

Montgomery Planning Commission Meeting Minutes

Regular Meeting

Public Safety Building

May 13, 2025 - 6:00pm

Present: Alissa Hardy, Joe Sherman, Diane Sherman

Guests: Emily Klofft (Northwest Regional Planning Committee)

Meeting called to order at: 6:07

1. Additions/deletions to agenda.
 - a. None
2. Approval of the April 15, 2025 meeting minutes.
 - a. Alissa motion to approve, Diane second the motion – all in favor (3-0)
3. Comments on text changes to short-term rental ordinance and confirm next steps.
 - a. See Appendix A for updated Short-Term Rental Ordinance draft
 - b. Next steps – Send draft to DRB. Alissa to ask Patrick to send on behalf of PC and CC Emily. Emily to try to attend DRB meeting when discussed to help answer questions.
4. Draft zoning recommendations for selectboard based on outreach.
 - a. See Appendix B for handout summarizing public outreach discussion and potential zoning changes. See Appendix C for reference materials. The following items discussed are recommendations from Emily (NWRP) based on outreach event and summarized in Appendix B.

- b. Recommendation to remove section 4 and 5 from review standards in bylaws and include in site plan review (example Appendix C Pg. 8).
- c. Additional considerations for zoning regulations based on outreach:
 - i. (1) Medium-based density district map example for Bakersfield included in Appendix C pg. 4
 - ii.(2) “consider form-based standards for villages” Examples of form-based standards for villages starting on Pg.9 of Appendix C
- d. There is a need for second public outreach – First outreach event the PC heard direction of concern but detail wasn’t gathered in some areas.
- e. HOME ACT and Act 181 Zoning Compliance Checklist - Appendix B
 - i. Need to update the definition of ADU to align with State definition.
 - ii.Added converted shelters/hotels/motels to list of emergency shelters. Can’t interfere with operational use (hours etc.)
 - iii. By-right development review – provides more clarity to developers. Regulating commissions are not able to make additional conditional requests based on public concern for example.
 - iv. 3-4 unit dwellings can’t be denied based on character of the area.
 - v. Decisions, appeals & process – changed definition of interested persons from 10 to 20 and additions of residents to property owners.

vi. Accessory on-farm businesses – adjacent agricultural businesses to farming. Tourism uses, recreational, social uses or selling farm adjacent products are exempt and considered permitted use.

vii. Replace “family” with “household” in bylaws.

f. Additional discussion items in Appendix B

i. (2) Subdivision are referred to in bylaws – currently no subdivision regulations in Montgomery.

1. What happens when a lot is subdivided smaller than what zoning allows given lack of subdivision regulations - does that mean it cannot be developed? 1/8 of an acre and 40 feet deep could be developed if subdivided before zoning regulations were put in place.

ii.(3) Montgomery adopted MAPA/On the Record Review. Positives and negatives to using this. Suggestion to use MAPA for certain situations - could require on the record review for projects of a current size for example. It would be helpful to understand how many cases have gone to Environmental Court and the outcome to address whether use of MAPA should be re-considered.

iii. (4) Regulations will need to comply with new FEMA standards. Suggestion to replace flood hazard with model standard from state.

- iv. (5) See appendix C for Westford example of campground/campsite definitions. Good starting point and connects to states definition of primitive site vs. camping site.
- v. (6) Mobile home parks – Consider whether current standard of 5-30 acres of land in bylaws still makes sense given new mobile home parks tend to be smaller (maybe 4 mobile homes for local employment housing or families).
- g. Based on feedback and constraints analyses, expansion of village 2 area doesn't make sense.
- h. Comments identifying areas towards Jay or south of the Center (Hutchins) being a better fit.
- i. Would be good to get a map overlay of the whole town with environmental constraints and Zoning map to identify specific areas that could be appropriate for growth. Further Zoning recommendation discussion based on areas identified.

5. Public comment.

- a. None

6. Other business.

- a. Ask that Ellen keep Planning Commission informed on new short term rental conditional use permit requests.
- b. Emily to check what percentage of town needs to vote to adopt new bylaws.

7. Future agenda items.

- a. Discussion of zoning recommendations for the Select Board
- b. Short term rental update
- c. Review of current zoning bylaws including updated constraint analyses map

Meeting adjourned at 8:02

Notes submitted by Narissa Furtado-Cordeiro, Planning Commission Secretary

Appendix A

Short-Term Rental Registry Ordinance



Town of Montgomery VERMONT

Adopted: _____, ____ 202__

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Section 1. Authority

The Town of Montgomery Selectboard adopts this Ordinance pursuant to the authority set forth in Chapters 59 and 61 of Title 24 of the Vermont Statutes Annotated, including but not limited to 24 VSA § 1971 and 2291(15) and (29). This Ordinance shall be designated as a civil ordinance under 24 V.S.A. § 1971(b).

Section 2. Purpose

The Town of Montgomery values its history and status as a vibrant, year-round mountain resort town and recognizes the significant benefit to the local economy and community stemming from tourism. The Town also recognizes the need for the availability of long-term housing. The purpose of this Ordinance is to seek to balance the well-established practice of renting dwelling units to the traveling, transient, and visiting public with the needs of ensuring an adequate supply of long-term housing, preserving the character of residential neighborhoods, and protecting the public health, safety, welfare, and convenience of visitors and residents. This is accomplished through the establishment of an orderly process for compiling a database of all Short-Term Rentals in the Town, identifying contact information for each Short-Term Rental, and establishing basic requirements for the operation of Short-Term Rentals.

Section 3. Definitions

The following words, terms, and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- 3.1.1 “Designated Local Agent” shall mean an individual living both within the United States and a 25-mile driving distance of a Short-Term Rental who the registrant of the Short-Term Rental authorizes to represent the registrant, respond to the Town in matters concerning compliance with this Ordinance when the owner is not available, and act as an emergency contact for guests of the Short-Term Rental.
- 3.1.2 “Dwelling Unit” has the same meaning as in the Montgomery Zoning Regulations, as amended from time to time.
- 3.1.3 “Existing” or “in existence” in reference to a Short-Term Rental means its availability as a Short-Term Rental is listed, advertised, or otherwise marketed or it is occupied as a Short-Term Rental.
- 3.1.4 “Owner” means each individual or entity including, without limitation, all partners, officers, or trustees of any real estate trust; all members or managers of a limited liability company; and all officers and directors of a

corporation that constitute the record owner or owners of a building or property.

- 3.1.5 “Primary Residence” means the dwelling in which a person resides as their legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.
- 3.1.6 “Registrant” means the person seeking to register a Short-Term Rental under this Ordinance or who holds a registration for a Short-Term Rental duly registered pursuant to this Ordinance.
- 3.1.7 “Resident-Occupied Dwelling Unit” means a dwelling unit occupied by an individual as his or her primary residence.
- 3.1.8 “Short-Term Rental” means a furnished house, condominium, or other dwelling room or self-contained dwelling unit, or a portion thereof, rented to the transient, traveling, or vacationing public for a period of fewer than 30 consecutive days and for more than 14 days per calendar year, but excluding the following:
 - 3.1.8.1 a lodging establishment, as the term is defined in 18 V.S.A. § 4301, which holds a current license to operate a food and lodging establishment with the Vermont Department of Health; and
 - 3.1.8.2 two or fewer individual bedrooms or other portions of dwelling units rented to the transient, traveling, or vacationing public in a resident-occupied dwelling unit.
- 3.1.9 “Town” means the Town of Montgomery, Vermont.

Section 4. Registration

4.1 Registration of Short-Term Rentals Required

- 4.1.1 Except as provided in Subsection 4.1.2, a Short-Term Rental shall be registered with the Town by the owner of the Short-Term Rental prior to its availability as a Short-Term Rental being listed, advertised, or otherwise marketed or prior to its first occupancy as a Short-Term Rental, whichever is earlier.
- 4.1.2 For Short-Term Rentals in existence on the effective date of this Ordinance, or at any time in the 12 months preceding the effective date of this Ordinance, any owner of a Short-Term Rental wishing to continue the Short-Term Rental after the effective date of this Ordinance shall have 60 days after such effective date to submit a complete signed initial registration application for the Short-term Rental to the Town, with payment of the applicable fee, although the Town may grant an extension of this date for a maximum of 30 additional days for good cause demonstrated on a case-by-case basis.

- 4.1.3 For Short-Term Rentals that are bedrooms or portions of dwelling units, only one registration, and one registration number, per dwelling unit which contains a Short-Term Rental shall be required. For example, if three bedrooms in the same dwelling unit are rented separately, only one registration is needed for all three bedrooms and they will be assigned the same registration number.
- 4.1.4 Except where this Ordinance otherwise provides, registrations shall be valid until April 30 of the calendar year following the year they were applied for, after which date they shall automatically expire unless renewed.
 - 4.1.4.1 Registrations shall be renewed annually on or before May 1 of each calendar year through the submission of a renewal application and payment of applicable fee by the deadline of May 1.
 - 4.1.4.2 Renewal applications submitted between May 1 and May 31 shall be accepted but treated as late renewal applications.
 - 4.1.4.3 The failure to submit a renewal application and pay the applicable fee by May 31 shall result in the forfeiture of the right to renew the registration.
 - 4.1.4.3.1 Any listing, advertising, or other marketing of the availability of, or occupancy as, a Short-Term Rental, after May 31 by registrants who failed to submit a renewal application and pay the applicable fee for the Short-Term Rental by May 31 shall constitute a violation of this Ordinance.
 - 4.1.4.3.2 Any subsequent application for registration shall require submission of a new initial registration application and initial application fee.
- 4.1.5 A Short-Term Rental shall not be considered registered unless and until all of the following have occurred:
 - 4.1.5.1 The owner of the Short-Term Rental has submitted a complete, signed application together with any additional information required by the Town and payment of the applicable fee.
 - 4.1.5.2 For an initial registration application, the Town has reviewed the application, determined the information in the application and in the Town records indicates the Short-Term Rental can be operated in compliance with this Ordinance, and provides a registration number to the registrant; or
 - 4.1.5.3 For a renewal application, the Town does not deny the application within 15 days of its receipt.
- 4.1.6 Applications for registrations shall be denied if the Town determines the Short-Term Rental cannot be operated in compliance with this Ordinance.

- 4.1.6.1 If an application for a registration of an existing Short-Term Rental is denied by the Town, no later than 30 days after notification of the denial by the Town the registrant shall ensure its availability as the Short-Term rental has ceased being listed, advertised, or otherwise marketed and it has ceased being occupied as a Short-Term Rental.
 - 4.1.6.2 Notification of denials shall be provided by certified mail.
 - 4.1.6.3 For the purposes of calculating the deadline in Subsection 4.1.6.1 of this Ordinance, the day after the day the Town provides the notification of denial to the mail carrier or places it in an official United States post office mailbox is counted as day 1
- 4.1.7 In the context of reviewing an initial application registration, the Town may perform an inspection of a Short-Term Rental in order to determine whether the Short-Term Rental can be operated in compliance with this Ordinance, including but not limited to the ability to comply with all building, health, and fire safety codes, ordinances, policies, and regulations adopted by the Town.
- 4.1.8 Except as provided in Subsection 4.1.8.1 of this Ordinance, Registrants shall provide an update to the Town of any changes to the information provided in an application within 15 calendar days of the change.
 - 4.1.8.1 Registrants wishing to make a material change to the manner in which the Short-Term Rental is operated shall submit a new initial registration application and shall not alter the operation of the Short-Term Rental unless and until an updated registration is provided by the Town.
 - 4.1.8.2 For the purposes of this Subsection a “material change” means any change to the information submitted in an application that is required pursuant to Subsections 4.2.1.4-4.2.1.7 of this Ordinance.
- 4.1.9 Registrations shall only be valid for the owner named on the application. Registrations shall not run with the land and shall not be transferrable or assignable.
 - 4.1.9.1 Upon sale of a dwelling unit associated with a Short-Term Rental registration, the registration shall terminate.
 - 4.1.9.2 Should the new owner desire to have a Short-Term Rental the new owner shall be subject to all of the requirements of this Ordinance, including the initial registration application and payment of the initial application fee.
- 4.1.10 The approval of a registration, and issuance of a registration number, by the Town for a Short-Term Rental shall not be interpreted as a finding that, or deemed to be evidence that:
 - 4.1.10.1 the Short-Term Rental is in compliance with applicable building, health, and fire safety codes, ordinances, policies, registrations and laws adopted by the Town or State;

- 4.1.10.2 the Short-Term Rental is in compliance with other requirements of this Ordinance; or
- 4.1.10.3 the Short-Term Rental is in compliance with the Wastewater and Potable Water Supply Permit associated with the property.

4.2 Application

- 4.2.1 Initial registration applications shall be submitted on a form supplied by the Town which shall require, at a minimum, the following information:
 - 4.2.1.1 The physical (E-911) address of the property on which the Short-Term Rental is located.
 - 4.2.1.2 The number of dwelling units on the property.
 - 4.2.1.3 The number of dwelling units on the property that will include or be a Short-Term Rental.
 - 4.2.1.4 The total number of bedrooms in the dwelling unit for which the registration is sought.
 - 4.2.1.5 A description of whether the dwelling unit will be rented as a whole-house rental or separately per bedroom or other portion of the dwelling unit, and, if the latter, the number of bedrooms that will be separately rented and the number of other portions of the dwelling unit that will be separately rented.
 - 4.2.1.6 The maximum number of overnight Short-Term Rental guests the dwelling unit will be rented to.
 - 4.2.1.7 The number and location of parking spaces that are dedicated for the Short-Term Rental.
 - 4.2.1.8 The name, physical address, mailing address, phone number, military status, and email address of the owner of the Short-Term Rental.
 - 4.2.1.8.1 If the owner is a corporation, this information shall be supplied for both the registered corporate agent and the president, CEO, or managing officer of the corporation.
 - 4.2.1.8.2 If the owner is a partnership, this information shall be supplied for the registered partnership agent, and each of the general partners.
 - 4.2.1.9 The name, physical address, mailing address, phone number, and email address of any designated local agent and alternate designated local agent.
 - 4.2.1.10 A certificate of insurance that expressly acknowledges that the registrant has insurance that meets the requirement of Subsection 5.1 of this Ordinance or proof that the registrant will conduct all of its rental transactions through a hosting platform that provides equal or greater coverage and that the hosting platform-provided insurance carrier is obligated to defend and indemnify the registrant, as an additional named insured, and any user in the building for any bodily injury and property damage arising from the rental.
 - 4.2.1.11 Proof of Vermont tax account for rooms & meals and/or sale tax purposes or proof that the registrant will conduct rental

- transactions through a hosting platform that pays all applicable rooms & meals and/or sale taxes on behalf of the registrant.
- 4.2.1.12 A completed “Short Term Rental Safety, Health and Financial Obligations” form required by the State for the Short-Term Rental, or, if the form is discontinued and replaced by the State, the replacement form or documentation required by the State.
 - 4.2.1.13 For Short-Term Rentals that require inspection from the Division of Fire Safety, the resulting inspection report from the Division of Fire Safety.
 - 4.2.1.14 Any other information related to the use or occupancy of the Short-Term Rental, dwelling unit, or property that the Town identifies as material to determining compliance with this Ordinance or to gaining an understanding of the effect of Short-Term Rentals on the availability of long-term housing in the Town.
- 4.2.2 Renewal applications shall be submitted on a form supplied by the Town which shall require, at a minimum, the following information:
- 4.2.2.1 All updates and changes to the information provided in the initial registration application or most recent renewal application.
 - 4.2.2.2 If applicable, an updated certificate of insurance that expressly acknowledges that the registrant has insurance that meets the requirements of Subsection 5.1 of this Ordinance.
- 4.2.3 Providing false or materially misleading information on an application shall be considered a violation of this Ordinance.
- 4.3 Registration Fees
- 4.3.1 Initial registration applications shall include payment to the Town of an initial application fee of \$300 per dwelling unit.
 - 4.3.2 Renewal applications submitted by the May 1 deadline shall include payment to the Town of a renewal fee of \$250 per dwelling unit.
 - 4.3.3 Late renewal applications shall include payment to the Town of a late renewal fee of \$300 per dwelling unit.

Section 5. Requirements to Obtain Registration and Ongoing Requirements

- 5.1 Registrants shall maintain insurance that expressly acknowledges that the property may be used for Short-Term Rental business activity and includes property insurance and general liability insurance appropriate to cover the rental use in the aggregate of not less than \$1 million or a greater amount as otherwise required by law.
- 5.2 Registrants who do not live within 25 miles driving distance of the registered Short-Term Rental and registrants who do not live within the United States shall authorize an individual to act as the designated local agent.

- 5.2.1 All registrants shall have the option to authorize an individual to act as a designated local agent.
 - 5.2.2 All registrants shall have the option to identify an alternate designated local agent to act as the designated local agent when the primary designated local agent is unavailable.
- 5.3 The Short-Term Rental registration number assigned by the Town shall be prominently displayed in each Short-Term Rental and included in any and all listings, advertisements, and other marketing information for the Short-Term Rental.
- 5.4 The current and valid name, address, phone number, and email of the registrant and the designated local agent or agents, if any, shall be prominently displayed in the Short-Term Rental along with all additional information required by the State to be displayed.
- 5.5 Registrants shall provide guests with written documentation that contains the following information:
 - 5.5.1 The current and valid name, phone number, address, and email of the registrant and any designated local agent and alternate designated local agent.
 - 5.5.2 Written instructions on the location and use of fire extinguishers.
 - 5.5.3 Written instructions on emergency shut-off of heating systems and fuel burning appliances.
 - 5.5.4 A diagram identifying all emergency egress routes.
- 5.6 Overnight Short-Term Rental guest occupancy shall be limited to 2 guests per bedroom plus no more than 2 additional guests per dwelling unit.
 - 5.6.1 For the purposes of this subdivision, the number of bedrooms is determined by using the number of bedrooms for the dwelling unit stated in the Vermont Wastewater and Potable Water Supply Permit associated with the dwelling unit or, if no such permit exists, the number of bedrooms that meets the definition of “bedroom” as defined in Section 1-806(a) of the Vermont Wastewater System and Potable Water Supply Rules.
- 5.7 Registrants shall provide a minimum of 1 off-street parking space per bedroom for use by Short-Term Rental guests.
 - 5.7.1 The required parking spaces shall be 9 feet by 18 feet long and shall be on the same property as Short-Term Rental or adjacent property owned by the registrant.
 - 5.7.1.1 The required parking spaces do not have to meet the definition of parking space in the Montgomery Zoning Regulations and are not limited to parking spaces approved in the property’s zoning permit.
 - 5.7.1.2 Stacked parking. Registrants may designate more than one parking space in a driveway to meet the number of required parking spaces such that some vehicles will be blocked in by other vehicles from accessing the access aisle or the road

unless such designation has the possibility of impacting properties not owned by the registrant.

5.7.1.3 Registrants shall not permit Short-Term Rental guests to park on properties not owned by the registrant without the property owner's permission or to park in the travel lane of roads or other public locations not specifically designated for parking.

5.8 Registrants shall comply with all applicable building, health, and fire safety codes, ordinances, policies, regulations and laws adopted by the Town and the State including but not limited to the Vermont Department of Public Safety's Residential Rental Housing Health & Safety Code.

5.9 Registrants shall not permit guests to have pets in the Short-Term Rental unless the guests provide proof of valid rabies vaccination.

5.10 Registrants shall prohibit guests from subleasing, sublicensing, or assigning all or any portion of the Short-Term Rental to another person.

5.11 Registrants shall not allow Short-Term Rental guests to host parties, conferences, family reunions, weddings, fundraisers, or similar gatherings at the Short-Term Rental that results in, or are reasonably foreseeable to result in, an assemblage of vehicles or a greater number of persons than the maximum allowable number of overnight Short-Term Rental guests for the dwelling unit.

5.12 Registrants shall not allow overnight camping on the same property as the Short-Term Rental unless the property on which the camping takes place has a Town zoning permit that authorizes use of the property as a campground.

Section 6. Enforcement

6.1 Any person who violates a provision of this Ordinance may be subject to a civil penalty of up to \$800 per day, as specified in Section 7 of this Ordinance, for each day that such violation continues.

6.2 When the protection of the public health, safety, or welfare of the community warrants, the owner of a Short-Term Rental who violates a provision of this Ordinance may also be subject to the following:

6.2.1 suspension or revocation of the registration for the Short-Term Rental to which the violation applies for the remainder of the registration term; and

6.2.2 prohibition from submitting a new initial registration application for the Short-Term Rental for a period of up to 12 months following the expiration date that would have applied if not for the suspension or revocation.

- 6.3 The _____ shall all be designated and authorized to act as Issuing Municipal Officials to issue and pursue before the Judicial Bureau, or other court having jurisdiction, a municipal complaint.
- 6.4 As a condition of registration, the Town may perform an inspection of a Short-Term Rental in order to assess compliance with this Ordinance, including but not limited to compliance by the Short-Term Rental with all building, health, and fire safety codes, ordinances, policies, and regulations adopted by the Town.

Section 7. Civil Penalty; Waiver Fees

- 7.1 An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each day of a violation:
- 7.1.1 Operating a Short-Term Rental without registration: \$800
- 7.1.2 All Other Violations:
- | | |
|---------------------------------|---|
| First Offense: | \$400 |
| Second Offense: | \$600 |
| Third Offense: | \$800 |
| Fourth and Subsequent Offenses: | \$800 plus automatic revocation of registration and prohibition for twelve (12) months following the registration expiration date that would have applied if not for the revocation before a new initial registration application may be submitted. |
- 7.2. An Issuing Municipal Official is authorized to recover waiver fees, in lieu of a civil penalty, in the following amounts for each day of a violation, for any person who declines to contest a municipal complaint and pays the waiver fee:
- 7.2.1. Operating a Short-Term Rental without registration: \$500
- 7.2.2. All Other Violations:
- | | |
|---------------------------------|--|
| First Offense: | \$100 |
| Second Offense: | \$250 |
| Third Offense: | \$500 |
| Fourth and Subsequent Offenses: | \$700 plus automatic revocation of registration and prohibition for twelve (12) months following the registration expiration date that would have applied if not for the revocation before a new initial registration application may be submitted |
- 7.3 Offenses shall be counted on a twelve (12) month basis beginning May 1 and ending April 30 of each year.

Section 8. Other Relief

In addition to the enforcement procedures available under Chapter 59 of Title 24, the Town is authorized to commence a civil action in the Civil Division of the Vermont Superior Court to obtain injunctive and other appropriate relief, to request suspension or revocation of any Short-Term Rental registration on behalf of the Town, or to pursue any other remedy authorized by law.

Section 9. Severability

If any provision of this Ordinance is deemed by a court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, that provision shall be severed from this Ordinance and the remaining provisions that can be given effect without the severed provision shall continue in effect.

Section 10. Effective Date

In accordance with 24 V.S.A. § 1972, this Ordinance shall take effect on _____.

Adopted at Montgomery, Vermont this ____ day of _____, 20__

MONTGOMERY SELECTBOARD

Received and Recorded: _____ Clerk: _____

Appendix B



**Northwest
Regional Planning
Commission**

75 Fairfield Street
St. Albans, Vermont 05478
PHONE 802-524-5958
WEB nrpcvt.com

To: Montgomery Planning Commission
From: Emily Klofft, Regional Planner
Date: May 13, 2025
Subject: Key Takeaways from Public Outreach and Discussion of Potential Zoning Changes

Key Takeaways from Public Outreach

Overall Concern about New Development

Many residents were concerned about the potential for new development and its impact on the character of Montgomery. Some specific concerns noted included:

- Ensuring Montgomery maintains its current character
- Protecting river water quality, stormwater/drainage
- Limited parking capacity in the villages
- Dreamer's Road area is habitat for deer population

However, some attendees did note that there was a need for new housing in the village for young families or workers, with a need to ensure enough students for the school.

Potential "Village 3", phased expansion and other areas for growth

Several attendees identified other potential opportunities to allow for additional housing growth.

- Consider a phased approach with a smaller amount of land added to Village 2 and then evaluate development in 5 years to consider additional expansion
- Consider a "Village 3" or denser rural residential district with a smaller lot size but less dense than Village 2
- Consider area south of the center and the northeast towards Jay for development at a lower density than Village 2- these areas are along the highway and have fewer environmental constraints

Short-Term Rental Regulations

Several concerns about short-term regulations were discussed including:

- Need for a strong enforcement method
 - Discussion on whether or not zoning or ordinance is better for enforcement
- Short-term rentals are beneficial for property owners as there are fewer potential legal liabilities than with long-term tenants
- High percentage of short-term rentals is reducing the amount of housing available for teachers and workers at Jay Peak

SERVING THE MUNICIPALITIES OF: Albion/Town • Albion/Village • Bakersfield • Berkshire • Enosburg Falls • Enosburg Town • Fairfax • Fairfield • Fletcher • Franklin • Georgia • Grand Isle • Highgate • Isle La Motte • Montgomery • North Hero • Richford • St. Albans City • St. Albans Town • Sheldon • South Hero • Swanton Town • Swanton Village

Discussion on Possible Options for Zoning Regulations

Key Recommendations from the Previous Bylaw Modernization Project

- 1) *Move large multi-units (5+ units) from being permitted only under Planned Unit Development to being a conditional use with site plan review.*

Planned Unit Development standards are best used for supporting flexibility in standards such as lot size, setbacks or frontage. Common uses of planned unit development standards are to allow for mixed uses or, in towns with subdivision regulations, to allow for the clustering of lots in a subdivision. A larger multi-unit should generally not require flexibility in district standards. Conditional use review addresses the character of the area and conformance with the Town Plan to ensure that uses are appropriate and is therefore a better tool for permitting larger multi-unit development that will otherwise meet lot size and dimensional requirements.

- 2) *Add site plan review standards, allowing the town to permit small multi-units with site plan review.*

Under the HOME Act, the Town cannot use character of the area as a reason to deny small 3-4 unit apartments. Since character of the area is the main consideration of conditional use, it makes this tool less effective for regulating these uses. Site plan review includes standards that address lot layout, traffic circulation, parking and screening. These standards are allowable and can support appropriate design to address potential impacts to neighboring residents.

Additional Potential Considerations for Changes to Zoning Regulations Based on Outreach

- 1) *Consider a "medium-density district".*

Several attendees noted that if the Planning Commission were to add additional land for housing development, they would prefer a district at a lower density than Village 2. There are examples throughout the state of "medium-density" districts, generally with 1 acre minimum lot size. For instance, Bakersfield's "High-Density Residential District" surrounds its village with a lot size of 1 acre. It is important to ensure that such a district is does not create a pattern of "rural sprawl" development.

- 2) *Consider form-based standards for the villages*

Many residents noted concerns about the character of the village. Form-based standards focus on the impact the form of development can have on community character. For instance, standards can dictate a maximum building footprint, require pedestrian orientated entrances, or certain building shapes that match the existing character of the community. Examples of communities that have adopted some form-based standards include Fairfield and Georgia.

Additional Discussion Items

1) HOME Act and Act 181 updates

There are a number of HOME Act and Act 181 provisions that will require changes to Montgomery's zoning, please see attached form.

2) Subdivision Regulations

Currently, Montgomery does not have subdivision regulations. Subdivision regulations control the pattern of development and can support protection of natural resources and appropriate lot layout. For instance, subdivision regulations could further the goal of the conservation districts to reduce forest fragmentation and protection of natural areas.

The adoption of subdivision regulations would have the impact of creating a temporary exemption to Act 250 for up to 50 units of housing within and ¼ mile from the existing designated village centers (local zoning would continue to apply and limit maximum number of units).

3) MAPA/On the Record Review

Montgomery's bylaws currently adopt the Municipal Administrative Procedures Act (MAPA) and On the Record Review. These standards require additional care for process during DRB hearings, such as requiring the municipality to identify all interested persons. In return, cases appealed to the Environmental Court are decided based solely on legal arguments, with no new review of the facts of the case. This can reduce legal appeals costs but also increase costs of hearings. For this reason, most municipalities in the state do not use on the record review. Consider discussing with the DRB if this tool is working for Montgomery.

4) Flood Hazard & River Corridor Recommendations

In conjunction with the FEMA map update process, municipalities will be required to update their flood hazard regulations to comply with FEMA's minimum requirements to maintain participation in the National Flood Insurance Program (NFIP). Due to the specificity of these requirements, NRPC recommends entirely replacing the existing flood hazard section with a model standard which the State of Vermont has reviewed and approved to meet the FEMA standards.

5) Regulation of Campgrounds and Campsites

The Planning Commission has noted regulation of campsites rented online via sites such as Hipcamp are not currently regulated. Westford, VT is an example of a community which has specifically regulated this issue. In their bylaws, they separately define campground and campsite, with a campsite, with 1-3 campsites being permitted and 4 or more being a conditional use.

6) Mobile Home Parks

Review the requirements for mobile home parks and consider modernizing to allow for smaller and more flexible modern mobile home parks. Small 3–4-unit mobile home “parks” are a method of providing affordable housing while fitting with existing town development. Current regulations require between 5-30 acres of land, which may be unnecessarily restrictive for smaller parks. Ensure that standards for mobile home parks are equivalent to those for other forms of development to ensure compliance with Vermont’s fair housing laws.

Appendix C

Example of Medium Density Zoning District- Bakersfield

- development. If a newly created parcel lies in two districts, the more restrictive dimensional standards shall apply.
- b. The permitted and conditional use restrictions for the district in which the use is to occur shall control, and if the use is to occur in both districts, it must conform to the restrictions of both.
 - c. When building a structure, the minimum frontage and setback requirements for the district in which the structure is to be located shall control, and if the structure is to be in both districts, the smaller requirement shall control.

3.3 ZONING DISTRICT PURPOSES AND SUPPLEMENTAL STANDARDS

The following section sets forth the stated purpose and supplemental standards for each zoning district.

A. Village Center District

Purpose: The Village Center district represents the historic center of Bakersfield. This district has a distinct historic character which features mixed residential, commercial and public uses in a historic village setting. Development in this district should protect and preserve existing historic resources, promote pedestrian access and maintain the village character, including its historic settlement pattern, scenic character and sense of community.

B. High Density Residential District

Purpose: This district is comprised of the area around the village center where additional high-density development could be accommodated. This district provides a transition between the compact development of the village center and the rural areas of Bakersfield. It is designed to allow a radial pattern of development around the village in an effort to discourage linear sprawl. Development in this district should complement and extend the character and traditional development pattern of the village core. Interconnected street networks and pedestrian access are encouraged in this district.

C. Rural District

Purpose: It is intended that this district remain rural, agricultural and silvicultural. The preservation of farmland and prime agricultural soils is a major objective. Rural residential development and compatible rural uses, at a density the land can support are permitted. Clustered development that protects large, contiguous tracts of farmland or open space is appropriate in this district. Within the rural district, additional restrictions are included to protect an important Heron Rookery in northwestern Bakersfield, consistent with the requests of the Vermont Department of Fish and Wildlife.

D. Conservation District

Purpose: This district is designated to protect the natural resources and scenic value of mainly forested lands that lack direct access to public roads, are important for wildlife and wildlife habitat, and which are poorly suited for development. Included are areas of high elevation, steep slopes and swamplands. Concern must be given to building on any slope greater than 15% because the soils in these areas tend to be thin and unstable, making them unsuitable for development. The Conservation District includes the watershed that provides Bakersfield's municipal water supply and land uses that might

3.4 ZONING DISTRICT USES AND DIMENSIONAL STANDARDS

A. All uses and structures must meet the district dimensional requirements and all other applicable provisions of these regulations except as authorized by a variance, by approval of a planned unit development or as allowed by Section 5.8 – Nonconformities.

B. Table 3.1 lists uses and structures for each district. Procedures for review of each type of use are found in Article 4 – Permit Review Procedures and Standards. An explanation of each type of use may be found in Section 5.2 - Uses.

Table 3.1 contains the following uses: permitted uses (P), permitted uses that require site plan approval (P/S), conditional uses (C), uses that require conditional use and site plan approval (C/S), and prohibited uses (X). All uses require, at minimum, a zoning permit per Section 4.1 – Permitting Process.

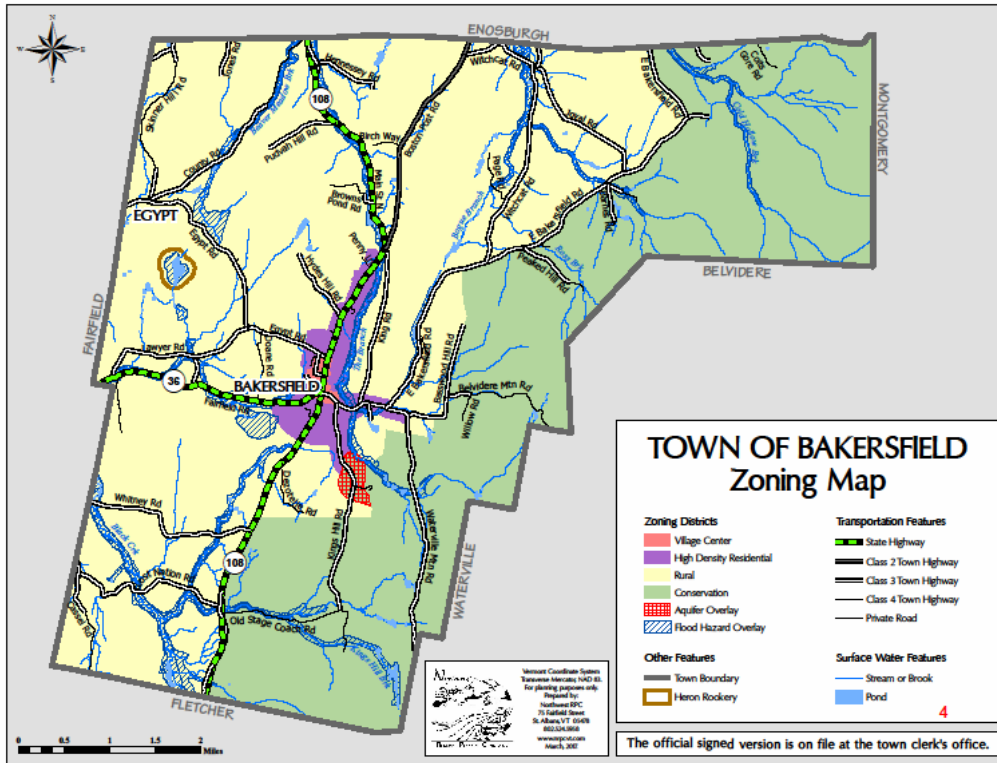
C. The supplemental standards imposed by the Aquifer Overlay District and Flood Hazard Overlay District are in addition to the requirements of the underlying district.

D. Uses not specifically listed in Table 3.1 shall be considered prohibited unless such use is approved by the Board of Adjustment as a Conditional Use in accordance with the following:

1. The Board of Adjustment must find that the use is of the same general character as those permitted or allowed as conditional uses in the area in which the use is proposed. The burden of proof to show that the proposed use is of the same general character as allowed uses in the area shall be on the applicant.
2. In reaching its decision, the Board of Adjustment must hold a public hearing after public notice, and send notice to the Planning Commission 15 days in advance of the hearing. The Planning Commission may submit written or oral recommendations to the Board of Adjustment relative to the acceptability of the proposed use. The Board of Adjustment will determine the minimum lot size, setbacks, lot frontage and other requirements for the use based on the area regulations and requirements for similar uses. In no case will the minimum lot size, setback or frontage be less than the minimum otherwise required in the zoning district.

Table 3.1. Dimensional Standards and Uses by Zoning District					
Dimensional Standards					
	Village Center	High Density Residential	Rural	Conservation	
Minimum Lot Size (acres)	0.25	1	10	25	
Min. Frontage (feet)	60	125	275	400	

Max Setback from Road (feet measured from center line of road)	125	n/a	n/a	600	
Min Setback from Road (feet measured from center line of road)	35	50	50	50	
Min. Setback – Rear and Side Yard (feet measured from property line)	5	10	30	30	
Uses					
	Per Section 4.1: "No land development, as defined in Article 11 shall commence in the Town of Bakersfield without a zoning permit issued by the Zoning Administrator unless specifically exempted in Section 1.7."				
	"P"-Permitted Use; "C"-Conditional Use; "S"-Site Plan Review; "X"-Prohibited				
	Village Center	High Density Residential	Rural	Conservation	Please refer to:
Residential Uses					
Accessory Use	P	P	P	P	Section 5.2
Accessory Dwellings	P	P	P	P	Section 6.2
Camps	X	X	P	P	for conversion of camps to year-round dwellings, see Section 6.3
Child Care Home	P	P	P	P	
Senior Housing	P/S	P/S	X	X	
Group Home or Residential Care Home	P	P	P	P	
Mobile Home Park	X	C/S	C/S	X	Section 6.10
Multi-Family Dwelling	C/S	C/S	X	X	
Single Family Dwelling	P	P	P	P	
Two-Family Dwelling	P	P	P	X	
	Village Center	High Density Residential	Rural	Conservation	Please refer to:
Non-Residential Uses					
Bed and Breakfast	P/S	P/S	P/S	C/S	
Business Services	P/S	P/S	C/S	X	



- (6) **BOARDING HOUSE** means a single-family dwelling where rooms are rented for compensation to lodgers for a contract period of not less than 30 days and where the rented rooms do not include individual cooking or eating facilities. Lodgers may be provided or be able to make meals in a common kitchen and eating area, but no meals may be provided to outside guests. The owner or manager of the boarding house must live in the single-family dwelling.
- (7) **BOARDWALK** means a walkway constructed over wet ground that is no greater than 4 feet in width.
- (8) **BUILDING** means a portable, temporary, fixed, or permanent structure having a roof supported by columns or walls, for the shelter, support, or enclosure of people, animals, or property; including, but not limited to, dwellings, barns, garages, sheds, tents, storage units, or trailers or vehicles used for shelter or storage.
- (9) **BUILDING ENVELOPE** means a specific area of a lot, delineated on a subdivision plat, within which land development must be located and outside of which no land development may be located, except walkways, driveways, roads, utilities, water-dependent structures, and exempt accessory structures (See Section 111).
- (10) **BULK STORAGE OF FUELS** means the storage of 500 gallons or more of liquid or gaseous fuels in large quantities for distribution. Such fuels include fuel oil and pressurized gasses such as propane and compressed natural gas.

511.C

- (1) **CAMPGROUND** means a parcel of land that is occupied or intended or designed or improved for occupancy by transients using tents, tent platforms, or single axel towed campers that do not have access to utility hookups for use as temporary living quarters for recreation, education or vacation purposes and is advertised as such to the public for use in a temporary, seasonal manner. Campgrounds consist of one or more camping sites for commercial use. Campgrounds with four or more camp sites may include facilities and/or structures associated with campground operations, such as bathrooms, showers and concessions. See also Camping Site.
- (2) **CAMP SITE** means any tent, tent platform, or single axel towed camper that does not have access to utility hook ups that is used in a campground as temporary living quarters for recreation, education, or vacation purposes.
- (3) **CEMETERY** means property used for the interring of the dead.
- (4) **CHARACTER OF THE AREA** means the image and perception of an area as defined by factors such as its built environment, land uses, transportation network, landscaping, natural features and open space elements, type of housing, architectural style, infrastructure, and the type and quality of public facilities and services. Standards that require uses to be compatible with the character of the area must consider the generation of light, noise, dust, and traffic, and the location, size, and design of structures, as compared to what is typical in or planned for the area as described in the purpose statement of the zoning district and the land use goals and policies of the Westford Town Plan.

2023 Bylaw Mod- Example Subdivision

above the roof line which are mounted on complying structures. Height will be measured as the vertical distance from the mean level of the finished grade of the building to the ridge-line or deck-line of the roof (Figure 4(B)). Under conditional use review, the DRB may authorize other exceptions as long as they are unoccupied, such as steeples and cupolas, which do not disrupt the surroundings nor create a hazard.

Article 5: Development Regulations

Section 5.1: Conditional Use Approval

A) **Applicability.** The following uses require conditional use approval from the DRB:

- 1) Initiating a new use that is listed in Table 4(A) as conditional (C).
- 2) Changing an existing use to a different use that is listed as conditional (C) in Table 4(A) (Pg. 24-25).
- 3) Expanding or modifying an existing conditional use so that it no longer conforms to its existing conditional use approval. (Alterations or minor changes to an existing conditional use permit, that are not a "change of use" may be permitted by the ZA as a permitted use under these regulations).
- 4) Nonconformities (in some cases, see Section 6.6)
- 5) Access by right of way to lots without frontage on a public road or waters (see Section 6.10(D)).
- 6) Any excavation or fill involving 100 or more cubic yards of material, or which the ZA determines may cause a change in the rate or direction of drainage to the detriment of neighboring properties (See Section 6.2).
- 7) Exceptions to the maximum height regulation (See Section 4.3(F)).
- 8) The approval of more than one principal use within one principal building (See Section 4.3(C)).
- 9) Any other land development that requires conditional use approval according to these Regulations.

B) **Purpose.** Conditional use approval requires compliance with standards addressing the impact of proposed land uses on adjacent properties, the neighborhood or district in which the project is located, and the community at large. Standards and conditions emphasize considerations to identify, avoid, and/or mitigate off-site impacts of a proposed project. ~~Conditional use approval also considers a building's and site design's consistency with the purpose and character of the district within which it is located. Standards and conditions emphasize these considerations related to internal layout of the site, its physical design and appearance as viewed from off-site, and the functional integration of the site with surrounding properties and uses.~~

C) **Application Requirements.** A complete application for conditional use approval shall include all the information requested on the Montgomery DRB Project Application Form, the requirements in Table 5, and the application fee.

- D) **Public Notice and Issuance Requirements.** The DRB shall issue a written decision following a duly noticed public hearing according to Section 2.4 and 2.5.
- E) **Review Standards.** The DRB may grant conditional use approval only upon finding that the proposed development shall not result in an undue adverse effect on any of the following:
- 1) **The capacity of existing or planned community facilities.** The DRB shall consider the demand for community services and facilities resulting from the proposed development, and determine whether that demand will exceed the existing or planned capacity of existing facilities or services. In making such a determination, the DRB will consider any capital program or budget in effect at the time of application.
 - 2) **The character of the neighborhood area or district affected.** The DRB shall consider the location, scale, type, density, and intensity of the proposed development in relation to the character of area likely to be affected by the proposed development, as defined by the purpose(s) of the zoning district(s) within which the project is located and specifically stated policies and standards of the Montgomery Town Plan.
 - 3) **Traffic on roads and highways in the vicinity.** The DRB shall consider the projected impact of traffic resulting from the proposed development on the capacity, safety, efficiency and use of affected roads, bridges, and intersections. A traffic impact study may be required.
 - ~~4) **Maximum safety of vehicular and pedestrian circulation between the site and the street network.** Particular attention shall be given to visibility at intersections, to traffic flow and control, to pedestrian safety and convenience, and to access in case of emergency.~~
 - ~~5) **Adequacy of circulation, parking, and loading facilities.** Particular consideration shall be given to the effect of noise, glare or odors on adjoining properties and state and town highways. Adequacy of provisions for erosion control, runoff, refuse removal, service areas, and snow removal shall be considered.~~
 - 6) **Conformance with applicable General Regulations and Specific Standards in Article 6 and 7.**
 - 7) **Other Town bylaws in effect.** No development shall be approved in violation of existing municipal bylaws and ordinances.
 - 8) **The utilization of renewable energy resources.** The DRB shall consider whether the proposed development will interfere with the sustainable use of

renewable energy resources, including the existing and future availability of and access to such resources on adjoining properties.

Example of Site Plan Review Section

A) Applicability

- 1) Initiating a new use that is listed in Table 4(A) as requiring site plan review (C/S or P/S).
- 2) Changing an existing use to a different use that is listed as requiring site plan review (C/S or P/S) in Table 4(A) (Pg. 24-25).
- 3) Expanding or modifying an existing use that requires site plan review so that it no longer conforms to its existing site plan approval. (Alterations or minor changes to an existing conditional use permit, that are not a "change of use" may be permitted by the ZA as a permitted use under these regulations).
- 4) Any other land development that requires site plan review approval according to these Regulations.

B) Site Plan Review Process. A complete application for site plan review shall be filed with the Zoning Administrator. The Zoning Administrator shall schedule a hearing with the DRB at the next available date but not sooner than fifteen (15) days.

C) Application Requirements. A complete application for conditional use approval shall include all the information requested on the Montgomery DRB Project Application Form, the requirements in Table 5, and the application fee.

D) Public Notice and Issuance Requirements. The DRB shall issue a written decision following a duly noticed public hearing according to Section 2.4 and 2.5.

E) Standards. Site plan review applications shall meet the following standards:

- 1) **Adequacy of circulation, parking, and loading facilities.** Particular consideration shall be given to the effect of noise, glare or odors on adjoining properties and state and town highways. Adequacy of provisions for erosion control, runoff, refuse removal, service areas, and snow removal shall be considered.
- 2) **Screening:** Adequacy of landscaping and screening (see Section 6.5)
- 3) **Maximum safety of vehicular and pedestrian circulation between the site and the street network.** Particular attention shall be given to visibility at intersections, to traffic flow and control, to pedestrian safety and convenience, and to access in case of emergency.

Georgia, VT- Example of Form-Based Standards

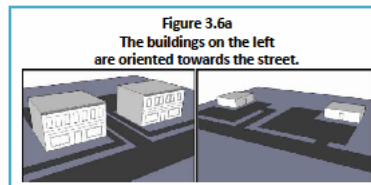
- b. **Group Net Metering.** A density bonus of up to 50% may be considered for a PUD that incorporates the installation of a group net-metered renewable energy facility (e.g., solar collectors, wind turbines) that is designated to provide at least fifty percent of the average annual energy consumption of each unit within the development, subject to facility approval by the VT Public Utility Commission.
 2. **Energy Efficient Building Design.** A density bonus of up to 50% may be considered for PUDs that incorporate one or more of the following design elements, as certified by a qualified professional architect or engineer licensed by the State:
 - a. Energy efficient building design that exceeds minimum state energy efficiency requirements for residential and commercial buildings (e.g., LEED, Energy Star Homes, Vermont Builds Greener Program).
 - b. Residential development in which single household dwelling units do not exceed 1,500 square feet of habitable floor area, and/or two household and multi-household dwelling units do not exceed 1,200 square feet of habitable floor area per unit.

Section 3.6 South Village Core Design Standards

A. **Applicability.** All land development in the South Village Core District shall satisfy the following design criteria. To demonstrate that a criterion is satisfied, the applicant must comply with each associated standard.

B. **Design Criteria.**

1. **Criterion #1 - Design and Context Sensitivity.** The purpose of this criterion is to allow the development of buildings, lighting fixtures, and signs that conform to the desired character and design of the South Village Core.

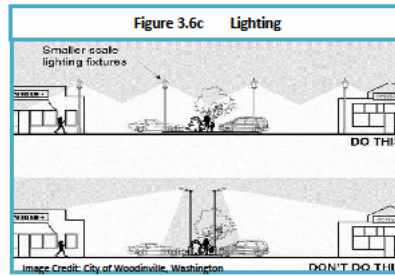


- a. **Standard 1a. Building Orientation.** Building(s) shall have at least one public entrance facing and oriented toward the street (see Figure 3.6a) and conform to the applicable dimensional standards in Table 2.3(c), and (d) (Dimensional Standards by Zoning District) and (Dimensional Standards for Special Uses).

d. Standard 1d. Outdoor lighting shall illuminate public spaces, including streets, sidewalks, walkways, parks/plazas, and parking areas, as approved by the DRB in accordance with the following:

i. Outdoor lighting fixtures are designed to direct light downward and adjusted so as not to cast light directly on adjacent roadways or properties and do not cause excessive glare within the property or adjoining properties. To achieve this, lighting fixtures shall have either exterior shields or optics within the fixture, such as "cut-off" technology, that controls light spread. Parking area lighting shall be a concealed recessed light source.

ii. Lighting fixtures in public spaces, including sidewalks, walkways, and plazas, shall be of a smaller, pedestrian scale (See Figure 3.6c). Pedestrian scale lighting is a maximum of 16 feet in height. In no case shall any parking area light fixture exceed a maximum of 20 feet in height.



iii. Lighting fixtures shall be architecturally integrated in the design of a building or sign. The same pole type and fixtures shall be used on a development site.

2. Criterion #2 - Efficient and Compact Use of Site, Mixed Use Development. The purpose of this criterion is to create a compact site layout that is coordinated with adjacent development and to permit land uses that are mixed on-site or are mixed in combination with adjacent uses (existing or planned). The combining of land uses shall promote easy access among stores and services by pedestrians and minimize vehicle accesses to streets with a goal of having street accesses serve two or more properties.

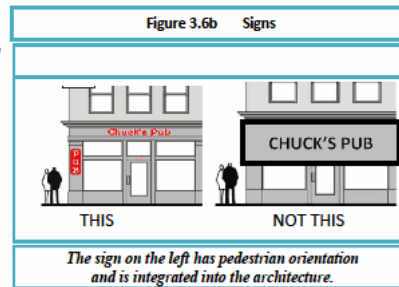
a. Standard 2a. The site layout clusters and integrates buildings with existing development to promote linked pedestrian trips (see Figure 3.6d).

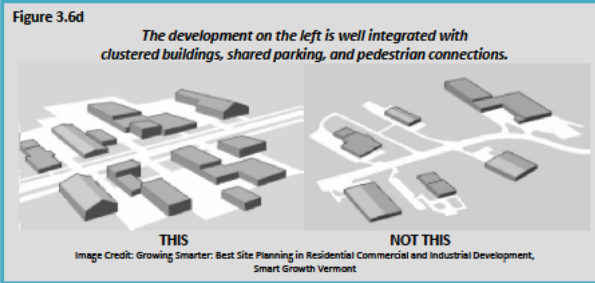
b. Standard 2b. Opportunities for shared parking are utilized in the proposal (See Section 5.6 C (Shared Parking) for shared parking approval requirements).

- b. Standard 1b. Buildings shall have interesting and diverse storefronts, facades, and/or architectural detailing. Franchise architecture shall be prohibited (see Article 10). Listed below are examples of design elements that make interesting and diverse storefronts, facades, or architectural detailing:
- i. Corning at top of roof and top of first story
 - ii. Detailed molding around windows and doors
 - iii. Accentuated entrances
 - iv. Storefront windows
 - v. Window and door awnings
 - vi. Regularly spaced windows and doors
 - vii. Front porches
 - viii. Decorative signs integrated into the façade
 - ix. Rooftop cupola, tower, or weathervane

Examples of interesting and diverse design elements are also shown in the South Village Core Strategic Plan, November 2009.

- c. Standard 1c. Signs shall be architecturally integrated in a building's elevation and have orientation to pedestrians as well as automobiles (Figure 3.6b). Pedestrian orientation means that signs are scaled to be easily read by pedestrians walking in the streetscape. Whether bracketed off the face of a building or mounted directly on the façade, signs are hung in logical spaces between windows or between floor levels. Signs do not obscure key architectural features of a building. Signs shall also conform to Section 5.9 (Signs).





- c. **Standard 2c.** The proposal is a mixed-use development or contributes to a mixed-use district. Mixed-use means a combination of residential, commercial, and/or governmental uses, arranged vertically (in multiple stories of buildings) or horizontally (adjacent to one another). Opportunities for including mixed uses include, but are not limited to, apartments on upper levels with commercial space on the ground floor or public parking in the basement underneath an office or apartment building. New residential uses are prohibited on the first story of all structures in the South Village Core District with the exception of large multi-household dwelling uses (5 Units or more), but through conditional use review, the DRB may waive this requirement and approve residential uses on the first floor if:
 - i. An equivalent square footage of commercial elsewhere in the building or in other buildings within the site plan, and
 - ii. In the judgment of the DRB the proposed mix of uses meets the purpose of the SV District as described in Article 2 of the regulations.
- d. **Standard 2d.** The number of curb cuts and their widths shall be minimized as feasible and shall integrate entries with other access points and streets rather than at random locations along the street. The DRB shall require shared access to adjoining properties to the maximum extent feasible and may limit access to the property to the lesser traveled street. Shared access shall be feasible when:
 - i. It can be implemented without removal of any existing buildings;
 - ii. Subsurface conditions can reasonably support it; and
 - iii. It will not have an undue adverse effect on one of the uses of the property in question.

3. **Criterion #3 - Pedestrian Access, Safety, and Comfort.** The purpose of this criterion is to permit development that is accessible by a direct, convenient, attractive, safe, and comfortable system of pedestrian facilities, and development that provides appropriate pedestrian amenities. The design of buildings and the streetscape shall support a safe and attractive pedestrian environment based on the following standards.

- a. **Standard 3a.** Building(s) shall have at least one public entrance facing and oriented toward the street with a direct link to sidewalks and any other pedestrian walkways (Figure 3.6e). Corner entrances are encouraged on corner buildings.

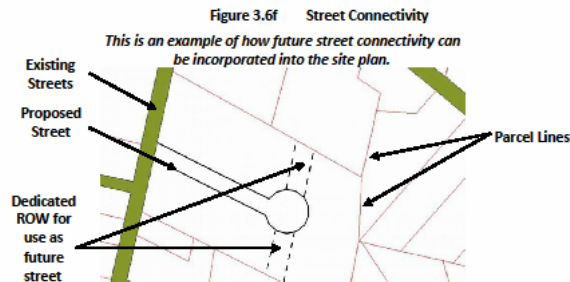
When specific circumstances make it impractical for a building to have a public entrance facing and oriented toward the street, the DRB may approve buildings with a public entrance facing and oriented toward a pedestrian walkway that directly connects to the street(s). The building façade facing the street shall include interesting architectural detailing oriented to pedestrians (see Standard 1b) such as windows at eye level and first story cornices.



- b. **Standard 3b.** Windows or window displays are provided at a pedestrian scale (eye level) along facades that face and are oriented to streets.
- c. **Standard 3c.** Sidewalks are placed along every street having frontage on the development parcel and pedestrian walkways are integrated throughout the site plan, providing connection to adjacent land uses, parking areas, and building entrances. Sidewalks shall be located so a greenstrip or street-furnishing zone is provided as a buffer from the street and shall be constructed in accordance with Town of Georgia specifications. Appropriate pedestrian amenities (for example: street tree well cutouts, space for outdoor seating, mailboxes, newspaper vending machines, etc.) may be provided in the greenstrip or street furnishing zone as appropriate.
- d. **Standard 3d.** Street trees are planted in the street furnishing zone or greenstrip along all sidewalks or, if not possible due to infrastructure or other physical constraints, in the front yard parallel to the edge of the street right-of-way. Street tree selection, purchasing, spacing, and planting is done according to Criterion 6 (Quality Landscaping and Screening) and an overall landscaping plan as required in Text Box 3.3 (Requirements of a Landscaping and Screening Plan).
- e. **Standard 3e.** Parking lots and vehicle drives shall be not located between the primary building entrance and the street and shall be located behind or to the side of a building (See Figure 3.6a). Parking lots are not located on street corners.

- f. **Standard 3f.** Landscape buffering shall be provided between parking lots and all adjacent sidewalks and pedestrian walkways.
4. **Criterion #4 - Building a Safe Public Road Network.** The purpose of this criterion is to permit development that is part of a complete and connected road network that safely and efficiently accommodates vehicles, pedestrians, bicycles and future transit.
 - a. **Standard 4a.** New streets connect development to existing or proposed adjacent streets in accordance with planned street connections to form a network (no dead ends). Planned street connections shall comply with the Conceptual Future Road Layout in the South Village Core Strategic Plan dated November, 2009, or any master street plan or Official Map in existence. In the event these plans/maps are in conflict, the Official Map shall be given priority followed by the South Village Core Strategic Plan dated November 2009. Conformance with the Conceptual Future Road Layout shall be satisfied if proposed new roads further the development of a road network; new roads are not required to follow the exact path of proposed roads as laid out in the South Village Core Strategic Plan.

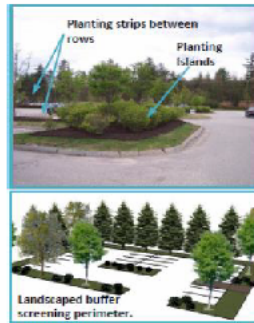
When existing and planned land uses on or in the vicinity of the site make it impractical to provide street connectivity at the time of application as required above, potential for future street connectivity is established by the dedication of rights-of way to the Town (See Figure 3.6f). The applicant shall work with the DRB to determine appropriate locations for future street rights-of-way based on existing and anticipated development, the Conceptual Future Road Layout in the South Village Core Strategic Plan dated November, 2009, or any master street plan or Official Map in existence. Rights-of-way width shall conform to the Selectboard's specifications for public roads and dedication for future use as a street shall be clearly indicated as a condition of site plan and/or subdivision approval and recorded in an irrevocable offer of dedication to the Town.



- b. **Standard 4b.** All proposed new roads shall be built to Town standards and may be taken over by the Town as public roads. All roads will be required to be named and identified by a street sign, which is of a standard approved by the Town in accordance with E-911 street address ordinance requirements.
 - c. **Standard 4c.** When a traffic study is required (according to application requirements in Section 3.3 B(2) (Site Plan Review Application Submission)), the proposal shall not cause traffic conditions on a Town highway or intersection to go below a Level of Service (LOS) of C, as defined by the Vermont Agency of Transportation. The DRB may require mitigation measures for existing or proposed traffic conditions and congestion that are dangerous according to LOS and crash data from the Vermont Agency of Transportation.
5. **Criterion #5 - Efficient Parking, Loading, and Service Areas.** The purpose of this criterion is to minimize the amount of land developed as surface parking and loading areas and to promote efficient and safe parking, loading, and service facilities with good circulation and access.
- a. **Standard 5a.** The project shall use shared parking where feasible and underground parking is encouraged. Shared parking means that multiple uses share one or more parking facilities See Section 5.6(C) (Shared Parking).
 - b. **Standard 5b.** Multi-Household dwellings of eighteen or more units shall have underground parking equal to a minimum of one space per unit. This underground parking shall be designated only to serve the residents of the multi-household dwelling and their guests, and these designated spaces may not be used to satisfy the requirement of mixed use (Standard2c).
 - c. **Standard 5c.** All parking lots proposed as part of a single development plan are designed to provide cross access connectivity (vehicular and pedestrian), or the interconnection of parking areas. Cross access connectivity (vehicular and pedestrian) shall be provided to any existing adjacent parking lots when it can be implemented without removal or relocation of any existing buildings, when it is feasible based on subsurface conditions, and when it will not have an undue adverse effect on one of the uses of the adjacent properties.

- d. **Standard 5d.** Parking areas are landscaped and screened from adjacent uses and from roadways in the vicinity via landscaped buffers around the perimeter and planting strips and islands integrated throughout the lot design (Figure 3.6g). Signage directing drivers to parking areas may be installed at the DRB's discretion in conformance with Section 5.9 (Signs).

Figure 3.6g – Parking Lot Landscaping



6. **Criterion #6 - Landscaping and Screening.** The purpose of this criterion is to create attractive, human-scale, mixed use neighborhoods with abundant shade trees and vegetation, and to approve quality landscaping and other screening methods, which harmonize mixed uses and transportation infrastructure in a pedestrian-friendly village.
- a. **Standard 6a.** Landscaping shall be integrated throughout the site, including in front and side yards, within and around parking areas, and where rear yards abut residential properties, so as to soften the landscape and effectively shade parking areas, sidewalks/walkways, and public spaces. In addition, trees and other landscaping are placed to interrupt the facades of buildings, to visually reduce the scale and bulk of large buildings, to integrate the site with the surrounding landscape, and to enhance environmental quality (e.g., wildlife habitat, soil stabilization, air quality, energy conservation).
- b. **Standard 6b.** Landscaping or other screening is placed appropriately on the site to mitigate the impacts of development on adjacent properties and pedestrian sidewalks/walkways. Examples of where the use of landscaping or screening is appropriate include to screen utility infrastructure, to screen the exterior storage of materials, to buffer noise from kitchen or heating infrastructure or equipment, to screen unsightliness or buffer odor from refuse removal areas, and to screen unsightliness and noise of parking and/or loading areas.

- c. **Standard 6c.** Landscaping plans use both deciduous and coniferous shade-giving trees in available yard areas, especially front and side yards and parking areas. Shade trees are especially important in instances where street trees are not practical because of site constraints. Flowering, ornamental, or small trees are used to compliment shade trees in instances where large yard areas exist, and where space limitations prevent the planting of shade trees.
 - i. In addition to trees, landscaping plans shall include a combination of the following:
 - I. Landscaping beds that enhance the general appearance of the site and define planting strips, lawn, and buffer areas;
 - II. A mix of evergreen and flowering shrubs and bushes adjacent to buildings, within planting beds, and to compliment shade trees and other landscaping features; and
 - III. Lawns mixed with trees and other plants, especially in any front yard area.
 - IV. Large expanses of mulched areas are prohibited.
 - ii. Compliance with this standard shall be required, provided:
 - I. It can be implemented without removal or relocation of any existing building on the site; and
 - II. Subsurface conditions on the property are adequate to accommodate required landscaping.
 - d. **Standard 6d.** Where street trees are proposed in the greenstrip, street furnishing area, or in the front yard parallel to the edge of the right-of-way, at least one street tree is planted for each 40 linear feet of greenstrip or frontage (excluding driveways), unless modified by the DRB due to infrastructure or other practical limitations. In addition, greenstrips shall be no less than 6 feet wide where street trees are proposed and street tree wells within a surfaced street furnishing zone shall be no less than 4 feet by 4 feet. The applicant shall demonstrate that there is adequate rooting space. Street tree selection, purchasing, spacing, and planting shall be accomplished according to an overall landscaping plan according to Text Box 3.3 (Requirements of a Landscaping and Screening Plan).
7. **Criterion #7 - Public Space.** The purpose of this criterion is to create usable public space and parkland that integrates appropriately with existing or planned public space, including adjacent parks, sidewalks, and public buildings and to seek specific opportunities for public greenspace appropriate for a central village green.
- a. **Standard 7a.** Development proposals shall incorporate public space into the site design. Public space is available for use by the development and is designed to encourage community interaction and to connect with adjacent public spaces. Examples of public space include outside foyers at building entrances with pedestrian access and seating, open plazas with street furniture, playgrounds, picnic areas, greens, or gardens with pedestrian access and seating. If it has a significant nexus with and is roughly proportionate to the

MAPA/On The Record Review

Municipalities may choose to participate in Environmental Court proceedings to defend the AMP's decision, or may choose *not* to participate and instead allow the Environmental Court to address the issues raised in the appeal. As discussed below, there are limited circumstances when the legislative body has standing to appeal a decision of an AMP.

Finally, local officials should be aware that the Environmental Court is increasingly turning to mediation to resolve cases before them. Parties to a local proceeding (including the municipality) may wish to consider involving a mediator in order to resolve local land use disputes. For more information on mediation, contact the Environmental Court at (802)828-1660 or go to www.VermontJudiciary.org

Appeals in Environmental Court are heard by the judges as if there were no proceeding at the municipal level; this is called a *de novo* appeal.

3. The Role of the Legislative Body in the Appeal Process

When an administrative officer's decision is appealed, the appeal is heard by the AMP. The legislative body's role is minimal at this point, and primarily focuses on clarifying expectations for all involved, including the municipal attorney. The legislative body may have to coordinate with the municipal attorney to clarify who the client is and define the scope of the attorney's services.

When a case is appealed from the appropriate municipal panel to the Environmental Court, the AMP's role ends. It has no authority to appeal, to participate in an appeal, or to represent the municipality.⁷⁵ However, the legislative body may appeal a decision of the appropriate municipal panel if "the plan or bylaw is at issue."⁷⁶ While this statute may seem to grant broad authority to participate, case law has limited that right to those cases where the legislative body believes there has been an illegal or unconstitutional interpretation of a bylaw.⁷⁷ Nevertheless, a legislative body may participate in an appeal that has been initiated by another appellant.

E. On the Record Review

As an alternative to *de novo* review, municipalities may choose to have their decisions heard *on the record*. When a decision from a municipality that has adopted on the record review is appealed to the Environmental Court, the court only examines whether the AMP misinterpreted the bylaw or state law. The court does not hold any new factual hearings and any questions as to the facts will be resolved by looking at the record developed by the appropriate municipal panel. A basic requirement, therefore, is an audio recording of the proceedings.⁷⁸

The first step prior to adopting on the record review is to adopt the Municipal Administrative Procedure Act (MAPA). MAPA may be adopted either by the voters or by the legislative body. The benefit of

As an alternative to *de novo* review, municipalities may choose to have their decisions heard *on the record*... the court only examines whether the AMP misinterpreted the bylaws or state law ... and does not hold any new factual hearing.

⁷⁵ The legislative body appoints a designee to act on its behalf at Environmental Court proceedings. This could be the municipal attorney, a member of the legislative body, or perhaps the zoning administrator. The appropriateness of all of these potential designees should be considered. It would not be appropriate for a member of the AMP to serve as the selectboard's designee.

⁷⁶ 24 V.S.A. § 4465(b)(2).

⁷⁷ *In re 292511 Investments, Ltd.*, 2006 VT 27.

⁷⁸ 24 V.S.A. § 1205(c).

Municipal Administrative Procedure Act (MAPA)

24 V.S.A. Chapter 36, § 1205

Any municipality that chooses to have local decisions appealed to Environmental Court to be heard "on the record" (rather than anew), or to conduct local Act 250 reviews, must adopt the Municipal Administrative Procedure Act to apply to specified development review proceedings. MAPA provisions include the following:

- Conflicts of Interest
- Notice Requirements
- Hearing Procedures
- Evidence
- Ex Parte Communications
- Qualification of Members (in rendering decisions)
- Decisions
- Appeals (per Chapter 117)

adopting on the record review is that the municipality retains stronger local control in the outcome of the case. Why go through the effort of holding a hearing if an appeal is going to be heard anew, without any consideration of the proceedings below? On the record review allows local decisions to stay local. The parties have the right to participate at the Environmental Court, but they will only have the right to question whether the AMP made a mistake in interpreting the law. The facts found by the AMP will stand as the facts on which the case is built.

However, there are downsides to adopting on the record review as well. The biggest problem is that, in all matters, the expectations are greater. From managing evidence to finding facts, writing adequate decisions, and managing conflicts of interest, the Environmental Court has higher expectations. As such, the chairperson must run a very orderly proceeding and continually reinforce such matters as requiring speakers to repeat his or her name prior to speaking so that those reviewing the audio can discern the speaker. Municipalities considering adopting on the record review may wish to schedule a workshop with a knowledgeable expert to help determine if on the record review is a good fit with their municipality.



Subdivision Regulations

26

Overview

Of all the tools used by municipalities to implement their municipal plans, zoning and subdivision regulations are the most common. According to the most recent municipal survey by the Vermont Department of Housing and Community Affairs, over half of Vermont municipalities have adopted subdivision regulations.

While zoning regulations address the type and density of development allowed within a community, subdivision regulations control the pattern of development—the way land is divided up to accommodate land uses and supporting infrastructure such as roads and utilities. Subdivision regulations may be adopted in the absence of zoning, but are most effective when tied to related dimensional and density requirements typically found in zoning regulations.

In the simplest sense, subdivision regulations are meant to ensure that the division of land into smaller units results in lots or parcels that are useable and safe and reflect the physical characteristics of the site.

In practice, subdivision regulations can be used to ensure that:

- new lots are laid out according to local standards, including applicable zoning standards, to avoid the cre-



Subdivision regulations control the pattern of development by creating rules for the way land is divided and infrastructure is provided. This subdivision sketch shows a village parcel just below the town green in Shoreham with new house lots designed to reflect historic patterns of development. In a rural setting, desired subdivision patterns might focus instead on preserving open space and natural resources. Design and drawing by ORW Landscape Architects and Planners, for the Vermont Neighborhoods Project, courtesy of the Vermont Forum on Sprawl.

ation of nonconforming or oddly shaped lots and, where appropriate (for example, within downtown, village, or historic districts), to reflect traditional settlement patterns;

- each lot has adequate access for its intended use and, where appropriate, for emergency vehicle access;
- new roads, sidewalks, and pedestrian paths, whether public or private, effectively connect to existing and planned roads in the surrounding area;
- there is adequate provision for potable water supply, wastewater

treatment/disposal and stormwater management systems, and park or recreation areas and that these and other utilities and improvements are provided in a timely and efficient manner; and

- significant natural, cultural, and scenic features are protected.

Application

In Vermont, subdivision regulations are authorized under Chapter 117 to implement the municipal plan as a separately adopted bylaw, or as part of a “unified development regulation” that includes zoning regula-

Subdivision Definition

24 V.S.A. Chapter 117

Land Development (§4303): The division of a parcel into two or more parcels.

Subdivision (§4418): The division of a lot or parcel of land into two or more lots or other divisions of land for sale, development, or lease.

Required Provisions

24 V.S.A., §4418

There are four provisions required in statute for subdivision bylaws:

- Procedures and requirements for design, submission, and processing of plans;
- Standards for the design and layout of all public facilities;
- Standards for the design and configuration of parcels or lots; and
- Standards for the protection of natural and cultural resources and open space.

tions. Given the statutory definition of land development, a few municipalities choose to regulate subdivisions under their zoning regulations as a type of land use that requires site plan or conditional use approval. Subdivision regulations in any form must conform to an adopted municipal plan. (See related topic papers.) Subdivision regulations are prepared or reviewed by the planning commission for adoption by the legislative body or municipality following warned public hearings.

Definition. The Chapter 117 definition of subdivision (§4418) covers more than simply the division of a parcel of land; it allows local jurisdiction over large developments that include leased space, such as apartment complexes and shopping centers. It's not uncommon for municipalities to define subdivisions to include multifamily housing developments, shopping centers, mobile home and industrial parks, or condominium developments. Subdivision review is one of the most comprehensive processes available for local permit review, so defining types of projects that require significant community impacts and public services as "subdivisions" and thus subject to subdivision review can make sense.

Procedures. Subdivision regulations also must establish standards and procedures for the review, approval, modification, or disapproval of proposed subdivision plans and be

administered in accordance with statutory requirements for public hearings, notice procedures, decisions, and the filing of approved plans. Regulations are administered by the appropriate municipal panel as specified in the regulations—typically the planning commission or development review board. The municipality may also authorize and assign staff to assist the commission or board in its work.

It's not uncommon for local subdivision regulations to differentiate between small or minor subdivisions (for example, of fewer than four lots) and larger, major subdivisions and to establish abbreviated review procedures for smaller projects.

Subdivision regulations must define the local review and approval process, including the timing and sequence of subdivision review in relation to other applicable review procedures (for example, site plan, conditional use, or planned unit development review). Subdivision review must include at least one fully noticed public hearing, but may include additional steps, as specified in the regulations.

For example, many regulations call for a two- or three-step process to include:

- *Sketch plan review*, which is an informal, conceptual, or preapplication review that allows the subdivider and review panel to explore different approaches to subdivision design, and offer some indication that a proposal can be developed in conformance with applicable local regulations. This step is often used to classify a subdivision as major or minor.
- *Preliminary subdivision review*, which is intended to provide the review panel with more specific information to determine conformance with local regulations and to provide additional guidance to the subdivider before the submission of a final application. This step generally applies only to major subdivisions, which tend to be more complex, and includes a warned public hearing. In practice,

most of the work involved in developing the subdivision design takes place in preparation for preliminary review. At this point, the reviewing body will generally approve, approve with conditions, or deny the proposed subdivision. If the development is not denied, the next step is to finalize all the plans and supporting materials and submit them for final approval.

- *Final subdivision review*, which includes a final subdivision plan and plat approval to ensure that the proposed subdivision conforms to all applicable regulations and which, where applicable, adequately addresses issues raised during preliminary review. This applies to both minor and major subdivisions and must include a warned public hearing.

In all cases, the subdivision regulations must specify exactly what must be submitted for each step in the review process and what effect related board or commission determinations will have for the next stage in the review process.

Standards. The decision to approve, approve with conditions, or deny a proposed subdivision must be based on clear standards included in the bylaws. In addition to administrative procedures and requirements, local subdivision regulations often include the following sections, in some form:

- *General planning standards*, which are intended to ensure that the pro-

A Look Back at Land Subdivision in Vermont

Most municipal charters in Vermont, when initially granted, subdivided towns into "divisions" and "draughts" (or lots) of generally equal proportion, with no consideration for local topography. They also set aside land for public and religious use, including church and school lots and, in some cases, timber stands or other resource lands that were reserved for the crown.

posed subdivision conforms to the municipal plan and local zoning regulations and is consistent with traditional or anticipated development patterns. Planning standards often address such issues as the protection of scenic and natural features, relationship to topography and waterways, access and connection to local road systems, provision for and connection to local and regional trail systems, and so on. These may also include density reductions or bonuses, for example, to limit adverse impacts to designated conservation or resource lands, to encourage or require the set aside of open space, to promote the development of affordable housing, or to provide incentives for the dedication of land for public access and use.

- *Specific design standards*, which may include detailed requirements for the layout of lots, blocks, roads, and pathways; the placement of lot markers and survey monuments; the construction and installation of roads, curbs, sidewalks, utilities, and water, wastewater, and stormwater management facilities; the layout of recreation, common, or open space areas; and landscaping.

- *Alternative design standards*, which, for example, may include requirements for “cluster” or “open space design” to protect natural resources and open space in rural zoning districts; traditional neighborhood design to require more compact, higher-density development within downtowns, villages, and new town centers; or transit-oriented design to allow for higher densities around designated public transit centers. These types of standards are often, but not necessarily, applied in conjunction with the review of planned unit developments. Alternative subdivision designs are covered in more detail in related topic papers.

Recording Requirements. The regulations should clarify that subdivisions must satisfy all applicable standards to be approved and recorded in the land records of the community.

The decision to approve or deny a subdivision must be made within 45 days of the date of final hearing adjournment. Subdivision approvals are a type of “municipal land use permit,” as defined under Chapter 117, which must be recorded in the municipality’s land records within 30 days of the date of approval. Under Chapter 117 (§4463), however, subdivision approval, once granted, expires unless the final subdivision plat is filed in the municipality’s land records within 180 days of approval. The regulations may allow the administrative officer to grant a 90-day extension if other local or state approvals are still pending.

Subdivision plats must meet both state survey plat recording requirements (under 27 V.S.A. Chapter 17) and any local requirements specified in the regulations. For example, most municipalities require one or more signatures of the review panel to indicate that the plat has been recorded as approved. Some municipalities also require the submission of plats in a compatible digital format for use in updating their tax maps or official maps.

Related Considerations

Administrative Review. The regulations may provide for review by the administrative officer of exemptions from the regulations, as noted below, or minor amendments to approved subdivisions that do not have the effect of altering the findings or conditions of approval. The regulations must specify the thresholds and conditions under which administrative review will be allowed, as required under Chapter 117 (§4464).

Exemptions. There are some land transactions that technically involve the division of land, but are often exempted by municipalities from subdivision review. For example, these may include:

- a boundary or lot line adjustment where a small portion of land is

What about Public Works Standards?

Other applicable local design standards for new development—for example road standards, or the more comprehensive public works standards adopted by larger municipalities—should be referenced in the subdivision regulations and care taken to avoid conflicts between any standards in the subdivision regulations and other town requirements. All local design requirements for development should be reviewed and updated periodically to conform to municipal plan recommendations for access and safety, relative cost, and their effect on community and neighborhood character.

transferred from one parcel to the adjoining parcel by simply moving the interceding lot boundary, but no new lot is created, or

- the subdivision of a large tract of farm- or forestland only to allow for the transfer of ownership and facilitate continued agricultural or forestry use.

Such adjustments or subdivisions can either be excluded from the definition of subdivision or addressed through an administrative review process. In either case, provision should be made for some type of review to make sure that local requirements are met and no nonconforming lots are created and for filing new lot boundaries in the land records.

Optional Provisions. Chapter 117 (§4418) lists a number of optional provisions that may be included in local subdivision regulations, including:

- provisions for the review panel to waive preliminary review procedures and some or all required improvements,
- standards to promote energy conservation, and
- the incorporation of state Act 250 review standards.

Phasing. As authorized under Chapter 117 (§4422), subdivision regulations also may include requirements that development be phased in

Official Map in Subdivision Review

24 V.S.A., §4421

Municipalities can map the locations of future roads, parks, schools, and other public facilities through an official map. If subdivision is proposed on a parcel with a mapped facility, the applicant must demonstrate that the mapped public facility, such as a trail or a through road, will be accommodated by the project, or the project may be denied.

This is a powerful tool for municipalities to use in ensuring that the roads, trails, drainage, and other corridors that are created as part of new development eventually interconnect in a logical way. (See topic paper, Official Map.)

If the municipality has adopted an official map, a plat automatically becomes part of the official map through the recording process, and the official map should be updated accordingly.

over time as needed to avoid or mitigate undue impacts to existing or planned community facilities and services. The phasing of development must be tied to the timing of construction or installation of necessary public facilities or services, in conformance with an adopted capital budget and program.

Performance Bonds and Development Agreements. Many subdivisions require the construction of substantial improvements such as streets, water and sewer lines, and so on. It is often unreasonable to require that these be constructed prior to actual approval. As an alternative, many communities allow the posting of performance bonds or other forms of surety that cover the full cost of required improvements and maintenance for up to two years after installation—in the event that they aren't completed by the developer. Chapter 117 (§4464) sets a three-year limit on performance bonds, unless the owner

agrees to extend the period for up to three more years. A few municipalities also use development agreements—entered into between the developer and the legislative body—that more specifically govern the timing, financing, and coordination of public and private improvements in accordance with the terms of subdivision approval.

Planned Unit Development. Subdivision regulations typically refer to applicable zoning standards to regulate lot size and density. In some cases, however, a municipality will decide that effective implementation of its municipal plan calls for more flexibility in the design of subdivisions, for example, to conserve open space, protect natural or scenic resources, or allow for higher densities of development to make affordable housing, walkability, or public transit viable. Chapter 117 allows local zoning to include provisions for planned unit developments, which, when applied concurrently with subdivision regulations, allow for the modification or waiver of applicable dimensional requirements. (See topic paper, Planned Unit Development.) Planned unit development provisions are especially useful for clustering development on the most buildable portions of the site and may include additional density and design standards that vary by the type(s) of development proposed, or the zoning district(s) in which developments are located.

Summary. Subdivision regulations are a very effective tool for both implementing various aspects of the municipal plan and for ensuring the creation of safe, useable lots that are adequately documented in local land records.

There are many examples of local subdivision regulations available online. Follow links at www.vpic.info or contact your regional planning commission for assistance.