

## ARTICLE 4. ADMINISTRATION & ENFORCEMENT

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### Section 4.1 Permits & Approvals

(A) **Permit Requirements.** In accordance with the Act [§4446], no development or subdivision of land may begin in the Town of Middlesex until all applicable **municipal land use permits** and approvals have been issued, unless the development is specifically exempted from these regulations under Section 4.3. Such permits and approvals include:

- (1) **Zoning Permits** issued by the Zoning Administrator under Section 4.2 for all development. .
- (2) **Site Plan Approval** issued by the Planning Commission under Section 5.4 for all uses subject to site plan review.
- (3) **Conditional Use Approval** issued by the Board of Adjustment under Section 5.5 for uses subject to conditional use review, including uses within any overlay district.
- (4) **Subdivision Approval** issued by the Zoning Administrator or Planning Commission under Section 6.2 for the subdivision or re-subdivision of land.
- (5) **Planned Residential or Planned Unit Development (PRD or PUD) Approval** issued by the Planning Commission under Section 5.7 in association with subdivision approval.

(B) The Zoning Administrator will coordinate the development review process on behalf of the Town of Middlesex, refer applications to the appropriate board or municipal officer, and provide information and assistance to applicants for municipal land use permits as appropriate [§4448(c)].

### Section 4.2 Zoning Permit Requirements

(A) **Application Requirements.** The application for a zoning permit must be submitted to the Zoning Administrator on forms provided by the town, along with any application fees as established by the Selectboard. In addition, the following will be required as applicable:

- (1) Applications for permitted uses shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be accompanied by two copies of a sketch plan, no smaller than 8" x 11," drawn to scale, that accurately depicts the following:
  - a. the dimensions of the lot, including existing and proposed property boundaries;
  - b. the location, footprint, and height of existing and proposed structures and additions;
  - c. the location and dimensions of existing and proposed accesses (curb cuts), driveways and parking areas;
  - d. the location of existing and proposed easements, rights-of-way and utilities;
  - e. setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
  - f. the location of existing and proposed water and wastewater systems; and
  - g. such other information as may be needed to determine compliance with these regulations.
- (2) Applications for permits that require review and approval by the Board of Adjustment, Planning Commission and/or Selectboard shall also include information required for all applicable reviews. The Zoning Administrator shall refer the application to the appropriate board following submission.

(3) Any permit application that has to be referred to a state agency, under Article II and/or Section 5.6, must include a brief report describing the proposed use, location, and an evaluation of the effects of such use on municipal and regional plans currently in effect. The report shall be forwarded by the Zoning Administrator to the appropriate state agency or department within twenty-one (21) days of the date of receipt.

(B) **Issuance of Zoning Permits.** A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act [ §§4448, 4449] and the following provisions:

- (1) No zoning permit shall be issued by the Zoning Administrator for any use or structure that requires approval of the Board of Adjustment, Planning Commission and/or Selectboard until such approval has been obtained.
- (2) No zoning permit shall be issued by the Zoning Administrator for the development of a lot for which major subdivision approval is required until subdivision approval has been obtained.
- (3) For uses requiring state agency referral no zoning permit shall be issued until the expiration of 30 days following the submission of a report and/or application to the appropriate state agency or department.
- (4) If public notice has been issued by the Selectboard for their first public hearing on a proposed amendment to these regulations, the Zoning Administrator shall issue a zoning permit for development that is subject to the proposed amendment only in accordance with the requirements of the Act [§4449(d)].
- (5) Within 30 days of receipt of a complete application, including all application materials, fees, and required approvals, the Zoning Administrator shall act to either issue or deny a zoning permit in writing, or to refer the application to the Planning Commission or Board of Adjustment for consideration. In accordance with the Act [§4448], if the Zoning Administrator fails to act within the 30-day period, a permit shall be deemed issued on the 31<sup>st</sup> day.
- (6) Each zoning permit issued shall include a statement of the time within which appeals may be taken under Section 45; and shall require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired.
- (7) Within three (3) days of issuance, the Zoning Administrator shall deliver a copy of the permit to the Listers, and post a copy at the Town Office for a period of 15 days from the date of issuance.

(C) **Effective Dates.** No zoning permit shall take effect until the time for appeal under Section 4.5 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal. Permits and associated conditions will run with the land and be binding upon the landowner's future heirs and assigns. A permit will, however, expire and become null and void within one (1) year from the date of issuance if the permitted development has not been substantially commenced. Prior to the expiration of the permit, the Zoning Administrator may issue an extension for one (1) additional year in the event the permittee can document an unavoidable delay in the substantial completion of the project.

(D) **Display of Zoning Permit.** In accordance with the Act [§4449], the notice of a zoning permit must be displayed within view from the public right-of-way nearest to the property until the time for appeal under Section 4.5 has passed.

### Section 4.3 Exemptions

- (A) In accordance with the Act [§4446], no zoning permit shall be required for the following:
- (1) Any building for which construction lawfully began prior to the effective date of these regulations, provided that such construction is substantially completed within two (2) years of the effective date.
  - (2) Normal maintenance, repair, remodeling or interior alteration of an existing structure that does not result in a change in use or any change to the footprint, height dimensions or expansion in the total area of the structure.
  - (3) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls no greater than six feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic.
  - (4) Up to two (2) accessory structures, such as a shed, tree house, doghouse, child's play house, or similar structure with a floor area of not more than 80 square feet (each) and a height of not more than 10 feet which is located at least 10 feet from all property lines. A zoning permit is required for all other accessory structures.
  - (5) Prefabricated, temporary carports and storage covers, assembled out of metal structural supports and fabric, provided such covers are not affixed to a permanent foundation and meet all setback standards for the district in which they are located.
  - (6) The ordinary use of a small room of a dwelling for personal office use and/or paperwork for business activity carried on elsewhere (see Section 7.7 for additional standards related to other types of home businesses).
  - (7) Noncommercial outdoor recreation that does not involve the development or use of structures or substantial site improvement (e.g., construction of parking area at a trail head).
  - (8) Minor grading and excavation associated with road and driveway maintenance (including culvert replacement and re-surfacing) and yard improvements associated with accessory uses to existing principle uses (contouring yards, establishing garden and landscape areas).
  - (9) Garage sales, yard sales and auctions not exceeding 3 consecutive days, nor more than 12 days per calendar year, which do not cause unsafe traffic conditions or parking problems.
  - (10) Fuel storage as an accessory structure to an allowed use, provided such storage meets the requirements of Section 3.13.
- (B) In accordance with the Act [§4413(d)], accepted agricultural and best management practices (AAPs, BMPs), including farm structures, as defined by the Commissioner of Agriculture, Food and Markets, also are exempted from the permit requirements under Section 4.2. However, written notification, including a sketch plan of the structure showing setback distances from road rights-of-way, property lines, and surface waters shall be made to the Zoning Administrator prior to any construction as required under the AAPs.

(C) Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are specifically exempted from these regulations in accordance with the Act [§4413(b)].

#### 4.4 Certificates of Occupancy

(A) In accordance with the Act [§4449((a)(2)], no building or building addition for which a zoning permit has been issued shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the Zoning Administrator, certifying that such building or addition conforms to the approved plans, specifications, and requirements of the permit and these regulations.

- (1) An application for a certificate of occupancy shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit a completed application to the Zoning Administrator upon completion of required improvements, but prior to the use or occupancy of the building or addition.
- (2) The applicant shall demonstrate, to the satisfaction of the Zoning Administrator, that the proposed building or addition has been completed in conformance with the zoning permit and any associated approvals, including all applicable permit conditions. The Zoning Administrator may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.
- (3) A certificate of occupancy may be issued for a substantially completed structure if the Zoning Administrator determines that it meets all applicable permit conditions.
- (4) A certificate of occupancy shall be issued or denied by the Zoning Administrator within 14 days of receipt of the application. If the Zoning Administrator fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate shall be deemed issued on the 15<sup>th</sup> day. The decision of the Zoning Administrator may be appealed to the Board of Adjustment under Section 4.5(A).

#### Section 4.5 Appeals

(A) **Decisions of the Zoning Administrator.** In accordance with the Act [§4465], the applicant or any other **interested person** may appeal a decision or act of the Zoning Administrator by filing a notice of appeal with the Secretary of the Board of Adjustment, or the Town Clerk if no Secretary has been elected, within 15 days of the date of such decision or act. A copy of the notice of appeal also shall be filed with the Zoning Administrator.

(B) **Board of Adjustment & Planning Commission Decisions.** The applicant, appellant or other **interested person** who has participated in a regulatory proceeding of the Board of Adjustment or Planning Commission may appeal the decision rendered by the board or commission within 30 days of such decision, to the Vermont Environmental Court, in accordance with the Act [§4471].

#### Section 4.6 Variances & Setback Waivers

(A) **Setback Waivers.** Notwithstanding the minimum setback standards for front yards (setback from highway right-of-way) and side and rear yards (setback from parcel boundaries) for various zoning districts set forth in Article II, the Board of Adjustment may allow the modification of building setbacks as a conditional use reviewed in accordance with Section 5.5 and subject to the following provisions:

- (1) The parcel associated with the waiver request was legally in existence prior to November 2, 2004; and
- (2) The Board may allow for a reduction of the front, side and rear setback, providing the reduction will not adversely impact the use and enjoyment of adjacent parcels, and the reduced setback complies all conditional use standards set forth in Article 5.

(B) **Variiances.** The Board of Adjustment shall hear and decide upon requests for variances pursuant to the Act [§4469(a)] and appeal procedures under Section 4.5. The Board may grant a variance, and render a decision in favor of the appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:

- (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;
- (2) Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) The unnecessary hardship has not been created by the appellant.
- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
- (5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

(C) **Variiances within the Flood Hazard Area Overlay District.** Variances within the Flood Hazard Area Overlay District shall be granted by the Board of Adjustment only:

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

(D) In granting a variance or setback waiver under this section, the Board of Adjustment may attach conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

## Section 4.7 Violations & Enforcement

(A) **Violations.** The commencement or continuation of any land development or use that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [ §§4451, 4452]; each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute, in the name of the Town of Middlesex, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the town.

### Section 4.8 Municipal Administrative Requirements

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

- (1) **Zoning Administrator.** The Selectboard shall appoint a Zoning Administrator, from nominations submitted by the Planning Commission, for a term of three (3) years in accordance with the Act [§4448]. In the absence of the Zoning Administrator, an acting Zoning Administrator may be appointed by the Selectboard, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.
- (2) **Board of Adjustment.** Board of Adjustment members and alternates shall be appointed by the Selectboard for specified terms in accordance with the Act [§4460]. The Board shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law.

The Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

- applications for conditional use approval (Section 5.5),
  - appeals of any decision, act or failure to act by the Zoning Administrator (Section 4.5(A)) and
  - variance requests (Section 4.6).
- (3) **Planning Commission.** The Planning Commission shall be elected to specified terms by the voters of the Town in accordance with the Act [ §§4321, 4323]. The Commission shall adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4323] and Vermont's Open Meeting Law [1 V.S.A. 310-314]; and shall have powers and duties as set forth in the Act [§4325], including but not limited to the power to hear and decide:
    - requests and petitions for bylaw amendments;
    - requests for site plan approval (Section 5.4);
    - requests for major subdivision approval (Section 6.2); and
    - applications for planned residential and planned unit developments (Section 5.7).

(B) **Fee Schedule.** The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs. Such fees may be revised from time to time as deemed necessary by the Selectboard.

(C) **Hearing Notice Requirements.**

All hearing notices shall be in accordance with the requirements of the Act [section 4464(a)]

(D) **Permit & Violation Recording Requirements.**

- (1) Within 30 days of the issuance of a municipal land use permit or notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the municipal land use permit or notice of violation to the Town Clerk for recording in the land records of the town generally as provided for in 24 V.S.A. §1154(a) and (c), and file a copy in the Town Office in a location where all municipal land use permits shall be kept, as required under the Act [§4449(c)]. The applicant shall be charged for the cost of the recording fees.
  
- (2) For development within the Flood Hazard Area Overlay District, the Zoning Administrator shall also maintain a record of:
  - a. permits issued for development in areas of special flood hazard;
  - b. elevation certificates that show the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings;
  - c. the elevation, in relation to mean sea level, to which buildings have been floodproofed;
  - d. all floodproofing certifications required under this regulation; and
  - e. all variance actions, including the justification for their issuance.