

How soon after a conditional use application is submitted to the zoning administrator does the zoning board of adjustment or development review board (ZBA/DRB) have to schedule a public hearing on the application?

Although there is a clear legal requirement that the ZBA/DRB must act to approve or deny a conditional use application within 60 days of the close of the final public hearing, the statutes *do not* spell out the pre-hearing time table for scheduling the public hearing. 24 V.S.A. § 4407(2).

There is, however, a Vermont Supreme Court case, *Nash v. Warren ZBA*, 153 Vt. 108 (1989), which holds that 24 V.S.A. Chapter 117, Subchapter 8 applies to conditional use procedure just as it does to variances. Subchapter 8 covers appeals. Specifically, that means that the ZBA/DRB must set a date and place for a public hearing within *60 days of the filing of the application for conditional use approval*. See 24 V.S.A. § 4467.

In rendering its decision, the Court found that the procedural requirements of the conditional use provision, § 4407(2), “are too limited and brief to be self-contained” and, therefore, need additional guidance from Subchapter 8. *Nash* at 113. The Court also determined that the term “appeal” in Subchapter 8 means a request for zoning board action with respect to “any decision or action” of the zoning administrator. This encompasses requests for both variances (even though the zoning administrator could not grant a variance because the authority to do so legally rests with the ZBA/DRB) and conditional uses. *Nash* at 112. If you would like a copy of this case, please contact the VLCT Municipal Law Center.

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