

***Once the zoning board issues a variance, must the applicant still obtain a zoning permit from the administrative officer prior to construction or commencing a new use?***

Yes. Vermont law clearly requires that prior to the commencement of any “land development,” a zoning permit must be obtained from the administrative officer, commonly known as the “zoning administrator.” 24 V.S.A. § 4443(1). “Land development” includes “...*the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.*”

Thus, even though the zoning board issues an approval for a variance or conditional use, and the planning commission or development review board gives its approval to a subdivision or site plan application, these boards are not empowered to issue the requisite *zoning permit*. That authority rests solely with the administrative officer. This process actually makes good sense given that it is the administrative officer who is responsible for administering the town’s bylaws *in their entirety*. The planning commission and zoning board’s review, on the other hand, tends to focus on just one or two segments of the bylaws, such as the site plan or subdivision requirements or the conditional use or variance criteria. The zoning administrator has to ensure that the project or use conforms to *all of the applicable provisions of the bylaw* and any other pertinent rules or policies in effect. For example, a landowner applies for a setback variance for a new house. The zoning board’s authority is limited solely to the specific variance criteria described in the statutes:

- (1) unique physical circumstances or conditions of property;
- (2) hardship;
- (3) hardship not created by appellant;
- (4) essential character of the neighborhood or district will not be altered by variance; and,
- (5) least deviation possible.

The zoning board’s examination of the application probably would not include a review of associated aspects of the construction such as the design and location of the on-site septic system and drilled well; access to the house; building design criteria, if any; etc.

In sum, it makes good sense that the Legislature made *one* municipal official responsible for ensuring that, prior to any land development, all of the prerequisite requirements have been met and approvals obtained. The issuance of the municipal zoning permit by the administrative officer brings finality to a sometimes lengthy and complicated approval process!