

***Our town has not amended its zoning bylaw. When reviewing a zoning permit application, do we apply our existing bylaw or state law?***

The new 24 V.S.A. §§ 4412 and 4413 address some of the substantive issues of zoning, including, for example, multiunit dwellings, accessory dwelling units, existing small lots, and nonconformities. They also set forth some limits on a municipality's ability to regulate certain uses, like churches, farm structures, and hospitals.

In those towns that have not yet warned the first public hearing by the legislative body on proposed bylaw amendments, VLCT recommends that zoning administrators continue to review applications applying their existing municipal bylaws. Applicants and interested persons who believe that the zoning administrator has improperly applied a municipal bylaw that is inconsistent with state law may appeal the zoning administrator's decision to the AMP.

While the appeal process may result in a delay for some applicants, the determination of whether an existing bylaw is consistent with these provisions of state law involves the exercise of a considerable amount of discretion. Each substantive consistency analysis is essentially a quasi-judicial determination, and an AMP, being a deliberative body able to take evidence and arguments within the context of a hearing, is better equipped to make these decisions. In contrast, state law significantly limits zoning administrators' discretion by requiring them to interpret their bylaws literally and giving them no authority to permit any land development that is not in conformance with the municipal bylaw. 24 V.S.A. § 4448.

VLCT recommends that AMPs in these towns review their bylaws for consistency with state law on a case-by-case basis. To do this, the AMP should review the zoning permit application to determine which sections of its zoning bylaw will apply to the proposed project. It should compare these sections of the zoning bylaw with the provisions of 24 V.S.A. §§ 4412 and 4413, and the definitions in 24 V.S.A. § 4303, to determine whether the applicable sections of the bylaw are consistent, or inconsistent, with the provisions of these sections.

If the AMP concludes that an applicable section of its zoning bylaw is ***consistent*** with the provisions of 24 V.S.A. § 4412 or 4413, the AMP should ***apply the applicable section of its bylaw to the permit application***. If the AMP concludes that an applicable section of its zoning bylaw is ***inconsistent*** with the provisions of 24 V.S.A. § 4412 or 4413, the AMP should ***apply the applicable provisions of 24 V.S.A. § 4412 or 4413 to the permit application***.

Finally, the AMP should include in its written decision explicit findings with regard to the consistency between the applicable sections of its zoning bylaw and the provisions of 24 V.S.A. §§ 4412 or 4413, and clearly articulate whether the provisions of the bylaw or state law have been applied in reaching its decision. A clear and well-reasoned decision may forestall subsequent appeals to the environmental court.

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