

ISN'T THIS MY LAND?

AN INTRODUCTION TO PLANNING AND ZONING IN VERMONT

Surviving the Local Regulatory Process

Sure it's your land, but that doesn't mean you can do anything you want with it. If your town has adopted planning and zoning, there are rules to be followed, applications to be made, perhaps variances or conditional use permits to be sought. Like a Chinese finger puzzle, the more you struggle against these local controls, the more they will resist you. To make it through the process, you need to learn how the system works and how you can make it work for you. That's the reason for this pamphlet.

Many people don't pay much attention to planning and zoning until it gets in their way. When the reality of these local regulations first comes home to them, they are sometimes shocked and surprised, sometimes angry that the town can intrude in what they believe to be their private affairs. But planning and zoning is founded on the belief that all the people of a town have a right to decide *how* their town should be developed. Local regulation of land use is not designed to stop development, but to ensure that it's done systematically, according to standards that guarantee reasonable use of property without interfering with the reasonable use of others' property.

Anything shouldn't be built anywhere. Appropriate development has its place, in order to ensure an orderly community and protect the town's own investments in the local economy, its highways, water and sewer systems, and schools. You know you wouldn't appreciate some kinds of commercial development in your residential neighborhood.

Planning and zoning is a public process, and requires the vigilance of all citizens, not only in

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Distinguishing Between Planning and Zoning

Planning is the process of designing a community's future. Zoning is the process of regulating proposed uses of property to fit with the design. Both are legitimate mechanisms for change, if they are properly adopted.

The municipal plan is developed by an appointed planning commission and adopted by the board of selectmen in most towns. Voters since 1988 can petition for a vote on whether to have the town plan adopted and amended by the electorate. The plan is used as a guide to the development of bylaws. It is also used in Act 250 proceedings as a benchmark for deciding whether a proposal pending before the District Environmental Commission (or Environmental Board) conforms to criterion 10 of the law.

The land use map is part of the plan. It shows the various zones which determine how property should be used. Residential, agricultural, commercial, industrial, conservation, forest and public uses are common in Vermont. It may indicate areas planned for open space as well.

Zoning bylaws or amendments are usually drafted by the planning commission, reviewed and approved by the board of selectmen, and adopted by a vote of the town, when the town has a population of 2,500 or less. A town of over 2,500 but less than 5,000 residents may also choose to become a "rural town" and vote bylaws and amendments directly. Municipalities of 5,000 or more (or those over 2,500 that have not voted to become "rural towns") adopt bylaws by an act of the selectmen or city council, unless voters equal to five percent of the checklist petition to have a particular proposal voted by Australian ballot.

When there's a conflict between a plan and a bylaw, the bylaw

prevails. This is because a plan is a prospective vision of how the community should grow, while bylaws may implement only part of that vision at this time.

The principal enforcement tool of the planning and zoning process is the zoning bylaw. Bylaws tell us explicitly what can be done on property (if the bylaw is silent, it usually means you can't do it). They tell us what types of development can take place and at what density, how far back from the edge of the property development can occur and how much of a site can be developed. Sometimes they limit the height of a building. Bylaws also regulate driveways, accessory buildings (garages, for instance), screening (trees and shrubs), and parking and circulation.

In most cases, to develop you need a permit.

A Little Preparation Will Go a Long Way

You have to read the rules before you can understand them. That's why it's so essential for you to ask the town clerk for a copy of the municipal plan, map, bylaws, including any special bylaws such as those relating to subdivisions, and local sewer and building ordinances if the town has adopted them. You should also get a copy of Chapter 117 of Title 24, the state's law on planning and zoning. Contact the regional planning commission or the state Department of Housing and Community Affairs at 828-3217 for a copy.

Once you have these materials, try to make sense of them. Read them over slowly. With the town bylaws and map, find the location of your property and read the appropriate regulations that fit with the zone in which the property is located. Read the sections that apply to the project you intend to build, noting any special require-

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A Little Preparation *continued from* ments and procedures. To understand the foundation of planning and zoning, read Chapter 117 of Title 24 carefully, noting where the sections that will apply to you appear. Sections 4403 and 4404 describe the process of adopting and amending bylaws. Section 4413 and following discuss the subdivision process. The administrative and enforcement process is covered in section 4441 and following, and appeals from the zoning administrator and variances in 4461 and following.

Before you file an application, talk to the town zoning administrator about your plans. Knowing how he/she interprets the bylaws is critical to your planning process. Ask for help on completing the application and, if necessary, on fitting what you intend to do to what the bylaws require.

You may also find some advantage in a review of the minutes and decisions of the planning commission and the zoning board of adjustment. Knowing how they have ruled on applications in the past will give you a fair indication of how they will treat your application, if their approval or review is necessary.

Surviving the Local Regulatory Process

how the system is administered but in how it is designed. That's why it's important to all of us to follow the public debate on proposals to adopt or amend the plan, the map, and the bylaws.

To survive the regulatory process, you need to understand it. You need to know what the rules say, how they can be challenged if they don't fit with your plans, and how to propose and implement changes if all else fails.

Above all else, try to remain patient and courteous throughout the process. Assume that it will take time and effort on your part. Don't fight it; make it work for you. In most cases, attitude can improve your chances of doing what you want with your land.

The Players in the Zoning and Planning Game

The officials you are apt to meet in the process of planning and zoning include the zoning administrator, the planning commission, the zoning board of adjustment and the board of selectmen. Each has a unique role to play, one that you ought to understand in order to ensure the most efficient use of your resources and time. You may also meet your neighbors in a public hearing on your application, although they may not seem neighborly if they object to your proposal. You need to know their rights in order to protect yourself.

The *zoning administrator* is appointed by the planning commission, upon the approval of the board of selectmen. There are no special prerequisites to serving in this position, not even residency. Ideally, the administrator is a person who understands how to administer a code, who has a good sense of diplomacy, and who has the courage to stand firm when the rules require it. State statutes use the term "administrative officer" to describe this official, but the common name is zoning administrator.

The administrator is charged with the responsibility of interpreting and enforcing the zoning bylaws literally. If the bylaws set a fifty-foot setback in one zone, the administrator has no choice but to insist on it or deny the application. The administrator can only issue a permit if the proposals fits snugly within the confines of the bylaws.

Enforcement is another responsibility of the administrator. If a citizen builds in spite of what the bylaws say, the administrator may take the offender to court and seek a fine or a court order to remove the violation.

The *planning commission* is usually appointed by the board of selectmen, unless the town votes to elect commission members at town meeting. The commission writes and reviews the plan, map,

and bylaws in most cases, although if at least five percent of the voters on the checklist petition the commission, other proposals will be reviewed. Bylaws may also grant the commission the power to conduct a site plan review in cases of developments other than single residences. In this duty, the commission is limited to a review of the adequacy of traffic access, circulation and parking, landscaping and screening, and protecting the utilization of renewable energy resources.

The commission approves all subdivisions, if the community has adopted subdivision regulations.

The *zoning board of adjustment* hears appeals from decisions of the zoning administrator, grants variances when they are appropriate, and issues conditional use permits where the bylaws require. It too is appointed by the board of selectmen.

The *legislative body* (the board of selectmen, village trustees or city council members or aldermen), in addition to its appointive responsibilities, adopts the plan, approves all bylaws before they can be put to a vote of the electorate in rural towns. In urban municipalities, they actually adopt the bylaws in most cases.

"*Interested persons*" round out the cast of characters in the zoning process. They are admissible parties to public hearings on site plan reviews and subdivisions before the planning commission and to appeals, variance or conditional use proceedings before the zoning board of adjustment. They have the right to participate in the hearings and to appeal the decisions of these bodies to superior court. The category of "interested persons" includes adjoining landowners, state agencies, and the municipal conservation commission.

Key Words and Concepts

Like all governmental systems, planning and zoning has its own language. Knowing what the words mean and how to use them in context gives you an ad-

vantage in your dealings with the officials who administer planning and zoning in your town. Some of the following terms may also be defined in your bylaws.

Any development requires a zoning permit. If it is for a permitted use, the permit is issued directly by the zoning administrator. If the permit is for a conditional use, it requires a special review by the zoning board of adjustment and usually the imposition of special conditions to be imposed before a permit can be issued. Part of the permit approval process could involve review by the planning commission.

A *variance* is an exception to the bylaws, granted by the zoning board of adjustment after it finds evidence to justify an affirmative vote on each of the five criteria, listed in 24 V.S.A. §4468. If your land simply doesn't allow you to build a garage anywhere but close to the road, because the land is hilly, for instance, you may qualify for a variance from the front setback if you can show that your case satisfies the five criteria. Variances are approved by the zoning board of adjustment.

A *subdivision* is a partition or division of land into two or more parcels. Some subdivision bylaws expand on that definition to include condominium or shopping center projects. If a town has subdivision regulations, the planning commission reviews the project. The state also issues subdivision permits under separate authority (and separate requirements).

Existing small lots is a term used to describe lots that do not conform to the minimum lot size as established by current bylaws, if the lot existed at the time zoning was adopted. *Nonconforming structure* describes a building that doesn't meet the requirements of the current bylaws but that existed before zoning. Perhaps it sits too close to the neighboring property or the highway or has a greater density than the bylaws require. When a commercial enterprise, otherwise

forbidden in a residential zone, preexists the bylaws, it's a *non-conforming use*.

Uses, structures and lots that preexist zoning may be continued in spite of the adoption of bylaws that would prohibit their creation after the effective date of the regulation. Structures and uses usually may not be expanded without special permission under most zoning bylaws. Zoning theory assumes that every property may be put to some *reasonable use*.

For more on definitions, check your local bylaws.

Deadlines and Defaults

The legislature has established deadlines for many of the decisions to be made in zoning, and provided defaults in case the deadlines are not met. For instance, if a zoning board of adjustment does not issue a written decision within 45 days of the end of a hearing on an appeal or variance, the law steps in to grant the relief requested by the appellant by operation of law (which means automatic approval). The same principle applies

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A Sample Variance Case

Because variances are so common, a little more comprehensive consideration of that form of appeal may be justified here. The key to variances is understanding the five criteria. This isn't going to be easy because of the way they are written. Here they are, with key words highlighted:

1. That there are **unique physical circumstances or conditions**, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions, and **that unnecessary hardship is due to such conditions**, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.
2. That because of such physical circumstances or conditions, there is no **possibility** that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is therefore necessary to enable the **reasonable use** of the property.
3. That the unnecessary hardship has **not been created by the appellant**.
4. That 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, nor be detrimental to the public welfare.
5. That the variance, if authorized, will represent the **minimum variance that will afford relief** and will represent the **least deviation possible** from the zoning regulation and from the plan.

Being able to answer the zoning board's questions about these five criteria will be essential to success in your variance appeal.

when the law provides that a conditional use permit is granted by default if the board fails to render a decision within 60 days of the final public hearing on a permit.

If the planning commission fails to approve or disapprove a site plan within 60 days of receiving the plan, the law deems that the plan is approved. If it fails to approve, modify and approve, or disapprove a subdivision plat plan within 45 days after the public hearing, the plan is approved by operation of law.

Even the zoning administrator has mandatory deadlines. If the administrator fails to approve or disapprove a zoning application within 30 days of its submission, the permit is approved automatically on the 31st day.

Some town officials feel that these default mechanisms are unfair, especially when they realize that no other regulatory system in Vermont has such limits. They may even be surprised when the applicant points out that a default has occurred. As an applicant or appellant, however, counting days and marking the target date off on the calendar isn't a bad idea.

The Hearing

When a public hearing is required, as in a site plan review, appeal, variance request, subdivision, or conditional use, the board or commission is required to provide at least 15 days published and posted warning. The hearing is public, and any "interested person," as defined by the statute, may appear and participate as a party. The zoning administrator is also a party, although many administrators don't see themselves in that role.

Before testifying, each party must be sworn. This is the traditional oath— Do you solemnly swear that the evidence you shall give relative to the cause now under consideration shall be the whole truth and nothing but the truth so help you God? (or, if an affirmation, under the pains and penalties of perjury).

After the Hearing is Over...

Each applicant/appellant before the planning commission or zoning board has a right to appeal the decision to the superior court within thirty days of the decision. You need not wait for the written decision if you were present and know that the oral decision was against you. Court appeals take time and cost money. As an alternative, you may want to think about redesigning your proposal to meet the board's or commission's objections, or about petitioning for a change in the zoning bylaws to permit you to do what you've been denied.

Usually the applicant/appellant goes first. Sometimes you will be allowed to make a short presentation; in other cases, depending on the board or commission, the members of the public body simply ask questions to assist them in reaching a decision on whether the proposal is appropriate.

Taking time to prepare for the questions that will be asked is highly advisable. Know in advance precisely what the bylaws say about the standards you must follow. If necessary, have copies or citations available so that the board or commission members don't have to waste

their time looking for the source of the law. Discussing the case fully with the zoning administrator in advance of the hearing, including the asking of questions designed to give you fair warning of what to expect from the board or commission, is energy well spent.

Some boards or commissions will seem intent on getting you to change your proposal to fit their whims. Try not to compromise too much if you believe in what you want to build. Ask politely for the specific statutory or bylaw authority for their demands and stand firm, when necessary, to preserve what you want to do. You can always redesign the offensive part of the application and return later for another try.

Having copies of exhibits for each member of the board or commission is a nice touch. So is writing up a short summary of your case, to help the body focus on what you think is most important to your case.

Don't be surprised to be asked back for a second or third hearing, especially if you are proposing something more than a single family dwelling.

Don't fail to attend every public meeting held on your application or appeal so you can protect your interest and speak up if someone tries to question your proposal. Most boards and commissions make site inspections. Don't miss attending yours, if only to avoid having other parties offer evidence against you.

The Vermont Institute for Government

The Vermont Institute for Government (VIG) is a nonprofit corporation dedicated to improving educational opportunities for local officials and the public on how government works. It consists of representatives from each of the major groups in Vermont that offer such training. For more information contact:

Vermont Institute for Government

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