
CHAPTER IX. ADMINISTRATION & ENFORCEMENT

Section 9.1 Permits & Approvals

(A) **Permit Requirements.** No development or subdivision of land may commence in the Town of Charlotte until all applicable **municipal land use permits** and approvals have been issued, unless the development is specifically exempted from these regulations under Section 9.2. Permits are required for all structural improvements in the Flood Hazard Area Overlay District. Such permits and approvals include:

- (1) **Zoning Permits** issued by the Zoning Administrator under Section 9.3 for all development except for subdivisions of land requiring subdivision approval, and any activity exempted under Section 9.2;
- (2) **Variance Approval** issued by the Board of Adjustment under Section 9.7 for variance requests on appeal of a Zoning Administrator decision.
- (3) **Conditional Use Approval** issued by the Board of Adjustment under Section 5.4, and Section 5.6 (Flood Hazard Area Overlay District), for uses subject to conditional use review.
- (4) **Site Plan Approval** issued by the Planning Commission under Section 5.5 for all uses subject to site plan review.
- (5) **Subdivision Approval**, including preliminary and/or final approval, issued by the Planning Commission under Chapter VI for the subdivision of land; and also including Planned Unit or Planned Residential Development (PRD or PUD) Approval issued by the Planning Commission under Chapter VIII in association with subdivision approval.
- (6) **Boundary Adjustments and Subdivision Amendments** issued by the Planning Commission for changes to parcel boundaries, easements, or conditions of approved subdivisions.
- (7) **Certificates of Occupancy and Certificates of Compliance** issued by the Zoning Administrator under Section 9.5.

(B) **Additional Permits & Approvals.** Additional permits or approvals may be required for activities associated with subdivision and development including, but not necessarily limited to, the following:

- (1) **Wastewater Disposal System and Water Supply Construction Permits** issued by the Charlotte Sewage Officer for the Vermont Agency of Natural Resources in accordance with the the Vermont Wastewater and Water Supply Rules.
- (2) **Highway Access Permit** issued by the Charlotte Selectboard and/or the Vermont Agency of Transportation.

(C) In accordance with the Act [§4448], the Zoning Administrator will coordinate the development review process on behalf of the Town of Charlotte, refer applications to the appropriate board or municipal officer, and provide information and assistance to applicants for municipal land use permits as appropriate.

Section 9.2 Exemptions

(A) Except as regulated by the Flood Hazard Area Overlay District, the following uses and structures are exempt from these regulations. No zoning permit or approval shall be required for:

- (1) The normal maintenance and repair of existing structures, utilities and infrastructure which does not result in any change to the footprint or height of a building, the historic character of a designated historic structure, or a change in use. Interior construction or remodeling which does not affect the exterior appearance of a structure, or affect the water or septic requirements for the structure.
- (2) Handicap ramps and walkways that do not obstruct public rights-of-way or pedestrian traffic.
- (3) Fences and walls less than six (6) feet in height which do not obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic (see Section 3.4).
- (4) Minor grading and excavation associated with normal road, driveway, and parking area maintenance (including ditching, culvert replacement and resurfacing). This does not include site grading or excavation in preparation for the construction of a road, major infrastructure, or a structure.
- (5) Landscaping, for example: installation of plants, soils, arbors, terraces, and patios.
- (6) Outdoor recreational facilities associated with a residential use, and which do not involve the development or use of structures or parking areas (e.g., walking, hiking, cross-country skiing and/or snow mobile trails).
- (7) Up to two (2) detached accessory structures per lot provided that the combined area of both structures does not exceed 250 square feet in floor area, and neither structure is taller than twelve (12) feet in height. Structures housing or sheltering animals must meet all setback distances for the district in which they are located; otherwise structures must be at least 10 feet from property lines. This exemption does not apply to accessory structures in the Shoreland Seasonal Home Management District. Accessory structures in that district require conditional use review.
- (8) School bus shelters which do not exceed 36 square feet in area and 8 feet in height, are not located within the road right-of-way, and do not otherwise interfere with corner visibility or sight distances for vehicular traffic and shall be no less than 25 feet from an adjoining property line.
- (9) Garage sales, yard sales, auctions or related activities not exceeding three (3) consecutive days, nor more than twelve (12) days in any calendar year.
- (10) Accepted agricultural practices (AAPs)¹ and Best Management Practices (BMPs), including farm structures, as defined by the Secretary of Agriculture, Food and Markets in accordance with the Act [§4413(d)]. however, pursuant to associated state rules:
 - a) Prior to the construction of farm structures, the farmer must notify the administrative officer in writing of the proposed construction activity. The notification must include a sketch of the proposed structure, including setbacks from road rights-of-way, property lines, and surface waters.
 - b) The proposed structure shall comply with all setback requirements for the district in which it is located unless written approval granting a reduced setback is received from the Secretary of the Agency of Agriculture, Food, and Markets. Such approval shall be attached to the notification filed with the Administrative Officer.
- (11) Accepted management practices (AMPs) for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation, in accordance with the Act [§4413(d)].

¹ As part of Act 64 -- the Vermont Clean Water Act -- the Accepted Agricultural Practices, also known as the AAPs, are being updated, and will be known as the Required Agricultural Practices (RAPs).

(12) Utility generation and transmission facilities requiring the issuance of a certificate of public good by the Vermont Public Service Board, in accordance with the Act [§4413(b)].

(B) Decisions of the Zoning Administrator as to whether a use is exempt under this section may be appealed to the Board of Adjustment under Section 9.6(A).

Section 9.3 Zoning Permit

(A) **Applicability.** No development requiring a zoning permit shall commence until a permit has been issued by the Zoning Administrator in accordance with the Act [§4449] and these regulations.

(B) **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:

(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, "11" x 17", drawn to scale, that accurately depicts the following as required by the Zoning Administrator:

- (a) the dimensions of the lot, including existing property boundaries;
- (b) any approved building envelope;
- (c) the location, footprint, and height of existing and proposed structures and additions;
- (d) the location and dimensions of existing and proposed accesses (curb cuts), driveways and parking areas;
- (e) the location of existing and proposed easements, rights-of-way and utilities;
- (f) setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
- (g) the location of the special flood hazard area boundaries.
- (h) the location of existing and proposed water and wastewater systems; and
- (i) such other information as may be needed to determine compliance with these regulations.

(2) The application for a zoning permit shall also include, as applicable, the following submissions:

- (a) a copy of the approved subdivision plat;
- (b) relevant Planning Commission and Board of Adjustment decisions; and
- (c) deeds, and relevant easements, covenants or restrictions;

(3) Applications that require review and approval by the Planning Commission, Board of Adjustment, Selectboard or Sewage Officer must also include information required for such review (see Section 5.2). In accordance with the Act [§4448(d)], the Zoning Administrator shall refer the application to the appropriate board or municipal official following submission as follows:

- (a) applications to the Planning Commission will be forwarded to the Town Planner,
- (b) applications to the Board of Adjustment will be forwarded to the Clerk of the Board,
- (c) applications to the Selectboard will be forwarded to the Selectboard Assistant, and
- (d) applications for Wastewater System and Potable Water Supply Permits will be forwarded to Sewage Officer.

(C) **Issuance.** A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act [§4449] and the following:

- (1) No zoning permit shall be issued by the Zoning Administrator for any use or structure that requires approval of the Planning Commission, Board of Adjustment, Selectboard and/or Sewage Officer 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 subdivision approval is required until subdivision approval has been obtained, the plat has been properly recorded and, if required as a condition of subdivision approval, a certificate of compliance has been issued.
- (3) For uses requiring state agency referral, no zoning permit shall be issued until the expiration of 30 days following the submission of a copy of the application to the appropriate state agency or department. All applications for development within the Flood Hazard Area Overlay District shall be referred to the River Management Program of the Vermont Department of Environmental Conservation for review. No zoning permit shall be issued until a response has been received from the Department or the expiration of 30 days following the submission of the application.
- (4) For development which requires the alteration or relocation of a watercourse within the Flood Hazard Area Overlay District, the Vermont Department of Environmental Conservation and adjacent municipalities shall be notified at least 15 days prior to the issuance of a zoning permit, and copies of such notification shall be sent to the Administrator of the Federal Insurance Administration.
- (5) Within 30 days of receipt of a complete application, including all application materials, fees and required approvals, the Zoning Administrator shall either refer the application to the appropriate municipal panel, or issue or deny a permit in writing, in accordance with the Act [§4448(d)]. If the Zoning Administrator fails to act within the 30-day period, whether by issuing a decision or making a referral, a permit shall be deemed issued on the 31st day.
- (6) In accordance with the Act [§4449(b)], all zoning permits and denials shall include a statement of the time within which an appeal may be taken under Section 9.6. A Notice of Permit shall be posted on a form and in a manner prescribed by the municipality on the property within view of the nearest public right-of-way during the appeal period, and the permit shall be posted until construction is completed.
- (6) The Zoning Administrator shall, within three (3) days of the date of issuance, deliver a copy of the permit to the Listers, and post a copy of the permit at the town office. The permit shall be posted for a period of 15 days from the date of issuance.
- (7) 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 review any new application under both the proposed amendment and the applicable existing bylaws and ordinances in accordance with the requirements of the Act [§4449(d)].

(D) Effective Date & Expiration.

- (1) In accordance with the Act [§4449], no zoning permit shall take effect until the time for appeal under Section 9.6 has passed or, in the event that a notice of appeal is properly filed, until the appeal has been decided. If an appeal is taken to the Environmental Court, the permit shall not take effect until the Environmental Court rules in accordance with state statutes [10 V.S.A. §8504] on whether to issue a stay, or until the expiration of 15 days, which ever comes first.
- (2) Zoning permits shall remain in effect for two (2) years from the date of issuance (which shall be deemed the date a decision of the applicable Board or Court became final if the decision was appealed), unless the permit specifies otherwise. All development authorized by a zoning permit shall be substantially commenced within this period or the zoning permit shall become null and void

and reapplication and approval for further development shall be required. A single, two-year administrative extension may be granted by the Zoning Administrator, if the extension is requested prior to the permit expiration date, and the Administrator determines that any improvements completed to date conform to permit requirements and these regulations.

Section 9.4 Scheduled Site Inspections

(A) One or more of the following scheduled site inspections may be required in association with the issuance of a zoning permit by the Zoning Administrator under Section 9.3 to ensure that development conforms to permit requirements and these regulations:

- (1) following the staking or flagging of building footprints, and prior to the laying of a foundation or footings;
- (2) following the laying of the foundation or footings; and/or
- (3) following substantial completion of the project, prior to the issuance of a certificate of occupancy.

(B) One or more site inspections may be required as a condition of subdivision approval, prior to the issuance of a certificate of compliance by the Zoning Administrator, to ensure that the installation of infrastructure conforms to the conditions and specifications of subdivision approval and other applicable municipal regulations.

(C) The applicant shall give the Zoning Administrator a minimum of five (5) days notice to schedule a site inspection. No further work shall be initiated until after the site inspection has been completed.

Section 9.5 Certificates of Occupancy & Compliance

(A) **Certificate of Occupancy.** 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.

Note: Charlotte does not have a building code. However a State building permit may be required for any structure to be used for human occupancy which is not a single family residence on its own lot.

- (1) Within 14 business days of the date of receipt of a complete application and associated fees for a certificate of occupancy, the Administrative Officer will inspect:
 - (a) the premises to ensure that all work has been completed in conformance with the zoning permit application and associated approvals, including all applicable permit conditions; and
 - (b) for zoning permit applications within the Flood Hazard Area Overlay District, other documentation such as a Project Review Sheet and copies of permits, to ensure that all required permits have been obtained.
- (2) A certificate of occupancy may be issued for a substantially completed structure if the Zoning Administrator determines that it meets all applicable permit conditions.
- (3) A certificate of occupancy shall be issued or denied by the Zoning Administrator within 15 days of receipt of the application. If the Zoning Administrator fails to either grant or deny the certificate of occupancy within 15 days of the submission of an application, the certificate shall be deemed issued on the 16th day. The decision of the Zoning Administrator may be appealed to the Board of Adjustment under Section 9.6.

(B) **Certificate of Compliance.** In accordance with Section 6.5, after the effective date of these regulations, the Planning Commission may require, as a condition of subdivision approval, that a certificate of compliance be obtained to ensure that public and private improvements have been installed in accordance with the conditions of approval prior to any further land development.

- (1) The application for a certificate of compliance shall be submitted to the Zoning Administrator, to include information required by the Planning Commission.
- (2) Within 15 days of receipt of the application for a certificate of compliance, the Zoning Administrator may inspect the subdivision to ensure that all work has been completed in conformance with the conditions of subdivision approval. If the Zoning Administrator fails to either grant or deny the certificate of compliance within 15 days of the submission of an application, the certificate shall be deemed issued on the 16th day.
- (3) In the event that there are discrepancies between the approved subdivision and as-built drawings or completed work, the Zoning Administrator shall deny the certificate of compliance. The Zoning Administrator, in consultation with the Planning Commission, may require the subdivider to submit an application for an amendment to the subdivision approval, or initiate enforcement action under Section 9.8.

Section 9.6 Appeals

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

- (1) **Notice of Appeal.** In accordance with the Act [§4466], the notice of appeal shall be in writing and include the following information:
 - (a) the name and address of the appellant;
 - (b) a brief description of the property;
 - (c) a reference to applicable provisions of these regulations;
 - (d) the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations [see Section 9.7]; and
 - (e) the alleged grounds why such relief is believed proper under the circumstances.
 - (2) The Board of Adjustment shall conduct a hearing of an appeal within sixty days of the filing of the notice of appeal as provided in the Act [§4468]. The Board shall render its decision within forty-five days after completing the hearing. The decision shall include findings of fact setting forth its basis. A copy of the decision and findings of fact shall be issued as provided under Section 9.9(E).
- (B) **Planning Commission & Board of Adjustment Decisions.** In accordance with the Act [§4471], an **interested person who has participated** in a proceeding of the Planning Commission or Board of Adjustment may appeal a decision rendered in that proceeding within 30 days of such decision to the Vermont Environmental Court. In addition:
- (1) “Participation” in a proceeding shall have consisted of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.

- (2) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court, and by mailing a copy to the Charlotte Town Clerk, or the Zoning Administrator if so designated, who shall supply a list of interested persons to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

Section 9.7 Variances

(A) The Board of Adjustment shall hear and decide requests for variances in accordance with the Act [§§4424(E), §4469(a)] and associated appeal procedures under Section 9.6(A). A variance may be granted upon approval of the Board only if enforcement of these regulations will result in an undue hardship. **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 such 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 these physical circumstances and 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 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.

(B) **Renewable Energy Structures.** Where a variance is requested for a structure that is primarily a renewable energy resource structure (solar structure, wind generator, and other similar renewable energy structures), in accordance with the Act [§4469(b)], **the Board may grant such variance only if all of the following facts are found in the affirmative and specified in its written decision:**

- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations.
- (2) The hardship was not created by the appellant.
- (3) 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.
- (4) 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) **Variations within the Flood Hazard Area.** In addition to requirements under Subsection (A), variations for development within the Flood Hazard Overlay District shall be granted by the Board of Adjustment only in accordance with all of the following:

- (1) in accordance with the Act [§§1403(B), 4424, 4469] and the criteria for granting variations found in 44 CFR Section 60.6 of the National Flood Insurance Program regulations;
- (2) upon determination that during the base flood discharge the variance will not result in increased flood levels;
- (3) upon 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; and,
- (4) Any variance issued within the Flood Hazard Area Overlay District shall include, in writing over the signature of a community official as part of the decision, a statement that: “The issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage.” Such notification shall be maintained with a record of all variance actions.

(D) In granting a variance under this section, the Board of Adjustment may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. In no case shall the Board of Adjustment grant a variance for a use or condition prohibited in the applicable zoning district, or a variance which results in a density increase.

Section 9.8 Violations & Enforcement

(A) **Violations.** The commencement or continuation of any land development, subdivision or use that is not in conformance with the provisions of these regulations or conditions of a permit or approval shall constitute a violation. All violations will 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 any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the town.

(B) **Notice of Violation.** No action may be brought under this section unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists, as required under the Act [§4451]. The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within seven (7) days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven-day period. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

Violation, Notice, and Enforcement pertaining to the Flood Hazard Area Overlay District. A copy of the notice of violation will be mailed to the State NFIP Coordinator. If the violation remains after all appeals have been resolved, the Administrative Officer shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance for the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

(C) **Limitations on Enforcement.** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit or condition of an approval may be instituted against the alleged offender only if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged

violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit that has not been recorded in the land records of the municipality in accordance with Section 9.9(F).

(D) Violations of the accepted Agricultural Practices shall be immediately reported to the Secretary of Agriculture for enforcement under 6. V.S.A. §4812.

Section 9.9 Municipal Administrative Requirements

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

- (1) **Zoning Administrator (Administrative Officer).** 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 Planning Commission nominations, who shall have the same duties and responsibilities of the Zoning Administrator in his or her 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 are necessary and appropriate. In accordance with federal floodplain regulations in 44 CFR 60.3(a)(2), the Administrative Officer shall review any proposed development to assure that all necessary state and federal permits have been received before work can begin. The Agency of Natural Resources Project Review Sheet, to be completed by the applicant with assistance from state Permit Specialists, are useful for identifying permit requirements (see, <http://www.anr.state.vt.us/dec/permits.htm>).
- (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 and rules of ethics with regard to conflicts of interest 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 5.4),
 - appeals of any decision, act or failure to act by the Zoning Administrator (Section 9.6), and
 - variance requests (Section 9.7).
- (3) **Planning Commission.** Planning Commission members shall be appointed by the Selectboard for specified terms in accordance with the Act [§§4321–4323]. The Commission shall adopt rules of procedure and rules of ethics with regard to conflicts of interest to guide its official conduct as required under the Act [§4460] and Vermont's Open Meeting Law. The Commission 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:
 - requests and petitions for amendments to these regulations, including zoning map changes (Sections 1.5, 2.1);
 - applications for access to parcels not having frontage on maintained public roads or public waters (Section 3.2),
 - applications for site plan approval (Section 5.5),
 - applications for subdivision approval (Chapter VI), and

- applications for planned residential and planned unit development (Chapter VIII).
- (4) **Design Review Committee.** A design review committee shall be appointed by the Selectboard in accordance with the Act [§4433(1)]. The Design Review Committee shall not have fewer than three (3) members, the majority of which shall reside within the town. The committee shall include professional and lay members with specific areas of expertise in historic preservation, architecture, and landscape architecture. The terms of the Committee members shall be three years each. The Committee shall adopt rules of procedure, comply with Vermont Open Meeting Laws and all ethical policies and ordinances as adopted by the town, and keep records of all its transactions, to be filed with the Town Clerk as a public record of the municipality. The committee functions in an advisory capacity to the Board of Adjustment, not as a quasi-judicial body in and of itself. In accordance with the Act [§4464(d)], for purposes of these regulations the Design Review Committee shall have the authority to:
- review applications subject to design review criteria under the Shoreland Seasonal Home Management;
 - meet with the applicant and interested parties, conduct site visits, and perform other fact-finding that will enable the preparation of recommendations on an application subject to design review;
 - present its recommendations on an application to the Board of Adjustment either in writing prior to or at a warned public hearing, or orally at a public hearing of the Board;
 - notify the applicant prior to the public hearing if the Committee finds that the application fails to meet one or more of the review standards, giving the applicant the opportunity to either address and correct identified deficiencies, or withdraw the application; and
 - suggest to the applicant remedies to correct identified deficiencies.
- (B) **Fee Schedule.** In accordance with the Act [§4440], the Selectboard may establish a schedule of reasonable fees to be charged in administering these regulations with the intent of covering the town's administrative costs. Such fees may include the cost of posting and publishing notices, holding public hearings, and conducting periodic inspections during the installation of public improvements. Fees may be required to be payable by the applicant upon submission of an application or prior to the issuance of a permit or approval. In addition:
- (1) The Selectboard may set reasonable fees for filing notices of appeal and for other acts it deems proper, the payment of which shall be a condition to the validity of the filing or act under these regulations.
 - (2) The Selectboard may establish procedures and standards for requiring an applicant to pay for reasonable costs of an independent technical review of all or portions of an application, as requested by the Board of Adjustment or Planning Commission.
- (C) **Public Notice.**
- (1) In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Section 5.4), appeals and variances (Sections 9.6 and 9.7), and preliminary and final subdivision approval (Sections 6.4 and 6.5). Any notice for a public hearing required under these proceedings shall be given at least 15 days prior to the date of the hearing by *all* of the following:
 - (a) publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town;
 - (b) posting of the same information in three (3) or more public places within the town in conformance with the requirements of state statute [1 V.S.A. §312(c)(2)], including the posting

- of a hearing notice within view from the public right-of-way nearest to the property for which the application is being made;
- (c) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public or private rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the proceeding is a prerequisite to the right to take any subsequent appeal;
 - (d) for hearings required in association with the review of subdivision plats located within 500 feet of a municipal boundary, to the clerk of the adjoining municipality; and
- (2) Public notice of all other types of quasi-judicial proceedings, including site plan review hearings under Section 5.5, shall be given not less than seven (7) days prior to the date of the public hearing, and at minimum shall include the following:
- (a) Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality in conformance with the requirements of state statutes [1 V.S.A. §312 (c)(2)], and
 - (b) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public or private rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the proceeding is a prerequisite to the right to take any subsequent appeal.
- (3) The applicant shall be required to bear the cost of the public warning and the cost and responsibility of notifying adjoining property owners. The applicant shall be required to demonstrate proof of delivery to adjoining property owners either by certified mail, return receipt requested, or by notice hand delivered or mailed to the last known address supported by a sworn certificate of service.
- (4) In accordance with the Act [§4464(a)(5)], no defect in the form or substance of a notice under Subsections (C)(1) or (C)(2) shall invalidate an action of the Board of Adjustment or Planning Commission where reasonable efforts have been made to provide adequate posting and notice. An action will be invalid when the defective posting or notice was materially misleading in content.
- (D) **Meetings & Hearings.**
- (1) **Board of Adjustment & Planning Commission.** In accordance with the Act [§§4461, 4464], all meetings and hearings of the Board of Adjustment and Planning Commission, except for deliberative and executive sessions, shall be open to the public. In addition:
- (a) **Quorum.** To conduct a meeting and to take any action a quorum shall be not less than a majority of the members of the Board or Commission.
 - (b) **Records.** The Board and Commission shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions which shall be filed in the Town Office as public records.
 - (c) **Party Status.** In any regulatory hearing of the Board or Commission there shall be an opportunity for each person wishing to achieve status as an interested person, for purposes of participation or appeal under Section 9.6, to demonstrate that the criteria for achieving such status are met. The Board or Commission shall keep a written record of the name, address, and participation of each of these persons.

- (d) **Recess and Closing of Hearing.** The Board or Commission may recess the proceedings on any application pending submission of additional information, and should close evidence promptly after all parties have submitted requested information.
 - (e) **Ex Parte Communications.** No member of the Board or Commission shall communicate on any issue in an application proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any interested person in the outcome of the proceeding while the proceeding is pending without additional notice and opportunity for all parties to participate. All ex parte communications received by Board or Commission members, all written responses to such communications, and the identity of the person making the communication shall be entered into the record.
 - (f) **Review of Testimony.** Members of the Board or Commission shall not participate in the decision on an application unless they have heard all the testimony and reviewed all the evidence submitted in the hearing. This may include listening to a recording, or reading the transcripts of testimony they have missed, and reviewing all exhibits and other evidence prior to deliberation.
- (E) **Decisions.** The Board or Commission shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day.
- (1) **Form.** All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section 9.6.
 - (2) **Conditions.** In rendering a decision in favor of the applicant, the Board or Commission may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the town plan currently in effect. These may include, as a condition of approval:
 - (a) the submission of a three (3)-year performance bond, escrow account, or other form or surety acceptable to the Charlotte Selectboard, which may be extended for an additional three (3)-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or
 - (b) a requirement that no certificate of occupancy or certificate of compliance be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.
 - (3) **Distribution.** All decisions shall be sent by certified mail, within the required 45-day period, to the applicant or to the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Town Clerk as part of the public record of the municipality, in accordance with Subsection 9.9(F).
 - (4) **Appeals and Reconsideration.**
 - (a) **Appeals.** Decisions of the Board of Adjustment and Planning Commission may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in

the proceeding. Such appeals must be taken within 30 days of the date that the permit is issued, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

- (b) **Reconsideration.** At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B). To reopen a hearing on its own motion, the Board of Adjustment or Planning Commission must approve such a motion within the 30-day appeal period.
- 1) In order to reopen a public hearing the Board or Commission must find that new evidence can be presented that could not have previously been presented which indicates a substantial change of conditions or circumstances, or that the prior decision was induced by fraud, surprise, error or oversight, or that an unintended negative consequence will result.
 - 2) The reopened hearing will be warned in accordance with Section 9.9(C).
 - 3) The submission of a request for reconsideration will terminate the running of the 30 day appeal period. A new 30 day appeal period will start after the Board or Commission either 1) decides to not reopen the hearing, or 2) votes to reopen and issues a reconsidered decision on the application.
- (5) **Expiration.** Approvals granted by the Board or Commission under these regulations, except for legally recorded subdivision plats, shall expire two (2) years from the date of issuance if development has not commenced within that time. The Board or Commission may grant a longer approval period to accommodate phased development, or for development that reasonably requires a longer period of time for project commencement. In addition, the Board or Commission may grant a single two-year extension of an approval if the extension is requested prior to the approval expiration date, and the Board or Commission determines that conditions are essentially unchanged from the time of the initial approval.
- (6) **Administrative Review.** In accordance with the Act [§4464(c)], any decision issued by the Board of Adjustment or Planning Commission may authorize that subsequent changes or amendments to an approved project may be allowed subject to administrative review by the Zoning Administrator, rather than Board or Commission review, in accordance with the following:
- (a) The decision shall clearly specify the thresholds and conditions under which administrative review and approval shall be allowed.
 - (b) The thresholds and conditions shall be structured such that no new development shall be approved that results in substantial impact under the requirements of these regulations, or under any of the thresholds or conditions set forth in the decision.
 - (c) An administrative review shall not have the effect of substantially altering the findings of fact of any Board or Commission approval in effect.
 - (d) Any decision of the Zoning Administrator authorized in this manner may be appealed to the Board in accordance with Section 9.6(A).
- (F) **Recording Requirements.**
- (1) Within 30 days of the issuance or denial 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 a municipal land use permit, denial or violation to the Town Clerk for recording in the land records of the town as

provided in 24 V.S.A. §1154, and as required under the Act [§4449(c)]. The applicant may be charged reasonable recording costs.

- (2) For development within the Flood Hazard Area Overlay District, the Zoning Administrator shall also maintain a record of:
- (a) all permits issued for development in areas of special flood hazard;
 - (b) elevation certificates that show the as-built elevation, (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community in relation to mean sea level), of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory buildings) in the Special Flood Hazard Area;
 - (c) an elevation certificate with the as-built elevation, (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community 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.

(G) **Availability of Documents.** In accordance with the Act [§4445], copies of these regulations, other related municipal regulations, policies and ordinances, and the town plan shall be made available to the public during normal business hours in the Charlotte Town Office.