

**CHAPTER 17: APPEALS****SECTION 1701: ADMINISTRATIVE DETERMINATIONS**

- A. Purpose. To provide for the timely response to requests for interpretation of provisions of this Code.
- B. Filing of Application. A request for interpretation does not require a formal application. However, all requests shall be in writing and shall refer to the sections of the Code upon which the request is based.
- C. Staff Review. Staff shall provide a written response to any written request. Nothing in this section authorizes Staff to approve any application unless specifically authorized.
- D. For the purposes of appeals, an interested person means any one of the following:
1. A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
  2. The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.
  3. A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
  4. Any ten (10) persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
  5. Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.
- E. Appeals. A prospective applicant may appeal administrative determinations as follows:
1. A determination that a Zoning Permit is required under Section 502.A to the Board of Adjustment following the procedures of Section 1702.
  2. A determination that one or more approvals set forth in Section 502.A.1 are required to the Board of Adjustment following the procedures of Section 1702.
  3. A determination that Subdivision Approval is required under Section 503 to the Planning Commission following the procedures of Section 1704.
  4. A determination that a Public Sewer System Approval is required under Section 504 to the Board of Trustees following the procedures of Section 1705.

5. A determination that a Private Sewer System Approval is required under Section 505 to the Board of Trustees following the procedures of Section 1705.
6. A determination that a Noise Standard Waiver is required under Section 506 to the Board of Trustees following the procedures of Section 1705.
7. A determination that a Public Water System Approval is required under Section 507 to the Board of Trustees following the procedures of Section 1705.
8. A determination that a Private Water System Approval is required under Section 508 to the Board of Trustees following the procedures of Section 1705.
9. A determination that a Public Road Access Approval is required under Section 509 to the Board of Trustees following the procedures of Section 1705.
10. Any appeal of a Staff interpretation or determination shall be in accordance with the provisions of Section 303 except as specifically provided herein.

F. Standards of Review. Staff shall review all requests based upon provisions of this Code and the rules of interpretation as contained herein. Staff shall issue a letter of interpretation within 14 days of receipt of a written request. Determinations shall be limited as follows:

1. A determination that a particular use, which does not fall under a definition of one of the uses specified in the Table of Uses in Section 620 of this Code, is clearly not allowed within the District or is substantially similar to one of the permitted or conditional uses within the District.
2. An interpretation of any definition of any term within this Code as it affects any proposed development.
3. An interpretation of any administrative or application procedure.
4. An interpretation of any Zoning District boundary.
5. An interpretation of the completeness of materials submitted for any review.
6. An interpretation of any policies established by any Board or Commission of the Village of Essex Junction.
7. A determination that an application for an amendment to an approved Planned Development requires new Conceptual Plan Approval.
8. A determination that a proposed amendment to an approved Site Plan is a major or minor amendment.

## **SECTION 1702: APPEALS OF STAFF DECISIONS PURSUANT TO SECTION 502**

A. Purpose. To provide a mechanism by which interested parties may appeal a Staff decision under any subsection of section 502 regarding an application. Actions or approvals of the Planning Commission under this Code shall not be appealable to the Zoning Board of Adjustment.

B. Notice of Appeal. Any interested person who believes that the Administrative Officer has committed an error in making a decision or taking an action may appeal such act or decision to the Board of Adjustment by filing a written Notice of Appeal with the Village Clerk within fifteen (15) calendar days of the subject action or decision. The Notice of Appeal must identify the decision or action appealed and state why such decision or action is erroneous.

C. Action by the Zoning Board of Adjustment. The Board shall conduct a duly warned Public Hearing at which it will take testimony and receive evidence from the applicant, Staff and

interested parties. The Board shall then consider all relevant evidence before it and shall render its decision and issue signed findings of fact and conclusions within forty-five (45) days of the Public Hearing. Failure to act within this time shall result in granting of the Appeal.

D. Standards of Review. The Board shall review any appeal in accordance with the following:

1. Review is restricted to Staff decision appealed.
2. Any interpretation shall fully consider the intent of the provision or sections of Code upon which the Appeal is based.
3. Any interpretation shall fully consider the intent of all applicable provisions of the Village Plan.

### **SECTION 1703: REQUESTS FOR VARIANCES FROM THE REQUIREMENTS OF CHAPTERS 6 and 7**

A. Purpose. To provide a mechanism for granting relief from a specific requirement of this Code, which when strictly applied to a specific parcel may cause undue hardship for the applicant.

B. Action by Zoning Board of Adjustment. The Board may approve or deny an application for a Variance. The Board may grant only the minimum relief necessary to allow the applicant reasonable use of the property in question. A use variance shall not be granted.

No Variance may grant rights to a particular piece of property which is not allowed on other properties within the District except as necessary to allow reasonable use of the property as intended within the District.

C. Standards of Review. In accordance with Section 4469 of Title 24, Chapter 117, of Vermont Statutes Annotated, the Board may grant Variances if it finds that all of the following standards of review are met and such findings are included in its written decisions.

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 these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
3. 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 variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.
6. A request for a Variance that is primarily a request for a renewable energy

resource structure shall meet only the following criteria:

- (a) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaws.
- (b) The hardship was not created by the appellant.
- (c) 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.
- (d) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaws and from the plan.
- (e) In rendering a decision in favor of an appellant under this section, a board of adjustment or development review board or the environmental court may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this chapter and the plan of the municipality then in effect.

D. Effect of Approval or Denial. Approval by the Board authorizes the applicant to apply for a Zoning Permit in accord with the Findings as signed by the Board. An application which was denied may not be refiled within six (6) months of the effective date of the denial unless substantive new evidence is submitted.

#### **SECTION 1704: APPEALS OF STAFF DECISIONS TO THE ZONING BOARD OF ADJUSTMENT**

- A. Purpose. To provide a mechanism by which interested parties may appeal the:
1. Classification of activities at an Exposition Center PUD pursuant to Section 502.E.6; or
  2. Staff decisions regarding Site Plan Approvals pursuant to Section 502.I.10; or
  3. Administrative determinations of Staff regarding the applicability of subdivision review to a particular project; or
  4. A decision of Staff under the provisions of Section 503.B, regarding classification of a project or a determination that an application is not complete.
- B. Notice of Appeal. Any interested person who believes that Staff has committed an error in making a decision or taking an action may appeal such act or decision to the Zoning Board of Adjustment by filing a written Notice of Appeal with the Village Clerk within fifteen (15) calendar days of the subject action or decision. The Notice of Appeal must identify the decision or action appealed and state why such decision or action is erroneous.
- C. Action by the Board. The Board shall conduct a duly warned public hearing at which it will take testimony and receive evidence from the applicant, interested parties and Staff. The Board shall consider all relevant evidence before it. It shall issue its decision in writing with findings of fact and conclusions within forty-five (45) days of the final public hearing. Failure to act within this time shall result in granting the appeal.

D. Standard of Review. In an appeal under this Section, the Commission shall proceed de novo but shall limit its review and decision to the specific decision or action appealed.

### **SECTION 1705: APPEALS TO THE BOARD OF TRUSTEES**

A. Purpose. To provide a mechanism by which interested parties may appeal any decision or act of Staff under the provisions of Sections 504-509, including administrative determinations, and determinations that an application is not complete.

B. Notice of Appeal. Any interested person who believes that the Staff has committed an error in making a decision or taking an action may appeal such act or decision to the Board of Trustees by filing a written Notice of Appeal with the Village Clerk within 15 calendar days of the subject action or decision. The Notice of Appeal must identify the decision or action appealed and state why such decision or action is erroneous.

C. Action by the Board of Trustees. The Board shall conduct a duly warned Public Hearing, except in those matters identified in subsection E below, at which it will take testimony and receive evidence from the applicant, interested parties and Staff. The Board shall consider all relevant evidence before it. It shall issue its decision in writing with findings of fact and conclusions within forty-five (45) days of the final public hearing. Failure to act within this time shall result in granting of the Appeal.

D. Standard of Review. In an appeal under this Section, the Board shall proceed de novo but shall limit its review and decision to the specific decision or action appealed.

E. Matters Not Requiring a Public Hearing. The Board of Trustees shall not be required to hold a public hearing for consideration of the following matters:

1. Review of Staff determination pursuant to Section 506 that a waiver is required from the standards of Chapter 13. The identified matters may be considered by the Board of Trustees and decided at a regular or special meeting of the Board.

F. Decisions of the Board of Trustees shall be final.

### **SECTION 1706: APPEALS FROM BOARD OF ADJUSTMENT DECISIONS**

Decisions of the Board of Adjustment made pursuant to Sections 1702 and 1703 may be appealed to the Vermont Environmental Court in accordance with the provisions of 24 V.S.A. §4471. All appeals shall be on the record.

### **SECTION 1707: APPEALS FROM PLANNING COMMISSION DECISIONS**

Decisions of the Planning Commission made pursuant to Section 1704 above, may be appealed to The Vermont Environmental Court in accordance with the provisions of 24 V.S.A. §4475. All appeals shall be on the record.

**SECTION 1708: ON THE RECORD REVIEW**

As provided for in 24 V.S.A. § 4471 (b) the use of on the record review procedures will be followed for all development applications that require review by the Planning Commission or Zoning Board of Adjustment. The procedures outlined in the Municipal Administrative Procedure Act (MAPA) shall govern all Planning Commission and Zoning Board of Adjustment application reviews. Evidence provided and recorded at public meetings and hearings shall follow the Vermont Rules of Evidence as outlined in 24 V.S.A. § 1206 (b).