

## Chapter 8

### Variances and Amendments

This chapter establishes a variance procedure that provides for relief from the strict application of this bylaw when certain findings can be made. It also explains how this bylaw can be amended.

#### 8.1 Variances

**8.1.1 *Is it possible to obtain a variance from the requirements of this bylaw?*** Yes, but not easily. A variance may be granted only where the DRB can make the findings required by WDB 8.1.3 or, if applicable, WDB 8.1.4.

**8.1.2. *How would I apply for a variance?*** An application for a variance is treated as an application for a discretionary permit. It will be combined with such an application where the variance would permit development for which a discretionary permit is required. Where only an administrative permit would ordinarily be required, a development for which a variance is needed will be treated as if a discretionary permit was required.

**8.1.3 *What findings are required for the DRB to approve a variance?*** The DRB must, as required by 24 V.S.A. §4469, make the following findings:

8.1.3.1. ...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 this bylaw in the neighborhood or district in which the property is located.

8.1.3.2. ...because of these physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of this bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

**The “Bottom Line” on Variances.** If the property has been, or can be, developed for a conforming use, the town cannot allow a variance. See WDB 8.1.4 for a narrow exception to this rule for renewable energy resource structures.

8.1.3.3. ... the unnecessary hardship has not been created by the appellant or his/her predecessors in interest.

8.1.3.4 ... 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, and

8.1.3.5. ... the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and the *Town Plan*.

8.1.3.6 For Nonconformities. A variance may be approved to permit the reasonable use of a nonconforming lot, but only in the limited situations that are made possible by WDB 2.2.3.1 and 2.4.3.2,

**8.1.4 Isn't it easier to obtain a variance for renewable energy resource structures?** A little. As provided by 24 V.S.A. § 4469(b), a variance for a proposed renewable energy resource structure may be approved where the DRB finds that it is unusually difficult or unduly expensive for the applicant to build a suitable renewable energy resource structure in conformance with this bylaw, and can also make the findings of WDB 8.1.3.3 through 8.1.3.5.

**8.2 Amendments.** This section is based on 24 V.S.A. § 4441 which provides the statutory requirements for bylaw adoption, amendments, and repeal.

**8.2.1 Who may propose an amendment of this bylaw?** Amendments may be proposed by the planning commission or any other person or body. Proposed amendments that are not prepared by the planning commission must be submitted in writing, along with supporting materials, at least 30 days before the regularly-scheduled planning commission meeting at which their consideration is requested. Requests for consideration of an amendment may be accompanied by a petition, as explained in WDB 8.2.2.

**8.2.2 Can the planning commission be compelled to conduct a hearing on a proposed amendment?** The planning commission may find that an amendment proposed by another person or body would be consistent with the *Town Plan* and proceed as if it had prepared that proposal. If the planning commission declines to consider a proposed amendment, it may be compelled to do so by a petition signed by not less than five percent (5%) of the town's registered voters.

**8.2.3 Can the planning commission change proposed amendments that are submitted via petition?** The planning commission may correct technical deficiencies in proposed amendments submitted via petition, but may make no other changes before preparing the report required by WDB 8.2.4, and scheduling a hearing.

**8.2.4 How will proposed amendments be explained to the public?** The planning commission must prepare a report on all proposed amendments. That report is required to explain the proposed amendment and its purpose, and address the following:

8.2.4.1 ... how it conforms with or furthers the goals and policies contained in the *Town Plan*, including the effect of the proposal on the availability of safe and affordable housing;

8.2.4.2 ... how it is compatible with the proposed future land uses and densities of the *Town Plan*; and

8.2.4.3 ... how it, as applicable, carries out any specific proposals for planned community facilities.

**8.2.5 How will notice of the hearing be given?** Upon completion of the report required by WDB 8.2.4, above, the planning commission shall schedule at least one public hearing on the proposed amendment. Notice of that hearing shall be given as provided here.

8.2.5.1 Publication. The hearing, the date, time, place, and purpose of the hearing shall be published in a newspaper of general circulation within the town at least 15 days before the hearing.

8.2.5.2 Posting. The date, time, place, and purpose of the hearing shall be posted in three or more public places within the town, including the offices of the town clerk, at least 15 days before the hearing.

8.2.5.3 Additional Contents. The hearing notice shall also include:

- a statement of purpose for the proposed amendment, which shall be same as the statement of purpose included in the report required by WDB 8.2.4;
- a map or description of the area that will be affected by adoption of the proposed amendment;
- a table of contents or list of section headings, and
- an explanation of how a copy of the full text may be obtained.

8.2.5.4 Notice to Agencies. At least 15 days before the hearing, a copy of both the proposed amendment and the report required by WDB 8.2.4, above, shall be delivered, with proof of receipt, or mailed by certified mail, return receipt requested, to each of the following: the chairperson of the planning commission of each adjoining municipality, or in the absence of a planning commission, the clerk of the municipality; the Executive Director of the Chittenden County Regional Planning Commission; and the Vermont Department of Housing and Community Affairs.

## **8.2.6 What is the hearing procedure?**

8.2.6.1 Opening Statements. The presiding member shall state the purpose of the hearing, and if the hearing concerns a zoning map amendment or another change that affects the interests of a particular landowners or owners (as opposed to a change that affects the entire town):

- ask whether any member wishes to be excused on account of a conflict of interest, as defined at WDB 3.11 or report an ex parte contact, as defined at WDB 3.11, and excuse any member declaring a conflict of interest; and
- advise participants that there are specific statutory requirements for becoming an interested party who can appeal a decision. The chair need not review those requirements, but shall refer the participants to the requirements of this bylaw and state law. The chair shall also state that anyone wishing to be considered an interested party must sign the register specifically provided for that purpose.

8.2.6.2 Questions and Answers. The purpose of a hearing is to take statements for consideration by the planning commission. Once the hearing is opened, the commission will not answer questions, nor will it permit questions or discussion among members of the audience. For this reason, the hearing will be preceded by a staff report, which may be followed by questions and answers from the audience.

8.2.6.3 Staff Report. The staff will summarize the written report required by WDB 8.2.4 and present additional information regarding the proposed amendment. This report may be followed by questions from the audience, which shall be directed through the presiding member. No statements of position or opinion will be taken at this time. The purpose of the question and

answer session is to help participants understand the amendment process and to establish the facts.

**8.2.6.4 Testimony.** Before taking testimony, the presiding member shall remind those who wish to speak to first state their name and address, and that statements are to address the merits of the proposed amendment. The presiding member shall then ask for testimony. Members may ask questions following any statement, with questions and responses being directed through the presiding member.

**8.2.6.5 Time Limits.** The Planning Commission may set and enforce a time limit on oral statements.

**8.2.7 What actions can the planning commission take?** After considering all statements taken at the hearing, the Planning Commission may decide that no further action on the proposed amendment is justified or revise the proposed amendment and the accompanying report as it deems necessary, then submit them to the Selectboard for consideration.

**8.2.8 Can the Planning Commission be compelled to send a proposed amendment to the Selectboard?** Yes. Upon written request of the Selectboard or where the proposal was accompanied by a petition signed by not less than five percent (5%) of the town's registered voters, the Planning Commission shall correct any technical deficiencies and promptly submit the proposal, together with its recommendation, to the Selectboard.

**8.2.9 Must the Selectboard hold a hearing on a proposed amendment?** Yes. Within 120 days of receiving a proposed amendment from the Planning Commission, the Selectboard shall schedule one or more public hearings on that proposal. Notice shall be given in the same way as provided for planning commission hearings. The Selectboard may make minor revisions to the proposed amendment, but these shall be complete and available for public review at least 14 days before the scheduled hearing.

**8.2.10 What actions can the Selectboard take?** The Selectboard may, at any meeting after the final public hearing, decide not to adopt the proposed amendment, adopt the proposed amendment as presented, or make revisions. If the Selectboard makes substantial revisions in the proposal, it shall schedule and give notice of new hearings. Proposed revisions shall also be filed with the Town Clerk and the Planning Commission at least 10 days before the scheduled hearing. Upon receipt of such changes, the Planning Commission shall amend the report required by WDB 8.2.4, and submit that report and its recommendation to the Selectboard at, or before, the hearing.

**8.2.11 When does an amendment or repeal become effective?** Upon adoption by the Selectboard, an amendment becomes effective in 21 days.

**8.2.12 Is the public allowed to vote on amendments to this bylaw?** A petition calling for a popular vote may be filed with the Town Clerk within 20 days following the adoption of an amendment by the Selectboard. If the petition is signed by not less than five percent (5%) of the town's registered voters, the amendment shall not take effect, and a town meeting shall be warned for the purpose of voting upon the proposed amendment by Australian ballot.