

Chapter 2

Vested Rights Nonconforming Lots, Uses, and Structures

This chapter provides for the transition from the previous bylaws to this one. It repeals the previous bylaws, while protecting the rights of projects that are underway to proceed in compliance with those bylaws. It also establishes the rights of nonconforming lots, uses, and structures.

2.1 Previous Bylaws. All bylaws authorized by Chapter 117, Title 24 of the Vermont Statutes that existed on the effective date of this bylaw are hereby repealed to the extent of their inconsistency with this bylaw.

2.2 Vested Rights. It is important to understand the difference between these provisions for vested rights and the provisions this bylaw makes for existing, but nonconforming, lots, uses, and structures in WDB 2.3-2.6. This section applies only to developments for which a complete application had been filed or a permit approved, but that were not completed, and thus not ‘existing,’ on the effective date of the current version of this bylaw.

2.2.1 What is a vested right? A vested right is the right for a development to be completed in compliance with the rules that were in effect on the date the application for a permit for that development was deemed complete.

Complete? Completed? A ‘complete’ application is one that has been accepted as such by the Administrator, as provided by WDB 5.1.6 or 6.4.6. A ‘completed’ development is one for which a certificate of occupancy (CO) has been issued, as provided by WDB 7.3, or where a CC is not required, one on which all work has been completed, as permitted.

2.2.2 How is a vested right established?

2.2.2.1 For Residential Subdivisions. Obtaining approval of a residential subdivision in Williston is a competitive process. Subdivisions are evaluated and ranked on the basis of their consistency with the town’s goals, as stated in the town plan and this bylaw. Development rights do not vest until a residential subdivision has been through pre-application review as required by WDB 6.2; obtained an allocation from the town’s residential growth target as provided by Chapter 11 of this bylaw; and submitted a timely and complete application for a discretionary permit following the procedures established in WDB 6.4, et seq.

2.2.2.2 For Other Developments. A vested right can be established only by having filed a complete application for a discretionary permit or an administrative permit, whichever is the appropriate first step in the proposed development’s review. Vested rights cannot be established by filing a request for pre-application review.

2.2.3 What is the extent of a vested right?

2.2.3.1 For Subdivisions. Lots in subdivisions that are completed in reliance on a vested right may be conveyed, even if they have become nonconforming. Development of the lots must, however, comply with this bylaw or obtain a variance, as provided by WDB 8.1.3.6.

2.2.3.2 For Uses and Structures. Uses and structures that are completed in reliance on a vested right may be occupied, even if they become nonconforming. See WDB 2.5 and 2.6 regarding nonconforming uses and structures.

2.2.4 Can vested rights expire? Yes. Both this bylaw and the previous bylaws provide for the expiration of permits or approvals. Vested rights expire with the permit or approval.

2.2.5 Can a plan with vested rights be revised? Any substantial change in the approved final plans for a development voids its vested rights. Minor changes may be allowed, with the approval of the Administrator, as provided at WDB 5.6.

2.3 Specific Authority. The provisions of WDB 2.4, 2.5, and 2.6 are specifically authorized by 24 V.S.A § 4412(7), which requires all bylaws to “define how nonconformities will addressed, including standards for nonconforming uses, nonconforming structures, and nonconforming lots.” These provisions are also consistent with 24 V.S.A § 4412(2), which limits municipal regulation of “existing small lots.”

2.4 Nonconforming Lots

2.4.1 What is a nonconforming lot? Per 24 V.S.A. § 4303 (13), nonconforming “lots or parcels do not conform to the present bylaws covering dimensional requirements, but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.” Usually a lot is nonconforming because it is too small to accommodate any use that is permitted in its zoning district. Lots may also be nonconforming for other reasons, including the lack of legal or safe access.

2.4.2 Must nonconforming lots be merged? Contiguous, nonconforming lots that are under the same ownership are considered merged, except as provided below.

2.4.2.1 Exception to Merger. Contiguous, nonconforming lots may be conveyed in their pre-existing, nonconforming configuration where, on the effective date of this bylaw, each lot:

- was connected to central water and sewer systems or developed with a water supply and wastewater disposal system that is functioning in an acceptable manner, as verified in the field by a licensed designer, or
- had an allocation for a dwelling unit approved under any of the previous versions of the growth management system that is embodied in Chapter 11 of this bylaw.

2.4.2.2 Easements Required. The instruments of conveyance for contiguous, nonconforming lots that are not merged must create easements sufficient for the replacement and maintenance of water and wastewater systems on all lots involved.

What does it mean to “merge” lots? Lots are merged for the purposes of this bylaw only. They may still appear as separate in the land records or be subject to separate property tax bills. Merger means only that the lots are treated as one for the purposes of determining compliance with the standards of this bylaw.

2.4.3 How can a nonconforming lot be used? A nonconforming lot that is not subject to merger as required by WDB 2.4.2; is in individual, separate, and nonaffiliated ownership from surrounding properties; and was in existence on the effective date of this bylaw, may be used as provided here.

2.4.3.1 Boundary Adjustment. Nonconforming lots may be divided and added to adjoining lots using the boundary adjustment procedure established by Chapter 10 of this bylaw.

2.4.3.2 Development. A nonconforming lot may be developed for any of the uses permitted in the zoning district in which it is located, provided that the proposed development complies with all other requirements of this bylaw. If full compliance is not possible, a variance may be approved using the nonconformity as a basis for the findings required by WDB 8.1.3.

2.5 Nonconforming Uses

2.5.1 What is a nonconforming use? Per 24 V.S.A. § 4303(15), a nonconforming use is “a use of land that does not conform to the present bylaws, but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.”

2.5.2 Can nonconforming uses continue? Yes, but only with the limitations described in WDB 2.5.3 and 2.5.4.

2.5.3 Can a nonconforming use be changed? No. Any change in use, or in the nature or extent of use, is subject to the requirements of this bylaw.

2.5.4 What happens if a nonconforming use ceases to operate? If a nonconforming use ceases operation for more than one year (twelve months) it may be replaced only with a conforming use.

2.6 Nonconforming Structures

2.6.1 What is a nonconforming structure? Per 24 V.S.A. § 4303(14), a nonconforming structure is “a structure or part of a structure that does not conform to the present bylaws, but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.”

2.6.2 Can a nonconforming structure continue? Yes. Nonconforming structures can continue indefinitely in their present form, unless they are determined to be dangerous buildings, in accord with WDB 18.2. Routine maintenance and repair of nonconforming structures is permitted.

2.6.3 Can a nonconforming structure be replaced? Yes, with some limitations. A nonconforming structure may be replaced with a new one as long as there is no change in the nature or extent of any nonconforming use if present, and the degree of the structure’s nonconformity is not increased. A nonconforming structure that is demolished or destroyed may only be replaced if a permit to replace the nonconforming structure is obtained no later than one year (12 months) from the date when the nonconforming structure was destroyed.

2.6.4 Can a nonconforming structure be modified? Yes, with some limitations. A nonconforming structure may be modified or expanded as long as there is no change in the nature or extent of any nonconforming use if present, and the degree of the structure’s nonconformity is not increased.

WDB 31.3.4.4 contains specific restrictions on the expansion of nonconforming structures in the Lake Iroquois Shoreline Protection Area (LISPA).

Is allowing the replacement or enlargement of a nonconforming structure good policy? First, remember that a conforming use can be housed in a nonconforming structure. This means that the replacement or enlargement of a nonconforming structure may not result in a change in the nature or extent of a nonconforming use. Second, refusing to allow the replacement of nonconforming structures often results in blight, as these structures are not maintained. Allowing replacement may result in an improvement. Finally, most nonconforming structures are not nonconforming in every dimension. Consider a building that is too close to a stream or a property line. The side nearest the stream or property line is nonconforming, but as long as that side doesn't change, it may be possible to expand the building in another direction in full compliance with this bylaw. This possibility gives the owner an asset instead of a building there is little incentive to maintain.

2.7 Nonconforming Signs. See WDB 25.9.

2.8 Correction of Nonconformities. The DRB may require that nonconformities be corrected as a condition of approval of a discretionary permit for additional development on the same lot or on adjacent lots in the same ownership. This power is limited to requiring work that is reasonably proportional to the scale of the proposed development.

2.9 Additional Regulations for Nonconformities

2.9.1 What if a nonconforming lot, use, or structure is in a watershed protection buffer?

2.9.1.1 Within SFHA's. As provided by WDB 28.16 and the requirements of the National Flood Insurance Program, nonconformities located in watershed protection buffers that are also Special Flood Hazard Areas may not be maintained, repaired, replaced, or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses conducted in accordance with standard engineering practices and certified by a registered professional engineer that the proposed work will result in no increase in flood levels during the occurrence of the base flood.

2.9.1.2 Outside SFHAs. Nonconformities located in watershed protection buffers that are not also Special Flood Hazards Areas may be maintained, repaired, replaced, and enlarged provided that the degree of nonconformity is not increased, and that all exterior work is subject to the runoff and erosion control requirements of Chapter 29 of this bylaw, but no change that permits or expands the processing, manufacture, storage, or handling of regulated hazardous materials or materials that could float and be dispersed downstream during a flood may be permitted.

2.9.2 What if a nonconforming lot, use, or structure is in the Village Zoning District? All exterior changes in the Village Zoning District must comply with the *Williston Village Historic District Design Review Guide*.