

Chapter 4

Permits Thresholds and Exemptions

This chapter requires a permit for most development activity. It also allows some complete and partial exemptions from that requirement and establishes the two types of permits used in the administration of this bylaw. Permit application, review, and appeal procedures are found in Chapters 5 and 6 of this bylaw.

4.1 Permit Requirements

4.1.1 Is a permit required for development? Yes. Permits are required for all development that is not specifically exempted by WDB 4.2. Failure to obtain a permit before beginning development is a violation of this bylaw, subject to enforcement as provided by WDB 7.4-7.6.

4.1.2 What is development? 24 V.S.A. § 4303(10) defines “land development” as “the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.” This bylaw uses the term ‘development’ rather than land development, but they are synonymous.

4.1.3 Are land boundary adjustments development? See Chapter 10 of this bylaw, which establishes the review procedure for proposed boundary adjustments that create no significant potential for future subdivision, but must be reviewed for content and form. Proposed boundary adjustments that present some potential for future subdivision will ordinarily be treated as development for which a discretionary permit is required, but WDB 10.1.3 does provide two possible exceptions to this rule.

4.1.4. Are outdoor sales and storage development? Yes. Outdoor sales and storage are development, and are regulated by this bylaw. Outdoor sales and storage are not permitted in all zoning districts. Where they are permitted, outdoor sales and storage areas must be specifically delineated on the plans submitted with an application for a permit. If approved, outdoor sales and storage will be confined to the delineated areas. Specific standards for outdoor sales and storage appear in the chapters establishing each zoning district.

4.1.5 Are exterior changes that do not change a building’s dimensions development? They may be. 24 V.S.A. § 4414(e) specifically authorizes Williston to regulate such changes in design review districts and several zoning districts are designated as design review districts, including the BPZD, GZDS, GZDW, MUCZD, MURZD, TCZD, and VZD. Development on lots in the IZDW that adjoin Marshall Avenue and Route 2 are also subject to design review.

4.1.6 Is the posting or placement of a sign development? Yes. The installation, posting, or placement of any sign, including temporary and portable signs, is development regulated by this bylaw. 24 V.S.A. § 2291(7) also gives the Town independent authority to regulate signs.

4.1.7 Is a change of use development? Yes. A ‘change of use’ for which a permit is required by this bylaw occurs when the use of a building, a space within a building, or a lot is changed and the new use is not in the same four-digit North America Industry Classification System (NAICS) category as the old use.

4.1.8 When is a permit required for development? Before ANY land division or work begins. Permits must be obtained before lots are created or before a site is cleared of vegetation or any earth is moved. Clearing or grading a site before applying for the required permits is a violation of this bylaw, subject to enforcement as provided by WDB 7.4-7.6. Restoration of the site to its original condition may be required.

4.2 Exemptions from the Requirements of this Bylaw

4.2.1 Are there exemptions from this bylaw? There are a few, which are listed below. There are also some partial exemptions, which are listed in WDB 4.2.2

4.2.1.1 State-Regulated Utilities. As provided by 24 V.S.A § 4413(b), this bylaw does not apply to public utility power generating plants and transmission facilities.

4.2.1.2 Agricultural and Silvicultural Practices. As provided by 24 V.S.A § 4413(d), this bylaw does not apply to specific Required Agricultural Practices and Accepted Management Practices in forestry defined by the secretary of agriculture, food, and markets or the commissioner of parks, forests, and recreation, respectively. Farmers must notify the Administrator in writing of the proposed construction activity. This notification must include a sketch of the proposed structure including how it meets local setbacks from adjoining property lines and road rights-of-way.

What are Required Agricultural Practices? Agricultural practices that are governed by these regulations [regulations promulgated by the Vermont Agency of Agriculture Food and Markets] include, but are not limited to, the following: (a) the confinement, feeding, fencing, and watering of livestock; (b) the handling of livestock wastes and by-products; (c) the collection of maple sap and production of maple syrup; (d) the preparation, tilling, fertilization, planting, protection, irrigation and harvesting of crops; (e) the ditching and subsurface drainage of farm fields and the construction of farm ponds; (f) the stabilization of farm field streambanks constructed in accordance with the USDA-Natural Resources Conservation Service standards and specifications or other standards approved by the Commissioner; (g) the construction and maintenance of farm structures in accordance with Federal Flood Insurance Management Program standards, the construction and maintenance of farm ponds, farm roads, walls, fences, structures to control the grade and head cutting in natural or artificial channels, and an irrigation, drainage or other water management system that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation; (h) the on-site production of fuel or power from agricultural products produced on the farm; (i) the on-site storage, preparation and sale of agricultural products principally produced on the farm; and (j) the on-site storage of agricultural inputs including, but not limited to, lime, fertilizer and pesticides. **Farm Structure** means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in subdivision 6001(23) of Title 10, but excludes a dwelling for human habitation.

4.2.1.3 Temporary Events. Temporary Events are land development but are not regulated by this bylaw. They are defined and regulated by the town's Temporary Events Ordinance.

4.2.1.4 Pre-emption by State Statute. Where a provision of the Williston Development Bylaw is not consistent with State statute, State statute shall prevail or "pre-empt" that specific provision of the bylaw.

4.2.2 Are there partial exemptions from this bylaw? As provided by 24 V.S.A § 4413(a), this bylaw applies to the following developments only to the extent that it does not have the effect of interfering with their intended functional use:

4.2.2.1 ... institutions and facilities owned and operated by the state or a municipality;

4.2.2.2 ... public and private schools and other educational institutions certified by the state department of education;

4.2.2.3 ... churches and other places of worship, convents, and parish houses;

4.2.2.4 ... public and private hospitals;

4.2.2.5 ... regional solid waste management facilities certified under 10 V.S.A. Chapter 159; and

4.2.2.6 ... hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A § 6606a.

4.2.2.7... emergency shelters.

4.2.2.8 Permit Requirement for Partially Exempted Developments. Permits are required for the uses listed above. The town is specifically authorized to regulate the “location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening” of these developments. However, the statute then states that the town may not interfere with the intended functional use, and that regulating the daily or seasonal hours of operation of an emergency shelter shall constitute interfering with the intended functional use. In order to clarify the local application of this language, the town adopts the policy stated in WDB 4.2.2.9.

4.2.2.9 Policy on the Regulation of Partially Exempted Developments. The town strongly discourages partially exempted development on sites that are not zoned for the proposed use. In compliance with the statute cited above, however, the town will accept an application for a discretionary permit for a partially exempted development in any zoning district. Proposals for partially exempted developments that would normally be reviewed and approved under the Administrative Major Certificate of Conformity process outlined in WDB 32 will be reviewed by the DRB using the hearing procedures for a Discretionary Permit. The DRB will then apply all standards of this bylaw to the proposed development and impose any conditions it finds necessary to maximize compliance. The burden of demonstrating that a condition imposed on a partially exempted development interferes with the intended functional use rests with the applicant.

4.2.3. Are there exemptions from the requirement for a permit, but not from the requirements of this bylaw? Yes. As explained below, permits are not required for some minor development activity that is still subject to all requirements of this bylaw. For development within the Taft Corners Form-Based Code Zoning district, see TCFBC Section 8.

4.2.3.1 Accessory Structures on Residential Properties. No permit is required for detached residential accessory structures, including decks, patios, play structures, and portable structures that are less than 10 feet in height and have a footprint of less than 120 square feet. Accessory structures on residential properties must, however, comply with the requirements of this bylaw. For example, placing a 100 square foot play structure within 5 feet of a side property line in the RZD would not require a permit, but would be a violation of the 10-foot minimum side setback required in that zoning district, subject to enforcement as provided in

WDB 7.4-7.6. This exemption does not apply to accessory structures located in the Special Flood Hazard Area.

4.2.3.2 Boundary Adjustments. Boundary adjustments must be reviewed and approved by the Administrator, as required by Chapter 10 of this bylaw, but do not require a permit.

4.2.3.3 Outdoor Lighting of Residential Properties. No permit is required for outdoor lighting associated with one- and two-household dwellings, but that lighting must comply with the requirements of Chapter 24. For example, installing more lighting than is permitted by WDB 24.2.3.2, would not require a permit, but would be a violation, subject to enforcement as provided in WDB 7.4-7.6.

4.2.3.4 Signs. All signs must comply with the requirements of this bylaw, but no permit is required for the placement or posting of certain signs, including directional signs. For example, no permit is required for directional signs, but placing one in a public right-of-way would be a violation, subject to enforcement as provided in WDB 7.4-7.6.

4.3 Types of Permits. This bylaw establishes two types of permits: administrative and discretionary.

4.3.1 What is an administrative permit? An administrative permit is required for all development outside the Taft Corners Form-Based Code Zoning District that is not specifically exempted by WDB 4.2.1. Applications for administrative permits are reviewed and approved or denied by the Administrator following the procedures of Chapter 5 of this bylaw. Approval of an administrative permit authorizes development to begin. **Approval of a discretionary permit may be required before an application for an administrative permit is submitted.**

4.3.2 What is a discretionary permit? Discretionary permits are required for the developments listed in WDB 4.3.3 and 4.3.4. Applications for discretionary permits are reviewed and approved or denied by the DRB, following the procedures established in Chapter 6. Approval of a discretionary permit does NOT authorize development to begin but allows the developer to apply for one or more administrative permits. For example, approval of the discretionary permit for a subdivision does not allow the developer to begin grading streets or building homes. An administrative permit must be obtained before grading or building construction begins. In the Taft Corners Form-Based Code Zoning District, a discretionary permit is not applicable, and projects must receive a Certificate of Conformity (see 4.3.6 and FBC Section 8).

4.3.3 What is a Certificate of Conformity? A Certificate of Conformity is required in the Taft Corners Form-Based Code Zoning District. The Certificate of Conformity replaces the Discretionary Permit and Administrative Permit procedures. See Form-Based Code Section 8 in WDB 32.

4.3.4 What is a Certificate of Appropriateness? A Certificate of Appropriateness may be required for properties in the Village Zoning District. See WDB 4.5 below.

4.3.5 Where do I obtain administrative forms? The Administrator is authorized to prepare permit applications and other administrative forms, and to update those forms as experience and amendments to this bylaw necessitate. These forms may be obtained at Williston Planning, which is located in the Town Hall Annex at 7878 Williston Road or online at the town's website.

4.4 Permit Thresholds. Permit requirements vary depending on the type of development proposed, the type of property (ex. residential vs. commercial), and other factors. See WDB 4.5 for permit threshold in the Village Zoning District (VZD).

4.4.1 What types of development activity require a discretionary permit prior to administrative permit(s)?

4.4.1.1 ... the subdivision of land, including subdivisions in the Taft Corners Form-Based Code Zoning District,

4.4.1.2 ... boundary line adjustments that cannot be approved administratively as provided by Chapter 10 of this bylaw;

4.4.1.2 ... clearing, grading, or excavation that disturbs one-quarter (¼) or more acres of land, excluding agricultural and forestry practices exempted by WDB 4.2.1.2; and

4.4.1.3 ... all multi-unit residential (> 2 units), commercial, institutional, and industrial development, including both site improvements and structures, and including both new structures and additions, except ‘minor work,’ which is defined by WDB 4.3.5.

4.4.1.4 ... the establishment of a medical cannabis dispensary or retail cannabis operation requires a discretionary permit.

4.4.2 What types of development activity only require an administrative permit? ? Meaning, the development activity does NOT require a discretionary permit prior to administrative permit(s).

4.4.2.1 ... development within the Taft Corners Form-Based Code Zoning District, where a Certificate of Conformity is required instead.

4.4.2.2. ... the construction of one- and two-household dwellings on existing or approved lots,;

Existing? Approved? For the purposes of the exemption established by WDB 4.3.3.2, an existing lot is one that is: a) zoned for residential use, b) is presently unoccupied by a dwelling, c) is separate from all adjoining parcels because it is in separate ownership and control or is a split parcel, as defined by WDB 12.1.3.1; and d) was not made separate from adjoining parcels that are in the same ownership by a violation of the town’s subdivision regulations. In determining whether a parcel is ‘existing,’ please refer to the requirements of WDB 2.4. An approved lot is part of a residential subdivision for which a final plan has been recorded, as provided by this or previous bylaws.

4.4.2.3 ... accessory dwellings that comply with WDB 20;

4.4.2.4 ... accessory structures, decks, patios, pools, and certain other improvements on residential properties, as provided in Chapter 20 of this bylaw and that are not exempted by 4.2.3;

4.4.2.5 ... certain boundary adjustments, as provided by Chapter 10 of this bylaw;

4.4.2.6 ... certain signs, as provided by WDB 4.2.3.4;

4.4.2.7 ... demolition, except in the VZD where a Determination of Contributing Structure Status and/or Certificate of Appropriateness (COA) is required for the demolition of a contributing structure ; and

4.4.2.8 ... clearing, grading, or excavation that disturbs less than one-quarter (1/4) acre of land and is not undertaken in anticipation of a development for which a discretionary permit will be required. For more on the requirements for clearing, grading, or excavation see Chapter 29 of this bylaw.

4.4.2.9 “Minor work” on commercial, industrial, institutional, and multi-unit (>2 units) residential properties as follows:

- 4.4.2.9.1 Accessory Structures. To be ‘minor,’ accessory structures must be less than 10 feet in height and have a footprint of less than 120 square feet
- 4.4.2.9.2 Additions. To be minor, additions must be architectural extensions of the existing building, using identical or essentially identical exterior materials, and include less than 1000 square feet.
- 4.4.2.9.3 Exterior Remodels. To be minor, exterior remodels must be architectural extensions of the existing building, using identical or essentially identical exterior materials. An example would be the addition of windows or a door using a fully consistent spacing, rhythm, scale, and materials.
- 4.4.2.9.4 Site Work. To be minor, site work must affect less than 1,000 square feet.
- 4.4.2.9.5 Outdoor Lighting. To be minor, outdoor lighting work must involve only changes in materials that may be approved by the Administrator or involve the installation of no more than eight (8) luminaires.
- 4.4.2.9.6 Mobile Vendors. To be minor the mobile vendor must occupy less than 1,000 square feet including temporary outdoor seating.

4.5 Permits in the Village Zoning District. Administrative and discretionary permit thresholds, and permit exemptions, are the same in the VZD as elsewhere in town. However, depending on the type of property and location within the Village, a Certificate of Appropriateness may be required.

4.5.1 What is a Certificate of Appropriateness? A Certificate of Appropriateness (COA) is a determination that the proposed development activity meets the historic and design standards of this bylaw, and/or that the proposed development complies with the National Park Service Historic Preservation Standards and Guidelines for parcels within the National Register Historic District. A COA is issued by the Development Review Board with recommendations of the HDAC. In the National Register Historic District, the DRB is an appropriate municipal panel acting as the historic preservation commission on behalf of the National Park Service when reviewing a Certificate of Appropriateness as required by 36 CFR Part 61 and 24 V.S.A. § 4414(1)(F). A Certificate of Appropriateness is required for Contributing Structures throughout the VZD, and all structures in the National Register Historic District.

4.5.2 What types of development are exempt from a Certificate of Appropriateness (COA)? A Certificate of Appropriateness is not required for the following development activities:

- Repair, maintenance, or identical replacement of exterior materials
- Interior renovations, floor plan changes, or expansion of finished space that does not require exterior modifications
- Accessory structures less than 120 SF or 10' height
- Site plan modifications to landscaping, access, driveways, parking areas
- Boundary line adjustments or subdivisions of land
- Portable structures per WDB 20.14
- At-grade patios
- Decks that are minimally visible or invisible from the street
- Fences
- Solar installations on a property with a non-contributing structure in the NRHD

4.5.3 Permit requirements for all properties in the National Register Historic District (NRHD):

4.5.3.1 Below threshold for Administrative Permit: The COA will be issued on its own where the development is below the threshold for an administrative permit. No COA is required if the development is listed as exempted by WDB 4.5.2.

4.5.3.2. Administrative Permit: Where an administrative permit is required by this bylaw, the COA will be issued prior to or in conjunction with the administrative permit.

4.5.3.3. Discretionary Permit: Where a discretionary permit is required, the COA will be incorporated into the discretionary permit approval and apply to subsequent administrative permits associated with the discretionary permit.

4.5.4 Permits requirements for properties in the Village Zoning District, but outside the National Register Historic District:

4.5.4.1 Properties with a Contributing Structure: Same as the National Register Historic District, see 4.5.3 above.

4.5.4.2 Parcel without a Contributing Structure: A Certificate of Appropriateness is not required. Where the development activity requires a discretionary permit, the HDAC will provide advisory recommendations to the DRB. Where the development activity requires an administrative permit, the Administrator may seek advice of the HDAC and/or DRB.

4.5.4.3 Determination of Contributing Structure Status. A letter issued by the Zoning Administrator, with the advice of the HDAC, that specifics which structure(s) on a property are contributing or non-contributing for the purposes of applying the standards of Chapter 42. See WDB 42 for definitions and procedures.

4.6 Other Permits. State and federal regulations may apply. Applicants should understand that state and federal regulations apply to many projects. Where those regulations are not as restrictive as this bylaw, this bylaw applies. Private agreements may apply. Applicants should be aware that covenants, deed restrictions, easements, and similar private agreements affect many projects. Those agreements may be more restrictive than this bylaw.

4.6.1 FAA Compliance near the Burlington Airport. What other permits might be required? Given the elevation of some areas within Williston and their proximity to the approach path for BTV Runway 15-33, The Federal Aviation Administration has requested that a form 7460-1 be submitted for any construction or alteration that is more than 100 feet above ground level at its site. The form contains instructions and information to be filled out, including the location of the project, the duration of construction, the height of the permanent structure, and the tallest of any construction equipment to be used.

4.6.2 Class IV Groundwater. The Vermont Department of Environmental Conservation (VTDEC) has designated certain areas in Williston in the Commerce Street, Kirby Lane, and South Brownell Road areas, as containing Class IV groundwater. Developments that require excavation, such as: building foundations with basements, swimming pools, and underground utility work within areas designated as containing Class IV groundwater must be performed under a work plan consistent with VTDEC’s Investigation and Remediation of Contaminated Properties Rule (the “Rule”), and under the supervision of “environmental professional,” as defined under Section 35-2019(19) of the Rule. The Rule can be found at https://dec.vermont.gov/sites/dec/files/wmp/Sites/0706.IRULE_.pdf Applications for Administrative Permits for developments involving excavation in Class IV groundwater zones must include documentation of compliance with the Rule.