

Chapter 6 Discretionary Permit Procedures

This chapter establishes the application, review, and appeal procedures for discretionary permits.

6.1 Overview

6.1.1 What are the steps in the discretionary permit procedure? The principal steps in the review of a development for which a discretionary permit is required are:

- pre-application;
- for residential subdivisions only: growth management review;
- submission of an application, including a filing conference;
- public hearing notice;
- the public hearing;
- DRB action;
- submission of final plans;
- final plan review; and
- obtaining an administrative permit/s to authorize work.

Minor exceptions to some of these steps are explained below. **REMEMBER THAT APPROVAL OF A DISCRETIONARY PERMIT AND FINAL PLAN DOES NOT AUTHORIZE DEVELOPMENT ACTIVITY. IT AUTHORIZES THE APPLICANT TO OBTAIN AN ADMINISTRATIVE PERMIT(S)**

6.1.2 What if I have questions before applying for a permit? The town's staff can explain the requirements of this bylaw. Staff can also discuss proposed developments and make suggestions prior to the filing of an application. Staff cannot design your project or provide drawings. If you need that type of assistance, retain a qualified professional.

Please Make an Appointment! People who drop in to Williston's Planning Department are often disappointed to find that the entire staff has other commitments. Making an appointment guarantees that a staff person can spend time with you.

6.1.3 Do the definitions and procedures adopted here apply in the Taft Corners Form-Based Code Zoning District? *No. The TCFBC has its own administration procedures, see TCFBC Section 8 for details.*

6.2 Pre-Application

6.2.1 When is pre-application review required? Pre-application review is required for all subdivisions and all other new development for which a discretionary permit is required by Chapter 4 of this bylaw, except for subdivisions that create no new development potential and changes in existing developments, including accessory structures, additions, and remodels of multi-household, commercial, institutional, and industrial properties. For these developments, an application for a discretionary permit may simply be filed as provided by WDB 6.4. Applicants are, however, strongly encouraged to review plans with the Administrator before filing an application.

6.2.2 What is the purpose of pre-application review? The purpose of pre-application review is to acquaint the DRB and its advisors with a proposed development site and its possibilities without requiring the presentation of extensive surveying, engineering, or design data. At this step in the review process, plans for complex projects should be presented in an informal way that invites comment and the discussion of alternatives.

6.2.3 How do I schedule a pre-application review? Pre-application review shall be scheduled by filing the appropriate form provided by the Administrator and all additional information required by the *Pre-Application Checklist*. Payment of a pre-application fee will also be required. Upon determining that it is complete, the Administrator will place the pre-application on the agenda of the next regularly scheduled DRB meeting at which time will allow its consideration.

6.2.4 Will my neighbors be notified about the pre-application? Yes. Notice will be provided to adjoining property owners and the general public in the same way as required for a hearing on an application for a discretionary permit: see WDB 6.5.3.

6.2.5 How will my pre-application be reviewed? Pre-applications will be referred to the Conservation Commission and/or HDAC, as relevant, before they are reviewed by the DRB. The Administrator may also provide comments.

6.2.6 Will site visits be required? Yes. The Administrator and members of the Conservation Commission, HDAC, and DRB often need to visit the site of a proposed development. The filing of a pre-application constitutes permission for a site visit at any time during regular business hours or as otherwise arranged with the applicant. Applicants must provide notice of hazardous conditions on a site and arrange a safe site visit at the Administrator's request.

6.2.7 I only want to develop a portion of my land. Why does the Pre-Application Checklist require me to cover it all? Town planning tries to ensure that the decisions individuals make in their own interest are consistent with the community's interests, as expressed in the *Town Plan*. This means looking at how development proposals implement goals like connectivity and watershed health. The requirement that concept plans present a proposed pattern of development for the entire contiguous holdings of the owner is necessary if the town is to do this well. The *Pre-Application Checklist* allows the level of detail presented in a concept plan to vary, and requires little more than a "bubble diagram" for areas that the applicant does not intend to include in the application for a discretionary permit. Actual development may proceed in phases, as provided in WDB 6.4.4 and 7.1.4

6.2.8 What type of action is taken on a pre-application? A pre-application is a basis for discussion. It is neither approved nor rejected and creates no vested rights. The DRB will adopt written recommendations that should be reflected in the application for a discretionary permit. The DRB may also require that certain information be included in the application for a discretionary permit, including:

6.2.8.1 ... the wetlands delineation and/or functional assessment that may be required by WDB 29.8.1;

6.2.8.2 ... the shared parking study that may be required by WDB 14.2.2; and/or

6.2.8.3 ... a traffic study, where it is determined that existing studies do not provide sufficient information (see WDB 13.8).

6.2.8.4 Other Determinations. Pre-application review is also the time at which the DRB may:

- exempt proposed infill developments in the RZD from open space development requirements; and/or
- authorize the transfer of development rights in a discretionary permit application.
- The DRB may also recommend that the applicant prepare a specific plan before an application for a discretionary permit is filed.

6.2.9 *How will I be notified of the action taken on my pre-application?* The DRB's recommendations will be sent to the applicant and other interested parties by first class mail.

6.2.10 *How soon after pre-application review must an application be filed?*

6.2.10.1 For Residential Subdivisions. Certain residential subdivisions are subject to growth management review in the year following their pre-application review. See WDB 6.3 and Chapter 11 of this bylaw. Residential subdivisions exempt from growth management review must file an application for a discretionary permit within one year after pre-application review or repeat the pre-application process.

6.2.10.2 For Other Developments. All other proposed developments must file an application for a discretionary permit within one year after pre-application review or repeat the pre-application process.

6.3 Growth Management Review. All applications for discretionary permits must go through the process described in WDB 6.4. Certain proposed residential developments must undergo growth management review established in Chapter 11 of this bylaw. Exceptions to growth management review are described under WDB 11.2.2.

6.4 Filing an Application for a Discretionary Permit. Where required by WDB 6.2, a pre-application must have been submitted and reviewed before an application for a discretionary permit is filed. For proposed residential developments, the growth management review required by WDB 6.3, must also have been completed before an application for a discretionary permit is filed.

6.4.1 *Who can apply for a permit?* All applications for permits must be signed by the owner of the land on which the development is proposed or by a trustee or guardian of the owner. The owner may appoint a representative to prepare and file the application, but his or her signature is required on the application form. If the proposed development will involve more than one property, the owners of all lots or parcels involved must sign the application for a discretionary permit.

6.4.2 Is there an application form? Applications for discretionary permits must be submitted on the forms provided by the Administrator, as authorized by WDB 4.3.6. These forms may be obtained at Williston Planning, which is located in the Town Hall Annex at 7878 Williston Road or, with some exceptions, on-line at the town's website. Please be sure you have the most current version. Applications made on outdated forms will not be reviewed.

6.4.3 What plans and documents must accompany the application form? A preliminary plan, which may be presented on one or multiple sheets, and includes all items listed in the *Discretionary Permit Application Checklist* must be submitted.

6.4.4 Am I allowed to propose developing in phases? Yes. Where development in phases is proposed, the proposed development agreement that accompanies the application for a discretionary permit must show which parts of the proposed development will be constructed in each phase. A map showing the phases is also required. If the application for a discretionary permit is approved, final plans will be filed and reviewed for each phase.

6.4.5 How much does it cost to apply for a discretionary permit? Application fees are set by resolution of the Selectboard, which may revise the fees at any time. A copy of the current fee schedule is available from the Administrator or on-line at the town's website.

6.4.6 Can I just hand an application for a discretionary permit across the counter? Only if pre-application review was not required. All other applications for a discretionary permit must be filed at a filing conference.

6.4.6.1 Completeness When a Filing Conference is Not Required. The Administrator has 15 working days to determine whether an application for a discretionary permit that was not subject to pre-application review is complete and, if it is complete, to schedule a hearing before the DRB. Incomplete applications will be returned with a checklist indicating what is needed to make the application complete.

6.4.6.2 When a Filing Conference is Required. A filing conference is required for applications for proposed developments that were subject to pre-application review. The applicant must schedule this conference with the Administrator. Its purpose is to review the application materials and determine whether the application is complete. If the application is found to be complete, the Administrator has 15 working days to schedule a hearing before the DRB. If the application is not complete it may be withdrawn, a schedule for the submission of additional materials before a hearing is scheduled may be established by agreement of the applicant and the Administrator, or the applicant may appeal the Administrator's determination that the application is incomplete to the DRB, as provided by WDB 5.4.

6.4.7 Who may communicate with the town about an application for a discretionary permit? Applicants for a discretionary permit must designate a single representative who is responsible for communication with the town.

6.4.8 May I make changes in my application after it is filed, but before the DRB's hearing? Not after the hearing date has been noticed. Due process requires that the DRB's hearing be on the application that was noticed and made available for public review. You may ask the Administrator for time to make changes in response to recommendations of the Conservation Commission or HDAC before a hearing date is set, but must submit a set of plans that is complete and will remain unchanged **BEFORE** the Administrator schedules a hearing before the DRB.

6.5 Review of Applications for Discretionary Permits

6.5.1 *Who reviews applications for discretionary permits?* Your application will be reviewed by the DRB. In most cases, however, the Administrator will first refer your application to the Conservation Commission and/or HDAC and to potentially affected departments of town government. Your application will not be placed on a DRB agenda until the Administrator is sure that review by the Conservation Commission and/or HDAC and by town departments will be complete before the hearing.

6.5.1.1 What is the Conservation Commission's role in the review of applications for discretionary permits? The Conservation Commission conducts an informal, but thorough, review of most applications for discretionary permits and makes written recommendations to the DRB. You may be required to arrange and participate in a site visit with the Conservation Commission.

6.5.1.2 What is the HDAC's role in the review of applications for discretionary permits? The HDAC conducts an informal, but thorough, review of applications for permits within the VZD and of applications for discretionary permits for proposed multiple household residential, commercial, industrial, and institutional developments, including major additions, and then makes written recommendations to the DRB. The specific responsibilities of the HDAC are described in WDB 3.5. Applicants may be required to arrange and participate in a site visit with the HDAC.

6.5.1.3 What role do town departments play in the review of applications for discretionary permits? Department heads review applications for discretionary permits and may make written recommendations to the DRB. The Administrator may also convene a project review committee consisting of department heads to provide input to the DRB. Applicants may be required to arrange and participate in meetings and/or site visits with department heads or their designees.

6.5.1.4 Are other agencies involved in development review? The Williston schools will be provided with notice of applications for discretionary permits for proposed residential developments. This notice will be provided in the same way as for an adjoining property owner. The town may also consult with potentially affected state and federal agencies.

6.5.2 *Is a public hearing required for all applications for discretionary permits?* Yes. The DRB holds a formal public hearing on all applications for discretionary permits.

6.5.3 *What type of hearing notice is required?* As required by 24 V.S.A. §4464(a)(1), notice of a hearing on an application for a discretionary permit must be given at least 15 days before the hearing, by the following means:

6.5.3.1 ... publication of the date, place, and purpose of the hearing in a newspaper in general circulation in Williston;

6.5.3.2 ... posting of the same information in three or more public places within the town, including an on-site posting within view from the public right-of-way most nearly adjacent to the property for which development review is required; and

6.5.3.3 ... written notification to the applicant and the owners and tenants of all properties adjoining the property for which development review is required. This notice shall include:

- a brief description of the proposed development;
- an explanation of how and where the recipient may obtain additional information about the proposed development; and
- a statement that participation in the hearing is required to become an interested party, as defined by WDB 6.5.5.

6.5.3.4 Roles in Providing Notice. The Town will provide the text of the newspaper, posted, and written notices. The developer will provide stamped envelopes addressed to every owner and tenant of adjoining property for the Town to use in its mailings, as required by the *Discretionary Permit Checklist*. The developer will also post the notice on the development site and provide the Town with a dated photograph showing that sign, as seen from the nearest public right-of-way.

6.5.3.5 All letters should be addressed to owner or “current resident” If the property owner mailing address is different that the abutting property address, both addresses should be sent written notice. If a property contains multiple tenancies/E-911 addresses, then each must receive a letter addressed to current resident/tenant. This applies to both commercial and residential projects.

6.5.4 *Must I be present at the hearing?* Yes. The applicant or a representative must be present at the hearing. If the applicant or a representative fails to appear, the hearing will be re-scheduled once. If the applicant fails to appear at the re-scheduled hearing, the application for a discretionary permit will be considered void.

6.5.5 *Who may speak at the hearing?* All persons are free to offer oral or written testimony at hearings conducted by the DRB, but state law provides that only interested parties may appeal decisions. Consistent with 24 V.S.A. § 4465(b), interested parties include:

6.5.5.1 ... the owner of the property for which the permit is required by this bylaw;

6.5.5.2 ... any municipality or solid waste district that is empowered to condemn such a property, or an interest in it;

6.5.5.3 ... the town or any adjoining municipality; and

6.5.5.4 ... any person owning or occupying property in the immediate neighborhood of a property for which a permit or other approval required by the town’s bylaws is requested who can show that approval of the permit would result in a physical or environmental impact on his or her interests; and alleges that approval of the permit would not be in accord with goals and policies of the *Town Plan* or the requirements of this bylaw.

6.5.5.5 Petitioners. Interested parties also include any ten persons who are owners of real property and/or voters in the town who submit a signed petition alleging that the reversal or modification of the Administrator’s decision will not be in accord with goals and policies of the *Town Plan* or the requirements of this bylaw. The petition must designate one person as the group’s representative.

6.5.5.6 State Agencies. Interested parties also include any department or administrative subdivision of the state that owns property, or an interest in property, in the town, and the Agency of Commerce and Community Development.

6.5.5.7 Interested Parties Must Participate. In order to file an appeal of a DRB decision, a party must meet the criteria adopted above and show that it participated in the hearing before the DRB. Participation is defined as having offered, through oral or written testimony, evidence or a statement of concern.

6.5.6 What is the hearing procedure?

6.5.6.1 Opening Statements. The presiding member shall state the purpose of the hearing;

- ask whether any member wishes to be excused on account of a conflict of interest, as defined at WDB 3.10, 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.

6.5.6.2 Questions and Answers. The purpose of a hearing is to take statements for consideration by the DRB. Once the hearing is opened, the DRB 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.

6.5.6.3 Staff Report. The Administrator or a staff person assigned by the Administrator will present a report that summarizes the findings of fact and conclusions of law included in the written report from the staff. This 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 development process and to establish the facts.

6.5.6.4 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 development, as demonstrated by its compliance or failure to comply with specific requirements of this bylaw. The presiding member shall then ask for testimony, which will begin with the statement of the applicant. Commission members may ask questions following any statement, with questions and responses being directed through the presiding member.

6.5.6.5 Time Limits. The DRB may set and enforce a time limit on oral statements.

6.6 DRB Action

6.6.1 On what basis will the DRB make its decision? The DRB's decision will be based on the proposed development's compliance or failure to comply with the requirements of this bylaw. Where it is

considering a proposed development that is subject to a previously approved permit, it will also determine whether or not that proposed development is consistent with all applicable conditions imposed on the previous approval.

6.6.2 Will I be able to listen to the DRB discuss my application? Not necessarily. The DRB may enter a closed deliberative session to discuss any application.

6.6.3 What options does the DRB have after the hearing?

6.6.3.1 Recess. The DRB may recess any hearing to a date certain pending the submission of further information. This is a recess for the purpose of obtaining information only. The 45 days permitted for a decision by WDB 6.6.4 does not begin until the DRB has received the requested information, closed the hearing, and commenced its deliberations.

6.6.3.2 Approve. The DRB may find that the proposed development complies with the requirements of this bylaw and approve the application for a permit. Conditions may be imposed on the approval of a permit, as provided by WDB 6.6.5.

6.6.3.3 Deny. The DRB may find that the proposed development fails to comply with the requirements of this bylaw and reject the application for a permit.

6.6.4 How long does the DRB have to make a decision? No hearing may be recessed for more than 45 days, except at the request of the applicant, and all decisions must be made and reported within 45 days after the close of a hearing. If a decision is not made within 45 days after a hearing, the proposed development will be deemed approved.

6.6.5 May conditions be imposed on the approval of a discretionary permit? Yes. Conditions designed to ensure compliance with the requirements of this bylaw may be imposed on any approval, as specifically authorized by 24 V.S.A. § 4464(b)(2).

6.6.6 How will the DRB's decision be reported? Within 45 days after the DRB's decision, the administrator shall prepare a record of decision that conveys the DRB's findings of fact and conclusions of law. Copies of the record of decision shall be sent to all agencies or persons who submitted testimony, verbally or in writing, at the hearing. A copy shall also be filed with the Town Clerk. The applicant's copy shall be sent by certified mail.

6.7 Expiration

6.7.1 Do approvals of discretionary permits expire? Yes. Final plans or, where phased development has been approved, final plans for the first phase must be submitted for review within one year of the day the record of decision was issued. If final plans are not filed within the specified time frame set forth in this bylaw, the approval of the discretionary permit shall become null and void.

6.7.2 Is it possible to extend the deadline for filing final plans? Yes. One extension of six months will automatically be granted upon written application to the Administrator.

6.7.3 Are there any additional extensions to the deadline for filing final plans? Yes. The DRB may grant one additional six-month extension for the filing of final plans.

6.7.4 Do approvals of discretionary permits expire after final plans are signed? In some case, yes. Discretionary permits approved for non-residential development shall have one year from the date the final plans are signed to obtain administrative permits in accordance with the provisions of WDB Chapter 5, or the discretionary permit approval shall expire.

6.8 Appeals. Appeals from decisions of the DRB may be taken to Environmental Court, as provided by 24 V.S.A. § 4471.

6.9 Final Plans

6.9.1 How soon after approval of the discretionary permit must final plans be filed? As established by WDB 6.7.1, within one year, unless an extension is granted as provided by WDB 6.7.2. Appeals to the Environmental Court must be filed within 30 days after the DRB's decision.

6.9.2 What must be included in final plans? Everything required by the *Final Plan Checklist*.

6.9.3 How are final plans evaluated? The purpose of final plan review is to demonstrate compliance with all conditions imposed on the approval of the discretionary permit and to file final paper work, including a development agreement.

6.9.3.1 Review by Administrator. The DRB may, in its record of decision, delegate review of the final plans of any proposed development to the Administrator.

6.9.3.2 Are the Plans Complete? The Administrator has 15 working days after the filing of a final plan to determine whether it is complete. Upon determining that it is complete the Administrator shall, if authorized as provided by WDB 6.9.3.1, review it, or schedule its review at the next regular DRB meeting at which time permits its consideration.

6.9.3.3 Basis of Review. Compliance with this bylaw was determined when the application was approved by the DRB. The Administrator or the DRB review final plans to ensure that they are in full compliance with the DRB's action, including all conditions of approval imposed in the record of decision.

6.9.3.4 Signatures. Approval of the final plan is indicated by the signature of the Chair of the DRB, or where this authority has been delegated as provided by WDB 6.9.3.1, the Administrator, in the signature block provided on the final plan, and by the signature of the Town Manager on the development agreement, where one is required.

6.9.3.5 Notice of Decision. One copy of the signed plan and development agreement will be provided to the applicant by hand delivery or certified mail. A copy will also be provided to the DPW and any other department head who requests one. Copies will be made available to any other interested party for the cost of copying.

6.9.3.6 Recording. Final plans for subdivisions must be recorded in the town's land records. WDB 6.9.5 sets a deadline on the recording of subdivision plans. Other final plans are not recorded.

6.9.4 Can conditions be imposed on the approval of a final plan? No. A final plan is complete and ready to build by definition. It must be either approved or denied. The approved development agreement and the other means of enforcement adopted in Chapter 7 of this bylaw will ensure compliance with all conditions of approval.

6.9.5 When must a final subdivision plan be recorded? If the final plan of a proposed subdivision or phase of a subdivision is not recorded within 180 days after the approval of the final plans for that subdivision, its approval becomes null and void. The Administrator may, upon written request, extend this deadline by up to 90 days if other local or state approvals are pending.

6.10 Amendments

6.10.1 What if I want to change the approved plan before, or during, construction? Final plans are binding, as approved. No administrative permit will be approved for development that is not consistent with the approved final plans. WDB 5.6 does allow some exceptions for minor changes.

6.10.2 Is making a change without a permit a violation of this bylaw? Yes. Making a substantial change from approved final plans without obtaining a new permit is a violation of this bylaw, subject to enforcement as provided in WDB 7.4-7.6.

6.10.3 What if a substantial change is necessary? The approved final plans must be amended. Final plan amendments are made using the discretionary permit procedure of this chapter, but skipping the pre-application step, and subject to the additional rules established here.

6.10.3.1 Limited Scope. The scope of the hearing and DRB action will be limited to determining whether the proposed amendment complies or fails to comply with this bylaw.

6.10.3.2 Exception to Limited Scope. The scope of review may be expanded when an amendment to the approved final plans is proposed on a property that is not in full compliance with those plans or this bylaw.

6.10.3.3 Conditions. The DRB may impose conditions designed to ensure compliance with specific, cited requirements of this bylaw on the approval of a proposed amendment.

6.10.3.4 Depiction. The plans submitted with the proposed amendment must show the proposed changes from the approved final plans using color or another technique that makes it easy for reviewers to identify the changes.