

Chapter 4

Permits Exemptions

This chapter requires a permit for all 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. § 4293(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.

4.2.2 Are there partial exemptions from this bylaw? As provided by 24 V.S.A § 4413(e), 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 **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. In order to clarify the local application of this language, the town adopts the policy stated in WDB 4.2.2.8.

4.2.2.8 **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. 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.

4.2.3.1 Accessory Structures on Residential Properties. No permit is required for 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, unless those structures are located within the VZD. Accessory structures on residential properties must, however, comply with the requirements of this bylaw. For example, placing a 100 square foot play structure within 10 feet of a side property line in the MDRZD would not require a permit, but would be a violation of the 15-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 family 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 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.

4.3.3 Do I always have to obtain a discretionary permit before applying for an administrative permit? Usually, but not always. A discretionary permit is not required for:

4.3.3.1 ... development that was exempted by WDB 4.2.1;

4.3.3.2 ... the construction of one or two family dwellings on existing or approved lots, except in the VZD, where a discretionary permit is required;

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.

4.3.3.3 ... accessory dwellings that comply with WDB 17.1;

4.3.3.4 ... accessory structures, decks, patios, pools, and certain other improvements on residential properties, as provided in WDB 4.2.3.1 and Chapter 17 of this bylaw;

4.3.3.5 ... minor accessory structures, additions, exterior remodels, and site work on multi-family residential, commercial, institutional, and industrial properties, as explained in WDB 4.3.5:

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

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

4.3.3.8 ... demolition, except in the VZD, where a discretionary permit is required; and

4.3.3.9 ... 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.

4.3.4 To ask a different way: what types of development need a discretionary permit? A discretionary permit is required for all other development, which includes:

4.3.4.1 ... the subdivision of land, except the administrative boundary adjustments that are permitted by Chapter 10 of this bylaw;

4.3.4.2 ... clearing, grading, or excavation that disturbs one-quarter (1/4) or more acres of land, excluding agricultural and forestry practices exempted by WDB 4.2.1.2; and

4.3.4.3 ... all multi-family residential, 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.

4.3.5. What "minor" work is exempt from the requirement for a discretionary permit? The construction or installation of small accessory structures, additions, exterior remodels, and minor site work on commercial, industrial, institutional, and multi-family residential properties may require only an administrative permit. The exemptions listed in WDB 4.3.5.1-5 do not apply in the VZD.

4.3.5.1 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

4.3.5.2 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.

4.3.5.3 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.

4.3.5.4 Site Work. To be minor, site work must affect less than 1,000 square feet.

4.3.5.5 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.

4.3.6 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, with some exceptions, on-line at the town's website.

4.4 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.

4.4.1 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.