

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Anita Wade, Zoning Clerk



TO: Planning Commission Ordinance Committee
FROM: Scott Gustin
DATE: January 4, 2018
RE: Article 3: Applications, Permits, and Project Reviews

Sec. 3.2.5, *Completeness of Submission, Administrator's Action* affords a 30-day timeline for action on a complete zoning permit application. Action includes administrative approval or denial or referral to the Development Review Board. Separate sections refer to this 30-day timeframe for administrative action (Sec. 3.2.7 {c}) and other timelines for DRB decisions (45 days following close of proceedings per Sec. 3.2.8 {e}) and subdivision reviews (30 days per Sec. 10.1.9). What is missing is a time limit for deferred action on complete applications. Occasionally, applicants will request that action on complete application be deferred due to outside factors such as state permits and building codes. There is no express provision for allowing deferred action, nor is there any limit as to the amount of time that action on a complete application may be deferred. As a result, some applications remain pending for many months or even past a year.

Staff recommends codifying provision to allow deferral of action at the request of the applicant and to establish a time limit for deferral.

Proposed language is underlined in red.

Sec. 3.2.5 Completeness of Submission, Administrator's Action

An application for a zoning permit shall not be complete until all submission requirements have been provided to the satisfaction of the administrative officer. The administrative officer shall take action with regard to a complete application within 30 days. Such action shall be to issue a decision on the application pursuant to the authority granted in Sec 3.2.7 of this Article, or by making a referral to the DRB.

Should the administrative officer fail to take any such action, a permit shall be deemed issued on the 31st day pursuant to 24 VSA 4448(d). Modifications to a pending application by an applicant shall restart any applicable time limits, commencing upon the modification date.

An applicant may request deferral of action on a complete zoning permit application. Deferral of action shall be limited to six (6) months. For zoning permit applications subject to DRB review, the six (6) month deferral may be extended up to two (2) times of three (3) months each. If an initial extension is granted by the DRB and the application lies dormant (no revised plans, information submitted) for the three (3) month duration of the extension, the DRB shall not grant another extension.

Sec. 3.2.7 Administrative Review and Approval

Pursuant to the provisions of 24 V.S.A. Section 4464(c), this section provides for the administrative review and approval of new development and amendments to previously approved development.

(a) – (b) As written.

(c) Administrative Decisions:

The administrative officer shall act with regard to an application subject to administrative review pursuant to this section within 30 days of receiving a complete application unless deferral is requested by the applicant per Sec. 3.2.5. Decisions to deny the application shall be sent by certified mail to the applicant, and shall contain a statement of the period of time within which an appeal may be taken pursuant to the requirements of Article 12. A notice of a decision made in favor of the applicant shall be posted in a public place pursuant to Sec. 3.2.9(c).

Should the administrative officer fail to take such action, a permit shall be deemed granted on the 31st day pursuant to 24 VSA 4448(d) or upon expiration of the deferral, if applicable.

(d) As written.

Sec. 3.2.9, *Zoning Permits* (b) *Appeal Period* refers to a 15-day appeal period that must run before a zoning permit may be released to the applicant. This reference is only partially correct. All administrative zoning permits have a 15-day appeal period. All zoning permits issued per decision of the Development Review Board effectively have a 30-day appeal period (per Sec. 12.2.3).

Staff recommends adding language to Sec. 3.2.9 (b) to incorporate the 30-day appeal period for zoning permits associated with Development Review Board decisions.

Proposed language is underlined in red.

Sec. 3.2.9 Zoning Permits

(a) As written.

(b) Permit Appeal Period:

No zoning permit granted by action of the administrative officer under this ordinance shall be released until a fifteen (15) day appeal period has passed. No zoning permit granted in association with a decision of the Development Review Board shall be released until a thirty (30) day appeal period has passed. In the event that a notice of appeal pursuant to the requirements of Article 12 is properly filed, such permit shall not be released until the adjudication of said appeal has been finalized or the Superior Court Environmental Division rules on whether to issue a stay per V.S.A. 24 § 4449 (a) (3), whichever comes first.

(c) – (f) As written.

Sec. 3.2.9, *Zoning Permits* (d) *Time Limit on Zoning Permits* establishes a 2-year timeframe for zoning permits – 1 year to start the project and a 2nd year to finish it. The 1994 Zoning Ordinance allowed for a 3-year timeframe for most zoning permits – 1 year to start and 2 years to finish. That timeline was deliberately shortened to 2 years with the adoption of the 2008 Comprehensive Development Ordinance. The CDO also contains provision for longer permit timelines for major impact and conditional use applications. Yearlong permit extensions may be granted for all zoning permits, most at no cost. Those associated with DRB public hearings incur a \$150 fee. The percentage of zoning permits receiving time extensions is seemingly low – staff is working to assemble numbers for the Committee’s consideration. Staff recommends leaving the existing Time Limits language unchanged.

Sec. 3.2.9 Zoning Permits

(a) – (c) As written.

(d) Time Limit on Zoning Permits:

Notwithstanding (e) and (f) below, a zoning permit shall become invalid unless the work or action authorized commences within one (1) year after the date of final decision. All work or action authorized there under shall be completed, and a Final Zoning Certificate of Occupancy received, within two (2) years of the date of decision unless a written extension of time not to exceed one (1) year is granted in advance by the administrative officer. Extensions of time for a zoning permit issued in connection with a conditional use or variance shall require approval by the DRB after a public hearing.

(e) – (f) As written.

Sec. 3.2.9, *Zoning Permits* (d) *Time Limit on Zoning Permits* and (e) *Time Limit on Zoning Permits: Violations* both establish timelines for zoning permits. Both also allow for yearlong time extensions. What is missing is any basis for granting or denying a time extension request and a limit of how many extensions may be granted. In practice, permit extensions have been granted when the present zoning standards continue to allow what was previously approved, and a de facto limit of 3 extensions has been established.

Staff recommends codifying this practice with new language under Sec. 3.2.9 (d) and (e).

Proposed language is underlined in red.

Sec. 3.2.9 Zoning Permits

(a) – (c) As written.

(d) Time Limit on Zoning Permits:

Notwithstanding (e) and (f) below, a zoning permit shall become invalid unless the work or action authorized commences within one (1) year after the date of final decision. All work or action authorized there under shall be completed, and a Final Zoning Certificate of Occupancy received, within two (2) years of the date of decision unless a written extension of time not to exceed one (1) year is granted in advance by the administrative officer. Extensions of time for a zoning permit issued in connection with a conditional use or variance shall require approval by the DRB after a public hearing. Extensions of time may be granted only when the work or action authorized under the zoning permit remains compliant with the current zoning regulations. Up to three (3) time extensions may be granted.

(e) Time Limit on Zoning Permits: Violations:

Notwithstanding (f) below, a zoning permit which is issued in connection with a violation of this ordinance shall become invalid unless the work or action authorized is completed, and a Final Zoning Certificate of Occupancy is received, within one (1) year of the date of decision unless an extension of time not to exceed one (1) year is approved in advance after public hearing by the DRB. Extension of time may be granted only when the work or action authorized under the zoning permit remains compliant with the current zoning regulations. Only one (1) time extension may be granted.

(f) As written.