
ARTICLE 4. GENERAL REGULATIONS

Section 4.1 Applicability

The following general regulations, including required provisions under the Act, apply to all uses and structures as specified.

Section 4.2 Abandonment & Demolition of Structures

(A) No zoning permit shall be required for the stabilization of a damaged structure to prevent hazards to public health and safety, and to adjoining properties; nor for the repair, restoration or reconstruction of a damaged structure to the extent of its prior condition and use. Reconstruction that results in density, dimensional or use changes, or design changes for structures subject to design review specified in Table 3.19, shall require a permit.

(B) Within one year after the cessation of use of any structure which has been substantially damaged or destroyed or has not been regularly maintained, or the cessation of construction of a substantially incomplete structure, the owner shall apply for a zoning permit to either:

- (1) resume repair, maintenance or construction, and thereby confirm the intent not to abandon the structure, or
- (2) demolish the structure in accordance with Subsection (C) and municipal building codes currently in effect.

(C) The demolition or replacement of any structure or portion thereof listed on the *Vermont Historic Sites and Structures Survey for the Town of Bennington*, or of any structure within the Historic Central Bennington Design Review District, or any application for development which involves the demolition of such structures shall be reviewed by the Development Review Board under Article 6, and the following provisions:

- (1) The permit application shall include, in addition to other required materials:
 - a. a demolition and site restoration plan which, at minimum, describes the intended use of the site; and the manner in which the site is to be restored to grade, surfaced, landscaped and/or screened to minimize adverse visual impacts, and secured to prevent hazards to public safety and adjoining properties; and
 - b. for historic structures, documentation that the rehabilitation of the structure would cause undue financial hardship to the owner; or that the demolition is part of a site development plan that would provide clear and substantial benefit to the municipality.
- (2) **Demolition of Historic Structures.** The demolition or replacement of any structure or portion thereof listed on the *Vermont Historic Sites and Structures Survey for the Town of Bennington*, or any structure within the Historic Central Bennington Design Review District, is prohibited unless the Development Review Board approves the demolition and site restoration plan, and:
 - a. The Development Review Board finds, pursuant to subsection 4.2(C)(3 and 5), that rehabilitation of the structure or portion thereof would cause undue financial hardship to the owner; or
 - b. The Development Review Board finds that the demolition is part of a site development plan and design plan (if applicable) that would provide clear and substantial benefit to the community.

- (3) **Standards for Determination.** In considering undue financial hardship, the Development Review Board shall apply the following standards regarding the factors, evidence, and testimony to be considered in making its determination:
- a. The applicant's knowledge of the property's historical significance at the time of acquisition, or of its status subsequent to acquisition;
 - b. The structural soundness of the building, or any structures on the property and their suitability for rehabilitation;
 - c. The economic feasibility of rehabilitation or reuse of the existing property in the case of a proposed demolition;
 - d. The current level of economic return on the property as considered in relation to the following:
 - i. amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant, and the person from whom the property was purchased;
 - ii. a substantial decrease in the fair market value of the property as a result of the denial of the permit;
 - iii. the fair market value of the property at the time the application is filed;
 - iv. real estate taxes for the previous three (3) years;
 - v. annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and a depreciation deduction and annual cash flow before and after debt service, if any, for the previous three (3) years;
 - vi. remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years;
 - vii. all appraisals obtained within the previous three (3) years by the owner or applicant in connection with the purchase, financing or ownership of the property;
 - viii. any state or federal income tax returns on or relating to the property for the previous three (3) years.
 - e. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and the price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:
 - i. any real estate broker or firm engaged to sell or lease the property;
 - ii. reasonableness of the price or rent sought by the applicant, and
 - iii. any advertisements placed for the sale or rent of the property by the owner or applicant.
 - f. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
 - i. a report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings/structures on the property and their suitability for rehabilitation;
 - ii. testimony from a licensed engineer or architect with experience in rehabilitation as to the economic feasibility of rehabilitation or reuse of existing buildings/structures on the property.
 - g. Studies and evaluations conducted at the owner's expense shall identify impact of economic incentives and/or funding available to the applicant through federal, state, city, or private

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programs in relation to a ten (10) year pro forma of projected revenues and expenses for the reasonable uses or revenues that takes into consideration the utilization of incentives programs available.

h. Input from community organizations, preservation groups, other associations and private citizens who may wish to evaluate and comment on a submission made under the financial hardship provision.

(4) **Conduct to be excluded from review** - Demonstration of undue financial hardship by the owner shall not be based on conditions caused by or resulting from the following:

- a. willful or negligent acts by the owner;
- b. purchasing the property for substantially more than market value at the time of purchase;
- c. failure to perform normal maintenance and repairs;
- d. failure to diligently solicit and retain tenants;
- e. failure to prescribe a rental amount which is reasonable; or
- f. failure to provide normal tenant improvements.

(5) **Determination of Undue Financial Hardship** - A determination of undue financial hardship may be granted only if the project fully complies with one of the following requirements:

- a. For income producing properties - the building, site or object cannot be feasibly used or rented at a reasonable rate of return in its present condition or if rehabilitated, and denial of the application would deprive the owner of all reasonable use of the property; or
- b. For non-income producing properties - the building site or object has no beneficial use as a residential dwelling or for an institutional use in its present state or if rehabilitated, and denial of the application would deprive the owner of all reasonable use of the property.

(6) **Hearing Recess** - In accordance with the Act, prior to approving the demolition of an historic structure, the Development Review Board may temporarily adjourn the hearing process for a period not to exceed six months from the date of application, to provide time to assess the feasibility of rehabilitation of the structure, or to document the historic and architectural elements of the structure prior to its demolition.

(7) **Site Restoration** - Within 30 days after a permanent or temporary building or structure has been demolished, all structural materials shall be removed from the site, and the excavation thus remaining shall be covered over and filled to the normal grade by the owner(s), unless otherwise required as a condition of an approved site restoration plan.

Section 4.3 Access Management & Frontage Requirements

(A) **Required Frontage.** No land development may be permitted on lots which have a frontage of less than fifty (50) feet on a public street. However, if the Development Review Board has approved a parcel in accordance with Section 7.5, land development may be permitted on a lot which otherwise conforms with these regulations which has access to a public street by a permanent easement or right-of-way not less than 50 feet wide. The required right-of-way width may be increased by the Board as necessary, as determined from an evaluation of the proposed use, site and traffic conditions.

(B) **Access (Curb Cuts).** Access onto public highways is subject to the approval of the Town of Bennington, and for state highways, the approval of the Vermont Agency of Transportation. As a