ARTICLE 5: CITYWIDE GENERAL REGULATIONS

Introduction: This Article of the Burlington Comprehensive Development Ordinance provides general development regulations that apply citywide and in all zoning districts unless otherwise modified by the specific district standards in Article 4.

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Sec. 5.0.0 Purpose

It is the purpose of this Article to provide general and citywide standards and regulation of land development that will promote the public health, safety, convenience, and welfare.

PART 1: USES AND STRUCTURES

Sec. 5.1.1 Uses

Except as otherwise provided by law or by this ordinance, no land or structure in any district shall be used or occupied except as specified under the provisions of this ordinance and the requirements of the zoning district in which such land or structure is located as specified in Article 4 and in Appendix A-Use Table.

(a) Preexisting Uses:

Any use lawfully existing as of the effective date of this ordinance shall be authorized to continue solely on the basis of the provisions of this ordinance.

(b) Preexisting Non-conforming Uses:

Pre-existing uses that do not conform to the requirements of this ordinance shall be subject to the provisions of Sec. 5.3.4.

(c) Permitted Uses:

A permitted use is allowed as of right in any district under which it is denoted by the letter "Y" in Appendix -.Use Table. Permitted uses are subject to such requirements as may be further specified in this ordinance such as but not limited to dimensional and intensity limitations, performance and design standards, and parking requirements.

(d) Conditional Uses:

A conditional use is listed in any district where denoted by the letters "CU" in Appendix A - Use Table. Such uses may be permitted by the DRB only after review under the conditional use provisions provided in Article 3, Part 5, such further restrictions as the DRB may establish and

such additional requirements as may be established by this ordinance such as but not limited to dimensional and intensity limitations, performance and design standards, and parking requirements.

(e) Uses Not Permitted:

A use in any district denoted by the letter "N," or any use not listed, shall not be allowed in any zoning district unless the administrative officer determines that the use is substantially equivalent in use, nature, and impact to a listed permitted or conditional use.

(f) Principal Uses:

Only one principal use shall be permitted on any lot in any residential zoning district unless otherwise expressly authorized pursuant to another provision of this ordinance including Article 11 – Planned Development. In all other districts, more than one principal use may be permitted on any single lot.

(g) Accessory Uses:

1. Accessory Dwelling Units. Accessory dwelling units as mandated by 24 VSA 4412 (1)(E) shall be regulated as set forth in Sec. 5.4.5 hereof.
2. Accessory Residential Uses: Except as specified in 1 above and subject to the restrictions of 3 below, accessory residential uses shall also be governed by Sec. 4.4.5(d)4.
3. Other Accessory Uses. Except as specified in 1 above, any use may be an accessory use provided in Article 3, Part 5 provided each of the following standards are present:
   A. The accessory use is subordinate and customarily incidental to the principal use;
   B. The accessory use is reasonably necessary to the conduct of the principal use;
   C. Except for home occupations as regulated by Sec. 5.4.6, no accessory use, or combination of accessory uses, shall occupy more than twenty-five (25%) per cent of the total gross area dedicated to the principal use;
   D. The accessory use shall not include the outdoor storage of more than one unregistered vehicle;
   E. The accessory use does not result in, or increase the extent of, any pre-existing non-conformity or violation of the provisions of this ordinance; and,
   F. The combination of uses on any given property shall meet all of the other provisions of this ordinance.

(h) Temporary Uses

The administrative officer may approve a temporary use that is incidental and accessory to a principal use subject to the following:

No Review or Permit Required	Site Plan Review: Zoning Permit & COA	Review as per Underlying Zoning
A use in place for up to 10 consecutive days or 30 days within any 12-month period at the same location.	A use in place from 11-31 consecutive days or 31-60 days within any 12 month period at the same location.	A use in place for over 31 consecutive days or more within any 12 month period at the same location, is no longer considered a temporary use.

(i) Temporary Uses Incidental to Development

The administrative officer may issue a zoning permit for a temporary use that is incidental and accessory to the development or redevelopment of a building and/or site, and where reasonably required for such development activity. Such permits for temporary uses shall not be issued for a period in excess of ninety (90) days in any consecutive twelve (12) month period unless such uses would otherwise conform to the applicable provisions of this ordinance.

Sec. 5.1.2 Structures

Except as otherwise provided by law or by this ordinance, no structure in any district shall be created, removed or altered except in conformance with the provisions of this Article and the requirements of the district in which such land or structure is located.

(a) Preexisting Structures:

Any preexisting structure lawfully existing as of the effective date of this ordinance shall be authorized to continue solely on the basis of the provisions of this ordinance.

(b) Preexisting Non-conforming Structures:

Pre-existing structures that do not conform to the requirements of this ordinance shall be subject to the provisions of Sec. 5.3.5.

(c) Principal Structures:

Only one principal structure shall be permitted on any lot in any residential zoning district defined pursuant to Article 4 – Zoning Districts unless otherwise authorized pursuant to the requirements of Article 11 – Planned Development. In all other districts, more than one principal structure may be permitted on any single lot.

(d) Accessory Residential Structures or Buildings:

An accessory structure or building customarily incidental and subordinate to a principal residential use, structure, or building shall also be governed by the provisions of Sec. 4.4.5(d)4.

(e) Accessory Nonresidential Structures or Buildings:

An accessory structure or building customarily incidental and subordinate to a principal nonresidential use, structure, or building may be permitted subject to the provisions of Article 4.

(f) Temporary Structures:

The administrative officer may approve a temporary structure that is incidental and accessory to a principal use subject to the following:

No Review or Permit Required	Site Plan Review: Zoning Permit & COA	Review as per Underlying Zoning
A structure placed up to 10 consecutive days or 30 days within any 12-month period at the same location.	A structure placed from 11-31 consecutive days or 31-60 days within any 12 month period at the same location.	A structure placed over 31 consecutive days or more within any 12 month period at the same location, is no longer considered a temporary structure.
Tents used for recreational non-commercial camping purposes.		
Tents as defined in Chapter 3 of NFPA 101 for non-residential purposes, as approved by the Burlington Fire Marshal, placed up to 180 days within and 12-month period at the same location.		

PART 2: DIMENSIONAL REQUIREMENTS

Sec. 5.2.1 Existing Small Lots

Any small lot of record existing as of April 26, 1973 may be developed for the purposes permitted in the district in which it is located even though not conforming to minimum lot size requirements if the lot:

- can be served by municipal water and sewer service; and,

- is at least four thousand (4,000) square feet in area; and,
- has a minimum width and depth dimension of forty (40) feet or more.

Any such development shall require a permit pursuant to standards of Article 4 and, where design review is applicable, the design review provisions of Article 3 and the development standards of Article 6.

Sec. 5.2.2 Required Frontage or Access

No subdivision of land may be permitted on lots that do not have frontage on a public road or public waters.

For lots that have access on both a public road and public waters, only the access on a public road shall be considered for the frontage required under this ordinance.

For lots of record existing as of April 26, 1973, subdivision may be permitted with approval of the DRB, if access to such road or public waters exists by a permanent easement or right-of-way of at least twenty-five (25) feet in width.

Sec. 5.2.3 Lot Coverage Requirements

Where a maximum lot coverage is specified pursuant to the requirements of Article 4, no building or part of a building or impervious surface or other form of coverage shall exceed such maximum allowable except as specifically authorized by this ordinance.

(a) Calculating Lot Coverage:

Lot coverage shall be calculated in the following manner:

1. Compute the square footage of all parts of the lot, or portion of the lot where split by a zoning district boundary, covered by all buildings including accessory structures, decks, patios, paved or unpaved walkways and parking areas, and any other paved surface;
2. Add the square footage calculated in subsection (1) above to obtain a figure for total coverage; and,
3. Divide the total coverage calculated in subsection (2) above by the square footage of the entire upland portion of the lot to derive the percentage of lot coverage. Lot area inundated by water including streams, ponds, lakes, wetlands, and other bodies of water, shall not be included.

For more information and a description of lot coverage calculations please see the City of Burlington, Department of Planning and Zoning's Design Guide for Site Plans.

(b) Exceptions to Lot Coverage:

In all districts, the following shall not be counted as lot coverage:

1. Lawns, gardens and unpaved landscaped areas;
2. Drainage ways;

3. Open play structure without roofs, sand boxes, or swings, not located on a paved surface;
4. Fountains;
5. Swimming pools (Note: aprons, decks and walks adjacent to swimming pools shall be considered as lot coverage);
6. Fences;
7. Retaining walls less than eighteen (18) inches in width across the top surface; if eighteen(18) inches or greater, the entire top surface shall be considered as lot coverage; and,
8. Ramps for the disabled, for which the sole purpose is to provide access for the disabled, and which have no more than the minimum dimensions required to meet accessibility standards.
9. For the purposes of lot coverage calculations, at-grade green roofs shall be counted as open space, and above-grade green roofs shall be counted as lot coverage. Partially at-grade green roofs shall be counted as lot coverage as follows:
    - *i.* Intensive green roofs will be counted at 50% lot coverage of their total roof area.
    - *ii.* Extensive green roofs will be counted at 75% lot coverage of their total roof area.
    - *iii.* Walkways, equipment, and other un-vegetated areas within the green roof shall not receive lot coverage credit.
    - *iv.* These lot coverage exceptions are contingent on continued maintenance and functionality of the green roof.
10. For lot area occupied by an ADU, the DRB may approve up to 650 sq. ft. additional lot coverage over existing lot coverage, even if present or proposed lot coverage exceeds the standard lot coverage limits. To grant such an exemption, the DRB must find that the existing lot coverage has been lawfully created, and that the proposed location, site design, and improvements will enable on-site management of the first one inch of stormwater runoff from the lot area of the ADU exceeding the applicable lot coverage limit, and will not have undue adverse impact on public rights of way based on the review of the DPW Stormwater Program Manager.

Sec. 5.2.4 Buildable Area Calculation

The intent of this section is to:

- To protect sensitive natural features;
- To prevent overdevelopment of properties that contain sensitive and unbuildable areas, and

- To ensure that new development fits within the existing scale and intensity of the surrounding neighborhood.

For any properties two (2) or more acres in size within any RCO, WRM, RM, WRL, or RL zoning district, the maximum building density or lot coverage shall be calculated using the buildable area only. Buildable area shall be deemed to include only those portions of a property that are not inundated at least six months per year by water including streams, ponds, lakes, wetlands and other bodies of water; and lands with a slope in excess of 30%.

The DRB may under conditional use criteria allow up to 50% of the maximum building density or lot coverage to be calculated on lands with a slope between 15-30% if the applicant can demonstrate that the additional density or lot coverage will be compatible within the existing scale and intensity of the surrounding neighborhood, and not have an undue negative impact on sensitive natural features.

Sec. 5.2.5 Setbacks

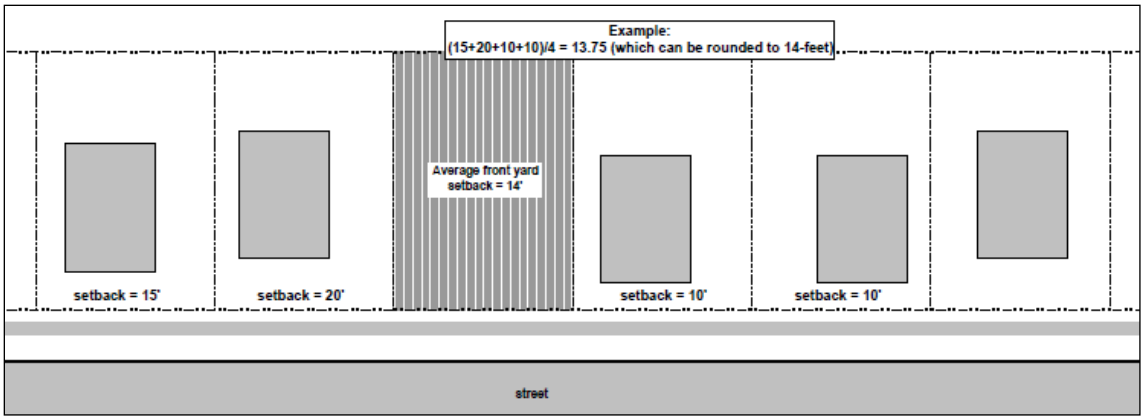
Setbacks between buildings and property lines where required are intended to provide access to light and air, provide fire separation and access, and maintain the existing neighborhood pattern of buildings and open spaces between them and to the street.

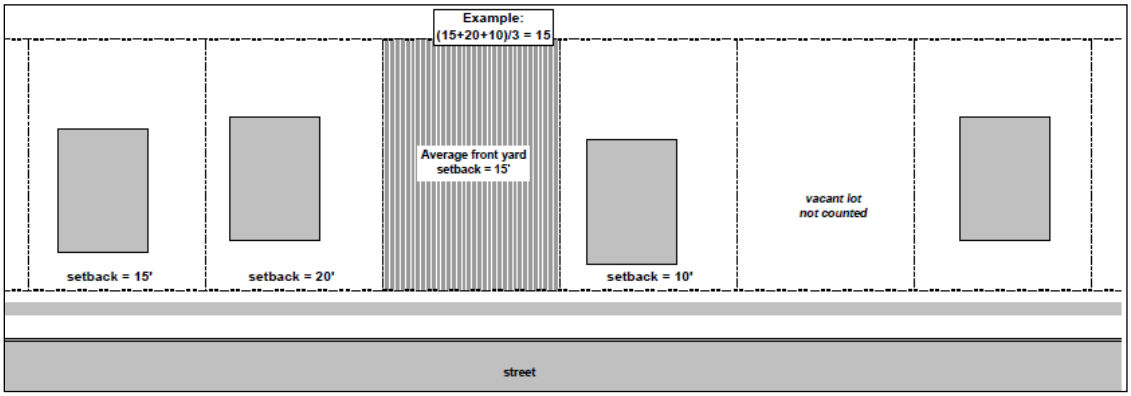
(a) Setbacks Required:

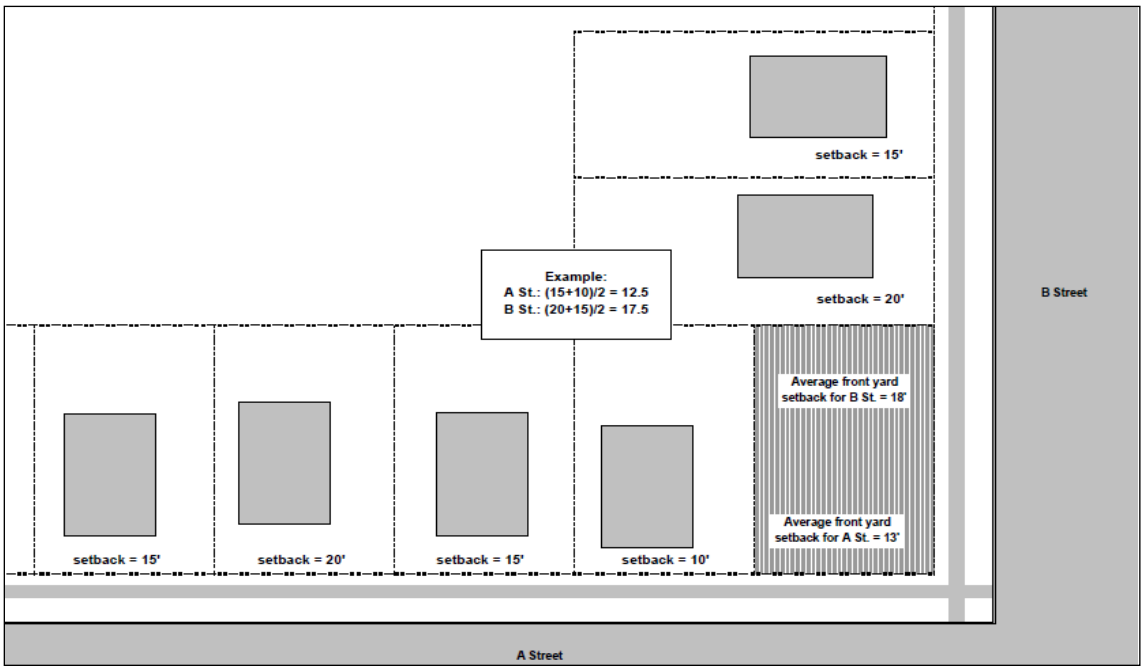
Unless otherwise authorized or specified under the district-specific provisions of Article 4, which shall be controlling over these provisions, a setback shall be provided between any proposed structures and/or site features, and the front, side and rear yard property lines as follows: (See Art. 13 for definitions of "setback" and "yard.")

1. Front yard. In order to maintain the existing pattern of development along a given street, both a minimum and maximum front yard setback shall be maintained where required under Article 4.

    A. The minimum front yard setback for any structure shall be the average of the front yard setback of principal structures in lawful existence as of the adoption of this ordinance on the two (2) neighboring lots on either side and within the same block and having the same street frontage.


Example:
(15+20+10+10)/4 = 13.75 (which can be rounded to 14-feet)
Average front yard setback = 14'
setback = 15'
setback = 20'
setback = 10'
setback = 10'
street


Example:
(15+20+10)/3 = 15
Average front yard setback = 15'
vacant lot not counted
setback = 15'
setback = 20'
setback = 10'
street


setback = 15'
setback = 20'
Example:
A St.: (15+10)/2 = 12.5
B St.: (20+15)/2 = 17.5
B Street
Average front yard setback for B St. = 18'
Average front yard setback for A St. = 13'
setback = 15'
setback = 20'
setback = 15'
setback = 10'
A Street

B. The maximum front yard setback for any structure, if any is required, shall be a distance specified under the district-specific provisions of Article 4 permitted in addition to the minimum front yard setback specified above in order to allow for continued variation of the building pattern along the street.

C. Lots having frontage on more than one public street shall maintain a front yard setback on each public street except access alleys.

2. Side yard. The minimum side yard setback for any principal structure shall be as required under the provisions of Article 4. Where the side yard setback is expressed as a percent of the lot width, such width shall be measured parallel to the lot frontage. Alternatively, where provided for under Article 4, the minimum side yard setback may be the average of the correlating side yard setbacks (i.e. left or right) of principal structures in lawful existence as of the adoption of this ordinance on the four (4) neighboring lots (2 on either side) and within the same block having the same street frontage.

3. Rear yard. Minimum rear yard setback for any principal structure shall be as required under the provisions of Article 4. Where the side yard setback is expressed as percent of the lot width, such width shall be measured perpendicular to the lot frontage.

(b) Exceptions to Yard Setback Requirements:

The following projections into required yard setbacks may be permitted subject to the standards of Article 6 to ensure compatibility with neighboring properties:

1. Abutting Building with Doors or Windows: Where the façade of an existing adjacent principal building is within 5 feet of the common property line and has either doors or windows, a setback of 10-feet shall be required for any new development up to the height of the abutting building in any district where no setback is required.

2. Building and Site Features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, walls, and similar building and site features may project into a required yard setback.

3. Retaining Walls. Retaining walls no greater than 5’ tall may project into a required yard setback, but retaining walls should be set back a minimum of 2’ from a property boundary. Retaining walls projecting into a required setback and exceed 5’ tall and/or come within 2’ of a property boundary shall be subject to Development Review Board review per Article 6. These provisions shall not apply to retaining walls acting as seawalls and constructed along, and parallel to, the banks of any river, stream, or brook or constructed in whole or in part below the 102’ elevation along the Lake Champlain Shoreline.

4. Historic Building Features. Features of a historic building such as porches, additions, entries, bays and porticos that have been removed may be replaced and may project into required yard setbacks subject to the following:
   A. The structure is listed or eligible for listing on the State or National Register of Historic Places;
   B. The building feature being replaced was a character defining feature of the primary structure, can be documented to have previously existed, and is being replaced within the original footprint; and,
   C. The building feature replacement is completed in accordance with the standards for historic buildings contained in Sec. 5.4.8.
5. Accessory Structures and Parking Areas. Accessory structures no more than fifteen (15) feet in height, parking areas, and driveways may project into a required side and rear yard setback provided they are no less than five (5) feet from a side or rear property line where such a setback is required.
6. Swimming Pools. Swimming pools and related features, but not including structures, may project into a required side or rear yard setback provided that the water's edge is no less than five (5) feet, and any apron less than two (2) feet, from any property line.
7. Shared Driveways. Common or shared driveways and walkways along shared property lines and associated parking areas do not have to meet setback requirements along the shared property line.
8. Additional exceptions for nonconforming structures under Sec. 5.3.5.

Sec. 5.2.6 Building Height Limits

No structure shall exceed thirty-five (35) feet in height unless otherwise authorized under the district-specific provisions of Article 4:

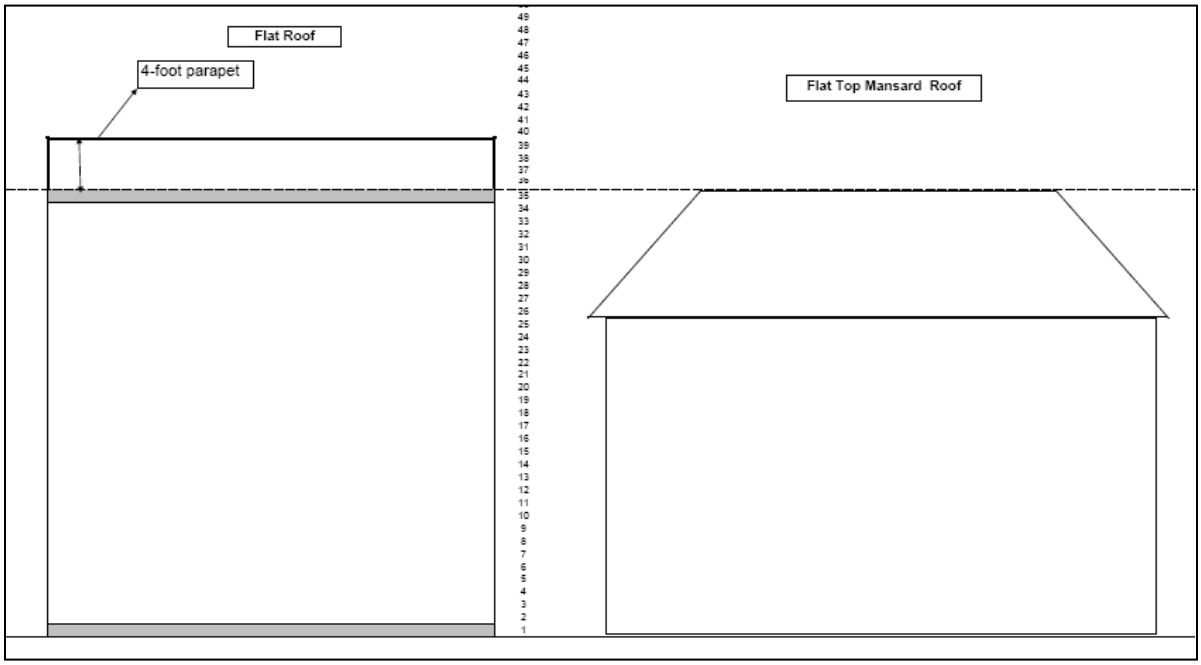
(a) Height Measurement:

The maximum height of any building shall be measured as follows:

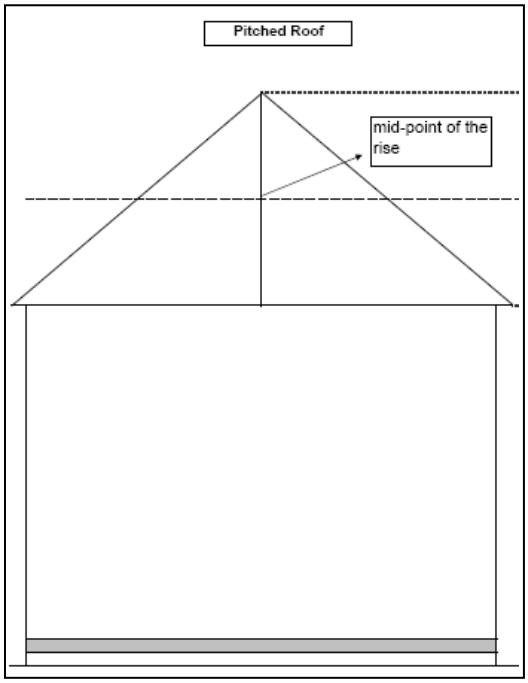
1. Starting Point: Building height shall be measured from:
   A. a public sidewalk, alley, or other public way or space where the proposed building's street-facing façade is within a 50-foot horizontal distance of the lot's street frontage; or,
   B. the average finished grade within a 10-foot horizontal distance of the building's street-facing façade where the proposed building is more than a 50-foot horizontal distance from the lot's street frontage.
   C. For buildings on sloped sites, see additional measurement standards in (b) below.

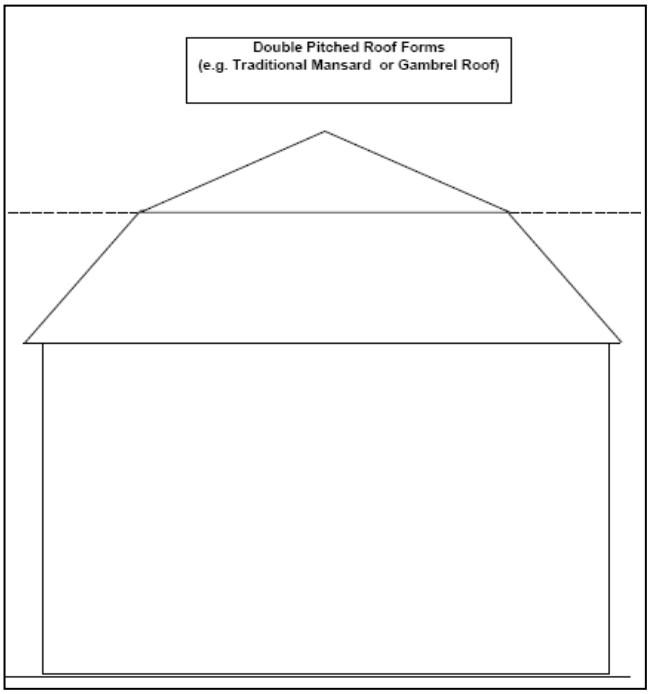
2. Ending Point: Building height shall be measured to:

   A. Flat Roof: the highest point of the decking of a flat or flat-topped mansard roof. A parapet no taller than four (4) feet shall not be considered part of a flat roof for the purposes of measuring building height;

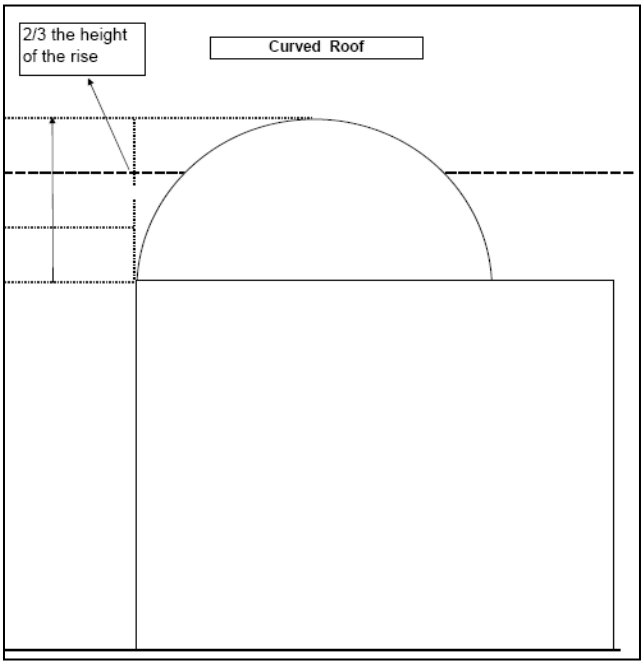


B. Pitched Roof: the midpoint of the rise between the roofplate and the ridge of the highest gable of a pitched or hipped roof. A double-pitched roof (e.g. gambrel or double-pitched mansard) shall be measured to the roofplate of the highest pitch; or,





C. Curved Roof: a point two thirds (2/3) the vertical distance from the point at which an exterior wall varies from a 100% slope and to highest point of the roof.



D. Roofs with Dormers: Building height will be calculated to the midpoint of the rise of dormers that either individually or collectively exceed 50% of the width of the horizontal eave length of the roof. Dormers less than this width do not affect height calculation noted in A – C and E of this subsection.

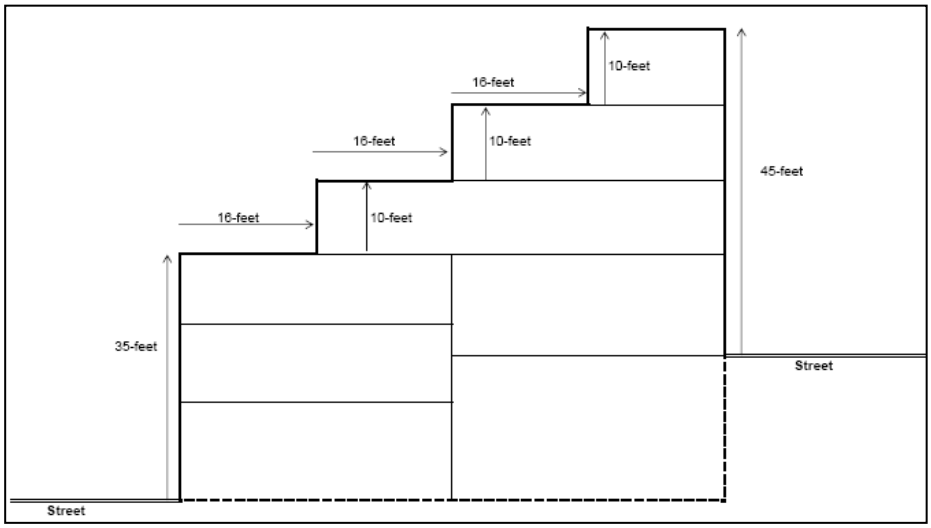
E. Other Roof Forms: Building height shall be measured as determined by the administrative officer in a manner that most closely reflects the intent of subsections (a) through (c).

(b) Buildings on Sloped Sites:

Buildings on slopes shall reflect the pre-construction topography of the site by making use of opportunities to vary the building's height and roof forms relative to terrain changes as follows:

1. Measurement Interval: Building height shall be measured along the street-facing façade at intervals of no less than 32-feet or more than 65-feet along the entire length of the street-facing façade (s).

2. Lots Fronting on Two or More Streets: Where a lot, other than a corner lot, fronts on two or more streets, the building height shall be measured along each street-facing façade. Where the streets are at differing elevations, the building height may gradually increase above the maximum height allowed on the lowest street provided that any such additional height along the lowest street shall be set-back a minimum of 16-feet from the average plane of the building's street-facing façade below for every 10-feet of additional building height up to the maximum height allowed on the highest street.



3. Illustration: To evaluate the height and bulk of a proposed building in context with its surroundings, the applicant may be required to prepare a scale model, computer visualization, illustrations, or other renderings.

(c) Exceptions to Height Limits

1. Additions and new construction on parcels created prior to January 1, 2008 that contain a non-conforming Principal Building exceeding the maximum permitted Building height may exceed the maximum permitted Building height of the zoning district subject to the design review provisions of Art. 3 and 6, but in no event shall exceed the height of the existing non-conforming Principal Building.
2. In no case shall the height of any structure exceed the limit permitted by federal and state regulations regarding flight paths of airplanes.
3. Ornamental and symbolic architectural features, including towers, spires, cupolas, belfries and domes; greenhouses, garden sheds, gazebos, rooftop gardens, terraces, and similar features; and fully enclosed stair towers, elevator towers and mechanical rooms, where such features are not used for human occupancy or commercial identification, are exempt from specific height limitations but shall be subject to the design review provisions of Art. 3 and 6. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the Building.
4. Exposed mechanical equipment shall be allowed to encroach beyond the maximum building height by no more than 15-feet provided that portion exceeding the height limit does not exceed 20% of the roof area.

   Exposed mechanical equipment shall be fully screened on all sides to the full height of the equipment, and positioned on the roof to be unseen from view at the street level. Screening may consist of parapets, screens, latticework, louvered panels, and/or other similar methods. Such features

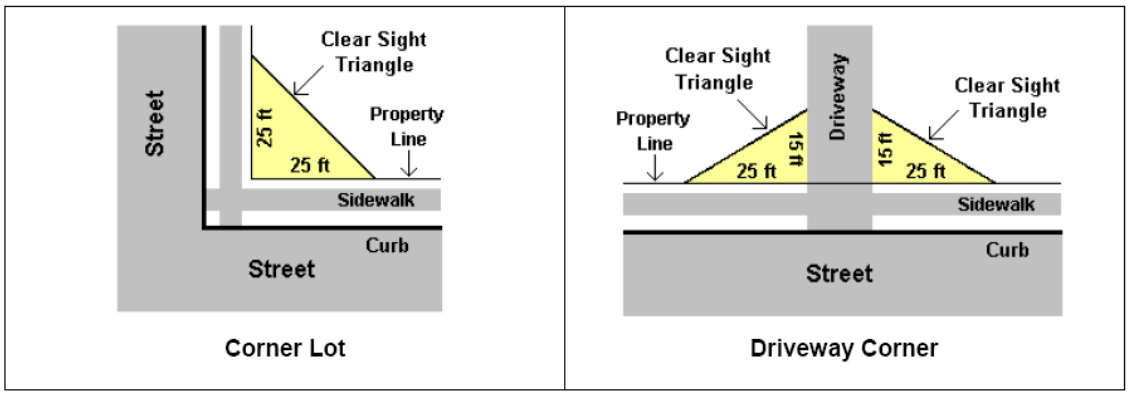
and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the Building

Where mechanical equipment is incorporated into and hidden within the roof structure, or a mechanical penthouse setback a minimum of 10-ft from the roof edge, no such area limit shall apply and the structure shall be considered pursuant with 4 above.

5. All forms of communications equipment including satellite dish antennae shall not be exempt from height limitations except as provided in Sec 5.4.7 of this Article.
6. The administrative officer may allow for up to a 5% variation in the maximum building height to account for grade changes across the site. In no event however, shall such additional height enable the creation of an additional story beyond the maximum permitted.

(c) Clear Sight Triangle

1. Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3-feet in height above the curb in order to provide safe sight distances for pedestrians and vehicles.



Sec. 5.2.7 Density Calculations

(a) Dwelling Units per Acre:

In accordance with the district-specific provisions of Article 4, the calculation of density shall be measured as follows in such cases where the density is measured on a dwelling unit per acre basis:

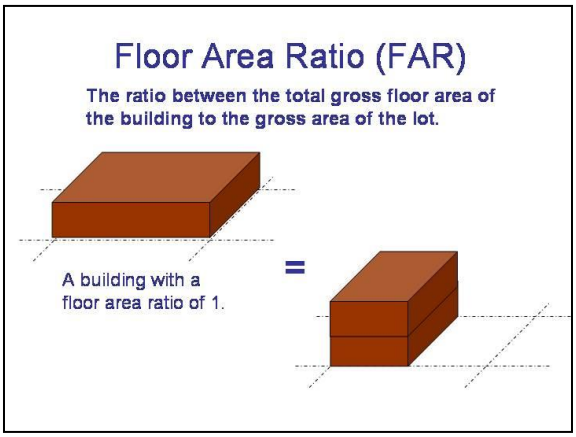
1. Density Calculation: The total number of dwelling units provided on a lot or lots, or portion of the lot(s) where split by a zoning district boundary, shall be divided by the net area expressed in acres calculated to the nearest fractional tenth (i.e. to a single decimal point). The net area of the lot(s) shall account for buildable area where applicable (see Sec. 5.2.4). In calculating the number of dwelling units permitted, fractional units of less

than five-tenths (0.5) shall be rounded down to the nearest whole number and fractional units of five-tenths (0.5) or greater shall be rounded up to the nearest whole number. Any rounding of fractional units shall be limited to a single final calculation.

2. Density Equivalent, Nonresidential Uses: For purposes of density calculations, each one thousand, five hundred (1,500) square feet of nonresidential gross floor area shall be counted as one dwelling unit.

(b) Floor Area Ratio:

In accordance with the district-specific provisions of Article 4 where the intensity of development is measured on a floor area ratio basis, the calculation of development intensity shall be measured by dividing the gross floor area of all structures on a site, or portion of the site where split by a zoning district boundary, by the gross site area.



PART 3: NON-CONFORMITIES

Sec. 5.3.1 Purpose

These regulations are enacted for the purpose of governing all aspects of nonconformity, regardless of whether it is a use, a structure or a lot. As defined under Article 13, nonconformity means a use, structure or lot that was legal at the time it was constructed or laid out, but would not be lawful under the requirements of this ordinance. This Part will also address "Bianchi-controlled Situations", in which a zoning violation may not subject to enforcement under the standards set forth by the Vermont Supreme Court in the case entitled *Bianchi v. Lorentz* and later codified in 24 VSA Sec. 4454.

In combination, these standards are intended to establish the property rights of individuals and organizations in a manner consistent with the overall goals of zoning and to promote the City's general health, safety, and welfare.

Sec. 5.3.2 "Bianchi" controlled uses, structures, and lots.

Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the *Bianchi* decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days

or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.

Sec. 5.3.3 Continuation

Except as otherwise specified in this Article, any nonconformity which lawfully existed at the time of passage of the applicable provisions of this or any prior ordinance or any amendment thereto may be continued subject to the provisions of this Part.

Sec. 5.3.4 Nonconforming Uses

(a) Changes and Modifications:

A nonconforming use may be changed to a conforming use pursuant to all applicable provisions of this ordinance. When a nonconforming use has been made conforming, it shall not be made nonconforming again.

Any change or modification to a nonconforming use, other than to full conformity under this Ordinance, shall only be allowed as specified below and shall require conditional use approval pursuant to the provisions of Article 3, Part 5 by the DRB.

1. Nonconforming Non-Residential Use:

A nonconforming non-residential use shall not be expanded or altered in any way, other than to full conformity under this Ordinance, except as follows:

A. Exception for residential conversion.

A non-residential nonconforming use may be converted to a residential non-conforming use pursuant to the applicable adaptive reuse or residential conversion provisions of Sec. 4.4.5(d)(7).

B. Existing Neighborhood Commercial Uses.

Existing non-residential uses intended to primarily serve the nearby residential area shall not be considered non-conforming to the extent they comply with the provisions of Sec. 4.4.5(d)(6).

2. Nonconforming Residential Use:

A change or expansion of a non-conforming residential use may be allowed subject to conditional use approval pursuant to the provisions of Article 3, Part 5 by the DRB provided:

A. Such an expansion does not add any additional dwelling units except as may be permitted for adaptive reuse or residential conversion bonuses approved per the provisions of Sec. 4.4.5(d)(7) and for Accessory Dwelling Units per the provisions of Sec. 5.4.5;

B. Such an expansion does not increase the degree of non-conformity of any non-conforming structure; and,

C. In such cases where the non-conforming residential use is located in a zoning district where residential uses are generally permitted, expansion of a non-conforming residential use into an existing and previously uninhabited attic or basement within the principle structure may be permitted subject to administrative review provided no additional dwelling units are created, except for Accessory Dwelling Units per Sec. 5.4.5.

(b) Discontinuance:

A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer. Provided, however, a period not in excess of two (2) years shall be the applicable standard for the re-establishment of discontinued uses in the Enterprise-Light Manufacturing (E-LM) district.

An extension to this time limit may be granted by the DRB after a public hearing and on the basis of documented evidence of a continuous good faith effort to re-establish the nonconforming use. Such evidence shall include but not be limited to application(s) to the DRB, bid documents, records of expenditures, newspaper advertisements, and/or real estate listings. Any request for such an extension shall be submitted in writing prior to the expiration of the one (1) or two (2) year time limit as specified above.

Any extension approved by the DRB shall be made in writing and shall specify the date after which no nonconforming use will be permitted upon the subject property.

Sec. 5.3.5 Nonconforming Structures

(a) Changes and Modifications:

Nothing in this Part shall be deemed to prevent normal maintenance and repair or structural repair, or moving of a non-complying structure pursuant to any applicable provisions of this Ordinance.

Any change or modification to a nonconforming structure, other than to full conformity under this Ordinance, shall only be allowed subject to the following:

1. Such a change or modification may reduce the degree of nonconformity and shall not increase the nonconformity except as provided below.

   Within the residential districts, and subject to Development Review Board approval, existing nonconforming single family homes and community centers (existing enclosed spaces only) that project into side and/or rear yard setbacks may be vertically expanded so long as the expansion does not encroach further into the setback than the existing structure. Such expansion shall be of the existing nonconformity (i.e. setback) and shall:

i) Be subject to conformance with all other dimensional requirements (i.e. height, lot coverage, density and intensity of development);

ii) Not have an undue adverse impact on adjoining properties or any public interest that would be protected by maintaining the existing setbacks; and,

iii) Be compatible with the character and scale of surrounding structures.

Existing accessory buildings of 15 feet in height or less shall not exceed 15 feet tall as expanded.

Within all districts, and subject to the Development Review Board approval, structures for the purpose of creating an ADU may be constructed on lots with legally non-conforming lot coverage per Sec.5.2.3 (b) 10.

2. Such a change or modification shall not create any new nonconformity; and,
3. Such a change or modification shall be subject to review and approval under the Design Review provisions of Article 3, Part 4.

When any portion of a nonconforming structure has been made conforming, it shall not be made nonconforming again except as provided for historic building features pursuant to Sec. 5.2.5(b)(4).

A non-conforming residential structure may be enlarged up to the dimensional standards of the underlying zoning district, subject to review and approval by the DRB pursuant to Art. 3, Part 4 Design Review and Art. 3, Part 5 Conditional Use Review. Adaptive reuse or residential conversion bonuses may allow a greater expansion than the underlying zoning district allows approved per the provisions of Article 4.

(b) Demolition:

A nonconforming structure may be replaced by a new structure retaining the same degree of nonconformity as the original structure. This provision is limited to the existing dimensional nonconformity (i.e. setback, lot coverage, or height), and shall not expand the degree of nonconformity except as provided for in (a) above. The new structure shall be subject to conformance with all other dimensional requirements (i.e. setback, lot coverage, and height). Zoning permit application for the replacement structure shall be completed within 1 year of demolition of the nonconforming structure; failure to do so shall result in the loss of the ability to retain the nonconformity.

In all other cases, a nonconforming structure that has been demolished or moved shall not be re-built or relocated in any way other than in full conformance with the provisions of this ordinance. Structures or any portion thereof that are structurally unsound, and are required to be removed by order of the building inspector, may be replaced within the original footprint provided both the

requirement to demolish the building is not the result of demolition by neglect and the replacement shall not expand the degree of nonconformity.

Sec. 5.3.6 Nonconforming Lots

Development may occur on a non-conforming lot only in the following manner:

(a) Existing Small Lots:

See Sec. 5.2.1.

(b) Required Frontage or Access:

See Sec. 5.2.2.

(c) Changes to a Nonconforming Lot:

No change shall be permitted to any nonconforming lot which would have the effect of increasing the density at which the property is being used, or increasing the structure located upon such lot, if the dimensional requirements and standards, including parking, of the underlying zoning district are not met as a result thereof. Allowance of adaptive reuse and residential conversion bonuses shall be an exception to the foregoing standards. A lot shall be considered nonconforming if there is not sufficient parking, as determined by the standards provided in Article 8. In such cases where a parking waiver or waivers may be or have been legally granted, such a waiver shall not be considered to increase the degree of non-conformity.

Sec. 5.3.7 Nonconforming Signs

Any sign or other advertising device which does not conform to the provisions of this ordinance in terms of location, area, illumination, type, or height shall be deemed a nonconforming sign. Nonconforming signs may remain in use at the same location and ordinary maintenance and repair of such signs shall be permitted. Specific provisions regarding changes or modifications to non-conforming signs can be found in Article 7 - Signs.

Sec. 5.3.8 Rebuilding After Catastrophe

If the structure housing a nonconforming use or a nonconforming structure is damaged by fire, explosion, or other catastrophe, and no government investigation determines that the damage resulted from the owner's intentional conduct or gross negligence the use may be restored or the structure rebuilt subject to the following provisions:

(a) A zoning permit shall be obtained;

(b) Any restoration or rebuilding which results in a modification of exterior features or to the site plan shall be subject to the provisions of Art. 3, Part 4 – Site Plan and Design Review where applicable;

(c) A nonconforming use shall not be expanded in size or intensity beyond its extent prior to the catastrophe. If a nonconforming use is relocated and becomes operational in an area where it is a permitted use as a result of a catastrophe, it shall not be reestablished as a nonconforming use;

(d) Noncompliance, in terms of dimensional regulations or parking requirements, shall not be increased beyond what existed prior to the catastrophe and, where physically possible, shall come into compliance;

(e) If the structure is a nonconforming non-residential structure, determined to be 50% or more destroyed as determined by the City's building inspector, any reconstruction must be in full conformity with then existing zoning regulations, except that a building that is listed or eligible for listing on the National or State Registers of Historic Places may be reconstructed in accordance with the provisions of Secretary of the Interior's Standards for Rehabilitation, where such reconstruction is approved pursuant to the requirements of Art. 3, Part 5 Conditional Use Review; and

(f) Such restoration or reconstruction shall be completed within one year after such catastrophe unless extended in accordance with Sec. 5.3.4(b).

PART 4: SPECIAL USE REGULATIONS

The following regulations are use-specific requirements that shall apply in all cases where such uses are otherwise permitted or conditionally permitted pursuant to the provisions of Article 4. These regulations are in addition to, or may modify, other applicable provisions of these bylaws.

The following provide specific regulatory requirements for each use listed that shall apply in all cases where such uses are otherwise permitted or conditionally permitted pursuant to the provisions of Article 4.

Sec. 5.4.1 Day Care Centers and Preschools

In addition to the provisions of Art 3, Part 5 for conditional uses, and applicable site and design review standards in Art 6, the following additional regulations shall be applicable to an application involving a day care center or preschool where such uses are treated as conditional uses pursuant to Appendix A – Use Table:

(a) No playground equipment shall be located within the front yard;

(b) [Reserved]

(c) The site plan review shall insure adequate and safe drop-off and pickup space is provided and that traffic problems are not created;

(d) Any additions, signage, or site improvements shall be residential in character;

(e) The facility shall be licensed by the State of Vermont;

(f) No more than one residential unit may be converted for the creation of a single day care center or preschool. Such a conversion shall be exempt from the requirements of Article 9, Part 2- Housing Replacement; and,

(g) The neighborhood is not overburdened with other day care centers or preschools.

Sec. 5.4.2 Historic Inns

In addition to the applicable provisions of Art 3, Part 5 for conditional uses, and site and design review standards in Art 6, the following additional regulations shall be applicable to an application involving a historic inn:

(a) Historic Building:

The principal building shall be listed or eligible for listing on the State or National Register of Historic Places, and located on a lot of record as of January 1, 2007 a minimum of one-half (1/2) acre (21,780 square feet) in size and located on a major street.

(b) Owner-Occupied:

In districts where a Historic Inn is a conditional use, the premises shall by occupied by a person as their primary residence who is an owner of the property or of the business. For purposes of this subsection only, an “owner” is defined as someone who holds, at least, a twenty-five (25%) percent ownership interest in the property or in the business.

(c) Guestrooms:

The maximum number of guestrooms allowed shall be based on an overall density of twelve (12) rooms per acre. In districts where a Historic Inn is a conditional use, the DRB may determine that a lesser number of rooms is appropriate, based on their consideration of the impact of the proposed use on neighboring properties and traffic on nearby streets.

(d) Exterior Modifications:

Any exterior modifications to the principal structure and changes to the site plan shall be subject to the development review standards for historic buildings in Sec 5.4.8.

(e) Dining Facilities:

Common dining facilities for overnight guests and their guests may be included where a Historic Inn is a permitted use. In districts where a Historic Inn is a conditional use, regular meals may be limited if so determined by the DRB based on their consideration of the impact of the proposed use on neighboring properties and traffic on nearby streets.

(f) Ancillary Events:

In districts where a Historic Inn is a permitted use, ancillary events are allowed. In districts where a Historic Inn is a conditional use, ancillary events may be permitted only at the discretion of the DRB based on their consideration of the impact of the proposed use on neighboring properties and traffic on nearby streets, and if so permitted shall be limited to indoor business meetings and meals in conjunction with those meetings for overnight guests and no more than four (4) invited guests.

(g) Parking:

1. The full setback requirements as for a new principal structure shall be applied to new parking areas in the RL districts; and,
2. All parking shall be adequately screened from neighboring properties and the public street.

Sec. 5.4.3 Convenience Stores

In addition to the applicable provisions of Art 3, Part 5 for conditional uses, and site and design review standards in Art 6, the following additional regulations shall be applicable to an application involving a convenience store:

(a) Access to a public street shall be limited to a width and location approved by the city engineer. In no case shall such access extend along the length of road frontage, or the nearest edge of any curb cut be located any less than 50 feet from any intersection between public streets. Shared access between adjacent properties is encouraged, and may be required subject to review and approval by the DRB in order to reduce congestion and improve safety;

(b) Where canopies are proposed over gas pump islands, it shall be reviewed under the site and development review standards in Art 6 to determine if such canopy is appropriate and, if so, its appropriate location, size, height, and design;

(c) No signs or fascia lighting may be placed on or within any pump canopy;

(d) No outside storage except for a screened dumpster, displays, or vending machines shall be allowed on the site. The term "vending machine" does not include pay telephones, air pumps, or vacuum machines;

(e) There shall be no exterior service windows or exterior ATMs allowed;

(f) There shall be a least one sidewalk dedicated exclusively for pedestrians from a public way/sidewalk to the store entrance; and,

(g) Gasoline Sales: Where permitted, the area for the sale of gasoline shall not exceed the lesser of 1,850 s.f. or 50% of the gross floor area of the enclosed convenience store. The area for the sale of gasoline is determined by the total square footage occupied by pumps, pump islands, and vehicular space(s) at a pump filling station.

Sec. 5.4.4 Community House

Community houses shall be considered a conditional use in any residential district and subject to all applicable provisions of Art 3, Part 5, and the site and design review standards in Art 6. In addition to conditional use standards, proposals for new community houses shall also comply with the following requirements:

(a) Density shall not exceed 1 person per two hundred (200) square feet of gross floor area;

(b) All dimensional standards for the underlying zoning per the requirements of Art. 4 shall be applicable; and,

(c) The minimum distance (lot line to lot line) between any two community houses shall be at least the following:

Total Occupancy (beds)	Distance (feet)
6 or less	0
7 – 12	500
13 – 20	1,000
21 or more	1,500

Sec. 5.4.5 Accessory Dwelling Units

(a) Accessory Units, General Standards/Permitted Uses:

Where there is a principal structure on a lot which exists as an owner-occupied single family residence, one accessory dwelling unit, that is located within or appurtenant to such single family dwelling, shall be allowed as a permitted use if the provisions of this subsection are met. An accessory dwelling unit means a dwelling unit that is clearly subordinate to the principal dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. An accessory unit shall not be counted as a dwelling

unit for the purposes of density calculation. Additionally, there must be compliance with all the following:

1. The property has sufficient wastewater capacity as certified by the Department of Public Works; and
2. The unit does not consist of more than 900 sq.ft., or 30 percent (30%) of the Gross Floor Area of the principal home, whichever is greater; and
3. Applicable setback and coverage requirements are met, except as provided for in Sec. 5.2.3 (b) 10; and
4. A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit prior to the issuance of the certificate of occupancy for the unit. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.

(b) Discontinuance of Accessory Units:

Approval of an accessory dwelling unit is contingent upon owner-occupancy of either the principal or accessory dwelling unit as a primary residence. For purposes of this section, owner-occupancy means that, after the creation of the accessory unit all individuals listed on the deed for the property must reside in the principal unit or in the accessory unit. If neither the principal unit nor the accessory unit is owner-occupied as a primary residence, the approval for the accessory dwelling unit is void and the kitchen of the accessory dwelling unit must be removed within 90 days with the entirety of the property being occupied as a single unit. When an accessory unit that is the result of additional square footage and/or a new accessory structure is proposed to be removed, revised floor plans and a revised site plan shall be required to be submitted for review and approval.

Furthermore, where additional square footage is added to a single family home for purposes of creating an accessory unit and the accessory unit is at any point discontinued, none of the additional square footage shall be eligible for the purposes of increasing the number of unrelated adults that may be allowed to inhabit the property.

Sec. 5.4.6 Home Occupations

Pursuant to the requirements of 24 VSA 4412(4), it is the intent of these regulations to provide for the use of a minor portion of a dwelling unit for a home occupation and to ensure compatibility with other permitted uses and with the residential character of the neighborhood. Such a home occupation must clearly be secondary or incidental to the principal residential use, and so located and conducted that the average neighbor, under normal circumstances, would not otherwise be aware of its existence.

(a) Administrative Approval:

Home occupations may be approved by the administrative officer subject to the following:

1. A home occupation not located within a residential or institutional district;
2. A home occupation located in a residential or institutional district as follows:

A. Home occupations that are low impact office in nature and including design studios, using normal office equipment such as computers, calculators, telephone, fax machines, desks, drafting tables or other similar office furnishings;

B. No clients or customers come to the premises;

C. There shall be no vehicles associated with the home occupation except:

(i) A personal vehicle with no commercial identification can be used; and,

(ii) An occasional delivery vehicle such as a Postal Service, UPS, or FedEx truck, but excluding semi trailers or 18 wheel vehicles;

(iii) deliveries or pick-ups shall occur no more than an average of one (1) time per day between the hours of 8 am and 6 pm;

D. No goods are located on site except for samples or designs produced on site and no such samples or other materials associated with the home occupation may be stored outside of an enclosed structure;

E. All employees shall be residents of the home where the home occupation is conducted. No outside employees are allowed on the premises;

F. No more than 25%, up to 500 square feet, of a residence can be used for the home occupation; and,

G. No signs are allowed.

(b) Conditional Use Review:

All home occupations not otherwise eligible for administrative approval above shall require review and approval by the DRB pursuant to the requirements of Art. 3, Part 5. In addition to the conditional use criteria, the following criteria must be met for any home occupation:

1. A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL districts, and no more than two (2) full-time equivalent employees in other districts. The home occupation shall be conducted entirely within an existing dwelling unit and/or one enclosed accessory structure;
2. No more than thirty-five per cent (35%) of the floor area of said residence, including accessory structures, up to a maximum of seven hundred fifty (750) square feet, whichever is less, shall be used for such purpose;

3. No home occupation shall require alterations, construction or equipment that would change the fire rating of the structure or the fire district in which the structure is located;
4. There shall be no outside storage of any kind related to the home occupation;
5. There shall be no exterior evidence of the conduct of a home occupation except for:
   A. Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each); and
   B. One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.
6. No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries. All parking shall be located off-street and shall maintain the required front yard setback;
7. No home occupation shall create sounds, noise, dust, vibration, smell, smoke, heat, humidity, glare, radiation, electrical interference, fire hazard or any other hazard, nuisance or unsightliness which is discernible from any adjacent dwelling unit;
8. The home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes and shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part.
9. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day;
10. With the exception of one delivery per day, as specified in subparagraph (9), no more than one (1) commercial vehicle shall be allowed on the premises at any one time; and
11. There shall be no sale of goods except for goods fabricated on the premises as part of an approved home occupation.

(c) Exclusions:

Home occupations shall not include commercial stables or kennels, veterinary clinics, or similar establishments.

(d) Revocation:

Approval of a home occupation may be revoked by the DRB in accordance with the following provisions:

1. Noncompliance. Upon receipt of notification or evidence of noncompliance with conditions of approval or evidence of error or misrepresentation, the DRB may schedule a public hearing to consider the revocation or modification of approval for a home occupation;
2. Notice. The administrative officer shall duly warn such public hearing and give notice to the applicant, abutters, and other interested parties;

3. Public Hearing. The DRB shall hold a public hearing to hear cause as to why the approval of the home occupation should not be revoked. The DRB shall render its decision in accordance with the conditional use time limitations set forth in Article 3, Part 5; and
4. Errors. The burden of providing complete and accurate information shall be the sole responsibility of the applicant. Any error or misrepresentation may result in voiding or modification of the approval for a home occupation.

Sec. 5.4.7 Wireless Telecommunications Facilities

The purpose of these regulations are to promote the public health, safety, welfare, and convenience of the residents of the City of Burlington while accommodating the wireless telecommunication needs of the city's residents, businesses, and visitors. It is a further intent of these regulations to ensure that wireless telecommunication facilities be sited and designed in such as way as to minimize visual intrusion and ensure compatibility with the city's landscape and architectural features.

(a) Authority, Applicability and Exemptions:

These regulations shall govern the construction, alteration, development, decommissioning and dismantling of all wireless telecommunication facilities as defined in this ordinance.

These regulations shall be applicable in all zoning districts with the exception that the development of new wireless telecommunication facilities shall be prohibited in any RCO zoning district.

The provisions of this Section shall not be applicable, and no permit shall be required, for any of the following:

1. a wireless telecommunication facility that is used exclusively for municipal radio dispatch service or emergency radio dispatch service, and which does not exceed 50 feet in height.
2. a wireless telecommunication facility that is used solely for amateur (ham) radio activities, citizens-band radio, single-use local business radio dispatch, or television antennas for home use, and which does not exceed 50 feet in height.
3. a temporary wireless telecommunications facility. A temporary wireless telecommunications facility is one that is in use for no more than 5 consecutive days within a 60 day period.

(b) Submission Requirements:

In addition to the submission requirements of Article 3 for COA Level II applications, applications involving a wireless telecommunications facility shall also be required to submit the following additional information:

1. Construction sequence and time schedule for completion of each phase of the entire project;
2. In the case of a site that is forested, the approximate average elevation of the existing vegetation within 50 feet of any tower base;
3. A report from a qualified engineer that:
   A. Describes the facility's design and elevation;
   B. Documents the elevation above grade for all proposed mounting positions for antennas to be collocated on a facility and the minimum distances between antennas;
   C. Describes a facility's capacity, including the number, elevation and types of antennas that the facility is proposed to accommodate;
   D. In the case of new facility, demonstrates that existing structures within 5 miles of the site cannot reasonably be modified to provide adequate coverage and adequate capacity to the community;
   E. Describes potential changes or additions to existing structures that would enable them to provide adequate coverage;
   F. Describes the output frequency, number of channels and the power output per channel for each antenna. In the alternative, a coverage map may be provided;
   G. Demonstrates the facility's compliance with the standards set forth in this bylaw or other applicable standards;
   H. Provides proof that at the proposed facility will be in compliance with all FCC regulations, standards and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards and requirements for radio frequency radiation (RFR); and,
   I. Includes such other information as determined by the administrative officer to evaluate the application.
4. A letter of intent committing the facility owner and its successors to permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provisions of this ordinance and all other applicable laws;
5. In the case of an application for additional antennas or other equipment to be installed on an existing facility, a copy of the executed contract with the owner of the existing structure; and,

6. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the Facility, or a written statement by the applicant that an EA is not required is not required for the facility.

(c) Independent Consultants:

An applicant may be required to pay the reasonable costs and fees incident to an independent technical review of the application. Upon submission of an application for a wireless telecommunications facility, the DRB may retain independent consultants whose services shall be paid for by the applicant. These consultants shall be qualified professionals in wireless telecommunications engineering, structural engineering, monitoring of electromagnetic fields and such other fields as determined by the DRB The consultant(s) shall work at the DRB's direction and shall provide the DRB such reports and assistance as are deemed necessary to the Board's review an application.

(d) Visual Impact Assessment:

The DRB may require the applicant to prepare a visual impact assessment such as a scaled model, computer visualization, and/or to fly a four-foot diameter brightly colored balloon at the location and maximum elevation of any proposed wireless telecommunications tower.

If a balloon test is required, the applicant shall advertise the date, time, and location of this balloon test 7 days in advance of the test in a newspaper with a general circulation in the city. The applicant shall also inform the administrative officer, in writing, of the date, time, and location of the test, at least 15 days in advance of the test. The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further tests may be required by the development review board.

(e) Conditional Use Approval:

All wireless telecommunications facilities as defined in this ordinance shall require conditional use review and approval by the DRB pursuant to the requirements of Article 3, Part 5. No conditional use permit relating to a wireless telecommunications facility shall be authorized by the DRB unless it finds that such facility:

1. Is necessary to provide adequate service to locations that the applicant is not able to serve with existing facilities;
2. Conforms to all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies;
3. Will be designed and constructed in a manner which minimizes its visual impact on the surrounding community to the extent practical including the extent to which the proposed facility has been designed to blend into the surrounding

environment through the use of screening, camouflage, architectural design, and/or imitation of natural features;

4. Is the most appropriate site among those available within the technically feasible area for the location of a wireless telecommunications facility; and,
5. Is in conformance with all of the applicable development standards pursuant to Sec.5.4.7(f) below.

As part of its approval, the DRB may additionally require the following:

6. The Facility shall not be built on speculation. If the applicant is not a Wireless Telecommunication Service Provider, the DRB may require the applicant to provide a copy of a contract or letter of intent showing that a Wireless Telecommunication Service Provider is legally obligated to locate a Wireless Telecommunication Facility on lands owned or leased by the applicant;
7. The applicant shall maintain adequate insurance on the facility; and,
8. The facility shall be properly identified with appropriate warnings indicating the presence of radio frequency radiation. The DRB may condition a permit on the provision of appropriate fencing and signage.

(f) Development Standards:

All wireless telecommunications facilities shall comply with the following development standards as applicable.

1. Co-Location/Location On Existing Structure

The shared use of existing wireless telecommunications towers or other structures shall be preferred to the construction of new facilities. Any conditional use permit application, renewal, or modification thereof shall include proof that reasonable efforts have been made to co-locate within an existing wireless telecommunications facility or upon an existing structure within a reasonable distance, regardless of municipal boundaries, of the site. The applicant must demonstrate that the proposed wireless telecommunications facility cannot be accommodated on existing wireless telecommunications facilities due to one or more of the following reasons:

A. The planned equipment would exceed the structural capacity of existing and approved wireless telecommunications facilities or other structures, considering existing and planned use for those facilities;

B. The planned equipment would materially impact the usefulness of other equipment at the existing facility which cannot be reasonably prevented or cause radio frequency interference with other existing or planned equipment in violation of federal standards;

C. Existing or approved wireless telecommunications facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;

D. Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures; or,

E. The property owner or owner of the existing wireless telecommunications facility or other structure refuses to allow such co-location or requests an unreasonably high fee for such co-location compared to current industry rates.

2. Height Limitations

The height limit for all telecommunications facilities shall not exceed twenty-five (25) feet above the average height of the tree line within fifty (50) feet of the base of the tower in wooded areas; or, not exceed twenty-five (25) feet above the average height of surrounding buildings within five-hundred (500) feet of the base of the telecommunication facility in a developed area. This height limitation shall not apply to panel antennas or similar telecommunication equipment installed on existing structures where height shall be governed by the applicable provisions of Sec. 5.2.7.

3. Fall Zones

Wireless telecommunication towers shall be constructed so as to minimize the potential safety hazards and located in such a manner that if the facility should fall, it will remain within the property boundaries and avoid habitable structures, public streets, utility lines and other wireless telecommunications facilities.

4. Setbacks

Wireless telecommunications facilities shall comply with all existing setbacks within the underlying zoning district and any applicable overlay district.

5. Lighting

Facilities shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Notwithstanding, an applicant may be compelled to add FAA-style lighting and marking, if in the judgment of the DRB, such a requirement would be of direct benefit to public safety. The board may choose the most appropriate lighting and marking plan from the options acceptable by the FAA at that location. The applicant must provide both standard and alternative lighting and marking plans for the board's review.

6. Engineering Standards

All wireless telecommunications facilities shall be built, operated, and maintained to acceptable industry standards. Each application including a wireless telecommunications tower must contain a site plan for the facility containing the signature of an engineer licensed by the State of Vermont.

Every facility shall be inspected at least every second year for structural integrity by a state-licensed engineer. A copy of the inspection report shall be submitted to the administrative officer and placed on file.

7. Residential Districts

Wireless telecommunications facilities determined by the DRB to be necessarily located in a residential district in order to provide service to such district may be approved by the DRB provided it also finds that such facilities are being co-located with other existing utility facilities or are otherwise shielded from public view.

(g) Abandonment and Removal:

At the time of submission of the application for a wireless telecommunication facility the applicant shall submit an agreement and financial surety in a form suitable to the city attorney to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower used as a wireless telecommunication facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than twelve consecutive months. Upon removal, the property shall be restored to its previous condition.

Sec. 5.4.8 Historic Buildings and Sites

The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:

- To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;
- To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;
- To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,
- To promote the adaptive re-use of historic buildings and sites.

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

As such, a building or site may be found to be eligible for listing on the state or national register of historic places and subject to the provisions of this section if all of the following conditions are present:

1. The building is 50 years old or older;
2. The building or site is deemed to possess significance in illustrating or interpreting the heritage of the City, state or nation in history, architecture, archeology, technology and culture because one or more of the following conditions is present:

A. Association with events that have made a significant contribution to the broad patterns of history; or,

B. Association with the lives of persons significant in the past; or,

C. Embodiment of distinctive characteristics of a type, period, or method of construction, or representation of the work of a master, or possession of high artistic values, or representation of a significant or distinguishable entity whose components may lack individual distinction; or,

D. Maintenance of an exceptionally high degree of integrity, original site orientation and virtually all character defining elements intact; or,

E. Yielding, or may be likely to yield, information important to prehistory; and,

3. The building or site possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association

(b) Standards and Guidelines:

The following development standards, following the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used in the review of all applications involving historic buildings and sites subject to the provisions of this section and the requirements for Design Review in Art 3, Part 4. The Secretary of the Interior's Standards are basic principles created to help preserve the distinctive character of a historic building and its site. They are a series of concepts about maintaining, repairing and replacing historic features, as well as designing new additions or making alterations. These Standards are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible,

materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Additional information can be found at: http://www.cr.nps.gov/hps/tps/standguide/rehab/rehab_standards.htm.

(c) Demolition by Neglect:

No owner of a historic building, or lessee who is obligated by lease to maintain and repair such a structure (other than the interior), shall allow, cause, or permit the structure to suffer or experience demolition by neglect. Examples of such disrepair and deterioration include, but are not limited to, the following:

1. Deterioration of walls or other vertical supports; walls, partitions or vertical supports that split, lean, list, or buckle, thus jeopardizing structural integrity;
2. Deterioration or inadequate foundations that jeopardize structural integrity;
3. Deterioration of roofs, ceilings, or other horizontal members;
4. Deterioration of fireplaces or chimneys;
5. Deterioration or crumbling exterior stucco or mortar;
6. Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors;
7. Lack of weather protection that jeopardizes the structural integrity of walls, roofs, plumbing, electricity, or overall structural integrity, including lack of paint, lack of adequate heating, and lack of adequate ventilation;
8. Vandalism caused by lack of reasonable security precautions; and/or
9. Deterioration of any feature so as to create a hazardous condition that could require demolition for public safety.

In such cases, the building inspector shall notify the property owner of any violation of this section. Such person shall have sixty (60) days to remedy any such violation. In the event the violation is not corrected within sixty (60) days of notification, the city shall be authorized to perform all repairs necessary to correct the violation and to place a lien on the property for the costs of such repairs and reasonable administrative and legal fees incurred.

(d) Demolition of Historic Buildings:

The purpose of this subsection is:

- To discourage the demolition of a historic building, and allow full consideration of alternatives to demolition, including rehabilitation, adaptive reuse, resale, or relocation;
- Provide a procedure and criteria regarding the consideration of a proposal for the demolition of a historic building; and,
- To ensure that the community is compensated for the permanent loss of a historic resource by a redevelopment of clear and substantial benefit to the community, region or state.

1. Application for Demolition.

For demolition applications involving a historic building, the applicant shall submit the following materials in addition to the submission requirements specified in Art. 3:

A. A report from a licensed engineer or architect who is experienced in rehabilitation of historic structures regarding the soundness of the structure and its suitability for rehabilitation;

B. A statement addressing compliance with each applicable review standard for demolition;

C. Where a case for economic hardship is claimed, an economic feasibility report prepared by an architect, developer, or appraiser, or other person experienced in the rehabilitation and adaptive reuse of historic structures that addresses:

(i) the estimated market value of the property on which the structure lies, both before and after demolition or removal; and,

(ii) the feasibility of rehabilitation or reuse of the structure proposed for demolition or partial demolition;

D. A redevelopment plan for the site, and a statement of the effect of the proposed redevelopment on the architectural and historical qualities of other structures and the character of the neighborhood around the sites; and,

E. Elevations, drawings, plans, statements, and other materials which satisfy the submission requirements specified in Art. 3, for any

replacement structure or structures to be erected or constructed pursuant to a development plan.

2. Standards for Review of Demolition.

Demolition of a historic structure shall only be approved by the DRB pursuant to the provisions of Art. 3, Part 5 for Conditional Use Review and in accordance with the following standards:

A. The structure proposed for demolition is structurally unsound despite ongoing efforts by the owner to properly maintain the structure; or,

B. The structure cannot be rehabilitated or reused on site as part of any economically beneficial use of the property in conformance with the intent and requirements of the underlying zoning district; and, the structure cannot be practicably moved to another site within the district; or,

C. The proposed redevelopment of the site will provide a substantial community-wide benefit that outweighs the historic or architectural significance of the building proposed for demolition.

And all of the following:

D. The demolition and redevelopment proposal mitigates to the greatest extent practical any impact to the historical importance of other structures located on the property and adjacent properties;

E. All historically and architecturally important design, features, construction techniques, examples of craftsmanship and materials have been properly documented using the applicable standards of the Historic American Building Survey (HABS) and made available to historians, architectural historians and others interested in Burlington's architectural history; and,

F. The applicant has agreed to redevelop the site after demolition pursuant to an approved redevelopment plan which provides for a replacement structure(s).

(i) Such a plan shall be compatible with the historical integrity and enhances the architectural character of the immediate area, neighborhood, and district;

(ii) Such plans must include an acceptable timetable and guarantees which may include performance bonds/letters of credit for demolition and completion of the project; and,

(iii) The time between demolition and commencement of new construction generally shall not exceed six (6) months.

This requirement may be waived if the applicant agrees to deed restrict the property to provide for open space or recreational uses where such a restriction constitutes a greater benefit to the community than the property's redevelopment.

3. Deconstruction: Salvage and Reuse of Historic Building Materials.

The applicant shall be encouraged to sell or reclaim a structure and all historic building materials, or permit others to salvage them and to provide an opportunity for others to purchase or reclaim the building or its materials for future use. An applicant may be required to advertise the availability of the structure and materials for sale or salvage in a local newspaper on at least three (3) occasions prior to demolition.

Sec. 5.4.9 Brownfield Remediation

The City of Burlington encourages the remediation and redevelopment of brownfield sites through the waiver or modification of the requirements of this ordinance in situations where development otherwise authorized by the underlying zoning is constrained due to the presence of surface and subsurface contamination. Specifically, these regulations seek to achieve the following goals:

- To promote the public health and safety by remediating contaminated sites that pose a threat to human and environmental health; and,
- To encourage an efficient pattern of development in Burlington by supporting the redevelopment of previously developed sites.

(a) Applicability:

The provisions of this section shall only be available to the following types of properties throughout the city:

1. Properties eligible to participate in the Redevelopment of Contaminated Properties Program (RCPP) within the Agency of Natural Resources, Department of Environmental Conservation created pursuant to 10 VSA §6615a or are otherwise impacted by a VT DEC approved Corrective Action Plan (CAP) for such a property;
2. Property listed on the national priorities list of superfund sites established under the federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") or otherwise impacted by a US EPA approved Record of Decision (ROD) for such a property; and,
3. Properties which have a hazardous waste certificate under 10 VSA §6606 and which are undergoing corrective action under the federal Resource, Conservation and Recovery Act ("RCRA") pursuant to the Vermont Hazardous Waste Management Regulations (VHWMR) §7-105(b) or are otherwise impacted by a VT DEC approved Corrective Action Plan (CAP) for such a property.

(b) Application Submission Requirements:

In addition to the submission requirements pursuant to Article 3, the following information as applicable specifying any and all use and development limitations of the site shall also be provided at the time of application:

1. A VT DEC Approved Corrective Action Plan (CAP) pursuant to 10 VSA §6615a (h);
2. A Record of Decision (ROD) issued by the US EPA;
3. A VT DEC Approved Corrective Action Plan (CAP) pursuant to VHWMR) §7-105(b); and,
4. Any Warranty Deed specifying any and all use and development limitations of the site.

(c) Review Process:

Applications seeking a waiver from the requirements of the underlying zoning pursuant to the provisions of this section shall be required to participate in both an Administrative Conference and Sketch Plan Review pursuant to Sec. 3.2.1 of Article 3.

Applications seeking a waiver from the requirements of the underlying zoning pursuant to the provisions of this section shall require review and approval by the DRB pursuant to the requirements of:

1. Site Plan and Design Review under Article 3, Part 4; and,
2. Major Impact Review under Article 3, Part 5.

(d) Waiver Limitations and Review Criteria:

The DRB has the discretion to waive or modify any relevant dimensional and use standards of the underlying zoning and other limitations imposed by this ordinance based on a demonstrated nexus with specific development limitations imposed by an approved corrective action plan, record of decision, or deed restriction limiting potential reuse and redevelopment or an eligible property.

In addition to the review criteria required pursuant to the provisions of Major Impact Review under Article 3, Part 5, and the development principles and design standards of Article 6, no permit shall be authorized by the DRB unless it finds that:

1. Any waiver or modification so granted is based on a demonstrated nexus with the development limitations imposed by an approved corrective action plan, record of decision, or deed restriction limiting potential use and redevelopment;
2. Any waiver or modification so granted is the minimum necessary to grant relief from the specific limitations imposed by an approved corrective action plan, record of decision, or deed restriction that would prevent the site from being redeveloped in strict conformance with the underlying requirements of the ordinance; and,
3. The redevelopment of the effected site as proposed more effectively satisfies the goals of the municipal development plan, furthers the intent of the zoning

district in which it is located, and addresses the development principles and design standards of Article 6 than redevelopment in strict conformance with the underlying standards of this ordinance.

Sec. 5.4.10 Crisis Counseling Center

Crisis Counseling Center shall be considered a conditional use in any residential district and subject to all applicable provisions of Art 3, Part 5, and the site and design review standards in Art 6. In addition to conditional use standards, proposals for new Crisis Counseling Center in any residential district shall also comply with the following requirements:

(a) A Crisis Counseling Center may only be permitted on lots fronting the following streets: North Ave., Shelburne St., Main St., St. Paul St., Colchester Ave., and Pearl St.;

(b) A Crisis Counseling Center may only be permitted in a principal building existing as of January 1, 2007;

(c) Secondary residential use in the same building or on the same lot may be permitted consistent with the requirements of the underlying zoning district per Art. 4; and,

(d) All dimensional standards for the underlying zoning per the requirements of Art. 4 shall be applicable.

Sec. 5.4.11 Mental Health Crisis Center

A Mental Health Crisis Center shall be considered a conditional use in the Neighborhood Mixed-Use (NMU) district and subject to all applicable provisions of Art 3, Part 5, and the site and design review standards in Art. 6. In addition to conditional use standards, proposals for a Mental Health Crisis Center shall also comply with the following requirements:

(a) A Mental Health Crisis Center may only be permitted on lots fronting on Flynn Avenue and/or Pine Street within one thousand feet of the northwest corner of Pine St and Flynn Avenue.

(b) Inpatient short-term crisis care shall not exceed fourteen (14) consecutive nights;

(c) The number of beds for inpatient use shall not exceed ten (10);

(d) All dimensional standards for the underlying zoning per the requirements of Art. 4 shall be applicable.

Sec. 5.4.12 Mobile Home Parks

In addition to the applicable provisions of Site Plan Design Standards in Art 6, Part 2, and Article 10 Subdivision Review (if applicable), the following additional

regulations shall be applicable to any application involving a Mobile Home Park. The provisions of Art 3, Part 5 for Conditional Uses shall also apply to applications involving new or expanded Mobile Home Parks.

(a) Mobile Home Parks

Regarding the establishment and operation of a Mobile Home Park:

1. The required minimum lot size, lot frontage, and waterfront setback, and required maximum density and building height shall be as required per the applicable Zoning District standards found in Tables 4.4.5-1, 4.4.5-2 and 4.4.5-3.
2. The required minimum side and rear setback shall be 20' and shall be calculated at the periphery of the Mobile Home Park.
3. The maximum permissible lot coverage shall be 60% calculated across the entire Mobile Home Park parcel.
4. The required minimum lot size shall be for the entire Mobile Home Park parcel, not the individual mobile home lots.
5. The required minimum separation distance between individual Mobile Homes within the Mobile Home Park shall be 10'.
6. One (1) on-site parking space shall be required per individual Mobile Home.
7. The Mobile Home Park shall maintain a circulation network that provides direct access to, and the mobility and replacement of, each individual Mobile Home.
8. Mobile Home Parks shall be exempt from the requirements of Art 9, Part 1 Inclusionary Zoning.
9. Individual Mobile Homes may be removed without triggering the requirements of Art 9, Part 2 Replacement Housing provided the total number of permitted Mobile Home lots remain available for occupancy, and any vacant lots are being actively marketed to prospective occupants.

(b) Non-Conforming Mobile Home Parks

1. Where a pre-existing Mobile Home Park is nonconforming pursuant to Art 5, Part 4, the entire Mobile Home Park, and not individual Mobile Homes and lots, shall be treated as nonconforming.
2. A Mobile Home Park shall be considered abandoned when the Mobile Home Park as a whole has been vacant for a period of six months or more. An individual Mobile Home lot that is vacated shall not be considered abandoned. No pre-existing nonconforming Mobile Home Park may be resumed once it has been abandoned except in full conformity with these bylaws.
3. An individual Mobile Home within a nonconforming Mobile Home Park may be altered, expanded, or replaced, provided:
   a. the applicant provides proof of adequate water and wastewater capacity;

b. any portion of the relocated or expanded Mobile Home shall not be located less than five (5) feet from any other primary structure(s); and,

c. the expansion or replacement will not:

i. obstruct or prohibit ingress or egress for any primary structure;

ii. obstruct or prohibit mobility or replacement of any primary structure;

iii. obstruct or prohibit the provision of emergency services;

iv. obstruct existing utilities or rights of way; nor

v. threaten or unduly degrade public health, safety, or welfare

4. Any of the requirements in (3) above may be waived by the DRB provided:

a. the applicant demonstrates that adherence to these standards would have the effect of prohibiting the replacement of a Mobile Home on an existing lot;

b. the DRB shall provide only the minimum waiver that will afford relief and will represent the least deviation possible from the bylaw, while ensuring public health, safety, and welfare; and,

c. in approving any waiver, the DRB may impose conditions requiring design features, screening, or other remedy as may be necessary to mitigate anticipated impacts of granting any such waiver.

Sec. 5.4.13 Emergency Shelters

Emergency shelters shall be subject to the site and design review standards in Art 6.

In addition to conditional use standards where applicable, proposals for all new emergency shelters shall comply with the following requirements:

(a) All dimensional standards for the underlying zoning per the requirements of Art. 4 shall be applicable;

(b) Density within the residential zones shall be per the residential density standards of Article 4. For the purposes of density calculation for emergency shelters, every four (4) beds shall count as one (1) dwelling unit;

(c) Density within the neighborhood mixed use zones shall be limited to fifty (50) beds, and there is no density limit in the downtown or downtown transition zones;

(d) Overnight stays by any individual are limited to 180 consecutive days. An extension of up to 60 days may be provided if no alternative housing is available;

(e) There shall be onsite management by qualified adults during all hours of operation with at least 1 management person for every 25 beds; and,

(f) An emergency shelter may be the primary use of a property, or it may be accessory to another primary use on a property.

PART 5: PERFORMANCE STANDARDS

Sec. 5.5.1 Nuisance Regulations

All applications for a zoning permit shall be required to demonstrate compliance with the applicable nuisance regulations and performance standards pursuant to the requirements of the Burlington Code of Ordinances. All such standards shall be met and maintained for all uses, except for agriculture and forestry, in all districts, as determined or measured at the property line. In determining ongoing compliance, the burden of proof shall fall on the applicant, property owner, and/or all successors and assigns.

Sec. 5.5.2 Outdoor Lighting

It is the intent of these standards to encourage outdoor lighting practices and systems which will minimize light pollution and trespass; conserve energy while facilitating night-time visibility, surveillance and evening commercial and recreational activity ; and curtailing the degradation of the night time visual environment. All outdoor lighting shall be evaluated to ensure that the functional and security needs of the project are met in a way that will not adversely affect the adjacent properties or the surrounding neighborhood.

(a) Site Plan Review Required:

Unless otherwise exempt by this Section, all outdoor light fixtures shall be subject to review and approval in conjunction with any land use and development permits under the requirements of Article 3 – Site Plan Review.

(b) Exemptions:

The following types of outdoor lighting and lighting fixtures shall be exempt from the requirements of this chapter subpart as specified below:

1. Outdoor light fixtures for single-family dwellings not otherwise subject to the requirements of Art 3 - Design Review;
2. All outdoor light fixtures existing and legally installed prior to the effective date of this article. This exemption shall only apply for the replacement of an existing light fixture when it is replaced in-kind;
3. All outdoor light fixtures producing light directly by the combustion of fossil fuels, such as citronella or kerosene lanterns or gas lamps;
4. Seasonal or holiday low output lighting decorations. Such lighting may not be moving or otherwise animated to the point of being distracting to motorists;
5. Decorative fixtures using low output lamps used for landscaping that do not emit direct illumination or glare, or cast a shadow onto adjacent property;
6. Lighting fixtures using low output lamps to light building entryways that do not emit direct illumination or glare, or cast a shadow onto adjacent property;

7. Construction or emergency lighting provided that such lighting is temporary and is discontinued immediately upon completion of construction work or abatement of said emergency. Such lighting shall not emit direct illumination or glare onto adjacent property; and,
8. Lighting of temporary uses and special events permitted by the city consistent with the provisions of the Title.

(c) Lighting Prohibited:

The following outdoor lighting shall be prohibited as specified below.

1. Up-lighting or back-lit canopies unless otherwise allowed under this Section;
2. The operation of searchlights or beacons for advertising or promotional purposes;
3. Moving or otherwise animated lighting to the point of being distracting to motorists; and,
4. Any light that imitates or causes visual interference with a traffic signal or other necessary safety or emergency light.

(d) Lighting Plan Submission Requirements:

In addition to the application submission requirements of Article 3, projects involving outdoor lighting not otherwise exempt from this Section shall also include a lighting plan. The following information shall be included within a lighting plan:

1. A site plan showing:
   A. The area(s) to be illuminated;
   B. A point-by-point photometric analysis of the anticipated illumination levels, including the maximum, minimum, and average illumination levels for each area specified to be illuminated;
   C. A calculation of the initial and mean lamp lumens per net acre across the entire site; and,
   D. The number, type, location, and mounting heights of all pole mounted and building mounted fixtures;
2. If vertical surfaces are to be illuminated, a point by point distribution of vertical illumination levels shall be provided, along with an indication of the maximum illumination level to be generated;
3. Specifications of all fixtures to be used including lamps, poles or other supports, and refractors, reflectors and lenses, along with documentation for cut-off classification, horizontal and vertical light distribution patterns which may be provided as catalogue cut sheets from the manufacturer; and,
4. Any additional information as may be required by the administrative officer in order to determine compliance with this Article.

(e) General Outdoor Lighting Standards:

All outdoor lighting shall be designed to provide no more than the minimum lighting necessary to ensure adequate vision and safety for the intended task to be performed in the lighted area. Light levels shall be compatible with or have gradual transitions with lighted public streets and sidewalks, and to not cause glare or cast direct illumination onto adjacent properties or streets.

Unless otherwise specified in Sec 5.5.2 (f) below, all outdoor lighting shall comply with the applicable sections of one or more of following general standards as may be required and interpreted by the administrative officer. In the case of conflicts, the lowest light level or most restrictive standard shall apply:

1. Standards developed by the Illuminating Engineering Society of North America (IESNA) *Lighting for Exterior Environments* (RP-33-99) or the most current edition.
2. Standards developed by the Illuminating Engineering Society of North America (IESNA) *Lighting for Parking Facilities* (RP-20-98) or the most current edition.
3. *Outdoor Lighting Manual for Vermont Municipalities* published by the Chittenden County Regional Planning Commission (1996) or the most current edition.
4. All outdoor lighting fixtures, other than those using only low output lamps and alternatives specifically allowed under these regulation, shall be "Full Cut-off" or "Cut-off" as defined by the Illuminating Engineering Society of North America (IESNA) to ensure that glare is minimized, that lighting is directed only to the area to be illuminated, that illumination is directed below a horizontal plane, and that illumination does not cast direct light beyond the boundaries of the property on which they are located. Light levels on adjacent properties shall not exceed one-tenth (0.1) footcandle as a direct result of the on-site lighting measured twenty (20) feet beyond the property line of the development site.
5. All illumination shall be of a white light, such as a fluorescent, metal halide, incandescent or a combination of lamps having a color rendering index greater than seventy (70).
6. Illumination levels where indicated are to be measured in mean footcandles (fc) produced by the mean light output of the lamps specified. Actual or estimated illumination levels shall be measured horizontally at ground level unless otherwise specified in these regulations.
7. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment shall not project above the horizontal plane and shall not extend beyond the property line, nor in the direction of the public right of way used for traffic or pedestrians or residential properties.
8. The illumination of all flags, other than the flag of a state or national government as may be required under law, shall be extinguished at the end of public business hours or by 10:00 PM whichever is later.

Such flags not taken down at sunset may be illuminated by down-directed lighting or pole mounted up-lighting using no more illumination than is necessary for it to be recognized by the casual observer. All fixtures used to illuminate flags shall be narrow beam spot lights using low voltage and low level lighting selected to focus only on the area of the flag. Spot lights shall conceal the source by employing shields, grids, and hoods that prevent lamp glare from impacting surrounding uses.

9. Neon tubing or band lighting along a building or structure highlighting articulations shall only be allowed after review and approval subject to the requirements of Article 3 - Design Review. Such lights are exempt from the shielding and color rendering requirements of this ordinance.

(f) Specific Outdoor Lighting Standards:

In addition to the general standards above, the following specific lighting standards shall apply to each of the following outdoor lighting applications:

1. Parking Lot Lighting:

Outdoor lighting of parking and related circulation areas shall comply with the following standards:

A. The maximum mounting height for any fixture shall be 25 ft.

B. The maximum illumination level shall not exceed 4 footcandles (fc) at any point.

C. The maximum illumination level shall only be computed for the functional area of the parking lot.

D. The maximum to minimum uniformity ratio shall not exceed 20:1.

E. Illumination levels are encouraged to be reduced by at least 50% within one hour after the end of public business hours

These standards also shall apply to the top and/or unenclosed level of any parking garage. Enclosed areas within parking garages such as parking and circulation areas, internal stairways, and attendant booths are subject to the lighting regulations pertaining to Parking Garages found in Sec 5.5.2(f)(5).

2. Walkway Lighting:

Outdoor lighting of walkways, alleys, and pedestrian paths shall comply with the following standards:

A. The average illumination level on a walkway or pathway surface shall not exceed 0.5 footcandles. Maximum lighting levels shall not exceed 2 footcandles;

B. The area over which the average illumination level is computed shall only include the walkway surface plus an area on each side not more than 5 feet in width; and,

C. Lighting fixtures other than full cut-off fixtures may be used but shall be designed to minimize glare, direct illumination downward, and shall have an initial output of no more than 1,200 initial lumens.

Lighting of walkways and paths in all RCO districts is discouraged. If lighting is installed, in no case shall such lighting exceed the levels cited above under (A) above.

3. Lighting of Gasoline Fueling Pump Islands and Canopies:

Lighting of areas around fueling pump islands, and under canopies sheltering such fueling pump islands, shall meet the following standards:

A. The average illumination level for canopies in commercial and other zones where permitted shall not be more than 10.0 footcandles. Canopies in Residential Zones and/or where they are associated with a non-conforming use, average illumination levels shall not exceed 5.0 footcandles;

B. Light fixtures mounted under a canopy shall be recessed so that the lens cover is recessed into, or flush with, the underside (ceiling) of the canopy;

C. No light fixtures may be mounted on top of the canopy, and the sides of the canopy (fascia) shall be opaque and shall not be illuminated;

D. Illumination levels shall be reduced by at least 50% within one hour after the end of public business hours; and,

E. Areas away from fueling pump islands, as defined by the extent of the canopy, shall be considered parking and circulation areas. They shall be identified as such on the lighting plan submitted in accordance with Sec 5.5.2(d), and shall be subject to parking area lighting regulations as set forth in Sec 5.5.2(f)(1) above.

4. Other Vehicular Canopies:

This section applies to canopies associated with commercial buildings that are used to protect drivers and pedestrians from inclement weather

A. Average illumination levels below the perimeter of the canopy shall not exceed 2 footcandles.

B. Light fixtures mounted under a canopy shall be full cut off.

C. No light fixtures may be mounted on top or on the sides (fascia) of the canopy. Opaque or translucent canopies and shall not be illuminated.

D. Lights shall be turned off during non-business hours. If security lighting is required, such lighting shall be submitted and reviewed as per Sec 5.5.2 (f)7.

5. Parking Garage Lighting

Recommended illumination levels for parking garages are generally higher and more uniform that that of exterior parking lots. Non-cut-off, up-light and in-direct light is often used to create a uniform lighting environment and an added feeling of security.

A. Light levels shall not exceed minimums currently recommended by IESNA.

B. Any fixture visible from the exterior of the garage facility shall be a full cutoff or cut-off fixture or shall be constructed in a manner that prevents glare to be visible from the exterior of the parking garage (see examples pictured below)

6. Lighting of Exterior Sales/Display Areas:

Illumination of exterior sales/display areas shall meet the following standards:

A. Areas designated for exterior display or sales shall have an average illumination level of no more than 2.0 footcandles and a maximum illumination of no more than 10 footcandles;

B. The average illumination level shall be computed only for the area used for exterior display or sales;

C. Illumination levels shall be reduced by at least 50% within one hour after the end of public business hours; and,

D. Areas used for passive storage or parking and circulation shall be illuminated in accordance with the parking area standards of these regulations, and indicated as such on the lighting plan submitted in accordance with Sec 5.5.2 (d).

7. Security Lighting:

Lighting for security surveillance should be kept to a minimum. Use of motion/heat activated light and security alarms are encouraged to minimize the use of full site lighting when the building is not occupied or in use.

All applications involving security lighting shall include a written narrative outlining the need for and purposes of security lighting as part of a security plan. A site plan shall designate the area to be illuminated for security purposes. To the extent that the area designated for security lighting may also

be illuminated for other purposes, independent security lighting fixtures shall be discouraged.

A. All fixtures used for security lighting shall be full cut-off as defined by IESNA.

B. The use of flood light fixtures is prohibited unless approved by the DRB. The applicant shall present cause as to why cut-off fixtures cannot be used for the illumination needed.

C. If flood lights are used, the fixtures shall be positioned so that the lamp or reflector cannot be view directly from any point beyond the property and shall include grids and/or baffles to prevent glare.

D. Security lighting fixtures may be mounted on poles located no more than ten (10) feet from the perimeter of the designated area being illuminated. Illumination from pole mounted fixtures outside the property line is not permitted.

E. Security lighting designed to illuminate a perimeter (such as a fence) are encouraged to include motion/heat sensors designed to be off unless triggered by an intruder located within five (5) feet of the perimeter.

F. Security lighting may illuminate vertical surfaces up to a level eight (8) feet above grade or eight (8) feet above the bottom of doorways or entries, whichever is greater.

G. The average illumination level of vertical surfaces shall be measured at a height of 5 feet above grade, and computed over the area of the surface designated to be illuminated in the security plan.

H. Security lighting may remain illuminated beyond 10:00pm or the close of business to one hour after sunrise.

8. Outdoor Recreational Facility Lighting:

There are a variety of outdoor recreation facilities that may be illuminated to allow nighttime use. Examples include tennis courts, ball fields, swimming pools, outdoor skating rinks, and public parks. The regulations in this section are intended to allow illumination of such activities while minimizing adverse impacts such as glare, unwanted illumination of nearby properties and streets, and skyglow. Such lighting shall be consistent with the following regulations:

A. Cut-off, shielded, and/or louvered lighting are recommended for fields designed for Class III or IV levels of play (typically amateur or municipal league, elementary to high school, training, recreational or social levels; cf. IESNA Lighting Handbook and IESNA RP-6 *Sports and Recreational Area Lighting*).

B. Lighting for facilities designed for Class I and II levels of play (typically college, semi-professional, professional, or national levels) shall utilize luminaires with minimal uplight consistent with the illumination constraints of the design.

C. Where cut-off fixtures are not utilized, acceptable luminaires shall include those which:

i. Are provided with internal and/or external glare control louvers and installed so as to minimize uplight and offsite light trespass;

ii. Are installed and maintained with aiming angles that permit no greater than five percent (5%) of the light emitted by each fixture to project above the horizontal; and;

iii. All lighting installations shall be designed to achieve no greater than the minimal illuminance levels for the activity as recommended by the Illuminating Engineering Society of North America (IESNA).

D. Lighting fixtures other than full cut-off fixtures may be allowed only if their beams fall within the primary playing area and immediate surroundings, and so that no direct illumination is directed offsite.

E. Lighting shall be turned off except when the facilities are in use or being maintained.

9. Lighting of Building Facades:

Low level illumination of building facades may be allowed behind and beneath covered walkways. Lighting of building facades other than behind and beneath covered walkways may be allowed only for buildings of cultural or religious significance. Façade lighting shall meet the following requirements.

A. The maximum illumination level on any vertical surface shall not exceed 5.0 footcandles;

B. If a first floor façade is illuminated by lights mounted under a canopy sheltering a walkway, the maximum horizontal illumination of the walkways shall not exceed 3.0 footcandles at grade level. If there is no walkway under the canopy, the average horizontal illumination shall not exceed 1.0 footcandle at grade level;

C. Roofs shall not be illuminated;

D. Light fixtures under translucent canopies shall be cut-off or fully cut-off so that illumination is not directed to the underside of the canopy;

E. Lighting fixtures shall be shielded so that the light source and/or lens is not visible from adjacent or adjoining properties or streets; and,

F. Cut-off lighting fixtures shall be used for lighting of building facades behind and beneath covered walkways. Non-cut-off lighting fixtures may be used for building façade lighting of significant public or institutional buildings.

(g) Exceptions

Technological advances in outdoor lighting lamp sources and luminaires may allow for options not considered in these regulations. Induction (electrodeless) or LED lighting are two current examples. The use of new technologies, and especially those that have energy saving properties, are encouraged. Applications that use new technologies, and follow the spirit of the ordinance will be considered and evaluated for approval.

Sec. 5.5.3 Stormwater and Erosion Control

All new development and redevelopment projects that require a zoning permit shall be required to demonstrate compliance with the standards in Article 3, Stormwater & Erosion Control of Chapter 26 of the City Code of Ordinances: Wastewater, Stormwater, and Pollution Control.

Sec. 5.5.4 Tree Removal

Zoning permit requests for tree removal are subject to DRB review per the following criteria.

(a) Review criteria for zoning permit requests for tree removal.

1. Grounds for Approval

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be permitted for any of the following reasons:

A. Removal of dead, diseased, or infested trees

B. Thinning of trees for the health of remaining trees according to recognized accepted forestry practices

C. Removal of trees that are a danger to life or property; or

D. As part of a development with an approved zoning permit

2. Grounds for Denial

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be denied if existing healthy trees are known to be:

A. Providing a significant privacy or aesthetic buffer or barrier between properties

B. Providing stabilization on slopes vulnerable to erosion

C. Located within a riparian or littoral buffer

D. Provide unique wildlife habitat

E. A rare northern Vermont tree species as listed by the Vermont Natural Heritage Program; or

F. A significant element of, or significantly enhances, an historic site

(b) Tree Maintenance Plans

Institutions or other property owners who practice ongoing tree removal shall be exempt from the requirement to obtain a zoning permit for individual tree removal projects subject to obtaining approval from the DRB for a plan as follows:

1. A Tree Maintenance Plan prepared by a certified arborist shall be submitted as a Level I Certificate of Appropriateness, with a level I application fee. This plan shall include general and specific criteria for removing trees based on the criteria as per Sec. 5.5.4 (a).
2. The Tree Maintenance Plan if approved by the Development Review Board. Approval of the Plan is valid for up to five (5) years.
3. In order to continue tree removal, Tree Maintenance Plans must be updated or re-written and approved by the Development Review Board at five (5) year intervals.