

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/planning

Yves Bradley, Chair
Bruce Baker, Vice-Chair
Lee Buffinton
Emily Lee
Andy Montroll
Harris Roen
Jennifer Wallace-Brodeur
Holly Ransom, Youth Member



Burlington Planning Commission

REGULAR MEETING

Tuesday, January 13, 2015 - 6:30 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

AGENDA

Note: times given are approximate unless otherwise noted.

I. Agenda

II. Public Forum - Time Certain: 6:35 pm

The Public Forum is an opportunity for any member of the public to address the Commission on any relevant issue.

III. Report of the Chair – Yves Bradley (5 min)

IV. Report of the Director – David White (5 min)

V. Urban Agriculture Zoning Amendment (5 min)

The Commission will review and comment on changes made by the City Council Ordinance Committee to ZA-14-08.

VI. Public Hearings: Proposed Zoning Amendments (30 min)

The Commission will hold public hearings the following proposed amendments to the Comprehensive Development Ordinance:

- **ZA-15-01** – Fix a typo referencing another section.
- **ZA-15-02 Part 1** - The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:
 - disconnecting Conditional Use Review from development that does not actually involve an identified conditional use (Sec. 3.5.2 (a) and Sec. 3.5.3);
 - revising the Conditional Use Review criteria to focus more specifically on the aspects of the development that may actually be effected by a proposed conditional use (Sec. 3.5.6 (a) and (b)); and,
 - clarifying the scope of conditions that may be imposed under Conditional Use Review and Major Impact Review (Sec. 3.5.6 (c)).
- **ZA-15-02 Part 2** - The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

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- removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment (Sec. 9.1.5 and 9.1.12);
 - removing the requirement for Conditional Use approval by DRB for any project involving Inclusionary Housing (Sec. 9.1.8 and 9.1.12); and,
 - removing the requirement for Conditional Use approval by DRB for any project involving Replacement Housing (Sec. 9.2.3, 9.2.5, 9.2.9 and 9.2.10).
- **ZA-15-02 Part 3** - The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:
 - removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment and the necessity of having Major and Minor PUD's (Sec. 11.1.3);
 - disconnecting PUD's from Subdivision review in cases where no actual subdivision of land is being proposed (Sec. 11.1.3); and,
 - clarifies the scope of flexibility for development standards afforded by the PUD Review process (Sec. 11.1.4, 11.1.5 and 11.1.6).

VII. Proposed Zoning Amendments (20 min)

The Commission will consider the following proposed amendment to the Comprehensive Development Ordinance:

- Downtown Districts Setbacks Abutting a Residential Zoning District
- Inclusionary Zoning for Institutional Zoning Districts

VIII. Committee Reports (5 min)

IX. Commissioner Items (5 min)

X. Minutes/Communications (2 min)

The Commission will review communications and approved minutes from the November 12, 2014 meetings.

XI. Adjourn (8:00 p .m.)

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-14-08 – Urban Agriculture

*As approved by the Planning Commission on March 11, 2014
Altered December 8, 2014 & approved by City Council Ordinance Committee on
December 11, 2014 to include 15' height limit on exempt 24 sf structures*

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: Refine definitions and provide further allowances for urban agriculture activities to take place on private properties as per the Urban Agriculture Task Force report prepared on September 2012.

ARTICLE 3: APPLICATIONS, PERMITS, and PROJECT REVIEWS

Sec. 3.1.2 Zoning Permit Required

Except for that development which is exempt from a permit requirement under Sec. 3.1.2(c) below, no development may be commenced within the city without a zoning permit issued by the administrative officer including but not limited to the following types of exterior and interior work:

(a) Exterior Work:

As written.

(b) Interior work:

As written.

(c) Exemptions:

The following shall be exempt from the requirements of this Ordinance and shall not be required to obtain a zoning permit:

1. Exterior modifications to a single family dwelling in a non-design review portion of the RL zoning district lawfully in existence prior to the adoption of this ordinance on a conforming lot, and not on or eligible for listing on the State or National Register of Historic Places. Such an exemption shall not be applicable to any of the following changes, which do require a zoning permit:
 - A. Increased lot coverage;
 - B. Increased habitable living space;
 - C. Changes in setbacks or building footprints; and
 - D. Construction of additional stories to an existing structure.
 - E. Improvements in a Special Flood Hazard Area.

From Article 13 – Definitions:

Development: Any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; including but not limited to the division of land into parcels; any change in the intensity or use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial or industrial use from a less intensive use; any human activity that alters a shore, beach, river, stream, lake, pond, canal, marsh, woodlands, wetland, rare or endangered species habitat, aquifer or other resource area, including shoreland construction or other activity.

2. The removal of trees from any lot containing a single family home or duplex which consists of no more than three-quarters (3/4) of one acre.
3. Individual tree removal projects that are included under an approved and valid “tree maintenance plan”.
4. The maintenance or repair of any exterior architectural feature, or its replacement in-kind, which does not involve a change in the location, design, material, or the outward appearance of the feature;
5. Temporary ramps to serve the handicapped or disabled, for a period of not more than 90 days.
6. Public utility power generating plants and transmission facilities regulated under 30 V.S.A. §248.
7. Accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 VSA §1021(f) and 1259(f) and 6 VSA §4810. Prior to the construction of farm structures the farmer must notify the Administrative Officer in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.
8. The temporary stabilization and securing of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a written order of the same issued under the authority of the city building inspector.
9. Where temporary stabilization is not reasonably available the emergency demolition of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a order of the same issued under the written authority of the city building inspector and with the written concurrence of the city engineer. This exemption does not extend beyond the required demolition, clearing of debris, securing or filling cellar holes, and related erosion control and stormwater management.
- 9.10. All structures of 24 square feet or less and no taller than 15 feet, as long as they are located in compliance with applicable setbacks. This exemption is limited to 1 such structure, or multiple structures in aggregate up to 24 square feet, per property. This exemption does not apply to properties located within the Special Flood Hazard Area.
- ~~10.~~11. Children’s play structures.
- ~~11.~~12. Temporary Structures or Uses as per Sec. 5.1.2 (f).
- ~~12.~~13. Urban agricultural exemptions:
 - A. Cold frames of 6 feet in height or less. This exemption does not apply to properties located within the Special Flood Hazard Area.

- B. Up to 2 seasonal hoop houses, each 200 square feet or less, without foundations and as long as they are located in compliance with applicable setbacks. This exemption applies only to seasonal hoop houses that are sheathed in translucent plastic or similar material for a maximum of 9 months per year and are maintained in an intact condition. The frame may remain in place year-round. This exemption does not apply to properties located in the Special Flood Hazard Area.
- C. Urban agricultural uses or structures located on building rooftops.
- D. Sale of food produced onsite or at an individual's community garden plot not to exceed \$1,000 per year. Food may be processed within the individual's residential kitchen.

(d) Determination of Non-Applicability:

As written.

ARTICLE 5: CITYWIDE GENERAL STANDARDS

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) through (f) *as written*

(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 ~~authorized as an accessory use by the DRB subject to conditional use review as 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:

<u>No Review or Permit Required</u>	<u>Site Plan Review: Zoning Permit & COA</u>	<u>Review as per Underlying Zoning</u>
<u>A use in place for up to 10 consecutive days or 30 days within any 12-month period at the same location.</u>	<u>A use in place from 11-31 consecutive days or 31-60 days within any 12 month period at the same location.</u>	<u>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.</u>

(ih) 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) through (e) *as written*

(f) Temporary Structures:

The administrative officer ~~may issue a permit for~~ 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.		

ARTICLE 13: DEFINITIONS

Sec. 13.1.1 Miscellaneous.

As written.

Sec. 13.1.2 Definitions.

For the purpose of this ordinance certain terms and words are herein defined as follows:

Unless defined to the contrary in Section 4303 of the Vermont Planning and Development Act as amended, or defined otherwise in this section, definitions contained in the building code of the City of Burlington, Sections 8-2 and 13-1 of the Code of Ordinances, as amended, incorporating the currently adopted edition of the American Insurance Association's "National Building Code" and the National Fire Protection Association's "National Fire Code" shall prevail.

Agriculture (See ~~Farm~~ also Urban Agriculture): For the purposes of this ordinance, agriculture shall mean accepted agricultural practices, including the construction of farm structures, as defined by the Vermont Secretary of Agriculture, Food, and Markets under 10 V.S.A. Sec. 1021 (f) and 1259 (f) and exempted from zoning review under V.S.A. 24 Sec. 4413 (d):

- ~~(a) the cultivation or other use of land for growing food, fiber, trees, or horticultural and orchard crops; or~~
- ~~(b) the raising, feeding or management of livestock, poultry, equines, fish or bees; or~~
- ~~(c) the operation of greenhouses; or~~
- ~~(d) the production of maple syrup; or~~
- ~~(e) the on-site storage, preparation and sale of agricultural products principally produced onsite; or~~
- ~~(f) the on-site production of fuel or power from agricultural products or wastes produced onsite.~~

Agricultural structure (see Farm structure)

Animal

- (a) **Boarding:** An establishment involving any structure, land, or combination thereof used, designed, or arranged for the keeping of five (5) or more domestic ~~animals~~pets more than three (3) months of age for profit or exchange, inclusive of equines but exclusive of other livestock used for agricultural purposes in areas approved for agricultural uses. The keeping of four (4) or less such animals more than three (3) months of age for personal enjoyment shall not be considered “boarding” for the purposes of this ordinance.
- (b) ~~**Domestic Animal:** Any animal, including, but not limited to mammals, reptiles, birds, livestock and domestic pets, that have been bred or raised to live in or about the habitation of humans, including, but not limited to mammals, reptiles and birds, and is dependent on people for food and shelter.~~
- (c) **Domestic Pet:** Any canine, feline, or European ferret (*Mustela putorius furo*) and such other domestic animals as the Secretary of the Agency of Agriculture, Food and Markets shall establish by rule and that has been bred or raised to live in or about the habitation of humans, and is dependent on people for food and shelter.
- (d) ~~**Livestock:** Cattle, sheep, goats, equines (including, but not limited to, horses, ponies, mules, asses, and zebra.), fallow deer, red deer, American bison, swine, water buffalo, fowl and poultry, pheasant, Chukar partridge, Coturnix quail, camelids (including, but not limited to, guanacos, vicunas, camels, alpacas and llamas), ratites (including, but not limited to ostriches, rheas, and emus), and cultured fish propagated by commercial fish farms Animals used for food production (including eggs, milk, honey, and meat) or fiber.~~
- (e) **Grooming:** Any establishment where domestic pets are bathed, clipped, or combed for the purpose of enhancing their aesthetic value or health.
- (f) **Hospitals:** An establishment for the care and treatment of the diseases and injuries of animals and where animals may be boarded during their convalescence. (See Veterinarian Office)
- (g) **Kennel:** Accessory building or enclosure for the keeping of domestic pets.
- (h) **Barn or coop:** Accessory building or enclosure for the keeping of livestock.
- (i) **Shelter:** A facility used to house or contain stray, homeless, abandoned, or unwanted domestic ~~animals~~pets or livestock for the purpose of providing temporary kenneling and finding permanent adoptive homes and that is owned, operated, or maintained by a public body, an established humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and human treatment of animals.

- (j) **Store, Pet:** A retail sales establishment primarily involved in the sale of domestic pets, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and ~~farm animals such as horses, goats, sheep, and poultry livestock.~~

Cold Frame: A temporary structure placed ovetop of a garden bed typically made of, but not limited to, glass, plastic, fabric or other material used to extend growing season or protect seedlings and plants from the cold or heat.

Community Garden: A private, not for profit, or public common area used ~~for gardening by a group of households.~~by a group of households to grow and harvest food crops or non-food crops (e.g. flowers) for personal or group consumption, for donation, or for sale. Community gardens may be principal or accessory uses and may be located on a roof or within a structure.

Farm(ing): The use of land and/or structures for agricultural purposes. (See Agriculture and Urban Agriculture)

Green House: A permanent structure typically made of, but not limited to, glass, plastic, or fiberglass in which plants are cultivated.

Hoop House: A temporary structure typically made of, but not limited to, piping or other material covered with translucent plastic, constructed in “half-round” or “hoop” shape, for the purposes of growing plants.

Open Air Market: A building or site used for selling or offering for sale at retail of locally-grown vegetables or produce, occurring in a pre-designated area, where there ~~is~~ may be a collection of individual vendors or single vendor who have/has raised the vegetables or produce or have/has taken the same on consignment for retail sale. Also includes the incidental sale at retail of artisan-produced handicrafts, artwork, and baked goods.

Urban Agriculture: The production of food in a city at a household, community, or commercial scale; it can involve a range of activities including the cultivation of plants, keeping animals, and aquaculture. For the purposes of this ordinance, the term “urban agriculture” pertains to all agricultural activities not included in “agriculture” as defined in this ordinance.

Appendix A – Use Table – All Zoning Districts

Open Air Markets	N	Y	Y	N	Y	CU	CU	CU	Y	Y	(See Sec.4.4.1(d)2)	Y	Y	Y	Y	Y	Y	Y
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COMPREHENSIVE DEVELOPMENT ORDINANCE—
Garage Size and Orientation
ZA#15-01

That Appendix A, Comprehensive Development Ordinance of the Code of Ordinances of the City of Burlington be and hereby is amended by amending Sec. 4.4.5(d)(4), Residential Districts, thereof to read as follows:

Sec. 4.4.5 Residential Districts

(d) District Specific Regulations:

1. through 3. As written.
4. Accessory Residential Structures and Uses

An accessory structure and/or use as provided under Sec. 5.1.1~~2~~ and 5.1.2 customarily incidental and subordinate to a principal residential use, including but not limited to private garages, carriage houses, barns, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and detached fireplaces may be permitted as follows:

- A. through F. As written

* Material stricken out deleted.

** Material underlined added.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-15-02 – Conditional Use Review

As recommended by the Planning Commission Ordinance Committee on July 10, 2014

Changes shown (underline to be added, ~~strike-out~~ to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

- disconnecting Conditional Use Review from development that does not actually involve an identified conditional use (Sec. 3.5.2 (a) and Sec. 3.5.3);
- revising the Conditional Use Review criteria to focus more specifically on the aspects of the development that may actually be effected by a proposed conditional use (Sec. 3.5.6 (a) and (b)); and,
- clarifying the scope of conditions that may be imposed under Conditional Use Review and Major Impact Review (Sec. 3.5.6 (c)).

ARTICLE 3. APPLICATIONS, PERMITS AND PROJECT REVIEWS

PART 5. CONDITIONAL USE AND MAJOR IMPACT REVIEW

Sec. 3.5.1 Purpose

These conditional use regulations are enacted to provide for a more detailed consideration of development proposals which may present a greater impact on the community

Additionally, it is the intent of these regulations through the creation of a major impact review:

- (a) To ensure that projects of major significance or impact receive a comprehensive review under established criteria; and,
- (b) To ensure that the city's natural, physical and fiscal resources and city services and infrastructure are adequate to accommodate the impact of such developments, both individually and cumulatively.

Sec. 3.5.2 Applicability

(a) Conditional Use Review:

Conditional Use Review shall be required for the approval of all development subject to the following provisions of this ordinance:

1. any use identified under **Article 4** and **Appendix A – Use Table** as a “Conditional Use” or “CU;”

2. any Special Use specifically identified as being subject to conditional use review under **Article 5, Part 3**;
- ~~3. any application subject to **Article 9 — Inclusionary and Replacement Housing**;~~
- ~~4. all applications for an Institutional Parking Management Plan pursuant to the provision of **Article 8, Part 3**;~~
- ~~5. all applications subject to **Article 10 — Subdivision**; and,~~
- ~~6. all applications subject to **Article 11 — Planned Development**.~~

(b) Major Impact Review:

Unchanged

Sec. 3.5.3 Exemptions

Conditional Use and Major Impact Review shall not apply to applications involving one or more of the following:

- ~~(a) Single family dwellings;~~
- ~~(b)(a)~~ Temporary structures that do not otherwise involve a conditional use;
- ~~(e)(b)~~ Substantial rehabilitation that does not expand the floor area of an existing building or the structural capacity of existing development;
- ~~(d)(c)~~ Projects that do not result in a change of use or increased parking demand ~~as determined by the administrative officer~~; and,
- ~~(e)(d)~~ Subsurface site improvements including but not limited to underground utility lines and subsurface drainage ways.

Sec. 3.5.4 and Sec. 3.5.5

Unchanged

Sec. 3.5.6 Review Criteria

The application and supporting documentation submitted for proposed development involving Conditional Use and/or Major Impact Review, including the plans contained therein, shall indicate how the proposed use and associated development will comply with the review criteria specified below:

(a) Conditional Use Review Standards:

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. Based on the scale and characteristics of the proposed use and its development, the proposal is consistent with the purpose and intent of the zoning district and specifically stated policies and standards of the municipal development plan;

2. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses allowed by right in the same zoning district;
3. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies; and,
- ~~1.4. The capacity of existing or planned public community utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area.;~~
- ~~2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;~~
- ~~3. Traffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to complementing the flow of traffic and/or parking needs; if not in a commercial district, the impact of customer traffic and deliveries must be evaluated;~~
- ~~4. Any standards or factors set forth in existing City bylaws and city and state ordinances;~~
- ~~5. The utilization of renewable energy resources; and,~~

~~In addition to the General Standards specified above, the DRB;~~

- ~~1. shall consider the cumulative impact of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible;~~
- ~~2. in considering a request relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, RL-W, RM and RM-W districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green space standards must be observed.~~

- ~~3. may control the location and number of vehicular access points to the property, including the erection of parking barriers.~~
- ~~4. may limit the number, location and size of signs.~~
- ~~5. may require suitable mitigation measures, including landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.~~
- ~~6. may specify a time limit for construction, alteration or enlargement of a structure to house a conditional use.~~
- ~~7. may specify hours of operation and/or construction to reduce the impact on surrounding properties.~~
- ~~8. may require that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.~~
- ~~9. may consider performance standards, should the proposed use merit such review.~~
- ~~10. may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.~~

(b) Major Impact Review Standards:

Before a major impact development may receive approval, the DRB must be satisfied, based on documentation provided by appropriate city agencies, experts, interested parties and/or the applicant that the proposed development, ~~in addition to meeting the review standards for conditional use review above~~, shall:

1. Not result in undue water, air or noise pollution;
2. Have sufficient water available for its needs;
3. Not unreasonably burden the city's present or future water supply or distribution system;
4. Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;
6. Not cause an unreasonable burden on the city's ability to provide educational services;
7. Not place an unreasonable burden on the city's ability to provide municipal services;
8. Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city;
9. Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;

10. Be in substantial conformance with the city's municipal development plan and all incorporated plans;
11. Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location; and/or
12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.
2. time limits for construction.
3. hours of operation and/or construction to reduce the impact on surrounding properties.
4. that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,
5. such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

Sec. 4.4.5 Residential Districts

(d) District Specific Regulations:

5. Residential Density
- C. Residential Occupancy Limits.

In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in **Article 13**. Notwithstanding the following, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied.

Subject to Conditional Use approval by the DRB, a dwelling unit may be occupied by more than four (4) unrelated adults if it contains at least twenty-five hundred (2,500) square feet excluding its attic and basement pursuant to the following:

- (i) If in a RL district, the dwelling unit also contains at least an additional two hundred fifty (250) square feet and one (1) additional parking space per

adult occupant in excess of four (4); or,

- (ii) If in a RM district, the dwelling unit also contains at least an additional two hundred (200) square feet and one (1) additional parking space per adult occupant in excess of four (4).
- (iii) If in a RH district, the dwelling unit also contains at least an additional 150 square feet and 1 additional parking space per adult occupant in excess of four (4).

In considering a request relating to permitting a greater number of unrelated individuals residing in a dwelling unit within a residential zoning district, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet.

D. Redevelopment of Historic Carriage Houses.

Carriage houses and other accessory buildings listed or eligible for listing on the state or national register may be redeveloped and converted, in whole or in part, into one additional residential unit subject to review under the standards set forth for the redevelopment of historic buildings in Sec. 5.4.8 (b). All dimensional requirements of the underlying zoning district as set forth in Table 4.4.5-3 shall be met. Such a unit shall not be counted for the purposes of density calculation, and onsite parking shall be calculated as for a Shared Use Parking District.

PROPOSED: ZA-15-02 Conditional Use Review
Part 2 Housing

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

- removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment (Sec. 9.1.5 and 9.1.12);
- removing the requirement for Conditional Use approval by DRB for any project involving Inclusionary Housing (Sec. 9.1.8 and 9.1.12); and,
- removes the requirement for Conditional Use approval by DRB for any project involving Replacement Housing (Sec. 9.2.3, 9.2.5, 9.2.9 and 9.2.10).

ARTICLE 9. INCLUSIONARY AND REPLACEMENT HOUSING
PART 1: INCLUSIONARY ZONING

Sec. 9.1.1- Sec. 9.1.4

Unchanged

Sec. 9.1.5 Applicability

This ordinance provision applies to ~~all subdivisions and planned unit development (PUD) pursuant to Articles 10 and 11 respectively.~~ Any development of five or more residential units in a single structure ~~shall be considered “minor” planned unit developments and~~ shall be subject to the standards of this article. Multiple developments or projects by the same applicant or responsible party within any consecutive twelve (12) month period that in the aggregate equal or exceed the above criteria shall be subject to these regulations.

Except as otherwise provided in this ordinance, these regulations shall apply in the instances specified below.

- (a) The creation of five (5) or more residential units through new construction and/or substantial rehabilitation of existing structures, including the development of housing units utilizing development provisions other than those specified in **Sec 9.1.5 (b)**.
- (b) Where units are created using the Adaptive Reuse or Residential Conversion criteria pursuant to the provisions of **Art 4, Sec 4.4.5**, this article shall be applicable when at least ten (10) or more dwelling units are created.
- (c) An applicant may elect to be subject to the provisions of this article if new units are added to existing units for a total of 5 or more units.

Sec. 9.1.6 Exemptions

Unchanged

Sec. 9.1.7 Certificate of Inclusionary Housing Compliance

Unchanged

Sec. 9.1.8 Conditional Use Approval

~~A covered project, except subdivisions approved by the DRB pursuant to the provisions of the Article 10, must first receive approval of such board under conditional use criteria pursuant to the requirements of Article 3, Part 5.~~

Sec. 9.1.98 – Sec. 9.1.1211

Unchanged – re-numbered only.

Sec. 9.1.13–12 Additional Density and Other Development Allowances

All covered projects, ~~except as outlined under (b) below,~~ shall be entitled to increases in the development allowances of the underlying zoning district in accordance with the provisions of this section.

- (a) Any covered project shall be entitled to an increase in the maximum coverage allowed for the site on which the project is located following the calculation of density, height, lot coverage, setbacks, and parking improvements for the site. Calculations for these entitlements shall be based on the following tables:

Table 9.1.13-1 Density/Intensity Allowance Table			
Zoning District	Additional Allowance	Maximum Units/Acre	FAR
RH	15%	46	n/a
RM, RM-W	20%	25	n/a
RL, RL-W	25%	8.75	n/a
D, DT, DW	n/a	n/a	0.5 FAR+10' height set back 10' along street facade
NMU, NAC, NAC-R, BST	n/a	n/a	0.5FAR+10' height set back 10' along street facade

Table 9.1.13-2 Lot Coverage Allowance Table		
Zoning District	Additional Allowance	Maximum Lot Coverage
RH, NMU, NAC, NAC-R	15%	92%
RM-W	20%	72%
RM	20%	48%
RL, RL-W	25%	44%

~~(b)~~ Major and Minor PUD shall be treated as follows:

- ~~1. “Minor” PUD shall be exempt from the standards of Article 11, but shall be subject to the requirements of this article and all development standards as otherwise required by this ordinance.~~
- ~~2. “Major” PUD as described in Sec. 11.1.3, shall be subject to the provisions of this Article and Article 11. Planned Unit Development. No additional allowances under the provisions of this article shall be permitted for the construction of the required inclusionary units. Inclusionary units in any major PUD shall be provided in accordance with Table 9-A.~~

~~(e)~~(b) Other possible allowances for the provision of Inclusionary Units may include:

- A waiver of up to 50% waiver of parking spaces as outlined in Article 8, Sec. 8.1.14,
- A waiver of a portion of the impact fees associated with the Inclusionary units, pursuant to the Art. 3, Part 3 Impact Fee Administrative Regulations.

~~(d)~~(c) The allowances provided for herein may be declined at the option of the applicant;

~~(e)~~(d) With the approval of the DRB, ~~applying conditional use criteria,~~ units added to a project as market rate units may be substituted by nonresidential uses wherever such nonresidential uses are otherwise permitted in the district where the project is located. Approved substitution for nonresidential uses shall occur at the following rate: 1 market-rate dwelling unit = 1,500 square feet nonresidential space

~~(f)~~(e) All provisions of Sec. 9.1.9-8 through 9.1.12-11 shall apply, without exception, to any inclusionary units that are constructed.

Sec. 9.1.1413 Off-Site Option

Unchanged – re-numbered only.

Sec. 9.1.1514 General Requirements for Inclusionary Units

All covered projects must comply with the requirements set forth below.

- (a) In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the non-inclusionary units of the project;
- (b) Inclusionary units may differ from the market units in a covered project with regard to interior amenities and gross floor area, provided that:
 - 1. These differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the project's units; and
 - 2. These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the project's units; and
- (c) The gross floor area of the inclusionary units is not less than the following minimum requirements, unless waived by the DRB using the following criteria:
 - 1. All of the units being provided with a specific bedroom count are smaller than the standards outlined below;
 - 2. More than the required number of inclusionary units are provided on site, not all shall be subject to bedroom mix and size requirement; or,
 - 3. The units have an efficient floor plan (meaning that less than 5% of the square footage is devoted to circulation) and the bedroom size(s) is a minimum of 144sf or 12'x12'.

One bedroom	750	square feet
Two bedroom.....	1,000	square feet
Three bedroom.....	1,100	square feet
Four bedroom	1,250	square feet

- (d) Upon demonstration of inability to sell units to income eligible residents earning 75% of the median income, the Manager of the HTF may extend income eligibility to allow priority in the sale of inclusionary units to households earning as much as eighty percent (80%) of median income, adjusted for household size and to households residing in Burlington at the time that these units are offered for sale or lease;
- (e) Except for household income limitations as set forth herein, occupancy of any inclusionary unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project unless required under federal law, e.g. local use of the Low Income Housing Tax Credit, or in conflict with the stricter bylaws of the designated housing agency (see **Sec 9.1.1615(e)**); and
- (f) The final calculations for the number of inclusionary units shall be determined by the Manager DRB prior to the issuance of the zoning permit. If there is any change in the project due to sales prices for these units that increases the number of inclusionary units required, such modifications shall be determined by the Manager and communicated to the administrative officer prior to the issuance of a certificate of occupancy for the covered project. The rental or sales price of the

inclusionary units shall also be determined by the Manager prior to the issuance of a certificate of occupancy.

Sec. 9.1.1615 - Sec. 9.1.1716

Unchanged – re-numbered only.

Sec. 9.1.1817 DRB Review of Proposal for Phasing

Proposals for projects to be constructed in phases shall be reviewed as a component of the initial project review and shall be included in ~~DRB~~ any conditions of approval. A schedule setting forth the phasing of the total number of units in a covered project, along with a schedule setting forth the phasing of the required inclusionary unit(s), shall be presented ~~to the DRB~~ for review and approval as part of the permitting process, for any development subject to the provisions of this article. If phasing is not included as part of the review process, no phasing of the inclusionary units shall be allowed.

If a covered project is approved to be constructed in phases, the requirements of the following section shall be applicable to each such phase.

Sec. 9.1.1918 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy

Inclusionary units shall be made available for occupancy on approximately the same schedule as a covered project's market units, except that certificates of occupancy for the last ten percent (10%) of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units; except that with respect to covered projects to be constructed in phases, certificates of occupancy may be issued on a phased basis consistent with the conditions of approval set forth ~~by the DRB~~ in **Sec. 9.1.1817**.

Sec. 9.1.2019 - Sec. 9.1.2120

Unchanged – re-numbered only.

PART 2: HOUSING PRESERVATION AND REPLACEMENT/DEMOLITION AND CONVERSION

Sec. 9.2.1 – Sec. 9.2.2

Unchanged

Sec. 9.2.3 Conditional Use Approval

Notwithstanding any other provision of this ordinance, a person who proposes to remove, demolish, or to convert to a nonresidential use, any housing unit or units, in a zone where such a use is otherwise permitted, must ~~first~~ obtain ~~conditional use~~ approval ~~from the development review board~~ pursuant to ~~the all applicable~~ provisions of ~~Article 3, Part 5~~ this Ordinance.

In addition to the permit application requirements contained in Article 3, the applicant must also submit:

- (a) A statement certifying the number of housing units to be demolished or converted to a nonresidential use and the number of bedrooms existing within each of these units; and
- (b) A list containing the name of each tenant currently residing in the housing units to be demolished or converted, as well as verification by affidavit of compliance with the tenant notice requirements of this section.

Sec. 9.2.4 Relocation Requirements; Notice and Relocation Costs

Unchanged

Sec. 9.2.5 Housing Replacement Requirement

In addition to all other applicable requirements ~~for a conditional use of this Ordinance, the DRB shall require, as a condition of approval, that~~ an owner shall replace any housing units that are demolished or converted to a nonresidential use.

~~An owner shall meet the replacement requirement by creating new housing units pursuant to a plan approved by the DRB. The plan shall be in accordance with the provisions of this Article.~~ Replacement units may be provided by the owner or by the owner's designee fully in any of the following ways:

- a. New Construction. Construction of housing units within a new structure or new addition;
- b. Residential Conversion. Conversion of all or a portion of a nonresidential building to residential use; or,
- c. Subsidy. Creation of affordable housing units that have not been affordable to low-income households for the twenty-four (24) months preceding the date of application for ~~conditional use~~ approval.

An applicant may use any of the three methods to partially fulfill their replacement requirements, until the total requirement is met, ~~subject to approval by the DRB~~.

Sec. 9.2.6 – Sec. 9.2.8

Unchanged

Sec. 9.2.9 Relief

Any owner who has applied for ~~conditional use~~ approval for demolition or conversion of a housing unit or units may apply to the DRB for relief from the housing replacement requirements of **Section 9.2.5**. Such relief may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

- (a) The literal interpretation and strict application of the housing replacement requirement would be impossible for the owner;
- (b) The requested relief would be consistent with the spirit and purpose of this Article; and
- (c) The requested relief does not constitute a grant of special privilege inconsistent with the limitations upon similar properties.

The DRB must make positive findings on each of the three (3) criteria above in order for any such adjustment to be valid.

Sec. 9.2.10 Exemptions

This article, ~~except for Section 9.2.4 pertaining to conditional use approval~~, shall not be applicable to:

- (a) – (d) *Unchanged*

PROPOSED: ZA-15-02 Conditional Use Review
Part 3 Planned Development

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

- removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment and the necessity of having Major and Minor PUD's (Sec. 11.1.3);
- disconnecting PUD's from Subdivision review in cases where no actual subdivision of land is being proposed (Sec. 11.1.3); and,
- clarifies the scope of flexibility for development standards afforded by the PUD Review process (Sec. 11.1.4, 11.1.5 and 11.1.6).

ARTICLE 11. PLANNED DEVELOPMENT
PART 1. – PLANNED UNIT DEVELOPMENT

Sec. 11.1.1 – Sec. 11.1.2

Unchanged

Sec. 11.1.3 Major and Minor Planned Unit Development

~~A minor Planned Unit Development shall include any development consisting of:
5 or more units in a single structure, prompting the requirements of Article 9.
Inclusionary and Replacement Housing.~~

~~redevelopment of existing carriage houses and other out buildings meeting density of
the underlying zoning district;~~

~~development of accessory units in a detached structure.~~

~~Minor PUD's shall be exempt from the requirements and standards of this article, but
shall be subject to the development standards as otherwise required by this ordinance.~~

~~All other development consisting of one or more lots, tracts or parcels of land to be
developed as a single entity subject to the provisions of Sec. 11.1.4 below shall be
considered a major PUD and shall be subject to the review processes and
requirements as defined under this Article.~~

Sec. 11.1.43 General Requirements and Applicability.

Any development involving multiple lots, tracts or parcels of land to be developed as
a single entity, or seeking to place multiple structures and/or uses on a single lot
where not otherwise permitted, may be permitted as a PUD subject to the provisions
of this Article.

A planned unit development may be permitted subject to ~~the provisions of this Article~~ minimum project size as follows in the following districts:

Districts	Minimum Lot <u>Project</u> Size
RH, RM, RM-W, Downtown and Neighborhood Mixed Use, Institutional ¹	No minimum lot <u>project</u> size.
RL, RL-W ² , RCO-R/G ¹	2 acres or more

~~1.~~ Subject to Conditional Use Review pursuant to Art 3, Part 5.

~~2.1.~~ The two acre minimum may be waived by the DRB for the conversion of an accessory structure existing as of January 1, 2007 to a residential use.

~~Planned unit developments are not authorized for non-residential uses except as provided for under Sec. 11.1.7. A planned unit development must receive a certificate of appropriateness under the design review provisions of Article 3, Part 4, the development review standards of Article 6, and final subdivision plat approval in accordance with Article 10.~~

Sec.11.1.54 Modification of Regulations.

With the approval of the DRB after a public hearing, and subject to the limitations of Sec. 11.1.6, the following modifications of the requirements of the underlying zoning may be altered within a planned unit development:

- density, frontage, lot coverage, and setback regulations~~requirements may be altered for a planned unit development may be met as calculated across the entire project rather than on an individual lot-by-lot basis;~~
- required setbacks may apply only to the periphery of the project rather than on an individual lot-by-lot basis;
- ~~More~~ more than one principal use and more than one principal structure may be permitted on a single lot; ~~At the discretion of the DRB the and,~~
- ~~dwelling buildings units~~ may be of varied types including single detached, attached, duplex or apartment construction.

~~-Any proposed modifications of regulations shall be listed in a statement accompanying the plat application submission and such modifications shall be subject to the provisions of Sec. 11.1.65 and Sec. 11.1.67.~~

Sec. 11.1.56 Approval Requirements.

The following requirements shall be met for the DRB to approve a planned unit development:

- ~~(a) Lot coverage requirements of the district shall be met;~~
- ~~(b) The minimum setbacks required for the district shall apply to the periphery of the project;~~

- ~~(c)~~(a) The minimum ~~parcel~~-project size requirements of Sec 11.1.3 shall be met if the project is located in a RL or RL-W districts;
- ~~(d)~~(b) The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Art. 6;
- ~~(e)~~(c) The project shall meet the requirements of Article 10 for subdivision review where applicable;
- ~~(f)~~(d) The minimum setbacks required for the district shall apply to have been met at the periphery of the project;
- (e) density, frontage, and lot coverage requirements of the underlying zoning district have been met as calculated across the entire project;
- (f) All other ~~dimensional, density, and use~~ requirements of the underlying zoning district ~~shall have been~~ met as calculated across the entire project;
- (g) Any proposed accessory uses and facilities shall meet the requirements of Sec. 11.1.6 below;
- (h) – (k) *Unchanged*

Sec. 11.1.76 Accessory Facilities.

- (a) A planned unit development may contain a building or buildings intended for non-residential uses such as but not limited to as a community center, recreation facility, child care center and/or business office if the DRB determines that such use or uses are compatible with the intended principle residential use and will not contribute to parking problems on site or in the surrounding area.
- (b) *Unchanged*

Department of Planning and Zoning

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

www.burlingtonVT.gov/pz

David E. White, AICP, Director
Ken Lerner, Assistant Director
Sandrine Thibault, AICP, Comprehensive Planner
Jay Appleton, Senior IT/GIS Programmer
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Senior Planner
Nic Anderson, Planning & Zoning Clerk
Elsie Tillotson, Administrative Assistant



MEMORANDUM

TO: Yves Bradley, Chair
FROM: David E. White, AICP, Director of Planning & Zoning
DATE: Wednesday, November 05, 2014
RE: Proposed Zoning Amendment –
ZA-15-? Downtown Districts Setbacks Abutting a Residential Zone

For your consideration you will please find attached a proposed amendment to the *Burlington Comprehensive Development Ordinance* for your consideration, warning, and adoption as recommended by the Planning Commission Ordinance Committee.

The proposed amendment is as follows:

- **ZA-15-?** -to amend the zoning setback provision of Section 4.4.1, Table 4.4.1-1 Footnote 2 and Sec. 4.4.1 (d) 6 to change the wording for downtown districts setbacks abutting a residential zone from “property line” to “zoning district boundary line”.

This amendment comes as a result of a determination by the Environmental Division that the language of the ordinance by referring to a property line, allows a change of a property line to de facto change the zoning setback. The result without this setback in effect extends the encroachment of a mixed use district into a residential area based solely on changes in parcel boundaries rather than on the zoning boundary line established by the Planning Commission and City Council. Instead the City needs to assure better control over the expansion of districts, thus this change references the “zoning boundary” rather than a dynamic “property line” that is not under the City’s control.

The PCOC unanimously concurred and agreed that such an amendment be referred to the full PC.

Planning staff is available to answer any questions on this proposed amendment.

Thank you for your consideration.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-15-? Downtown Districts Setbacks Abutting a Residential Zone

As recommended by the Ordinance Committee.

Changes shown (underline to be added, ~~strike-out~~ to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: See attached memo.

Sec. 4.4.1 (a) through (c) as written.

Table 4.4.1-1 Dimensional Standards and Intensity						
Districts	Max. Intensity (floor area ratio)	Max. Lot Coverage	Min. Building Setbacks (feet)			Height³ (feet)
			Front⁵	Side^{2, 4}	Rear^{2, 4}	
Downtown						
D	5.5 FAR	100%	Greater of 0' or 12' from curb	0	0	Min: 30 Max: 65
Church St. Marketplace	<i>Same as Downtown</i>					Min: 30 Max: 38 (see Sec. 4.4.1(d)(4)(B))
Downtown Transition District						
DT		100%	Greater of 0' or 12' from curb	0	0	
A. North of Buell St.	4 FAR	<i>Same as Downtown Transition</i>				Min: 30 Max: 45
B. South side of Main St.	5.5 FAR	<i>Same as Downtown Transition</i>				Min: 30 Max: 65
C. South of Buell St.	4 FAR	<i>Same as Downtown Transition</i>				Min: 30 Max: 45
D. South of Maple St.	2 FAR	<i>Same as Downtown Transition</i>				Min: 30 Max: 35
Downtown Waterfront						
DW		100%	Greater of 0' or 12' from curb	0	0	
A. North of Pearl - East	4 FAR	<i>Same as Downtown Waterfront</i>				Min: 30 Max: 45
B. Pearl to Bank - East	4 FAR	<i>Same as Downtown Waterfront</i>				Min: 30 Max: 45
C. Pearl to Bank - West	2 FAR	<i>Same as Downtown Waterfront</i>				Min: 30 Max: 35
D. Bank to College - East	3 FAR	<i>Same as Downtown Waterfront</i>				Min: 30 Max: 35
E. Bank to College - West	2 FAR	<i>Same as Downtown Waterfront</i>				Min: 30 Max: 35
F. South of College	2 FAR	<i>Same as Downtown Waterfront</i>				Min: 30 Max: 35

Downtown Waterfront – Public Trust						
A. North of Pearl West	2 FAR	Same as Downtown Waterfront				Max: 35
B. Lakeshore ⁴	2 FAR	Same as Downtown Waterfront				Max: 35
Battery Street Transition						
BST	3 FAR	100%	Greater of 0' or 12' from curb	0	0	Min: 30 Max: 35
<p>1 Floor area ratio is defined and described in Art 5. Bonuses for additional FAR where available are described in section (d)6 below. Actual maximum build out potential may be reduced by site plan and architectural design considerations of Art 6.</p> <p>2 Structures shall be setback along any zoning district boundaryproperty line that abuts a residential zoning district pursuant to the requirements of (d)6 below.</p> <p>3 Minimum building height shall be 30-feet and 3 stories. Measurement of and exceptions to height standards are found in Art 5. Bonuses for additional building height where available are described in section (d)6 below. Any portion of a building over 45-feet in height shall be setback from the front property line pursuant to the requirements of (d)4 below.</p> <p>4 All structures shall be setback a minimum of 50-feet from the shoreline of Lake Champlain unless an encroachment is authorized under (d)5 below.</p> <p>5 All structures shall be setback 12-feet from the curb on a public street except as otherwise allowed by the DRB for development along the following streets: both sides of Center Street; both sides of Pine Street between Cherry and Pearl Streets; the east side of Pine Street between Bank and Main Streets; the west side of Pine Street between College and Main Streets; and South Winooski Avenue between Bank and College Streets. The DRB may order a wider setback in any case under its review if it should determine that the application cannot be approved under applicable criteria without such additional setback.</p>						

(d) 6. Residential District Setback

Structures shall be setback a minimum of 15-feet from any [zoning district boundary](#)~~property~~ line that abuts a residential zoning district. (Exceptions to yard setback requirements can be found in (Sec. 5.2.5))

Where a structure, legally existing before 1 January 2011, already encroaches into the required residential district setback for the Residential High-Density District (RH), the DRB may permit, subject to design review, additions to the pre-existing encroaching structure provided:

- the addition does not project farther into the residential district setback towards the RH district boundary than the pre-existing encroachment. In no event shall the encroachment of the addition be less than 5 feet from the boundary line; and,
- the height of any addition does not exceed the height of the pre-existing encroachment or 35-feet whichever

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TO: Planning Commission
FROM: Scott Gustin
DATE: November 13, 2014
RE: Article 9, Inclusionary Housing Exemptions

=====

This proposal exempts institutional student housing outside of the Institutional zone from the inclusionary housing requirements of Article 9. Presently, the exemption applies only to institutional student housing within the Institutional zone. The City has seen one application to develop institutional student housing outside of the Institutional zone and expects to see more in the future. The present exemption recognizes that institutional student housing is a clearly different entity than housing available to anyone. Institutional student housing provides temporary housing for students while enrolled at the institution. The principles of inclusionary housing to provide housing to an array of citizens with various income levels are not intended to apply to institutional student housing. The current exemption should apply to institutional student housing regardless of the zone wherein it is located.

The Planning Commission first reviewed this amendment on September 23, 2014 and requested changes to include “affiliates” of the institutions and to remove the limitation of just institutions located within the city limits of Burlington. Those changes are been made in the proposed language below.

New CDO language is underlined, and language to be deleted is ~~stricken~~.

Sec. 9.1.6 Exemptions

Exempt from the requirements of this article are:

- (a) Projects ~~that are located within an Institutional (I) zoning district~~ that are developed by or for an educational institution for the exclusive residential use and occupancy by that institution’s students or affiliates or by the students of another educational institution. In the event that the property which received an exemption under this section ceases to be used by an educational institution for the exclusive residential use and occupancy by that institution’s students or affiliates or by another educational institution, the exemption from Article 9 shall no longer apply, and compliance with the same shall be enforced accordingly;
- (b) Those dwelling units in a covered project that are produced as “replacement units,” pursuant to Article 9, Part 2 and which do not produce any net new units; and,
- (c) Projects created using the Senior Housing Development Bonus pursuant to the provisions of Article 4.

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Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/planning

*Yves Bradley, Chair
Bruce Baker, Vice-Chair
Andrew Saba
Lee Buffinton
Harris Roen
Andy Montroll
Jennifer Wallace-Brodeur
Vacant, Youth Member*



Burlington Planning Commission Minutes

Tuesday, November 12, 2014 - 6:34 pm

PC Present: L. Buffinton, H. Roen, J. Wallace-Brodeur, Y. Bradley, A. Montroll, B. Baker

Absent: E. Lee, H. Ransom, Y. Bradley leaves at 7:30

Staff: D. White, E. Tillotson, S. Thibault

I. Agenda

No changes presently, possible rearrangement to accommodate early departure of the Chair.

II. Public Forum

J. Ripa: He was here this past May to speak to a change in the statute of limitations, proposing 15 year. He understood that the City Attorney's office would make recommendations and return to the Commission with suggested action. He has a customer for his Burlington property that is affected by this situation.

B. Baker: This is an issue that I brought to the Commission. I tend to think that 15 years is a reasonable statute of limitations period.

D. White: There were a couple of meetings with the City Attorney about this.

Y. Bradley: I suggest that we nudge the attorney since we do want resolution on this issue.

B. Baker: Perhaps we should propose an ordinance change.

L. Buffinton: This action was associated with the clean hands policy during our discussions. Let's make this a priority of the Ordinance Committee.

Y. Bradley: Let's ask the Attorney where this stands and we will contact the Rippas when something is proposed.

Closed public forum 6:48 pm.

III. Report of the Chair

The Chair presented the following:

- He has reviewed the market analysis from the consultants. He feels that there is a possible slight bias from consultants toward housing in south end.

D. White: Does the Chair feel that the market is characterized correctly?

Y Bradley: Yes. The report potentially targets the south end for micro housing which could serve a portion of the housing demand.

As approved by the Burlington Planning Commission on , 2014.

IV. Report of the Director

The Director presented the following:

- Our Zoning Clerk Nic Anderson's last day is this coming Friday. The job posted advertisement period ends this coming Monday. He will be impossible to replace but we wish him well.
- The Director spent weekend with Joe Spiedel and others in Portland ME. Portland is a really good example of a city with challenges similar to Burlington. There was a lot of sharing between committee members, housing is a very important issue in Portland as well.

V. Housing Action Plan

CEDO Staff: Brian Pine

The process has taken longer than we hoped. The draft from Oct 2nd has just been replaced by a more recent draft which was received on November 10th. The earlier draft has been revised with comments from the Mayor.

Feedback: The general concerns of the public were firstly: building a significant number of student beds, primarily off campus. This is a bit of a lightning rod and criticism was received from many for this approach. In this version the number proposes a 1,500 bed increase in campus and downtown housing which is the UVM concept through their housing master plan. One of most important points is that the administration can't force more students to stay on campus, students want independence. The price of Redstone Apartments is comparable to dorm cost, roughly \$800 per bed in residential neighborhoods. There was a lot of concern and comments and the associated need to work with UVM.

Areas that concern the Planning Commission are eliminating parking minimums, the general public was not willing to remove those requirements. The public doesn't really understand the proposal and the concept that market demands will supply parking. Ward I and Ward II people believe that no parking will exacerbate parking complications.

D. White: Portland is working on FBC for one area of their city. On the record review is not presently in their plan but may end up in the plan.

H. Roen: The issue is that for a homeowner or small business, the process is too expensive for small entities.

D. White: The burden is actually on the city. The issue is does the neighbor have the necessary resources to participate fully?

B. Baker: It seems that there is a burden both on the city and on the applicant.

B. Pine: Regarding inclusionary zoning revisions, Cornerstone Consulting asked if Burlington had done an econometrics study. As far as Brian knows, there is no funding for such a study.

D. White: There were not specific recommendations around inclusionary zoning or about modernizing the ordinance which hasn't changed much in 24 years.

B. Pine: It would be good to hire a consultant to tell us what we need to do to reform the building code, particularly the rehabilitation sub code which needs more flexibility. Rehabilitation should not be treated as if it were new building, it's a disincentive. Bob Duncan recommends a robust public discussion about building codes. A discussion of fees should examine the scale of fees to evaluate if they are too high.

D. White: This needs to be part of the broader discussion of the permitting processes.

B. Pine: The South End planning process, include housing, appropriately should consider the live/work concept for this area.

H. Roen: Doesn't believe that everyone in the south end is against housing.

As approved by the Burlington Planning Commission on , 2014.

Y. Bradley: There is sensitivity to this issue. There could be a discussion with the consultant around the semantics since this is a very sensitive area.

B. Pine: The University sees a need for increasing the supply of student housing on and off campus and extending existing commitments. There should be some consideration of creating a pot of money to tip the balance toward longer term residents. One possibility is TIF money.

A. Montroll: Building single family homes in Burlington is becoming almost impossible, as more student housing is available. We should support the return of single families return to neighborhoods.

Y. Bradley: During his time on the Police Commission, he became aware that most department employees couldn't afford to live in city housing.

B. Pine: The housing trust fund is a means to support single family housing. Since 1989 administrative budgeting has reduced the level of funding which needs to be increased to its previous level. There has been an effort used all over the country to identify homeless people and identify associated risk factors. Housing is the first and lowest barrier during cold weather. As shelter, the motel voucher system just doesn't work. The concept of providing shelter just in the winter time is gaining support.

D. White: Portland, Maine has 24/7 availability with some treatment programs.

B. Pine: And an aging population.

L. Buffinton: There is a need for greater density in the RM zone, and more accessory units.

J. Wallace-Brodeur: Presents a letter from Kirby Dunn emphasizing the advantages of the home share program.

VI. Proposed Zoning Amendments

ZA-15-02 Subdivision and Conditional Use Review Changes

D. White: This is a follow up to a previous discussion about this subject. It affects adaptive reuse for carriage barns which is relocated to item d. It is a treatment similar to the pre 2007 ordinance. Parking is in the shared parking zone.

H. Roen: Would like to see the renewable energy standard remain.

L. Buffinton: Agrees with H. Roen.

On a motion by H. Roen, seconded by L. Buffinton, the Commission unanimously warns ZA-15-02 for public hearing on December 9, 2014, as amended.

Downtown Districts Setbacks Abutting a Residential Zoning District

This item is postponed to the next Commission meeting.

VII. Public Service Board Wireless Telecommunications – 128 Lakeside Avenue

D. White: Over the course of the last several months, there has been an increase in activity around cell tower installations. So what is the City's role in this process? The City does have a seat at the table as an interested party. An example of a complicated installation is the North Winooski Avenue. Some installations are not an issue. 128 Lakeside is another new one and there are a number of questions about this. Does it violate any community standard in our ordinance? There are other telecom utilities on the same property.

A. Montroll: There are a scope of different carriers, Verizon, AT&T and others, all separate companies.

D. White: This is the second application for the same property.

As approved by the Burlington Planning Commission on , 2014.

A. Montroll: We need speed and capacity. Title 30 changed this year to a public meeting process. Planning Commissions may not realize that they can participate in these hearings.

A. Montroll: This has a lot to do with community values?

K. Smart, attorney for AT&T: The rooftop placement doesn't work within AT&T and there is a capacity issue in the south end. Co location, the red playpen (North Winooski Avenue) is too high based on the FCC licensing regulations. They would like to engage with the City about this issue.

VIII. 2015 Regular Meetings Schedule Adoption

On a motion by J. Wallace-Brodeur, seconded by L. Buffinton, the Commission unanimously adopts the proposed annual meeting schedule for calendar year 2015.

IX. Committee Reports

Ordinance Committee – parking and shared parking.

LRPC – has met, will need to revisit south end project.

X. Commissioner Items

None

XI. Minutes/Communications

On a motion by A. Montroll, seconded by J. Wallace-Brodeur, the Commission unanimously approved the minutes of October 28th, 2014.

XII. Adjourn

On a motion by J. Wallace-Brodeur, seconded by A. Montroll, the Commission unanimously adjourned at 8: 46pm.

Y Bradley, Chair

Date

E Tillotson, recording secretary

From: [David Ross Golden](#)
To: bbaker@cdbesq.com; l.buffington@gmail.com; emilyannicklee@gmail.com; andym@montrrollaw.com; roen@burlingtontelecom.net; jwb@burlingtontelecom.net; [Sandrine Thibault](#); ybradley@vermontrealestate.com
Subject: Public Comment on ZA 15-2
Date: Tuesday, December 09, 2014 6:24:10 PM

TO: Burlington Planning Commission
Sandrine Thibault

CC: City Counselors

FROM: David Ross Golden

DATE: December 8, 2014

RE: ZA 15-2 and Burlington's Housing Action Plan

The Burlington Planning Commission is requesting public comments on December 9th regarding proposed zoning amendment 15-2. The purpose of the ZA 15-2 is to increase density in all of Burlington, and not just downtown, by making construction more profitable for developers.

The changes to the ordinance that I object to are:

- Eliminating conditional reviews and major impact reviews for some very significant projects. [Sec. 3.5.2(a) 2]
- Eliminating individual and neighborhood protections by not considering adverse impacts and cumulative impacts in order to reduce permitting hurdles for the developer. [Sec. 3.5.6 (a) 2 – Review Criteria eliminates all consideration of adverse and cumulative effects on neighbors and neighborhoods.]
- Allowing more units per building; and larger buildings per lot.

[Sec. 4.4.5 d (c), Sec. 9.1.5, Sec. 9.1.12]

- Introducing mixed use into any neighborhood district, including RL and RM where it historically has not been allowed by zoning. [Sec. 11.1.6]
- Allowing a diverse range of housing stock (duplexes, apartments, condos, and multi-resident units above shops) to be built in any neighborhood despite adverse impacts on nearby property values and the character of the neighborhood [Sec. 11.1.4]
- Allowing large multi-unit resident complexes (PUDS) to be constructed in any neighborhood despite the underlying RL, RM, RH zoning limits on density [Sec. 11.1.3].

LACK OF TRANSPARENCY

The Mayor's office, CEDO, the Planning Commission and the Planning and Zoning Department have done a disservice to Burlington residents by misleading them with regard to the scope of PlanBTV. The initiatives listed above are in PlanBTV, but the afore mentioned parties repeatedly told the public that PlanBTV was for the downtown/waterfront district. The huge publicity effort for PlanBTV did not effectively disclose to city residents that PlanBTV's vision and initiatives would also be implemented in residential neighborhoods. Unlike the publicity used by City Hall to tell people about PlanBTV for the downtown /waterfront district, CEDO has not used any publicity to effectively engage city residents about City Hall's vision for increased density and mixed use in residential neighborhoods.

Many of the 2000 people who participated in PlanBTV were not city residents. Many of the participants were city employees who live out of town, and other downtown commuters. Compared to the 40,000 people who live in Burlington, the 2000 total participants in PlanBTV represents less than 5% of our city's population. PlanBTV obtained less input and was less engaging with city residents than is being represented by City Hall when it says that thousands of people participated in creating PlanBTV.

The vast majority of city residents will be surprised to learn that city officials are approving ordinances that will increase density in their neighborhoods while at the same time removing language from the ordinance that protects the average citizen's financial and personal interest in their own property and their neighborhood.

The lack of engagement regarding the future of residential neighborhoods appears to have been intentionally misleading because the ordinance changes allowed by ZA 15-2 are as significant as Plan BTV's goals for the downtown/waterfront district.

In fact, in my opinion, the public should harshly criticize this administration for its lack of transparency about how PlanBTV was intended not just for the downtown/waterfront district but for the entire city.

ZA 15-2 provides developers with expansive rights to increase density in all residential neighborhoods regardless of adverse impacts and cumulative impacts on neighbors and the surrounding neighborhood.

It is dishonest and sneaky to proceed with implementing PlanBTV initiatives outside of the downtown/waterfront district before educating and engaging the public about the significant ramifications that these ordinance changes will have on their neighborhoods.

Before ZA 15-2 has a reading with City Council, city officials owe city residents much more engagement, education, and a chance to provide their voices regarding the vision for their residential neighborhoods, OR, ZA 15-2 should be limited to the downtown district. (no ½ mile extension beyond the downtown district).

Proceeding with ZA 15-2 would be an example of tricking city residents. When residents see a project going up and learn that the ordinances have changed to give developers too many rights and their neighborhood is adversely impacted by development projects, they will look at City Council and City Hall and realize that they have been treated badly by their representatives. Please avoid this blow-up by putting ZA 15-2 on hold and start engaging the public about what the city is planning for neighborhoods.

Most likely, city residents will not want ZA 15-2 to be as developer-friendly as it is written. Until ZA 15-2 is understood by the broad public and probably modified to be less density-intensive, ZA 15-2 should not be submitted to City Council for its first reading.

AN ABUSE OF ECONOMIC POWER AND POLITICAL INFLUENCE

ZA 15-2 financially benefits people who have economic power and political influence. Too many powerful developers are directly involved in drafting this zoning amendment and the Housing Action Plan. This will become obvious to voters if you proceed with ZA 15-2 without public engagement.

Planning and Zoning and the DRB have always been too influenced by developers -- approving requested changes to developer's permits and granting their permits even when the developer's permit request is not consistent with our city ordinances. The Mayor considers Planning and Zoning's permit revenues a performance metric when evaluating the department; and this creates an incentive for Planning and Zoning to endorse developers' projects even when the development may be contrary to city ordinances and even when the development harms neighbors and neighborhoods. Something has to be done to fix this.

Given the powerful developers' and Planning and Zoning's financial interests, it behooves us to slow-down the process and make sure the zoning amendment is protecting current residents.

EXTRACTIVE ECONOMIC MODEL

ZA 15-2 transfers unreasonable power and wealth to developers because it eliminates protective language for residents from the Review Criteria; and residents' voices, protests, and how they are impacted will be ignored when permits are requested and granted to developers. [See ZA 15-2: Sec. 3.5.6 (a)]

DENSITY:

ZA 15-2 allows an unfair transfer of value from residents to developers because property values and quality of life will drop for current city residents, while developers will profit from their development projects and the rights granted to them by the new zoning ordinances in ZA 15-2.

If most of your neighbors don't know about these proposed changes to the zoning that affects their quality of life, their property values, and their neighborhood, then it is too early to approve ZA 15-2.

I am opposed to the approval of ZA 15-1 because the proposed ordinance changes are (too) developer-friendly and because the increase in density and lack of protections in the review criteria will cause irreparable adverse impacts in our residential neighborhoods.

ZA 15-2 is too-developer-friendly. ZA 15-2 gives too much leeway and too many rights to developers and at the expense of long-time residents.

ZA 15-2 should not be implemented because it allows developers to build large-scale developments, mixed use, and underground garages in all residential neighborhoods regardless of the underlying zoning limits on density; and construction permits will be given to developers **without any consideration of adverse and cumulative impacts on neighbors and the neighborhood.**

We should not ignore the adverse impacts of development on neighbors and residential neighborhoods when evaluating permit requests. ZA 15-2 allows development that will ruin residential neighborhood property values and degrade the quality of life for residents.

Development projects should be denied because of adverse impacts and cumulative impacts.

We should not ruin residential neighborhoods with PUDS.

We should not ruin residential neighborhoods with mixed use buildings / activities.

We should not build underground garages near or in residential neighborhoods. Garages ruin nearby property values because they cause an increase in traffic, pollution, crime and vandalism. For health and safety reasons with respect to children who attend Edmunds, a garage should not be built under the playground at Edmunds Middle School. The ordinance needs to require a conditional review for all garages in all districts.

Thank you.