

## Burlington Planning Commission

149 Church Street  
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*Yves Bradley, Chair  
Bruce Baker, Vice-Chair  
Lee Buffinton  
Emily Lee  
Andy Montroll  
Harris Roen  
Jennifer Wallace-Brodeur  
vacant, Youth Member*



## Burlington Planning Commission

Regular Meeting

**Tuesday, February 23, 2016 - 6:30-8:00 P.M.**

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

### AGENDA

*Note: times given are approximate unless otherwise noted.*

**I. 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.

**II. Report of the Chair (5 min)**

**III. Report of the Director (5 min)**

**IV. Agenda**

**V. Proposed CDO Amendment: Low Impact Design (10 min)**

The Commission will discuss a proposed amendment to allow an additional 10% lot coverage in RL and RM zones for pervious pavement. This amendment intends to provide a small incentive for installing pervious pavement for improved on-site stormwater management. The PC Ordinance Committee recommended approval of this amendment at their December 3, 2015 meeting. A memo regarding this proposed amendment is provided on pages 3-4 of the agenda packet.

**VI. Proposed CDO Amendment: Natural Resource Protection Overlay District (5 min)**

In July 2015, delegation was granted to the City for the Shoreland Protection act by the VT Agency of Natural Resources, with two conditions pertaining to amendments to the City's CDO Sec. 4.5.4. A memo regarding these conditions and proposed amendments to Sec. 4.5.4., are provided on pages 5-7 of the agenda packet. A revised map of the NR Overlay District will be provided by the CCRPC to reflect the change.

**VII. Proposed CDO Amendment: Duplexes on Existing Lots (15 min)**

The proposed amendment is to remove the footnote prohibiting duplexes on new lots in the RL and RL-W zones, in order that the requirements of the ordinance will be consistent with the expressed intent of these zoning districts. A memo and use table regarding this proposed amendment are provided on pages 8-10 of the agenda packet.

*This agenda is available in alternative media forms for people with disabilities. Individuals with disabilities who require assistance or special arrangements to participate in programs and activities of the Dept. of Planning & Zoning are encouraged to contact the Dept. at least 72 hours in advance so that proper accommodations can be arranged. For information, call 865-7188 (865-7144 TTY). Written comments may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401.*

**VIII. Proposed CDO Amendment: 15 Year Statute of Limitations (20 min)**

The Commission will conclude its discussion of a proposed amendment regarding the 15 Year Statute of Limitations. Supporting documents for this item have been included on pages 11-21 of the agenda. Revised text for the proposed amendment will be provided in advance of the meeting.

**IX. Burlington Town Center Redevelopment (10 min)**

The Planning Commission's representatives on the Development Agreement Public Advisory Committee (DAPAC) will provide an update to the Commission on the recently revised plans for the mall and the components of a zoning ordinance amendment that the Commission will be likely to consider.

**X. Committee Reports**

**XI. Commissioner Items**

**XII. Minutes/Communications**

The Commission will review approve minutes from the February 9, 2016 meeting which are provided on pages 22-27 of the agenda packet. Communications for consideration by the Commission are included on pages 28-32.

**XIII. Adjourn - 8:00 p.m.**

## Department of Planning and Zoning

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*Mary O'Neil, AICP, Principal Planner*  
*Anita Wade, Zoning Clerk*  
*Elsie Tillotson, Department Secretary*



**TO:** Planning Commission  
**FROM:** Scott Gustin  
**DATE:** December 4, 2015  
**RE:** Low Impact Development (LID) Amendment to CDO

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Following several reviews and iterations beforehand, the Planning Commission Ordinance Committee recommended approval of this LID amendment at their December 3, 2015 meeting.

This amendment simply allows an additional 10% lot coverage in RL and RM zones for pervious pavement. The purpose of the amendment remains to provide at least a small incentive for installing pervious pavement for improved onsite stormwater management. The amendment merely affords an extra 10% for pervious pavement, like the provisions for decks, patios, and the like.

Proposed CDO Language:

### **Article 4: Zoning Maps and Districts**

#### **Sec. 4.4.5, Residential Districts**

##### **(d) District Specific Regulations**

##### **3. Lot Coverage**

##### **A. Exceptions for Accessory Residential Features**

i – vi as written.

vii. Walkways; ~~and/or,~~

viii. Window wells; and/or,

ix. Pervious pavement designed and maintained to infiltrate the 1-year storm event onsite, subject to review and recommendation by the Stormwater Administrator.

### **Article 6: Development Review Standards**

#### **Part 2: Site Plan Design Standards**

##### **Sec. 6.2.2, Review Standards, (i) Vehicular Access:**

Paragraph 1: as written.

Residential driveways shall be a minimum of 7 feet in width or consist of two 2' driveway strips made of pavement or pervious pavement. ~~Driveway strips shall be accompanied by a paved area for the parking and/or storage of motor vehicles.~~ The maximum width for single or shared access driveways shall be 18'. In a residential district, driveways and parking areas shall be set back a minimum of 5' from side and rear property lines. Driveways that have a slope of 5% or greater (towards the right of way) shall be made of a solid surface including conventional pavement, pavers or pervious pavement.

Paragraph 3: as written.

## **Article 13: Definitions**

**Stormwater Administrator:** The administrative officer of Chapter 26: Wastewater, Stormwater, and Pollution Control for the City of Burlington.

**Pervious pavement:** Pervious pavement is a permeable pavement surface with an underlying stone reservoir that temporarily stores surface runoff before infiltrating into the subsoil. Pervious pavement includes porous asphalt, pervious concrete, grass pavers, and plastic grid systems, or their equivalents as deemed acceptable by the Stormwater Administrator.

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**TO:** Planning Commission  
**FROM:** Scott Gustin  
**DATE:** February 23, 2016  
**RE:** Shoreland Delegation: Sec. 4.5.4 Natural Resource Protection Overlay amendment

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As of July 2014, the State of Vermont enacted its Shoreland Protection Act. The act is focused on preservation of natural lakeshore vegetation for improved water quality. The Act contains provision to exempt downtowns, village, and similar growth centers from its standards. Burlington's downtown waterfront is exempt. The Act is administered by the Agency of Natural Resources. Following enactment, the City of Burlington sought municipal delegation of the Act via its existing Natural Resource Protection Overlay District: Riparian and Littoral Conservation Zone. This overlay district is the city's own lakeshore protection overlay and has similar provisions and exemptions (such as for the downtown waterfront). The city succeeded in obtaining municipal delegation June 22, 2015. Delegation was granted by the VT Agency of Natural Resources with two conditions relating to the city's Natural Resource Protection Overlay District. They are:

- Amend the CDO to include shoreland from 95.5' above sea level (currently, the CDO refers to 100' above sea level) within the Riparian and Littoral Conservation Zone.
- Amend the CDO to include additional language relative to the purpose of the Natural Resource Protection Overlay District citing the preservation of natural shoreland vegetative cover when reasonably possible and the protection of native plants and vegetative cover that provide shoreland wildlife habitat to the greatest extent possible.

The stipulated amendments are consistent with existing city policy and standards.

The change to 95.5' has virtually no effect on lakeshore vegetation. Most of the affected lakeshore is sand or rock between 100' and 95.5'. The change is required by the Agency of Natural Resources to be consistent with the state Shoreland Protection Act that cites 95.5' above sea level. Except for deletion of 100' in favor of 95.5', standards of the city's Riparian and Littoral Conservation Zone remain unchanged. The overlay map will be changed accordingly.

Existing standards of the Riparian and Littoral Conservation Zone limit tree clearing and will remain unchanged. Wildlife habitat is not specifically noted in the Riparian and Littoral Conservation Zone; however, it is a benefit of the existing buffer protections. Wildlife habitat is specifically cited in the landscaping standards of criterion (m) of Sec. 6.2.2, *Review Standards*. The existing language states "contiguous green space... should be provided on a site whenever possible and be designed to protect wildlife travel corridors and habitat preservation..."

Per the municipal delegation agreement, the amendments are to be made within two years of delegation (i.e. by June 22, 2017).

Proposed changes to the Comprehensive Development Ordinance are below. New language is underlined in red. Deleted language is ~~crossed-out~~.

### **Sec. 4.5.4 Natural Resource Protection Overlay (NR) District**

#### **(a) Purpose and Authority:**

The Natural Resource Protection Overlay District is intended to:

- Protect surface waters and wetlands from encroachment by development, and from sources of non-point pollution;
- Preserve natural lake shoreland vegetative cover where reasonably possible, and the protection of native plants and vegetative cover that provide lake shoreland wildlife habitat, to the greatest extent possible;
- Protect the functions and values of Burlington's wetlands;
- Protect and enhance water quality near public beaches and other water-based recreation areas from sources of non-point pollution;
- Preserve natural features and communities, geologic features and cultural sites for education and research.
- Provide opportunities for public access where feasible and appropriate;
- Facilitate connections and corridors for wildlife between areas of publicly protected sites.
- Ensure that development that occurs within a Flood Hazard Area conforms to the requirements of the National Flood Insurance Program.
- Minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding and other flood related hazards; and
- Ensure that the design and construction of development in flood and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property; and
- Manage all flood hazard areas designated pursuant to 10 V.S.A. § 753; and
- Make the City of Burlington and its residents eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

#### **(b) Areas Affected**

This overlay district consists of all areas delineated on Map 4.5.4-1-Natural Resources Protection Overlay (NR) District and is divided into four (4) subparts:

1. A **Riparian and Littoral Conservation Zone** which consists of all surface water and a corresponding upland buffer area, and specifically includes the following areas:
  - A. Uplands within 250 feet of the Lake Champlain lakeshore (measured at ~~100 feet~~ 95.5 feet above mean sea level per National Geodetic Vertical Datum 1929) with the exception of that portion of the shoreline between the northern extent of the Interim Development Area north of the former Moran Generating Station

and the most westerly extent of Roundhouse Point described as the “Urban Waterfront” in the *2000 Open Space Protection Plan*;

- B. Uplands within 250 feet horizontal distance measured from the top of the slope where the channel runs adjacent to a valley wall or high terrace, or top of the bank where the channel has access to its floodplain, of the Winooski River;
- C. Uplands within 100 feet horizontal distance measured from the top of the slope where the channel runs adjacent to a valley wall or high terrace, or top of the bank, where the channel has access to its floodplain, of Engelsby Brook, Potash Brook or Centennial Brook; and,
- D. Uplands within 50 feet horizontal distance measured from the top of the slope where the channel runs adjacent to a valley wall or high terrace, or top of the bank where the channel has access to its floodplain, of all other minor streams, or the mean shoreline of all other minor ponds;

2-4 As written.

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**TO:** Planning Commission  
**FROM:** Scott Gustin  
**DATE:** February 23, 2016  
**RE:** Duplexes on existing lots

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Duplexes are allowed in the low density residential zones (RL & RL-W) as a conditional use, subject to footnote 2. That footnote reads:

Duplexes may be constructed, or a single unit may be converted into a duplex, on lots existing as of January 1, 2007 and which meet the minimum lot size of 10,000 square feet

This footnote prevents establishment of a duplex on any new lot within the low density residential zones (except as part of a PUD). The Planning & Zoning Department has received a request to eliminate this footnote. Doing so would continue to allow duplexes as a conditional use in the low density residential zones; however, they could be established on any lot (new or existing) meeting the minimum dimensional requirements. Duplexes are expressly cited in the purpose statement for the low density residential zones:

The Residential Low Density (RL) district is intended primarily for low-density development in the form of single detached dwellings and duplexes...

The Waterfront Residential Low Density (RL-W) district is intended primarily for low-density development in the form of single detached dwellings and duplexes...

Duplexes are consistent with the intent of the low density residential zones. Removal of footnote 2 could enable additional duplexes within these zones, consistent with the express intent of these zoning districts.

Proposed amendment language is depicted in the attached Use Table excerpt.

## Appendix A-Use Table – All Zoning Districts

	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use					Neighborhood Mixed Use			Enterprise	
USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	D	DW	DW-PT <sup>16</sup>	DT	BST	NMU	NAC	NAC-RC	E-AE	E-LM
RESIDENTIAL USES	UR	RCO - A <sup>1</sup>	RCO - RG	RCO - C	I	RL/W	RM/W	RH	D	DW	DW-PT <sup>16</sup>	DT	BST	NMU	NAC	NAC-RC	E-AE	E-LM
Single Detached Dwelling	N	N <sup>1</sup>	N	N	Y	Y	Y	N	N	N	N	N	N	N	N	N	N	N
Accessory Dwelling Unit (See Art.5, Sec.5.4.5)	N	N	N	N	Y	Y	Y	N	N	N	N	N	N	N	N	N		
Attached Dwellings - Duplex	N	N <sup>1</sup>	N	N	Y	CU <sup>2</sup>	Y	Y	N	N	N	N	N	Y <sup>3</sup>	N	Y	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N <sup>1</sup>	N	N	CU	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N
Attached Dwelling(s) – Mixed-Use <sup>26</sup>	N	N <sup>1</sup>	N	N	CU	CU	CU	CU	Y	Y	N	Y	Y	Y	Y	Y	N	N
RESIDENTIAL SPECIAL USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	D	DW	DW-PT <sup>16</sup>	DT	BST	NMU	NAC	NAC-RC	E-AE	E-LM
Assisted Living	N	N	N	N	CU	CU	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N
Bed and Breakfast <sup>4, 6</sup>	N	N	N	N	CU	CU	CU	CU	Y	Y	N	Y	Y	Y	Y	Y	N	N
Boarding House <sup>6</sup> (4 persons or less)	N	N	N	N	CU	CU	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N
Boarding House <sup>6</sup> (5 persons or more)	N	N	N	N	CU	CU	CU	CU	Y	Y	N	Y	Y	CU	CU	CU	N	N
Community House (See Sec.5.4.4)	N	N	N	N	CU	CU	CU	CU	Y	Y	N	CU	CU	CU	CU	CU	N	N
Convalescent /Nursing Home	N	N	N	N	CU	CU	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N
Dormitory <sup>5</sup>	N	N	N	N	CU	N	N	N	N	N	N	CU	CU	N <sup>25</sup>	CU	CU	N	N
Group Home	N	N	N	N	Y	Y	Y	Y	Y	CU	N	Y	N	Y	Y	Y	N	N
Historic Inn (See Sec.5.4.2)	N	N	N	N	CU	CU	CU	CU	Y	Y	N	CU	CU	CU	Y	Y	N	N
Sorority/Fraternity <sup>5</sup>	N	N	N	N	CU	N	N	N	N	N	N	CU	N	N	N	N	N	N
NON-RESIDENTIAL USES	UR <sup>21</sup>	RCO - A	RCO - RG	RCO - C	I	RL/W	RM	RH	D	DW	DW-PT <sup>16</sup>	DT	BST	NMU	NAC	NAC-RC	E-AE	E-LM
Adult Day Care	N	N	N	N	CU	N	N	N	Y	Y	N	Y	Y	Y	Y	Y	N	N
Agricultural Use <sup>20</sup>	N	Y	Y	CU	Y	N	N	N	N	N	N	N	N	N	N	N	Y	N
Amusement Arcade	N	N	N	N	N	N	N	N	Y	Y	N	CU	CU	N	CU	CU	N	N
Animal Boarding/Kennel/Shelter	N	CU	N	N	N	N	N	N	N	N	N	N	N	N	CU	CU	CU	CU
Animal Grooming	N	N	N	N	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	CU	CU
Animal Hospitals/Veterinarian Office	N	CU	N	N	CU	N	N	N	CU	N	N	CU	CU	CU	CU	CU	Y	Y
Appliance Sales/Service	N	N	N	N	N	N	N	N	Y	Y	N	CU	Y	Y <sup>24</sup>	Y	Y	N	Y
Aquarium	N	N	CU	N	CU	N	N	N	Y	Y	(See Sec.4.4.1(d) 2)	CU	Y	N	N	N	N	N
Art Gallery/Studio	N	N	N	N	Y	N	N	CU <sup>8, 13</sup>	Y	Y	(See Sec.4.4.1(d) 2)	Y	Y	Y	Y	Y	Y	Y
Auction House	N	N	N	N	N	N	N	N	Y	Y	N	Y	Y	N	Y	Y	N	CU
Automobile Body Shop	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	Y
Automobile & Marine Parts Sales	N	N	N	N	N	N	N	N	Y	Y <sup>14</sup>	(See Sec.4.4.1(d) 2)	CU	Y	CU	Y	Y	N	Y

## Appendix A-Use Table – All Zoning Districts

1. Residential uses are not permitted except only as an accessory use to an agricultural use.
- ~~2. Duplexes may be constructed, or a single unit may be converted into a duplex, on lots existing as of January 1, 2007 and which meet the minimum lot size of 10,000 square feet. **Reserved.**~~
3. Duplexes shall only be allowed as a result of a conversion of an existing single family home. New duplexes are prohibited.
4. No more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use. No more than 3 rooms permitted to be let in the RL district.
5. An existing fraternity, sorority, or other institutional use may be converted to dormitory use subject to conditional use approval by the DRB.
6. Must be owner-occupied.
7. Must be located on a major street.
8. Small daycares in the RCO zones shall be conditional use and shall only be allowed as part of small museums and shall constitute less than 50% of the gross floor area of the museum.
9. Automobile sales not permitted other than as a separate principal use subject to obtaining a separate zoning permit.
10. Exterior storage and display not permitted.
11. All repairs must be contained within an enclosed structure.
12. No fuel pumps shall be allowed other than as a separate principal use subject to obtaining a separate zoning permit.
13. Permitted hours of operation 5:30 a.m. to 11:00 p.m.
14. Such uses not to exceed ten thousand (10,000) square feet per establishment.
15. Excludes storage of uncured hides, explosives, and oil and gas products.
16. See Sec.4.4.1(d) 2 for more explicit language regarding permitted and conditional uses in the Downtown Waterfront – Public Trust District.
17. Allowed only as an accessory use.
18. A permitted use in the Shelburne Rd Plaza and Ethan Allen Shopping Center.
19. Cafes not permitted as an accessory use. Retail sales and tasting are permitted as an accessory use.
20. 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 are exempt from regulation under local zoning.
21. See Sec. 4.4.7 (c) for specific allowances and restrictions regarding uses in the Urban Reserve District.
22. See Sec. 4.4.5 (d) 6 for specific allowances and restrictions regarding Neighborhood Commercial Uses in Residential districts.
23. Allowed only on properties with frontage on Pine Street.
24. Such uses shall not exceed 4,000 square feet in size.
25. Dormitories are only allowed on properties contiguous to a school existing as of January 1, 2010.
26. The mixed uses shall be limited to those that are either permitted, conditional, or pre-existing nonconforming in the zoning district.
27. Performing arts centers in the ELM zone shall be limited to a total of 5,000 square feet in size and to properties with frontage on Pine Street. Performing arts centers may contain accessory space for preparation and serving food and beverages, including alcohol, provided this accessory space comprises less than 50% of the entire establishment.

<b>Legend:</b>	
<b>Y</b>	Permitted Use in this district
<b>CU</b>	Conditional Use in this district
<b>N</b>	Use not permitted in this district
<b>Abbreviation</b>	<b>Zoning District</b>
<b>RCO – A</b>	RCO - Agriculture
<b>RCO – RG</b>	RCO – Recreation/Greenspace
<b>RCO – C</b>	RCO - Conservation
<b>I</b>	Institutional
<b>RL/W</b>	Residential Low Density, Waterfront Residential Low Density
<b>RM/W</b>	Residential Medium Density, Waterfront Residential Medium Density
<b>RH</b>	Residential High Density
<b>D</b>	Downtown
<b>DW</b>	Downtown Waterfront
<b>DT</b>	Downtown Transition
<b>BST</b>	Battery Street Transition
<b>NMU</b>	Neighborhood Mixed Use
<b>NAC</b>	Neighborhood Activity Center
<b>NAC-RC</b>	NAC – Riverside Corridor
<b>E-AE</b>	Enterprise – Agricultural Processing and Energy
<b>E-LM</b>	Enterprise – Light Manufacturing

	“Grandfathered” Preexisting Legal Nonconformity	Statute of Limitations
Where do they come from?	24 V.S.A. §4303(13)-(16) 24 V.S.A. §4412(7)	24 V.S.A. §4454
What are they?	Use, structure, lot or parcel that does not conform to the present bylaws, <u>but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws</u> (includes use, structure, lot or parcel that was improperly authorized as result of error by the administrative officer).	Ongoing zoning violations related to a structure or lot that are deemed to be unenforceable under 24 V.S.A. §4454 due to the length of time (15 years from date known) that the violation has been ongoing.
Can they be discontinued?	-Under state enabling legislation, municipality can set a time for discontinuance so long as it is not less than 6 months. -Generally, the City has set 1 year as its timeframe.	-Not stated under state statute. -Under CDO the standard is 60 days.
Can they be modified or enlarged?	Yes – within limitations established in the CDO	No.
Can they be counted toward requirements of a new application?	Yes.	No.

additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

**Sec. 2.6.3 Defect in Notice**

No defect in the form or substance of any requirements in Section 2.6.2 above shall invalidate the action taken of the appropriate municipal panel, where reasonable efforts are made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the environmental court, or by the DRB itself, the action shall be remanded to the DRB to provide new posting and notice, hold a new hearing, and take a new action.

**Sec. 2.6.6 Open Hearing**

All hearings under this Article shall be open to the public except for executive or closed deliberative sessions called in accordance with Vermont’s Open Meeting Law. No votes or other actions may be taken while in executive or closed deliberative session.

**Sec. 2.6.7 Rules of Evidence**

The rules of evidence at public hearings under this article shall be the same rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. Section 810. The DRB may examine or cause to be examined any property or information bearing upon the matter(s) concerned in the hearing, require the attendance of persons having knowledge of the premises, take testimony, and administer oaths as further set forth in the Board’s Rules of Procedure created pursuant to Sec 2.4.3.

**PART 7. ENFORCEMENT**

**Sec. 2.7.1 Purpose**

The purpose of this article is to set forth efficient and effective procedures for enforcement of the provisions of this ordinance.

**Sec. 2.7.2 Definitions.**

“Waiver Fee” shall refer to the payment that is made for a person to "waive" or relinquish a specific right (e.g. the right to a hearing) with respect to an action of the

court. For purposes of this ordinance, when a party is issued a municipal complaint ticket with a penalty fee and also a waiver fee, that party may consent to no hearing and instead pay only the designated "waiver" fee and send the payment with the ticket form in accordance with the procedures of the Judicial Bureau.

### **Sec. 2.7.3 Enforcement Officer: Administrative Officer and Designees**

Pursuant to the provisions of Sec. 2.3.3, the administrative officer shall have ultimate responsibility for all matters relating to the enforcement of this ordinance. The administrative officer may request other city officials to assist with the enforcement of this ordinance, including planning and zoning staff, staff of the code enforcement office, building inspectors, fire marshal, police officers, staff of the city attorney's, and/or city constable.

### **Sec. 2.7.4 Entrance Upon Premises**

The administrative officer, as representative of the DRB, may enter upon any land in the city to make examinations and surveys pursuant to 24 V.S.A. Section 4325(9). When entrance upon property is refused or denied, the administrative officer may seek a warrant for the purposes of conducting an examination of the premises. A warrant shall only be requested on the basis of administrative officer observations, when another city official has provided credible information to the administrative officer or upon notification by verified written complaint that a zoning violation allegedly exists.

### **Sec. 2.7.5 Observation or Complaints of Violations**

Upon receipt of a written, signed complaint alleging a violation of this ordinance, the administrative officer shall investigate the complaint, take whatever action is warranted, and, if requested, inform the complainant in writing of actions that have been taken.

The observation of a violation on the part of the administrative officer shall be considered an Investigation, and the alleged violator may be issued a notice of zoning violation or a municipal civil complaint ticket.

### **Sec. 2.7.6 Persons Liable**

The owner, tenant, or occupant of any structure or land or part thereof who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, and any architect, builder, contractor, agent, or other person who knowingly participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, may be held

responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

### **Sec. 2.7.7 Civil Offense, Penalties**

A violation of this ordinance shall constitute a civil offense. Once a violation has been determined by the administrative officer, each day that a violation is continued shall constitute a separate offense. If an alleged violation is determined to exist, a formal notification shall be issued in the form of an enforcement action as described below.

#### **(a) Municipal Civil Complaint Ticket:**

The administrative officer may issue a municipal complaint ticket for zoning violations with two copies of said ticket to be served either in person or by first class mail to the defendant (one copy shall be retained by the issuing officer and the original shall be filed with the Judicial Bureau). The issuing officer shall follow the procedure set forth by the Judicial Bureau for municipal complaint tickets.

The first offense ticketed for a violation shall be punishable by a fine of one hundred dollars (\$100.00), the waiver fee shall be one hundred dollars (\$100.00); a second offense ticketed for the same violation shall be punishable by a fine of one hundred and fifty dollars (\$150.00), the waiver fee shall be one hundred and fifty dollars (\$150.00); a third offense ticketed for the same violation shall be punishable by a fine of two hundred and fifty dollars (\$250.00), the waiver fee shall be two hundred and fifty dollars (\$250.00). Upon the fourth offense, the city may request that the case be transferred from the Judicial Bureau to the Environmental Court, or any other court of competent jurisdiction.

#### **(b) Enforcement Action:**

An enforcement action may be brought for any violation of this ordinance. Pursuant to an enforcement action, any person who violates this ordinance shall be fined not more than the maximum amount authorized by statute for each offense. No action may be brought under this subsection unless the alleged offender has had at least seven (7) days' warning notice by certified mail. An action may be brought without the seven (7) day notice and opportunity to cure if the alleged offender repeats the violation of the by-law or ordinance after the seven (7) day notice period and within the next succeeding twelve (12) months. The seven (7) day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven (7) days and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) days. In default of payment of the fine, such person, the members of any partnership, or the principal officers of such corporation, shall each pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of by-laws shall be paid over to the City.

**Sec. 2.7.8 Processing Fee**

If any enforcement action results in the need for a zoning permit for the subject property, the application fee(s) for processing such permit shall be twice the regular application fee charged if the application is made within 7 days of receipt of the violation notice, or triple the regular application fee if the application is made between 7 to 15 days after receipt of the violation notice, or triple the regular application fee plus \$75/hour staff time up to \$500 worth of staff time if the application is made after 15 days of receipt of the violation notice in order to recoup a portion of the administrative costs associated with the enforcement action. These fees shall be separate from any penalties that may be assessed hereunder

**Sec. 2.7.9 Remedies**

If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this ordinance, or in violation of one or more conditions of a permit issued under this ordinance, the administrative officer shall institute in the name of the city any appropriate action (see Sec. 2.7.10 below), injunction or other proceeding to prevent, restrain, correct or abate such construction or use, and to prevent, in or about such premises, any act, conduct, business or use constituting a violation.

**Sec. 2.7.10 Appropriate Action**

The administrative officer shall take the appropriate action, in an effort to remedy a violation(s) of a zoning permit. Such actions may include, but are not limited to any combination of the following:

- (a) A new zoning permit;
- (b) Referral to the DRB for review;
- (c) Immediate removal of the structure;
- (d) A denial of a zoning Certificate of Occupancy; and,
- (e) Fines, as allowed under law, until the violation is rectified.

**Sec. 2.7.11 Administrative Appeal**

A decision by the administrative officer pertaining to an alleged zoning violation may be appealed to the DRB in accordance with the provisions of Article 12, provided that such appeal is filed within fifteen (15) days of the administrative officer's written decision.

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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);
- 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.

**(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.

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. 5.2.6(b)(3).

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:**

Subject to approval by the DRB pursuant to the requirements of Art. 3, Part 4 – Site Plan and Design Review, any lot of record existing as of January 1, 2007, may be developed for the purposes permitted in the district in which it is located even though not conforming to minimum lot size requirements, provided such lot is not less than four thousand (4,000) square feet in area with a minimum width and depth dimension of forty (40) feet.

#### **(b) Required Frontage or Access:**

Subject to the provisions of Sec. 5.2.2, no land development may be permitted on lots that do not have frontage on a public road or public waters. For lots of record existing as of January 1, 2007, development 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.

#### **(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. Any changes proposed on a non-conforming lot are subject to conditional use review. 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).

## Burlington Planning Commission

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



# Burlington Planning Commission Minutes

## Regular Meeting

**Tuesday, February 9, 2016 - 6:30-8:00 P.M.**

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

Present: B Baker, Y Bradley, A Montroll, H Roen

Absent: E Lee, L Buffinton, J Wallace-Brodeur

Staff: D White, M Tuttle, E Tillotson, S Gustin, K Sturtevant, E Blackwood

### **I. Agenda**

There were no changes to the agenda.

### **II. Report of the Chair**

Y Bradley: Shared that there had been an Executive Committee meeting last week following the statute of limitations discussion. He has been advised that staff felt at a disadvantage with no opportunity to state their side of the ideas and solutions. Tonight's discussion should provide staff an opportunity to provide their perspective on the issue and propose solutions and answer questions. The minutes should reflect that the absent Commissioners are requested to pay close attention to the discussion of that item since they are not present to hear this.

### **III. Report of the Director**

D White: The office is now fully staffed. The City Council Ordinance Committee met last week to take up three amendments: mobile home parks, grocery stores in the enterprise zone, and major impact. Did not get to Major Impact, but passed the other two for public hearing on March 7. Council also heard a presentation by Don Sinex regarding the Burlington Town Center; after the presentation the council adjourned to executive session to examine the list of items to be addressed in the development agreement. A lot of other moving parts, including downtown parking which will be coming back to the Planning Commission in the next month or two.

### **IV. Public Forum**

Y Bradley opened the public hearing at 6:37 p.m.

Eli Lesser-Goldsmith, resident of Lakeview Terrace: Met with D White who suggested to come to the Commission. Agenda packet includes a letter regarding E Lesser-Goldsmith's two adjoining properties on Lakeview Terrace. Needs to have covered parking over shared driveway between properties, which present zoning does not allow. He hopes the Commission will consider possible solutions. This issue is especially pertinent to narrow lots and/or driveways currently located within setbacks.

A Montroll: Are there any present options?

D White: One solution is to join the two lots, which may or may not be good solution for the owner. Currently the ordinance doesn't anticipate anything other than a single family home being built in the middle of a lot.

E Lesser-Goldsmith: Also considered building a garage between the two houses to replace two existing subpar structures, but this would involve a PUD which makes it more complicated.

H Roen: Would this be addressed in form-based code?

D White: Yes, it is a scenario that would be recognized.

Y Bradley: Are there preliminary thoughts from staff about this issue?

D White: There has been discussion of some options, but there has not been time to give much thought to the matter.

Y Bradley: Thank you for bringing the issue to us. Staff will review and work on this issue when possible. E Lesser-Goldsmith will be notified when it will be a PC discussion.

Todd Rawlings, Housing Program Coordinator, CEDO Housing Office: Addressing the amendment affecting the North Avenue Co-op and suggest that the change recommended by the ordinance committee is necessary. The administration has been strong supporter of the amendment in order to assist the co-op.

Tim Bouvier, President of the North Avenue Co-op: The Co-op needs the ordinance changes in order to assist with clean-up and making the co-op a nice neighborhood so we need these ordinance changes. The Co-op passed a unanimous resolution in support of the amendment; T Bourvier present to discuss the co-op's level of support.

Ibnar Avilix: Would like to speak about planBTV South End—speak now or during the agenda item?

YBradley: Now is a time to speak about any item. It is your judgement.

I Avilix: Particularly concerned that mobility is a discussion that needs to be expanded. The Champlain Parkway was not a central part of the planBTV South End conversation, and it is now way short of 21<sup>st</sup> century standards. The transportation portion needs to be more clear for the public. The cover of planBTV South End showcases Speeder and Earls; showing a café within a rough industrial district seems to plant a flag welcoming gentrification. Would rather see innovation on the cover, such as Edlunds' machines, Burton snow boards, etc. All through this process he has been asking for manufacturing study which was left out of the plan. It needs to be a part of the conversation, but the plan is so far along in the conversation. He wonders if there is to be a segment on manufacturing. In regards to the question about whether form-based code would address the Lakeview Terrace issue, the theory and concepts have been established, but the ordinance has yet to be decided on by the City Council. It seems premature and uncomfortable to make decisions based on the assumption that the code will be approved.

## **V. ZA-16-02: Mobile Home Parks**

D White: This amendment which was considered by the City Council Ordinance Committee, who proposed a change to the standards for coverage. It was originally proposed for a maximum of 50 percent coverage, which is roughly what exists today; Ordinance Committee recommended 60 percent. The present day open area has been excluded in the coverage calculation because there was some thought that this parcel may be sold separately. The City Council Ordinance Committee made this recommendation and would like the Planning Commission to weigh in and indicate if they support this.

A Montroll: This all sounds fine but why the change in coverage?

D White: The Ordinance Committee decided to increase the coverage to 60 percent to allow for changes to take place in the park. Considering the entire park itself, and then removing the larger open area which may or may not remain a portion of the park, it was treated as a PUD, calculated just as a mobile home park without open space since the future of the open space portion is unknown.

On a motion by A Montroll, seconded by H Roen the Commission unanimously approved the change for the City Council's upcoming second reading.

## VI. planBTV South End Draft

M Tuttle: The Long Range Planning Committee has been working on updating the housing, arts and economic development elements of planBTV South End. In order to continue their work, wants to dedicate some time tonight for plan elements not previously covered so that the Committee has feedback when they're ready to discuss those sections. M Tuttle provided a brief overview to the strategies under the mobility, parks, stormwater and brownfield themes. What changes should the LRPC make to these elements?

A Montroll: The section on mobility presupposes that the Champlain Parkway will be built, but has already been delayed for so long. There may be some things to take care of now, rather than wait for the Parkway. For example, the South End plan should address the Pine Street traffic backups at certain times of the day as a priority. There is a recommendation for stoplights on Pine Street as part of the Parkway implementation, but should be an approach to dealing with present traffic patterns if we will actually realize the vision of the plan.

H Roen: Starting with the Champlain Parkway in the plan is controversial in itself. Agree that we should identify the items that we want regardless of the Parkway's success.

B Baker and Y Bradley agree.

Y Bradley: The question for the Commission is: is this a separate task from planBTV South End?

D White: In this section of the plan, he appreciates that the Parkway is controversial and agrees that the Maple Street intersection is problematic. The big picture is that all of these things need to happen, and we need to do something to increase connectivity for that area.

Y Bradley: It is a good position statement to say that while we envision Champlain Parkway being implemented, please make sure that we can do something regardless of whether the Parkway goes forward.

A Montroll: Poor traffic flow along Pine Street corridor will hamper our vision for the plan.

All Commissioners present agreed that this is something that should be added.

H Roen: Strategies about connectivity enhances the link to the lake, but what about the stormwater problems in the area? The plan doesn't seem to touch on these problems.

M Tuttle: The presentation tonight is a much distilled version/summary. However, we can make sure that stormwater information from Phase I studies is incorporated in the plan.

Y Bradley: For the Brownfield section, wonder if DEC is a friend or foe? The Seven Days article about dirty soils comes to mind. The cost of the South End's redevelopment with soil that needs to be cleaned up seems to be staggering. We need to think about how we work together with DEC. The plan needs a dose of reality that talks about soils, not just brownfields, as a hurdle to development. Also, need to include a piece about creating partnerships with private properties—a lot of what is envisioned in the plan is on property that the City does not own.

D White: The city has been in partnership with other cities around state that have made progress on their obstacles around soils.

Y Bradley: It is important to call that out so that people are aware.

A Montroll: It's not just about brownfields, it's about all soils, including urban soils.

Y Bradley: This complication raises the cost of doing urban infill development, the result could be sprawl.

A Montroll: Are the plan's recommendations regarding connectivity to the waterfront strong? This is important.

D White: It has been discussed extensively.

M Tuttle: The maps are in the second part of plan, which really shows locations where strategies about “connectivity” could be applied. We’re aware that there is a need to strengthen the connection between the maps and the text. We are starting to forward edits to Goody Clancy and hoping to have a major revision at some point in April.

Y Bradley: It has been a lot of work and thanks.

I Avilix: Is concerned about traffic and recommend a traffic study, with a suggestion for a light at Maple and King. Many people would suggest a roundabout, rather than a traffic light. Would traffic experts examine the approach before a decision is made?

## **VII. Proposed CDO Amendment: 15 Year Statute of Limitations**

Y Bradley: We are here to hear both parts of the conversation. Thank you to staff, there was no real way to interject back and forth at the previous meeting.

S Gustin: We should focus on the meat of the 15 year statute amendment, and later discuss the staff’s position on the Diemer situation if the Commission wishes.

Y Bradley: Great idea.

K Sturtevant went through a chart addressing the differences between grandfathering and situations to which the statute of limitations applies.

Y Bradley: If an owner has a four unit building, zoning records show three units, and one unit is empty does it go away after 60 days? This might need to be further clarified.

D White: We might have a precedent for a pre-existing non-conformity has stopped and it has been grandfathered but it is actively being marketed.

Y Bradley: The idea is to be predictable and have an approach that is not to necessarily be permissive and but also not punitive.

D White: Important to make the distinction, because even though they’re similar, they do appear in different sections of the ordinance. The new ordinance language appears as a new entry in the enforcement section of the ordinance.

B Baker: Putting in the enforcement section and not stating the commonality between these uses and legal non-conforming uses seems to overlook the relationships. We are trying to create predictability.

K Sturtevant: Will address the current version of the ordinance. Defines what being aware means. The burden of proof is established with the burden on the owner. This type of status is hard to label, so at this point have added the term of “stabilized status”. It requires a determination from the Zoning Office. Indicates that when there is a safety problem, must come into compliance.

Y Bradley: What documentation is necessary?

S Gustin: It depends on the type of violation.

A Montroll: It is good that the burden of proof remains with the owner, but the language defining the City’s awareness of a violation for 15 years should be clarified.

Y Bradley: “Preponderance of evidence” is still really ambiguous. Need assurance that the Planning & Zoning records will not override all other City records.

S Gustin: Preponderance of evidence is an established term which means precisely what we’re saying.

B Baker: We need to limit the scope of the investigation. Should refer back to the departments listed above as the records that qualify for proof.

J Rippa: Regarding the 60 day issue for a discontinued use, what if an owner was working on a rental unit and the renovations take longer than 60days? It's still a rental unit, but it just doesn't have occupants due to a delay. Shouldn't be penalized as discontinuance.

B Baker: Renovation of a unit is continuing use as rental unit—this is part of the business of having a rental unit. Are there cases like this?

K Sturtevant: Don't know that there are cases on statute of limitations discontinuance of use.

B Baker: May need to add a clause to articulate what situations do not constitute discontinuance.

S Gustin: We can clarify in a consistent way with other language we have established in the ordinance.

D White: Struggled with what to call these situations, but we need to have a name for these conditions.

A Montroll: Suggest that just pick a name and include a definition of it either in Article 13 or in this section because it is not necessarily clear today what it is.

D White: This written determination is something that people can take to the bank, has a notice process, has appeal rights, and goes in the land records.

A Montroll: The section on notice is important. Add that anyone who has filed a formal complainant should be noticed.

D White: Some of it is about practical procedures in the department.

B Baker: Perhaps a FAQ would be helpful. There are two problems: we have poor records and enforcement is much more serious now. People can't be cavalier now, and it doesn't seem fair. This change will impact hundreds if not thousands of units in the City.

A Montroll: These situations have to be counterbalanced with what people are actually allowed to do and how these illegal uses impact neighbors. There seem to be a lot of gray areas.

Y Bradley: There is a difference between a property that is a non-conforming use which has been problem, and a conforming property with a problematic tenant. If notice is given to anyone that has filed a complaint, does that accomplish what you are looking for?

A Montroll: A letter from the city saying property is okay (complying), vs a letter stating the condition is older than fifteen years are different things.

Y Bradley: As an example say someone bought a four unit building. Planning & Zoning doesn't have a record of the property as being a four unit. Now the regulations have changed. Is that what you're trying to protect?

K Sturtevant: The whole point is to clear up the 15 year definition, except for health and safety violations.

D White: There is a process with the DRB to sort out these issues.

Y Bradley: Are we satisfied that this accomplishes what we asked for?

A Montroll: An example of someone putting in vinyl windows, can't make them take them out, but can make them replace them when they need to be replaced?

D White: That is correct.

B Baker: Need to clarify use and construction violations and how they apply to the statute of limitations.

K Sturtevant: Language says “for use, dimensional, or otherwise...”

Y Bradley: Not quite at closer, we likely need a few more tweaks. Thanks to both K Sturtevant and S Gustin. The documents they have presented tonight reflects well on the department representing fair treatment for the public and doing what the Commission has asked.

J Rippa: Would suggest this include defining change or discontinuance vs routine maintenance and repair.

**VIII. Committee Reports**

Long Range Planning Committee: H Roen reports that the last meeting didn’t happen, due to lack of quorum; next meeting Feb.18<sup>th</sup> at noon at Public Works.

Ordinance Committee: B Baker reports the same issue for the Ordinance Committee.

Executive Committee: D White reports they did meet and discussed many of the issues on tonight’s agenda.

**IX. Commissioner Items**

None.

**X. Minutes/Communications**

On a motion by B Baker, seconded by A Montroll, the Commission unanimously approved the minutes of January 26, 2016.

On a motion by A Montroll, seconded by H Roen, the Commission unanimously accepted the communications and placed them on file.

**XI. Adjourn**

On a motion by H Roen, seconded by A Montroll, the Commission unanimously voted to adjourn at 8:21 pm.

\_\_\_\_\_  
Y Bradley, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
E Tillotson, Recording Secretary



January 25, 2016

Department of Planning & Zoning  
City of Burlington  
149 Church Street  
Burlington, VT 05401

Dear City of Burlington Planning Commission,

On behalf of the Greater Burlington YMCA, we are pleased to submit this request for amendment to the City of Burlington Comprehensive Development Ordinance. As we have progressed the planning process for the proposed development of the Ethan Allen Club on College Street, our team has identified several areas of the CDO that do not accurately reflect the proposed land use and unique operational characteristics of our non-profit, community-focused, health, wellness, learning and lifestyle programs.

As demonstrated in the attached documentation from RSG, our transportation planning and engineering partner, we are requesting that the Comprehensive Development Ordinance recognize the unique range of services that a YMCA or similar facility provides to the city by amending the land use table in Appendix A and all associated regulations to include **"Recreational Community Center"**, and allow an increased parking waiver up to 100% for this land use. It is our belief the unique RCC definition and parking flexibility more accurately describes the services and infrastructure demands that our organization requires, which are otherwise not captured in the CDO.

By amending the Comprehensive Development Ordinance to accurately capture the impacts and demands of our proposed development, we will be able to ensure the new YMCA is right-sized for the neighborhood, the community, and the City. After 80 years in our current location, we look forward to serving many more generations in our new location, building our relationship with the families of Burlington and beyond.

Warmest Regards,

Pam Mackenzie  
Interim CEO

# ZONING AMENDMENT ANALYSIS

**TO:** Scott Gustin, Burlington Planning and Zoning  
**FROM:** Corey Mack, PE  
**CC:** Pam Mackenzie, CEO GBYMCA; Scott Mapes  
**DATE:** January 25, 2016  
**SUBJECT:** Zoning Amendment to add Land Use “Recreational Community Center”

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The purpose of this document is to provide support for an amendment to the Burlington Comprehensive Development Ordinance (CDO) to add “Recreational Community Center” as a recognized land use. Based on the findings outlined in this document, the following changes to the CDO are proposed:

- Create a new Non-Residential Land Use to Appendix A and all applicable tables: “Recreational Community Center” (RCC) as defined by the Institute of Traffic Engineers (ITE) Land Use Code 495.
  - RCC is proposed for conditional use in all Residential, Downtown Mixed Use, and Neighborhood Mixed Use zoning districts in Appendix A.
  - RCC is proposed to have a parking requirement of one (1) parking space per 1,000 square feet of gross floor area in Table 8.1.8-1.
- Add the “Recreational Community Center” land use to the one hundred percent (100%) waiver exceptions detailed in Section 8.1.15 provided the proposed building documents the land use generates a minimal parking demand exclusive to the land use.

The two proposed amendments are justified in this document in the following three items.

## **ITEM 1: “Recreational Community Center” Describes a Unique Land Use**

This zoning amendment is proposed following review of the CDO with respect to the development of a new YMCA facility. A YMCA provides a unique service to the community not captured by the existing range of land uses in Appendix A. In particular, the Greater Burlington YMCA (GBYMCA) is a non-profit operating in Burlington for almost 150 years, providing three areas of focus including youth development, healthy living, and social responsibility. These combined services, all contained within the facility, do not function the same as the seemingly related Daycare, Health Club, and Community Center land uses defined in the CDO. The services provided by the GBYMCA are complimentary, and similar to mixed-use developments, the peak demand for one of their services is generally not at the same time as the other services.

The Institute of Traffic Engineers (ITE) provides national guidance on parking and trip generation from different land uses. ITE assigns codes to each distinct land use, and ITE identifies a land use code for YMCA facilities specifically. ITE Land Use Code (LUC) 495: Recreational Community Center is defined as:

“Recreational community centers are stand-alone public facilities similar to and including **YMCAs**. These facilities often include classes and clubs for adults and children; a day care or nursery school; meeting rooms; swimming pools and whirlpools;...”

The ITE Land Use Description for Recreational Community Centers (“YMCAs”) also notes that “significant pedestrian trips” have been recorded in their trip and parking generation studies.

When comparing ITE LUC 495 to ITE LUC 492: Health/Fitness Club, it is clear the PM peak hour trip and parking generation rates between the two land uses is significantly different (Table 1). While the studies conducted to develop the trip and parking generation rates were based on small sample sizes, such a substantial difference in rates necessitates a unique land use definition for Recreational Community Centers.

**TABLE 1: ITE TRIP GENERATION RATES FOR THE PM PEAK HOUR (7<sup>TH</sup> EDITION).**

	<b>Land Use Code 492: Health / Fitness Club</b>	<b>Land Use Code 495: Rec. Community Center</b>
<b>PM Peak Hour Trip Generation (Trips / 1,000 SF)</b>	4.05	1.64
<b>Peak Period Parking Demand (Vehicles / 1,000 SF)</b>	5.19	1.15 (Urban Environment)

In summary of Item 1:

- A YMCA provides a unique range of services distinct from Health / Fitness Clubs and Day Cares;
- National traffic guidance authorities (ITE) distinctly categorize YMCAs in their literature;
- A substantial difference in ITE trip and parking generation rates is noted between the YMCA category and those defined by the existing zoning land uses; and
- There is potential for “significant pedestrian trips”.

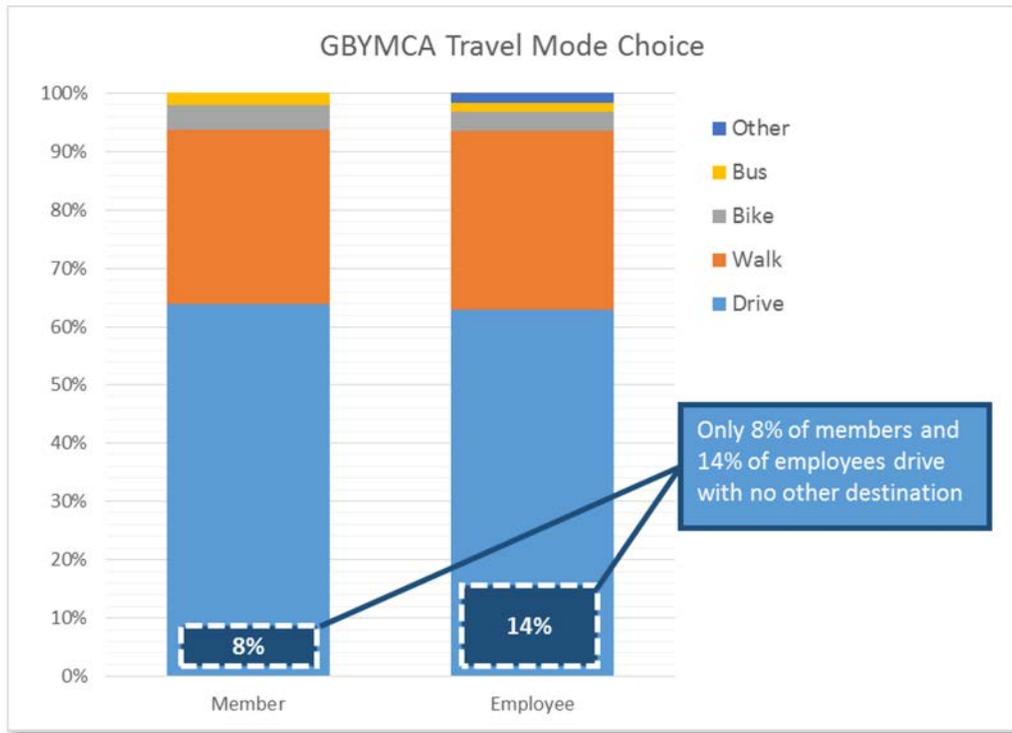
Given these characteristics, a unique land use code is proposed to be added to the CDO to be applicable to Recreational Community Centers.

**ITEM 2: Existing Recreational Community Center Requires Fewer Parking Spots**

In support of the development of a Recreational Community Center land use in the CDO, the GBYMCA surveyed their existing membership and employees to understand the current travel mode choice of the membership and employees. An online survey was conducted in mid-December. A variety of information was gathered from 145 members and 64 employees (response rate of 5% of



the members, 66% of employees). Some of the more relevant information regarding GBYMCA member and employee travel mode choice to the existing downtown Recreational Community Center follows.



**FIGURE 1: MEMBER AND EMPLOYEE TRAVEL MODE CHOICE TO AND FROM THE EXISTING GBYMCA RECREATIONAL COMMUNITY CENTER.**

Figure 1 illustrates that roughly two thirds of both the members and employees (64% and 63%, respectively) drive downtown to access GBYMCA Recreational Community Center. Further analysis of the survey results indicate that most trips to the GBYMCA include other destinations, such as work, shopping, or other destinations (“trip-chaining”). For instance, a member may visit the Y over their lunch break or shop at nearby City Market or Church Street after their trip to the GBYMCA, or an employee at the Y may coordinate their shift with other work engagements. Only 11 of the 145 members (8%) and nine of the 64 employees (14%) reported driving straight to the GBYMCA and driving straight home following their visit to the Y.

Since the visit to the GBYMCA Recreational Community Center is generally just one stop in a larger, multi-destination trip downtown, those who do drive are parking in a variety of locations that serve the entire trip purpose. Of members who report regularly driving to the Y, 64% (59 of 92) responded that they typically park on the street nearby, which was defined as Maple Street north to Pearl Street, and from St Paul Street to east to Willard Street, while 29% reported parking in an off-street parking lot or garage. This area spans a great number of destinations, including residential, office, commercial, and retail.

It should be noted that the survey was conducted in December where a large portion vehicle trips would be expected and the number of bicycle trips would be underrepresented, the results only

captured a portion of the members, and the results were never tested for statistical significance. Even so, the survey results indicate:

- A large number of members and employees walk to the Y Recreational Community Center, even in the winter; and
- Those that drive are generally combining trips with other destinations.

These two items indicate that a low parking rate per square foot is applicable to Recreational Community Centers, and an increased waiver for the parking requirement is appropriate for the RCC land use.

### **ITEM 3: Variety of Adjacent Land Uses to Recreational Community Centers**

As suggested in Item 2, Recreational Community Centers benefit from a centralized location by combining trip destinations. By locating within a short distance to a variety of land uses, RCCs are better able to achieve their mission by reaching a larger population. By locating close to a variety of land uses, near both trip origins (residential locations) and destinations (retail, office), the RCC becomes part of the members routine.

The existing GBYMCA, which is an example of a Recreational Community Center in operation in an urban setting, has been in service to the community for over 80 years, providing only 20 spaces for use by employees (8 on property and 12 leased spaces). Similar YMCAs around the country operate successfully under similar limited parking scenarios. The intention of these RCCs is to capitalize on the mixed-uses and variety of activities in the surrounding neighborhood, and in doing so, RCCs are desirable destinations outside of vehicle travel.

In addition, since RCCs are commonly in densely developed areas near residential land uses, providing a large number of parking spaces, either in an open lot or multi-story structure, will likely not fit within the context of the surrounding neighborhood.

### **SUMMARY**

Based on the findings documented above:

- A YMCA provides a unique range of services not captured in the current zoning land use, and based on national guidance; a new land use category should be developed based on ITE Land Use Code 495: Recreational Community Center.
- The parking requirement should reflect the data captured from national guidance and site-specific observations. The ITE PM peak parking generation rate for Urban Recreational Community Center is 1.15 spaces per 1,000 SF. Additionally, the PM peak hour trip generation rate is approximately 1/3 that of the ITE “Health / Fitness Club”; it is proposed that the parking requirement is also approximately 1/3 that of “Health Club” in Burlington CDO, or one (1) per 1,000 SF.
- The operations of the existing GBYMCA Recreational Community Center support the development of a new land use, and since the RCC land use is generally sited within an area that encourages trip-chaining, an increased waiver of up to 100% is proposed.