The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505. Written comments on items may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401, or at mtuttle@burlingtonvt.gov.

AGENDA

I. Agenda

II. Chair’s Report

III. Director’s Report

IV. Public Forum

Public forum for items not on the agenda. See the Agenda Packet for details on how to participate in the public forum for this meeting.

V. Public Hearing: Proposed CDO Amendment ZA-21-07 Heights, Dormers & Eaves (Time Certain 6:45pm)

The Commission will hold a public hearing on a proposed amendment to the Burlington Comprehensive Development Ordinance regarding height measurements, dormers and eaves. Information related to this item is in the agenda packet on page 6.

Staff Recommendation: Approve Municipal Bylaw Amendment report and refer to Council with recommendation.

VI. Public Hearing: Proposed CDO Amendment ZA-21-08 Act 179 Changes

The Commission will hold a public hearing on a proposed amendment to the Burlington Comprehensive Development Ordinance resulting from Act179 of the 2020 VT Legislative session. Information related to this item is in the agenda packet on page 11.

Staff Recommendation: Approve Municipal Bylaw Amendment report and refer to Council with recommendation.

VII. Public Hearing: Proposed CDO Amendment ZA-21-09 Updates & Corrections to Article 14

The Commission will hold a public hearing on a proposed amendment to the Burlington Comprehensive Development Ordinance regarding updates and corrections to Article 14. Information related to this item is in the agenda packet on page 16.

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Staff Recommendation: Approve Municipal Bylaw Amendment report and refer to Council with recommendation.

VIII. Commissioner Items
   a. Committee Reports
   b. Upcoming Meetings: July 13 and July 27 at 6:30pm (Zoom vs. In-Person TBD)

IX. Minutes & Communications
   a. The minutes of the May 11, 2021 meeting are enclosed in the agenda packet on p. 38.
   b. Communications are posted online under this meeting date at https://www.burlingtonvt.gov/CityPlan/PC/Agendas

X. Adjourn
**Guidance for Participating in a Virtual Planning Commission Meeting**

As social distancing measures to preserve public health and safety continue to be required to prevent the spread of COVID-19, or are recommended as a standard practice, the Office of City Planning will be supporting the Planning Commission to conduct their meetings online via Zoom. Here is information about how to join a virtual meeting, and what to expect while participating.

**General Guidance for Public Participation**

Please remember that in this digital meeting environment, meetings are open to the public and anyone may be watching or listening even if you cannot see them. Meetings will be recorded, and both the recording and chat content of the meeting will be maintained as a public record.

Please ensure your display photo and screen name are professional, such as using your first and last name. Please test your audio and video prior to the start of a meeting, and familiarize yourself with how to join a meeting by your chosen method. And finally, please be patient with us. Technology doesn’t always work as planned, and we are all learning how to hold a successful virtual meeting!

**How to Join a Virtual Meeting**

Zoom allows participation via either computer or telephone. Each agenda for a meeting that will be conducted virtually will include details about how to join via either of these options, including a web address, phone number, Meeting ID, and password.

If you participate via computer, you have the option of seeing Commissioner videos and any presentation materials that may be shared. If you use either a standard phone or cell phone to call in, you will only hear the audio portion of the meeting. If you join via a smartphone, you may have the option to download the Zoom app, which will enable you to see and hear the meeting.

**How to Participate in a Virtual Meeting**

During meetings, only Planning Commission members and limited staff members will be viewed on video. Members of the public attending a meeting will be muted, except when invited to speak during public forum or a public hearing. Whether members of the public can speak at other times during the meeting is the discretion of the Chair.

If you want to speak during public forum, please take the following steps to assist us in making this process run as smoothly as possible:

- Email staff at mtuttle@burlingtonvt.gov by 5pm on the day before a meeting to indicate your interest in speaking. You do not need to provide your comments. Staff will enable your microphone as your name is called from a list of interested speakers.
- During a meeting, you can use the "Raise Hand" feature, or indicate in a chat message that you wish to speak during public forum. Staff will enable your microphone as your name is called.
- If you are interested in submitting your comments in writing instead of speaking during the meeting, you may do so by 5pm the day before a meeting, they will be forwarded to the Commissioners ahead of the meeting.
Pursuant to 24 V.S.A. §4441 and §4444, notice is hereby given of a public hearing by the Burlington Planning Commission to hear comments on the following proposed amendments to the City of Burlington’s Comprehensive Development Ordinance (CDO). Per Act 92, Secs. 5 and 6, the public hearing will take place during the Planning Commission meeting on Tuesday, June 22, 2021 beginning at Time Certain 6:45pm. You may access the hearing/meeting as follows:

To join from a Computer, please click this URL to join, and enter the Webinar ID if prompted: https://us02web.zoom.us/j/87383170809

To join by phone, dial this number and enter the Webinar ID when prompted:
Number: +1 312 626 6799   Webinar ID: 873 8317 0809

Pursuant to the requirements of 24 V.S.A. §4444(b):

Statement of purpose:
The purpose of the proposed amendments are as follows:
- **ZA-21-07**: To clarify building height measurements, when and how dormers affect building height, and defines dormers and eaves.
- **ZA-21-08**: To incorporate recent changes to state enabling statute regarding ADU’s, existing small lots, and small multi-unit dwellings.
- **ZA-21-09**: To make a range of corrections and updates to Article 14 based on its application.

Geographic areas affected:
These amendments apply to the following areas of the city:
- **ZA-21-07**: All areas and zoning districts within the city.
- **ZA-21-08**: All areas and zoning districts within the city.
- **ZA-21-09**: Form Districts 5, 6, and Civic located in the downtown area of the city.

List of section headings affected:
The proposed amendments modify the following sections of the Burlington Comprehensive Development Ordinance:
- **ZA-21-07**: Modifies Sec. 5.2.6 (a) 1.; adds Sec. 5.2.6(a) 2D and Sec. 5.2.6 (b); Modifies Sec. 6.3.2. (a) 2; and Modifies Article 13: Definitions
- **ZA-21-08**: Modifies Sec. 5.2.1; Modifies Sec. 5.4.5; Modifies Sec.13.1.2; and Modifies Appendix A-Use Table
- **ZA-21-09**: Modifies Sec. 14.1.3; Sec 14.3.4-C; Sec.14.3.4-E; Sec.14.3.4-F; Sec.14.3.4-G; Sec 14.3.5-C; Sec.14.3.5-E; Sec.14.3.5-F; Sec.14.3.5-G; Creates Sec. 14.3.6.-I Water Dependent; Modifies Sec.
14.4.13; Sec. 14.5.15; Sec. 14.6.4; Sec. 14.6.7; Sec. 14.6.8; Sec. 14.7.1; Sec. 14.7.2; Sec. 14.7.3; and Sec. 14.8; and Modifies Article 14- Map 3 Shopfront Required

The full text of the Burlington Comprehensive Development Ordinance is available online at www.burlingtonvt.gov/DPI/CDO. The proposed amendment can be reviewed in hard copy posted on the first floor of City Hall, 149 Church Street, Burlington or online at https://www.burlingtonvt.gov/DPI/CDO/Amendments
TO: Planning Commission
FROM: David E White, FAICP, Dir. of Planning
       Scott Gustin, AICP, DPI Principal Planner & Zoning Division Manager
       Mary O’Neil, AICP, DPI Principal Planner
DATE: May 28, 2021
RE: CDO Amendment ZA-21-07: Height Measurement, Dormers & Eaves

Overview & Background
This amendment addresses two areas within the Comprehensive Development Ordinance that relate to how a building’s height is measured as follows:

Height Measurement
This amendment seeks to improve the connection between existing sections of the Comprehensive Development Ordinance pertaining to how building height is measured:

- Sec. 5.2.6 (a) 1 A & B note two starting points for measuring a building’s height – from the sidewalk or from the average finished grade around the entire building, depending on the distance from the sidewalk.
- Sec. 5.2.6 (a) 3 specifies increments for building height measurement along the street façade.

The relationship between Sec. 5.2.6 (a) 1 A and 3 is clear. A building’s height measured from the public sidewalk is done in increments to account for changes in grade along the street façade. The relationship between Sec. 5.2.6 (a) 1 B and 3 however is not clear. How does the requirement for height measurement intervals along the street façade(s) relate to the average finished grade around the entire building? This amendment seeks to clarify this relationship. The end result clarifies that measurement of building height is done in increments along the street façade(s) in any case.

The Committee met and discussed this issue on 2/4 and 3/4, and unanimously recommended forwarding the staff recommendation to the full Planning Commission.

Dormers & Eaves
The Comprehensive Development Ordinance offers no guidance on how the measurement of a building’s height may be impacted when dormers are proposed. Dormers are a common building element that enable greater useable living space in an attic, and at times, can stretch or exceed height limits. This amendment seeks to articulate under what circumstances roof dormers actually affect building height and how. It also introduces a basic design standard and new definition of the term.

A related matter as to roof form is the term “eave” which lacks definition in the CDO. Eaves are allowed to project into setbacks. Lacking definition of the term, there have been proposals to stretch the concept of what an eave is in order to take advantage of the allowable setback encroachment. This amendment seeks to define the term “eave.”

The Planning Commission Ordinance Committee discussed changes to address dormers and eaves separately, but the matters have been combined into one amendment given that they are both related to roof forms. The Committee addressed dormers January 7 and February 4, 2021 and recommended forwarding the amendment to the full Planning Commission for consideration. The Committee discussed the eave matter at their March 7 and April 4, 2019 meetings and recommended forwarding the amendment to the full Planning Commission for consideration.
**Proposed Amendment**

**Amendment Type**

<table>
<thead>
<tr>
<th>Text Amendment</th>
<th>Map Amendment</th>
<th>Text &amp; Map Amendment</th>
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**Purpose Statement**

The purpose of this amendment is to clarify that building height is measured in increments along the street façade, regardless of whether the building height is measured just from the public sidewalk or from the average finished grade around the entire building. Further, the proposed amendment identifies when and how roof dormers affect building height measurement, provides a design standard for dormers, and defines the terms “dormer” and “eave.”

**Proposed Amendments**

*Deleted language is crossed out and new language is underlined in red.*

[Begin text amendment]

Article 5: Citywide General Regulations

Sec. 5.2.6 Building Height Limits

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

(a)Height Measurement:

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

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

2. **Ending Point:** Building height shall be measured to:
   - A. Flat Roof: As written.
   - B. Pitched Roof: As written.
   - C. Curved Roof: As written.
   - D. **Roofs with Dormers:** Building height will be calculated to the midpoint of the rise of any dormer that exceeds 50% of the width of the horizontal eave length of the roof. Dormers less than this width do not affect height calculation noted in A – C and E of this subsection.
   - E. Other Roof Forms: As written.
(b) Buildings on Sloped Sites: Buildings on slopes shall reflect the pre-construction topography of the site by making use of opportunities to vary the building’s height and roof forms relative to terrain changes as follows:

1. **Measurement Interval:** To encourage a variation in building heights relative to terrain changes and encourage a variation in roof form, building height shall be measured along the street-facing façade beginning no less than 16-feet or more than 32-feet from lowest corner, or where two streets intersect if a corner lot, and at intervals of no less than 32-feet or more than 65-feet for along the entire length of the street-facing façade(s).

2. **Lots Fronting on Two or More Streets:** Where a lot, other than a corner lot, fronts on two or more streets, the building height shall be measured along each street-facing façade. Where the streets are at differing elevations, the building height may gradually increase above the maximum height allowed on the lowest street provided that any such additional height along the lowest street shall be set-back a minimum of 16-feet from the average plane of the building's street-facing façade below for every 10-feet of additional building height up to the maximum height allowed on the highest street.
3. **Illustration:** To illustrate evaluate the height and bulk of the a proposed building structure in context with its surroundings, the DRB applicant may be required the developer to prepare a scale model, computer visualization, illustrations, or other renderings of the proposed building in context with its surroundings.

**(cb) Exceptions to Height Limits**

*(Unchanged)*

**Article 6: Development Review Standards**

**Sec. 6.3.2 (a) 2, Roofs and Rooflines**

New buildings should incorporate predominant roof forms and pitches within the existing neighborhood and appropriate to the context. Large expanses of undifferentiated roof forms shall be avoided. This can be achieved by incorporating dormers or some variation in the roof form to lessen the impact of the massing against the sky. While flat roofs can be a reasonable architectural solution, pitched roof forms and architectural elements that enhance the city's skyline are strongly encouraged. Roof eaves, parapets, and cornices should be articulated as an architectural detail. Roof-top mechanicals shall be screened from view from the public street, and should be incorporated into and hidden within the roof structure whenever possible.

**Dormers shall not exceed the height of the ridgeline of the roof to which they are attached, and are limited in total to 33% of the horizontal eave length of the principal roofline.**

Solar panels, light colored ballast or roof membranes, split roof clerestories, planted or “green” roof technologies (with a clearly articulated maintenance plan) and “gray water” collection are encouraged. Active rooftop uses are also encouraged to add to the visual complexity and activity of the city’s skyline, and afford public access to otherwise unseen views of the city and surrounding landscape.

**Article 13: Definitions**

**Eave:** The edge of the roof which overhangs the face of an exterior building wall and, normally, projects beyond the side of a building; performing the primary function of the roof in throwing water clear of the exterior building walls.
**Dormer**: A roofed structure, often containing a window that projects vertically beyond the plane of a pitched roof. Dormers are commonly used to increase the usable space in a half story and to create window openings in a roof plane.

*Shed dormers have a single, inclined roof.*

*Dog house dormers are gable roofed, typically with a single window.*

*All other definitions, as written.*

**Relationship to planBTV**

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

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*Compatibility with Proposed Future Land Use & Density*

The proposed amendment does not impact the types or density of potential land use and density.

*Impact on Safe & Affordable Housing*

The proposed amendment has no impact on housing safety and affordability.

*Planned Community Facilities*

The proposed amendment has no impact on planned community facilities.

**Process Overview**

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<table>
<thead>
<tr>
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<td><strong>Draft Amendment</strong></td>
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<td><strong>prepared by:</strong> Staff, PC OC</td>
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Overview & Background

The Vermont legislature passed Act 179 (S.237) in September 2020, and the bill was signed into law on October 12, 2020. Among other things, this act included multiple changes to state enabling law (24 VSA Ch 117) intended to promote greater access to affordable housing. Specifically relevant to Burlington are 3 changes that require amendment to the Comprehensive Development Ordinance (CDO) in order to conform with these changes in state statute. These are:

- amending the definition and some requirements for accessory dwelling units
- requiring that certain “small lots” must be unable to connect to municipal water and sewer in order for a municipality to prohibit development on it
- prohibiting a municipality from denying dwellings of four or fewer units in districts that allow multi-unit dwellings based solely on the character of the area when conducting a conditional use review

The Planning Commission discussed each of these issues on Feb 23, 2021, and supported recommended staff changes applicable to sections of the CDO relative to Accessory Dwelling Units and Existing Small Lots. The Commission referred the issue of conditional use review for small multi-unit buildings to its Ordinance Committee for additional discussion.

The Commission’s Ordinance Committee discussed the provisions related to conditional use review of multi-unit buildings between two and four units on March 4, 2021. Staff presented 4 possible approaches, with an overall recommendation which centered on removing conditional use review for all residential uses across the city. The staff recommendation that conditional use is not appropriate for residential uses located within a residential district is based on a number of factors, including:

- residential uses permitted or prohibited within each district should be more consistent with the purpose statement of the zoning districts involved (i.e. allowing duplexes as a permitted use in RL)
- there is regulatory redundancy between Conditional Use Review and Major Impact Review for multi-unit housing; ultimately Major Impact Review is more appropriate for considering changes in residential intensity
- Appendix A currently creates confusion between regulating use vs. regulating building type (i.e. “Attached Dwelling(s) – Mixed-Use” is a building type, not a use).

The Ordinance Committee unanimously recommended forwarding the staff recommendation to the full Planning Commission for consideration.
Proposed Amendment

Amendment Type

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Purpose Statement

The proposed amendment addresses recent changes to the state enabling statute, ensuring that the CDO complies with new standards for ADUs, existing small lots, and small multi-unit dwellings.

Proposed Amendments

The following amendments to the Burlington CDO are included in this proposal:

1. **Amend Sec. 5.2.1 Existing Small Lots**
   
   This affords additional provisions for the development of existing Small Lots, when those lots can connect to municipal water and sewer infrastructure.

2. **Amend Sec. 5.4.5 Accessory Dwelling Units and Sec. 13.1.2 Definitions**
   
   This removes bedroom and occupant limits from ADU standards and definitions, and increases the alternative maximum size for ADUs to 900 sq.ft.

3. **Amend Appendix A - Use Table**
   
   Changes duplex from a Conditional to Permitted use within the RL and RL-W districts; deletes “Attached Dwellings-Mixed Use” and distinguishes between multi-family dwellings of 3-4 units and those with 5 or more units; and changes multi-family dwellings of 3-4 units from a Conditional to a Permitted use in the Institutional district.

[Begin text amendments]

Note: Deleted language is crossed out and new language is underlined in red.

Sec. 5.2.1 Existing Small Lots

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

- can be served by municipal water and sewer service; and
- is at least four thousand (4,000) square feet in area; and
- has a minimum width and depth dimension of forty (40) feet or more.

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

Sec. 5.4.5 Accessory Dwelling Units

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

Where there is a principal structure on a lot which exists as an owner-occupied single family residence, one accessory dwelling unit, that is located within or appurtenant to such single family dwelling, shall be allowed as a permitted use if the provisions of this subsection are met. An accessory dwelling unit means a one efficiency or one bedroom apartment, dwelling unit that is clearly subordinate to the principal dwelling, and has...
facilities and provisions for independent living, including sleeping, food preparation, and sanitation. **No accessory unit shall be inhabited by more than 2 adult occupants.** An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation. Additionally, there must be compliance with all the following:

1. The property has sufficient wastewater capacity as certified by the Department of Public Works; and,

2. The unit does not consist of more than 800 sq. ft., or 30 percent (30%) of the Gross Floor Area of the principal home, whichever is greater; and,

3. Applicable setback and coverage requirements are met, except as provided for in Sec. 5.2.3 (b) 10; and, 

4. A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit prior to the issuance of the certificate of occupancy for the unit. Such reference must identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.

**Sec. 13.1.2 Definitions.**

**Accessory Dwelling Unit or Apartment:** An efficiency or one-bedroom apartment A **dwelling unit** that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

**Appendix A – Use Table**

*See attached.*

[End text amendments]

**Relationship to planBTV**

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

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**Compatibility with Proposed Future Land Use & Density**

The proposed amendments, while necessary to maintain compliance with state enabling statutes, are consistent with the land uses and densities proposed in planBTV. These changes do not significantly change the overall land uses and densities permitted in residential areas of the city, but is in line with the plan’s future land use vision, which anticipates small and incremental changes to residential areas within the context of existing development patterns.

**Impact on Safe & Affordable Housing**

The proposed amendments have no impact on housing safety, and may serve to improve affordability by reducing the time, cost, and complexity for small multi-family residential development.

**Planned Community Facilities**

The proposed amendment has no impact on planned community facilities.
Process Overview
The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

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Planning Commission Agenda
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### Appendix A - Use Table – All Zoning Districts – Planning Commission Public Hearing Draft 06/22/2021

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<th>USES</th>
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<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Attached Dwellings - Multi-Family (3 or more)</td>
<td>N</td>
<td>N²</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
</tbody>
</table>

1. Residential uses are not permitted except only as an accessory use to an agricultural use.
2. Duplexes may be constructed on lots which meet the minimum lot size specified in Table 4.4.5-1.
3. Duplexes shall only be allowed as a result of a conversion of an existing 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. Daycare centers and preschools in the RCO zones shall only be allowed when a small museum is the principal use.
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. 4.4.5 (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. (Reserved).
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 not conforming in the zoning district.
27. This use is permitted or conditionally permitted on lots south of Home Avenue only when one or more Industrial or Art Production use(s) exists on the lot, and when the combined gross floor area of all uses with this footnote does not exceed 49% of the Gross floor area on the lot.
28. Grocery stores up to but not to exceed 35,000 square feet may be permitted subject to conditional use approval by the DRB in that portion of the Enterprise-Light Manufacturing District between Flynn and Home Avenue.
29. Must be fully enclosed within a building.
30. New single detached dwellings are not permitted. However, a pre-existing single detached dwelling may be reverted to a single family use regardless of its present use if the building was originally designed and constructed for that purpose.
31. See special use standards of Sec. 5.4-13, Emergency Shelters.
32. Performing Arts Centers in the ELM zone shall be limited to properties with frontage on Pine Street up to 5,000 square feet in size, and to properties with frontage on Industrial Parkway up to 15,000 square feet in size. 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.

¹For permitted and conditional uses within the Downtown and Waterfront Form Districts, refer to Article 14.
TO: Planning Commission
FROM: David E White, FAICP, Dir. of Planning
DATE: May 28, 2021
RE: ZA-21-09 - Updates and Corrections to Article 14

Overview & Background
This amendment makes a collection of corrections and revisions to Article 14 of the Burlington Comprehensive Development Ordinance (BCDO) – the planBTV: Form Based Code – based on the past 36+ months of real-world application to improve its consistent use and effective applicability. This has been a collective effort of the Permitting and Inspections team and some applicants working with staff to collect problems, questions, and challenges confronted in its application to real-world projects since adoption in the fall of 2017.

Proposed Amendment

Amendment Type

<table>
<thead>
<tr>
<th>Text Amendment</th>
<th>Map Amendment</th>
<th>Text &amp; Map Amendment</th>
</tr>
</thead>
</table>

Purpose Statement
The purpose of this amendment is to revise Article 14 of the Burlington Comprehensive Development Ordinance (BCDO) based on the past 36+ months of real-world application to include a number of corrections and updates to improve its consistent use and effective applicability, including:

Proposed Amendments
Proposed amendments include:

- Consistent use of terms and concepts regarding things like allowed encroachments into setbacks, location of parking, glazing, and voids.
- Makes clear the the exemption for work being proposed for a public right-of-way or thoroughfare, and instead directs compliance with Great Streets BTV: Downtown Street Standards, and approval by the Dept. of Public Works.
- Adds new definitions including those for Awnings, Balconies, Canopies, Decks
- Revises rear yard setback in FD5 to be consistent with previous Downtown-Transition District requirement
- Adds a new Civic Space Type for “Water-Dependent” sites to better incorporate current and potential use of Perkins Pier
- Revise Map 3 – Shopfronts Required to include the new segments of Pine and St. Paul streets
Revises Urban Design Standards regarding Primary Materials, Balconies and Decks, and Awnings and Canopies to improve their practical application.

- Consolidates standards regarding Fences into a single location for ease of use, and adds maximum height and expands material standards.
- Clarifies how the requirements and standards apply to existing and non-conforming structures.
- Expands authority for Administrative Relief for minor variations from numerical standards.
- Removes references to “Planning and Zoning” department and “Director,” and replaces them with “Permitting and Inspections” dept and “Administrative Officer” as appropriate.

Deleted language is crossed out and new language is underlined in red.

[Begin text amendment]

See attached.

[End text amendment]

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

<table>
<thead>
<tr>
<th>Theme:</th>
<th>Dynamic</th>
<th>Distinctive</th>
<th>Inclusive</th>
<th>Connected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Use:</td>
<td>Conserve</td>
<td>Sustain</td>
<td>Grow</td>
<td></td>
</tr>
</tbody>
</table>

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety and affordability.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<table>
<thead>
<tr>
<th>Planning Commission Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff 4/7/21</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City Council Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Read &amp; Referral to Ordinance Cmte</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
Burlington Comprehensive Development Ordinance

PROPOSED: ZA-21-09 – planBTV Downtown Code Update


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

Purpose: This amendment is to revise Article 14 of the BCDO to include a number of corrections and updates to improve its use and applicability.

Sec. 14.1.1-14.1.2 – unchanged

Sec. 14.1.3 -Applicability

This planBTV Downtown Code shall be applicable to all lands outside of the public rights-of-way or a Thoroughfare within the Downtown and Waterfront District as mapped or described on the Burlington Regulating Plan (Section 14.2), as such may be changed from time to time, pursuant to Section 14.2 - Regulating Plan. Any and all subdivision of land, development, and construction or modification of all Improvements, land, Buildings, and Structures in the Downtown and Waterfront District shall occur only in accordance with this Article 14 planBTV Downtown Code as in effect on the date of acceptance of the completed application for approval of the applicable Project Plan submitted pursuant to Section 14.7 Administration and Procedures.

Improvement, development, construction or modification within an existing or proposed public right-of-way or a Thoroughfare shall be made in accordance with Great Streets BTV: Downtown Street Standards, and require approval by the Dept. of Public Works.

To the extent applicable, and not otherwise in conflict with this Article 14-planBTV Downtown Code, the following sections of the Burlington Comprehensive Development Ordinance (CDO) shall also continue to apply:

a) Article 1 - General Provisions
b) Article 2 - Administrative Mechanisms;
c) Article 3 - Applications, Permits and Project Reviews, Parts, 1, 2, 3, 5 and 6;
d) Article 4 - Zoning Maps and Districts, Parts 1, 2, 3, and Part 5 Sec. 4.5.4;
e) Article 5 - Citywide General Regulations, Parts 1 and 2; Part 3, Secs 5.3.1-5.3.4 and Secs 5.3.1-5.3.8; Part 4, Sec. 5.4.7 and Sec. 5.4.8; and Part 5;

f) Article 7 - Signs

g) Article 8 - Parking

h) Article 9 - Inclusionary and Replacement Housing;

i) Article 10 - Subdivision Review;

j) Article 12 - Variances and Appeals; and,

k) Article 13 - Definitions.

In each case, the standards and requirements applicable to the Downtown and Waterfront District Regulating Plan and this Article 14 shall take precedence without limitation over any duplicative or conflicting provisions of the other Articles of the Burlington Comprehensive Development Ordinance (BCDO).

If there is any conflict between the provisions of this Article 14 and any provisions of any other existing City codes, ordinances, regulations or standards (the “Existing Local Codes”), the provisions of this Article 14 shall take precedence over such conflicting provisions except for City and state Building, Fire, Health and Safety Codes.

The graphics, illustrations, photographs, tables, and metrics are an integral part of the planBTV Downtown Code; however:

a) Photographs are provided only as general illustrative examples and are not binding;

b) The illustrations of Table 14.3-A Burlington Form Districts Summary Table, Table 14.3.6-A Civic Space Types Summary Table, Table 14.4-A Building Types Summary Table, and Table 14.5-A Frontage Types Summary Table are provided only as general illustrative descriptions and are not binding;

c) The diagrams, photographs, and illustrations contained in Sections 14.3.4 through 14.3.6 (Specific to Form Districts), Sections 14.4.4 through 14.4.13 (Specific to Building Types), and Sections 14.5.4 through 14.5.17 (Specific to Frontage Types) are provided only to indicate the general character of the various Form Districts and elements. References to metrics shown thereon however shall have regulatory effect.

d) The graphics, illustrations, and photographs in Section 14.8 Glossary are provided for illustrative purposes only and are not binding;

e) The graphical depictions of the Form Districts on the various Tables are provided for ease of reference only and are not binding. The Form District designations and standards applicable to each Form District are binding.
Where in conflict, metrics represented in text and/or tables shall take precedence over metrics represented graphically, and a more specific standard shall take precedence over a more general standard.

Sec 14.2.6 - Special Requirements

Map 3 - Shopfronts Required – See Attached

Sec. 14.3.4 FD6 Downtown Core

14.3.4-C Lot Occupation & Building Placement

Frontage Buildout & Building Setback

Rear Setback:
- Principal Buildings: 0-ft min. or 15-ft from a rear public Alley centerline
- Outbuildings: 0-ft min. or 15-ft from a rear public Alley centerline

Table 14.3.4-E Parking, Loading & Service

On-Site Parking

On-site parking shall be provided per the requirements of Sec. 14.6.7.

Location on the Lot

All parking provided within a Principal Building Type (other than a Perimeter Building) shall be located underground, above the second story, and/or at-grade within the first story where located in the third lot layer and separated from the street by an active street-level use. Parking Lots are not permitted, and Parking Areas shall be located in the third lot layer. Unless located within a Principal Building below the finished grade or above the second story, all Parking Structures, and Garages, and Parking Areas shall be located in the third lot layer behind a Principal Building Type Perimeter Building (see Sec. 14.4.11 and Sec. 14.6.3). Parking Lots are not permitted

Miscellaneous

See also Sec. 14.6.7 for additional requirements pertaining to parking and site design.
14.3.4-F- Encroachments - into

Required Setbacks

<table>
<thead>
<tr>
<th>Encroachment Type</th>
<th>Front</th>
<th>Rear</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frontage Type Elements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awnings and Canopies</td>
<td>Permitted</td>
<td>Not permitted</td>
</tr>
<tr>
<td>Signs</td>
<td>Permitted</td>
<td>Not permitted</td>
</tr>
<tr>
<td>Balcony and Decks</td>
<td></td>
<td>4-ft max. encroachment</td>
</tr>
<tr>
<td>Other Architectural Features</td>
<td>4-ft max.</td>
<td>4-ft max.</td>
</tr>
<tr>
<td>Landscaping</td>
<td>Permitted</td>
<td>Permitted</td>
</tr>
<tr>
<td>Fences or freestanding walls</td>
<td>Not permitted</td>
<td>6-ft max. height</td>
</tr>
<tr>
<td>Driveways, Walkways</td>
<td>Permitted</td>
<td>Permitted</td>
</tr>
<tr>
<td>Utility Structures</td>
<td>Not permitted</td>
<td>Permitted</td>
</tr>
</tbody>
</table>

14.3.4-G- Encroachments - Public right-of-way

Building eaves, roof overhangs, solar shades, and light shelves; bay windows, oriel, and vestibules that are less than ten feet wide; and, cornices, belt courses, window sills, buttresses, or other similar architectural features may encroach into the ROW provided they are a minimum of 10-ft above the Sidewalk.

Sec. 14.3.5 FD5 Downtown Center

14.3.5-C- Lot Occupation & Building Placement

Frontage Buildout & Building Setback

Rear Setback:
- Principal Buildings: 03-ft min. or 15-ft from rear public Alley centerline
- 10-ft min. along a Form District boundary shared with a residential district.
- Outbuildings: 03-ft min. or 15-ft from rear public Alley centerline
Table 14.3.5-E- Parking, Loading & Service

On-Site Parking

On-site parking shall be provided per the requirements of Sec. 14.6.7.

Location on the Lot

All parking provided within a Principal Building (other than a Perimeter Building Type) shall be located: Underground, above the second Story, and/or at-grade within the first Story where located in the Third Lot layer and separated from the street by an Active Street-level Use. Parking Lots are not permitted, and Parking Areas shall be located in the Third Lot Layer.

Unless located within a Principal Building below the finished grade or above the second Story, All Parking Structures, Garages and Garages Parking Areas shall be located in the Third Lot Layer behind a Principal Perimeter Building (see Sec. 14.6.3 and Sec. 14.4.11) Type. Parking Lots are not permitted

Miscellaneous

See also Sec. 14.6.7 for additional requirements pertaining to parking and site design.

14.3.5-F- Encroachments into Required Setbacks

<table>
<thead>
<tr>
<th>Encroachment Type</th>
<th>Front</th>
<th>Rear</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frontage Type Elements</td>
<td>Permitted</td>
<td>Permitted</td>
</tr>
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<td>Awnings and Canopies</td>
<td>Permitted</td>
<td>Not permitted</td>
</tr>
<tr>
<td>Signs</td>
<td>Permitted</td>
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</tr>
<tr>
<td>Balcony and Decks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Architectural Features</td>
<td>4-ft max.</td>
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</tr>
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<td>Utility Structures</td>
<td>Not permitted</td>
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</tr>
</tbody>
</table>
14.3.5-G- Encroachments - Public right-of-way

Building eaves, roof overhangs, solar shades, and light shelves; bay windows, oriel, and vestibules that are less than ten feet wide; and, cornices, belt courses, window sills, buttresses, or other similar architectural features may encroach into the ROW provided they are a minimum of 10-ft above the Sidewalk.

Sec. 14.3.6-I Water-Dependent

Intent

An Open Space associated with water-dependent recreation and related facilities.

Specifications

<table>
<thead>
<tr>
<th>Specification</th>
<th>Details</th>
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<tbody>
<tr>
<td>Form District</td>
<td>FD5</td>
</tr>
<tr>
<td>Size</td>
<td>No size limits</td>
</tr>
<tr>
<td>Frontage</td>
<td>Independent</td>
</tr>
<tr>
<td>Character</td>
<td>Informal</td>
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<tr>
<td>Coverage</td>
<td>80% max.</td>
</tr>
<tr>
<td>Buildings and Structures</td>
<td>1,500 sqft max in aggregate</td>
</tr>
<tr>
<td>Setback for Buildings and Structures</td>
<td>50-feet from the mean high water mark of Lake Champlain (100-feet above mean sea level) unless encroachment is required for the operation of a water-dependent use or facility. Features such as walkways, planters, benches, fountains, public art, sitting walls and other improvements to enhance the pedestrian environment and enjoyment of the waterfront may encroach into this required setback provided public access to the water's edge and pedestrian circulation is not unreasonably impaired.</td>
</tr>
</tbody>
</table>

Not inclusive of any associated Civic Buildings.
Typical Facilities

• Water-oriented facilities and services such as docks, marinas, boat ramps and lifts, boat fueling and pump-out, restrooms, marina office and chandlery, and facilities for commercial vessels.
• Civic, recreational, and community facilities
• Playgrounds and play structures
• Passive recreation, paths, and trails
• Buildings and structures necessary to support water-oriented facilities and services
• Commercial concessions

Parking

On-site parking is not required, and may not occupy more than 60% of the gross site area.

Sec. 14.4.13 - Urban Design Standards

a) Voids and Transparency: Requirements regarding the proportion and spacing of voids, and the transparency of glazing on a building facade for the purposes of activating the public street, shall be as required in Table 14.4.13-A Street Activation - Primary and Secondary Facade below.

14.4.13-A - Street Activation – Primary and Secondary Facade

<table>
<thead>
<tr>
<th>Building Types: Rowhouse, and Multi-Family: Small</th>
<th>Building Types: Mixed-Use, Multi-Family: Large, Perimeter, and Civic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground Floor</td>
<td>Upper Floors</td>
</tr>
<tr>
<td>15% min</td>
<td>10% min</td>
</tr>
</tbody>
</table>

Facade Voids: (Rough openings of all windows and doors, and the transparent portion of a curtain wall per floor)

Distance between voids measured both horizontally and vertically

Transparency and Reflectance of

VLT - na | VLT - na | 60% VLT min | VLT - na | VLR - 15% max | VLR - 15% max |
Glazing: applicable to 80% of the glazing per floor.

(VLT - Visible Light Transmittance, VLR - Visible Light Reflectance)

Additional requirements shall be as required for Officefront or Shopfront Fronts.

b) Windows & Doors:

iii. Principal Entrances shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, canopies, awnings, transoms, sidelights, or other design elements appropriate to the architectural style and details of the Building as a whole. Bays including a Principal Entrance should be expressed vertically and may continue onto the upper stories. Such bays are not required to include additional horizontal expression or upper story step-backs as required in c) below.

iv. Where provided:

A-D - unchanged

E. Shading devices designed and intended to control light entering the Building may project no more than 5-feet from the Façade, shall be consistent in materials, color, and design across the same Façade, and shall be placed, sized, shaped, and proportioned to match the associated openings.

c) Façade Articulation and Upperstory Stepbacks:

iii. Building Facades shall be horizontally articulated as follows:

C. The top story (other than a penthouse setback at least 10-feet from the primary plane of the Façade below) must have a cornice, parapet, pitched or shaped roof form and/or other equivalent architectural feature involving a projection from the average plane of the Facade of the story below by at least 12-inches to serve as an expression of the Building’s top.

iv. The upper stories of any Building exceeding 6 stories in height shall step-back as follows:

A. An upper story step-back of at least 10-feet from the primary plane of the Façade below shall occur above either the 2nd, 3rd, 4th, or 5th story, with the resulting Building base seeking to maintain a consistent height of at least 50-feet along Main and Battery streets, and at least 33-feet on all other downtown streets, in order to frame and define the public realm.

d) Building Materials:

i. Primary Materials: Not less than 80 percent of each street-facing Façade (not inclusive of voids) shall be constructed of one or more primary materials comprised of tested and proven, high quality, durable, and natural products, and those with low embodied carbon. For Facades over 100 square feet, more than one Primary Material shall be used. Changes between
Primary Materials must occur only at inside corners. The following are considered acceptable:

**Primary Materials:**
- A. Brick and tile masonry;
- B. Native or sintered stone;
  
  C. - E - unchanged

**ii. Accent Materials:** The following Accent Materials may make up no more than 20% of the surface area on each Façade. Accent Materials are limited to:
- A. Pre-cast and cast-in-place board-formed, finished and/or textured, and patterned masonry (for trim and cornice elements only);
  
  B - F - unchanged

**iii. - unchanged**

iv. **Fences:** Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line, however, woven cable fencing is permitted.

iv. **Roof Materials (not applicable to flat roofs).** Acceptable roof materials include 300 pound or better, dimensional asphalt composite shingles, wood shingles and shakes, metal tiles or standing seam, slate, and ceramic tile. *To the extent possible, all roof materials and colors should be selected to maximize the roof’s Solar Reflectance Index (SRI).*

vi. **Alternate Materials:** Alternate Primary and Accent materials, including high quality synthetic materials, may be approved by the Planning Director/Administrative Officer after seeking input from the Design Advisory Board. New materials must be considered equivalent or better than the materials listed above and must demonstrate successful, high quality local installations in a similar climate. Regionally-available materials and those with low embodied carbon will be strongly preferred.

**vii. Other:** - unchanged

**e). Walls:**

i. Unfinished (ie, not clad or constructed in a Primary or Secondary Material per d) above) foundation walls on a Principal Building shall be exposed no more than 48-inches above the finished grade. Surface-applied waterproofing on any foundation wall shall not be visible.

ii-vi – unchanged

**f). Roofs:** – unchanged

g) **Balconies and Decks:** Where provided, all Balconies and Decks shall meet the following specifications:

i. Balconies must be at least 4-feet deep (A) and 5-feet wide, and shall not project more than 8-feet from the plane of the Façade or Elevation to which it is attached.
ii. **Balconies** shall be cantilevered or visibly supported by brackets or beams sized, shaped and proportioned to match the associated balcony. Columns or posts extending to the ground within the public right-of-way are prohibited on a Facade, except in the case of a Gallery Frontage Type.

iii. Balconies shall provide 8-feet minimum clear height above the finished grade, or 13-feet 6-inches minimum clear height above the finished grade above any area used for vehicular parking or circulation, or emergency vehicle access.

i.iv. The balcony platform shall be at least 3-inches thick, and where the underside of a balcony is visible from a public way it shall be finished. Balconies may or may not incorporate a roof, Canopy or Awning, but shall not be enclosed.

v. **Decks** shall be permitted only in the Third Lot Layer or on rooftops.

vi. **Decks** may include a Canopy, Awning or free-standing pergola, but shall not be enclosed.

h) **Awning and Canopies**: Awnings and Canopies are encouraged as a traditional street-level store-front fitting to accent and provide shade and/or shelter over a primary entrance, display windows, or outdoor seating. Awnings and Canopies may also be found above upper story windows and Balconies, and over secondary entrances. Where provided, such all Awnings and Canopies placed on a Facade shall meet the following specifications:

i. Awnings and Canopies shall provide 8-feet minimum clear height above the finished grade (A), and shall project a minimum of 6-feet from the Façade (B) to a maximum of 2-feet from the curb (C). 13-feet 6-inches minimum clear height above the finished grade shall be provided above any area used for vehicular parking or circulation, or emergency vehicle access (A).

ii. First floor Awnings and Canopies shall project a minimum of 3-feet from the Façade (B) or Elevation to which it is attached to a maximum of 2-feet from the curb (C). Awnings and Canopies on upper story windows may project no more than 5-feet from the Façade. Awnings that cannot project a minimum of 3-feet due to the small size of the opening, shall project a minimum of 50% of the height of the opening (e.g. a window that is 4-ft tall shall project at least 2-ft).

ii.i. Awnings and Canopies shall be placed, sized, shaped, and proportioned to match the associated openings or width of the associated Frontage, and shall be consistent in materials, color, and design across the same Façade, Frontage Type, or architectural bay.

ii.iv. Awnings and Canopies that span across an entire Façade Frontage shall be fixed no higher than the top of the first story.

iv. All awnings and canopies used within an individual Frontage Type shall be consistent in materials, color, and design.
Article 14: planBTV Downtown Code

v. Awnings and Canopies shall not be internally illuminated or backlit, however they may contain lighting fixtures intended to illuminate the ground beneath the Building entrance.

vi. Awnings and Canopies may incorporate signage pursuant to the requirements of Article 7.

vii. Awnings shall have an internal or external structural framework of steel/aluminum or other appropriate, durable structural material supporting a thin, non-translucent covering material with a matte finish such as painted metal, acrylic, canvas, or synthetic fabric. The Awnings design shall not include a soffit, and side panels. Retractable awnings are encouraged. Columns or posts extending to the ground are prohibited within the public right-of-way. Retractable Awnings are encouraged.

viii. Awnings shall be typically rectangular in elevation and triangular in cross-section, with straight edges with no arcs or curves, and may be pitched to shed water off to the side when placed over a Building entrance. The valance of the Awnings shall be no more than 12-inches in height (D). The design should not include a soffit. Side panels are prohibited. Retractable awnings are encouraged.

ix. Canopies are typically rectangular in both elevation and in cross-section, shall have straight edges with no arcs or curves, and may be pitched enough to shed water off to the side when placed over a Building entrance. The faces of the Canopy shall be no more than 24-in in height (D).

x. Canopies shall be constructed of steel/aluminum or other appropriate, durable structural material. The Canopy may be clad in metal panel, wood, or other durable finished material.

xi. The Canopy design shall be left open from above without a roof using louvers or slats instead to provide shade, and the exterior faces of the canopy should be no more than 24-in in height (D). Canopies may include a flat roof.

xii. Canopies projecting into the public right-of-way shall be cantilevered or supported from above, and columns or posts extending to the ground are prohibited. Canopies placed outside of the public right-of-way may be partially or fully free-standing.

i. Other:

i. Upper-story open exterior fire stairs shall be located in the Third Lot Layer. They may be located in the Second Lot Layer provided they are enclosed and incorporated and designed in a manner consistent with the overall architectural design of the Building.

ii. Permanent vertical access features (stairs, ramps, etc.) handicapped access ramps located in the First Lot Layer must be integrated into the design of the chosen Frontage Type. Otherwise they must be located in the Second or Third Lot Layer.

iii. All utility service connections shall be underground for new construction.
iv. The footprint area of an Outbuilding may not exceed the footprint area of the Principal Building.

(photo caption) - An example of a vertical access ramp integrated into a Building Frontage.

Sec 14.5.15- Courtyard Frontage Type

14.5.8-C - Standards

Courtyard Width 12-ft min. - lessor of 1/3 the total Building width or 35-ft max
Courtyard Depth 12-ft min. - 35-ft max
Canopy/Awn Projection 10-ft from Façade max

Clear Path of Travel to a Principal Entrance

14.5.8-D - Miscellaneous

A maximum of one Courtyard is permitted per Principal Building.

A Courtyard shall remain open to the sky, and may not contain Driveways, parking, loading or service areas, or mechanical equipment or vents.

A Courtyard may include a free-standing Canopy, Awning, umbrellas or pergola, but they shall not be enclosed.

The Courtyard shall be activated as a space for gathering, circulation, outdoor shopping, and/or restaurant seating.

The proportions and orientation of these spaces a Courtyard should be carefully considered for solar orientation and user comfort.

A Courtyard is considered as part of the Building for the purpose of measuring the Frontage Buildout. All faces of the recessed Courtyard shall be considered to be part of the Façade.

Sec 14.5.15- Forecourt Frontage Type

14.5.15-D - Miscellaneous

A Forecourt occupies the First Lot Layer, and may extend the depth of a maximum required front yard setback to an amount equal to the maximum depth permitted in Sec. 14.5.15-C.
A Forecourt shall remain open to the sky, and may not contain Driveways, parking, loading or service areas, or mechanical equipment or vents.

A Forecourt may include a free-standing Canopy, Awning, umbrellas or pergola, but they shall not be enclosed.

Hardscape coverage requirement may be achieved through a combination of pervious and impervious surface materials.

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Sec. 14.6.4- Building Height

a) thru c) - unchanged

d) Basements and Crawl Spaces

i. Exposed basement walls visible along any Frontage shall not exceed \(89\) (nine-eight) feet in height measured from the exterior finished grade to the finished floor of the Story above.

ii. Unfinished crawl spaces taller than \(3\) (three) feet shall be screened from view from public Thoroughfares with landscaping.

iii. Unfinished crawl spaces shall not exceed \(5\) (five) feet in height measured from the exterior finished grade to the finished floor of the Story above.

e) Grading or Regrading of Sites. Sites with uneven topography present unique issues in relation to Building height. Buildings on steep slopes shall reflect the pre-construction topography of the site. When a site’s topography is modified, the site shall be graded in such a way to avoid the following features:

i. Retaining walls or unfinished blank walls taller than 4 feet in height along required Principal or Secondary Frontage;

ii. Retaining walls taller than 8 feet in height along the rear or side setbacks; and

iii. The construction of Buildings that do not reflect the preconstruction topography of the site. Illustrations below show appropriate site grading methods.

f) - unchanged

Sec. 14.6.7- Parking and Circulation

a) thru d) – unchanged
e) Parking Structures and Garages

i. With the exception of individual Garages serving a Rowhouse Building Type which shall 
be located in the Third Lot Layer, all Parking Structures and Garages shall be located:
   - within a Principal Building Type and located Underground, above the second 
   Story, and/or in the ground floor when located in the Third layer and separated from 
   the street by an Active Street-level Use; or,
   - behind a Perimeter Building (See Section 14.4.11), or enclosed below the 
   finished grade or above the second story within a Principal Building that provides active 
   uses (such as, but not limited to, residential lobby, retail, office, recreational, or services) 
   at the street level along the width of the Frontage a minimum of 20-feet deep.

ii-vi – unchanged

g) Parking Spaces, Lot Design and Layout

i - ii – unchanged

iii. Stacked and Tandem Parking. – otherwise unchanged

Sec. 14.6.8- Site and Landscape Standards

a) Purpose and Applicability - unchanged

b) Site Standards:

v. Fences and Free-standing Walls:

A. Fences and Free-standing Walls placed within the First Lot Layer shall not exceed 4- 
feet in height. Fences and Free-standing Walls placed within the Second or Third Lot 
Layer shall not exceed 8-feet in height unless a different height limit is specified 
under the applicable Form District or Frontage Type.

B. Materials used for Fences and Free-standing Walls shall be limited to Brick and tile 
masonry: Native or sintered stone; Wood – panels, clapboard or shingles; 
Cementitious siding, metal, and woven or braided cable wire. Chain-link and welded-
wire fencing shall not be used along any Frontage Line with the exception of the 
temporary enclosure of a construction site, or where required by the Building Official 
to protect public safety. Barbed or razor wire shall not be used in any application. 
Alternate materials may be approved by the Administrative Officer after seeking input 
from the Design Advisory Board. Alternate materials must be considered equivalent 
or better than the materials listed above, and must demonstrate successful, high 
quality local installations. Regionally-available materials are preferred.
A. C. All fences and free-standing walls shall be installed so that the finished side faces outward towards the adjacent property or public way.

c) Landscape Standards: otherwise unchanged

d) Solid Waste Storage Areas - unchanged

Sec. 14.7 – Administration and Procedures

14.7.1 - Applying for a Zoning Permit: Submission Requirements and Review

a) – unchanged

b) Application Submission. Each application shall be submitted to the Department of Planning and Zoning along in a form to be provided by the Department. Upon its determination that an application is complete, the Department shall process each application in accordance with this Section.

c) – unchanged

d) Modification of Submission Requirements. The Administrative Officer Director may allow the modification of the application and submission requirements listed above, including reducing and/or combining existing and proposed information on the same site plan, provided that any modification enables adequate review of the application. The Administrative Officer Director may also require the submission of additional information when deemed necessary to make a decision on the request. Such additional information may include but is not limited to the following: (remaining unchanged)

e) - unchanged

f) Review and Approval of Civic Spaces and Civic Buildings.

The creation of new Civic Spaces or Civic Buildings, or the Substantial Modification of an existing Civic Space or Civic Building, shall follow the process as defined below. Any other proposed alteration to an existing Civic Space or Civic Building shall be reviewed and approved by the Director Administrative Officer who shall ensure ongoing compliance with the intent and standards of this Chapter as applicable.
Because of their important civic nature and public use, the design and form of a new or substantial modified civic space or civic building shall be determined after:

- pre-application review and consultation with the departments of City Planning and Zoning, Permitting and Inspections, Community and Economic Development, and Parks, Recreation, Waterfront;
- a pre-application Neighborhood Public Meeting pursuant to Sec. 3.2.1 (d) of the BCDO;
- review and recommendation of the Design Advisory Board; and,
- final review and approval by the Development Review Board.

Remaining section is unchanged.

Sec. 14.7.2 - Non-Conformities

In addition to that as specified in Article 5, Part 3 Non-Conformities of the Burlington Comprehensive Development Ordinance, any building, structure, frontage, development, site, improvement, or other appurtenance thereto non-conformity which lawfully existed at the time of adoption of the applicable provisions of this or any Article or any amendment thereto may be continued subject to the following provisions:

a) Nothing in these regulations are intended to prevent normal repair and maintenance necessary to keep a building, structure, site, improvement or other appurtenance thereto in a safe and sound condition;

b) Any building, structure, frontage, development, site, sign, improvement, or other appurtenance thereto which legally existed on the effective date of this Article that does not conform to the requirements of this Article may continue until a substantial modification is requested or abandonment occurs;

c) Any nonconforming structure may be enlarged, maintained, repaired or altered; provided, however, that no enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part.

a) At such time when a substantial modification is requested or abandonment occurs, only the affected portion(s) of the building, structure, frontage, development, site, sign, improvement, or other appurtenance thereto shall be required to comply with all applicable provisions of this Article, and to the greatest extent practicable in the determination of the administrative officer or unless relief is provided by the DRB pursuant to Sec. 14.7.3 below:

b) Any modification other than a substantial modification an existing building, structure, frontage, development, site, sign, improvement, or other appurtenance thereto shall be permitted by right only if such changes result in greater conformance with the specifications of this Article;

c) Any change or modification shall not create any new nonconformity; and,
d) Buildings listed or eligible for listing on the State or National Register of Historic Places shall not be required to make any modifications under a) and b) above this section that would threaten their historic integrity.

14.7.3 - Variation from the Form: Administrative Relief, DRB Alternative Compliance, and Variances

The planBTV Downtown Code is intended to result in By-Right approval where development occurs strictly in conformance with the requirements of the applicable Form District. In some instances, however, it may be necessary to vary the prescribed form in order to accommodate unique site and/or building circumstances in order to promote context-sensitive development. In such instances, an applicant may seek Administrative or Development Review Board approval for relief from the requirements as set forth below. Any and all relief from the prescribed standards shall run with the land and be binding on the Property Owner and its/their successor and assigns. Applications requesting relief shall be made in writing and in the form as determined by the Department.

a) Administrative Relief. The Administrative Officer shall have the authority to authorize modification of up to 10% from any numerical standard set forth in this Article inclusive of any specific relief set forth in Table 14.7.3-A Administrative Relief below. No other relief from the prescribed standards shall be permitted except as approved by the Development Review Board in b) below.

i. Any request for Administrative Relief shall extend the requirements of 24 VSA 4448(d) regarding Administrative decisions for an additional 30 days in order to provide for opportunities for public notice and comment pursuant to Departmental procedures.

ii. Decisions by the Administrative Officer Director regarding any Relief granted shall be made in writing and upon affirmative findings that:

A. The relief granted is the minimum necessary to achieve the desired result;
B. Granting the relief will yield a result equal to or better than in strict compliance with the standard:
C. The property will otherwise be developed consistent the purpose of this ordinance, the intent of the Form District, the intent and purpose of the section that the relief is being sought, and all other applicable standards; and,
D. Any additional findings as may be required by Table 14.7.3-A Administrative Relief as follows:
### Table 14.7.3-A - Administrative Relief

<table>
<thead>
<tr>
<th>Type of Relief</th>
<th>Limits of Relief Granted</th>
<th>Required Findings</th>
<th>Standards Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Glazing Voids</strong>:</td>
<td></td>
<td></td>
<td>previous unchanged</td>
</tr>
<tr>
<td>A reduction in the amount of required minimum glazing voids on Primary and Secondary Facades</td>
<td>Maximum of 10% from the required Glazing voids</td>
<td>The relief is necessary to meet the requirements of a High Performance Building Energy Code or program.</td>
<td>Section 14.4: Specific to Building Types, Table 14.4.1513 - A Street Activation – Primary and Secondary Façade, and Section 14.5: Specific to Frontage Types Section 14.4: Specific to Building Types, Table 14.4.13-</td>
</tr>
<tr>
<td><strong>Glazing Voids</strong>:</td>
<td></td>
<td></td>
<td>remaining unchanged</td>
</tr>
<tr>
<td>A reduction in the maximum linear distance between window openings</td>
<td>Maximum of 10% of the required linear distance between windows</td>
<td>The relief is necessary for the creation of stronger distinctions between individual Frontage Types and/or at Building corners.</td>
<td>remaining unchanged</td>
</tr>
</tbody>
</table>

#### Sec. 14.8 - Glossary

**Active Street-level Use**: a use or activity within a space that is regularly frequented and actively utilized by workers, residents, guests, and/or patrons of the Principal Use; invites direct access from the public sidewalk or Civic space; and, provides visual interest and engagement to pedestrians on the adjacent sidewalk. Active street level uses generally include, but are not limited to retail, restaurants, bars, entertainment, hospitality, professional and personal services, libraries, institutional, educational and cultural facilities, office, residential, and entrance lobbies. Active Street-level Uses do not include those intended for parking, storage, mechanicals, utilities, and other substantially similar secondary or accessory uses and spaces.

**Awning**: A fixed or retractable wall mounted frame covered with fabric or other pliable material that provides decoration and shade and weather protection over a patio, window, storefront, or Building entrance.

**Balcony**: A wall-mounted projecting platform with a railing accessible from an upper story doorway that provides outdoor amenity space above the first floor.

**Canopy**: A fixed wall mounted or stand-alone rigid structure that provides decoration and shade and weather protection over a patio, window, storefront, or building entrance.

**Deck**: A roofless, raised platform on the ground or on top of a roof that is accessible from a secondary entrance that provides outdoor amenity space.
Department: The Department of Permitting and Inspections.

Thoroughfare: a public or private way for use by public vehicular, pedestrian, and bicycle traffic that provides Access to Lots and Open Spaces, and incorporates vehicular lanes and Public Frontages.

Streetscreen: a freestanding hedge, fence or wall of between 3.5 and 8 feet in height built (a) along the Frontage Line or (b) on the same plane as the Façade of the Building to Screen a Parking Lot, Parking Area or Loading Area, provide privacy to a side yard or rear yard, and/or strengthen the spatial definition of the public realm. A Streetscreen may have include an openings no larger than necessary 4-feet to allow automobile and enable pedestrian Access, and may be no longer than 20-ft or 20% of the Frontage whichever is less.
Downtown Form District Shopfront Required - ZA-21-09 as proposed
Burlington Planning Commission
Tuesday, May 11, 2021, 6:30 P.M.
Remote Meeting via Zoom
Draft Minutes

Members Present | A Montroll, J Wallace Brodeur, A Friend, H Roen, E Lee
Staff Present | D White, M Tuttle, S Gustin, W Ward, K Sturtevant
Attendance | S Bushor

I. Agenda

Call to Order | Time: 6:34pm
Agenda | No Change

II. Chair Report

A Montroll | Thanked D White for service, congratulated M Tuttle on award.

III. Director’s Report

D White | Will not be seeking reappointment. Will serve until a search produces a new Director, anticipate transitioning into a part time role within the department. M Tuttle is recipient of 2021 VPA Professional Planner of the Year award.

IV. Public Forum

Name(s) | Comment
S Bushor | Shared a communication requesting an amendment related to the shoreline setbacks. M Tuttle indicated staff generally supports, will look at any adverse impacts on shallow lots and bring a recommendation to the Commission.

V. Proposed CDO Amendment: Article 14 Updates

Action: Accept the Ordinance Committee changes, approve Municipal Bylaw Amendment report and warn for public hearing
Motion by: E Lee | Second by: A Friend | Vote: Approved unanimously
Type: Action | Presented by: D White
Ordinance Committee discussed proposed amendments and recommended changes, including:
- Adjust language to allow additional forms and applications of concrete masonry as an accent material.
- Add preference for low embodied carbon for primary and alternative materials.

Regarding the request by property owners to rezone the corner of Pine & King, Committee agreed with staff recommendation that this should be considered as part of a broader discussion about zoning.
district boundaries, not tacked onto this amendment. There needs to be a broader assessment of the areas zoned RH, and particularly in the Pine Street corridor between ELM and FD5 zones.

VI. City Planning FY22 Proposed Work Plan & Budget

No action required.

<table>
<thead>
<tr>
<th>Type: Discussion</th>
<th>Second by:</th>
<th>Vote: n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presented by: D White</td>
<td></td>
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</table>

D White provided a preview of the department’s FY22 budget, anticipated work plan, staffing changes and requests. The information will be presented to the City Council’s Board of Finance on May 19. Several Commissioners indicated their support for the request to increase staffing for planning projects.

VII. Update on Department of Permitting & Inspections

No action required.

<table>
<thead>
<tr>
<th>Type: Discussion</th>
<th>Second by:</th>
<th>Vote:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presented by: W Ward, S Gustin</td>
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</table>

W Ward and S Gustin provided an update on how the relocation and combination of zoning and trades at the Dept. of Permitting & Inspections has been working over the last year. In addition to building closures, COVID-19 impacted construction by reducing number of permits and shifting to smaller projects which has decreased department revenues. Customer service team is now structured in a way that prioritizes customer service and gives team a strong sense of ownership to resolve issues. On May 3, new online permit application system went live. While some kinks are still being resolved, the first week has already brought a 22% reduction in the number of customers visiting the lobby for permits. Staff is finding that new system also helps streamline permit review, improve internal coordination, and reduce data entry redundancy.

Commissioners acknowledged how much of a leap forward this new system is, and shared anecdotes and small suggestions for improvement from their personal use.

VIII. Commissioner Items

- Next Meetings are on May 25 (TBD) and June 8 at 6:30pm.
- Commissioner Lee asked about status of recycling toters. W Ward indicated that DPW has no supply of toters, so City is not enforcing against property owners.

IX. Minutes and Communications

Action: Approve the minutes and accept the communications

<table>
<thead>
<tr>
<th>Motion by: A Friend</th>
<th>Second by: H Roen</th>
<th>Vote: Approved unanimously</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minutes Approved: April 27, 2021</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communications Filed:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- In the agenda packet and posted online</td>
<td></td>
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</tr>
</tbody>
</table>

X. Adjourn

<table>
<thead>
<tr>
<th>Motion: E Lee</th>
<th>Second: H Roen</th>
<th>Vote: Approved Unanimously</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjournment: Time: 7:47pm</td>
<td></td>
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