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TO: Planning Commission Ordinance Committee
FROM: Scott Gustin, Principal Planner & Zoning Division Manager
DATE: March 4, 2021
RE: Act 179: Conditional Use Revision

Overview & Background

The Vermont legislature recently passed a series of changes to 24 V.S.A, Chapter 117 in the form of Act 179. One of the changes pertains to conditional use criteria. Specifically, subsection (E) has been added to Sec. 4414 (3) *Conditional Uses*. That new subsection reads:

A multiunit dwelling project consisting of four or fewer units located in a district allowing multiunit dwellings may not be denied solely due to an undue adverse effect on the character of the area affected.

The conditional use standards in CDO Sec. 3.5.6 (a), *Conditional Use Review Standards*, will need revision to reflect this new statutory provision.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

The purpose of this amendment is to adjust the Conditional Use standards in the CDO to reflect the new statutory provision limiting the effect of the "character of the area" criterion on applications for multifamily dwelling units consisting of four or fewer units in certain zoning districts.

Proposed Amendments

No amendment language has been drafted yet. Four alternatives are offered for the Ordinance Committee's consideration. Upon selection of a preferred alternative, amendment language will be drafted for review.

Sec. 3.5.6, *Review Criteria*, (a) *Conditional Use Review Standards*, 2, presently reads:

The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which

the project is located, and specifically stated policies and standards of the municipal development plan.

In order for a conditional use application to be approved, the Development Review Board must find affirmatively that the project is consistent with this criterion. Conditional use review is required for multiunit development projects in the Institutional zone and, in some cases, in the Residential – Low Density zones. Elsewhere, multiunit dwellings are a permitted use or simply not allowed at all (such as the Enterprise zone).

Option 1: Exemption

Exempt multiunit dwelling projects of four or fewer units from this criterion.

Option 2: Deemed compliance

Add a statement to Sec. 3.5.6 (a) 2 that asserts multiunit dwelling projects of four or fewer units are deemed compliant with this criterion. Something similar was contained in the conditional use standards in a different subsection dealing with cumulative impacts prior to a comprehensive revision of the conditional use standards several years ago. That criterion read:

Shall consider the cumulative impacts of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible.

Option 3: Limited significance

Add a statement to Sec. 3.5.6 (a) 2 that notes an adverse finding by the Development Review Board under this criterion is not grounds for denial of applications involving multiunit residential development of four or fewer units.

Option 4: Permit Duplexes and Multiunit Residential Uses

Make duplexes a permitted use in the Residential - Low Density zones and make multi-family dwellings a permitted use in the Institutional zone. The express intent of the Residential – Low Density zones already acknowledges the appropriateness of duplexes. Multi-family attached dwellings (3 or more units) would continue to be conditional use, allowable only in certain instances such as PUD's or adaptive reuse. One of the above options would need to accompany this option to address remaining multi-family applications subject to conditional use. The institutional zone is targeted towards institutional growth and development. Multi-family attached dwellings; however, are common in this district. Enabling them would arguably be consistent with the existing character of the area.

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).

Theme	Dynamic	Distinctive	Inclusive	Connected
Land Use	Conserve	Sustain	Grow	

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not enable anything that is not presently enabled under the standards of the CDO. Rather, it simply facilitates approval of small-scale multiunit residential projects in the city's Residential – Low Density and Institutional zones. Such projects are already consistent with proposed land use and density within the city.

Impact on Safe & Affordable Housing

The proposed amendment removes a potential obstacle that could hinder approval and development of small scale multiunit residential projects. It does not have any direct impact on safety or affordability of housing.

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:

Planning Commission Process				
Draft Amendment prepared by: Staff	Presentation to & discussion by Commission	Approve for Public Hearing	Public Hearing	Approved & forwarded to Council
				Continue discussion
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion	Ordinance Cmte recommend as modified	Second Read & Public Hearing	CCOC Recommends Approval & Adoption
				Rejected