



**TO:** Planning Commission Ordinance Committee  
**FROM:** Scott Gustin  
**DATE:** April 1, 2021  
**RE:** Permitting Adjustments

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Grouped together in this amendment proposal are four changes that facilitate the zoning permit process. Each one has been identified through routine administration of the Comprehensive Development Ordinance, and each is based on applicant and staff experience with the permit process. The proposed changes are:

- Eliminate the zoning permit requirement for changes among permitted non-residential uses (only the use) where no standards apply;
  - Allow basic zoning permits for single-family uses on lots in the non-design review district (removing ‘conforming’ from the text);
  - Enable administrative review of flood hazard area zoning permits (unless otherwise trigger DRB review); and,
  - Allow some retail sales in home occupations for customers already visiting for a service (i.e. shampoos at a home salon).
1. Presently, any change from one use to another use requires a zoning permit. Oftentimes, the only zoning standard that changes when going from one permitted non-residential use to another permitted non-residential use is the parking standard. With the recent elimination of minimum parking requirements, there have been a number of non-residential changes in use that have received zoning permits without any standards to meet. In such cases, arguably, there is no need to require a zoning permit. The proposed amendment defines a narrow exemption from the need for a zoning permit for changes in use between permitted non-residential uses.

#### Begin Amendment Text

### **ARTICLE 3: APPLICATIONS, PERMITS, AND PROJECT REVIEWS**

#### **PART 1. GENERAL PROVISIONS AND ZONING PERMITS**

##### **Sec. 3.1.2 Zoning Permit Required**

**(a) Exterior Work:**

As written.

**(b) Interior Work:**

As written.

**(c) Exemptions:**

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

1. Exterior modifications to a single family dwelling in a non-design review portion of the RL zoning district lawfully in existence ~~prior to the adoption of this ordinance on a conforming lot~~, and not on or

eligible for listing on the State or National Register of Historic Places. Such an exemption shall not be applicable to any of the following changes, which do require a zoning permit:

- A. Increased lot coverage;
  - B. Increased habitable living space;
  - C. Changes in setbacks or building footprints; and
  - D. Construction of additional stories to an existing structure.
  - E. Improvements in a Special Flood Hazard Area.
2. The removal of trees from any lot containing a single family home or duplex which consists of no more than three-quarters (3/4) of one acre.
  3. Within any city park within an RCO zone or Civic district, regular tree maintenance and removal not otherwise associated with land clearing for new development or site improvements, and regular turf maintenance including re-grading and reseeded.
  4. Individual tree removal projects that are included under an approved and valid “tree maintenance plan”.
  5. The maintenance or repair of any exterior architectural feature, or its replacement in-kind, which does not involve a change in the location, design, material, or the outward appearance of the feature;
  6. Temporary ramps to serve the handicapped or disabled, for a period of not more than 90 days.
  7. Public utility power generating plants and transmission facilities regulated under 30 V.S.A. §248.
  8. Accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 VSA §1021(f) and 1259(f) and 6 VSA §4810. Prior to the construction of farm structures the farmer must notify the Administrative Officer in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.
  9. The temporary stabilization and securing of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a written order of the same issued under the authority of the city building inspector.
  10. Where temporary stabilization is not reasonably available the emergency demolition of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a order of the same issued under the written authority of the city building inspector and with the written concurrence of the city engineer. This exemption does not extend beyond the required demolition, clearing of debris, securing or filling cellar holes, and related erosion control and stormwater management.
  11. All structures of 24 square feet or less and no taller than 15 feet, as long as they are located in compliance with applicable setbacks. This exemption is limited to 1 such structure, or multiple structures in aggregate up to 24 square feet, per property. This exemption does not apply to properties located within the Special Flood Hazard Area.
  12. Children’s play structures.
  13. Seasonal skating rinks
  14. Temporary Structures or Uses as per Sec. 5.1.2 (f).
  15. Urban agricultural exemptions:
    - a. Cold frames of 6 feet in height or less. This exemption does not apply to properties located within the Special Flood Hazard Area.
    - b. Up to 2 seasonal hoop houses, each 200 square feet or less, without foundations and as long as they are located in compliance with applicable setbacks. This exemption applies only to seasonal hoop

houses that are sheathed in translucent plastic or similar material for a maximum of 9 months per year and are maintained in an intact condition. The frame may remain in place year-round. This exemption does not apply to properties located in the Special Flood Hazard Area.

- c. Urban agricultural uses or structures located on building rooftops.
- d. Sale of food produced onsite or at an individual's community garden plot not to exceed \$1,000 per year. Food may be processed within the individual's residential kitchen.

16. Family day care homes.

17. Per Act 45: Sec. 15c. 24 V.S.A. § 4413(g), notwithstanding any provision of law to the contrary, nothing in this ordinance shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

18. A change in use from one permitted non-residential use to another permitted non-residential use, provided that no development is included, no minimum parking requirement applies, and impact fees are not applicable. This exemption does not apply to uses affected by Article 5, Part 4: Special Use Regulations.

**(d) Determination of Non-Applicability:**

As written.

**End Amendment Text**

- 2. Within the Special Flood Hazard Area (SFHA), all development presently requires Development Review Board review and approval. This means substantially longer timeframes and greater expense for zoning permit review of things as simple as freestanding signs and tool sheds. The proposed amendment enables administrative zoning permit review of applications that otherwise qualify for administrative permit review. Other DRB review triggers such as development size, scope, and proposed use remain.

**Begin Amendment Text**

**ARTICLE 4: ZONING MAPS AND DISTRICTS**

**PART 5: OVERLAY ZONING DISTRICT REGULATIONS**

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

(a) – (e) As written.

**(f) District Specific Regulations: Special Flood Hazard Area:**

- 1. Additional Application Requirements

The following information shall be submitted in addition to the applicable requirements of Article 3 for any development proposed within a Special Flood Hazard Area:

- A. Base flood elevation data for all subdivision proposals and other proposed new developments containing more than fifty (50) lots or covering more than five (5) acres;
- B. The elevation, in relation to mean sea level, of the lowest floor, including basement, of all new construction or substantial improvements of structures;
- C. Confirmation if such structures contain a basement; and
- D. The elevation, in relation to mean sea level, to which any structure has been flood proofed.
- E. A Vermont Agency of Natural Resources Project Review Sheet for the proposal should be filled out. The Project Review Sheet should identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the City permit application. The identified permits, or letters indicating that such permits are not

required, shall be submitted to the Administrative Officer and attached to the permit application before work can begin.

In addition, ~~the DRB shall require~~ of the applicant may be required to provide any of the following information deemed necessary for determining the suitability of the particular site for the proposed use:

- F. Plans in triplicate, drawn to scale, showing the location, dimensions, contours and elevation of the lot; the size and location on the site of existing and/or proposed structures, fill or storage of materials; the location and elevations of streets, water supply and sanitary facilities; and the relationship of the above to the location of the channel, floodway and base flood elevation where such information is available;
  - G. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel and cross-sectional areas to be occupied by the proposed development;
  - H. A profile showing the slope of the bottom of the channel or flow line of the stream; and
  - I. Specifications for building construction and materials, flood proofing, mining, dredging, filling, grading, paving, excavation or drilling, channel improvement, storage of materials, water supply and sanitary facilities.
2. Permitted Uses in Floodway Areas
- The following open land uses shall be permitted within the floodway areas to the extent that they are permitted or conditionally permitted in the underlying zoning district, and provided that they do not require the erection of structures or storage of materials and equipment, the borrowing of fill from outside the floodway area, or channel modification or relocation, and do not obstruct flood flows, nor result in any increase in flood levels during the occurrence of the base flood discharge, decrease the water-carrying capacity of the floodway or channel, or increase off-site flood damage potential:
- A. Agricultural uses, such as general farming, pasture, orchard, and grazing, outdoor plant nurseries, truck farming, and forestry;
  - B. Recreation uses, such as parks, camps, picnic grounds, tennis courts, golf courses, golf driving ranges, archery and shooting ranges, hiking and riding trails, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming areas and boat launching sites; and/or
  - C. Accessory residential uses, such as lawns, gardens, and parking areas.
3. Permitted Uses in Special Flood Hazard Areas (including Floodway areas)
- A. All those permitted open space uses as listed in Section 4.5.4.(f).2 above shall be permitted in the Special Flood Hazard Areas.
  - B. All other uses permitted in the underlying zoning district are permitted only upon review and approval ~~by the DRB~~ as per subpart 7 below.
4. Permitted Accessory Uses in Special Flood Hazard Areas (Including Floodway areas)
- Uses customarily accessory and incidental to any of the permitted uses listed in underlying zoning district may be permitted, subject to the limitations therein.
5. Mandatory DEC Notification and 30-Day Review Period
- A. Prior to issuing a permit a copy of the application and supporting information shall be submitted by the administrative officer to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

- B. Adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section shall be notified at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the VT National Flood Insurance Program Coordinator.
- C. No permit may be granted for new construction, substantial improvement, filling, installation of a residential structure, or the development of land in any area designated as a floodplain by the Federal Emergency Management Agency (FEMA) prior to the expiration of a period of thirty (30) days following the submission of the application and a report to the Department of Environmental Conservation. The application and report shall describe the proposed use, the location requested and an evaluation of the effect of such proposed use on Burlington's municipal development plan and the regional plan, if any.
- D. The subsection shall not be applicable to public utility generating stations and transmission lines which shall require the issuance of a certificate of public good under 30 V.S.A. Sec. 248 prior to any land filling or construction.

6. Evaluation

~~In reviewing~~ Review of the application, ~~the DRB shall consider~~ shall include the evaluation of the Department of Environmental Conservation ~~and shall determine that~~ approval shall be predicated on finding that the proposed use will conform to the development standards of subpart 7 below.

7. Special Review Criteria

~~In reviewing each application, the DRB shall assure that the~~ The flood-carrying capacity within any portion of an altered or relocated watercourse shall be ~~is maintained.~~ Review ~~and shall consider:~~

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments;
- B. The danger that material may be swept on to other lands or down stream to the injury of others;
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
- E. The importance of the services provided by the proposed facility to the community;
- F. The availability of alternative locations not subject to flooding for the proposed use;
- G. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- H. The relationship of the proposed use to the municipal development plan;
- I. The safety of access to the property in times of flood of ordinary and emergency vehicles;
- J. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood-waters expected at the site; and,
- K. Conformance with all other applicable requirements of this ordinance.

8. Approval Conditions

Upon consideration of those factors in subpart 7 above and the purposes of these regulations, ~~the DRB shall attach~~ the following conditions shall be attached to any permit ~~it chooses to grant~~ed.

In **Floodway Areas** such conditions require that:

- A. Along watercourses with a designated Floodway no encroachments, including fill, new construction, substantial improvements and other development are allowed within the floodway

unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

- B. The flood-carrying capacity within any altered or relocated portion of a watercourse shall be maintained;

In all **Special Flood Hazard Areas** (including Floodway areas) such conditions require that:

C. All development:

- (i) New construction and/or substantial improvements to structures shall be reasonably safe from flooding and be:
  - 1. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
  - 2. Constructed of materials resistant to flood damage;
  - 3. Constructed by methods and practices that minimize flood damage; and
  - 4. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (ii) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
- (iii) All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
- (iv) All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall:
  - 1. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
  - 2. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings of two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
- (v) All necessary permits shall be obtained from those governmental agencies from which approval is required by federal or state law.

D. Residential Development:

- (i) All new and substantially improved residential structures within Special Flood Hazard Area have the lowest floor, including basement, elevated one foot or more above, the base flood elevation;
- (ii) All new, replacement or substantially improved manufactured homes in the Special Flood Hazard Area shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement during the occurrence of the base flood. The manufactured home may be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is above the base flood elevation OR so that the lowest

floor is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than one foot in height above the base flood elevation.

E. Non-Residential Development:

- (i) All new construction and substantial improvements for nonresidential purposes shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation. Existing non-residential structures may be flood proofed where designed to be watertight to one foot or more above the base flood elevation, with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a proposed building to be flood proofed shall not be issued until a registered architect or engineer has reviewed the structural design, specifications and plans and has certified that the design and methods of construction are in accordance with meeting the provisions of this subsection.

F. Water Supply Systems:

New and replacement water supply and sanitary sewer systems shall be designed so as to prevent the infiltration of floodwaters into the systems and discharge from the systems;

G. On-Site Waste Disposal Systems:

On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;

H. Recreational Vehicles:

Recreational Vehicles placed on sites with special flood hazard areas shall either:

- (i) be on the site for fewer than 180 consecutive days, or
- (ii) be fully licensed and ready for highway use, or
- (iii) be permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in Sec. 4.5.4 (f).8.(D).

9. Records

The administrative officer shall maintain a record of:

- A. All permits issued in areas covered by this bylaw;
- B. An Elevation Certificate with the as-built elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement in the Special Flood Hazard Area; and
- C. The elevations, in relation to mean sea level, to which existing structures have been flood-proofed.
- D. Any certification of floodproofing.

10. Variances

Variances to the above standards may be granted in writing by the DRB only in accordance with Article 12 and 44 CFR Section 60.6, and after a hearing noticed in the same manner as for a conditional use.

A. Review Criteria.

A decision in favor of the appellant shall be granted if all the following facts are found, and the supporting findings are specified in the decision. The variance, if authorized shall be issued by the DRB only upon:

- (i) determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

- (ii) determination that the variance will not result in increased flood heights, increased susceptibility to flooding or erosion, additional threats to public safety or infrastructure (including emergency services during flood events), or extraordinary public expense;
- (iii) the variance will not increase the potential of materials being swept onto other lands or into the stream and causing damage to others; and,
- (iv) the variance if granted will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan;

**B. Notice to Applicant.**

Upon request for a variance the administrative officer shall notify the applicant in writing over the signature of the zoning administrator or his/her designee that:

- (i) The issuance of a variance to construct a structure below the base flood elevation will result in increased flood insurance premium rates up to amounts as high as \$25 for \$100 of coverage; and
- (ii) Such construction below the base flood elevation increases risks to life and property.

**C. Annual Recording.**

The administrative officer shall:

- (i) Maintain a record of all variance actions, including justification for their issuance; and
- (ii) Report such variances issued in its annual report

**11. Warning of Disclaimer of Liability**

These regulations do not imply those areas outside the flood hazard area or land uses permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of any city official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

**End Amendment Text**

- 3. The Residential – Low Density zone is not within the city’s design review overlay. That basically means that the design review standards of Article 6 do not apply within this zone, and only the dimensional standards (height, setbacks, and lot coverage) of Article 4 apply. A “basic” zoning permit is required where development is proposed and requires only site plan review. There are multiple exceptions to this rule. Only detached single family homes are eligible for “basic” permit review. Anything other than a detached single family home in the RL zone is subject to Article 6 and “certificate of appropriateness” (COA) review. Even among detached single family homes, there are exceptions. An historic home is subject to COA review, and any home on a small lot (one less than 6,000 sf or with less than 60’ of street frontage) is subject to COA review. COA review is much more extensive than “basic” permit review, it is typically more expensive, and it may include Board review. The proposed amendment removes the small lot trigger for COA review. As proposed, a detached single family home that is not historic and is in the RL zone would qualify for “basic” permit review rather than COA review.

**Begin Amendment Text**

**ARTICLE 5: CITYWIDE GENERAL REGULATIONS**

**PART 2: DIMENSIONAL REQUIREMENTS**

**Sec. 5.2.1 Existing Small Lots**

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

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

#### End Amendment Text

Home occupations can span a wide variety of forms, from counseling services, to woodcraft, to hair salons. Presently, sales of any goods are prohibited except for those made as part of the home occupation (i.e. sale of baked goods from a home bakery, sales of guitars from a guitar maker). There has been a long-standing request to make this standard more permissive so that goods associated with the home occupation, but not necessarily made there, may be sold onsite. Sale of hair care products at a home salon is a typical example. The proposed amendment adjusts the provision for onsite sales to include goods that are typically associated with the home occupation and incidental to it.

#### Begin Amendment Text

### **PART 4: SPECIAL USE REGULATOINS**

#### **Sec. 5.4.6 Home Occupations**

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

#### **(a) Administrative Approval:**

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

1. A home occupation not located within a residential or institutional district;
2. A home occupation located in a residential or institutional district as follows:
  - A. Home occupations that are low impact office in nature and including design studios, using normal office equipment such as computers, calculators, telephone, fax machines, desks, drafting tables or other similar office furnishings;
  - B. No clients or customers come to the premises;
  - C. There shall be no vehicles associated with the home occupation except:
    - (i) A personal vehicle with no commercial identification can be used; and,
    - (ii) An occasional delivery vehicle such as a Postal Service, UPS, or FedEx truck, but excluding semi trailers or 18 wheel vehicles;
    - (iii) deliveries or pick-ups shall occur no more than an average of one (1) time per day between the hours of 8 am and 6 pm;
  - D. No goods are located on site except for those customarily incidental to the home occupation, ~~samples or designs produced on site~~ and no such samples goods or other materials associated with the home occupation may be stored outside of an enclosed structure;
  - E. All employees shall be residents of the home where the home occupation is conducted. No outside employees are allowed on the premises;
  - F. No more than 25%, up to 500 square feet, of a residence can be used for the home occupation; and,

G. No signs are allowed.

**(b) Conditional Use Review:**

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

1. A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL districts, and no more than two (2) full-time equivalent employees in other districts. The home occupation shall be conducted entirely within an existing dwelling unit and/or one enclosed accessory structure;
2. No more than thirty-five per cent (35%) of the floor area of said residence, including accessory structures, up to a maximum of seven hundred fifty (750) square feet, whichever is less, shall be used for such purpose;
3. No home occupation shall require alterations, construction or equipment that would change the fire rating of the structure or the fire district in which the structure is located;
4. There shall be no outside storage of any kind related to the home occupation;
5. There shall be no exterior evidence of the conduct of a home occupation except for:
  - A. Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each); and
  - B. One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.
6. No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries. All parking shall be located off-street and shall maintain the required front yard setback;
7. No home occupation shall create sounds, noise, dust, vibration, smell, smoke, heat, humidity, glare, radiation, electrical interference, fire hazard or any other hazard, nuisance or unsightliness which is discernible from any adjacent dwelling unit;
8. The home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes and shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part.
9. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day;
10. With the exception of one delivery per day, as specified in subparagraph (9), no more than one (1) commercial vehicle shall be allowed on the premises at any one time; and
11. There shall be no sale of goods except for goods ~~fabricated on the premises as part of~~ customarily incidental to an approved home occupation.

**End Amendment Text**