

CITY OF BURLINGTON

ORDINANCE 4.06

Sponsor: Office of City Planning,
Planning Commission, Ordinance
Committee

Public Hearing Dates: 02/18/20

In the Year Two Thousand Twenty

First reading: 12/16/19

Referred to: 1/6 Worksession

Rules suspended and placed in all
stages of passage:

Second reading: 02/18/20

Action: adopted

Date: 02/18/20

Signed by Mayor: 03/03/20

Published: 03/11/20

Effective: 04/01/20

An Ordinance in Relation to

COMPREHENSIVE DEVELOPMENT ORDINANCE –
Accessory Dwelling Units
ZA #20-03

It is hereby Ordained by the City Council of the City of Burlington as follows:

1 That Appendix A, Comprehensive Development Ordinance, of the Code of Ordinances of the City of
2 Burlington be and hereby is amended by amending Section 5.2.3, Lot Coverage Requirements; Section
3 5.3.4 Nonconforming Uses; 5.3.5, Nonconforming Structures; Section 5.4.5, Accessory Dwelling Units;
4 Section 8.1.14, Stacked and Tandem Parking Restrictions; Article 13, Definitions; and Appendix A-Use
5 Table All Zoning Districts, thereof to read as follows:

6 **Sec. 5.2.3 Lot Coverage Requirements**

7 Where a maximum lot coverage is specified pursuant to the requirements of Article 4, no building or part
8 of a building or impervious surface or other form of coverage shall exceed such maximum allowable
9 except as specifically authorized by this ordinance.

10
11 (a) **Calculating Lot Coverage** As written.

12
13 (b) **Exceptions to Lot Coverage**

14 In all districts, the following shall not be counted as lot coverage:

15
16 (1) - (9) As written

17
18 (10) The DRB may grant an exemption from maximum lot coverage limits for up to 650 sq. ft., of the
19 lot area occupied by an ADU. To grant such an exemption, the DRB must find that the existing lot
20 coverage has been lawfully created, and that the proposed location, site design, and improvements
21 will enable on-site management of the first one inch of stormwater runoff from the lot area of the
22 ADU exceeding the applicable lot coverage limit, and will not have undue adverse impact on public
23 rights of way based on the review of the DPW Stormwater Program Manager.

24 **Sec. 5.3.4 Nonconforming Uses**

25 (a) *Changes and Modifications:*

26 A nonconforming use may be changed to a conforming use pursuant to all applicable provisions of
27 this ordinance. When a nonconforming use has been made conforming, it shall not be made
28 nonconforming again.

29 Any change or modification to a nonconforming use, other than to full conformity under this
30 Ordinance, shall only be allowed as specified below and shall require conditional use approval
31 pursuant to the provisions of Article 3, Part 5 by the DRB.

32 (1) *Nonconforming Non-Residential Use:* As written

33
34 (2) *Nonconforming Residential Use:*

35 A change or expansion of a non-conforming residential use may be allowed subject to conditional
36 use approval pursuant to the provisions of Article 3, Part 5 by the DRB provided:

37
38 A. Such an expansion does not add any dwelling units except as may be permitted for adaptive
39 reuse or residential conversion bonuses approved per the provisions of Sec. 4. 54. (d)(7) and
40 for Accessory Dwelling Units per the provisions of Sec.5.4.5.;

41 B. Such an expansion does not increase the degree of non-conformity of any non-conforming
42 structure; and,

43 C. In such cases where the non-conforming residential use is located in a zoning district where
44 residential uses are generally permitted, expansion of a non-conforming residential uses into
45 an existing and previously uninhabited attic or basement within the principle structure may be
46 permitted subject to administrative review provided no additional dwelling units are created,
47 except for Accessory Dwelling Units per Sec.5.4.5.

48
49 (b) *Discontinuance:* As written.

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51 **Sec. 5.3.5 Nonconforming Structures**

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53 (a) **Changes and Modifications**

54 Nothing in this Part shall be deemed to prevent normal maintenance and repair or structural repair, or
55 moving of a non-complying structure pursuant to any applicable provisions of this Ordinance.

56 Any change or modification to a nonconforming structure, other than to full conformity under this
57 Ordinance, shall only be allowed subject to the following:

58 1. Such a change or modification may reduce the degree of nonconformity and shall not increase
59 the nonconformity except as provided below.

60 Within the residential districts, and subject to Development Review Board approval, existing
61 nonconforming single-family homes and community centers (existing enclosed spaces only)
62 that project into side and/or rear yard setbacks may be vertically expanded so long as the

63 expansion does not encroach further into the setback than the existing structure. Such
64 expansion shall be of the existing nonconformity (i.e. setback) and shall:

- 65 i) Be subject to conformance with all other dimensional requirements (i.e. height, lot
66 coverage, density and intensity of development);
- 67 ii) Not have an undue adverse impact on adjoining properties or any public interest that
68 would be protected by maintaining the existing setbacks; and,
- 69 iii) Be compatible with the character and scale of surrounding structures.

70 Existing accessory buildings of 15 feet in height or less shall not exceed 15 feet tall as
71 expanded.

72 Within all districts, and subject to the Development Review Board approval, structures for the
73 purpose of creating an ADU may be constructed on lots with legally non-conforming lot
74 coverage per Sec.5.2.3 (b) 10.

- 75 2. Such a change or modification shall not create any new nonconformity; and,
- 76 3. Such a change or modification shall be subject to review and approval under the Design Review
77 provisions of Article 3, Part 4.

78 When any portion of a nonconforming structure has been made conforming, it shall not be made
79 nonconforming again except as provided for historic building features pursuant to Sec. 5.2.6(b)(3).

80 A non-conforming residential structure may be enlarged up to the dimensional standards of the
81 underlying zoning district, subject to review and approval by the DRB pursuant to Art. 3, Part 4 Design
82 Review and Art. 3, Part 5 Conditional Use Review. Adaptive reuse or residential conversion bonuses
83 may allow a greater expansion than the underlying zoning district allows approved per the provisions
84 of Article 4.

85 **(b) Demolition.** As written.

86

87 **Sec. 5.4.5 Accessory Dwelling Units**

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

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

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

- 99 2. The unit does not consist of more than 800 sq. ft., or 30 percent (30%) of the total habitable
100 floorGross Floor Aarea of the building of the principal home, inclusive of the accessory dwelling
101 unit, whichever is greater; and
- 102 3. Applicable setback and coverage requirements are met, except as provided for in Sec. 5.2.3 (b) 10;
103 and
- 104 ~~4. One additional parking space which may be legally allocated to the accessory unit must be provided~~
105 ~~for the accessory unit; and,~~
- 106 54. A deed or instrument for the property shall be entered into the land records by the owner
107 containing a reference to the permit granting the accessory unit prior to the issuance of the
108 certificate of occupancy for the unit. Such reference shall identify the permit number and note
109 that the property is subject to the permit and its terms and conditions including owner occupancy.
110 No certificate of occupancy shall be issued for the unit unless the owner has recorded such a
111 notice.

112 ~~(b) — Conditional Use Approval for Accessory Units:-~~
113 ~~If any of the following are also proposed, conditional use approval, as well as development review~~
114 ~~provisions of Article 6 shall be required:~~

- 115 ~~1. A new accessory structure;~~
- 116 ~~2. An increase in the height or habitable floor area of the existing dwelling;~~
- 117 ~~3. An increase in the dimensions of any parking area;~~

118 ~~(c) (b) Discontinuance of Accessory Units:~~
119

120 Approval of an accessory dwelling unit is contingent upon owner-occupancy of either the single-
121 family-principal or accessory dwelling unit as a primary residence. For purposes of this section,
122 owner-occupancy means that, after the creation of the accessory unit all individuals listed on the deed
123 for the property must reside in the primary-principal unit or in the accessory unit. If neither the
124 primary-principal unit nor the accessory unit is no longer owner-occupied as a primary residence, the
125 approval for the accessory dwelling unit is void and the kitchen of the accessory dwelling unit must
126 be removed within 90 days with the entirety of the property being occupied as a single unit. When an
127 accessory unit that is the result of additional square footage and/or a new accessory structure is
128 proposed to be removed, revised floor plans and a revised site plan shall be required to be submitted
129 for review and approval.

130 Furthermore, where additional square footage is added to a single family home for purposes of
131 creating an accessory unit and the accessory unit is at any point discontinued, none of the additional
132 square footage shall be eligible for the purposes of increasing the number of unrelated adults that may
133 be allowed to inhabit the property.

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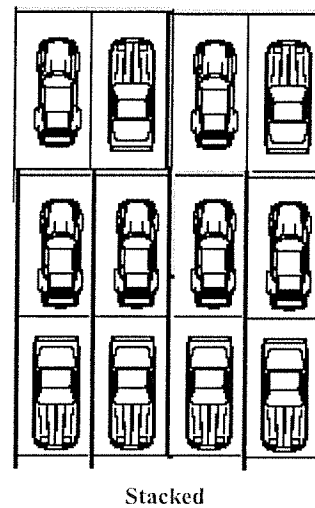
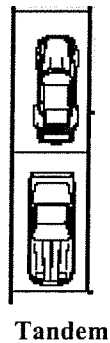
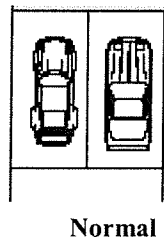
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138 **Sec. 8.1.14 Stacked and Tandem Parking Restrictions**

139 Except as otherwise provided below, all parking facilities shall be designed so that each motor
140 vehicle may proceed to and from the parking space provided for it without the moving of any other
141 motor vehicle.

- 142 (a) Stacked or valet parking may be allowed if an attendant is present to move vehicles. If stacked
143 parking is used for required parking spaces, a written guarantee must be filed with the City
144 ensuring that an attendant will always be present when the lot is in operation. The requirements
145 for minimum or maximum spaces continue to apply for stacked parking.
- 146 (b) Tandem Parking may be allowed for single family detached dwelling units, accessory
147 apartments, duplex dwelling units, and dedicated employee-only parking signed as such. In no
148 case shall more than 4 parking spaces (2 pairs) in total be provided in tandem on any one lot.
- 149 (c) Stacked parking shall be allowed for single-family detached dwelling units and Accessory
150 Dwelling Units with no requirement for an attendant to be present.

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154 **Sec. 13.1.2 Definitions.**

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

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

161 Additional definitions specifically pertaining to Art. 14 planBTV: Downtown Code can be found in Sec.
162 14.8, and shall take precedence without limitation over any duplicative or conflicting definitions of this
163 Article.

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166 **Accessory Dwelling Unit or Apartment (ADU):** An efficiency or one-bedroom apartment that is clearly
167 subordinate to a single-family dwelling, and has facilities and provisions for independent living, including
168 sleeping, food preparation, and sanitation, ~~provided the unit does not exceed 30% of the total habitable floor~~
169 ~~area of the single-family dwelling.~~

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173 **APPENDIX A – Use Table – All Zoning Districts --** *See proposed changes per excerpt attached.

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175

176 ** Material stricken out deleted.

177 *** Material underlined added.

178

179 lb/KS/Ordinances 2019/Zoning Amendment – ZA #20-03 Accessory Dwelling Units, Sec. 5.2.3, 5.3.4, 5.3.5, 5.4.5, 8.1.14, Art. 13 & App. A
180 12/11/19; 1/30/20

Excerpt of Appendix A- Use Table –All Zoning Districts

USES	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use ¹	Neighborhood Mixed Use				Enterprise		
		RCO - A	RCO - RG	RCO - C		I	RL/W	RM/W		RH	NM	DW-PT ¹⁶	NM	NAC	NAC-RC	NAC-RC
RESIDENTIAL USES	UR	RCO - A ¹	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NM	NAC	NAC-RC	NAC-RC	NAC-RC	E-AE	E-LM
Single Detached Dwelling	N	N ¹	N	N	Y	Y	Y	N ³⁰	N	N ³⁰	N ³⁰	N ³⁰	N	N	N	N
Accessory Dwelling Unit (See 44.5, Sec. 5.4.5)	N	N	N	N	Y	Y	Y	N	N	N	N	N	N	N	N	N
Attached Dwellings - Duplex	N	N ¹	N	N	Y	CU ²	Y	Y	N	Y ³	N	Y	N	N	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N ¹	N	N	CU	N	Y	Y	N	Y	Y	Y	Y	Y	N	N
Attached Dwelling(s) - Mixed-Use ²⁶	N	N ¹	N	N	CU	CU	CU	CU	N	Y	Y	Y	Y	Y	N	N

*Balance of Appendix A—Use Table –All Zoning Districts As written.

ORIGINAL

AN ORDINANCE IN RELATION TO

Comprehensive Development Ordinance - Accessory
Dwelling Units ZA #20-03

Introduced by Office of City Planning, Ordinance Committee

Read in City Council first time
December 16, 2019

Attest, [Signature], Clerk.

Rules suspended, and ordinance placed in all stages of passage.

Attest, _____, Clerk.

Read in City Council second time
February 18, 2020

Attest, [Signature], Clerk.

Passed in City Council at meeting held

February 18, 2020

Attest, [Signature], Clerk.

Approved [Signature], 2020, Mayor.

I, DFO Goodwin, City Clerk of the City of Burlington and Clerk of the City Council of said City, do hereby certify that the within written Ordinance has been duly published according to Law and the Charter of the City, and in compliance with said Charter this certificate is hereto attached.

And the within Ordinance was ordered published for _____ day, _____ day of _____, 2020. Adopted _____ day of _____, 2020. Effective _____ day of _____, 2020.

Distribution

I hereby certify that this Ordinance has been sent to the following department(s) on _____

- Office of City Planning
- Assistant City Attorney Sturtevant
- City Attorney's Office, Linda Blanchard

Attest, [Signature]
Lori Olberg
Licensing, Voting and Records Coordina

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