CITY OF BURLINGTON

In the Year Two Thousand Twenty

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:

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

Sec. 5.2.3 Lot Coverage Requirements
Where a maximum lot coverage is specified pursuant to the requirements of Article 4, no building or part of a building or impervious surface or other form of coverage shall exceed such maximum allowable except as specifically authorized by this ordinance.

(a) Calculating Lot Coverage As written.

(b) Exceptions to Lot Coverage
In all districts, the following shall not be counted as lot coverage:

(1) - (9) As written

(10) The DRB may grant an exemption from maximum lot coverage limits for up to 650 sq. ft., of the lot area occupied by an ADU. To grant such an exemption, the DRB must find that the existing lot coverage has been lawfully created, and that the proposed location, site design, and improvements will enable on-site management of the first one inch of stormwater runoff from the lot area of the ADU exceeding the applicable lot coverage limit, and will not have undue adverse impact on public rights of way based on the review of the DPW Stormwater Program Manager.
Sec. 5.3.4  Nonconforming Uses

(a) Changes and Modifications:

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

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

(1) Nonconforming Non-Residential Use: As written

(2) Nonconforming Residential Use:

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

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

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

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

(b) Discontinuance: As written.

Sec. 5.3.5  Nonconforming Structures

(a) Changes and Modifications

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

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

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

Within the residential districts, and subject to Development Review Board approval, existing nonconforming single-family homes and community centers (existing enclosed spaces only) that project into side and/or rear yard setbacks may be vertically expanded so long as the
expansion does not encroach further into the setback than the existing structure. Such expansion shall be of the existing nonconformity (i.e. setback) and shall:

i) Be subject to conformance with all other dimensional requirements (i.e. height, lot coverage, density and intensity of development);

ii) Not have an undue adverse impact on adjoining properties or any public interest that would be protected by maintaining the existing setbacks; and,

iii) Be compatible with the character and scale of surrounding structures.

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

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

2. Such a change or modification shall not create any new nonconformity; and,

3. Such a change or modification shall be subject to review and approval under the Design Review provisions of Article 3, Part 4.

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

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

(b) Demolition. As written.

Sec. 5.4.5 Accessory Dwelling Units

(a) Accessory Units, General Standards/Permitted Uses:
Where there is a primary-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 an efficiency or one-bedroom apartment that is clearly subordinate to the primary-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 two 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 total habitable floor area of the building of the principal home, inclusive of the accessory dwelling unit, whichever is greater; and

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

4. One additional parking space which may be legally allocated to the accessory unit must be provided for the accessory unit; and,

5. 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 shall 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.

(b) Conditional Use Approval for Accessory Units:

If any of the following are also proposed, conditional use approval, as well as development review provisions of Article 6 shall be required:

1. A new accessory structure;

2. An increase in the height or habitable floor area of the existing dwelling;

3. An increase in the dimensions of any parking area;

(e) (b) Discontinuance of Accessory Units:

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

Furthermore, where additional square footage is added to a single family home for purposes of creating an accessory unit and the accessory unit is at any point discontinued, none of the additional square footage shall be eligible for the purposes of increasing the number of unrelated adults that may be allowed to inhabit the property.
Sec. 8.1.14 Stacked and Tandem Parking Restrictions

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

(a) Stacked or valet parking may be allowed if an attendant is present to move vehicles. If stacked parking is used for required parking spaces, a written guarantee must be filed with the City ensuring that an attendant will always be present when the lot is in operation. The requirements for minimum or maximum spaces continue to apply for stacked parking.

(b) Tandem Parking may be allowed for single family detached dwelling units, accessory apartments, duplex dwelling units, and dedicated employee-only parking signed as such. In no case shall more than 4 parking spaces (2 pairs) in total be provided in tandem on any one lot.

(c) Stacked parking shall be allowed for single-family detached dwelling units and Accessory Dwelling Units with no requirement for an attendant to be present.

Sec. 13.1.2 Definitions.

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

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

Additional definitions specifically pertaining to Art. 14 planBTV: Downtown Code can be found in Sec. 14.8, and shall take precedence without limitation over any duplicative or conflicting definitions of this Article.
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Accessory Dwelling Unit or Apartment (ADU): An efficiency or one-bedroom apartment that is clearly
subordinate to a single-family dwelling, and has facilities and provisions for independent living, including
sleeping, food preparation, and sanitation, provided the unit does not exceed 30% of the total habitable floor
area of the single-family dwelling.

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

** Material stricken out deleted.
*** Material underlined added.
Excerpt of *Appendix A—Use Table—All Zoning Districts*

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<th>Downtown Mixed Use</th>
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*Balance of Appendix A—Use Table—All Zoning Districts  As written.*

*Proposed changes to Appendix A Use Table per ZA-20-03 Accessory Dwelling Units*
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.
[Signature], 20
Attest, [signature], 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.

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

DEO Goodwin
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 Wednesday, March 4, 2020
Published 03/11/20
Effective 04/01/20
Adopted 02/19/20
by the Council of the City of Burlington, Vermont, at a regularly called meeting held this 20th day of February, 2020

Attest
[Signature]
Lori Ullberg
Licensing, Voting and Records Coordinator

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