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TO: Burlington Planning Commission
FROM: David E. White, FAICP, Dir of Planning, Office of City Planning
Scott Gustin, AICP, Principal Planner & Zoning Division Manager, DPI
DATE: September 9, 2021
RE: Proposed CDO Amendment ZA-22-01: Historic Preservation Rehabilitation Bonus

The following proposed amendment to the BCDO is a companion to an amendment approved by the Commission earlier this year (ZA-21-04 Adaptive Reuse Definition) which revised the definition of the term "adaptive reuse" to be consistent with standard historic preservation practice. ZA-21-04 currently sits before the Council Ordinance Committee where it awaits the referral of this proposed amendment and they can be joined.

Subsequent to the Council taking up the Adaptive Reuse amendment, the Planning and DPI staff noted a potential conflict with Sec. 4.4.5(d) 6. B, and recommends that the BCDO dispense with the use of the term in Sec. 4.4.5(d) 6. B - Adaptive Reuse Bonus, and instead move this language to Sec. 5.4.8 where it would be co-located with other provisions related to historic buildings and to make it applicable in the Institutional District which, outside of the institutional campuses, also has a predominantly residential character and scale.

Proposed Amendment

BEGIN PROPOSED AMENDMENT

Sec. 4.4.5 Residential Districts, (d) District Specific Regulations:

5. Uses

A. Exception for Existing Neighborhood Commercial Uses.

Neighborhood commercial uses as defined in Article 13 and intended to primarily serve the nearby residential area shall be considered permitted uses in all

residential and institutional districts subject to the following:

- (i) This exemption shall only apply to:
 - 1) Historic neighborhood commercial buildings that are listed or eligible for listing on the state or national register and originally designed and constructed for such purpose(s); or,
 - 2) A street level neighborhood commercial use as defined in Article 13 in lawful existence as of January 1, 2007.
- (ii) Neighborhood commercial uses shall be limited to a single story on the street level of any structure.
- (iii) Neighborhood commercial uses less than 2,000 sqft shall be treated as a permitted use. Neighborhood commercial uses greater than or equal to 2,000

sqft but less than 4,000 sqft shall be treated as a conditional use. Neighborhood commercial uses occupying 4,000 sqft or more shall not be permitted.

- (iv) The neighborhood commercial use shall not be counted against the property's allowable residential density.
- (v) The sale of fuel for motor vehicles, or new or expanded gas station canopies, shall be prohibited.
- (vi) Hours of operation shall be limited to 6:00am to 11:00pm seven days per week. Any expansion in the hours of operation of an existing neighborhood commercial use shall require ~~conditional use~~ review by the DRB.
- (vii) All building height and setback requirements for the underlying residential district shall apply, and the lot coverage shall not exceed 60%.
- (viii) Any exterior changes to the building(s) or changes to the site plan shall be subject to the design review requirements of Article 6.
- (ix) To the extent that additional parking is necessary, the parking standards for Shared-Use Districts shall apply pursuant to Article 8.
- (x) The conversion of a residential use to a neighborhood commercial use within a historic neighborhood commercial building more than 50 years old and originally designed and constructed for such purpose shall be exempt from the housing replacement requirements of Article 9, Part 2.
- (xi) Home occupations as defined and regulated under this article are not restricted by the provisions of this section.
- (xii) Any aspect of a neighborhood commercial use in lawful existence as of January 1, 2007 not in strict conformance with any of the above standards shall be considered non-conforming and be subject to the provisions of Article 5, Part 3.

6. Residential Development Bonuses.

The following exceptions to maximum allowable residential density and dimensional standards in Tables 4.4.5-2 and 4.4.5-3 may be approved in any combination subject to the maximum limits set forth in Table 4.4.5-8 at the discretion of the DRB. Any bonuses that are given pursuant to this ordinance now or in the future shall be regarded as an exception to the limits otherwise applicable.

A. Senior Housing Bonus.

Residential development in excess of the density, lot coverage and building height limits specified in Tables 4.4.5-2 and 4.4.5-3 may be permitted by the DRB for senior housing provided the following conditions are met:

- (i) No less than twenty-five (25) per cent of the total number of units shall be reserved for low-moderate income households as defined by state or federal guidelines, including no less than ten (10) per cent reserved for low-income households. (Projects taking advantage of this bonus are exempt from the Inclusionary Zoning requirements of Article 9,

Part 1.);

- (ii) The proposal shall be subject to the design review provisions of Art. 6;
- (iii) A maximum of an additional 10-feet of building height may be permitted in the RH District; and,
- (iv) Lot coverage and residential densities shall not exceed the following:

Table 4.4.5-5: Senior Housing Bonus

| District | Maximum Coverage | Maximum Density |
|----------|------------------|-----------------|
| RL/RL-W | 44% | 20 du/ac |
| RM | 48% | 40 du/ac |
| RM-W | 72% | 40 du/ac |
| RH | 92% | 80 du/ac |

B. Adaptive Reuse Bonus:

~~Development in excess of the limits set forth in Tables 4.4.5-2 and 4.4.5-3 may be permitted by the DRB subject to conditional use review for the conversion of an existing non-conforming nonresidential principal use within a historic building to a conforming residential use subject to all of the following conditions:~~

- ~~(i) The building shall be listed or eligible for listing in the United States Department of the Interior's National Register of Historic Places or the Vermont State Register of Historic Places;~~
- ~~(ii)(i) The gross floor area shall not exceed the pre-redevelopment gross floor area of the existing structure by more than twenty-five (25) percent;~~
- ~~(iii)(i) The density limits of the underlying residential zoning district in Sec. 4.4.5(b) above shall not apply. The intensity and extent of development shall be limited by gross floor area maximum in (ii) above and Table 4.4.5-6 below;~~
- ~~(iv)(i) The adaptive reuse and rehabilitation conforms to the requirements of Art 5, Historic Buildings;~~
- ~~(v)(i) Neighborhood commercial uses less than 2,000 sqft gross floor area may be permitted by the DRB subject to the applicable requirements of Sec. 4.4.5(d)(5)(A) above. Neighborhood commercial uses 2,000 sqft or larger in gross floor area shall not be permitted. In combination, the sum of neighborhood commercial uses shall be limited to no more than 50% of the gross floor area of the existing structure; and;~~

~~(vi)(i) Lot coverage shall not exceed:~~

~~Table 4.4.5-6: Adaptive Reuse Bonus~~

| District | Maximum Coverage |
|---------------------|--|
| RL, RL-W | Greater of 50% (62% with inclusionary allowance), or expansion up to a total of 125% of pre-existing building coverage. |
| RM, RM-W | Greater of 60% (72% with inclusionary allowance), or expansion up to a total of 125% of pre-existing building coverage. |
| RH | Greater of 80% (92% with inclusionary allowance), or expansion up to a total of 125% of pre-existing building coverage. |

~~C. Residential Conversion Bonus.~~

~~Development in excess of the limits set forth in Tables 4.4.5-2 and 4.4.5-3 may be permitted by the DRB subject to conditional use review for the conversion of an existing non-conforming nonresidential principal use not involving a historic building to a conforming residential use subject to all of the following conditions:~~

~~(i) Any structure proposed for demolition shall not be listed or eligible for listing in the United States Department of the Interior's National Register of Historic Places or the Vermont State Register of Historic Places; and,~~

~~(ii)(i) Lot coverage and residential density shall not exceed:~~

~~Table 4.4.5-7: Residential Conversion Bonus~~

| District | Maximum Lot Coverage | Maximum Density (dwelling unit/acre) |
|---------------------|--|--|
| RL, RL-W | 50% (62% with inclusionary allowance) | 8 du/ac (8.75 with inclusionary allowance) |
| RM, RM-W | 60% (72% with inclusionary allowance) | 30 du/ac (37.5 with inclusionary allowance) |
| RH | 80% (92% with inclusionary allowance) | 60 du/ac (69 with inclusionary allowance) |

D. Limitations on Residential Development Bonuses:

For projects where the conditions of more than one applicable bonus listed above **and under Sec. 5.4.8 (e)** are met, the applicant may use the most permissive exemption to the underlying lot coverage or residential densities applicable.

In no case shall any development bonuses and allowances granted, either individually or in combination, enable a building to exceed the maximum density, lot coverage and building height permitted in any district as defined below:

Table 4.4.5-8: Maximum Density, Lot Coverage and Building Heights with Bonuses

| District | Maximum Density | Maximum Height | Maximum Lot Coverage |
|-----------------|------------------------|---|-----------------------------|
| RH | 80 du/ac | 45-feet <i>(68-ft in RH Overlay)</i> | 92% |
| RM-W | 40 du/ac | 60-feet | 72% |
| RM | 40 du/ac | 35-feet | 60% |
| RL, RL-W | 20 du/ac | 35-feet | 50% |

Sec. 5.3.4 Nonconforming Uses, (a) Changes and Modifications:

1. Nonconforming Non-Residential Use:

A nonconforming non-residential use shall not be expanded or altered in any way, other than to full conformity under this Ordinance, except as follows:

A. Exception for residential conversion.

A non-residential nonconforming use may be converted to a residential non-conforming use pursuant to the applicable ~~adaptive reuse or~~ residential conversion provisions of Sec. 4.4.5(d)(~~67~~).

B. Existing Neighborhood Commercial Uses.

Existing non-residential uses intended to primarily serve the nearby residential area shall not be considered non-conforming to the extent they comply with the provisions of Sec. 4.4.5(d)(~~56~~).

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 additional dwelling units except as may be permitted for ~~adaptive reuse or~~ residential conversion bonuses approved per the provisions of Sec. 4.4.5(d)(~~67~~), **the Historic Building Rehabilitation Bonus under Sec. 5.4.8 (e), and-or** for Accessory Dwelling Units per the provisions of Sec. 5.4.5;
- B. *(remainder as written)*

Sec. 5.4.8 Historic Buildings and Sites

(e) Historic Building Rehabilitation Bonus:

In order to facilitate the rehabilitation and reuse of historic buildings, in Residential and Institutional districts, development in excess of the limits set forth in Tables 4.4.4-1, 4.4.5-2 and 4.4.5-3 may be permitted by the DRB subject to conditional use review for the conversion of an existing non-conforming nonresidential principal use within a historic building to a conforming residential use subject to all of the following conditions:

- (i) The principal building shall be listed or eligible for listing in the United States Department of the Interior’s National Register of Historic Places or the Vermont State Register of Historic Places;
- The gross floor area shall not exceed the pre-redevelopment gross floor area of the existing structure by more than twenty five (25) percent;
- (ii) The density limits of the underlying residential zoning district in Sec 4.4.4(b) and 4.4.5(b) above shall not apply. The intensity and extent of development shall instead be limited to an expansion up to a total of 125% of pre-existing gross floor area of the principal building, by gross floor area maximum in (ii) above and Table 4.4.5-6 below;
- (iii) The adaptive reuse and rehabilitation conforms to the requirements of Art 5, Historic Buildings Sec. 5.4.8 (b) above;
- (iv) Neighborhood commercial uses less than 2,000 sqft gross floor area may be permitted by the DRB subject to the applicable requirements of Sec. 4.4.5(d)(5)(A) above. Neighborhood commercial uses 2,000 sqft or larger in gross floor area shall not be permitted. In combination, the sum of neighborhood commercial uses shall be limited to no more than 50% of the gross floor area of the existing structure; and,
- (v) Lot coverage shall not exceed;

Table 4.4.5-6: Adaptive Reuse Bonus

| <u>District</u> | <u>Maximum Coverage</u> |
|--------------------|--|
| <u>RL, RL-W, I</u> | <u>Greater of 50% (62% with inclusionary allowance), or expansion up to a total of 125% of pre-existing building coverage.</u> |
| <u>RM, RM-W</u> | <u>Greater of 60% (72% with inclusionary allowance), or expansion up to a total of 125% of pre-existing building coverage.</u> |
| <u>RH</u> | <u>Greater of 80% (92% with inclusionary allowance), or expansion up to a total of 125% of pre-existing building coverage.</u> |

END PROPOSED AMENDMENT

Amendment Type

| | | |
|-----------------------|----------------------|---------------------------------|
| Text Amendment | Map Amendment | Text & Map Amendment |
|-----------------------|----------------------|---------------------------------|

Purpose Statement

The intent of the proposed amendment is to correct a conflict in the use of terms regarding the adaptive reuse of historic buildings and applicable development bonuses intended to encourage their reuse and rehilitation, and expand such bonuses into the Institutional District where applicable.

Proposed Amendment

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

1. Move Sec. 4.4.5(d) 6. B - Adaptive Reuse Bonus to become Sec. 5.4.8(e), rename it to "Historic Building Rehabilitation Bonus," and make it applicable in the Institutional District in addition to the Residential Districts.
2. Correct references to Sec. 5.3.4 Nonconforming Uses, (a) Changes and Modifications:

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 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 or 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:

| Planning Commission Process | | | | |
|---|---|--------------------------------------|------------------------------|-------------------------------------|
| Draft Amendment prepared by: Staff | Presentation to & discussion by Commission 9/14/21 | Approved 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 |