

## Department of Planning and Zoning

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TO: Development Review Board  
FROM: Ken Lerner  
DATE: May 20, 2014  
RE: 14-0852CA/AP; 137-139 Elmwood Avenue

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. **THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Zone: RM                      Ward: 3  
Owner/Appellants: Mark D. Johnson//Peter Richardson

Request: Appeal of denial of zoning permit to change use of office unit into a one bedroom residential unit.

Recommendation: Uphold denial based on the following findings:

### I. Findings

#### A. Background

Description: Change use of office unit to one bedroom residential unit.

Zoning Permit 14-0852 CA was denied for the following reasons:

1. *Section 5.2.7 (a) 2* provides for a non-residential density equivalency. The non-residential density equivalency is 1500 square feet of non-residential space = one residential unit; at 475sf this calculates at 0.316 units, that is below one unit and thus the existing office does not meet the density equivalency. In calculating the density *Section 5.2.7 (a) 1* provides that fractional units of less than 0.5 shall be rounded down to the nearest whole number.
2. Residential conversion bonus (*Sec. 4.4.5 (d) 7 D*), only is for non-residential structures, the subject property is a mixed use structure and thus does not qualify.
3. Adaptive reuse bonus (*Sec. 4.4.5 (d) 7 C*), is for an existing non-conforming nonresidential structure. As noted in 2 above, the subject property is a mixed use structure and does not qualify for this provision. The subject structure contains the 475 sq. ft. office and two residential units. The office only utilizes a small portion of the first floor and the remainder of that floor and the second floor contain two residential units.
4. The non-conforming residential use changes (*Sec. 5.3.4 (a) 1. A*) allows changes to residential uses but subject to *4.4.5 (d) 7* as noted in #3 above.
5. Density is 20 units/acre for a property zoned RM. The subject property at (5412 sq. ft.) 0.1242 acre x 20 units/acre = 2.48 units allowed; with 4 existing units the property already

exceeds density and thus no additional units can be added based on the underlying allowable density.

## **B. Appeal**

The permit (#14-0852CA/AP) was denied on April 4 and the appeal filed on April 4, 2014 as well. Thus, the denial clearly was within its appeal period, (see attached statement from appellant dated 4-4-14).

## **C. Response**

1. Intent of the ordinance. While there is intent to rid zones of non-conforming uses, there are adopted provisions in the ordinance to accomplish this goal. Staff reviewed all applicable provisions and found none apply to the present situation to allow this change in use.
2. Residential character. There are commercial uses in the vicinity – the NMU – neighborhood mixed zoning district begins two properties from the subject site with a tavern (T. Ruggs) on the corner of Elmwood Avenue and North Street. North Street itself is the main commercial corridor for the Old North End.
3. Need for housing. There are many provisions in the CDO that provide for housing opportunities, including residential conversion and adaptive re-use bonuses. As noted, the subject situation simply does not qualify for any of these regulations adopted to provide for both replacing non-conformities and providing housing bonuses.
4. Parking availability. The parking requirement based on Article 8, within a Neighborhood parking district, for the office conversion to a residential unit is: office at 1 space per 500 square feet = 1 space; one residential unit requires 2 spaces. The overall parking required for the existing four residential units is 8 spaces. With only two spaces on-site, the property is non-complying with regard to parking and there is insufficient parking to accommodate this change.

An alternative to continuing the office use is for the appellant to reconfigure the interior of the building adding the 475 square footage of the office space to another unit(s).

Note that no additional rooms can be created as this would trigger the need for another parking space for each new room due to the non-compliance with current parking requirements. Based on the site plan it does not appear possible to provide any additional parking.

## **II. Recommended Motion**

Uphold the denial of zoning permit 14-0852CA for the reasons as stated.

APPEAL OF ZONING PERMIT APPLICATION 14-0826CA  
137-139 ELMWOOD AVENUE

**Property Description**

- The property was built about 1920. The flat, rectangular lot is 5,412 sf, or approximately one-eighth acre. Zoning is MR.
- The two structures are mostly vinyl-sided. They contain five rental units. Four units are residential apartments. The fifth is an office. A site plan and building photograph are enclosed.
- The front building (#139) contains an office and two apartments. The rear building (#137) contains two apartments. The two onsite parking spaces are leased to residential tenants.
- The buildings cover approximately 2,478 sf, or 45% of the 5,412 sf lot. A driveway and additional impervious surface (steps and walkways) consume approximately 1,762 sf of the lot, or 32%. The total existing lot coverage is approximately 4,240 sf, or 78%.

**The Application**

An application was made initially on March 19, 2014, to permit (1) adding two dormers, (2) installing an exterior door and window, and (3) converting a non-conforming commercial use (475 sf of office space) to a one-bedroom apartment. Based on initial staff review, the office conversion was withdrawn from the application. This allowed for administrative approval of the dormers and the door and window. A new application was made on March 31<sup>st</sup> to permit the office conversion.

**The Denial**

The change of use from office to residential was denied on April 4<sup>th</sup> because “there are no provisions in the CDO that allow for the conversion.” The five reasons cited involved (1) non-residential density equivalency; (2) residential conversion bonus; (3) adaptive reuse bonus; (4) non-conforming residential use changes; and (5) residential density.

**Relief Requested**

This appeal does not attempt to interpret or dispute the specific regulatory provisions or technical findings cited in the denial. Rather, the applicant requests the DRB to override the administrative decision for the following reasons:

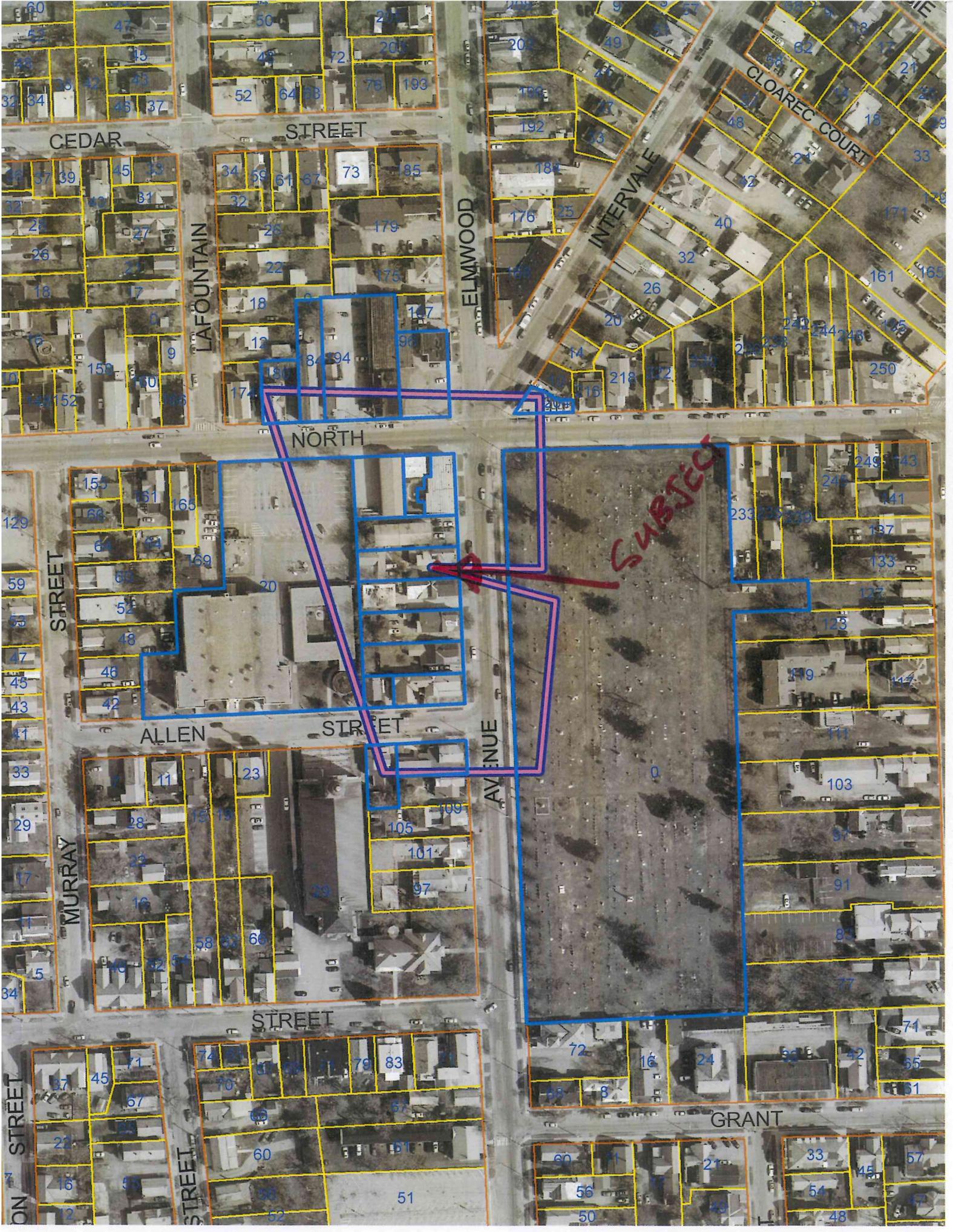
1. **Intent of the ordinance.** The office space is an existing nonconformity in the MR zoning district. Per section 5.3.1, the purpose of the ordinance is to get rid of nonconforming uses. Applying the provisions in the denial conflicts with this intent.
2. **Residential character.** With the exception of a building at the corner of North Street, the block of Elmwood Ave. on which the property is located is *all* residential. The office use is an anomaly.
3. **Need for housing.** Burlington’s rental housing vacancy rates are notoriously low. Where residential use is appropriate, the conversion of incidental commercial space to apartments should be encouraged and permitted.
4. **Parking availability.** There is currently no onsite parking reserved for the existing commercial tenant. The one-bedroom apartment will have no onsite parking either. But the small residential use will likely generate less parking demand than an active office.

**Attachments**

- Site plan and building photo

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PLANNING & ZONING



CEDAR STREET

LAFONTAIN

ELMWOOD

INTERVALE

CLOAREC COURT

NORTH

STREET

ALLEN STREET

AVENUE

MURRAY

STREET

GRANT

SUBJECT



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DEPARTMENT OF  
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NEDDE  
651-9888  
FOR SALE

SLIDEF

139

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137-130 ELMWOOD AVENUE

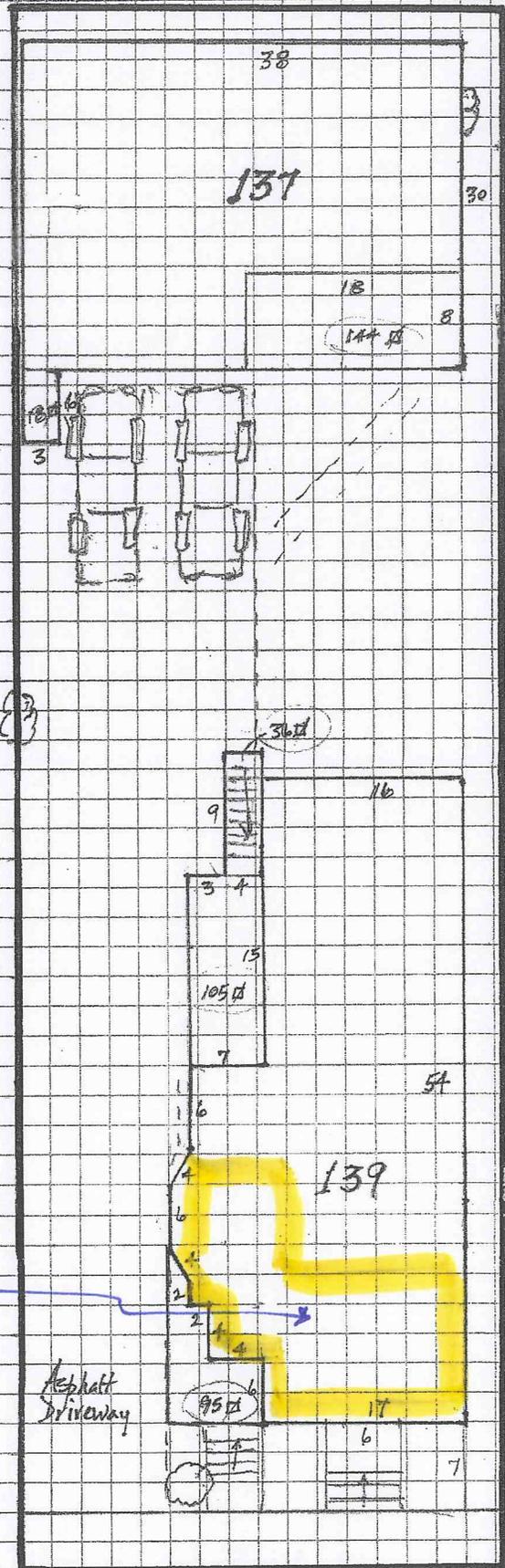
ID: 044-3-277-000

SPAN: 144-035-15265

Lot Size

41' x 132' = 5,412 sf

Scale 1" = 10'



Location of office

ELMWOOD AVE

# CITY OF BURLINGTON

ORDINANCE 7.01

Sponsor Planning Department,

Planning Commission, Councilors Mason, Bushor, Paul, Ordinance Com.

Public Hearing Dates

11/04/13

First reading: 08/12/13

Referred to: Ordinance Committee

Rules suspended and placed in all stages of passage: \_\_\_\_\_

Second reading: 11/04/13

Action: amended; adopted

Date: 11/04/13

Signed by Mayor: 11/07/13

Published: 11/13/13

Effective: 12/04/13

In the Year Two Thousand Thirteen

## An Ordinance in Relation to

COMPREHENSIVE DEVELOPMENT ORDINANCE—

Adaptive Reuse and Residential Bonuses

ZA 13-11

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

That Appendix A, Comprehensive Development Ordinance, of the Code of Ordinances of the City of Burlington be and hereby is amended by amending Sections 4.4.5, Residential Districts, Table 4.4.5-6: Adaptive Reuse Bonus and Table 4.4.5-7: Residential Conversion Bonus, thereof to read as follows:

### Sec. 4.4.5 Residential Districts

(a) – (c) As written.

#### (d) District Specific Regulations

The following regulations are district-specific exceptions, bonuses, and standards unique to the residential districts. They are in addition to, or may modify, city-wide standards as provided in Article 5 of this ordinance and district standards as provided above.

1-6. As written.

#### 7. 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-B. As written.

#### C. 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 ~~retention, adaptive reuse and rehabilitation~~ conversion of an existing non-conforming nonresidential principal use nonresidential structure and its conversion within a historic building to a ~~permitted conforming residential use provided the structure has not previously been converted~~

An Ordinance in Relation to

~~from a residential use to a nonresidential use. Any such redevelopment shall be subject to all of the following~~  
 conditions:

- ~~(i)~~ The structure shall not have previously been converted from a residential use to a nonresidential use;
- (ii) 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;
- (iii) The gross floor area shall not exceed the pre-redevelopment gross floor area of the existing structure by more than twenty-five (25) percent;
- ~~(iv)~~ The density limits of the underlying residential zoning district in Sec 4.4.5(b) above shall not apply. Residential density The intensity and extent of development shall be limited by gross floor area maximum in (iii) above and Table 4.4.5-6 below;
- ~~(v)~~ The building adaptive reuse and rehabilitation conforms to the requirements of Art 5, Historic Buildings;
- ~~(vi)~~ Neighborhood commercial uses less than 2,000 sq. ft. 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 sq. ft. 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,
- ~~(vii)~~ Lot coverage shall not exceed:

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

District	Maximum Coverage
RL, RL-W	Greater of <del>54%</del> <u>44</u> <del>62%</del> with inclusionary allowance), or expansion by <del>more than</del> <u>up to a total of 125%</u> of pre-existing building coverage.
RM,	Greater of <del>40%</del> <u>48%</u> with inclusionary allowance), or expansion by <del>more than 125%</del> <u>of pre-existing building coverage.</u>
<u>RM</u> , RM-W	Greater of 60% (72% with inclusionary allowance), or expansion by <del>more than</del> <u>up to a total of 125%</u> of pre-existing building coverage.
RH	Greater of 80% (92% with inclusionary allowance), or expansion by <del>more than</del> <u>up to a total of 125%</u> of pre-existing building coverage.

**D. 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 structure-principal use not involving a historic building to a permitted-conforming residential use provided, or for the elimination of a non-residential structure and its replacement by a residential structure, subject to all of the following conditions the following:

- (i) ~~The structure shall not have previously been converted from a residential use to a nonresidential use;~~
- (ii) 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,
- (iii) 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% <u>(62% with inclusionary allowance)</u>	8 du/ac <u>(8.75 with inclusionary allowance)</u>
RM, RM-W	60% <u>(72% with inclusionary allowance)</u>	30 du/ac <u>(37.5 with inclusionary allowance)</u>
RH	80% <u>(92% with inclusionary allowance)</u>	60 du/ac <u>(69% with inclusionary allowance)</u>

An Ordinance in Relation to

E. As Written.

\* Material stricken out deleted.

\*\* Material underlined added.

lb/KJS /c: Ordinances 2013/Zoning Amendment #ZA 13-11 – Adaptive Reuse and Residential Bonuses, Sec. 4.4.5  
8/7/13 amended; adopted 11/04/13 lo