

APPENDIX  
ZONING\*

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Sec. 1. Purpose, title.

(A) *Purpose.* For the purpose of promoting the health, safety and general welfare of the community, and to lessen congestion in the streets, to secure safety from fire, panic, and other dangers, to provide adequate light and air, prevent the over-crowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water sewerage, schools, parks, and other public requirements, under and pursuant to 24 VSA Chapter 91, as amended: the size of buildings and other structures, the percentage of lot area that may be occupied, the size of yards and density of population, and the use of buildings, structures and land for trade, industry residence or other purposes, are hereby restricted and regulated as hereinafter provided.

(B) *Title.* The ordinance shall be known and may be cited as The Burlington Zoning Ordinance.

Sec. 2. Definitions.

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

Unless otherwise defined in this section, definitions listed in section 4303 of the Vermont Planning and Development Act, as amended, shall be applicable throughout this ordinance.

\*Editor's note—The zoning ordinance, passed March 26, 1973, and approved April 3, 1973, enacted as Ch. 65 of the Rev. Ords. 1962, has been set out herein as enacted, with the following exceptions: (1) The digits 65 (or in some instances, 66) in the section numbers have been deleted, so that the sections are now numbered from 1 to 88. (2) Sub-section captions have in some instances been inserted. (3) The word "chapter" sometimes appearing therein has been changed to "ordinance". (4) Where there are counterparts in this Code, references to the Rev. Ords. 1962, have been changed to the counterparts in this Code; otherwise they have been left as written. (5) Typographical errors have been corrected.

Handwritten notes on the left margin: "13-11-73" and "13-11-73" written vertically.

Words used in the present tense include the future; words in the singular shall include the plural, and the plural the singular; the word "shall" is mandatory and not merely directory; the word "building" includes "structure", the word "lot" includes the word "plot", and the word "land" includes the words "marsh" and "water".

Unless defined to the contrary in section 4303 of the Vermont Planning and Development Act as amended, or 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.

*Accessory building or use:* A use, or detached building, which is subordinate to the main use, or building, and located on the same lot with the main building or use, the use of which is customarily incidental to that of the main building or to the use of the land. Where a substantial part of a wall of an accessory building is part of the wall of a main building, or where an accessory building is attached to the main building, such accessory building shall be counted as a part of the main building.

*Alteration:* Alteration means the rearrangement of interior space, including the addition of walls, halls, steps, elevators, escalators, the rearrangement of the exterior bearing walls, including new doors, wind exits or facades; but not including ordinary maintenance or repairs.

*Apartment house:* A building or portion thereof used or designed to be used as a residence for three (3) or more families living in units independently of one another.

*Bars, cafes:* A restaurant whose primary business is the sale of alcoholic beverages.

*Boarding or rooming house:* A building or premises where rooms are let to individuals, other than transients, and where meals may be regularly served in a common dining area for

compensation. Hotels, motels, apartment houses, inns, tourist homes and/or lodging houses shall not be considered boarding or rooming houses.

**Board of adjustment:** The officially appointed board under section 81 of this ordinance to hear appeal from persons aggrieved by a decision made under the provisions of this ordinance.

**Building inspector:** The administrative officer of the building code for the City of Burlington.

**Building lot:** A building lot is that area of land described in an application for a building permit or an application to the board of adjustment for a permit or a variance, or otherwise defined as the area on which a structure is to be constructed or a certain use is to be carried on. A building lot shall not include any part of a street which is relied upon to qualify the lot as to frontage.

**Commercial use:** Any business use, mercantile use or place of assembly, but excluding restaurants, bars, cafes, gasoline service stations and repair garages, as those terms are defined in the American Insurance Association, National Building Code as amended.

**Community Center:** A common building within a residential development which provides a focus for recreational, neighborhood commercial, educational and cultural activities for the residents of that immediate neighborhood.

**Conditions:** Those conditions required in this article which must be met prior to the issuance of a zoning permit or permit of occupancy.

**Convalescent home:** A health center or home where patients or boarders are given custodial or chronic medical, psychiatric or psychological care and may include patients receiving counseling from public and semi-public agencies but shall exclude acute care on a continuing basis.

The following densities shall prevail:

<b>Low Density</b>	<b>Maximum* Net Dwelling Unit</b>
Single family	4.4/acre
Duplex	5.5/acre

**Medium density—Maximum 25 units per acre\*\***

**High density—Maximum 75 units per acre\*\***

\*Exclusive of streets

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**\*\*Inclusive of new streets but exclusive of existing streets.**  
In calculating the number of residential units permitted, fractional units of less than five-tenths (0.5) shall be rounded down to the nearest whole number and fractional units of five-tenths (0.5) or greater shall be rounded up to the nearest whole number.

*Design review:* Design review is the review of height, bulk, open space, massing, traffic access, circulation, parking, landscaping and all other architectural features, as provided for in section 19, Waterfront Design Control District, by the Planning Commission.

*Design review, site plan review:* These reviews shall follow the procedures as indicated in sections 19 and 26 and in the subdivision regulations, Chapter 67 of the Burlington City Ordinances.

*Duplex:* A structure designed and constructed for two (2) family living units, regardless of the type of construction.

The following densities shall prevail:

<i>Low Density</i>	<i>Maximum* Net Dwelling Unit</i>
Single family	4.4/acre
Duplex	5.5/acre
Medium Density—Maximum 25 units per acre**	
High Density—Maximum 75 units per acre**	

\*Exclusive of streets

**\*\*Inclusive of new streets but exclusive of existing streets.**  
In calculating the number of residential units permitted, fractional units of less than five-tenths (0.5) shall be rounded down to the nearest whole number and fractional units of five-tenths (0.5) or greater shall be rounded up to the nearest whole number.

*Family:* One or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes.

*Frontage:* That portion of the lot which abuts on a public street or way, the width of which shall be measured along  
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the front building line across the width of the lot. (Ord. of 12-9-74)

*Gross floor area:* The exterior measurement of a building exclusive of porches, stairs and all other structures not enclosed by interior walls.

*Garage:* A building or structure or a portion thereof in which motor vehicles or equipment are housed.

- (a) *Garage, private:* a garage, but not for commercial repair of vehicles or the storage of any motor vehicles having a gross weight of more than six thousand (6,000) pounds or rental of more than two (2) stalls.
- (b) *Garage, public:* a garage, other than a private garage, as defined above, used or designed to be used for storage, repair, sale or lease, service or maintenance of motor vehicles or equipment.

*Home occupation:* An endeavor carried on for profit in a dwelling by an occupant in residence.

*Hotel, inn, motel, tourist home or lodging house:* A single building, or portion thereof on a single lot, intended to be used for the temporary occupancy of four (4) or more individuals, who are lodged, with or without meals, and in which provision for cooking may be made in a central kitchen, but may not be in the individual rooms or suites.

*Housing, elderly:* Housing that is designed for, and is occupied primarily by, those persons sixty (60) years of age or older.

*Junk yard:* Land or buildings used for the collection, storage or sale of waste paper, rags, scrap metal or discarded material; or for the collection, wrecking, dismantling, storage, salvaging and sale of machinery parts or vehicles not in running condition.

*Kennel or coop:* Accessory building or enclosure for the keeping of domestic pets of the residents, limited to three (3) or less such pets or animals three (3) months or older in age.

*Lakefront:* Lake shore means the water's edge of Lake Champlain at mean low water unless otherwise defined.

*Loading space, off-street:* An off-street space or berth, on the same lot with a building for the temporary parking of vehicles while loading or unloading merchandise or material, and which has access to a street, alley or other appropriate means of ingress and egress.

*Lot, corner:* A lot abutting on two (2) or more streets at their intersection.

*Membership club:* A private organization, building or grounds, specifically including country clubs, fraternities and sororities and other organizations and entities to which membership is limited or controlled.

*MSL: Mean sea level.*

*Non-complying structures:* Non-complying structures means a structure or part thereof not in conformance with the zoning regulations covering building bulk, dimensions, height, area, yards or density, where such structure conformed to all applicable laws, ordinances and regulations prior to enactment of such zoning ordinance.

*Non-conforming use:* A non-conforming use of land or building is an existing use of land or building which does not conform to the use regulations for the district in which such use of land or building exists and which legally existed at the time of the adoption of the regulation to which it does not conform.

*Planning commission or commission:* The planning commission of the City of Burlington, Vermont.

*Performance bond:* In lieu of the completion of the required improvements, the planning commission may require from the owner for the benefit of the city, a performance bond issued either by a bonding or surety company approved by the legislative body or by the owner with security acceptable to the legislative body, in an amount sufficient to cover the full cost of said required improvements and their maintenance for a

period of two (2) years after completion as is estimated by the planning commission or such municipal departments or officials as the commission may designate. Such bond or other security shall provide for, and secure to the public, the completion of any improvements which may be required within the period fixed in the regulations for such completion, and for the maintenance thereof for a period of two (2) years after completion.

*Professional occupation:* Any recognized profession licensed by the State of Vermont, such as the office of a doctor, lawyer or dentist, engineer; but excluding veterinarians and beauticians.

*Public use:* A use which is owned and operated by a public agency.

*Restaurant, including bars, cafes, and caterers:* Any food service establishment subject to Vermont Health Regulations which prepares and serves food for consumption on premises; and including those establishments whose primary business is the sale of prepared food for consumption off the premises. Bars and cafes are further defined as restaurants whose primary business is the sale of alcoholic beverages.

*Semi-public use and buildings:* Semi-public use includes churches, membership clubs and other non-profit operations. Provided, however, that private nursery schools are specifically determined not to be a semi-public use.

*Sign:* Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, trade marks by which anything is made known, such as are used to designate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are visible from a public street or right-of-way and used to attract attention.

*Site plan review:* The review of commercial, industrial or multi-family uses subject to the same procedures and requirements as a subdivision in accordance with Chapter 67 of the Burlington City Ordinances and section 26.

*Special exception:* No special exception is allowed under the provisions of this ordinance and none shall be granted.

*Street:* A public way as defined in section 1-2 of the Code of Ordinances of the City of Burlington, or a private way devoted to public use. The word "street" shall include the entire width between property lines of every way used for vehicular and pedestrian travel which has become public by authority of the law, and such ways in public places other than highways as the public is permitted to use for vehicular and pedestrian traffic.

*Structure:* Any construction, erection, assemblage or other combination of materials upon the land, including swimming pools necessitating pilings, footings or a foundation attachment to the land, and including paving (not including resurfacing).

*Tourist camp:* Land used, or intended to be used, let or rented for occupancy by campers traveling by automobile or otherwise; or for temporary occupancy by house trailers, tents, or movable or temporary dwellings, rooms or sleeping quarters of any kind.

*Variance:* Variance is allowed deviation from the physical dimensional requirements of this chapter as granted by the board of adjustment, but not to include any land use or density other than single-family residential than is specifically permitted under the provisions of this ordinance.

*Waterfront pedestrian corridor:* The waterfront pedestrian corridor is an area encouraged for dedication to the city by any applicant for a certificate of appropriateness in the waterfront design control district.

*Yard:* All open space, other than an enclosed court, on the same lot with a building or group of buildings, which open space lies between a building or group of buildings and a lot line.

- (a) *Yard, front:* The open, unoccupied space extending across the full width of the lot and lying between the street line of the lot and the nearest line of the building. The depth of a front yard shall be the minimum

distance between the building and front lot lines, measured at right angles to the front line of the lot.

- (b) *Yard, rear:* The open, unoccupied space extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the building. The depth of a rear yard shall be the minimum distance between the building and rear lot line, measured at right angles to the rear line of the lot.
- (c) *Yard, side:* The open, unoccupied space between the side lot line of the lot and the nearest line of the building, and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines, as may be. The width of a side yard shall be the minimum distance between the building and the side lot line, measured at right angles to the side line of the lot.

(Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 12-6-76, § 1; Ord. of 4-11-77, §§ 1, 2; Ord. of 6-13-77, § 1)

### Sec. 3. Establishment of districts.

(A) *List of districts.* The City of Burlington is hereby divided into sixteen (16) districts as follows:

- (1) FHD Floodway district
- (1.1) FFD Flood fringe district
- (2) RCO Recreation, conservation and open space
- (3) R-6 Residence low
- (4) WFR Waterfront residential
- (5) R-25 Residential medium density
- (6) WFR-75 Waterfront high density residential
- (7) R-75 High density district
- (8) NC Neighborhood commercial district
- (9) UC University campus

- (10) CBD : Central business district
- (11) C Commercial
- (12) GC General commercial
- (13) WFC Waterfront commercial
- (14) I Industrial
- (15) WFI Waterfront industrial

(B) *Incorporation of zoning map.* The boundaries of these districts are hereby established as shown on the zoning map. Said map titled "Comprehensive Zoning Map of Burlington, Vermont", and dated March 26, 1973, is hereby made a part of this ordinance. Said map is hereby amended to:

- (1) Create a high density residential (R-75) district north of the regional core bounded on the south by the center-

line of Pearl Street, on the east by the center line of North Union Street, on the north by the center line of Grant Street, Elmwood Avenue, Peru Street, North Champlain Street and Sherman Street and on the west by the center line of Park Street. The area was previously a medium density residential (R-25) district.

- (2) Expand the high density residential (R-75) district south of the regional core to include the area bounded on the south by the center line of Maple Street, on the east by the center line of South Union Street, on the north by the center line of Main Street and on the west by the center line of Church Street. The area described was previously a medium density residential (R-25) district.
- (3) Expand the university campus (UC) district to include the area bounded by the center line of Maple Street on the south, the rear lot lines of property fronting on South Willard Street to the east, the center line of Main Street to the north and the center line of South Union Street to the west. The area described was previously a medium density residential (R-25) district.
- (4) Create a medium density residential (R-25) district in the southern part of the city bounded on the east by the center line of Pine Street, on the south by the center line of Flynn Avenue, on the west by the westerly lot line of the St. Anthony's Convent property and on the north by the northerly lot line of the Old Champlain Elementary School. The area described was previously an industrial (I) district.
- (5) Create a medium density residential (R-25) district in the area bounded by the center line of Flynn Avenue to the north, the center line of Shelburne Street to the east, the center line of Home Avenue to the south, and on the west, by the rear property lines of those properties fronting on Shelburne Street between Flynn Avenue and Ferguson Avenue, or 199.5 feet west of the

center line of Shelburne Street, whichever is less, and by the rear property lines of those properties fronting on Shelburne Street between Ferguson Avenue and Home Avenue, or 187.5 feet west of the center line of Shelburne Street, whichever is less. The area west of that described in the preceding sentence located between Flynn Avenue and Home Avenue, but east of the center line of Wells Street, shall be a low density residential (R-6) district.

- (6) Create a low density residential (R-6) zone in the area bounded as follows:

Commencing at a point along the northerly line of the property owned by Lodge No. 916 of the Benevolent and Protective Order of Elks, which line also marks the current boundary between the R-6 district and the RCO district, which point is two hundred thirty-three (233) feet south of the northeast corner of such R-6 boundary; thence proceeding southerly parallel to North Avenue a distance of eight hundred eighty-five (885) feet to a point; thence proceeding easterly two hundred thirty-three (233) feet to a point along the existing boundary line between the R-6 district and the RCO district. The area described was previously a recreation, conservation and open space (RC) district.

- (7) Expand the existing Industrial District as follows:

Beginning at the intersection of the existing northwestern boundary line with Manhattan Drive; thence easterly to the center line of Intervale Street; thence southerly to the intersection of the center line of Intervale Avenue and the rear boundary line, extended, of the westernmost property fronting on Riverside Avenue; thence easterly along the rear property lines of those properties fronting on Riverside Avenue to the intersection with the existing zoning district boundary line; including this area; thence to continue easterly along the rear

property line of properties fronting on Riverside Avenue to the intersection of the rear property line of said properties, extended, and the center line of Intervale Road; thence, northerly to the intersection with an existing district boundary line.

- (8) Reclassify the present commercial (C) district on Riverside Avenue to a general commercial (GC) district without altering the boundaries thereof.
- (9) Create as overlay districts providing additional classification (as set forth in 24 V.S.A. 4405) as follows:
  - (a) Floodway district (FHD);
  - (b) Floodway fringe district (FFD); both are as described on the flood boundary and floodway map, dated November 15, 1978, as prepared by the U. S. Department of Housing and Urban Development-Federal Insurance Administration; and on file in the office of the city clerk and the planning commission; as amended by a flood boundary and floodway work map dated July 24, 1978, which revised the floodway limit on the Winooski River.
- (10) Creation of neighborhood commercial zone—Description of boundaries.

Commencing at the center line of North Street approximately 120 feet east of the intersecting center lines of North Street and North Winooski Avenue; proceeding west approximately 40 feet along the center line of North Street; south approximately 86.5 feet along the east (rear) property line of 146 North Winooski Avenue; west approximately 83.5 feet along the south property line of 146 North Winooski Avenue to the center line of North Winooski Avenue; north approximately 37.5 feet along center line of North Winooski Avenue; west along the south property line of 143—147 North Winooski Avenue and continuing in a general westerly direction along the rear property lines of the following properties having frontage along

North Street: 249; 245—247; 241; 235; 233; 201; 193; 191, 189; 187; 183—185; 181; 169; 165; 163; 155—157; 142—144 North Champlain Street; 139—143 North Champlain Street; 101—103 North Street; 95—97; 93; 89; 87; 83; 75—77; 68—71; 65; 59—61; 57; 51—55; 49; 33—31; 27—29; 79 Front Street; 23—25; 19—21 North Street; north approximately 40 feet along the rear property line of 70—72 North Avenue; west approximately 130 feet along the south property line of 82—84 North Avenue to center line of North Avenue; north approximately 156 feet along center line of North Avenue; west approximately 133 feet along south property line of 87—89 North Avenue; and rear property lines of 3 and 7 Haswell Street to center line of Lakeview Terrace; north along center line of Lakeview Terrace to intersection of center line of Haswell Street; east along center line of Haswell Street to intersection of center line of North Avenue; north approximately 95 feet along center line of North Avenue; east approximately 133 feet along north property line of 104 North Avenue; south approximately 100 feet along rear (east) property line of 104 North Avenue then proceeding in a general easterly direction along the rear (north) property lines of the following properties having frontage along North Street: 12—22 North Street; 24 North Street; 2 Drew Street; 38—40 North Street; 42; 52; 60—64; 66; 70; 74—76; 78—82; 84; 88; 92; 98; 100—106—108—110; 112—114—116; 118; 120; 122; 128; 132—136; 144—146; 145—150; 152; 158; 160—162; 166; 174—176; 180; 184; 188; 194; 202; 204—206; 216; 218; 222; 230; 236; 238; 242; 244; 248 North Street; south approximately 47 feet along east property line of 248 North Street; southeast approximately 203 feet along north property line of 149—151—153 North Avenue to the center line of North Winooski Avenue; north approximately 95 feet along center line of North Winooski Avenue; southeast approximately 45.5 feet along north property line of 156—160 North Winooski Avenue to the center line of North Street, a point 120 feet east of the intersecting center lines of North Street and North Winooski Avenue.

(C) *Interpretation of district boundaries.* Where uncertainty exists as to the boundaries of any district shown on said maps, the following rules shall apply:

- (1) Where district boundaries appear to approximately follow the center line of highways, roads, alleys, railroads, streams, other bodies of water, or civil division lines, land lot lines, property lines, such lines or center lines shall be construed to be such boundaries as they existed at the time of passage of this ordinance.
- (2) Where district boundaries are indicated as being measured from or being parallel to the center line of highways, roads, alleys, railroads, civil division lines, land lot lines, property lines, streams or other water bodies, such boundaries shall be construed as being measured from or being parallel thereto and at a distance therefrom as indicated or as determined by the scale shown on the zoning map.
- (3) Where a district boundary line divides a parcel in single ownership at the time of enactment of this ordinance the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extension shall not include any part of such lot more than thirty-five (35) feet beyond the district boundary line. The districts are listed from the most to the least restrictive.
- (4) In case further uncertainty exists, the planning commission shall make a determination as to the location of the boundaries based on the graphic scale of the zoning map. (Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 12-6-76, § 2; Ord. of 12-19-77; Ord. of 3-24-80; Ord. of 6-13-83)

**Sec. 4. Use requirements for the floodway district (FHD).**

The floodway district is intended to protect the citizenry from injury or damage caused by seasonal or periodic

flooding and to prevent pollution of Lake Champlain, rivers and streams.

The floodway district is intended to establish floodplain management criteria in floodprone areas to maintain eligibility in the National Flood Insurance program established by the National Flood Insurance Act of 1968, as amended; for these reasons the following regulations shall apply:

- (A) *Permitted uses:* The following open space uses shall be permitted within the floodway district to the extent that they are not prohibited by any other ordinance 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:

- (1) Agricultural uses, such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming, and forestry.
- (2) 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.
- (3) Residential uses, such as lawns, gardens, parking areas and play areas.

Among the uses not permitted are junk yards, mobile homes, storage facilities for chemicals, explosives, flammable liquids or other toxic materials.

- (B) *Permitted accessory uses*: Uses customarily accessory and incidental to any of the permitted uses listed in subsection (A), above, may be permitted, subject to the limitations therein.
- (C) *Conditional uses*: Reserved.
- (D) *Quantitative requirements*: As prescribed by the district in which the FHD is overlaid and as set forth in sections 22 and 23.
- (E) *Qualitative requirements*: As prescribed by the district in which the FHD is overlaid and as set forth in sections 19 and 26.
- (F) *Nonconforming uses and noncomplying structures*: As set forth in section 25. (Ord. of 3-24-80)

**Editor's note**—Prior to amendment by an ordinance of March 24, 1980, § 4 pertained to use requirements for floodplain (FPD) districts, and derived from an ordinance of Dec. 9, 1974.

**Sec. 4.1. Use requirements for the floodway fringe district (FFD).**

The floodway fringe district is intended to protect the citizenry from injury or loss due to damage caused by seasonal or periodic flooding and to prevent pollution of Lake Champlain, rivers and streams.

The floodway fringe district is intended to regulate land use in portions of zoning districts which are subject to flooding. For the purpose of maintaining eligibility in the National Flood Insurance Program established by the National Flood Insurance Act of 1968, as amended, the following regulations shall apply:

- (A) *Permitted uses:* The following open space uses are permitted in the floodway fringe district to the extent they are not prohibited in the zoning district to which these regulations apply:
- (1) Electric power generating stations and associated ancillary uses.
  - (2) Agricultural uses, such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming and forestry.
  - (3) 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.
  - (4) Residential uses, such as lawns, gardens, parking areas and play areas.
- (B) *Permitted accessory uses:* Uses customarily accessory and incidental to any of the permitted uses listed in subsection (A), above, may be permitted, subject to the limitations therein.
- (C) *Conditional uses:* All permitted uses in the zoning districts which are overlaid by this district, except

those open space uses as listed in subsections (A)(1), (2) and (3), above, are permitted only upon the granting of a conditional use permit by the zoning board of adjustment as provided in section 81 of this ordinance.

- (1) Upon receiving an application for a conditional use permit under the ordinance, the zoning board of adjustment shall, prior to holding a hearing and rendering a decision thereon, obtain:
  - (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 habitable floor, including basement, of all new construction or substantial improvements of structures;
  - (c) Confirmation as to whether or not such structures contain a basement;
  - (d) The elevation, in relation to mean sea level, to which any structure has been floodproofed.
- (2) In addition, the zoning board of adjustment shall require such of the following information as it deems necessary for determining the suitability of the particular site for the proposed use:
  - (a) 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 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;

- (b) 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;
  - (c) A profile showing the slope of the bottom of the channel or flow line of the stream;
  - (d) Specifications for building construction and materials, floodproofing, mining, dredging, filling, grading, paving, excavation or drilling, channel improvement, storage of materials, water supply and sanitary facilities;
- (3) In riverine situations, the board of adjustment shall notify adjacent communities and the Vermont Department of Water Resources prior to approval of any alteration or relocation of a watercourse and submit copies of such notifications to the FIA Administrator.
  - (4) The secretary of the zoning board of adjustment shall transmit one copy of the information described in subsections (C)(1), (C)(2), and (C)(3) to the Vermont Department of Water Resources in accordance with 24 V.S.A. section 4409(c)(2)(A).
  - (5) In reviewing the application, the zoning board of adjustment shall consider the evaluation of the Vermont Department of Water Resources and shall determine that the proposed use will conform to the development standards of subsection (C)(7) of this section.
  - (6) In accordance with 24 V.S.A. section 4409(c)(2)(A), no permit may be granted for new construction or the development of land in any area designated as a floodplain by the Vermont Department of Water Resources prior to the expiration of a period of thirty (30) days following the submission of a report describing the proposed use, the location requested and an evaluation of the effect of such

proposed use on Burlington's master plan and the regional plan, if any, to the Vermont Department of Water Resources under subsection (C)(5) above, provided this subsection shall not be applicable to public utility generating stations and transmission lines which shall require the issuance of certificate of public good under 30 V.S.A. 248 prior to any land filling or construction.

- (7) In reviewing each application, the zoning board of adjustment shall assure that the flood-carrying capacity within any portion of an altered or relocated watercourse is maintained and shall consider:
- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments;
  - (b) The danger that materials may be swept on to other lands or downstream 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 proposed comprehensive plan, insofar as the plan has been developed;

- (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 floodwaters expected at the site;
  - (k) Such other factors as are relevant to the purposes of this ordinance.
- (8) Upon consideration of those factors in subsection (C)(7), above, and the purposes of these regulations, the zoning board of adjustment shall attach the following conditions to any permit it chooses to grant. Such conditions require that:
- (a) All residential structures have the first floor, including basement, elevated at least at [to,] or above, the base flood elevation;
  - (b) All new construction and substantial improvements of nonresidential structures shall have the lowest floor, including basements, elevated to or above the base flood elevation or be floodproofed below the base flood level. A registered architect or engineer shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the base flood;
  - (c) Structures be designed and anchored to resist flotation, collapse, or lateral movement;
  - (d) Adequate surface drainage be provided to reduce exposure to flood hazards;
  - (e) Any fill be prohibited that will cause any increase in the base flood level;
  - (f) All gas and electrical equipment, circuits and appliances be located and constructed to minimize or eliminate damage by flood;

- (g) Water supply and waste treatment systems be designed so as to prevent the infiltration of floodwaters into the systems;
- (h) Sanitary sewage systems be designed to prevent infiltration of floodwaters into the systems and discharges from the systems into floodwater;
- (i) On-site waste disposal systems be located to avoid impairment to them or contamination from them during flooding;
- (j) All individual mobile homes and any mobile home parks or mobile home subdivisions to be placed in the designated floodplain area shall:
  - (i) Be located on elevated stands or lots on compacted fill or pilings so that the lowest floor of the mobile home will be at or above the base flood level;
  - (ii) Provide for adequate surface drainage and access for a hauler;
  - (iii) In the instance of elevation on pilings, the lots shall be large enough to permit the usage and construction of steps. The piling foundations shall be placed in stable soil no more than ten (10) feet apart, and reinforcement shall be required for pilings set more than six (6) feet above the ground level.
- (k) All mobile homes to be placed within or presently existing in the designated flood fringe area shall be anchored to resist flotation, collapse or lateral movement by both of the following:
  - (i) Over-the-top ties at each of the four (4) corners of the mobile home, with two (2) additional ties per side at intermediate

locations and mobile homes less than fifty (50) feet long requiring one additional tie per side and,

- (ii) Frame ties at each corner of the home with five (5) additional ties per side at intermediate points and mobile homes less than fifty (50) feet long requiring four (4) additional ties per side.
  - (l) All components of the mobile home anchoring system shall be capable of carrying a force of four thousand, eight hundred (4,800) pounds and any additions to the mobile home shall be similarly anchored.
  - (m) All necessary permits be obtained from those governmental agencies from which approval is required by federal or state law.
- (D) *Quantitative requirements:* As prescribed by the district in which the FFD is overlaid and as set forth in sections 22 and 23.
- (E) *Qualitative requirements:* As prescribed by the district in which the FFD is overlaid and as set forth in sections 19 and 26.
- (F) *Nonconforming uses and noncomplying structures:* As set forth in section 25.
- (G) *Records:*
- (1) The administrative officer shall maintain a record of:
    - (a) The elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement; and,
    - (b) The elevation, in relation to mean sea level, to which existing structures have been flood-proofed.

**(H) Variances:**

(1) Variances shall be granted by the board of adjustment only:

(a) In accordance with the provisions of 24 V.S.A. section 4468; and,

(b) Upon a determination that the variance will not result in increased flood heights, threats to public safety, extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.

(2) The secretary of the board of adjustment shall notify the applicant that:

(a) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage and,

(b) Such construction below the base flood elevation increases risks of life and property.

(3) The secretary of the board of adjustment shall:

(a) Maintain a record of all variance actions, including justification for their issuance, and,

(b) Report such variances issued in its annual report to the administrator.

**(I) Warning of disclaimer of liability:**

(1) These regulations do not imply that 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 town official or employee thereof for any flood damages that

result from reliance on this ordinance or any administrative decision lawfully made thereunder. (Ord. of 3-24-80)

**Sec. 5. Use requirements for recreation, conservation and open space (RCO).**

By virtue of the policy statement within the comprehensive land use plan (master plan) for the City of Burlington the recreation, conservation and open space district (RCO) is established to protect the green acres and waterfront so as to provide for their future appropriate development. Within the RCO district, the following uses and their normal accessory uses are permitted, subject to design review provided in section 19:

- (1) Public and semi-public recreation facilities and grounds.
- (2) Tourist camping areas.
- (3) Public and semi-public buildings not to exceed a ground area coverage of five (5) per cent.
- (4) Existing residential or single family residential clearly incidental to agricultural uses.
- (5) Agricultural uses: Fields, pastures, wood lots, greenhouses, horticultural activities, farms, including grazing, truck gardening and raising and storing crops but not including piggeries and fur farms provided that:
  - (a) No buildings are located within one hundred (100) feet of a district boundary line or twenty-five (25) feet of a lot line.

- (b) No animals are permitted to graze or be stabled closer than two hundred (200) feet to a district boundary line or lot line.

(6) Cemeteries. (Ord. of 12-9-74)

**Sec. 6. Use requirements for low density residential district (R-6).**

The low density residential (R-6) district is intended as an area primarily for single family residential and non-commercial uses.

**(1) Uses permitted:**

- (a) Single family detached dwellings.
- (b) Two family dwellings provided that the number of two (2) family units shall not exceed ten (10) per cent of the total units being developed.
- (c) Boarding houses or rooming houses for not more than four (4) persons, provided that the house is also occupied as a private residence, by the owner.
- (d) Reserved.
- (e) Reserved.
- (f) Reserved.
- (g) Reserved.
- (h) Cemeteries.
- (i) Reserved.
- (j) Funeral homes provided they are located on a major street.
- (k) Existing commercial and, subject to design review, any expansion or reconstruction not to exceed twenty-five (25) per cent of the existing floor area. An existing commercial use may be converted to another commercial use only after a determination by the board of adjustment that the proposed use shall be no more harmful or detrimental to the neighborhood than the existing use.

- (l) Accessory uses, including such normal accessory uses as private garages, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and a structure approved by civil defense authorities and designed for use by the inhabitants, employees, invitees or licensees of the property to which it is accessory and used for shelter from natural disaster of war, and detached fireplaces, but not including outdoor overnight storage of commercial vehicles or the outdoor storage of more than one unregistered vehicle. Private garages shall be limited to as many stalls as there are bedrooms in the dwelling to which it is accessory, provided that if the ground floor area of any accessory use, including private garage, exceeds one-half ( $1/2$ ) the ground floor area of the main building, site plan approval shall be obtained as provided in section 26.
  - (m) Planned residential developments subject to subdivision approval and compliance with the conditions set forth in the Vermont Planning and Development Act, as amended.
- (2) *Uses conditionally permitted:* The following uses shall be permitted if approved in advance as a conditional use by the zoning board of adjustment:
- (a) The conversion of an existing structure which as of the effective date of this amendment contains two (2) or more dwelling units by the addition of no more than one additional dwelling unit without regard to density standards provided there is a minimum of four hundred thirty (430) square feet of floor area for each dwelling unit.
  - (b) Boarding houses or rooming houses for more than four (4) persons, provided that the house is also occupied as a private residence by the owner.
  - (c) Convalescent homes.
  - (d) Public and semi-public uses including churches, provided:

- (i) They are located on a major or collector street.
  - (ii) Any building is placed not less than fifty (50) feet from any property line.
- (e) Recreation, including golf courses, parks (but not an amusement park), other noncommercial open-air recreation uses, provided that storage buildings required in connection with these uses shall not be located within one hundred (100) feet of a district boundary line of twenty-five (25) feet of a lot line.
- (f) Home occupation, provided that:
- (i) The profession or home occupation, is conducted by a resident of the premises.
  - (ii) The use is clearly incidental to and secondary to the use as a residence.
  - (iii) Not more than three (3) persons other than residents of premises, are regularly employed at the residence in connection with such use.
  - (iv) Home occupations may include, but are not strictly limited to: Dressmaking; preserving or home cooking; repair of portable equipment or appliances; craft manufacturing; selling and collecting of antiques; photography or art studies; the teaching of not more than five (5) pupils simultaneously, or in the case of musical instruction, of not more than one (1) pupil at any given time and the office of a member of a recognized profession such as medicine, law, dentistry or architecture.
  - (v) Nursery schools and private schools without dormitory facilities and schools, including dance and music studios, provided adequate off-street parking areas in accord with section 23 are provided and there is no external change of appearance of any dwelling utilizing such purposes.

- (vi) Home occupations shall not include: Barber shops, beauty shops, commercial stables or kennels or convalescent or nursing homes, tourist homes, veterinary clinics or similar establishments.
- (vii) No noise, vibration, smoke, dust, odors, heat, humidity, glare, radiation, unsightliness or other nuisance produced which is discernible beyond the lot line.
- (viii) There is no public display of goods or wares. There is no exterior storage of material or equipment and no exterior evidence of a non-residential use of the premises. There is adequate off-street parking provided at the side or rear of the structure for any employees or visitors in connection with such use and no traffic shall be generated by such home occupation in greater volumes than could normally be expected in a residential neighborhood.
- (g) Construction of a duplex or conversion of a single-family home to a duplex, on lots existing on the effective date of this amendment which meet the maximum city dwelling unit per acre standard for single-family homes, but which do not meet such standard for a duplex, provided that there shall be a minimum of four hundred thirty (430) square feet of floor area for each living unit. Provided further, before such use may be allowed, the board of adjustment must be satisfied and find that the following criteria are met, in addition to the statutory criteria for conditional uses:
  - (i) There will be adequate light and air for abutting properties.
  - (ii) There will be adequate access for fire protection in accordance with the standards of the city fire marshall.
  - (iii) There will be adequate parking in accordance with the standards of this code.

(iv) The front yard shall at least equal the existing average of the block in which it is located.

- (3) *Maximum density requirements:* Within R-6 districts the following maximum density requirements shall prevail:

*Maximum density dwelling  
units per acre net*

- |  |          |
|--|----------|
| (a) Single family  | 4.4/acre |
| (b) Duplex   | 5.5/acre |
| (c) Planned residential development—As per the restrictions set forth in the Vermont Planning and Development Act, as amended. |          |

- (4) Residential development at a maximum of twenty-five (25) units per acre or equal per cent thereof is allowed in those areas within the R-6 district which are specified by the comprehensive master plan for medium density development. (Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 4-11-77, § 3)

**Sec. 7. Use requirements for waterfront residential district (WFR).**

By virtue of its designation in the comprehensive master plan of the City of Burlington, the waterfront residential (WFR) district is hereby established, subject to the general provisions of this ordinance, and subject to design review as provided in section 19 the following uses are permitted in the waterfront residential (WFR) district:

- (A) Low density residential uses.
- (B) Accessory uses, including such normal accessory uses as private garages, storage sheds, tennis courts, swimming pools, cabanas for swimming pools, summer houses, and a structure approved by civil defense authorities and designed for use by the inhabitants, employees or customers of the property to which it is

accessory and used for shelter from disaster or war, and detached fireplaces, but not including uses devoted to outdoor overnight storage of commercial vehicles, or the outdoor storage of more than one (1) unregistered vehicle. Private garages shall be limited to as many stalls as there are bedrooms in the dwelling to which it is accessory.

- (C) Structures for household pets for use of the residents of the premises, not including commercial boarding or raising of household pets.
- (D) Home occupation, provided that:
  - (1) The profession or home occupation, is conducted by a resident of the premises.
  - (2) The use is clearly incidental to and secondary to the use as a residence.
  - (3) Not more than three (3) persons, other than residents of premises, are regularly employed at the residence in connection with such use.
  - (4) Home occupations may include, but are not strictly limited to: dressmaking; preserving or home cooking; repair of portable equipment or appliances; craft manufacturing; selling and collecting of antiques; photography or art studios; the teaching of not more than five (5) pupils simultaneously, or in the case of musical instruction, of not more than one (1) pupil at any given time and the office of a member of a recognized profession such as medicine, law, dentistry, architecture, real estate or engineering.
  - (5) Nursery schools and private schools without dormitory facilities and schools, including dance and music studios, provided adequate off-street parking areas in accord with section 23 are provided and there is no external change of appearance of any dwelling converted for such use.
  - (6) Home occupations shall not include: barber shops, beauty shops, commercial stables or kennels, con-

valescent or nursing homes, tourist homes, veterinary clinics or similar establishments.

- (7) No noise, vibration, smoke, dust, odors, heat, humidity, glare, radiation, unsightliness or other nuisance is produced which is discernible beyond the lot line.
- (8) There is no public display of goods or wares. There is no exterior storage of material or equipment and no exterior evidence of a non-residential use of the premises. There is adequate off-street parking provided at the side or rear of the structure for any employees or visitors in connection with such use and no traffic shall be generated by such home occupation in greater volumes than could normally be expected in a residential neighborhood.
- (E) Existing commercial and, subject to design review, any expansion or reconstruction not to exceed twenty-five (25) per cent of the existing floor area. An existing commercial use may be converted to another commercial use only after a determination by the board of adjustment that the proposed use shall be no more harmful or detrimental to the neighborhood than the existing use.
- (F) Public and semi-public uses including churches, educational facilities and recreational facilities, but not to include amusement parks, and provided that:
- (1) They are located on a major or collector street.
  - (2) Any building is placed not less than fifty (50) feet from any street.
- (G) *Maximum density requirements:*  
 Within zone WFR, the following maximum density requirements shall prevail.

*Maximum density dwelling  
units per acre net*

- |                   |          |
|-------------------|----------|
| (a) Single family | 4.4/acre |
| (b) Duplex        | 5.5/acre |

- (c) Planned residential development—as per the restrictions set forth in the Vermont Planning and Development Act, as amended.
- (d) Construction of a duplex or conversion of a single family home to a duplex, on lots existing on the effective date of this amendment which meet the maximum city dwelling unit per acre standard for single-family homes, but which do not meet such standard for a duplex, provided that there shall be a minimum of four hundred thirty (430) square feet of floor area for each living unit. Provided further, before such use may be allowed the board of adjustment must be satisfied and find that the following criteria are met, in addition to the statutory criteria for conditional uses:
  - (1) There will be adequate light and air for abutting properties.
  - (2) There will be adequate access for fire protection in accordance with the standards of the city fire marshal.
  - (3) There will be adequate parking in accordance with the standards of this code.
  - (4) The front yard shall at least equal the existing average of the block in which it is located. (Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 4-11-77. § 4)

**Sec. 8. Use requirements for medium density residential district (R-25).**

By virtue of its designation within the comprehensive master plan for the City of Burlington the medium density residential (R-25) district is hereby established.

The R-25 district is intended as an area primarily for residential uses of various types and associated uses including normal accessory uses.

**(A) Uses permitted:**

- (1) Single family residences
- (2) Duplexes

**(B) Uses permitted with site plan approval:**

- (1) Residential units attached, semi-detached, or apartments containing more than two (2) dwelling units.
- (2) Funeral homes.
- (3) Conversion of an existing structure for offices providing that:
  - (a) The exterior residential character of the structure is not altered.
  - (b) Retail sales are not conducted on the premises.
  - (c) Off-street parking is provided in accord with the provisions of section 23.
- (4) Tourist homes.
- (5) Professional and home occupations subject to restrictions of section 6.
- (6) Membership clubs.
- (7) Existing commercial and, subject to design review, any expansion or reconstruction not to exceed twenty-five (25) per cent of the existing floor area. An existing commercial use may be converted to another commercial use only after a determination by the board of adjustment that the proposed use shall be no more harmful or detrimental to the neighborhood than the existing use.
- (8) Public and semi-public uses including churches subject to design review.
- (9) Boarding and rooming houses. Boarding and rooming houses in which rooms are let to more than four (4) persons shall be permitted only if approved in advance as a conditional use by the zoning board of adjustment.
- (10) Convalescent homes.

**(C) Accessory uses:**

- (1) Retail sales or services occupying less than twenty (20) per cent of the ground floor area.
  - (2) Off-street parking as required in section 23.
- (d) *Maximum densities and lot coverages:* Within the R-25 zone there shall be a maximum of twenty-five (25) units per acre for new development with a maximum of fifty (50) per cent lot coverages. For rehabilitation of existing nonresidential structures, and for any new construction ancillary to the rehabilitation of such nonresidential structures and on such lot, the density shall not exceed forty (40) units per acre and the lot coverage shall not exceed eighty (80) per cent. For the purpose of newly constructed units being developed ancillary to rehabilitation, the number of newly constructed units shall not exceed one hundred and seventy-five (175) per cent of the units contained in the rehabilitated structure. For the purpose of this subsection, "lot coverage" shall be interpreted to include all walkways, driveways, and parking areas. (Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 4-11-75, § 5; Ord. of 9-14-81)

**Sec. 9. Use requirements for waterfront high density residential district (WFR-75).**

By virtue of its designation within the comprehensive master plan for the City of Burlington, the waterfront high density residential (WFR-75) district is hereby established.

- (A) *Permitted uses:* Within the high density waterfront residential (WFR-75) district the following uses and their normal accessory uses are permitted, subject to design review as provided in section 19:
- (1) Residential: Multiple family units, duplexes and existing single family units only.
  - (2) Fishing piers.
  - (3) Parking facilities.
  - (4) Rail lines, public and semi-public uses, including schools, substations and water processing, generation stations and associated fuel storage which

comply with performance standards or any above-ground utilities.

- (5) Motels and hotels.
- (6) Arenas.
- (7) Theaters and other places of amusement and assembly.
- (8) Office buildings.
- (9) Boarding and rooming houses. Boarding and rooming houses in which rooms are let to more than four (4) persons shall be permitted only if approved in advance as a conditional use by the zoning board of adjustment.

- (10) Home occupations as a permitted use subject to all of the limitations and requirements except zoning board approval, set forth in section 6 (2) (f) hereof.
- (11) Existing commercial and, subject to design review, any expansion or reconstruction not to exceed twenty-five (25) per cent of the existing floor area. An existing commercial use may be converted to another commercial use only after a determination by the board of adjustment that the proposed use shall be no more harmful or detrimental to the neighborhood than the existing use.

(B) *Accessory uses:*

- (1) Yacht basins and clubs and related retail establishments.
- (2) Existing commercial and, subject to design review, any expansion or reconstruction not to exceed twenty-five (25) per cent of the existing floor area. An existing commercial use may be converted to another commercial use only after a determination by the board of adjustment that the proposed use shall be no more harmful or detrimental to the neighborhood than the existing use.

(C) *Maximum densities:* Within the WFR-75 district there shall be a maximum density of seventy-five (75) units per acre or an equal per cent thereof exclusive of existing streets. (Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 8-9-76; Ord. of 4-11-77, §§ 6, 9)

**Sec. 10. Use requirements for high density residential district (R-75).**

By virtue of its designation within the comprehensive master plan for the City of Burlington the high density residential (R-75) district is hereby established.

Within the high density residential district, the following uses and their normal accessory uses are permitted subject to design review and the general provisions of section[s] 20—25 inclusive.

**(A) Permitted uses:**

- (1) Residential: Multiple family units, duplexes and existing single family residential only.
- (2) Office buildings.
- (3) Parking facilities.
- (4) Commercial establishments as a part of other allowed uses as approved by the planning commission as to design and location.
- (5) Telephone exchanges.
- (6) Funeral homes.
- (7) Conversion of an existing structure for offices providing that:
  - (a) The exterior residential character of the structure is not altered.
  - (b) Off-street parking is provided in accord with the provisions of section 23 in the side and rear yard.
- (8) Tourist homes.
- (9) Membership clubs.
- (10) Existing commercial and, subject to design review, any expansion or reconstruction not to exceed twenty-five (25) per cent of the existing floor area. An existing commercial use may be converted to another commercial use only after a determination by the board of adjustment that the proposed use shall be no more harmful or detrimental to the neighborhood than the existing use.
- (11) Public and semi-public uses including churches subject to design review.
- (12) Convalescent homes.
- (13) Boarding and rooming houses. Boarding and rooming houses in which rooms are let to more than four (4) persons shall be permitted only if approved in advance as a conditional use by the zoning board of adjustment.
- (14) Reserved.
- (15) Reserved.
- (16) Home occupations as a permitted use subject to the requirements and restrictions except zoning board approval set forth in section 6(2)(f) hereof.

**(B) Accessory uses:**

- (1) Retail sales or services occupying less than twenty (20) per cent of the ground floor area.
- (2) Off-street parking as required in section 23.

**(C) Conditional uses:**

- (1) For the purpose of creating a transitional zone in accordance with 24 V.S.A. Section 4405 (a) (1), upon lots within the high density residential district (R-75) which directly border the waterfront commercial zone (WFC), uses permitted in said WFC district with the exceptions of hotels, motels, yacht clubs, marinas, boat sales and rental establishments, auditoriums, theaters, parking facilities, rail lines, sports arenas, fishing piers, ferries and excursion facilities may be established solely within existing and recorded boundaries of such lot as described in a single deed description as of August 25, 1980, provided that satisfactory provision has been made for:
  - (a) Ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience on and adjacent to the site;
  - (b) Traffic on roads and highways in the vicinity;
  - (c) Access in case of fire or emergency;
  - (d) Off-street parking and loading, with particular attention to the economic, noise, glare or odor effects of the proposed use and its related activity on adjacent properties;
  - (e) Refuse and service areas, with particular emphasis to items (a) and (d) above;
  - (f) Utilities, with reference to locations, availability and compatibility;
  - (g) Screening and buffering, with reference to type, dimensions and character;

- (h) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
  - (i) Adequate yards and open space;
  - (j) The character of the area affected;
  - (k) Capacity of existing or planned community facilities;
  - (l) Bylaws now in effect.
- (2) For the purpose of creating a transitional zone in accordance with 24 V.S.A. Section 4405 (a) (1), upon lots within the high density residential district (R-75) which directly border the central business district (CBD), uses permitted within said CBD district with the exceptions of hotels and motels, filling stations, taxi stands and bus terminals and depots, bars, job printing and newspaper plants, communications studios (radio, TV) including transmission towers, may be established solely within the existing and recorded boundaries of such lot as described in a single deed description as of August 25, 1980, provided that satisfactory provision has been made for:
- (a) The conditions in (C) (1) (a) through (C) (1) (l) immediately above.

(D) *Maximum density:* Within the R-75 district there shall be a maximum density of forty (40) units per acre exclusive of existing streets. (Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 8-9-76; Ord. of 4-11-77, § 7; Ord. of 8-25-80)

**Sec. 10.1. Use requirements for neighborhood commercial district (NC).**

(A) *Purpose:* The neighborhood commercial district is designated to provide for limited commercial uses in neighborhood residential areas where the character of the neighborhood merits

protection by a suitable residential/commercial mix. For these reasons, the following regulations shall apply.

(B) *Permitted uses:* No building, structure or land shall hereafter be used and no building or structure shall hereafter be erected, structurally altered or enlarged except for the following:

(1) Residential:

- a. Single-family.
- b. Duplexes.
- c. Multi-unit housing at a density not greater than twenty-five (25) units per acre.
- d. Boardinghouses and rooming houses, up to four (4) persons, provided the owner also occupies the premises as a primary residence.

(2) Community centers; places of assembly limited to churches, chapels and synagogues.

(3) Existing commercial uses and any expansion or reconstruction not to exceed twenty-five (25) per cent of existing floor area.

(C) *Permitted accessory uses:* Uses or structures customarily subordinate to any of the listed primary uses may be permitted, provided, however, that any structure with a floor area in excess of five hundred (500) square feet or a building containing living space shall not be considered an accessory building.

(D) *Conditional uses:*

(1) Boardinghouses and rooming houses serving more than four (4) persons.

(2) Home occupations as described in section 6(2)(f).

(3) Professional occupations.

(4) Public and semipublic uses, and membership clubs.

(5) Commercial uses, except places of live entertainment, hotels and motels, pawnshops, or pool or billiard halls, provided that:

- a. Such use does not adversely affect the residential character of adjoining neighborhoods; and

- b. The primary market or service area is that of adjoining neighborhoods and that service of any extended area or regional market is ancillary to the neighborhood market; and
- c. The proposed use will not be contrary to any program of neighborhood conservation or revitalization nor will it encourage the development of "skid row-area."

(6) Restaurants except bars and cafes, provided that:

- a. No more than two (2) such uses shall be located within one thousand (1,000) feet of each other. (Ord. of 6-13-83)

**Sec. 11. Use requirements for university campus district (UC).**

By virtue of its designation within the comprehensive master plan for the City of Burlington the university campus district (UC) is hereby established.

The university campus district is intended as an area primarily for colleges and allied uses including their normal accessory uses:

**(A) Uses permitted:**

- (1) Single family detached dwellings and duplexes.
- (2) Other residential uses.

**(B) Uses permitted upon site plan approval of the planning commission as provided in section 26 and provided such use meets the general requirements of sections 21—25:**

- (1) College owned or directed activities and related activities of any non-profit educational institution conducted in structures owned or operated by any such institution including:

- (a) Non-profit offices housed by a public or private school or other educational institution certified by the Vermont Department of Education,
- (b) The education of its students,
- (c) Administrative offices,
- (d) Faculty offices, and
- (e) The shelter and feeding of the faculty, students and staff of any such institution.

An educational institution may submit a development plan for the approval of the planning commission subject to the conditions provided above. The approval of all development included within the plan shall be subject to its effect on adjacent uses as determined by the planning commission according to section 22.

- (2) Sorority or fraternity houses.
- (3) Apartments, provided that:
  - (a) each unit has two (2) exposures.
  - (b) each unit has two (2) exits.
- (4) University oriented laboratories, medical and dental laboratories and offices.
- (5) Tourist homes and boardinghouses.
- (6) Hospitals.

- (7) Existing commercial and, subject to design review, any expansion or reconstruction not to exceed twenty-five (25) per cent of the existing floor area. An existing commercial use may be converted to another commercial use only after a determination by the board of adjustment that the proposed use shall be no more harmful or detrimental to the neighborhood than the existing use.
- (8) Boarding and rooming houses. Boarding and rooming houses in which rooms are let to more than four (4) persons shall be permitted only if approved in advance as a conditional use by the zoning board of adjustment.
- (9) Home occupations as a permitted use subject to the conditions and restrictions, except zoning board approval, of section 6(2)(f) hereof.

(C) *Maximum density:* The density of the foregoing shall not exceed the limits in the master plan. The density or massing shall be as reasonably determined by the planning commission to be not detrimental to or intrusive upon the adjacent noncampus uses, but in no case shall the lot coverage exceed forty (40) per cent.

It is the intent of this section that the maximum open space be maintained which will still allow the permitted uses. Within the UC district there shall be a maximum of twenty-five (25) units per acre or equal per cent thereof. The density of the foregoing shall not exceed the limits specified in the master plan. (Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 8-9-76; Ord. of 4-11-77, § 8)

#### **Sec. 12. Use requirements for central business district (CBD).**

By virtue of its designation within the comprehensive master plan for the City of Burlington the central business district (CBD) is hereby established. The central business district is intended to provide goods and services primarily for the inhabitants of the city and its region.

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(A) The following uses and their normal accessory uses are permitted subject to design review as provided in section 19 and the general provisions of section 25:

(B) *Uses permitted:*

- (1) Retail store or service establishment, the principal activity of which shall be the offering of goods or services at retail within the building.
- (2) Business or professional offices or banks.
- (3) Restaurants or other places for serving food.
- (4) Hotels, motels.
- (5) Theaters and other places of amusement or assembly.
- (6) Parking areas or garages for use of employees, customers or visitors, subject to design standards in section 18.
- (7) Accessory buildings and uses.
- (8) Public, parochial or non-denominational schools, churches and religious buildings and uses.
- (9) Filling stations.
- (10) Taxi stands and bus shelters, terminals and depots.
- (11) Bars.
- (12) Job printing and newspaper plants.
- (13) Communications studios such as radio and television, not including transmission towers.
- (14) Residential uses, including elderly housing.

(C) *Maximum densities:* Within the CBD a maximum density of seventy-five (75) units per acre or equal per cent thereof is permitted exclusive of existing streets; provided, that housing for the elderly is permitted at a density of one hundred fifty (150) units per acre, or equal per cent thereof. (Ord. of 12-9-74; Ord. of 8-9-76; Ord. of 6-13-77, §§ 2, 3)

**Sec. 13. Use requirements for commercial district (C).**

By virtue of its designation within the comprehensive master plan for the City of Burlington the commercial district (C) is hereby established.

The commercial district is intended to provide goods and services for neighborhoods, transients or tourists.

(A) The following uses and their normal accessory uses are subject to design review as provided in section 19 and the general provisions of sections 20—25:

- (1) Hotels, motels, or lodging houses.
- (2) Restaurants or other places for serving food.
- (3) Mobile homes in a mobile home park not less than two (2) acres in size approved by site plan review and in accordance with minimum lots for duplexes screened from view from public right-of-way.
- (4) Gasoline service stations, garages and repair shops provided that:
  - (a) repairs shall be limited to minor repairs and adjustments unless conducted in a building;
  - (b) there shall be no storage of motor vehicles, appliances and equipment on the premises other than those that are licensed in process of repair, awaiting delivery, or in an enclosed structure or screened from public ways and abutting properties in no case shall there be more than five (5) unlicensed vehicles stored on the premises.
- (5) Salesrooms for automobiles, bicycles, boats, farm implements and similar equipment, provided outside display is limited to new merchandise or second-hand equipment in good repair.
- (6) Funeral homes, mortuaries or crematories.
- (7) Passenger depots, terminals, telephone exchange buildings, broadcasting stations and utility structures.
- (8) Shopping centers for retail stores or service establishments.
- (9) Office buildings.
- (10) Residential uses.

(B) *Minimum lot and maximum densities:* Within the C district a maximum of twenty-five (25) units per acre or equal per cent thereof is permitted (Ord. of 12-9-74)

**Sec. 14. General commercial district (GC).**

By virtue of its designation within the comprehensive master plan for the City of Burlington, the general commercial district (GC) has been established. This district is established for those areas of the community where the principal use of land is for businesses retailing heavy durable goods to the region.

(A) Within the (GC) district, the following uses and their normal accessory uses are permitted subject to design review as provided in section 19 and the general provisions of sections 20—25:

- (1) Animal hospitals or veterinary clinics, but excluding open kennels on the premises.
- (2) Automobile washing establishments.
- (3) Gasoline service stations, garages and repair shops provided that:
  - (a) repairs shall be limited to minor repairs and adjustments unless conducted in a building;
  - (b) there shall be no storage of motor vehicles, appliances and equipment on the premises other than those in process of repair or awaiting delivery or in an enclosed structure or screened from public ways and abutting properties.
- (4) Bakeries and other establishments manufacturing prepared foods and miscellaneous food products.
- (5) Salesrooms for automobiles, bicycles, boats, farm implements and similar equipment, provided outside display is limited to new merchandise or second-hand equipment in good repair.
- (6) Building supply and materials sales, but excluding open storage.
- (7) Cold storage and freezer lockers.
- (8) Dairy bars and ice cream manufacturing.
- (9) Dry cleaning and laundering establishments.
- (10) Electrical appliances and equipment, sales and repairs, but excluding open storage.

- (11) Fabricating shops such as cabinet, upholstery and sheet metal shops.
  - (12) Funeral homes, mortuaries and crematories.
  - (13) Launderettes and laundromats.
  - (14) Milk distribution and bottling facilities.
  - (15) Tourist homes.
  - (16) Nursery schools and kindergartens provided that at least one hundred (100) square feet of outdoor play area is provided for each child; provided further, that such aggregate play area shall be enclosed by a sturdy fence at least four (4) feet in height.
  - (17) Physical culture establishments.
  - (18) Plumbing shops, but excluding open storage.
  - (19) Produce stands and markets.
  - (20) Public works and public utility facilities such as distribution lines, transformer stations, transmission lines and towers, water tanks and towers, pumping stations, telephone exchanges, and service or storage yards.
  - (21) Restaurants, including drive-in restaurants.
  - (22) Sign painting and fabricating shops.
  - (23) Trucking terminals, transfer companies, bus terminals, passenger depots.
  - (24) Wholesale and warehouse establishments, except for the storage of uncured hides, explosives, oil and gas products.
  - (25) Resource Recycling Centers.
  - (26) Residential uses.
- (B) *Minimum lot and maximum densities:* Within the GC district a maximum of twenty-five (25) units per acre or equal per cent thereof is permitted. (Ord. of 12-9-74)

**Sec. 15. Use requirements for waterfront commercial district (WFC).**

By virtue of its designation within the comprehensive land use plan (master plan) for the City of Burlington, the waterfront commercial district (WFC) is established to enhance

and diversify the development of the lake shore area and to increase utilization and enjoyment of the shore by the community.

(A) Within the waterfront commercial district (WFC) the following uses and their normal accessory uses are permitted, subject to design review as provided in section 19 and the general provisions of sections 20—25:

- (1) High density housing at a maximum density of seventy-five (75) units per acre.
- (2) Hotels and motels.
- (3) Restaurants.
- (4) Yacht clubs, marinas, boat and accessory sales and rental establishments.
- (5) Retail establishments, but only as a part of other uses permitted within WFC, and only where the retail floor space does not exceed one hundred (100) per cent of the total ground floor area.
- (6) Offices.
- (7) Fishing piers.
- (8) Ferries and excursion facilities.
- (9) Parking facilities.
- (10) Sports arenas.
- (11) Auditoriums and theaters.
- (12) Display and sale of merchandise by distributors or manufacturers except that only items actually displayed may be stored on the site.
- (13) Rail lines.

(B) *Maximum densities:* Within the WFC district a maximum of seventy-five (75) units per acre or equal per cent thereof is permitted, subject to site plan approval. (Ord. of 12-9-74; Ord. of 8-9-76)

#### Sec. 16. Use requirements for industrial district (I).

By virtue of its designation within the comprehensive master plan for the City of Burlington the industrial district (I) is hereby established. The industrial district is intended for use by research laboratories, office buildings and industries.

(A) Within the I district the following uses and their normal accessory uses are permitted subject to site plan review as provided in section 26 and the general provisions of sections 21—25:

- (1) Restaurants or other places for serving food.
- (2) Passenger depots, terminals, telephone exchange buildings.
- (3) Research laboratories and manufacturing enterprises, provided that such activities meet the performance standards stated in section 21.
- (4) Building materials salesrooms, utility structures, contractors' yards, storage warehouses and buildings and wholesale distribution plants, provided that:
  - (a) All loading and unloading is done in such a manner so as to not interfere with the movement of pedestrian or vehicular traffic along public ways.
  - (b) All outdoor storage of materials and equipment is to be stored from view from public ways and abutting residential districts wherever possible and in any case in an orderly and desirable fashion.
- (5) Printing or publishing establishments, commercial photographic establishments, medical or dental laboratories, subject to the limitations in section 21.
- (6) Cafeterias for employees and other normal accessory uses, including a dwelling unit for a caretaker or watchman, when contained in the same structure as a permitted use.
- (7) Machine shops.
- (8) Truck terminals.
- (9) Municipal and public works yards.
- (10) Lumber yards and mills.
- (11) Junk yards. (Ord. of 12-9-74; Ord. of 12-6-76, § 3)

**Sec. 17. Use requirements for waterfront industrial district (WFI).**

By virtue of its designation within the comprehensive land use plan (master plan) for the City of Burlington, the waterfront industrial district (WFI) is established to protect existing industrial districts and to provide for their future orderly development. Within the waterfront industrial district the following uses and their normal accessory uses are permitted, subject to design review as permitted in section 19:

(A) All manufacturing, processing, fabricating, storing, and research operations, provided that such operations meet the performance standards in section 21 and the other general provisions of sections 22—25, provided that any objectionable conditions can not be detected beyond the lot line and provided that such operations are authorized as a conditional use by the zoning board of adjustment upon a finding that:

- (1) All operations must be conducted and all materials and products stored within the building of the plant, or concealed from public view as approved by design review.
- (2) No process shall emit noxious odor detectable beyond the lot line. Where odors are produced, the burden of successful elimination of the odors shall rest on the occupant of the premises.
- (3) No operations creating undue noise, vibration, dust or fumes which are in any way a nuisance to persons beyond the lot line.
- (4) Operations creating glare shall be so shielded that the glare cannot be seen from the lot line.
- (5) Off-street loading areas for handling all materials and products must be provided in areas treated to prevent dust. Travel ways and parking areas shall be stabilized or paved.

All uses must also meet the requirements of the performance standards as outlined in section 21.

(B) Retail and/or wholesale sales of goods produced or processed on the premises, including redistribution out-

lets, provided that the sale of goods not produced or processed on the premises is limited to redistribution to dealers.

- (C) Terminal and service garages for transit vehicles and trucks including rail facilities. (Ord. of 12-9-74)

### Sec. 18. Design control districts.

Because of their recognition as areas containing structures of historical, architectural and cultural merit, and because of the concentration of community interest in them, the areas listed below, as delineated in the comprehensive master plan, and as shown on the comprehensive official zoning map referenced in section 3(B), of the Burlington Zoning Ordinances, are designated as design control districts subject to the procedures, if any, listed below. Within these districts no structure may be erected, reconstructed, substantially altered, or restored, moved, demolished or changed in use or type of occupancy without approval of the plan therefor by the planning commission.

The design control districts for the City of Burlington are: 1. Waterfront core; 2. regional core; 3. inner city; 4. historic buildings; provided, however, that if properties are to be added after the date of enactment either individually or as a district, the owner shall be notified by certified letter advising him of the pending action.

#### (A) *General design control provisions.*

- (1) The planning commission shall grant a certificate of appropriateness prior to the commencement of any development or actively specified in this section, within any design control district.
  - (a) Within sixty (60) days after official filing of the final design plan or within such further time as the applicant may in writing allow for the issuance of a certificate of appropriateness, the commission shall either grant or deny the certificate of appropriateness.

- (b) The commission may from time to time adopt resolutions which detail the procedures for the issuance or denial of certificates of appropriateness. In considering whether to grant a certificate of appropriateness, the commission shall request advice and recommendations from the design review board, which is established pursuant to the provisions of this section. The commission shall provide the board a copy of the application and all accompanying plans, specifications and supporting materials. The advice and recommendations of the design review board shall be made in writing and submitted to the planning commission within the time prescribed by the commission in its request.
- (c) If the commission determines that the proposed development is appropriate, or if the commission fails to make a determination within the time limit prescribed in this section, it shall issue to the applicant a certificate of appropriateness. If the commission determines that a certificate of appropriateness should not be issued, it shall place on its records the reasons for its determination, delivering to him an attested copy of its reasons for the determination.

(B) *Procedure.*

- (1) *Predesign conference.* The developer is encouraged to meet with the planning commission staff before presenting any formal application, in order for the city's requirements to be clarified, and in order for the developer to avoid costly reworking of subsequent submissions.
- (2) *Submission requirements.* Each application shall be considered complete, and the time limit for action by the commission shall begin when the

following information has been provided by the applicant.

- (a) Identification and location of the project, including a perimeter survey of the land involved, specification of topography and existing public easements, and identification of existing uses and structures on the site, through photographs, models, etc.
  - (b) Detailed design of the proposed project, including basic materials, finishes, and all structural plans, and also including site grading plans, landscaping plans, and details of street access.
- (3) The applicant shall display a notice sign provided by staff at the time application is made. The notice shall be clearly visible from a public way.
- (C) [*Nonapplicability.*] Nothing in these design control district regulations shall be construed to prevent:
- (1) The ordinary maintenance or repair of any exterior architectural feature in the district which does not involve a change in design, material, color or the outward appearance of the feature except where the total dollar value for all labor and materials used for the interior or exterior does exceed five thousand dollars (\$5,000.00).
  - (2) The construction, reconstruction or alteration of any feature which the building inspector or other designated city inspector shall certify is required by the public safety because of an unsafe or dangerous condition.
  - (3) The construction, reconstruction, alteration or demolition of any feature under the permit issued by any inspector prior to the effective date of establishment of the particular district.
- (D) *Specific requirements for particular design control districts.*
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- (1) Design criteria for all design control districts. The following criteria, as amplified and illustrated by the "General Architectural Criteria for Development in Burlington's Design Control Districts," shall be considered in connection with any application for a certificate of appropriateness in each design control district:
  - (a) Relation of building to environment. The proposed development shall be related harmoniously to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship to the proposed buildings.
  - (b) Preservation of the landscape. The landscape shall be preserved in its natural state insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring development areas.
  - (c) Open space. All open space, landscaped and usable, shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from neighboring properties.
  - (d) Vehicular and pedestrian circulation. With respect to vehicular and pedestrian circulation, including entrances, ramps, walkways, drives and parking, special attention shall be given to location and number of access points to public streets, to width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of parking areas in a safe and convenient way so that insofar as practicable they do not detract from the use and enjoyment of proposed building structures and neighboring properties.

- (e) Surface water drainage. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system.
- (f) Advertising features. The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or feeders shall not detract from the use and enjoyment of proposed buildings and of the surrounding properties.
- (g) Special features. Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to such setbacks, screen planting or other screening methods as shall reasonably be required to prevent their being incongruous with existing or contemplated environment and the surrounding properties.
- (h) Safety. With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and maximize accessibility by fire, police or other emergency personnel and equipment.
- (i) Heritage. With respect to Burlington's heritage, the removal or disruption of historic, traditional or significant uses, structures or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.
- (j) Local climate. With respect to localized climatic characteristics of a given area, any development which proposes new structures, new hard-surface ground coverage, or the installation of machinery which emits heat or vapor or fumes shall endeavor to minimize,

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insofar as practicable, any adverse impact on light, air and water resources, or on noise and temperature levels of the immediate environment.

(2) Waterfront core.

(a) When considering plans submitted for design review within the waterfront core, the commission shall encourage, but not require the development of an area adjacent to the lakefront, for the purpose of providing continuous access for pedestrian traffic along the lakefront and for the purpose of providing an easement for underground utilities. Any such area shall be at least fourteen (14) feet in width and shall be designed in such a way as to connect adjacent developments along the waterfront. This corridor may not extend over narrow piers, bulkheads, breakwaters or extensions into the lake, where in the opinion of the commission, the best interests of public safety would not be served by such an extension. For purposes of the pedestrian corridor and setbacks within the district, the lakefront shall be established by the planning commission on the following basis:

1. It shall be the slope of the normal lake bank as established by existing man-made retaining walls, buttressing or rivetment, or natural land.
2. It shall be a line not annually inundated, located at one hundred and one and ninety-seven hundredths (101.97) feet above mean sea level.
3. It may be established on the basis of proposed extension into the lake by the developer.
4. A thirty-foot setback from the lakefront as defined in this subsection shall be re-

quired in the waterfront by the commission. No other setback shall be required in the waterfront districts, except that the following conditions shall be met: In relation to the waterfront pedestrian corridor, the planning commission will encourage, but not require, additional area adjacent to the thirty-foot required minimum setback to enhance the corridor by creating plazas, malls or green areas. Side, front and rear yards will depend on the facing of the buildings. The applicant will be encouraged to make maximum use of the lakeshore and mountain views and also respect these views for other affected developments. In addition, requirements for adequate privacy, light, air and access will be considered in the development of side, rear and front yard setbacks.

- (b) Service. Any point of vehicular access for delivery of goods will be encouraged to respect the character of the pedestrian corridor where it exists, or existing shops adjacent to the pedestrian corridor will ideally be serviced from the interior of the structure or eastern side of the building. Water-oriented commercial facilities requiring the movement of goods across the pedestrian corridor shall provide controlled points of access. Service may be permitted utilizing the pedestrian corridor, but may be restricted to nonpeak pedestrian hours.
- (c) Bulk and height. From the shoreline the silhouette shall follow the general slope of the topography so that on the shore one- or two-story structures are to be desired with taller structures desired in the area of the escarp-

ment. Vistas of existing neighborhoods and development above the escarpment shall be respected. Maintenance of cohesive architectural groups which take advantage of the views, and relate to one another respecting adjacent developments, and which insure adequate light, air and privacy, will be favored.

- (d) Scale and massing. Arrangement of new facilities shall be compatible with existing developments landward of the district.
  - (e) Landscaping requirements. There shall be a sufficient amount of landscaping, as determined by the commission, secured by a performance bond in sufficient amount as determined by the commission, to insure protection of and to enhance the quality of the neighborhood and to enhance the view from the lake.
- (3) Historic buildings district. Within the historic buildings district, in addition to the other criteria for design review specified in this section, in reviewing plans, the commission shall give specific consideration to:
- (a) The historic and/or architectural value and significance of the structure and its relationship to the historic and/or architectural value of the surrounding area.
  - (b) The relationship of the exterior architectural features of the structure to the rest of the structure and to the surrounding area.
  - (c) The general compatibility of exterior design, arrangement, texture and materials proposed to be used.
  - (d) To any other factor, including aesthetic factors, which it deems to be pertinent as delineated in the descriptions on file with the commission.

- (e) In making such considerations, the commission shall pass only on exterior features of the structure and shall not consider interior arrangements, nor shall it disapprove applications except in regard to these considerations.
- (f) It is the intent of this ordinance that the commission be strict in its judgment of plans for structures deemed to be valuable according to studies on file with the Commission for districts of historical or architectural value. It is also the intent of this ordinance that the commission be lenient in its judgment of plans for structures of little historic value or for plans for new construction except where such plans would seriously impair the historic or architectural value of surrounding structures or of the surrounding area. It is not the intent of this ordinance to require that new construction, alteration or repair exemplify any one period of architectural style.
- (g) The requirements as set forth by this section shall uniformly apply to the following list of sites and districts.

<i>District</i>	<i>Historic Sites Districts Boundaries</i>	<i>Ward No.</i>
University Green	University Place, east side Colchester Avenue, north side South Prospect Street west side Main Street, south side	1 and 6
Main Street, both sides	South Prospect Street, west side South Willard Street, east side	1 and 6
South Willard Street, both sides	Main Street, south side	6
College Street	Tower Terrace, north side South Willard Street, west side South Union Street, east side	2
South Williams Street	The rear property lines of those properties with frontage	1
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<i>District</i>	<i>Historic Sites Districts Boundaries</i>	<i>Ward No.</i>
Waterfront	<p>on South Williams Street, east and west sides, or a line parallel to South Williams Street two hundred fifty (250) feet distant from its center line, whichever is less; from the center line of Pearl Street, to the center line of Main Street South Champlain Street, west side</p> <p>Main Street, south side Battery Street, east side Maple Street, north side</p>	5
Battery Street	<p>Bounded by the lake waterfront from Maple Street extended to the rear property lines extended of those properties with frontage on the north side of Main Street extended; by the rear property lines of those properties with frontage on the north side of Main Street extended from the lake to Battery Street, then by the rear property lines of those properties with frontage on the south side of Main Street from Battery Street to St. Paul Street, then on the rear property lines of those properties with frontage on the east side of St. Paul Street from Main Street to Maple Street, then the rear property lines of those properties with</p>	

*Historic Sites  
Districts  
Boundaries*

*District* *Ward No.*

frontage on the south side of  
Maple Street from St. Paul  
Street to Battery Street, then  
the center line of Maple Street  
extended to the lake water-  
front.

<i>Ward No.</i>	<i>Top Priority Sites Tabulation</i>		<i>Total</i>
	<i>Grid E-W</i>	<i>Grid E-W</i>	
I	6	8	14
II	8	9	17
III	3	2	5
IV	2	5	7
V	2	5	7
VI	4	16	20
<b>Total</b>	<b>23</b>	<b>41</b>	<b>65</b>
<b>Total</b>	<b>23</b>	<b>42</b>	<b>65</b>

*Ward I*

*Grid east to west:*

- Pearl Street, north side:
  - Woodbury House No. 416
  - Horace Loomis House No. 342
- Pearl Street south side:
  - Van Patten House No. 371
  - Hills House No. 327
- College Street, north side:
  - Lyon House No. 404
- Main Street, north side:
  - Wheeler House No. 442 (UVM in-  
firmary)
- Chase Street, south side:
  - Chase-Barr House No. 21

*Grid north to south*

University Place, east side:

Ira Allen Chapel

Billings Library

Williams Science Hall

Old Mill

Old Gym

North Prospect Street, west side:

Fletcher Farm No. 179

South Williams Street, east side:

Bissell House No. 146

South Williams Street, west side:

Warren R. Austin House No. 43

*Ward II**Grid east to west*

Pearl Street, north side:

Deming House No. 308

First Unitarian Church No. 141

Pearl Street, south side:

Buell House No. 303

College Street, north side:

Burlington Savings Bank No. 148

College Street, south side:

Peck House No. 275

Hagar-Larner House No. 337

Hagar House No. 323

Main Street, north side:

Mark Rive House No. 278 (YWCA)

*Grid north to south*

South Willard Street, west side:

James Hickok House No. 143

(Sorority)

North Union Street, east side:

Atwater Kent House No. 29

North Winooski Avenue, east side:

Wales-Harte House No. 52

South Winooski Avenue, east side  
 First Congregational Church No. 338  
 First United Methodist Church  
 Church Street, east side:  
 Richardson Building No. 2  
 (Abernathy's)  
 Church Street, west side:  
 Masonic Temple No. 1  
 Ethan Allen Fire House  
 City Hall

*Ward III*

*Grid east to west*

Allen Street, south side:  
 St. Joseph's Church No. 29  
 College Street, south side:  
 Wells-Richardson Complex No. 127-115  
 Follett House No. 69 (V.F.W.)

*Grid north to south*

George Street, west side:  
 Standard House No. 3  
 Pine Street, west side:  
 Ominium Gatherum No. 1-15

*Ward IV*

*Grid north to south*

North Avenue, east side:  
 Hurley House No. 934  
 North Avenue, west side:  
 St. Mark's Church No. 1251

The Ethan Allen Farm House (so-called) under the ownership of the E. D. Pease Grain Co. located in the Intervale area within the property owned by the Winooski Valley District and easterly of the development on Rivermount Terrace.

*Ward V*

*Grid east to west*

Main Street, south side:  
 Old Armory No. 101  
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King Street, south side:  
Gideon King House No. 35

*Grid north to south*

St. Paul Street, west side:  
William Hickok House No. 567  
Battery Street, east side:  
Pomeroy House No. 164 (Holloway's)  
Howard Bank Building No. 194  
(Musecant)  
Battery Street, west side:  
Shephard Supply No. 197  
Old Stone Store No. 209 (Burgess)  
Pine Street, west side:  
Old Champlain School

*Ward VI*

*Grid east to west*

Main Street, south side:  
Reservoir Pump House  
Sproston House No. 447  
Grasse Mount No. 411  
Old Post Office No. 175

*Grid north to south*

South Prospect Street, east side:  
N.S. Hill House No. 194  
Kennedy House No. 216 (Fraternity)  
Redstone No. 350  
South Prospect Street, west side:  
Bittersweet No. 151  
Carriage House No. 385  
Coachman's Cottage No. 393  
Summit Street, east side:  
Howard House No. 26  
Summit Street, west side:  
Edward Wells House No. 61  
South Willard Street, east side:  
Jackson House No. 158 (Fraternity)

South Willard Street, west side:  
 Winterbotham Estates No. 163 (School Dept.)  
 Phelps House No. 251  
 South Union Street, west side:  
 Saxe House No. 177  
 Shaw House No. 253  
 Church Street, east side:  
 Court House No. 180  
 Converse Home No. 272  
 Church Street, west side:  
 Court House No. 180  
 Converse Home No. 272  
 Church Street: west side:  
 Wilson Hotel No. 189

(E) *Composition of design review board.* The design review board shall consist of five (5) members, who shall be appointed by the city council to serve for a term of three (3) years and until their successors are appointed and qualified, provided that of the five (5) members first appointed, two (2) shall serve for one-year terms, two (2) for two-year terms, and one for a three-year term. Three (3) of the five (5) members shall be a member of any one of the following professions: Architect, landscape architect, engineer, contractor or real estate developer.

(F) *Appeal.* Appeals from any decision of the planning commission under the terms of this section shall be taken as provided by 24 V.S.A. Section 4475, as that section now is and may in the future be amended. (Ord. of 11-10-80)

*Editor's note*—An ordinance of Nov. 10, 1980, repealed former App. A, §§ 18 and 19, relative to use requirements for historic building district and use requirements for design control districts, respectively, and in lieu thereof enacted a new § 18 as above set out. Former §§ 18 and 19 derived from ordinances of Oct. 15, 1973; Dec. 9, 1974; Nov. 3, 1975 and June 13, 1977, § 4.

[Sec. 19. Reserved.]

*Note*—See the editor's note to App. A, § 18.

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**Sec. 20. Planned residential development.**

(A) In accordance with the provisions set forth in Section 4407 (3) of the Vermont Planning and Development Act, the modification of zoning regulations by the planning commission may be permitted in all low density residential districts as provided in the master plan of the City of Burlington, Vermont. Said modification shall be limited only to cases in-

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volving subdivision approval; and granted by the planning commission simultaneously with final plan approval, in accordance with Chapter 28, Subdivision Regulations of the City of Burlington.

**(B) Definition:**

- (1) A planned residential development shall mean a subdivision developed as an entity by a land owner which does not correspond in lot size, bulk or type of dwelling, or required open spaces to the regulations in which district it is situated as established by this ordinance, regardless of whether by law or fact the area is to be utilized by separate entities, functions or families.

**(C) Intent:**

- (1) The purpose of the planned residential development is to provide for a mixture of housing types at different densities and at stated allowed higher densities than allowed under normal subdivision procedures; to provide economies and efficiencies in street utility and public facility construction and maintenance; to provide and enhance allocation and distribution and maintenance of areas designated as common open space; to provide within the project a variety of housing types; and to provide a method of development for existing lots which because of physical, topographical, or geological, conditions could not otherwise be developed.

(D) Upon approval of the planning commission the area, frontage and yard requirements may be waived for a planned residential development.

(E) The following requirements shall be met for approval by the planning commission:

- (1) Uses shall be limited to those permitted within the district in which it is located.
- (2) Density and building area coverage requirements of the district are met.

- (3) The minimum setbacks required for the district shall apply to the periphery of the project.
- (4) The project shall be subject to design review.
- (5) The project shall meet the requirements of the subdivision regulations as amended; Chapter 67, of the Burlington Code of Revised Ordinances, 1962, as amended.
- (6) The purposes of the intent as defined are met in a way not detrimental to the city's interests.
- (7) All other zoning requirements of the district, except for those specifically listed as not applicable, shall be met.

(F) Administrative controls. The following administrative and procedures and controls shall be required for the presentation of a planned residential development plan:

- (1) The proposed development shall be in harmony with the master plan of the city and shall be in conformance with the requirements of Section 4407 (5) of the Vermont Planning and Development Act, 1968 Acts, No. 334, as amended.
- (2) Open space or common land shall be assured and maintained in accordance with the procedures prescribed by the planning commission.
- (3) The development plan shall specify reasonable periods within which development of each section of the planned residential development may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be adjusted for in other sections of the planned residential development. No building designed or intended for business use, except the community center and development office, shall be constructed in the planned residential district.

(G) *Open space.* If the application of this procedure results in land available for park, recreation, open space or other municipal purposes, the planning commission as a condition of its approval may establish such conditions on the owner-Supp. No. 5

ship, use and maintenance of such lands as it deems necessary to assure preservation of such lands for their intended purpose. (Ord. of 12-9-74)

**Sec. 21. Reserved.**

**Sec. 22. Minimum lot requirements.**

(A) *Height*: Any structure exceeding thirty-five (35) feet is subject to site plan approval in any district.

(1) That in no case shall the height exceed the limits permitted by federal and state regulations regarding flight paths of airplanes.

(2) When a permit for a greater height is granted by site plan approval by the planning commission:

(a) Such height will not obstruct view of Lake Champlain or mountains from public ways, public and semi-public buildings or residential areas.

(b) Where a front yard is required, the depth is increased five (5) feet for each additional ten (10) feet of building height.

(B) *Yard and maximum lot coverage requirements*: No building or other structure shall be erected unless in conformity with the requirements on Table[s] I(a) and I(b), except that:

(1) Eaves, sills, steps, roof overhang, cornices, belt cornices, fences or walls, swimming pools, and similar features may project into the specified yards and no swimming pool's water's edge may be less than five (5) feet nor any apron less than two (2) feet from the side or rear property line, and provided that,

(2) On a corner lot, in order to provide unobstructed visibility at intersections, no sign, fence, wall, tree, hedge or other vegetation, and no building or other structure more than three (3) feet above the established street grades, measured from a plan, through the curb grades on the height of the crown

of the street, shall be erected, placed, or maintained within the area formed by the intersecting street lines and a straight line joining said street lines at points which are twenty-five (25) feet distant from the point of intersection, measured along said street lines,

- (3) Further, no yard, lot area, or other open space required for a building by this ordinance shall, during the existence of such building, be occupied by or counted as open space for another such building. No lot area shall be reduced or diminished so that the yards or other open space shall be smaller than prescribed by this ordinance,
- (4) Where an industrially zoned property borders a residential zone, there shall be a fifteen (15) foot setback of the industrial building or structure from that particular boundary line.

TABLE I(a)

*Maximum Percentage Building Coverage  
of Land Including Accessory Buildings*

<i>District</i>	
FPD	10
RCO	NA
WFR	35
R-6	35
R-25	50
WFR-75	80 and DR
R-75	80 and DR
UC	40
C	DR
GC	DR
CBD	DR
WFC	DR
WFI	DR
I	DR
HB	DR

NA—Not applicable.

DR—Design review required.

TABLE I(b)  
MINIMUM FRONT YARD SETBACK

	Residential			Commercial	Other
	L*	C*	M*		
WFR	15	20	25	30	
R-6	15	20	25	30	
R-25	15	20	25	25	
WFR-75	15	15	15	None	
R-75	15	15	15	None	
UC	15	15	15	None	25
CBD	15	15	15	None	
C			15	None	
GC	15	15	15	15	
WFC				30	
WFI					50
I					50

\*L—Local Street C—Collector Street M—Major Street  
Minimum side yard shall be five (5) feet. None is required in R-75 — WFR-75 — CBD — WFI — I except as required for fire lanes. The minimum lake front setback shall be thirty (30) feet.

Minimum rear yard shall be five (5) feet. None is required in R-75 — WFR-75 — CBD — WFI — I. (Ord. of 10-15-73; Ord. of 12-9-74; Ord. of 11-3-75; Ord. of 7-13-81; Ord. of 9-14-81)

**Sec. 23. Off-street parking and loading.**

(A) *Required spaces:* No structure hereinafter shall be erected, altered, repaired or established unless or until the following provisions shall have been set for off-street parking and loading. Each space shall be a minimum of two hundred (200) square feet exclusive of access drive or aisles thereto. Each space shall be provided access to a public street through a drive or aisle of not less than ten (10) feet wide:

- Boarding and rooming houses 1 space for each 2 bedrooms
- Clubs, lodges, and all similar places providing overnight accommodations 2 spaces for each bedroom plus 1 space for each five active members.

Dwelling, residential units	2 spaces for each dwelling unit up to 4 dwelling units, plus 1 space for each additional dwelling unit; provided that for housing for the elderly only one space per five (5) dwelling units shall be required.
Hospitals, sanitariums, rest and convalescent homes, and all similar institutions	1 space for each 4 beds plus 1 space for each staff or visiting doctor plus 1 space for each 4 employees including nurses.
Hotels	1 space per 1 guest room
Motels, tourist courts, tourist homes, trailer courts	1 space for each guest bedroom or trailer space plus 1 additional space for a resident manager or owner.
Food stores and super markets	1 space for each 75 square feet of retail sales floor area.
Office buildings, including business commercial, government	1 space for each 200 square feet of floor area used for office or similar purposes.
Places of amusement or assembly containing fixed seats	1 space for each 4 fixed seats provided for patron use.
Places of amusement or assembly without fixed seats	1 space for each 100 square feet floor or ground area used for amusement or assembly

Gas stations and service garages	10 spaces for each service bay.
Restaurants (sit down), including bars, grills and all similar dining and/or drinking establishments	1 space for each 4 fixed seats provided for patron use, plus 1 parking space for each 75 square feet of floor area provided for patron use but not containing fixed seats.
Restaurants (Drive-In)	1 space per 20 square feet gross floor area.
Public and private elementary and high schools and academies but not including colleges and universities and similar institutions	1 space for each 4 seats in assembly hall, or if no assembly hall, 1 space for each 2 employees including teachers and administrators.
Retail establishments and banks and other financial and lending institutions but excluding food stores of the type customarily termed "supermarkets"	1 space for each 100 square feet of retail floor area, plus 1 space for each 200 square feet of floor area above the first floor, excluding all rooms used for storage.
Wholesale and commercial manufacturing	1 space for each 3 employees plus 1 space for each company vehicle operating from the premises.
Produce stands	Minimum of four spaces plus 1 space for every 10 square feet of display bins over 30 square feet.
Nursery School	1 space for each 10 children enrolled.
Retail Business and Services	1 space of at least 25 square feet, for each 3,000 square feet of floor area or part thereof.
Wholesale and Industrial	1 space of at least 500 square feet for each 10,000 square feet of floor area or part thereof.

Bus and Truck Terminal      Sufficient space to accommodate the maximum number of buses or trucks to be stored or to be loading or unloading at the terminal at any one time.

(B) *Location*: If the required off-street parking space cannot reasonably be provided on the same lot as the building it serves, such space may be provided on other property located not more than four hundred (400) feet distant, as measured along the nearest pedestrian route.

(C) *Off-street loading and unloading space*: Every structure or building hereafter constructed and used for business, trade, or industry, shall provide space on the premises as indicated herein for the unloading and loading of vehicles. Such space shall have access to a public alley, or if there is no alley to a public street.

(D) *Colleges*: Colleges shall submit a parking plan for the entire campus with each building permit requested. The planning commission shall find that the following conditions are met by the parking plan:

- (1) That there be provided one space for each campus vehicle permit issued.
- (2) That the permits are not issued in a manner which effectively voids the intent of this provision.
- (3) That parking generated by the construction related to the permit requested will be provided.
- (4) That additional visitor parking is provided equal to twenty-five (25) per cent of the above spaces.
- (5) That the parking provided has a reasonable location to the points of generation.

(E) *Exceptions*: All of these requirements may be reduced to the extent that the applicant can demonstrate that for reasons of:

- (1) Unique use times,  
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(2) Overlap coverage, or

(3) The regulation is unnecessarily stringent, but in no case will less than fifty (50) per cent of the required spaces be authorized.

(F) No parking is required within the area bounded by Winooski Avenue, Main Street, Pine Street and Pearl Street. In addition, no off-street parking shall be required in connection with any retail and/or commercial but excluding residential use within the area bounded by Pine Street, College Street, South Champlain Street and Main Street.

(G) Repealed. (Ord. of 9-8-75; Ord. of 6-13-77, § 5)

#### Sec. 24. Street graphics.

1. *Purpose.* The purpose of this section shall be to promote signs which are 1) compatible with surroundings; 2) orderly, readable, and safe; 3) harmonious in color, material and lighting with the building to which it relates; and (4) nondistracting to motorists.

#### 2. *Definitions.*

##### (a) *Area.*

(1) The area of a sign shall include any lettering, design, or symbol, together with the background, whether open or enclosed, upon which they are displayed. Not included in this definition is any supporting framework incidental to the display itself.

(2) Where a sign consists of individual letters or symbols attached to a building, wall or window, the area shall be considered to be the smallest rectangle encompassing all the letters and symbols.

(3) In computing the area of a double-faced sign, only one side shall be considered if both faces are identical. Notwithstanding the above, if the interior angle formed by the two (2) faces of the double-faced sign is greater than forty-five (45) degrees, then both sides of such sign shall be considered in calculating the sign area.

- (b) *Business sign*: An on-premises sign which directs attention to any primary business, commodity, service, industry or other activity which is sold, offered or conducted on the premises.
- (c) *Clear sight triangle*: The area formed by the intersecting street lines and a straight line joining said street lines at points twenty-five (25) feet distant from the point of intersection of the street lines, measured along said street lines. No sign, except an official sign more than three (3) feet above the established street grades, shall be erected in the clear sight triangle.
- (d) *Directly illuminated sign*: A sign which emits light from a source within such sign directly or through transparent or translucent material, including but not limited to, neon and exposed lamp signs.
- (e) *Festoon lighting*: A method of illuminating a structure with a group of incandescent bulbs hung or strung overhead or used to outline a structure or any part thereof.
- (f) *Flashing sign*: An illuminated sign on which an artificial light is in a nonstationary position or is not constant in intensity or color at all times during use.
- (g) *Freestanding sign*: A self-supporting sign resting on the ground or supported by means of poles or standards in the ground. The height of freestanding signs shall be measured from the official street grade to the top of the light standard or supporting standard, whichever is higher.
- (h) *Indirectly illuminated sign*: A sign illuminated from an outside source so shielded that no direct rays are visible elsewhere on the lot. If such shielding device is defective, the sign shall be deemed to be a directly illuminated sign.
- (i) *Institutions*: Public and semipublic uses including, but not limited to, colleges, universities, hospitals, churches, membership clubs, and private colleges.

- (j) *Kiosk*: Any structure erected in a public place with the approval of the planning commission for the specific purpose of displaying any sign to direct or inform pedestrians. Kiosks erected on city sidewalks shall not occupy more than twenty-five (25) per cent of the total width of the sidewalk measured at the location of the kiosk. The maximum height of a kiosk shall not exceed nine (9) feet. Kiosks shall not unreasonably interfere with the normal flow of pedestrian traffic. A bus shelter may be used as a kiosk.
- (k) *Nonconforming sign*: Any sign existing at the time of the passage of this section that does not conform in area, illumination, type, or height with the provisions herein. Such signs may remain in use in the same location. If, for any reason, replacement or reconstruction becomes necessary, a zoning permit shall be required and the sign shall conform to the provisions herein. Nothing in this section shall preclude the ordinary maintenance and repair of a nonconforming sign.
- (l) *Off-premises sign*: A sign which advertises or otherwise directs attention to any commodity or activity sold, offered or conducted elsewhere than on the premises upon which such sign is located.
- (m) *Official sign*: Any sign, including traffic signs and similar regulatory notices, erected by a duly constituted governmental body.
- (n) *On-premises sign*: A sign which directs attention to an activity on the same premises.
- (o) *Parallel sign*: A sign attached, painted or otherwise mounted parallel to a wall or other vertical building surface. Parallel signs shall not extend beyond the edge of any wall or other surface to which they are mounted and shall not project more than eighteen (18) inches from the surface thereof.
- (p) *Political signs*: Signs advertising political parties and/or candidates.

- (q) *Projecting sign*: Any sign mounted to a wall or other vertical building surface other than a parallel sign.
- (r) *Roof sign*: A sign erected on or above the roof or parapet of a building.
- (s) *Sign*: Any permanent or temporary structure or part thereof, or any device attached or painted on any structure or other surface, that displays any design or object used as an advertisement, announcement, visual communication, or direction, or which is designed to attract the eye or bring the subject to the attention of the public. Excluded from this definition are interior merchandising displays as well as displays of less than two (2) square feet which serve only to indicate the name and address of residential occupants.
- (t) *Vehicular sign*: A sign affixed to any vehicle in such a manner that the display of such sign is a primary purpose of the vehicle. Any such sign shall be considered a freestanding sign.

### 3. *General regulations.*

- (a) *Permit requirements*. Except for official and political signs, all on-premises signs over two (2) square feet and all off-premises signs, regardless of size, shall require the issuance of a zoning permit before public display.
- (b) *Prohibited signs*. Flashing and animated signs are specifically prohibited. Projecting signs, roof signs, and festoon lighting are permitted only where specifically provided for herein.
- (c) *Obstruction*. No sign, except official signs, shall be placed so that it prevents clear and unobstructed view of official signs or of approaching or merging traffic. No sign shall be placed within the clear sight triangle, except as permitted in subsection 2(c) of this section.
- (d) *Posting of signs*. No person shall paint, paste, brand, stamp or in any other manner place on or attach to

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any tree, utility pole, or other pole on any street any sign, excluding an official sign, or other advertisement, bill, notice, card, or poster.

- (e) *Fluorescent signs.* No sign shall contain any fluorescent paint or device, including mirrors, which has the effect of intensifying reflected light.
- (f) *Enforcement; order.* If the zoning administrator finds any sign being maintained in violation of the provisions of this section, or the public health and safety administrator finds any sign regulated hereunder to be unsafe, insecure, or constructed in violation of any provision of the Code of Ordinances, that official shall give written notice ordering that the occupant comply with the standards of the Code within seven (7) days after such notice.
- (g) *Separate frontage.* If an establishment has walls fronting on two (2) or more streets, the sign area for each street shall be computed separately.
- (h) *Yard requirements.* Without exception, no portion of any freestanding sign shall be located closer to any lot line than fifty (50) per cent of the required yard setback for the district in which it is located.
- (i) *Holiday decorations.* Holiday decorations displayed for and during recognized federal, state, or religious holidays shall be exempted from the provisions of this article except where they interfere with traffic safety or in any way become a public safety hazard.

#### 4. *Signs in residential districts.*

- (a) *On-premises signs.* In residential districts, only the following on-premises signs shall be permitted:
  - (1) One nonilluminated sign advertising for sale agricultural produce raised on the premises where such sale is permitted, not to exceed two (2) square feet in area.

- (2) Nonilluminated signs displayed strictly for the direction, safety or convenience of the public, including signs which identify restrooms, telephone booths, parking area entrances or exits, freight entrances or the like, provided the area of any such sign shall not exceed two (2) square feet.
- (3) Parallel, projecting and freestanding signs representing governmental, educational or religious organizations.
- (4) One nonilluminated sign for home occupations or accessory offices displaying only the names of persons and their occupations, provided the area of any such sign shall not exceed two (2) square feet.
- (5) One nonilluminated sign or announcement board identifying a permitted nonresidential building, use, or activity, provided the area of any such sign or board shall not exceed twenty (20) square feet.
- (6) One nonilluminated sign in connection with a non-conforming use, provided the area of any such sign shall not exceed twenty (20) square feet.
- (7) One temporary nonilluminated sign advertising the sale or rental of the premises or indicating that such premises have been sold or rented, provided the area of any such sign shall not exceed six (6) square feet and shall be removed within twenty (20) days after the rental agreement has been executed or title has been transferred. For industrial and commercial uses such sign shall not exceed twenty-four (24) square feet or fifteen (15) per cent of the area of the front building wall, whichever is larger.
- (8) One temporary nonilluminated sign erected in connection with any proposed land development, provided the area of any such sign shall not exceed twenty-four (24) square feet and shall be removed within twenty (20) days after the last

structure has been initially occupied or upon expiration of the building permit, whichever is sooner.

- (9) Temporary nonilluminated artisan signs while such persons are performing work; provided all such signs shall be removed on completion of work and the total aggregate area of all such signs shall not exceed twelve (12) square feet.
  - (10) Nonilluminated signs such as those announcing no trespassing; the private nature of a road, driveway, or premises; or regulating fishing or hunting on the premises, provided the area of any such sign shall not exceed two (2) square feet.
  - (11) Nonilluminated memorial signs or historical signs or tablets.
  - (12) One projecting business sign not exceeding four (4) square feet.
- (b) *Off-premises signs.* In residential districts, the following signs shall be permitted either on or off premises:
- (1) Temporary signs advertising political parties or candidates, provided:
    - a. The size of such sign is not in excess of thirty-two (32) square feet;
    - b. The sign shall be erected no earlier than forty-five (45) days prior to the election to which they pertain;
    - c. All such signs are removed within three (3) days after the date of the election; and
    - d. A single zoning permit is obtained for the total number of signs.
  - (2) Temporary nonilluminated signs directing persons to temporary exhibits, shows or events provided:
    - a. The size of such sign does not exceed twelve (12) square feet in area; and

- b. Such signs are not posted earlier than two (2) weeks prior to the event and are removed within three (3) days after the event.
- (3) Nonilluminated signs used for directing members or patrons to service clubs, churches or other non-profit organizations provided:
- a. Such signs indicate only the name of the facility and the direction of the facility; and
  - b. Such signs do not exceed four (4) square feet in area.
- (c) *Restrictions on type and placement of signs.*
- (1) Illuminated signs are prohibited.
  - (2) Freestanding signs shall not exceed six (6) feet in height.
  - (3) No parallel signs or portions thereof shall be located above the ceiling of the ground floor or more than twelve (12) feet above the official street grade, whichever is less.
  - (4) No sign shall be located within three (3) feet of any sidewalk or its vertical plane, except where such sign is attached to the face of the building at least eight (8) feet above the sidewalk and is protruding no more than six (6) inches from the face of the building.
- (d) *Signs in university campus zone.* Within the university campus zone, signs for institutions which exceed the restrictions set forth in this section shall be permitted, provided such sign is in accordance with a signage plan submitted by the institution and approved by the planning commission.
- (e) *Signs in transitional zones.* Signs located in transitional zones, established under sections 10(c)(1) and (2) of Appendix A—Zoning, and associated with

legally established nonresidential uses shall be regulated according to the standards prescribed in subsection 5 of this section.

5. *Signs in commercial districts.*

(a) *On-premises signs.* In commercial districts, only the following on-premises signs shall be permitted:

(1) All signs permitted in section 4 according to those standards prescribed therein, except as otherwise provided in this section.

(2) Parallel business signs provided:

a. The total area of all parallel signs for each establishment does not exceed two (2) square feet for each linear foot of frontage devoted to such establishment;

b. If such establishment does not occupy any floor area on the ground level, other than an entryway, the maximum permitted sign area shall not exceed one square foot for each linear foot of frontage devoted to such establishment.

c. Signs painted on or affixed to the inside or outside of windows shall be included in the computation under (a) and (b) above, only if their combined area exceeds twenty-five (25) per cent of the area of the window which they occupy.

d. In no case, however, may the total area of parallel signs exceed two hundred (200) square feet or fifteen (15) per cent, whichever is less, of the area of the wall to which they are attached, including windows, door area, and cornices.

(3) *Freestanding business signs, provided:*

a. Only one such sign is permitted for each separate street frontage devoted to an establishment;

- b. The area of any such sign does not exceed one square foot per two (2) linear feet of frontage or a total of sixty (60) square feet, whichever is smaller.
- (4) Nonilluminated, indirectly illuminated, or directly illuminated business signs.
  - (5) Projecting business signs only in the C and GC and as a substitute for either parallel or free-standing signs, provided any such sign:
    - a. Does not visually interfere with the view to and from adjacent properties;
    - b. Does not extend above any portion of the roof of the building to which such sign is affixed;
    - c. Has its lower edge at least eight (8) feet above any pedestrian way;
    - d. Has a vertical alignment;
    - e. Has been approved by the planning commission as to design and location; and
    - f. Provided further that the maximum permitted area of all such signs shall be governed by section 5(a)(2).
  - (6) Signs connected to a canopy, awning, or marquee, provided they:
    - a. Are affixed flat to such canopy, marquee or awning; and
    - b. Are limited to announcing the name of the establishment or any on-premises show or event.

Such signs are to be considered projecting business signs, and as such are governed by subsection (5) above.

- (b) *Off-premises signs.* In commercial districts, only the following off-premises signs shall be permitted:

- (1) All off-premises signs permitted in section 4(b) according to the standards prescribed therein.
  - (c) *Restrictions on type and placement of signs.* Freestanding ground signs shall not exceed twenty (20) feet in height.
6. *Signs in industrial districts.*
- (a) *On-premises signs.* In industrial districts, only the following on-premises signs shall be permitted:
    - (1) Except as otherwise herein provided, all signs permitted in section 5 according to the standards prescribed therein.
    - (2) Parallel business signs, provided:
      - a. The total area of any parallel sign shall not exceed two (2) square feet for each foot of length of the front building wall or length of that portion of such wall devoted to such establishment, or two hundred (200) square feet, whichever is less;
      - b. No parallel sign shall be painted on or affixed to the outside windows.
  - (b) *Off-premises signs.* In industrial districts, only the following off-premises signs shall be permitted:
    - (1) Temporary signs advertising political parties or candidates, provided:
      - a. The size of such sign is not in excess of thirty-two (32) square feet;
      - b. The sign shall be erected no earlier than forty-five (45) days prior to the election to which they pertain;
      - c. All such signs are removed within three (3) days after the date of the election; and
      - d. A single zoning permit is obtained for the total number of signs.

- (2) Temporary nonilluminated signs directing persons to temporary exhibits, shows or events provided:
  - a. The size of such sign does not exceed twelve (12) square feet in area; and
  - b. Such signs are not posted earlier than two (2) weeks prior to the event and are removed within three (3) days after the event.
- (3) Nonilluminated signs used for directing members or patrons to service clubs, churches or other non-profit organizations provided:
  - a. Such signs indicate only the name of the facility and the direction of the facility; and
  - b. Such signs do not exceed four (4) square feet in area.

(c) *Restrictions on type and placement of signs.*

- (1) Illuminated signs are prohibited.
- (2) Freestanding signs shall not exceed six (6) feet in height.
- (3) No parallel signs or portions thereof shall be located above the ceiling of the ground floor or more than twelve (12) feet above the official street grade, whichever is less.
- (4) No sign shall be located within three (3) feet of any sidewalk or its vertical plane, except where such sign is attached to the face of the building at least eight (8) feet above the sidewalk and is protruding no more than six (6) inches from the face of the building. (Ord. of 1-4-82)

**Sec. 25. Nonconforming uses and noncomplying structures.**

In order to preserve the property rights of individuals and organizations as is reasonable and at the same time enforce the provisions of this ordinance and promote the general health, safety and welfare of the City of Burlington, these  
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provisions governing the continuance and discontinuance of nonconforming uses and noncomplying structures within the corporate limits of the City of Burlington are established.

(A) *Nonconforming uses:* The following provisions shall apply to all buildings and uses existing on the effective date of this section which do not conform to the use requirements of the districts in which they are located, and to all buildings and uses that in the future do not conform by reason of subsequent amendment to this zoning ordinance. Any nonconforming use may continue in operation subject to the following limitations: It is considered desirable and in the best interest of the city to encourage nonconforming uses to change to a use which is conforming. Nonconforming uses shall not be moved, enlarged, altered, extended, reconstructed, or restored, except in strict conformance with the following schedules:

- (1) **Enlargement:** Nonconforming uses may be enlarged within the existing lot (extension into any additional lots is permitted if such lots are under single ownership on the effective date of this ordinance) by up to twenty-five (25) per cent of the floor space, building or structural capacity existing at the time of the passage of this section.
- (2) **Change in use:** No nonconforming use may be altered in use, except to an allowed use under the provisions of the district in which it is situated.
- (3) Nonconforming uses shall not be re-established, if such use has been discontinued for any reason for a period of one year, to resume nonconforming use shall not confer the right to do so.
- (4) Nonconforming uses shall not be restored for other than a conforming use after damage from any cause which damage shall be sufficient to cause cessation of use unless the use is re-established within one year.

(B) *Discontinuance of nonconforming uses:* In order to eliminate nonconforming uses within a reasonable time without unduly sacrificing the rights and investments of the parties involved, all nonconforming uses within all WF districts shall be discontinued from the date of the passage of this section, according to the following date of investment schedule: Nonconforming uses and noncomplying structures: In order to preserve the property rights of individuals and organizations as is reasonable and at the same time enforce the provisions of this ordinance and promote the general health, safety and welfare of the City of Burlington, the following provisions governing the continuance and discontinuance of nonconforming uses and noncomplying structures are established:

- (1) Open air storage, including junkyards, automobile sales lots, signs, fences, and other uses not involving structures shall be discontinued within three (3) years.

- (2) Bulk storage within structures, including: Bulk oil, lumber, and wholesaling which does not include manufacturing, shall be discontinued within twenty (20) years.
  - (3) All nonconforming uses except residential not previously cited shall be discontinued within thirty (30) years.
  - (4) Any enlargement of a nonconforming use shall not extend the right of use and shall be allowed at the owner's peril, and the city shall not be held liable for any such extension or enlargement.
- (C) *Noncomplying buildings*: Nothing in this section shall be deemed to prevent normal maintenance and repair, structural alteration in moving, or enlargement of a noncomplying building, provided that such action does not increase the degree of or create any new noncompliance with regards to regulations pertaining to such buildings.

**Sec. 26. Site plan approval.**

(a) *Applicability*. Except as specifically exempted by subsections (1), (2) and (3) of this subsection, no uses, alterations and repairs other than to one- and two-family dwellings may be commenced or approved, nor may a zoning and/or building permit be issued therefor unless a certificate of site plan approval has been issued by the planning commission in accordance with the provisions of this section. Provided, in addition to one- and two-family dwellings, the requirements of this section shall not apply to the following:

- (1) Projects for which the total dollar value for all labor and materials does not exceed five thousand dollars (\$5,000.00).
- (2) Projects not involving any additional coverage of the lot, either in the form of construction of or addition to a structure, or in the form of additional paving, asphaltting or other equivalent method of lot coverage.

- (3) Projects involving the construction, reconstruction for alteration of any feature which the building inspector or other duly authorized city inspector certifies is required by public safety in order to correct an unsafe or dangerous condition or for which a permit has been issued by such inspector(s) prior to the effective date of this section.

(b) *Extent of review.* All uses, alterations and repairs to which this section applies shall be reviewed by the planning commission to determine the adequacy of traffic access, circulation and parking, and the adequacy of the proposed landscaping and screening. Should the commission determine that such features are adequate, it shall issue its certificate of site plan approval. Should it determine that it is necessary, the commission may condition its certificate of site plan approval by imposing and listing thereon appropriate stipulations and safeguards with respect to the features being reviewed. Should a submitted site plan not provide adequately for the features subject to review and should the commission determine that no conditions which it might impose would render such features adequate, the commission may disapprove the site plan application.

(c) *Procedures.* Any person requiring site plan approval under this section shall file an application in writing to the planning commission. The application shall briefly state the nature of the work to be done and the estimated cost of the project. Along with the letter of application, the following shall be submitted:

- (1) Location map at a scale of one inch equals six hundred (600) feet.
- (2) Plot plan at a scale of one inch equals ten (10) or twenty (20) feet showing lot lines with dimensions, approximate location of existing and proposed structures with dimensions, vehicular access to public street, parking areas, existing trees and plantings and other significant features on the lot.

- (3) Detailed site plan showing existing and proposed paved or gravelled areas, plan of parking layout and service access, vehicular circulation and curb cuts, exact dimensions of existing and proposed structures or additions thereto, and existing and proposed pedestrian walkways and entrances into the structure.
- (4) Detailed landscaping and screening plan showing the proposed site grading plan, the location, size and species of plantings, the location of exterior lighting with the direction of illumination, plan and location of any existing or proposed freestanding signs not attached to the structure and street furniture to be placed on the site.
- (5) Existing and proposed utility plan showing the location of utilities in the street, planned hookup to those utilities and the location of the storm collection and drainage system.

(d) *Determination.* The planning commission shall complete its review of an application submitted under this section within sixty (60) days from the date of its submission. Provided, that should the application be incomplete, the sixty-day period shall not begin to run until the application is made complete in accordance with the requirements under subsection (c). Failure of the planning commission to act within the sixty-day period from the time a proper application is submitted shall be deemed approval of the site plan and a certificate of site plan approval shall be submitted to the applicant upon request. The sixty-day review period may be extended upon written agreement of the applicant. Notwithstanding the official sixty-day review period established in this subsection, the technical staff of the planning commission shall be available for consultation with an applicant both before and after the submission of any application.

(e) *Findings.* Upon completion of its review, the planning commission shall make its determination and shall either issue a certificate of site plan approval, with or without included stipulations and safeguards, or reject the application for site plan approval.

(f) *Performance guarantees.* In the event the planning commission imposes stipulations and safeguards as a part of its certificate of site plan approval, it may also, as a condition of approval, require that a performance bond be submitted by the applicant which is sufficient in amount to cover the installation of the site improvements mandated by the commission and sufficient in amount to guarantee landscaping plant survival if such is mandated. The commission may accept a contract with a landscaping firm which provides adequate guarantees as compliance with that portion of its performance bond requirements.

(g) *Review standards.* In its analysis of the adequacy of traffic access, circulation and parking and of the adequacy of landscaping and screening in any application, the planning commission shall be guided by the following standards in conducting its review and imposing conditions and safeguards:

- (1) Traffic access. Curb cuts should be so arranged as to reduce congestion and improve traffic safety. Proper site triangles and sufficient turnarounds for vehicles are desirable to avoid accidents at points of egress.
- (2) Traffic circulation and parking. There should be sufficient parking as required in section 23 of this ordinance laid out in a manner to provide ease in maneuvering of automobiles and so as not to be detrimental to the surrounding properties or to create an undesirable visual effect from the street. Sufficient area for loading and unloading may be required if need for such loading zone is found to be necessary.
- (3) Landscaping and screening. There shall be a sufficient amount of landscaping, as may be reasonably determined by the planning commission, to insure protection of and to enhance the quality of the project in question and the adjacent properties. (Ord. of 6-23-75)

**Secs. 27—78. Reserved.**

**Sec. 79. Fees.**

(A) The city council may, from time to time by specific resolution, prescribe reasonable fees to be charged with respect to the administration of this bylaw.

(B) Repealed. (Ord. of 10-15-73; Ord. of 8-9-76)

**Sec. 80. Administrative officer.****(A) Appointment and powers of administrative officer:**

(1) An administrative officer, who may hold any other office in the municipality, shall be appointed for a term of three (3) years by the planning commission, with the approval of the city council, promptly after the adoption of the first of such bylaws or when a vacancy exists. The administrative officer shall administer the bylaws literally, and shall not have the power to permit any land development which is not in conformance with this ordinance. The administrative officer may be removed for cause at any time by the planning commission.

(2) The planning commission may appoint, with the approval of the city council, an acting administrative officer who shall have the same duties and responsibilities as the administrative officer in his absence.

**(B) Zoning permits and certificates of occupancy.**

(1) No land development may be commenced within the City of Burlington without a permit therefor issued by the administrative officer. No zoning permit may be issued by the administrative officer except in conformance with this ordinance.

(2) It shall be unlawful to use or occupy or permit the use or occupancy of any land or structure, or part thereof created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this ordi-

nance, within the area affected by such zoning regulations, until a certificate of occupancy is issued therefor by the administrative officer stating that the proposed use of the structure or land conforms to the requirements.

- (3) No zoning permit issued pursuant to this section shall take effect until the time for appeal in Section 4464(a) of Title 24, Chapter 91 of the Act has passed, or in the event that a notice of appeal is properly filed, such permit shall not take effect until final adjudication of said appeal.

(C) Each zoning permit issued under this section shall contain a statement of the period of time within which an appeal may be taken. Within three (3) days following the issuance of a zoning permit, the administrative officer shall:

- (1) Deliver a copy of the permit to the listers of the municipality; and

- (2) Post a copy of the permit in at least one public place in the municipality until the expiration of fifteen (15) days from the date of issuance of the permit.

(D) If a public notice is issued under this ordinance with respect to an amendment of a bylaw, the administrative officer shall not issue any permit under (B) (1) of this section, if such permit is with regard to the bylaw of which such amendment is proposed, for the period commencing upon the date of that public notice and ending upon the effective date of the adoption or rejection of such amendment, except with the written consent of the legislative body of the municipality given after public hearing upon public notice.

#### Sec. 81. Board of adjustment.

##### (A) *Membership:*

- (1) The board of adjustment for the City of Burlington shall consist of not less than three (3) nor more than nine (9) persons, as the board of aldermen determines and appointed promptly after the adoption of this ordinance.
- (2) Vacancies shall be filled by the legislative body for the unexpired terms and upon the expiration of such terms. Each member of a board of adjustment may be removed for cause by the legislative body upon written charges and after public hearing.

##### (B) *Procedure:*

- (1) A board of adjustment shall elect its own officers and adopt rules of procedure, subject to this section. Meetings of the board shall be held at the call of the chairman and at such times as the board may determine. The officers of the board may administer oaths and compel the attendance of witnesses and the production of material germane to any issue under appeal. All meetings of the board shall be open to the public. The board shall

keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the clerk of the municipality as a public record. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of the members of the board, and any action thereof shall be taken by the concurrence of a majority of the board. The board of aldermen may set such reasonable fees for filing of notices of appeal and other acts as it deems proper, the payment of which shall be a condition to the validity of such filing or act under this ordinance.

- (2) A board of adjustment in connection with any proceeding under this chapter, may examine or cause to be examined any property, maps, books or records bearing upon the matters concerned in such proceeding, may require the attendance of any person having knowledge in the premises, may take testimony and require proof material for its information, and may administer oaths or take acknowledgment in respect of such matters. Any of the powers granted to a board of adjustment by this subsection may be delegated by it to a specifically authorized agent or representative.

(C) *Party of interest:*

- (1) An interested person may appeal any decision or act taken, by the administrative officer by filing a notice of appeal with the secretary of the board of adjustment of that municipality or with the city clerk if no such secretary has been elected. If the appeal is taken with respect to a decision of act of an administrative officer, such notice of appeal must be filed within fifteen (15) days of the date of such decision or act, and a copy of the

notice of appeal shall be filed with such officer. If the administrative officer fails to act with regard to an application for a permit within thirty (30) days, a permit shall be deemed issued on the thirty-first (31st) day.

- (2) For the purposes of this ordinance, an interested person means any one of the following:
- (a) A person owning title to property affected by a by-law who alleges that such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
  - (b) The City of Burlington or any municipality which adjoins such municipality.
  - (c) A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act, if confirmed will not be in accord with the policies, purposes or terms of the plan of that municipality.
  - (d) Any ten (10) persons owning real property within a municipality listed in paragraph (b) of this subsection who, by signed petition to the board of adjustment of Burlington, the plan or a by-law of which is at issue in any appeal brought under Chapter 91 of the Act, allege that any relief requested by a person, if granted, will not be in accord with the policies, purposes or terms of the plan of Burlington.
  - (e) Any department and administrative subdivision of this state owning property or any interest therein within a municipality listed in paragraph (b) of this subsection, and the central planning office of this state.
- (3) In the exercise of its functions hereunder, a board of adjustment shall have the following powers, in

addition to those specifically provided for elsewhere in this ordinance:

- (a) To hear and decide appeals taken under this section, including without limitation, where it is alleged that an error has been committed in any order, requirement, decision or determination made by an administrative officer under this ordinance in connection with the enforcement of a by-law;
- (b) To hear and grant or deny a request for a variance under section 22 of this ordinance.

(D) *Notice of Appeal:* Such notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why such requested relief is believed proper under the circumstances.

(E) *Stay of enforcement:* If a notice of appeal includes a request for a stay of enforcement, and states the grounds for such request with a statement under oath by the appellant that irremedial damage will directly result if such stay is not granted, the board of adjustment may, after public hearing, grant a stay of enforcement of the regulatory provisions referred to in the notice of appeal, under such terms and conditions including, without limitation, a bond to be furnished by the appellant, as the board deems in its judgment and discretion appropriate under the circumstances. Any stay of enforcement granted under this section shall expire upon the expiration of the time to appeal to the county court. The grant or denial of a request for a stay shall be given in writing by the board, and shall be sent by registered or certified mail, or delivered, to the appellant within fifteen (15) days of the filing of the notice of appeal with the board. Any hearing under this section shall be held after publication of notice thereof in a newspaper of general daily or weekly circulation in the municipality, in two (2) public places within the

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municipality, and by mail to the appellant, at least five (5) days prior to the hearing date, and a sign erected by the appellant on the property as prescribed by the zoning board.

(F) *Hearing on appeal*: The board of adjustment shall set a date and place for a public hearing of an appeal under this ordinance, which shall be within sixty (60) days of the filing of the notice of such appeal. The board shall give public notice of the hearing, and shall mail to the appellant a copy of such notice at least fifteen (15) days prior to the hearing date. Any person or body empowered by this section to take an appeal with respect to that property at issue may appear and be heard in person or be represented by agent or attorney at such hearing. Any hearing held under this section may be adjourned by the board from time to time, provided, however, that the date and place of the adjourned hearing shall be announced at the hearing. All hearings held under this section shall be open to the public.

(G) *Appeal; variances*:

(1) On an appeal under this section wherein a variance from the provisions of a zoning regulation is the relief requested by the appellant, the board of adjustment may grant such variances, and render a decision in favor of such appellant, if all the following facts are found by the board and such finding is specified in its decision:

- (a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;
- (b) That because of such physical circumstances or conditions there is no possibility that the

property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

- (c) That such unnecessary hardship has not been created by the appellant;
  - (d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
  - (c) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the zoning regulation and of the plan.
- (2) In rendering a decision in favor of an appellant under this section, the board of adjustment may attach such conditions to such variance as it may consider necessary and appropriate under the circumstances to implement the purposes of this ordinance and the plan of the city then in effect.

(H) *Decisions on appeal:*

- (1) The board shall render its decision, which shall include findings of fact, within forty-five (45) days after completing the hearing, and shall within that period send to the appellant, by certified mail, a copy of the decision. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing, and a copy thereof shall be filed with the administrative officer and the clerk of the municipality as a part of the public records thereof. If the board does not render its decision within the period prescribed by this ordinance, the board shall be deemed to have

rendered a decision in favor of the appellant and granted the relief requested by him on the last day of such period.

- (2) The board of adjustment may reject an appeal without hearing and render a decision, which shall include findings of fact within ten (10) days of the date of filing of the notice of appeal, if the board considers the issues raised by the appellant in his appeal have been decided in an earlier appeal or the same is substantially or materially the same facts by or on behalf of that appellant, such decision shall be rendered, on notice given, as in the case of a decision under subsection (1) of this section, and shall constitute a decision of the board.
- (3) A municipality shall enforce all decisions of the board of adjustment of that municipality, and further, the courts of this state shall enforce such decisions upon petition, complaint or appeal or other means in accordance with the laws of this state by such municipality or any interested person by means of mandamus, injunction, process of contempt, or otherwise.

(I) *Appeal to county court:* An interested person may appeal a decision of a board of adjustment to the county court of the county in which is located the property at issue in the decision. The appeal shall be taken in such manner as the supreme court may by rule provide for appeals from state agencies governed by sections 801 through 816 of Title 3 of the Act. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the board of adjustment, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

(J) *Exclusivity of remedy; finality:*

- (1) The exclusive remedy of an interested person with respect to any decision or act taken, or any failure

to act, under this chapter or with respect to any one or more of the provisions of any plan or by-law shall be the appeal to the board of adjustment under Section 4464 of Chapter 91 of the Act, and the appeal to a county court from an adverse decision upon such appeal under Section 4471 of Chapter 91.

- (2) Upon the failure of any interested person to appeal to a board of adjustment under Section 4464 of Chapter 91, or to appeal to a county court under Section 4471 of Chapter 91, all interested persons affected shall be bound by such decision or act of such officer, such provisions, or such decisions of the board, as the case may be, and shall not thereafter contest, either directly or indirectly, such decision or act, such provision, or such decision of the board in any proceeding, including without limitation, any proceeding brought to enforce this ordinance.

(K) *Purpose; limitation:* It is the purpose of this ordinance to provide for the administrative review, by those persons knowledgeable in the city and with the issues, of all questions arising out of or with respect to the implementation by the city of this ordinance and thereby to make available to the courts of this state, in any action concerning this ordinance brought before them, a record of the facts found, after public hearing, and the grounds for the decision initially rendered by the board of adjustment. Except as specifically provided herein, the board of adjustment may not amend, alter, invalidate or affect the comprehensive development plan or by-law of the city or the implementation or enforcement thereof, or allow any use not permitted by any zoning regulations or other by-law.

**Sec. 82. Interpretation and administration and administrative officer.**

The provisions of this ordinance and any amendment thereto shall be administered and enforced by the administrative  
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officer of the City of Burlington, or in case of his absence from the city, inability to serve, resignation, death or removal, by the deputy administrative officer.

(A) *Zoning permits:*

- (1) No construction, excavation or site improvement for a building or structure shall be started, and no building or structure shall be erected, moved, altered, or changed until a zoning permit for the proposed work or change shall be applied for and granted in accord with Chapter 2 of Title 5 of the Revised Ordinances of the City of Burlington, as amended.
- (2) No permit shall be granted for the construction, alteration, relocation or use of any building, structure or premises in violation of any provisions of this ordinance. Whenever any permit or license is refused because of some provision of this ordinance, all the reasons therefor shall be clearly stated in writing.
- (3) An application for a zoning permit for a new or altered use of land or of a structure, or for construction, alteration, reconstruction or relocation of a building shall be made by the owner or his agent, in writing, on a form approved by the administrative officer and shall be accompanied by two (2) copies of a plot plan showing the site and size and shape of the lot, the names of the owners of record, the exact location of existing streets and buildings or structures, and of proposed buildings, structures, and additions thereto. The administrative officer shall send one (1) copy of the plot plan to the building inspector.

(B) *Occupancy permits:* No building hereafter erected, altered or relocated shall be used, and no change shall be made of the use of any building or any parcel of land, unless an occupancy permit signed by the administrative officer has been granted to the owner or

occupant of such land or building. Such permit shall not be granted unless the proposed use of the land or building and all accessory uses comply in all respects with this ordinance, and no use shall be made of such land or building except the use or uses authorized by such occupancy permit.

(C) *Performance Bond:*

- (1) Before endorsement of approval of a final plat of a subdivision, the subdivider shall file a performance bond with the city clerk together with the engineering inspection fees accrued to the office of the city engineer. The performance bond shall be secured by surety or deposit or negotiable securities in an amount determined by the city engineer after concurrence with all city departments to be sufficient to cover:
  - (a) the cost of all or any part of the improvements specified in section 14
  - (b) of ten (10) per cent contingency factor and
  - (c) the cost of maintenance of said improvements for a period of two (2) years after acceptance by the city.
- (2) The commission may specify the time period within which the required improvements must be completed, but in no case for a longer term than three (3) years. The time period shall be expressed in the bond.
- (3) Such bond or surety shall be approved as to form and manner of execution by the city attorney.
- (4) The commission may during the term of the performance bond release the bond after proclaimer has been endorsed by appropriate city officials as designated by the administrative officer indicating that the required improvements have been satisfactorily completed and return said bond or surety to the subdivider or his agent.
- (5) If any required improvements have not been installed or maintained as provided within the term

of such bond, a portion of the bond shall be forfeited as determined by the cost to the city of installing or maintaining such improvements.

**Sec. 83. Enforcement; penalties.**

Any person who violates any requirement shall be fined not more than fifty dollars (\$50.00) for each offense. No action may be brought under this section unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists. In default of payment of the fine, such person, the members of any partnership, or the principal officers of such corporation shall each pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of by-laws shall be paid over to the city.

**Sec. 84. Enforcement; remedies.**

If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of any by-law adopted under this ordinance the administrative officer shall institute in the name of the municipality any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate such construction or use, or to prevent, in or about such premises any act, conduct, business or use constituting a violation.

**Sec. 85. Required regulations.**

(A) *Existing small lots.* Any lot in individual and separate and nonaffiliated ownership from surrounding properties in existence on the effective date of this zoning regulation 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 three thousand (3,000) square feet in area with a minimum width or depth dimension of forty (40) feet.

(B) *Required frontage on, or access to public roads.* No land development may be permitted on lots which do not either

have frontage on a public road or, public water or with the approval of the planning commission, access to such a road or water by a permanent easement or right-of-way at least twenty (20) feet in width. (Ord. of 12-9-74)

**Sec. 86. Amendments.**

(A) Bylaws shall be prepared by the planning commission. Any amendment or repeal of a bylaw may be prepared by the planning commission or any other person or body. A proposed amendment or repeal prepared by a person or body other than the planning commission shall be submitted in writing along with any supporting documents to the planning commission. The commission may then proceed under this subchapter as if the amendment or repeal had been prepared by the commission. However, if the proposed amendment or repeal of a bylaw submitted to the planning commission is supported by a petition signed by not less than five (5) per cent of the qualified voters of the City of Burlington, Vermont, the planning commission shall proceed promptly under this subchapter as if the proposed amendment or repeal had been prepared by the commission. The commission may submit its opinion and recommendations with respect thereto to the legislative body at any hearing or review of the proposed amendment or repeal. (Ord. of 10-15-73)

(B) The planning commission shall hold at least one public hearing after public notice on any proposed by-law or amendment or repeal thereof. The commission shall thereafter make such amendments or revisions of such proposed plan, amendment or repeal as the commission considers appropriate, and shall thereafter submit the proposed by-law, amendment or repeal to the legislative body of Burlington. Simultaneously with such submission the planning commission shall file with the city clerk a copy of the proposed by-law, amendment or repeal for public review.

(C) The remaining procedure for adoption of amendments to the by-laws shall be in accordance with Section 4404 of the Vermont Planning and Development Act.

**Sec. 87. Greater restrictions and severability.**

Where this ordinance imposes a greater restriction upon the use, height and the area of structures or the use of premises than is imposed by other ordinances, the provisions of this ordinance shall control. The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof.

**Sec. 88. Effective date.**

The effective date of these zoning regulations is April 26, 1973.