

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-14-08 – Urban Agriculture

As approved by the Planning Commission on March 11, 2014

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: Refine definitions and provide further allowances for urban agriculture activities to take place on private properties as per the Urban Agriculture Task Force report prepared on September 2012.

Sec. 3.1.2 Zoning Permit Required

Except for that development which is exempt from a permit requirement under Sec. 3.1.2(c) below, no development may be commenced within the city without a zoning permit issued by the administrative officer including but not limited to the following types of exterior and interior work:

(a) Exterior Work:

As written.

(b) Interior work:

As written.

(c) Exemptions:

The following shall be exempt from the requirements of this Ordinance and shall not be required to obtain a zoning permit:

1. Exterior modifications to a single family dwelling in a non-design review portion of the RL zoning district lawfully in existence prior to the adoption of this ordinance on a conforming lot, and not on or eligible for listing on the State or National Register of Historic Places. Such an exemption shall not be applicable to any of the following changes, which do require a zoning permit:
 - A. Increased lot coverage;
 - B. Increased habitable living space;
 - C. Changes in setbacks or building footprints; and
 - D. Construction of additional stories to an existing structure.
 - E. Improvements in a Special Flood Hazard Area.
2. The removal of trees from any lot containing a single family home or duplex which consists of no more than three-quarters (3/4) of one acre.

From Article 13 – Definitions:

Development: Any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; including but not limited to the division of land into parcels; any change in the intensity or use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial or industrial use from a less intensive use; any human activity that alters a shore, beach, river, stream, lake, pond, canal, marsh, woodlands, wetland, rare or endangered species habitat, aquifer or other resource area, including shoreland construction or other activity.

3. Individual tree removal projects that are included under an approved and valid “tree maintenance plan”.
4. The maintenance or repair of any exterior architectural feature, or its replacement in-kind, which does not involve a change in the location, design, material, or the outward appearance of the feature;
5. Temporary ramps to serve the handicapped or disabled, for a period of not more than 90 days.
6. Public utility power generating plants and transmission facilities regulated under 30 V.S.A. §248.
7. Accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 VSA §1021(f) and 1259(f) and 6 VSA §4810. Prior to the construction of farm structures the farmer must notify the Administrative Officer in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.
8. The temporary stabilization and securing of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a written order of the same issued under the authority of the city building inspector.
9. Where temporary stabilization is not reasonably available the emergency demolition of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a order of the same issued under the written authority of the city building inspector and with the written concurrence of the city engineer. This exemption does not extend beyond the required demolition, clearing of debris, securing or filling cellar holes, and related erosion control and stormwater management.
- ~~9.10.~~ All structures of 24 square feet or less, as long as they are located in compliance with applicable setbacks. This exemption is limited to 1 such structure, or multiple structures in aggregate up to 24 square feet, per property. This exemption does not apply to properties located within the Special Flood Hazard Area.
- ~~10.11.~~ Children’s play structures.
- ~~11.12.~~ Temporary Structures or Uses as per Sec. 5.1.2 (f).
- ~~12.13.~~ Urban agricultural exemptions:
 - A. Cold frames of 6 feet in height or less. This exemption does not apply to properties located within the Special Flood Hazard Area.
 - B. Up to 2 seasonal hoop houses, each 200 square feet or less, without foundations and as long as they are located in compliance with applicable setbacks. This exemption applies only to seasonal hoop

houses that are sheathed in translucent plastic or similar material for a maximum of 9 months per year and are maintained in an intact condition. The frame may remain in place year-round. This exemption does not apply to properties located in the Special Flood Hazard Area.

- C. Urban agricultural uses or structures located on building rooftops.
- D. Sale of food produced onsite or at an individual's community garden plot not to exceed \$1,000 per year. Food may be processed within the individual's residential kitchen.

(d) Determination of Non-Applicability:

As written.

Sec. 4.4.5 Residential Districts

(a) **Purpose:**

As written.

(b) **Dimensional Standards and Density**

As written.

(c) **Permitted and Conditional Uses:**

As written.

(d) **District Specific Regulations:**

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

1. Setbacks

As written.

2. Height

As written.

3. Lot Coverage

As written.

4. Accessory Residential Structures and Uses

An accessory structure and/or use as provided under Sec. 5.1.12 and 5.1.2 customarily incidental and subordinate to a principal residential use, including but not limited to private garages, carriage houses, barns, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and detached fireplaces may be permitted as follows:

- A. Accessory Structures shall meet the dimensional requirement set forth in the district in which they are located pursuant to Sec. 4.4.5(b) of this Article and related requirements in Art 5, Part 2;
- B. Any accessory structure that is fifty percent (50%) or greater of the ground floor area of the principle structure shall be subject to the site plan and design review provisions of Art. 3, Part 4 and the applicable standards of Art 6;
- C. Private garages shall be limited to as many stalls as there are bedrooms in the dwelling to which it is accessory, provided that the ground floor area is less than fifty percent (50%) of the ground floor area of the principle structure; and,
- D. The outdoor overnight storage of commercial vehicles not otherwise associated with an approved home occupation or made available for the exclusive use of the residential occupants, or the outdoor storage of more than one unregistered vehicle, shall be prohibited. Any and all vehicles shall be

stored in an approved parking space; and,

- ~~E. Accessory structures such as doghouses, doll houses, or tree houses less than or equal in the aggregate to a total of sixteen (16) square feet in area shall not require a zoning permit.~~

5. Residential Density

As written.

6. Uses

As written.

7. Residential Development Bonuses.

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

A. Inclusionary Housing Requirement. *As written*

B. Senior Housing Bonus. *As written*

C. Adaptive Reuse Bonus. *As written*

D. Residential Conversion Bonus. *As written*

E. Urban Agriculture Bonus.

Development in excess of the limits set forth in Tables 4.4.5-2 and 4.4.5-3 may be permitted by the DRB subject to conditional use review for the provision of new community garden(s), subject to the following:

- (i) The garden shall be made available to residents of the property. Where appropriate, the garden may be accessible to members of the surrounding area managed as a neighborhood garden by the Burlington Area Community Gardens program operated through the Department of Parks and Recreation.
- (ii) At least one community garden plot of at least 4' X 8' (kitchen garden plot size), with additional space afforded for walkways between garden plots, for 2/3 of the dwelling units constructed shall be provided; and,

(iii) Lot coverage and residential density shall not exceed:

Table 4.4.5-78: Urban Agriculture Bonus

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

F. Limitations on Residential Development Bonuses. *As written*

Sec. 4.4.2 Neighborhood Mixed Use Districts

- (a) **Purpose:**
As written
- (b) **Dimensional Standards and Density:**
As written
- (c) **Permitted and Conditional Uses:**
As written
- (d) **District Specific Regulations:**
As written.

3. Development Bonuses/Additional Allowances

The following exceptions to maximum allowable base building height and FAR in Table 4.4.2-1 above may be approved in any combination subject to the maximum limits set forth in Table 4.4.2-2 below at the discretion of the DRB. The additional FAR allowed shall correspond to the proportion of the additional building height granted to the maximum available.

A. Inclusionary Housing:

As written

B. Senior Housing:

As written

C. Urban Agriculture:

A maximum of an additional 10-feet of building height, and corresponding FAR, may be permitted at the discretion of the DRB for the provision of community garden space per the following criteria:

- (i) The garden shall be made available to residents of the property. Where appropriate, the garden may be accessible to members of the surrounding area managed as a neighborhood garden by the Burlington Area Community Gardens program operated through the Department of Parks and Recreation and
- (ii) At least one community garden plot of at least 4' X 8' (kitchen garden plot size), with additional space afforded for walkways between garden plots, for 2/3 of the dwelling units constructed shall be provided.

D. Maximum Bonus:

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

| | Maximum FAR | Maximum Height |
|----------------------|--------------------|-----------------------|
| NAC | 3.0 FAR | 45 feet |
| NAC-Riverside | 3.0 FAR | 45 feet |

Sec. 5.1.1 Uses

Except as otherwise provided by law or by this ordinance, no land or structure in any district shall be used or occupied except as specified under the provisions of this ordinance and the requirements of the zoning district in which such land or structure is located as specified in Article 4 and in Appendix A-Use Table.

(a) through (f) as written

(g) Accessory Uses:

1. Accessory Dwelling Units. Accessory dwelling units as mandated by 24 VSA 4412 (1)(E) shall be regulated as set forth in Sec. 5.4.5 hereof.
2. Accessory Residential Uses: Except as specified in 1 above and subject to the restrictions of 3 below, accessory residential uses shall also be governed by Sec. 4.4.5(d)4.
3. Other Accessory Uses. Except as specified in 1 above, any use may be authorized as an accessory use ~~by the DRB subject to conditional use review as provided in Article 3, Part 5~~ provided each of the following standards are present:
 - A. The accessory use is subordinate and customarily incidental to the principal use;
 - B. The accessory use is reasonably necessary to the conduct of the principal use;
 - C. Except for home occupations as regulated by Sec. 5.4.6, no accessory use, or combination of accessory uses, shall occupy more than twenty-five (25%) per cent of the total gross area dedicated to the principal use;
 - D. The accessory use shall not include the outdoor storage of more than one unregistered vehicle;
 - E. The accessory use does not result in, or increase the extent of, any pre-existing non-conformity or violation of the provisions of this ordinance; and,
 - F. The combination of uses on any given property shall meet all of the other provisions of this ordinance.

(h) Temporary Uses:

The administrative officer may approve a temporary use that is incidental and accessory to a principal use subject to the following:

| <u>No Review or Permit Required</u> | <u>Site Plan Review: Zoning Permit & COA</u> | <u>Review as per Underlying Zoning</u> |
|---|--|--|
| <u>A use in place for up to 10 consecutive days or 30 days within any 12-month period at the same location.</u> | <u>A use in place from 11-31 consecutive days or 31-60 days within any 12 month period at the same location.</u> | <u>A use in place for over 31 consecutive days or more within any 12 month period at the same location, is no longer considered a temporary use.</u> |

(ih) Temporary Uses Incidental to Development

The administrative officer may issue a zoning permit for a temporary use that is incidental and accessory to the development or redevelopment of a building and/or site, and where reasonably required for such development activity. Such permits for temporary uses shall not be issued for a period in excess of ninety (90) days in any consecutive twelve (12) month period unless such uses would otherwise conform to the applicable provisions of this ordinance.

Sec. 5.1.2 Structures

Except as otherwise provided by law or by this ordinance, no structure in any district shall be created, removed or altered except in conformance with the provisions of this Article and the requirements of the district in which such land or structure is located.

(a) through (e) *as written*

(f) Temporary Structures:

The administrative officer ~~may issue a permit for~~ approve a temporary structure that is incidental and accessory to a principal use subject to the following:

| No Review or Permit Required | Site Plan Review: Zoning Permit & COA | Review as per Underlying Zoning |
|--|---|---|
| A structure placed up to 10 consecutive days or 30 days within any 12-month period at the same location. | A structure placed from 11-31 consecutive days or 31-60 days within any 12 month period at the same location. | A structure placed over 31 consecutive days or more within any 12 month period at the same location, is no longer considered a temporary structure. |
| Tents used for recreational non-commercial camping purposes. | | |

Sec. 13.1.1 Miscellaneous.

As written.

Sec. 13.1.2 Definitions.

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

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

Agriculture (See ~~Farm~~ also Urban Agriculture): For the purposes of this ordinance, agriculture shall mean accepted agricultural practices, including the construction of farm structures, as defined by the Vermont Secretary of Agriculture, Food, and Markets under 10 V.S.A. Sec. 1021 (f) and 1259 (f) and exempted from zoning review under V.S.A. 24 Sec. 4413 (d):

- ~~(a) the cultivation or other use of land for growing food, fiber, trees, or horticultural and orchard crops; or~~
- ~~(b) the raising, feeding or management of livestock, poultry, equines, fish or bees; or~~
- ~~(c) the operation of greenhouses; or~~
- ~~(d) the production of maple syrup; or~~
- ~~(e) the on-site storage, preparation and sale of agricultural products principally produced onsite; or~~
- ~~(f) the on-site production of fuel or power from agricultural products or wastes produced onsite.~~

Agricultural structure (see Farm structure)

Animal

- (a) **Boarding:** An establishment involving any structure, land, or combination thereof used, designed, or arranged for the keeping of five (5) or more domestic ~~animals~~ pets more than three (3) months of age for profit or exchange, inclusive of equines but exclusive of other livestock used for agricultural purposes in areas approved for agricultural uses. The keeping of four (4) or less such animals more than three (3) months of age for personal enjoyment shall not be considered “boarding” for the purposes of this ordinance.
- (b) ~~**Domestic Animal:** Any animal, including, but not limited to mammals, reptiles, birds, livestock and domestic pets, that have been bred or raised to live in or about the habitation of humans, including, but not limited to mammals, reptiles and birds, and is dependent on people for food and shelter.~~
- (c) **Domestic Pet:** Any canine, feline, or European ferret (*Mustela putorius furo*) and such other domestic animals as the Secretary of the Agency of Agriculture, Food and Markets shall establish by rule and that has been bred or raised to live in or about the habitation of humans, and is dependent on people for food and shelter.
- (d) ~~**Livestock:** Cattle, sheep, goats, equines (including, but not limited to, horses, ponies, mules, asses, and zebra.), fallow deer, red deer, American bison, swine, water buffalo, fowl and poultry, pheasant, Chukar partridge, Coturnix quail, camelids (including, but not limited to, guanacos, vicunas, camels, alpacas and llamas), ratites (including, but not limited to ostriches, rheas, and emus), and cultured fish propagated by commercial fish farms Animals used for food production (including eggs, milk, honey, and meat) or fiber.~~
- (e) **Grooming:** Any establishment where domestic pets are bathed, clipped, or combed for the purpose of enhancing their aesthetic value or health.
- (f) **Hospitals:** An establishment for the care and treatment of the diseases and injuries of animals and where animals may be boarded during their convalescence. (See Veterinarian Office)
- (g) **Kennel:** Accessory building or enclosure for the keeping of domestic pets.
- (h) **Barn or coop:** Accessory building or enclosure for the keeping of livestock.
- (i) **Shelter:** A facility used to house or contain stray, homeless, abandoned, or unwanted domestic ~~animals~~ pets or livestock for the purpose of providing temporary kenneling and finding permanent adoptive homes and that is owned, operated, or maintained by a public body, an established humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.
- (j) **Store, Pet:** A retail sales establishment primarily involved in the sale of domestic pets, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and ~~farm animals such as horses, goats, sheep, and poultry~~ livestock.

Cold Frame: A temporary structure placed overtop of a garden bed typically made of, but not limited to, glass, plastic, fabric or other material used to extend growing season or protect seedlings and plants from the cold or heat.

Community Garden: A private, not for profit, or public common area used ~~for~~ gardening by a group of households by a group of households to grow and harvest food crops or non-food crops (e.g. flowers) for personal or group consumption, for donation, or for sale. Community gardens may be principal or accessory uses and may be located on a roof or within a structure.

Farm(ing): The use of land and/or structures for agricultural purposes. (See Agriculture and Urban Agriculture)

Green House: A permanent structure typically made of, but not limited to, glass, plastic, or fiberglass in which plants are cultivated.

Hoop House: A temporary structure typically made of, but not limited to, piping or other material covered with translucent plastic, constructed in “half-round” or “hoop” shape, for the purposes of growing plants.

Open Air Market: A building or site used for selling or offering for sale at retail of locally-grown vegetables or produce, occurring in a pre-designated area, where there ~~is~~ may be a collection of individual vendors or single vendor who have/has raised the vegetables or produce or have/has taken the same on consignment for retail sale. Also includes the incidental sale at retail of artisan-produced handicrafts, artwork, and baked goods.

Urban Agriculture: The production of food in a city at a household, community, or commercial scale; it can involve a range of activities including the cultivation of plants, keeping animals, and aquaculture. For the purposes of this ordinance, the term “urban agriculture” pertains to all agricultural activities not included in “agriculture” as defined in this ordinance.

Appendix A-Use Table – All Zoning Districts

| | | | | | | | | | | | | | | | | | | |
|------------------|---|---|---------------|---|---------------|----------------|----------------|----------------|---|---|------------------------|----------------|---|----------------|---|---|---|----------------|
| Open Air Markets | N | Y | NY | N | NY | NCU | NCU | NCU | Y | Y | (See Sec.4.4.1(d)2) | CUY | Y | CUY | Y | Y | Y | CUY |
|------------------|---|---|---------------|---|---------------|----------------|----------------|----------------|---|---|------------------------|----------------|---|----------------|---|---|---|----------------|