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**TO:** Planning Commission  
**FROM:** Scott Gustin, Principal Planner & Zoning Division Manager  
**DATE:** September 14 2021  
**RE:** Permitting Adjustments

**Overview & Background**

Grouped together in this amendment proposal are three changes that facilitate the zoning permit process. Each one has been identified through routine administration of the Comprehensive Development Ordinance, and each is based on applicant and staff experience with the permit process. The proposed changes are:

- Eliminate the zoning permit requirement for changes among permitted non-residential uses (only the use) where no standards apply;
- Allow basic zoning permits for single-family uses on lots in the non-design review district (removing 'conforming' from the text); and,
- Enable administrative review of flood hazard area zoning permits (unless otherwise trigger DRB review).

The Planning Commission Ordinance Committee discussed this amendment April 1, 2021 and unanimously recommended forwarding the amendment to the full Planning Commission for consideration.

**Proposed Amendment**

**Amendment Type**

<b>Text Amendment</b>	<b>Map Amendment</b>	<b>Text &amp; Map Amendment</b>
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**Purpose Statement**

The intent of the proposed amendment is to facilitate permitting and to reduce unnecessary burden on applicants.

1. Eliminate the zoning permit requirement for changes among permitted non-residential uses (only the use) where no standards apply.

Presently, any change from one use to another use requires a zoning permit. Oftentimes, the only zoning standard that changes when going from one permitted non-residential use to another permitted non-residential use is the parking standard. With the recent elimination of minimum parking requirements, there have been a number of non-residential changes in use that have received zoning permits without any standards to meet. In such cases, arguably, there is no need to require a zoning permit. The proposed amendment defines a narrow exemption from the need for a zoning permit for changes in use between permitted non-residential uses.

2. Allow basic zoning permits for single-family uses on lots in the non-design review district (removing 'conforming' from the text).

The Residential – Low Density zone is not within the city's design review overlay. That basically means that the design review standards of Article 6 do not apply within this zone, and only the dimensional standards (height, setbacks, and lot coverage) of Article 4 apply. A "basic" zoning permit is required where development is proposed and requires only site plan review. There are multiple exceptions to this rule. Only detached single family homes are eligible for "basic" permit review. Anything other than a detached single family home in the RL zone is subject to Article 6 and "certificate of appropriateness" (COA) review. Even among detached single family homes, there are exceptions. An historic home is subject to COA review, and any home on a small lot (one less than 6,000 sf or with less than 60' of street frontage) is subject to COA review. COA review is much more extensive than "basic" permit review, it is typically more expensive, and it may include Board review. The proposed amendment removes the small lot trigger for COA review. As proposed, any detached single family home that is not historic and is in the RL zone would qualify for "basic" permit review rather than COA review.

3. Enable administrative review of flood hazard area zoning permits (unless otherwise trigger DRB review).

Within the Special Flood Hazard Area (SFHA), all development presently requires Development Review Board review and approval. This means substantially longer timeframes and greater expense for zoning permit review of things as simple as freestanding signs and tool sheds. The proposed amendment enables administrative zoning permit review of applications that otherwise qualify for administrative permit review. Other DRB review triggers such as development size, scope, and proposed use remain.

### **Proposed Amendments**

Deleted language is ~~crossed out~~ and new language is underlined in red.

[Begin text amendment]

## **ARTICLE 3: APPLICATIONS, PERMITS, AND PROJECT REVIEWS**

### **PART 1. GENERAL PROVISIONS AND ZONING PERMITS**

#### **Sec. 3.1.2 Zoning Permit Required**

##### **(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.
  3. Within any city park within an RCO zone or Civic district, regular tree maintenance and removal not otherwise associated with land clearing for new development or site improvements, and regular turf maintenance including re-grading and reseeding.
  4. Individual tree removal projects that are included under an approved and valid "tree maintenance plan".
  5. 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;
  6. Temporary ramps to serve the handicapped or disabled, for a period of not more than 90 days.
  7. Public utility power generating plants and transmission facilities regulated under 30 V.S.A. §248.
  8. 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.
  9. 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.
  10. 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.
  11. All structures of 24 square feet or less and no taller than 15 feet, 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.
  12. Children's play structures.
  13. Seasonal skating rinks
  14. Temporary Structures or Uses as per Sec. 5.1.2 (f).
  15. 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.
16. Family day care homes.
17. Per Act 45: Sec. 15c. 24 V.S.A. § 4413(g), notwithstanding any provision of law to the contrary, nothing in this ordinance shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.
18. A change in use from one permitted non-residential use to another permitted non-residential use, provided that no development is included, no minimum parking requirement applies, and impact fees are not applicable. This exemption does not apply to uses affected by Article 5, Part 4: Special Use Regulations.

## **ARTICLE 4: ZONING MAPS AND DISTRICTS**

### **PART 5: OVERLAY ZONING DISTRICT REGULATIONS**

#### **Sec. 4.5.4 Natural Resource Protection Overlay (NR) District**

**(a) – (e)** As written.

#### **(f) District Specific Regulations: Special Flood Hazard Area:**

##### **1. Additional Application Requirements**

The following information shall be submitted in addition to the applicable requirements of Article 3 for any development proposed within a Special Flood Hazard Area:

- 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 floor, including basement, of all new construction or substantial improvements of structures;
- C. Confirmation if such structures contain a basement; and
- D. The elevation, in relation to mean sea level, to which any structure has been flood proofed.
- E. A Vermont Agency of Natural Resources Project Review Sheet for the proposal should be filled out. The Project Review Sheet should identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the City permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the Administrative Officer and attached to the permit application before work can begin.

In addition, ~~the DRB shall require of~~ the applicant may be required to provide any of the following information deemed necessary for determining the suitability of the particular site for the proposed use:

- F. 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 and/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;

- G. 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;
- H. A profile showing the slope of the bottom of the channel or flow line of the stream; and
- I. Specifications for building construction and materials, flood proofing, mining, dredging, filling, grading, paving, excavation or drilling, channel improvement, storage of materials, water supply and sanitary facilities.

## 2. Permitted Uses in Floodway Areas

The following open land uses shall be permitted within the floodway areas to the extent that they are permitted or conditionally permitted in the underlying zoning district, 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:

- A. Agricultural uses, such as general farming, pasture, orchard, and grazing, outdoor plant nurseries, truck farming, and forestry;
- B. 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; and/or
- C. Accessory residential uses, such as lawns, gardens, and parking areas.

## 3. Permitted Uses in Special Flood Hazard Areas (including Floodway areas)

- 1. All those permitted open space uses as listed in Section 4.5.4.(f).2 above shall be permitted in the Special Flood Hazard Areas.
- 2. All other uses permitted in the underlying zoning district are permitted only upon review and approval by the DRB as per subpart 7 below.

## 4. Permitted Accessory Uses in Special Flood Hazard Areas (Including Floodway areas)

Uses customarily accessory and incidental to any of the permitted uses listed in underlying zoning district may be permitted, subject to the limitations therein.

## 5. Mandatory DEC Notification and 30-Day Review Period

- A. Prior to issuing a permit a copy of the application and supporting information shall be submitted by the administrative officer to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.
- B. Adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section shall be notified at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the VT National Flood Insurance Program Coordinator.
- C. No permit may be granted for new construction, substantial improvement, filling,

installation of a residential structure, or the development of land in any area designated as a floodplain by the Federal Emergency Management Agency (FEMA) prior to the expiration of a period of thirty (30) days following the submission of the application and a report to the Department of Environmental Conservation. The application and report shall describe the proposed use, the location requested and an evaluation of the effect of such proposed use on Burlington's municipal development plan and the regional plan, if any.

- D. The subsection shall not be applicable to public utility generating stations and transmission lines which shall require the issuance of a certificate of public good under 30 V.S.A. Sec. 248 prior to any land filling or construction.

#### 6. Evaluation

~~In reviewing~~ Review of the application, ~~the DRB shall consider~~ shall include the evaluation of the Department of Environmental Conservation ~~and shall determine that~~ approval shall be predicated on finding that the proposed use will conform to the development standards of subpart 7 below.

#### 7. Special Review Criteria

~~In reviewing each application, the DRB shall assure that the~~ The flood-carrying capacity within any portion of an altered or relocated watercourse shall be ~~is~~ maintained. Review ~~and shall consider:~~

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments;
- B. The danger that material may be swept on to other lands or down stream 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 municipal development plan;
- 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 flood-waters expected at the site; and,
- K. Conformance with all other applicable requirements of this ordinance.

#### 8. Approval Conditions

Upon consideration of those factors in subpart 7 above and the purposes of these regulations, ~~the DRB shall attach~~ the following conditions shall be attached to any permit ~~it chooses to grant~~ed.

8 A – F As written.

9-11 As written.

**ARTICLE 5: CITYWIDE GENERAL REGULATIONS**

**PART 2: DIMENSIONAL REQUIREMENTS**

**Sec. 5.2.1 Existing Small Lots**

Any small lot of record existing as of April 26, 1973 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 four thousand (4,000) square feet in area with a minimum width and depth dimension of forty (40) feet.

A permit for any such development shall require a certificate of appropriateness permit pursuant to the standards of Article 4 and, where applicable, pursuant to the design review provisions of Article 3 and the development standards of Article 6.

[End text amendment]

**Relationship to planBTV**

*This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).*

<b>Theme</b>	<b>Dynamic</b>	Distinctive	Inclusive	Connected
<b>Land Use</b>	Conserve	Sustain		<b>Grow</b>

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density. It reduces some unnecessary procedural and cost burdens in the permitting process while leaving standards as to land use and density intact.

Impact on Safe & Affordable Housing

The proposed amendment will reduce permitting costs for properties eligible for "basic" zoning permit review.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

**Process Overview**

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<b>Planning Commission Process</b>				
Draft Amendment prepared by: Staff	<b>Presentation to &amp; discussion by Commission</b> 9/14/21	<b>Approve for Public Hearing</b>	Public Hearing	Approved & forwarded to Council
				Continue discussion
<b>City Council Process</b>				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion	Ordinance Cmte recommend as modified	Second Read & Public Hearing	CCOC Recommends Approval & Adoption
				Rejected