

Department of Planning and Zoning

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TO: Jane Knodell, City Council President
Burlington City Councilors
Mayor Miro Weinberger

FROM: Scott Gustin

DATE: September 18, 2017

RE: Proposed ZA-17-17: Retaining Walls

Please see enclosed a proposed amendment to the Burlington Comprehensive Development Ordinance pertaining to retaining walls. The amendment was approved by the Planning Commission on August 8, 2017.

Retaining walls are not expressly addressed in the CDO. As a matter of practice, they have been governed as any other structure under zoning, except that they may project into yard setbacks per Sec. 5.2.5, *Setbacks*, (b) *Exceptions to Yard Setback Requirements*, 2, which reads: "Building and Site Features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, walls [emphasis added], and similar building and site features may project into a required yard setback."

Retaining wall height limits are currently tied to zoning district height limits (i.e. 35' in RL, 45' in ELM, etc). The retaining wall regulations of 8 municipalities were reviewed in preparation of this memo. Height limits specifically pertaining to retaining walls varied, but six of them included height limits of 8' tall or less. The other two were 30' (Wellesley, MA) and zoning district height limit (Montpelier, VT). Note that 4 of the municipalities exempted retaining walls of 4' tall or less from any permitting requirement.

Setback requirements varied widely, ranging from 0' to 35'. Some were simple setbacks (i.e. 10' from any property line) and others incorporated a sliding scale based on the size of the property. Some of the setbacks pertained to the distance between tiered retaining walls (i.e. the distance between two tiered walls must be at least equal to the height of the upper wall).

Height limits and setbacks associated with retaining walls should be located as a separate item under its present subsection 5.2.5 (b), rather than incorporated into item 2 as it is presently located. The Planning Commission found that a two-tiered approach was best. Within a side or rear yard setback, retaining walls are limited to 5' in height and a 2' setback. Taller or closer retaining walls may be allowed subject to review and approval by the Development Review Board in accordance with the design review provisions of Article 6. Such walls may have more significant impacts on neighboring properties. By sending them through the DRB process, there is more public notice and participation in the final decision to issue a permit or not.

Note that seawalls are specifically treated differently. They are always located within the lakeshore setback and, depending on the site, may well exceed the height limit specified for retaining walls within a setback.

Thank you for your consideration of this amendment, and please feel free to contact me with any questions.

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Burlington Planning Commission Report Municipal Bylaw Amendment ZA-17-17 Retaining Walls

This report is submitted in accordance with the provisions of 24 V.S.A. §4441(c).

Explanation of the proposed bylaw, amendment, or repeal and statement of purpose:

The purpose of this proposed amendment is to add requirements to the Comprehensive Development Ordinance regarding retaining walls which encroach into a required property setback, and design review standards for retaining walls, and provide definitions to distinguish between retaining walls and seawalls. This amendment permits retaining walls within a property's required setback as long as it is no taller than 5' and is setback at least 2' from the side or rear property line of an abutting property; if these conditions are not met, the approval of the retaining wall is subject to the Development Review Board. Further, the amendment clarifies that these provisions do not apply to seawalls.

Conformity with and furtherance of the goals and policies contained in the municipal development plan, including the availability of safe and affordable housing:

The proposed amendment has no impact the goals and policies contained within the Municipal Development plan as it relates to the availability of safe and affordable housing.

Compatibility with the proposed future land uses and densities of the municipal development plan:

The proposed amendment has no impact the goals and policies contained within the Municipal Development plan as it relates to future land uses and densities.

Implementation of specific proposals for planned community facilities:

The proposed amendment has no impact on the implementation of proposals for planned community facilities.

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TO: Planning Commission
FROM: Scott Gustin
DATE: June 13, 2017
RE: Retaining Walls

At their June 1, 2017 meeting, the Planning Commission Ordinance Committee reviewed a resurrected retaining walls zoning amendment. The amendment had been considered and recommended for approval by the Planning Commission in 2011. However, following referral to the City Council, no further action was taken, and the amendment expired. The amendment was initiated at the request of a Ward 6 City Councilor following resident complaints about the size and location of some recently installed retaining walls. The Ordinance Committee reviewed it again June 1st and forwarded it to the full Planning Commission with a recommendation for adoption.

Retaining walls are not expressly addressed in the CDO. As a matter of practice, they have been governed as any other structure under zoning, except that they may project into yard setbacks per Sec. 5.2.5, *Setbacks*, (b) *Exceptions to Yard Setback Requirements*, 2, which reads: “Building and Site Features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, walls [emphasis added], and similar building and site features may project into a required yard setback.”

Retaining wall height limits are currently tied to zoning district height limits (i.e. 35’ in RL, 45’ in ELM, etc). The retaining wall regulations of 8 municipalities were reviewed in preparation of this memo. Height limits specifically pertaining to retaining walls varied, but six of them included height limits of 8’ tall or less. The other two were 30’ (Wellesley, MA) and zoning district height limit (Montpelier, VT). Note that 4 of the municipalities exempted retaining walls of 4’ tall or less from any permitting requirement.

Setback requirements varied widely, ranging from 0’ to 35.’ Some were simple setbacks (i.e. 10’ from any property line) and others incorporated a sliding scale based on the size of the property. Some of the setbacks pertained to the distance between tiered retaining walls (i.e. the distance between two tiered walls must be at least equal to the height of the upper wall).

Height limits and setbacks associated with retaining walls should be located as a separate item under its present subsection 5.2.5 (b), rather than incorporated into item 2 as it is presently located. The Planning Commission found that a two-tiered approach was best. Within a side or rear yard setback, retaining walls are limited to 5’ in height and a 2’ setback. Taller or closer retaining walls may be allowed subject to review and approval by the Development Review Board in accordance with the design review provisions of Article 6. Such walls may have more significant impacts on neighboring properties. By sending them through the DRB process, there is more public notice and participation in the final decision to issue a permit or not.

Note that seawalls are specifically treated differently. They are always located within the lakeshore setback and, depending on the site, may well exceed the height limit specified for retaining walls within a setback.

New ordinance language is underlined in red, and existing ordinance language to be deleted is ~~stricken~~.

Sec. 5.2.5, Setbacks

(a) As written.

(b) Exceptions to Yard Setbacks Requirements

1. As written
2. Building and Site Features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, ~~walls~~, and similar building and site features may project into a required yard setback.
3. Retaining Walls. Retaining walls no greater than 5' tall may project into a required yard setback, but retaining walls should be set back a minimum of 2' from a side or rear property boundary. Retaining walls projecting into a required side or rear yard setback and exceed 5' tall and/or come within 2' of a side or rear property boundary shall be subject to Development Review Board review per Article 6. These provisions shall not apply to retaining walls acting as seawalls and constructed along, and parallel to, the banks of any river, stream, or brook or constructed in whole or in part below the 102' elevation along the Lake Champlain shoreline.

4-8 Renumber. Text as written.

Sec. 5.2.5, *Setbacks*, (b) *Exceptions to Yard Setback Requirements* already requires that building and site features, including retaining walls, that project into required setbacks be subject to the design review standards of Article 6. So as to keep all design review standards under Article 6, any new design review standards specifically aimed at retaining walls should be inserted into Sec. 6.2.2, *Review Standards*, (m) *Landscaping and Fences*. The subsection heading should be changed to “*Landscaping, Fences, and Retaining Walls*.”

Sec. 6.2.2 Review Standards

(a) – (l) As written.

(m) Landscaping and Fences and Retaining Walls

Retaining walls greater than 5 feet tall shall incorporate textured surfaces, terracing, and/or vegetation to avoid long monotonous unarticulated expanses and to minimize adverse visual impacts to neighboring properties. As with fences, retaining wall styles, materials, and dimensions shall be compatible with the context of the neighborhood and use of the property.

(n) – (p) As written.

ARTICLE 13: DEFINITIONS

Retaining wall: A wall or terraced combination of walls used at a grade change to hold soil and other earth material at a higher elevation. (Definition taken from the City of Wellesley, MA)

Seawall: A wall of stone, concrete, or other sturdy material, built along the banks or shoreline of any river, stream, brook, or lake to prevent erosion. (Definition modified from Dictionary of Geology)