



City of Burlington, VT  
149 Church Street, 3<sup>rd</sup> Floor  
Burlington, VT 05401

[www.burlingtonvt.gov/plan](http://www.burlingtonvt.gov/plan)

**TO:** Planning Commission  
**FROM:** David E White, FAICP, Dir. of Planning  
Scott Gustin, AICP, DPI Principal Planner & Zoning Division Manager  
**DATE:** May 28, 2021  
**RE:** ZA-21-08 Act 179 Changes to Ch. 117

---

### **Overview & Background**

The Vermont legislature passed Act 179 (S.237) in September 2020, and the bill was signed into law on October 12, 2020. Among other things, this act included multiple changes to state enabling law (24 VSA Ch 117) intended to promote greater access to affordable housing. Specifically relevant to Burlington are 3 changes that require amendment to the *Comprehensive Development Ordinance (CDO)* in order to conform with these changes in state statute. These are:

- amending the definition and some requirements for accessory dwelling units
- requiring that certain "small lots" must be unable to connect to municipal water and sewer in order for a municipality to prohibit development on it
- prohibiting a municipality from denying dwellings of four or fewer units in districts that allow multi-unit dwellings based solely on the character of the area when conducting a conditional use review

The Planning Commission discussed each of these issues on Feb 23, 2021, and supported recommended staff changes applicable to sections of the *CDO* relative to Accessory Dwelling Units and Existing Small Lots. The Commission referred the issue of conditional use review for small multi-unit buildings to its Ordinance Committee for additional discussion.

The Commission's Ordinance Committee discussed the provisions related to conditional use review of multi-unit buildings between two and four units on March 4, 2021. Staff presented 4 possible approaches, with an overall recommendation which centered on removing conditional use review for all residential uses across the city. The staff recommendation that conditional use is not appropriate for residential uses located within a residential district is based on a number of factors, including:

- residential uses permitted or prohibited within each district should be more consistent with the purpose statement of the zoning districts involved (i.e. allowing duplexes as a permitted use in RL)
- there is regulatory redundancy between Conditional Use Review and Major Impact Review for multi-unit housing; ultimately Major Impact Review is more appropriate for considering changes in residential intensity
- Appendix A currently creates confusion between regulating use vs. regulating building type (ie. "Attached Dwelling(s) – Mixed-Use" is a building type, not a use).

The Ordinance Committee unanimously recommended forwarding the staff recommendation to the full Planning Commission for consideration.

## **Proposed Amendment**

### **Amendment Type**

Text Amendment	Map Amendment	Text & Map Amendment
----------------	---------------	----------------------

### **Purpose Statement**

The proposed amendment addresses recent changes to the state enabling statute, ensuring that the CDO complies with new standards for ADUs, existing small lots, and small multi-unit dwellings.

### **Proposed Amendments**

The following amendments to the Burlington CDO are included in this proposal:

1. Amend Sec. 5.2.1 Existing Small Lots

This affords additional provisions for the development of existing Small Lots, when those lots can connect to municipal water and sewer infrastructure.

2. Amend Sec. 5.4.5 Accessory Dwelling Units and Sec. 13.1.2 Definitions

This removes bedroom and occupant limits from ADU standards and definitions, and increases the alternative maximum size for ADUs to 900 sq.ft.

3. Amend Appendix A- Use Table

Changes duplex from a Conditional to Permitted use within the RL and RL-W districts; deletes "Attached Dwellings-Mixed Use" and distinguishes between multi-family dwellings of 3-4 units and those with 5 or more units; and changes multi-family dwellings of 3-4 units from a Conditional to a Permitted use in the Institutional district.

[Begin text amendments]

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

#### **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 (4) feet.~~ the lot:

- can be served by municipal water and sewer service; and
- is at least four thousand (4,000) square feet in area; and
- has a minimum width and depth dimension of forty (40) feet or more.

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

#### **Sec. 5.4.5 Accessory Dwelling Units**

##### **(a) Accessory Units, General Standards/Permitted Uses:**

Where there is a principal structure on a lot which exists as an owner-occupied single family residence, one accessory dwelling unit, that is located within or appurtenant to such single family dwelling, shall be allowed as a permitted use if the provisions of this subsection are met. An accessory dwelling unit means a ~~an efficiency or one bedroom apartment~~ dwelling unit that is clearly subordinate to the principal dwelling, and has

facilities and provisions for independent living, including sleeping, food preparation, and sanitation. ~~No accessory unit shall be inhabited by more than 2 adult occupants.~~ An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation. Additionally, there must be compliance with all the following:

1. The property has sufficient wastewater capacity as certified by the Department of Public Works; and,
2. The unit does not consist of more than ~~800-900~~ sq.ft., or 30 percent (30%) of the Gross Floor Area of the principal home, whichever is greater; and,
3. Applicable setback and coverage requirements are met, except as provided for in Sec. 5.2.3 (b) 10; and,
4. A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit prior to the issuance of the certificate of occupancy for the unit. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.

**Sec. 13.1.2 Definitions.**

**Accessory Dwelling Unit or Apartment:** ~~An efficiency or one-bedroom apartment~~ **Δ dwelling unit** that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

**Appendix A – Use Table**

*See attached.*

**[End text amendments]**

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

Compatibility with Proposed Future Land Use & Density

The proposed amendments, while necessary to maintain compliance with state enabling statutes, are consistent with the land uses and densities proposed in *planBTV*. These changes do not significantly change the overall land uses and densities permitted in residential areas of the city, but is in line with the plan's future land use vision, which anticipates small and incremental changes to residential areas within the context of existing development patterns.

Impact on Safe & Affordable Housing

The proposed amendments have no impact on housing safety, and may serve to improve affordability by reducing the time, cost, and complexity for small multi-family residential development.

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, PC OC review 3/4/21	Presentation to & discussion by Commission 2/23/21, 4/27/21	Approved for Public Hearing 4/27/21	<b>Public Hearing</b> 6/22/21	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

## Appendix A-Use Table – All Zoning Districts – Planning Commission Public Hearing Draft 06/22/2021

USES	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use <sup>1</sup>	Neighborhood Mixed Use				Enterprise	
	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT <sup>16</sup>	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
RESIDENTIAL USES	UR	RCO - A <sup>1</sup>	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT <sup>16</sup>	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Single Detached Dwelling	N	N <sup>1</sup>	N	N	Y	Y	Y	N <sup>30</sup>	N	N <sup>30</sup>	N <sup>30</sup>	N <sup>30</sup>	N	N	N
Attached Dwellings - Duplex	N	N <sup>1</sup>	N	N	Y	<del>Y</del> <sup>2</sup>	Y	Y	N	Y <sup>3</sup>	N	Y	N	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N <sup>1</sup>	N	N	<del>CUY</del>	N	Y	Y	N	Y	Y	Y	Y	N	N
<del>Attached Dwelling(s) – Mixed-Use<sup>26</sup></del>	<del>N</del>	<del>N<sup>1</sup></del>	<del>N</del>	<del>N</del>	<del>CU</del>	<del>CU</del>	<del>CU</del>	<del>CU</del>	<del>N</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>N</del>	<del>N</del>

1. Residential uses are not permitted except only as an accessory use to an agricultural use.
2. Duplexes may be constructed on lots which meet the minimum lot size specified in Table 4.4.5-1.
3. Duplexes shall only be allowed as a result of a conversion of an existing single family home. New duplexes are prohibited.
4. No more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use. No more than 3 rooms permitted to be let in the RL district.
5. An existing fraternity, sorority, or other institutional use may be converted to dormitory use subject to conditional use approval by the DRB.
6. Must be owner-occupied.
7. Must be located on a major street.
8. Daycare centers and preschools in the RCO zones shall only be allowed when a small museum is the principal use.
9. Automobile sales not permitted other than as a separate principal use subject to obtaining a separate zoning permit.
10. Exterior storage and display not permitted.
11. All repairs must be contained within an enclosed structure.
12. No fuel pumps shall be allowed other than as a separate principal use subject to obtaining a separate zoning permit.
13. Permitted hours of operation 5:30 a.m. to 11:00 p.m.
14. Such uses not to exceed ten thousand (10,000) square feet per establishment.
15. Excludes storage of uncured hides, explosives, and oil and gas products.
16. See Sec.4.4.1(d) 2 for more explicit language regarding permitted and conditional uses in the Downtown Waterfront – Public Trust District.
17. Allowed only as an accessory use.
18. A permitted use in the Shelburne Rd Plaza and Ethan Allen Shopping Center.
19. [Reserved].
20. 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 are exempt from regulation under local zoning.
21. See Sec. 4.4.7 (c) for specific allowances and restrictions regarding uses in the Urban Reserve District.
22. See Sec. 4.4.5 (d) 6 for specific allowances and restrictions regarding Neighborhood Commercial Uses in Residential districts.
23. Allowed only on properties with frontage on Pine Street.
24. Such uses shall not exceed 4,000 square feet in size.
25. Dormitories are only allowed on properties contiguous to a school existing as of January 1, 2010.
26. The mixed uses shall be limited to those that are either permitted, conditional, or pre-existing nonconforming in the zoning district.
27. This use is permitted or conditionally permitted on lots south of Home Avenue only when one or more Industrial or Art Production use(s) exists on the lot, and when the combined gross floor area of all uses with this footnote does not exceed 49% of the Gross floor Area on the lot.
28. Grocery Stores up to but not to exceed 35,000 square feet may be permitted subject to conditional use approval by the DRB in that portion of the Enterprise-Light Manufacturing District between Flynn and Home Avenue.
29. Must be fully enclosed within a building.
30. New single detached dwellings are not permitted. However, a pre-existing single detached dwelling may be reverted to a single family use regardless of its present use if the building was originally designed and constructed for that purpose.
31. See special use standards of Sec. 5.4.13, Emergency Shelters.
32. Performing Arts Centers in the ELM zone shall be limited to properties with frontage on Pine Street up to 5,000 square feet in size, and to properties with frontage on Industrial Parkway up to 15,000 square feet in size. Performing Arts Centers may contain accessory space for preparation and serving food and beverages, including alcohol, provided this accessory space comprises less than 50% of the entire establishment.

Legend:	
Y	Permitted Use in this district
CU	Conditional Use in this district
N	Use not permitted in this district
Abbreviation	Zoning District
RCO – A	RCO - Agriculture
RCO – RG	RCO – Recreation/Greenspace
RCO – C	RCO - Conservation
I	Institutional
RL/W	Residential Low Density, Waterfront Residential Low Density
RM/W	Residential Medium Density, Waterfront Residential Medium Density
RH	Residential High Density
DW-PT	Downtown Waterfront-Public Trust
NMU	Neighborhood Mixed Use
NAC	Neighborhood Activity Center
NAC-RC	NAC – Riverside Corridor
NAC-CR	NAC – Cambrian Rise
E-AE	Enterprise – Agricultural Processing and Energy
E-LM	Enterprise – Light Manufacturing

<sup>1</sup> For permitted and conditional uses within the Downtown and Waterfront Form Districts, refer to Article 14.