

June 12, 2014

re: Building Code Conflicts in Burlington

In the context of considering the housing affordability crisis in our City, I have put together some examples of code conflicts that exist between our local ordinances and state/national building codes. It is worth noting that there are design and construction professionals in our area that don't even know that Burlington has its own requirements in addition to or stricter than the state or national codes, and so whether we modify or change them or not, it is imperative that we alert all permit applicants about these additional requirements through our zoning and building permit processes. Some of these issues are simple, like referencing the currently adopted codes and names of codes instead of out-of-print or no longer used ones; others are more complex and require more detailed analysis and modifications to our local ordinances if, as a community, we agree that these changes should be made.

My comments are in no particular order, except that I've followed the numbering sequence of Burlington's Code of Ordinances. My comments are directed to handicapped accessibility requirements, inner fire district, means of egress in multi-family buildings, elevator cab size requirements, construction of water services for new projects, inclusionary zoning and general concerns. The Arial font indicates text that is taken directly from the Burlington Code of Ordinances; **bold** text has been added to highlight areas of conflict or confusion. These comments are not intended to be all inclusive by any means. For instance, there are many examples where Burlington's Ordinances reference the "BOCA" code, which no longer exists and has been replaced by the IBC code, which is incorporated into the Vermont Fire and Building Safety Code (currently the 2012 edition, which includes and modifies the 2012 IBC, 2012 NFPA 1, and 2012 NFPA 101).

1. Handicapped accessibility: I have been a strong advocate for improving and providing handicapped accessibility in all of our projects, even when it has not been a code requirement. Some years ago the City, in the absence of other legislation mandating handicapped accessibility, adopted an ordinance requiring 10% accessibility. The current ordinance is confusing at best. Item (c) (1) requires compliance with State rules regarding "architectural barrier statutes" (there are no longer any such "statutes" - the State's rules are now called the 2012 Vermont Access Rules); Item (c) (3) says that 10% of the units must comply with the requirements of the section, which is based upon handicapped accessibility requirements in the state Rules, which don't require accessibility. The ordinance wording should be changed to make more sense. The 2012 Vermont Access Rules do not require any accessibility in multi-family dwellings; rather, all ground floor units and all units served by an elevator must meet the Fair Housing Act (FHA) design criteria, which essentially make all units usable by persons with physical disabilities, albeit not fully compliant with ADA Standards. Our experience has found that the cost to provide true ADA accessibility (extra grab bars, hearing/visually impaired improvements, additional shower valves and grab bars, removable under sink cabinets, more expensive range/stove to match HC counter height, etc.) adds \$4-5,000 per unit. The City's 10% requirement is twice that of the federal government. In a recent Burlington project of 86 units, we provided 9 out of 86 units as accessible or easily adaptable, at a project cost of about \$40,000; in the two years since the first batch of those units came "on-line", only one applicant indicated a need for a fully accessible unit. I know this is only one anecdote, but it's worth discussing whether 10% is the right number, both in the context of potential demand as well as affecting development costs. Here's the language on accessibility requirements in our Ordinances:

#### 8-2 Building codes adopted.

(a) *Generally.* There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, including permits and penalties, that certain building code currently adopted by the State of Vermont and known as the Vermont Fire and Building Safety Code. There is also adopted the **Architectural Barrier Compliance Rules (not called this anymore by the State) adopted by the State of Vermont.**

(b) *Conflicts.* In the event there is a conflict between the provisions of the codes adopted by reference in section 8-2(a) and the other provisions of this Code or ordinances of the city, **the other provisions of this Code or ordinances of the city shall prevail.**

All building and heating, ventilating, and mechanical work shall comply with the Vermont Fire and Building Safety Code as currently adopted by the State of Vermont except that the following exceptions or changes from that Code are made in order to address the unique needs of the City of Burlington:

- (1) The chapter on Interior Environment, of the 2003\* International Building Code shall apply within the city; and
- (2) Chapter 30 of the 2003\* International Building Code (elevators and conveyances pertaining to shaft construction) shall apply within the city.

\* 2003 version no longer used, 2012 is the latest adopted code in use

(c) *Architectural barriers:*

(1) **Compliance with State Statutes Required:** Plans received for the construction or alteration of a public building or the change in use of a nonpublic building to become a public building must comply with the architectural barrier statutes and rules currently adopted by the State of Vermont.

(2) **Specification Required:** A person shall not construct, alter or permit construction or alteration of a public building or allow the change in use of a nonpublic building to become a public building as defined in subparagraph (c)(1) of this section unless the specifications at the time work commences shall be equal to the **Vermont Access Board Rules for New Construction and Alterations to Existing Buildings (not called this anymore by the State)** as currently adopted by the State of Vermont.

(3) **Application to Residential Buildings:**

a. **New construction.** Ten (10) percent of all new residential units in a residential subdivision or a residential rental, condominium or cooperative development shall comply with the required accessibility standards in this paragraph (c). If a development contains four (4) to fourteen (14) units, one (1) unit must be accessible; if it contains fifteen (15) to twenty-four (24) units, two (2) units must be accessible. If the development contains three (3) or fewer units, it is exempt from this requirement.

In addition, all new residential construction containing rental apartments, condominiums or cooperatives shall have the principal outside entrance to common areas as well as common passageways and other common areas accessible as required by this paragraph (c). If such developments contain less than three (3) stories, they shall be exempt from any requirements related to installation of elevators.

b. **Altered residential construction:**

1. Except as set forth in subsection b.2. below, if existing residential rental, condominium or cooperative developments containing four (4) or more units are altered, ten (10) percent of the units must comply with the accessibility standards in this paragraph (c). If the building or development contains four (4) to fourteen (14) units, one (1) unit must comply; if the building or development contains fifteen (15) to twenty-four (24) units, two (2) units must comply. In addition, one (1) outside entrance to common areas and common areas and passageways in the building must be accessible as required by this paragraph; however, if the building or buildings are less than three (3) stories, the common areas and passageways above the first floor do not have to meet the standards of this paragraph.

2. The following are exempt from the provisions of this paragraph (c):

i. Alterations of a building or unit which do not exceed in cost forty (40) percent of the fair market value of the building or unit. For purposes of this section, "fair market value" means the appraisal value of the building or unit as determined for purposes of property taxation. If the appraisal value of the building or the unit has not been determined by the assessor, "fair market value" means the estimated fair market value as that term is described in [32 V.S.A. section 3481\(1\)](#);

ii. Alterations to an owner-occupied condominium, cooperative or single-family dwelling unit, or to the owner-occupied portion of a public building.

(4) **Barrier-free Accessways:** Passageways, corridors and other pedestrian walkways hereafter constructed or reconstructed on site to serve as a means of public access to, into or between public buildings and facilities, whether exterior or interior, shall also be made barrier-free in conformance with these standards.

(Rev. Ords. 1968, § 781; 1969 Cum. Supp., § 781; Ord. of 1-9-78; Ord. of 12-12-83; Ord. of 5-14-84; Ord. of 11-13-89; Ord. of 2-10-92, § 1; Ord. of 1-11-93; Ord. of 9-18-95; Ord. of 9-11-00; Ord. of 5-20-02; Ord. of 9-19-05, eff. 10-19-05; Ord. of 2-19-08(1), eff. 4-9-08)

**Cross reference**—Electrical code adopted, § [12-1](#); BOCA fire code adopted, § [13-1](#); gas codes adopted, §§ [15-1](#), [15-2](#); minimum standards for housing, § [18-70](#) et seq.

**State law reference**—Authority to adopt codes by reference, [24](#) V.S.A. § 3101(c).

2. The entire concept of an inner fire district, where building codes were stricter, has been eliminated from the national codes. The definition of an inner fire district, within which there aren't any different building code requirements, seems superfluous, although Chapter 12 Electricity (12-4) does not permit combustible wiring in this district except under limited situations (most new buildings of any consequence being built in this area would not be allowed combustible wiring under the National Electric Code). Ordinance 13-2, which limits locations for rubbish, does not seem to be enforced within this area. Should it be enforced, or eliminated? Here's the language on the Inner Fire District in our Ordinances:

#### **8-9 Inner fire district defined.**

The inner fire district shall consist of that portion of the city lying within that area bounded southerly by the northerly line of King Street, westerly by the easterly line of Pine Street and said easterly line extended northerly to intersect with the northerly boundary herein described, northerly by the southerly line of Grant Street, and said southerly line extended westerly to intersect with the easterly line of Pine Street extended as aforesaid, and easterly by the westerly lines of North and South Union Streets.

(Rev. Ords. 1962, § 761; 1969 Cum. Supp., § 761)

**Cross reference**—Placing rubbish and other wastes within inner fire district prohibited, § [13-2](#).

#### **13-2 Placing rubbish and other waste within inner fire district prohibited.**

No person shall place or cause to be placed within twenty (20) feet of any building in the inner fire district, as defined in section [8-9](#), any rubbish, paper, shavings, waste, cartons or boxes, except in a container approved by the chief engineer of the fire department.

(Rev. Ords. 1962, § 2151)

**Cross reference**—Inner fire district defined, § [8-9](#); restrictions on construction within inner fire district, § [8-10](#); garbage and refuse generally, § [14-1](#) et seq.

3. Many years ago, in an effort to make the buildings that had been converted (sometimes without any permits) to multi-family usage safer, the City adopted Section 18-95. This led to the proliferation of many of the pressure-treated wood exterior stairs that we see throughout the City, and absent of any other beneficial code criteria, has no doubt made those buildings safer; however, the state and national codes very clearly permit one means of egress for sprinklered buildings not more than 4 stories in height when compliant with several other criteria such as distance from the apartment to the stair, etc. There are at least 5 buildings in Burlington built within the last 10 years that comply with the state and national codes but may not comply with this ordinance. This ordinance should be changed to include language such as "unless otherwise permitted by the Vermont Fire and Building Safety Code". This will reduce unnecessary bureaucracy in meeting with City officials and applying for a variance from the Housing Board of Review, which involved a 6 month process several years ago on one project. Here's the language on means of egress requirements in our Ordinances:

#### **18-95 Means of egress.**

Each first and second floor dwelling unit shall have one safe, continuous and unobstructed means of egress from the interior of the unit to the exterior at a street or to a public open space or area at grade. **Dwelling units on the third floor and above shall have at least two (2) safe, continuous and unobstructed means of egress from the interior of the unit to the exterior at a street or to a public open area at grade.** At a minimum, standards for the maintenance of a required means of egress shall be governed by the following:

- (a) All doors in the required means of egress shall be readily openable from the inner side without the use of keys. Exits from dwelling units shall not lead through other such units or through toilet rooms or bathrooms.

(b) Ladders or any other exit method which does not comply with the requirements of the building code as adopted by the city in section 8-2 of this Code are not an acceptable means of egress and shall be removed or augmented by an acceptable means of egress.

(c) All required fire escapes shall be structurally sound and maintained safe and useable and free of snow and ice.

(d) All required exit signs shall be maintained illuminated and visible.

(Ord. of 8-4-86; Ord. of 11-8-93)

4. The cities of Burlington and South Burlington, to my knowledge, are the only municipalities in the State that require "hospital-sized" elevators, which are about 40% larger than the standard sized elevators otherwise required by state and national codes, in all new construction. There's no question that these larger elevators are better suited to accommodate first responders with stretchers, are easier for moving furniture in and out, etc., but this requirement comes with a cost that is not insubstantial. The elevator itself costs about \$5000 more than a standard sized cab, the shaft is easily (depending on height) another \$2500, the electrical service will cost more to power a larger motor, etc., so it's not unusual for this requirement to add \$10,000 to construction cost, not to mention the additional costs of the higher annual service contracts for the life of the elevator. Here's the language on elevator requirements in our Ordinances:

#### **13-61 Elevators.**

The following standards shall be met on all elevators installed or permitted after the effective date of the ordinance from which this section is derived:

(1) Dimension. All new elevator installations shall comply with the applicable elevator code adopted by the State of Vermont. Notwithstanding the applicable code adopted by the state, elevators shall have minimum interior finished dimensions of **eight (8) feet by four (4) feet and have an unrestricted door opening of not less than four (4) feet.**

(2) In existing elevator banks, the stretcher compliant elevator(s) shall be marked by a three-inch retro-reflective star of life on the latch side of the elevator lobby door frame.

(3) Elevator standards keys. All new and existing elevator firefighter access/override keys shall be to the state standard elevator bypass key. Existing elevators shall be converted to this standard within one (1) year of the effective date of the ordinance.

(Ord. of 10-26-09)

5. Water service installation costs: The construction of a new water service from the street to the building must be constructed by the Water Department, unless authorized by the public works director or his/her designee, regardless of whether a private contractor has quoted a lesser cost. As a City taxpayer, I understand the department's desire to keep its crews busy and generate income for the City; however, being at the mercy of the City's schedule, having to add another item to coordinate in the site construction, and almost invariably at higher cost, adds extra financial burden to a project, oftentimes many thousands of dollars. Here's the language on water service installation requirements in our Ordinances:

#### **31-16 Services to be installed by water department.**

All services, except fire service, from the street line to the building served shall be installed by the water department unless authorized by the public works director or his/her designee. If such authorization is given, a public works inspector must be present at the cost of the owner.

(Rev. Ords. 1962, § 6006; Ord. of 5-11-70; Ord. of 5-25-70; Ord. of 12-8-70; Ord. of 10-22-90)

6. Inclusionary zoning was adopted many years ago as a laudable and commendable effort to increase the amount of affordable housing in the City, by requiring all multi-family dwelling projects over five (5) units to provide housing to households that earn less than certain income guidelines. To be sure, additional incentives (more density, sometimes additional height, etc.) are also included to reduce the financial burden on builders. My limited understanding of the financial implications of this is as follows: appraisals drive the amount of money a bank will

lend; appraisals estimate worth based upon income generated; if income is reduced by the rental limits of the inclusionary requirements, then the borrowing capacity is reduced, even though the cost to build the inclusionary units is the same as the market rate units. The resulting difference between the actual cost of construction and the borrowing capacity to build that construction must be borne from somewhere; oftentimes, with publicly supported construction, this gap is supported by grants or other sources, but with privately financed projects, the gap must be closed in some other way. I'm not proposing elimination of inclusionary zoning, but I do think it's very important to understand the implications of the laws we pass, and to invite others, including the financial community, into the conversation to understand how to best achieve a higher percentage of more affordable housing, because in many ways, housing affordability and availability are the cruxes of the problem we face.

7. Shouldn't there be a process in the City by which adoption of stricter applications of the building codes should have to undergo? There's no question that Burlington may have unique situations or characteristics that sh/could lead to stricter rules than the minimum ones adopted by the State, and I'm sure our officials, when adopting such rules, have only the best interests of our citizens in mind. However, when additional rules are being contemplated, it seems only prudent to me that the public, and more directly, the design professionals, contractors and owners most directly affected, should have ample opportunities for input, and that whenever changes are made, they should be codified, duly adopted and published so that those most affected are made aware of them.

8. Finally, does it not make sense to appoint a Task Force that would include a city attorney, city officials (inspectors, department heads, etc.), private sector affected parties (developers, builders, architects, engineers, etc.), and the public-at-large, to review our construction related Code of Ordinances and make recommendations to update, revise, eliminate or do whatever's necessary to truly reflect what we want or need them to be as we move forward to address housing affordability and availability?

I have offered these examples of conflicts and redundancies in our ordinances to initiate a conversation about how some of what we legislate and require has implications on the cost of building in our City. Burlington is seen by some as a difficult place in which to do business, and while this is certainly anecdotally true, it is not generally true, in my opinion; however, whenever we can simplify our requirements, reduce redundancy, or create opportunity, each one of those examples will help in our quest to improve and increase our housing stock and its affordability, while at the same time chipping away at the thinking that "it's just too hard to work in Burlington".

Sincerely,

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