

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
www.burlingtonvt.gov/pz
Phone: (802) 865-7144

Andy Montroll, Chair
Bruce Baker, Vice Chair
Yves Bradley
Alex Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

PUBLIC HEARING NOTICE

Burlington Comprehensive Development Ordinance Amendment

ZA-21-07: Height Measurements, Dormers & Eaves

ZA-21-08: Act 179 Changes to Ch. 117

ZA-21-09: Updates and Corrections to Article 14

Pursuant to 24 V.S.A. §4441 and §4444, notice is hereby given of a public hearing by the Burlington Planning Commission to hear comments on the following proposed amendments to the City of Burlington's *Comprehensive Development Ordinance* (CDO). Per Act 92, Secs. 5 and 6, the public hearing will take place during the Planning Commission meeting on **Tuesday, June 22, 2021 beginning at Time Certain 6:45pm. You may access the hearing/meeting as follows:**

To join from a Computer, please click this URL to join, and enter the Webinar ID if prompted:

<https://us02web.zoom.us/j/87383170809>

To join by phone, dial this number and enter the Webinar ID when prompted:

Number: +1 312 626 6799 **Webinar ID:** 873 8317 0809

Pursuant to the requirements of 24 V.S.A. §4444(b):

Statement of purpose:

The purpose of the proposed amendments are as follows:

- **ZA-21-07:** To clarify building height measurements, when and how dormers affect building height, and defines dormers and eaves.
- **ZA-21-08:** To incorporate recent changes to state enabling statute regarding ADU's, existing small lots, and small multi-unit dwellings.
- **ZA-21-09:** To make a range of corrections and updates to Article 14 based on its application.

Geographic areas affected:

These amendments apply to the following areas of the city:

- **ZA-21-07:** All areas and zoning districts within the city.
- **ZA-21-08:** All areas and zoning districts within the city.
- **ZA-21-09:** Form Districts 5, 6, and Civic located in the downtown area of the city.

List of section headings affected:

The proposed amendments modify the following sections of the *Burlington Comprehensive Development Ordinance*:

- **ZA-21-07:** Modifies Sec. 5.2.6 (a) 1.; adds Sec. 5.2.6(a) 2.D and Sec. 5.2.6 (b); Modifies Sec. 6.3.2. (a) 2; and Modifies Article 13: Definitions
- **ZA-21-08:** Modifies Sec. 5.2.1; Modifies Sec. 5.4.5; Modifies Sec.13.1.2; and Modifies Appendix A- Use Table
- **ZA-21-09:** Modifies Sec. 14.1.3; Sec 14.3.4-C; Sec.14.3.4-E; Sec.14.3.4-F; Sec.14.3.4-G; Sec 14.3.5-C; Sec.14.3.5-E; Sec.14.3.5-F; Sec.14.3.5-G; Creates Sec. 14.3.6-I Water Dependent; Modifies Sec.

ZA-21-07, 21-08, 21-09

14.4.13; Sec. 14.5.15; Sec. 14.6.4; Sec. 14.6.7; Sec. 14.6.8; Sec. 14.7.1; Sec. 14.7.2; Sec. 14.7.3; and Sec. 14.8; and Modifies Article 14- Map 3 Shopfront Required

The full text of the *Burlington Comprehensive Development Ordinance* is available online at www.burlingtonvt.gov/DPI/CDO. The proposed amendment can be reviewed in hard copy posted on the first floor of City Hall, 149 Church Street, Burlington or online at <https://www.burlingtonvt.gov/DPI/CDO/Amendments>

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Burlington Planning Commission

Tuesday, June 22, 2021, 6:30 P.M.

Remote Meeting via Zoom

In-person option available at:

Bushor Conference Room (Room 102), 1st Floor of City Hall, 149 Church St.

To Join the Zoom Meeting on a Computer

Link: <https://us02web.zoom.us/j/87883733804>

To Join the Zoom Meeting on a Phone

Number: +1 312 626 6799 Meeting ID: 878 8373 3804

AGENDA

I. Agenda

II. Chair's Report

III. Director's Report

IV. Public Forum

Public forum for items not on the agenda. *See the Agenda Packet for details on how to participate in the public forum for this meeting.*

V. Public Hearing: Proposed CDO Amendment ZA-21-07 Heights, Dormers & Eaves (Time Certain 6:45pm)

The Commission will hold a public hearing on a proposed amendment to the Burlington *Comprehensive Development Ordinance* regarding height measurements, dormers and eaves. Information related to this item is in the agenda packet on page 6.

Staff Recommendation: Approve Municipal Bylaw Amendment report and refer to Council with recommendation.

VI. Public Hearing: Proposed CDO Amendment ZA-21-08 Act 179 Changes

The Commission will hold a public hearing on a proposed amendment to the Burlington *Comprehensive Development Ordinance* resulting from Act 179 of the 2020 VT Legislative session. Information related to this item is in the agenda packet on page 11.

Staff Recommendation: Approve Municipal Bylaw Amendment report and refer to Council with recommendation.

VII. Public Hearing: Proposed CDO Amendment ZA-21-09 Updates & Corrections to Article 14

The Commission will hold a public hearing on a proposed amendment to the Burlington *Comprehensive Development Ordinance* regarding updates and corrections to Article 14. Information related to this item is in the agenda packet on page 16.

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505. Written comments on items may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401, or at mtuttle@burlingtonvt.gov

Tuesday, June 22, 2021

Staff Recommendation: Approve Municipal Bylaw Amendment report and refer to Council with recommendation.

VIII. Commissioner Items

- a. **Committee Reports**
- b. **Upcoming Meetings:** July 13 and July 27 at 6:30pm (Zoom vs. In-Person TBD)

IX. Minutes & Communications

- a. The minutes of the May 11, 2021 meeting are enclosed in the agenda packet on p. 38.
- b. Communications are posted online under this meeting date at
<https://www.burlingtonvt.gov/CityPlan/PC/Agendas>

X. Adjourn

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Guidance for Participating in a Virtual Planning Commission Meeting

As social distancing measures to preserve public health and safety continue to be required to prevent the spread of COVID-19, or are recommended as a standard practice, the Office of City Planning will be supporting the Planning Commission to conduct their meetings online via Zoom. Here is information about how to join a virtual meeting, and what to expect while participating.

General Guidance for Public Participation

Please remember that in this digital meeting environment, meetings are open to the public and anyone may be watching or listening even if you cannot see them. Meetings will be recorded, and both the recording and chat content of the meeting will be maintained as a public record.

Please ensure your display photo and screen name are professional, such as using your first and last name. Please test your audio and video prior to the start of a meeting, and familiarize yourself with how to join a meeting by your chosen method. And finally, please be patient with us. Technology doesn't always work as planned, and we are all learning how to hold a successful virtual meeting!

How to Join a Virtual Meeting

Zoom allows participation via either computer or telephone. Each agenda for a meeting that will be conducted virtually will include details about how to join via either of these options, including a web address, phone number, Meeting ID, and password.

If you participate via computer, you have the option of seeing Commissioner videos and any presentation materials that may be shared. If you use either a standard phone or cell phone to call in, you will only hear the audio portion of the meeting. If you join via a smartphone, you may have the option to download the Zoom app, which will enable you to see and hear the meeting.

How to Participate in a Virtual Meeting

During meetings, only Planning Commission members and limited staff members will be viewed on video. Members of the public attending a meeting will be muted, except when invited to speak during public forum or a public hearing. Whether members of the public can speak at other times during the meeting is the discretion of the Chair.

If you want to speak during public forum, please take the following steps to assist us in making this process run as smoothly as possible:

- Email staff at mtuttle@burlingtonvt.gov by 5pm on the day before a meeting to indicate your interest in speaking. You do not need to provide your comments. Staff will enable your microphone as your name is called from a list of interested speakers.
- During a meeting, you can use the "Raise Hand" feature, or indicate in a chat message that you wish to speak during public forum. Staff will enable your microphone as your name is called.
- If you are interested in submitting your comments in writing instead of speaking during the meeting, you may do so by 5pm the day before a meeting, they will be forwarded to the Commissioners ahead of the meeting.

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TO: Planning Commission

FROM: David E White, FAICP, Dir. of Planning
Scott Gustin, AICP, DPI Principal Planner & Zoning Division Manager
Mary O'Neil, AICP, DPI Principal Planner

DATE: May 28, 2021

RE: CDO Amendment ZA-21-07: Height Measurement, Dormers & Eaves

Overview & Background

This amendment addresses two areas within the Comprehensive Development Ordinance that relate to how a building's height is measured as follows:

Height Measurement

This amendment seeks to improve the connection between existing sections of the Comprehensive Development Ordinance pertaining to how building height is measured:

- Sec. 5.2.6 (a) 1 A & B note two starting points for measuring a building's height – from the sidewalk or from the average finished grade around the entire building, depending on the distance from the sidewalk.
- Sec. 5.2.6 (a) 3 specifies increments for building height measurement along the street façade.

The relationship between Sec. 5.2.6 (a) 1 A and 3 is clear. A building's height measured from the public sidewalk is done in increments to account for changes in grade along the street façade. The relationship between Sec. 5.2.6 (a) 1 B and 3 however is not clear. How does the requirement for height measurement intervals along the street façade(s) relate to the average finished grade around the entire building? This amendment seeks to clarify this relationship. The end result clarifies that measurement of building height is done in increments along the street façade(s) in any case.

The Committee met and discussed this issue on 2/4 and 3/4, and unanimously recommended forwarding the staff recommendation to the full Planning Commission.

Dormers & Eaves

The Comprehensive Development Ordinance offers no guidance on how the measurement of a building's height may be impacted when dormers are proposed. Dormers are a common building element that enable greater useable living space in an attic, and at times, can stretch or exceed height limits. This amendment seeks to articulate under what circumstances roof dormers actually affect building height and how. It also introduces a basic design standard and new definition of the term.

A related matter as to roof form is the term "eave" which lacks definition in the CDO. Eaves are allowed to project into setbacks. Lacking definition of the term, there have been proposals to stretch the concept of what an eave is in order to take advantage of the allowable setback encroachment. This amendment seeks to define the term "eave."

The Planning Commission Ordinance Committee discussed changes to address dormers and eaves separately, but the matters have been combined into one amendment given that they are both related to roof forms. The Committee addressed dormers January 7 and February 4, 2021 and recommended forwarding the amendment to the full Planning Commission for consideration. The Committee discussed the eave matter at their March 7 and April 4, 2019 meetings and recommended forwarding the amendment to the full Planning Commission for consideration.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

The purpose of this amendment is to clarify that building height is measured in increments along the street façade, regardless of whether the building height is measured just from the public sidewalk or from the average finished grade around the entire building. Further, the proposed amendment identifies when and how roof dormers affect building height measurement, provides a design standard for dormers, and defines the terms "dormer" and "eave."

Proposed Amendments

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

[Begin text amendment]

Article 5: Citywide General Regulations

Sec. 5.2.6 Building Height Limits

No structure shall exceed thirty-five (35) feet in height unless otherwise authorized under the district-specific provisions of Article 4:

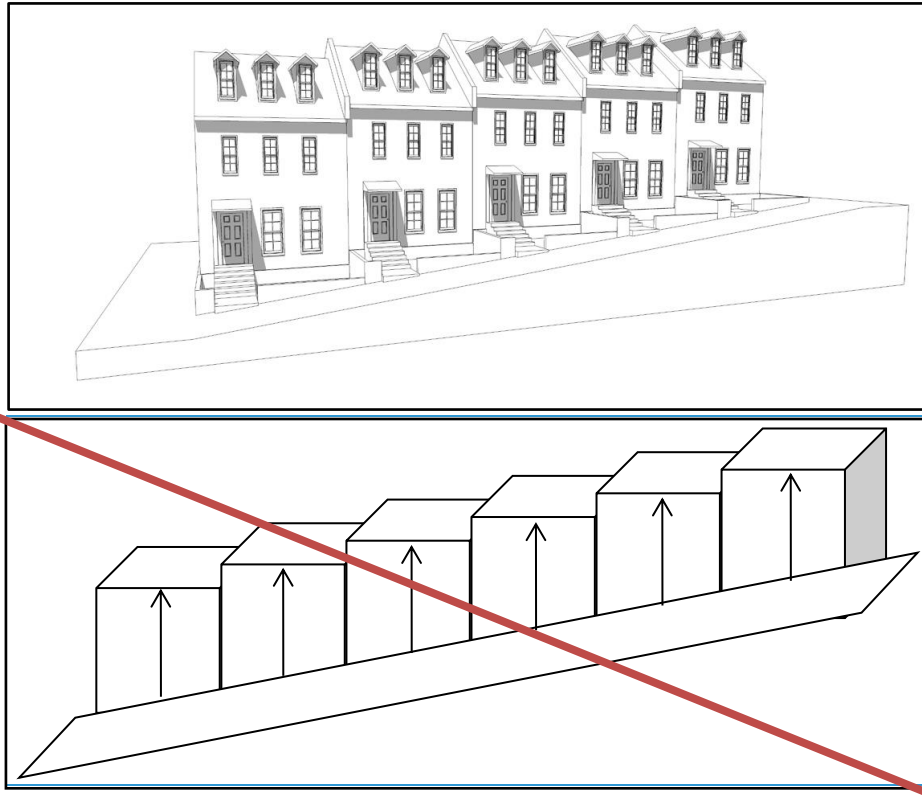
(a) Height Measurement:

The maximum height of any building shall be measured as follows:

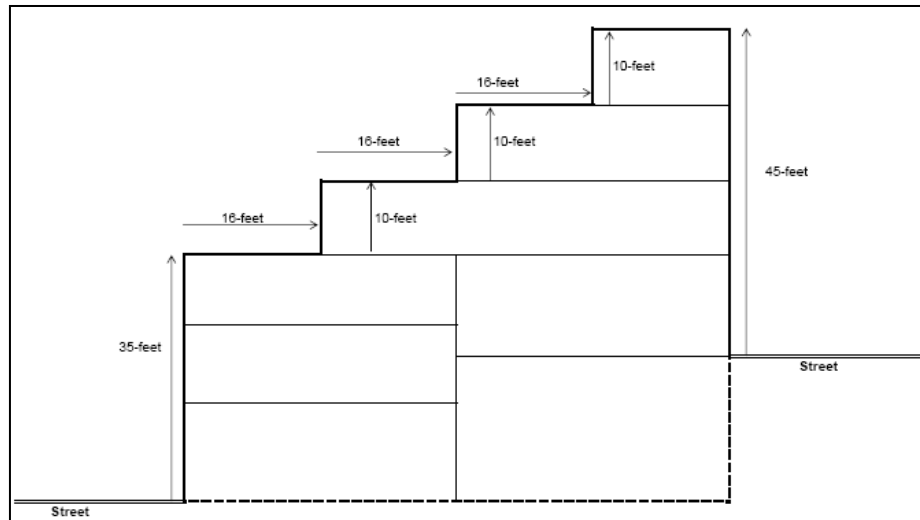
1. Starting Point: Building height shall be measured **from**:
 - A. a public sidewalk, alley, or other public way or space where the proposed building's street-facing façade is within a 1050-foot horizontal distance of the lot's street frontage of an exterior wall on the front of the building; or,
 - B. the average finished grade within a 10-foot horizontal distance of the building's street-facing façade where the proposed building is more than a 50-foot horizontal distance from the lot's street frontage; all exterior walls of the building. In cases where a property line is within a 10-foot horizontal distance of an exterior wall, the average grade shall be measured between the property line(s).
 - B.C. For buildings on sloped sites, see additional measurement standards in (b) below.
2. Ending Point: Building height shall be measured to:
 - A. Flat Roof: As written.
 - B. Pitched Roof: As written.
 - C. Curved Roof: As written.
 - D. Roofs with Dormers: Building height will be calculated to the midpoint of the rise of any dormer that exceeds 50% of the width of the horizontal eave length of the roof. Dormers less than this width do not affect height calculation noted in A – C and E of this subsection.
 - E. Other Roof Forms: As written.

(b) Buildings on Sloped Sites: Buildings on slopes shall reflect the pre-construction topography of the site by making use of opportunities to vary the building's height and roof forms relative to terrain changes as follows:

1. Measurement Interval: To encourage a variation in building heights relative to terrain changes and encourage a variation in roof form, building height shall be measured along the street-facing façade beginning no less than 16-feet or more than 32-feet from lowest corner, or where two streets intersect if a corner lot, and at an interval of no less than 32-feet or more than 65-feet for along the entire length of the street-facing façade(s).



2. Lots Fronting on Two or More Streets: Where a lot, other than a corner lot, fronts on two or more streets, the building height shall be measured along each street-facing façade. Where the streets are at differing elevations, the building height may gradually increase above the maximum height allowed on the lowest street provided that any such additional height along the lowest street shall be set-back a minimum of 16-feet from the average plane of the building's street-facing façade below for every 10-feet of additional building height up to the maximum height allowed on the highest street.



3. Illustration: To ~~illustrate~~ evaluate the height and bulk of ~~the a proposed building structure in context with its surroundings~~, the ~~DRB applicant~~ may be required the developer to prepare a scale model, computer visualization, illustrations, or other renderings ~~of the proposed building in context with its surroundings~~.

(cb) Exceptions to Height Limits

(Unchanged)

Article 6: Development Review Standards

Sec. 6.3.2 (a) 2, Roofs and Rooflines

New buildings should incorporate predominant roof forms and pitches within the existing neighborhood and appropriate to the context. Large expanses of undifferentiated roof forms shall be avoided. This can be achieved by incorporating dormers or some variation in the roof form to lessen the impact of the massing against the sky. While flat roofs can be a reasonable architectural solution, pitched roof forms and architectural elements that enhance the city's skyline are strongly encouraged. Roof eaves, parapets, and cornices should be articulated as an architectural detail. Roof-top mechanicals shall be screened from view from the public street, and should be incorporated into and hidden within the roof structure whenever possible.

Dormers shall not exceed the height of the ridgeline of the roof to which they are attached, and are limited in total to 33% of the horizontal eave length of the principal roofline.

Solar panels, light colored ballast or roof membranes, split roof clerestories, planted or "green" roof technologies (with a clearly articulated maintenance plan) and "gray water" collection are encouraged. Active rooftop uses are also encouraged to add to the visual complexity and activity of the city's skyline, and afford public access to otherwise unseen views of the city and surrounding landscape.

Article 13: Definitions

Eave: The edge of the roof which overhangs the face of an exterior building wall and, normally, projects beyond the side of a building; performing the primary function of the roof in throwing water clear of the exterior building walls.

Dormer: A roofed structure, often containing a window that projects vertically beyond the plane of a pitched roof. Dormers are commonly used to increase the usable space in a half story and to create window openings in a roof plane.

Shed dormers have a single, inclined roof.



Dog house dormers are gable roofed, typically with a single window.



All other definitions, as written.

[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).

Theme	Dynamic	Distinctive	Inclusive	Connected
Land Use	Conserve	Sustain		Grow

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety and affordability.

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:

Planning Commission Process				
Draft Amendment prepared by: Staff, PC OC review 2/4 & 3/4/21	Presentation to & discussion by Commission 4/27/21	Approved for Public Hearing 4/27/21	Public Hearing 6/22/21	Approve & forwarded to Council
				Continue discussion
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion	Ordinance Cmte recommend as modified	Second Read & Public Hearing	CCOC Recommends Approval & Adoption
				Rejected

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
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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~~ **A 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).

Theme	Dynamic	Distinctive	Inclusive	Connected
Land Use	Conserve	Sustain		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:

Planning Commission Process				
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	Public Hearing 6/22/21	Approved & forwarded to Council
				Continue discussion
City Council Process				
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

	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use ⁱ	Neighborhood Mixed Use				Enterprise	
USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
RESIDENTIAL USES	UR	RCO - A ¹	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Single Detached Dwelling	N	N ¹	N	N	Y	Y	Y	N ³⁰	N	N ³⁰	N ³⁰	N ³⁰	N	N	N
Attached Dwellings - Duplex	N	N ¹	N	N	Y	YCU ²	Y	Y	N	Y ³	N	Y	N	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N ¹	N	N	CUY	N	Y	Y	N	Y	Y	Y	Y	N	N
Attached Dwelling(s) – Mixed-Use²⁶	N	N¹	N	N	CU	CU	CU	CU	N	Y	Y	Y	Y	N	N

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

CU

N

Permitted Use in this district

Conditional Use in this district

Use not permitted in this district

Abbreviation

Zoning District

RCO – A

RCO – RG

RCO – C

I

RL/W

RM/W

RH

DW-PT

NMU

NAC

NAC-RC

NAC-CR

E-AE

E-LM

RCO - Agriculture

RCO – Recreation/Greenspace

RCO - Conservation

Institutional

Residential Low Density, Waterfront Residential Low Density

Residential Medium Density, Waterfront Residential Medium Density

Residential High Density

Downtown Waterfront-Public Trust

Neighborhood Mixed Use

Neighborhood Activity Center

NAC – Riverside Corridor

NAC – Cambrian Rise

Enterprise – Agricultural Processing and Energy

Enterprise – Light Manufacturing

ⁱ For permitted and conditional uses within the Downtown and Waterfront Form Districts, refer to Article 14.

TO: Planning Commission
FROM: David E White, FAICP, Dir. of Planning
DATE: May 28, 2021
RE: ZA-21-09 - Updates and Corrections to Article 14

Overview & Background

This amendment makes a collection of corrections and revisions to Article 14 of the *Burlington Comprehensive Development Ordinance* (BCDO) – the planBTV: Form Based Code - based on the past 36+ months of real-world application to improve its consistent use and effective applicability. This has been a collective effort of the Permitting and Inspections team and some applicants working with staff to collect problems, questions, and challenges confronted in its application to real-world projects since adoption in the fall of 2017.

Proposed Amendment

Amendment Type

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

Purpose Statement

The purpose of this amendment is to revise Article 14 of the *Burlington Comprehensive Development Ordinance* (BCDO) based on the past 36+ months of real-world application to include a number of corrections and updates to improve its consistent use and effective applicability, including:

Proposed Amendments

Proposed amendments include:

- Consistent use of terms and concepts regarding things like allowed encroachments into setbacks, location of parking, glazing, and voids.
- Makes clear the the exemption for work being proposed for a public right-of-way or thoroughfare, and instead directs compliance with *Great Streets BTV: Downtown Street Standards*, and approval by the Dept. of Public Works.
- Adds new definitions including those for Awnings, Balconies, Canopies, Decks
- Revises rear yard setback in FD5 to be consistent with previous Downtown-Transtion District requirement
- Adds a new Civic Space Type for "Water-Dependent" sites to better incorporate current and potential use of Perkins Pier
- Revise Map 3 – Shopfronts Required to include the new segments of Pine and St. Paul streets

- Revises Urban Design Standards regarding Primary Materials, Balconies and Decks, and Awnings and Canopies to improve their practical application
- Consolidates standards regarding Fences into a single location for ease of use, and adds maximum height and expands material standards
- Clarifies how the requirements and standards apply to existing and non-conforming structures.
- Expands authority for Administrative Relief for minor variations from numerical standards.
- Removes references to "Planning and Zoning" department and "Director." and replaces them with "Permitting and Inspections" dept and "Administrative Officer" as appropriate

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

[Begin text amendment]

See attached.

[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).

Theme:	Dynamic	Distinctive	Inclusive	Connected
Land Use:	Conserve	Sustain		Grow

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety and affordability.

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:

Planning Commission Process				
Draft Amendment prepared by: Staff 4/7/21	Presentation to & discussion by Commission 4/27/21 & 5/11/21	Approved for Public Hearing 5/1/21	Public Hearing 6/22/21	Approved & forwarded to Council
				Continue discussion
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion	Ordinance Cmte recommendation	Second Read & Public Hearing	Approval & Adoption
				Rejected

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-21-09 – planBTV Downtown Code Update

Planning Commission Public Hearing Draft– June 22, 2021.

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

Purpose: This amendment is to revise Article 14 of the BCDO to include a number of corrections and updates to improve its use and applicability.

Sec. 14.1.1-14.1.2 – unchanged

Sec. 14.1.3 -Applicability

This planBTV Downtown Code shall be applicable to all lands outside of the public rights-of-way or a Thoroughfare within the Downtown and Waterfront District as mapped or described on the Burlington Regulating Plan (Section 14.2), as such may be changed from time to time, pursuant to Section 14.2 - Regulating Plan. Any and all subdivision of land, development, and construction or modification of all Improvements, land, Buildings, and Structures in the Downtown and Waterfront District shall occur only in accordance with this Article 14 planBTV Downtown Code as in effect on the date of acceptance of the completed application for approval of the applicable Project Plan submitted pursuant to Section 14.7 Administration and Procedures.

Improvement, development, construction or modification within an existing or proposed public right-of-way or a Thoroughfare shall be made in accordance with Great Streets BTV: Downtown Street Standards, and require approval by the Dept. of Public Works.

To the extent applicable, and not otherwise in conflict with this Article 14-planBTV Downtown Code, the following sections of the Burlington Comprehensive Development Ordinance (CDO) shall also continue to apply:

- a) Article 1 - General Provisions
- b) Article 2 - Administrative Mechanisms;
- c) Article 3 - Applications, Permits and Project Reviews, Parts, 1, 2, 3, 5 and 6;
- d) Article 4 - Zoning Maps and Districts, Parts 1, 2, 3, and Part 5 Sec. 4.5.4;

- e) Article 5 - Citywide General Regulations, Parts 1 ~~and~~, 2, Part 3, Secs 5.3.1-5.3.4 and Secs 5.3.1-5.3.8, Part 4, Sec. 5.4.7 and, Sec. 5.4.8, and, Part 5;
- f) Article 7 - Signs
- g) Article 8 - Parking
- ~~g)~~ h) Article 9 - Inclusionary and Replacement Housing;
- ~~h)~~ i) Article 10 - Subdivision Review;
- ~~i)~~ j) Article 12 - Variances and Appeals; and,
- ~~j)~~ k) Article 13 - Definitions.

In each case, the standards and requirements applicable to the Downtown and Waterfront District Regulating Plan and this Article 14 shall take precedence without limitation over any duplicative or conflicting provisions of the other Articles of the Burlington Comprehensive Development Ordinance (BCDO).

If there is any conflict between the provisions of this Article 14 and any provisions of any other existing City codes, ordinances, regulations or standards (the "Existing Local Codes"), the provisions of this Article 14 shall take precedence over such conflicting provisions except for City and state Building, Fire, Health and Safety Codes.

The graphics, illustrations, photographs, tables, and metrics are an integral part of the planBTV Downtown Code; however:

- a) Photographs are provided only as general illustrative examples and are not binding;
- b) The illustrations of Table 14.3-A Burlington Form Districts Summary Table, Table 14.3.6-A Civic Space Types Summary Table, Table 14.4-A Building Types Summary Table, and Table 14.5-A Frontage Types Summary Table are provided only as general illustrative descriptions and are not binding;
- c) The diagrams, photographs, and illustrations contained in Sections 14.3.4 through 14.3.6 (Specific to Form Districts), Sections 14.4.4 through 14.4.13 (Specific to Building Types), and Sections 14.5.4 through 14.5.17 (Specific to Frontage Types) are provided only to indicate the general character of the various Form Districts and elements. References to metrics shown thereon however shall have regulatory effect.
- d) The graphics, illustrations, and photographs in Section 14.8 Glossary are provided for illustrative purposes only and are not binding;
- e) ~~h)~~ The graphical depictions of the Form Districts on the various Tables are provided for ease of reference only and are not binding. The Form District designations and standards applicable to each Form District are binding.

Where in conflict, metrics represented in text and/or tables shall take precedence over metrics represented graphically, and a more specific standard shall take precedence over a more general standard.

Sec 14.2.6 - Special Requirements

Map 3 - Shopfronts Required – [See Attached](#)

Sec. 14.3.4 FD6 Downtown Core

14.3.4-C- Lot Occupation & Building Placement

Frontage Buildout & Building Setback

Rear Setback:

- | | |
|-----------------------|--|
| - Principal Buildings | 0-ft min. or 15-ft from a rear public Alley centerline |
| - Outbuildings | 0-ft min. or 15-ft from a rear public Alley centerline |

Table 14.3.4-E- Parking, Loading & Service

On-Site Parking

On-site parking shall be provided per the requirements of [Sec. 14.6.7](#).

Location on the Lot

All parking provided within a Principal Building Type (other than a Perimeter Building) shall be located Underground, above the second Story, and/or at-grade within the first Story where located in the Third Lot layer and separated from the street by an Active Street-level Use.

~~Parking Lots are not permitted, and Parking Areas shall be located in the Third Lot Layer.~~

~~Unless located within a Principal Building below the finished grade or above the second Story,~~

~~a~~ All Parking Structures, and Garages, and Parking Areas shall be located in the Third Lot Layer behind a Principal Building Type Perimeter Building (see [Sec. 14.4.11](#) and [Sec. 14.6.3](#)).

Parking Lots are not permitted

Miscellaneous

See also [Sec. 14.6.7](#) for additional requirements pertaining to parking and site design.

14.3.4-F- Encroachments –into

Required Setbacks

Encroachment Type	Front	Rear
Frontage Type Elements ¹	Permitted	Permitted
Awnings and Canopies ²	Permitted	Not permitted
Signs ³	Permitted	Not permitted
<u>Balcony and Decks</u>		<u>4-ft max.</u> <u>encroachment</u>
Other Architectural Features ⁴	<u>4-ft max.</u>	4-ft max. <u>encroachment</u>
Landscaping	Permitted	Permitted
Fences or freestanding walls	Not permitted	6-ft max. height
Driveways, Walkways	Permitted	Permitted
Utility Structures	Not permitted	Permitted

14.3.4-G- Encroachments - Public right-of-way

³ Building eaves, roof overhangs, solar shades, and light shelves; bay windows, oriels, and vestibules that are less than ten feet wide; and, cornices, belt courses, window sills, buttresses, or other similar architectural features may encroach into the ROW provided they are a minimum of 10-ft above the Sidewalk.

Sec. 14.3.5 FD5 Downtown Center

14.3.5-C- Lot Occupation & Building Placement

Frontage Buildout & Building Setback

Rear Setback:

- | | |
|---------------------|---|
| Principal Buildings | - <u>03</u> -ft min. or 15-ft from rear <u>public</u> Alley centerline
- 10-ft min. along a Form District boundary shared with a residential district. |
| Outbuildings | - <u>03</u> -ft min. or 15-ft from rear <u>public</u> Alley centerline |

Table 14.3.5-E- Parking, Loading & Service

On-Site Parking

On-site parking shall be provided per the requirements of [Sec. 14.6.7](#).

Location on the Lot

All parking provided within a Principal Building (other than a Perimeter Building Type) shall be located: Underground, above the second Story, and/or at-grade within the first Story where located in the Third Lot layer and separated from the street by an Active Street-level Use.

~~Parking Lots are not permitted, and Parking Areas shall be located in the Third Lot Layer.~~

~~Unless located within a Principal Building below the finished grade or above the second Story, All~~

~~Parking Structures, Garages and Garages-Parking Areas shall be located in the Third Lot Layer behind a Principal Perimeter Building (see Sec. 14.6.3 and Sec. 14.4.11) Type.~~

Parking Lots are not permitted

Miscellaneous

See also [Sec. 14.6.7](#) for additional requirements pertaining to parking and site design.

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14.3.5-F- Encroachments into Required Setbacks

Encroachment Type	Front	Rear
Frontage Type Elements ¹	Permitted	Permitted
Awnings and Canopies ²	Permitted	Not permitted
Signs ³	Permitted	Not permitted
<u>Balcony and Decks</u>		<u>4-ft max.</u> <u>encroachment</u>
Other Architectural Features ⁴	<u>4-ft max.</u>	<u>4-ft max.</u> <u>encroachment</u>
Landscaping	Permitted	Permitted
Fences or freestanding walls	Not permitted	6-ft max. height
Driveways, Walkways	Permitted	Permitted
Utility Structures	Not permitted	Permitted

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14.3.5-G- Encroachments - Public right-of-way

³ Building eaves, roof overhangs, solar shades, and light shelves; bay windows, oriels, and vestibules that are less than ten feet wide; and, cornices, belt courses, window sills, buttresses, or other similar architectural features may encroach into the ROW provided they are a minimum of 10-ft above the Sidewalk.

Sec. 14.3.6-I Water-Dependent

Intent

An Open Space associated with water-dependent recreation and related facilities.

Specifications

Form District

FD5

Size

No size limits

Frontage

Independent

Character

Informal

Coverage¹

80% max.

Buildings and Structures¹

1,500 sqft max in aggregate

Setback for Buildings and Structures

50-feet from the mean high water mark of Lake Champlain (100-feet above mean sea level) unless encroachment is required for the operation of a water-dependent use or facility.

Features such as walkways, planters, benches, fountains, public art, sitting walls and other improvements to enhance the pedestrian environment and enjoyment of the waterfront may encroach into this required setback provided public access to the water's edge and pedestrian circulation is not unreasonably impaired.

¹ Not inclusive of any associated Civic Buildings.

Typical Facilities

- Water-oriented facilities and services such as docks, marinas, boat ramps and lifts, boat fueling and pump-out, restrooms, marina office and chandlery, and facilities for commercial vessels.
- Civic, recreational, and community facilities
- Playgrounds and play Structures
- Passive recreation, paths, and trails
- Buildings and Structures necessary to support water-oriented facilities and services
- Commercial concessions

Parking

On-site parking is not required, and may not occupy more than 60% of the gross site area.

Sec. 14.4.13 - Urban Design Standards

- a) **Voids and Transparency:** Requirements regarding the proportion and spacing of voids, and the transparency of glazing on a Building Facade for the purposes of activating the public street, shall be as required in **Table 14.4.13-A Street Activation - Primary and Secondary Facade** below.

14.4.13-A- Street Activation – Primary and Secondary Facade

	<u>Building Types: Rowhouse, and Multi-Family: Small</u>		<u>Building Types: Mixed-Use, Multi-Family: Large, Perimeter, and Civic</u>	
	Ground Floor	Upper Floors	Ground Floor	Upper Floors
<u>Facade Voids:</u> (Rough openings of all windows and doors, <u>and the transparent portion of a curtain wall</u> per floor)	15% min	10% min	40% min ₁	20% min
Distance between voids measured both horizontally and vertically		35-ft max.		20-ft max.
<u>Transparency and Reflectance of</u>	VLT - na	VLT - na	60% VLT min ₂ VLR - 15% max ₂	VLT - na VLR - 15% max ₂

Glazing: applicable to 80% of the glazing per floor. VLR - 15% max₂ VLR - 15% max₂

(VLT - Visible Light Transmittance, VLR - Visible Light Reflectance)

¹Additional requirements shall be as required for Officefront or Shopfront Fronta

b) Windows & Doors:

iii. Principal Entrances shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, canopies, awnings, transoms, sidelights, or other design elements appropriate to the architectural style and details of the Building as a whole. Bays including a Principal Entrance should be expressed vertically, and may continue onto the upper stories. Such bays are not required to include additional horizontal expression or upper story step-backs as required in c) below.

iv. Where provided:

A-D - unchanged

~~E. Shading devices designed and intended to control light entering the Building may project no more than 5 feet from the Facade, shall be consistent in materials, color, and design across the same Facade, and shall be placed, sized, shaped, and proportioned to match the associated openings.~~

c) Façade Articulation and Upperstory Stepbacks:

iii. Building Facades shall be horizontally articulated as follows:

C. The top story (other than a penthouse setback at least 10-feet from the primary plane of the Façade below) must have a cornice, parapet, pitched or shaped roof form and/or other equivalent architectural feature involving a projection from the average plane of the Façade of the story below by at least 12-inches to serve as an expression of the Buildings top.

iv. The upper stories of any Building exceeding 6 stories in height shall step-back as follows:

A. An upper story step-back of at least 10-feet from the primary plane of the Façade below shall occur above either the 2nd 3rd, 4th, or 5th story, ~~with the resulting Building base seeking to maintain~~ing a consistent height of at least 50-feet along Main and Battery streets, and at least 33-feet on all other downtown streets, in order to frame and define the public realm.

d) Building Materials:

i. Primary Materials: Not less than 80 percent of each street-facing Façade (not inclusive of voids) shall be constructed of one or more primary materials comprised of tested and proven, high quality, durable, ~~and~~ natural products, and those with low embodied carbon. For Facades over 100 square feet, more than one Primary Material shall be used. Changes between

Primary Materials must occur only at inside corners. The following are considered acceptable

Primary Materials:

A. Brick and tile masonry;

B. Native or sintered stone;

C- E - unchanged

ii. Accent Materials: The following Accent Materials may make up no more than 20% of the surface area on each Façade. Accent Materials are limited to:

A. Pre-cast and cast-in-place board-formed, finished and/or textured, and patterned masonry ~~(for trim and cornice elements only);~~

B-F - unchanged

iii - *unchanged*

~~iv. Fences: Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line, however, woven cable fencing is permitted.~~

iv. Roof Materials (not applicable to flat roofs). Acceptable roof materials include 300 pound or better, dimensional asphalt composite shingles, wood shingles and shakes, metal tiles or standing seam, slate, and ceramic tile. To the extent possible, all roof materials and colors should be selected to maximize the roof's Solar Reflectance Index (SRI).

vi. Alternate Materials: Alternate Primary and Accent materials, including high quality synthetic materials, may be approved by the ~~Planning Director~~ Administrative Officer after seeking input from the Design Advisory Board. New materials must be considered equivalent or better than the materials listed above, ~~and must demonstrate successful, high quality local installations in~~ a similar climate. Regionally-available ~~materials,~~ and those with low embodied carbon ~~are will~~ be strongly preferred.

vii. Other: - *unchanged*

e). **Walls:**

i. Unfinished (ie. not clad or constructed in a Primary or Secondary Material per d) above) foundation walls on a Principal Building shall be exposed no more than 48-inches above the finished grade. Surface-applied waterproofing on any foundation wall shall not be visible.

ii-vi – unchanged

f). **Roofs:** – *unchanged*

g) **Balconies and Decks:** Where provided, all Balconies and Decks shall meet the following specifications:

i. Balconies must be at least 4-feet deep (A) and 5-feet wide, and shall not project more than 8-feet from the plane of the Façade or Elevation to which it is attached.

- 174 ii. Balconies shall be cantilevered or visibly supported by brackets or beams sized, shaped
175 and proportioned to match the associated ~~b~~Balcony. Columns or posts extending to the
176 ground within the public right-of-way are prohibited ~~on a Façade, except in the case of a~~
177 ~~Gallery Frontage Type~~.
- 178 iii. Balconies shall provide 8-feet minimum clear height above the finished grade, or 13-feet
179 6-inches minimum clear height above the finished grade above any area used for
180 vehicular parking or circulation, or emergency vehicle access.
- 181 ~~i.~~iv. The ~~b~~Balcony platform shall be at least 3-inches thick, and where the underside of a
182 balcony is visible from a public way it shall be finished. Balconies may ~~or may not~~
183 incorporate a ~~roof~~, Canopy or Awning, but shall not be enclosed.
- 184 v. Decks shall be permitted only in the Third Lot Layer or on rooftops.
- 185 vi. Decks may include a Canopy, Awning or free-standing pergola, but shall not be enclosed.
- 186
- 187 h) **Awning and Canopies:** Awnings ~~s~~ and ~~e~~Canopies are encouraged as a traditional street-level
188 store-front fitting to accent and provide shade and/or shelter over a primary entrance, display
189 windows, or outdoor seating. Awnings and Canopies may also be found above upper story
190 windows and Balconies, and over secondary entrances. Where provided, ~~such all~~ Awnings and
191 Canopies ~~placed on a Façade~~ shall meet the following specifications:
- 192 i. Awnings and ~~e~~Canopies shall provide 8-feet minimum clear height above the finished
193 grade ~~(A)~~, and shall project a minimum of 6 feet from the Façade ~~(B)~~ to a maximum of
194 ~~2 feet from the curb (C)~~. 13-feet 6-inches minimum clear height above the finished
195 grade shall be provided above any area used for vehicular parking or circulation, or
196 emergency vehicle access (A).
- 197 ii. First floor Awnings and Canopies shall project a minimum of 3-feet from the Façade (B)
198 or Elevation to which it is attached to a maximum of 2-feet from the curb (C). Awnings
199 and Canopies on upper story windows may project no more than 5-feet from the Façade.
200 Awnings that cannot project a minimum of 3-feet due to the small size of the opening,
201 shall project a minimum of 50% of the height of the opening (e.g. a window that is 4-ft tall
202 shall project at least 2-ft).
- 203 ~~ii.~~iii. Awnings and ~~C~~eanopies shall be placed, sized, shaped, and proportioned to match the
204 associated openings or width of the associated Frontage, and shall be consistent in
205 materials, color, and design across the same Façade, Frontage Type, or architectural
206 bay.
- 207 ~~iii.~~iv. Awnings and ~~C~~eanopies that span across an entire ~~Façade~~ Frontage shall be fixed no
208 higher than the top of the first story.
- 209 ~~iv.~~ All awnings and canopies used within an individual ~~Frontage Type~~ shall be consistent in
210 ~~materials, color, and design.~~

v. Awnings and eCanopies shall not be internally illuminated or backlit, however they may contain lighting fixtures intended to illuminate the ground beneath when covering a Building entrance.

~~v.~~vi. Awnings and Canopies may incorporate signage pursuant to the requirements of Article 7.

~~vi.~~vii. Awnings shall have an ~~internal or external~~ structural framework of steel/aluminum or other appropriate, durable structural material supporting a thin, non-translucent covering material with a matte finish, such as ~~painted~~ metal, acrylic, canvas, or synthetic fabric. ~~The Awnings design should shall~~ not include a soffit, and c ~~or side panels. Retractable awnings are encouraged.~~ columns or posts extending to the ground are prohibited within the public right-of-way. Retractable Awnings are encouraged.

~~vii.~~viii. Awnings ~~shall be~~ are typically rectangular in elevation and triangular in cross-section, with shall have straight edges with no arcs or curves, and may be pitched to shed water off to the side when placed over a Building entrance. ~~–~~The valance of ~~the an~~ Aawning shall be no more than 12-inches in height (D).

ix. Canopies are typically rectangular in both elevation and in cross-section, shall have straight edges with no arcs or curves, and may be pitched enough to shed water off to the side when placed over a Building entrance. The faces of the Canopy shall be no more than 24-in in height (D).

x. Canopies shall be constructed of steel/aluminum or other appropriate, durable structural material, and ~~The canopy~~ may be clad in metal panel, wood, or other durable finished material.

~~viii.~~xi. The eCanopy design ~~shall may include a flat roof be or be left open to from~~ above without a roof using louvers or slats instead to provide shade, ~~and the exterior faces of the canopy should be no more than 24-in in height (D).~~

~~ix.~~xii. Canopies projecting into the public right-of-way shall be cantilevered or supported from above, and ~~C~~ columns or posts extending to the ground are prohibited. Canopies placed outside of the public right-of-way may be partially or fully free-standing.

i). Other:

- i. Upper-story open exterior fire stairs shall be located in the Third Lot Layer. They may be located in the Second Lot Layer provided they are enclosed and incorporated and designed in a manner consistent with the overall architectural design of the Building.
- ii. Permanent vertical access features (stairs, ramps, etc.) ~~handicapped access ramps~~ located in the First Lot Layer must be integrated into the design of the chosen Frontage Type. Otherwise they must be located in the Second or Third Lot Layer.
- iii. All utility service connections shall be underground for new construction.

- iv. The footprint area of an Outbuilding may not exceed the footprint area of the Principal Building.

(photo caption) - An example of a ~~handicapped~~ vertical access ramp integrated into a Building Frontage.

Sec 14.5.15- Courtyard Frontage Type

14.5.8-C - Standards

Courtyard - 12-ft min.

Width - lessor of 1/3 the total Building width or 35-ft max

Courtyard 12-ft min.- 35-ft max

Depth

Canopy/Awn 10-ft from Façade max

ing

Projection

Clear Path of Travel to a Principal Entrance

14.5.8-D - Miscellaneous

A maximum of one Courtyard is permitted per Principal Building.

A Courtyard shall remain open to the sky, and may not contain Driveways, parking, loading or service areas, or mechanical equipment or vents.

A Courtyard may include a free-standing Canopy, Awning, umbrellas or pergola, but they shall not be enclosed.

The Courtyard shall be activated as a space for gathering, circulation, outdoor shopping, and/or restaurant seating.

The proportions and orientation of ~~these spaces~~ a Courtyard should be carefully considered for solar orientation and user comfort.

A Courtyard is considered as part of the Building for the purpose of measuring the Frontage Buildout. All faces of the recessed Courtyard shall be considered to be part of the Façade.

Sec 14.5.15- Forecourt Frontage Type

14.5.15-D - Miscellaneous

A Forecourt occupies the First Lot Layer, and may extend the depth of a maximum required front yard setback to an amount equal to the maximum depth permitted in Sec. 14.5.15-C.

A Forecourt shall remain open to the sky, and may not contain Driveways, parking, loading or service areas, or mechanical equipment or vents.

A Forecourt may include a free-standing Canopy, Awning, umbrellas or pergola, but they shall not be enclosed.

Hardscape coverage requirement may be achieved through a combination of pervious and impervious surface materials.

Sec. 14.6.4- Building Height

a) thru c) - *unchanged*

d) Basements and Crawl Spaces

- i. Exposed basement walls visible along any Frontage shall not exceed ~~89~~ (nine~~eight~~) feet in height measured from the exterior finished grade to the finished floor of the Story above.
- ii. Unfinished crawl spaces taller than 3 (three) feet shall be screened from view from public Thoroughfares with landscaping.
- iii. Unfinished crawl spaces shall not exceed 5 (five) feet in height measured from the exterior finished grade to the finished floor of the Story above.

e) **Grading or Regrading of Sites.** Sites with uneven topography present unique issues in relation to Building height. Buildings on steep slopes shall reflect the pre-construction topography of the site. When a site's topography is modified, the site shall be graded in such a way to avoid the following features:

- i. Retaining walls or unfinished blank walls taller than 4 feet in height along required Principal or Secondary Frontage;
- ii. Retaining walls taller than 8 feet in height along the rear or side setbacks; and
- iii. The construction of Buildings that do not reflect the preconstruction topography of the site. Illustrations below show appropriate site grading methods.

f) - *unchanged*

Sec. 14.6.7- Parking and Circulation

a) thru d) – *unchanged*

287 e) **Parking Structures and Garages**

288 i. With the exception of individual Garages serving a Rowhouse Building Type which shall
289 be located in the Third Lot Layer, all Parking Structures and Garages shall be located:

290 -within a Principal Building Type and located Underground, above the second
291 Story, and/or in the ground floor when located in the Third Lot layer and separated from
292 the street by an Active Street-level Use; or,

293 - behind a Perimeter Building (See Section 14.4.11), or enclosed below the
294 finished grade or above the second story within a Principal Building that provides active
295 uses (such as, but not limited to, residential lobby, retail, office, recreational, or services)
296 at the street level along the width of the Frontage a minimum of 20 feet deep.

297
298 ii-vi unchanged

299
300 g) **Parking Spaces, Lot Design and Layout**

301 i - ii unchanged

302 iii. Stacked and Tandem Parking. – otherwise unchanged

303
304 **Sec. 14.6.8- Site and Landscape Standards**

305 a) **Purpose and Applicability-** unchanged

306 b) **Site Standards:**

307 v. Fences and Free-standing Walls:

308 A. Fences and Free-standing Walls placed within the First Lot Layer shall not exceed 4-
309 feet in height. Fences and Free-standing Walls placed within the Second or Third Lot
310 Layer shall not exceed 8-feet in height unless a different height limit is specified
311 under the applicable Form District or Frontage Type.

312 B. -Materials used for Fences and Free-standing Walls shall be limited to Brick and tile
313 masonry; Native or sintered stone; Wood – panels, clapboard or shingles;
314 Cementitious siding, metal, and woven or braided cable wire. Chain-link and welded-
315 wire fencing shall not be used along any Frontage Line with the exception of the
316 temporary enclosure of a construction site, or where required by the Building Official
317 to protect public safety. Barbed or razor wire shall not be used in any application.
318 Alternate materials may be approved by the Administrative Officer after seeking input
319 from the Design Advisory Board. Alternate materials must be considered equivalent
320 or better than the materials listed above, and must demonstrate successful, high
321 quality local installations. Regionally-available materials are preferred.

A.C. All fences and free-standing walls shall be installed so that the ~~a~~ finished side faces outward towards the adjacent property or public way Frontage.

c) **Land**scape Standards: *otherwise unchanged*

d) **Solid Waste Storage Areas** - *unchanged*

Sec. 14.7 – Administration and Procedures

14.7.1 - Applying for a Zoning Permit: Submission Requirements and Review

a) – *unchanged*

b) Application Submission. Each application shall be submitted to the Department of ~~Planning and Zoning~~ Permitting and Inspections along in a form to be provided by the Department. Upon its determination that an application is complete, the Department shall process each application in accordance with this Section.

c) – *unchanged*

d) Modification of Submission Requirements. The Administrative Officer ~~Director~~ may allow the modification of the application and submission requirements listed above, including reducing and/or combining existing and proposed information on the same site plan, provided that any modification enables adequate review of the application. The Administrative Officer ~~Director~~ may also require the submission of additional information when deemed necessary to make a decision on the request. Such additional information may include but is not limited to the following:
(*remaining unchanged*)

e) - *unchanged*

f) Review and Approval of Civic Spaces and Civic Buildings.

The creation of new Civic Spaces or Civic Buildings, or the Substantial Modification of an existing Civic Space or Civic Building, shall follow the process as defined below. Any other proposed alteration to an existing Civic Space or Civic Building shall be reviewed and approved by the ~~Director~~ Administrative Officer who shall ensure ongoing compliance with the intent and standards of this Chapter as applicable.

Because of their important civic nature and public use, the design and form of a new or Substantial Modified Civic Space or Civic Building shall be determined after:

- pre-application review and consultation with the departments of City Planning and Zoning, Permitting and Inspections, Community and Economic Development, and Parks, Recreation, Waterfront;
- a pre-application Neighborhood Public Meeting pursuant to Sec. 3.2.1 (d) of the BCDO;
- review and recommendation of the Design Advisory Board; and,
- final review and approval by the Development Review Board.

Remaining section is unchanged

Sec. 14.7.2 - Non-Conformities

In addition to that as specified in Article 5, Part 3 Non-Conformities, of the *Burlington Comprehensive Development Ordinance*, any Building, Structure, Frontage, Development, Site, Improvement, or other appurtenance thereto ~~non-conformity~~ which lawfully existed at the time of adoption of the applicable provisions of this ~~or any~~ Article or any amendment thereto may be continued subject to the following provisions:

a) Nothing in these regulations are intended to prevent normal repair and maintenance necessary to keep a Building, Structure, Site, Improvement or other appurtenance thereto in a safe and sound condition;

b) Any Building, Structure, Frontage, Development, Site, ~~sign~~, Improvement, or other appurtenance thereto which legally existed on the effective date of this Article that does not conform to the requirements of this Article may continue until a Substantial Modification is requested or Abandonment occurs;

c) Any nonconforming structure may be enlarged, maintained, repaired or altered; provided, however, that no enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part.

d) At such time ~~when a Substantial Modification is requested or Abandonment occurs~~, only the affected portion(s) of the Building, Structure, Frontage, Development, Site, ~~sign~~, Improvement, or other appurtenance thereto shall be required to comply with all applicable provisions of this Article, and to the greatest extent practicable in the determination of the Administrative Officer or unless relief is provided by the DRB pursuant to Sec. 14.7.3 below;

~~b) Any modification other than a Substantial Modification an existing Building, Structure, Frontage, Development, Site, sign, Improvement, or other appurtenance thereto shall be permitted By Right only if such changes result in greater conformance with the specifications of this Article;~~

~~e) Any change or modification shall not create any new nonconformity; and,~~

d) Buildings listed or eligible for listing on the State or National Register of Historic Places shall not be required to make any modifications under a) and b) above this section that would threaten their historic integrity.

14.7.3 - Variation from the Form: Administrative Relief, DRB Alternative Compliance, and Variances

The planBTV Downtown Code is intended to result in By-Right approval where development occurs strictly in conformance with the requirements of the applicable Form District. In some instances, however, it may be necessary to vary the prescribed form in order to accommodate unique site and/ or building circumstances in order to promote context-sensitive development. In such instances, an applicant may seek Administrative or Development Review Board approval for relief from the requirements as set forth below. Any and all relief from the prescribed standards shall run with the land and be binding on the Property Owner and its/their successor and assigns. Applications requesting relief shall be made in writing and in the form as determined by the Department.

- a) **Administrative Relief.** The Administrative Officer shall have the authority to authorize modification of up to 10% from any numerical standard set forth in this Article inclusive of any specific relief set forth in Table 14.7.3-A Administrative Relief below ~~sets forth relief from the prescribed standards that may be granted by the Director.~~ No other relief from the prescribed standards shall be permitted except as approved by the Development Review Board in b) below.
- i. Any request for Administrative Relief shall extend the requirements of 24 VSA 4448(d) regarding Administrative decisions for an additional 30 days in order to provide for opportunities for public notice and comment pursuant to Departmental procedures.
- ii. Decisions by the Administrative Officer ~~Director~~ regarding any Relief granted shall be made in writing and upon affirmative findings that:
- A. The relief granted is the minimum necessary to achieve the desired result;
 - B. Granting the relief will yield a result equal to or better than in strict compliance with the standard:
 - C. ~~The~~ The property will otherwise be developed consistent the purpose of this ordinance, the intent of the Form District, the intent and purpose of the section that the relief is being sought, and all other applicable standards; and,
 - D. Any additional findings as may be required by Table 14.7.3-A Administrative Relief as follows:

Table 14.7.3-A - Administrative Relief

Type of Relief	Limits of Relief Granted	Required Findings	Standards Reference
	<i>previous unchanged</i>		
Glazing Voids: A reduction in the amount of required minimum glazing voids on Primary and Secondary Facades	Maximum of 10% from the required Glazing voids	The relief is necessary to meet the requirements of a High Performance Building Energy Code or program.	Section 14.4: Specific to Building Types, Table 14.4.15-13- A Street Activation = <u>Primary and Secondary Façade</u> , and Section 14.5: Specific to Frontage Types
Glazing Voids: A reduction in the maximum linear distance between window openings voids	Maximum of 10% of the required linear distance between windows voids	The relief is necessary for the creation of stronger distinctions between individual Frontage Types and/or at Building corners.	Section 14.4: Specific to Building Types, Table 14.4.13-
	<i>remaining unchanged</i>		

b)-c) - unchanged

Sec. 14.8 - Glossary

Active Street-level Use: a use or activity within a space that is regularly frequented and actively utilized by workers, residents, guests, and/or patrons of the Principal Use; invites direct access from the public sidewalk or Civic space; and, provides visual interest and engagement to pedestrians on the adjacent sidewalk. Active street level uses generally include, but are not limited to retail, restaurants, bars, entertainment, hospitality, professional and personal services, libraries, institutional, educational and cultural facilities, office, residential, and entrance lobbies. Active Street-level Uses do not include those intended for parking, storage, mechanicals, utilities, and other substantially similar secondary or accessory uses and spaces.

Awning: A fixed or retractable wall mounted frame covered with fabric or other pliable material that provides decoration and shade and weather protection over a patio, window, storefront, or Building entrance.

Balcony: A wall-mounted projecting platform with a railing accessible from an upper story doorway that provides outdoor amenity space above the first floor.

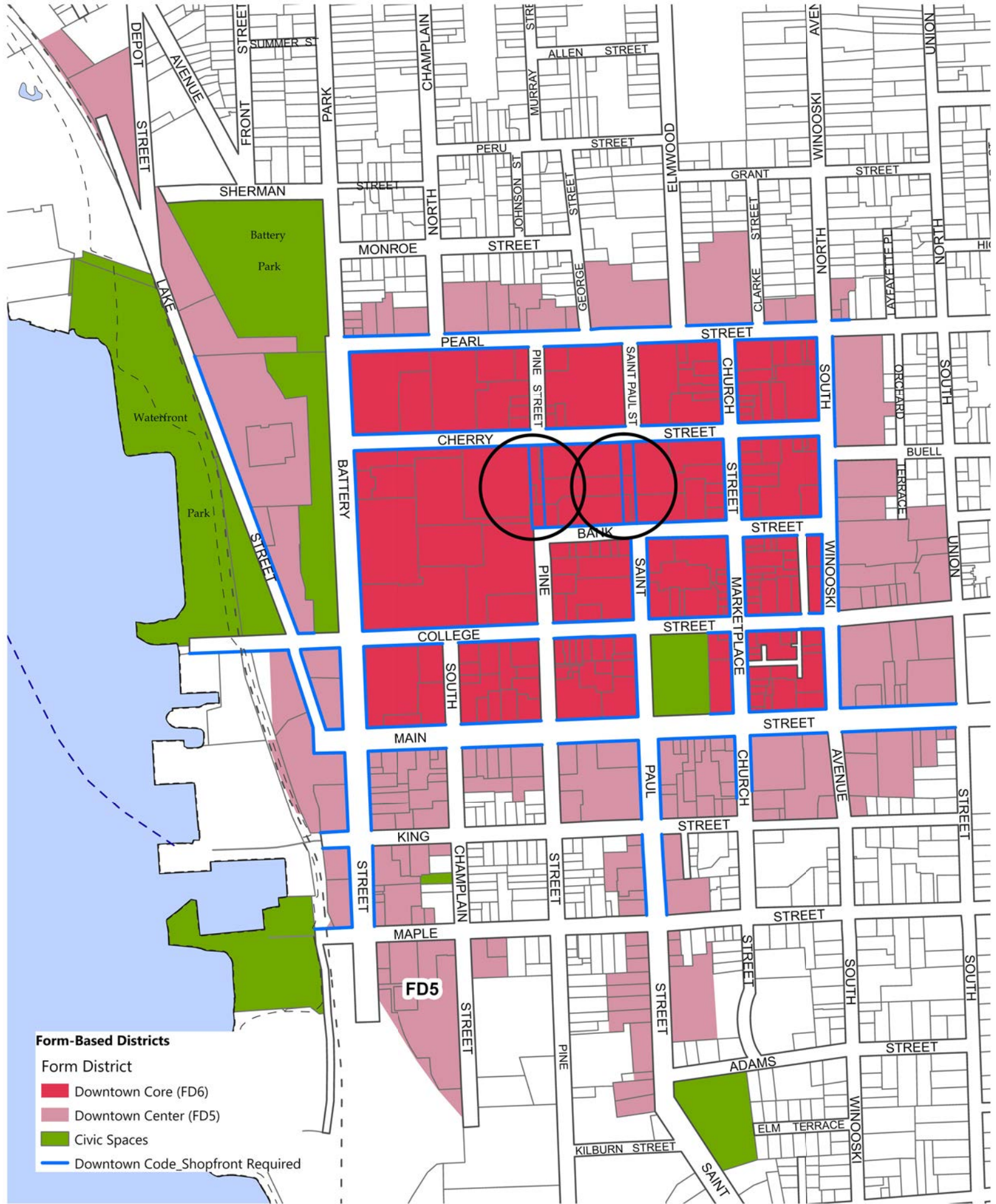
Canopy: A fixed wall mounted or stand-alone rigid structure that provides decoration and shade and weather protection over a patio, window, storefront, or building entrance.

Deck: A roofless, raised platform on the ground or on top of a roof that is accessible from a secondary entrance that provides outdoor amenity space.

Department: The Department of Permitting and Inspections.

Thoroughfare: a public or private way for use by public vehicular, pedestrian, and bicycle traffic that provides Access to Lots and Open Spaces, and incorporates vehicular lanes and Public Frontages.

Streetscreen: a freestanding hedge, fence or wall of between 3.5 and 8 feet in height built (a) along the Frontage Line or (b) on the same plane as the Façade of the Building to Screen a Parking Lot, Parking Area or Loading Area, provide privacy to a side yard or rear yard, and/ or strengthen the spatial definition of the public realm. A Streetscreens may have include an openings no larger than necessary 4-feet to allow automobile and enable pedestrian Access, and may be no longer than 20 ft or 20% of the Frontage whichever is less.



Downtown Form District Shopfront Required - ZA-21-09 as proposed



Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)

www.burlingtonvt.gov/pz

Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

Burlington Planning Commission

Tuesday, May 11, 2021, 6:30 P.M.

Remote Meeting via Zoom

Draft Minutes

Members Present	A Montroll, J Wallace Brodeur, A Friend, H Roen, E Lee
Staff Present	D White, M Tuttle, S Gustin, W Ward, K Sturtevant
Attendance	S Bushor

I. Agenda

Call to Order	Time: 6:34pm
Agenda	No Change

II. Chair Report

A Montroll	Thanked D White for service, congratulated M Tuttle on award.
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III. Director's Report

D White	Will not be seeking reappointment. Will serve until a search produces a new Director, anticipate transitioning into a part time role within the department. M Tuttle is recipient of 2021 VPA Professional Planner of the Year award.
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IV. Public Forum

Name(s)	Comment
S Bushor	Shared a communication requesting an amendment related to the shoreline setbacks. M Tuttle indicated staff generally supports, will look at any adverse impacts on shallow lots and bring a recommendation to the Commission.

V. Proposed CDO Amendment: Article 14 Updates

Action: Accept the Ordinance Committee changes, approve Municipal Bylaw Amendment report and warn for public hearing		
Motion by: E Lee	Second by: A Friend	Vote: Approved unanimously
Type: Action	Presented by: D White	
Ordinance Committee discussed proposed amendments and recommended changes, including: - Adjust language to allow additional forms and applications of concrete masonry as an accent material. - Add preference for low embodied carbon for primary and alternative materials.		
Regarding the request by property owners to rezone the corner of Pine & King, Committee agreed with staff recommendation that this should be considered as part of a broader discussion about zoning		

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

district boundaries, not tacked onto this amendment. There needs to be a broader assessment of the areas zoned RH, and particularly in the Pine Street corridor between ELM and FD5 zones.

VI. City Planning FY22 Proposed Work Plan & Budget

No action required.		
Motion by:	Second by:	Vote: n/a
Type: Discussion	Presented by: D White	
D White provided a preview of the department's FY22 budget, anticipated work plan, staffing changes and requests. The information will be presented to the City Council's Board of Finance on May 19. Several Commissioners indicated their support for the request to increase staffing for planning projects.		

VII. Update on Department of Permitting & Inspections

No action required.		
Motion by:	Second by:	Vote:
Type: Discussion	Presented by: W Ward, S Gustin	
W Ward and S Gustin provided an update on how the relocation and combination of zoning and trades at the Dept. of Permitting & Inspections has been working over the last year. In addition to building closures, COVID-19 impacted construction by reducing number of permits and shifting to smaller projects which has decreased department revenues. Customer service team is now structured in a way that prioritizes customer service and gives team a strong sense of ownership to resolve issues. On May 3, new online permit application system went live. While some kinks are still being resolved, the first week has already brought a 22% reduction in the number of customers visiting the lobby for permits. Staff is finding that new system also helps streamline permit review, improve internal coordination, and reduce data entry redundancy. Commissioners acknowledged how much of a leap forward this new system is, and shared anecdotes and small suggestions for improvement from their personal use.		

VIII. Commissioner Items

- Next Meetings are on May 25 (TBD) and June 8 at 6:30pm.
- Commissioner Lee asked about status of recycling totes. W Ward indicated that DPW has no supply of totes, so City is not enforcing against property owners.

IX. Minutes and Communications

Action: Approve the minutes and accept the communications		
Motion by: A Friend	Second by: H Roen	Vote: Approved unanimously
Minutes Approved: April 27, 2021 Communications Filed: • In the agenda packet and posted online		

X. Adjourn

Adjournment	Time: 7:47pm	
Motion: E Lee	Second: H Roen	Vote: Approved Unanimously

May 11, 2021

Via First Class Mail & Email

Aaron Brondyke, State Coordinator
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
NRB.Act250Essex@vermont.gov

Re: Act 250 Land Use Permit Application Nos. 4C0174-6, 4C0368-3 – The Burton Corporation, Burlington

Dear Aaron:

Applicant Burton Corporation (“Burton”) of the above-referenced permit applications submits this letter for the District 4 Environmental Commission’s (the “Commission”) consideration. On April 26, 2021, Smith, et al. (the “Smith Opponents”), the City of South Burlington,¹ and the South Burlington Fire District #1 (“SBFD #1”)² submitted proposed conditions for Burton’s proposed Project which is the subject of this application. Each of these parties has opposed various elements of this Project, and their proposed conditions reflect these points of opposition. The proposed conditions do not, however, reflect the evidence presented in this proceeding, and are not necessary for the Project to comply with Act 250. The Commission should therefore decline to impose the proposed conditions and approve Burton’s application, which incorporates the reasonable conditions imposed by the Burlington Development Review Board (“DRB”).

It is well settled that the Commission may impose reasonable conditions. *See generally, In re Denio*, 158 Vt. 230, 240 (1992); 10 V.S.A. § 6086(c). The Commission does not, however, have the authority to impose conditions that are not necessary to ensure compliance with the ten Act 250 Criteria. *Trapper Brown Corp. (TBC Realty)*, No. 4C0582-15-EB, 1991 WL 317403 at *4 (Vt. Env’tl. Bd. Dec. 23, 1991). The Smith Opponents presented no testimony explaining how their proposed conditions address any purported non-compliance with the criteria—indeed the April 26th submission is the first time these conditions have appeared in the record. By contrast, at the hearing, Mr. Santos, the Smith Opponents’ traffic expert, testified only that he recommended the same conditions, such as traffic control on the one-lane bridge, that are already prescribed by Burton’s OMP and the DRB conditions. Santos H’g Testimony (3/10/21).

¹ The City of South Burlington did not submit proposed Findings of Fact, but adopted the Smith Opponent’s argument on Criteria 9(K) and joined in their request for conditions.

² SBFD #1 provided proposed Findings of Fact under Criteria 1 and 1(B), but incorporated the Smith Opponent’s proposed conditions addressing other Criteria.

A closer examination of the proposed conditions reveals their lack of evidentiary foundation. For example, the Smith Opponents' proposed condition #3 limits the hours of operation for Performing Arts Center ("PAC") events. But there is no evidence that Project impacts are related to time of day.³ To the contrary, it is undisputed that the noise analysis demonstrates that existing background noise levels—in both L_{max} and L_{eq} —are fairly constant throughout the early nighttime hours during PAC events. See Ex. 009 (RSG Noise Assessment) at 14. If anything, background noise levels are currently slightly elevated at 2:00 AM, when the latest PAC events would end, compared to 10:00 and 11:00 PM, when the Smith Opponents generally suggest these events should end. *Id.* At all such times, noise generated by the proposed Project is consistent with these background levels and below any applicable guidelines or regulations. *Id.* at 23–27. The Smith Opponents presented no competing evidence that their various time limitations are relevant to either of the noise criteria.

Likewise, the Smith Opponents' proposal in condition #4 to limit attendance at PAC events would have no impact on the noise generated by these events, as the evidence shows that the primary source of Project noise is rooftop mechanical equipment. *Id.* Whether a concert is attended by 1,500 or 1,000 patrons, the same rooftop equipment will be operating and generating noise levels, which are again consistent with the existing background sound and do not create undue impacts under Criteria 1 or 8. *Id.*

The Smith Opponents therefore attempt to justify this attendance condition based on parking concerns. That basis is highly speculative and requires the Commission to find that patrons attending PAC events will ignore any parking regulations and that Burton and Higher Ground will not coordinate parking enforcement with the Cities of Burlington and South Burlington as required by their Operational Management Plan ("OMP"). The evidence in this proceeding is that Higher Ground has successfully coordinated with South Burlington police, Ex. 025; is proficient at safely coordinating large concert events at many venues, Balderston H'g Testimony (3/10/21); provides more parking than required by Burlington development regulations, Ex. 008; will work with neighboring businesses to secure overflow parking if needed, Conley H'g Testimony (3/10/21); and will manage the Smith Opponents' parking concerns under its OMP, Ex. 010a. The Smith Opponents have not rebutted any of this evidence, much less provided evidence beyond speculation that attendance limitations are necessary.

The Smith Opponents have also suggested that Red Rocks Park should be subject to a novel ambient noise standard (L_{90}). There is no precedent for applying this proposed standard in the Act 250 context or in Vermont. This proceeding—with no testimony provided on how the proposed standard relates to Criteria 1 or 8—is not the appropriate venue to do so.

As these examples demonstrate, the Smith Opponents' proposed conditions are unnecessary to ensure compliance with the applicable Act 250 criteria. The Smith Opponents have failed to present or identify the evidence upon which the Commission could make findings that require the proposed conditions. Instead, the Smith Opponents (and the City of South Burlington in their supporting filing) take the opportunity only to argue what they believe to be

³ Traffic impacts have been identified in this proceeding to be relevant to the time in which they occur—namely whether they overlap with peak commuter hour traffic. Following the DRB's approval, Burton's Operational Management Plan for the PAC includes conditions to prevent trip generation during peak hours.

deficiencies in Burton's proof. These claims, as presented in the Smith Opponents' proposed Conclusions of Law, are meritless.

First, the Smith Opponents claim that Burton failed to consider noise impacts as maximum noise levels ($L_{\max}$). RSG's noise assessment undisputedly considered $L_{\max}$ impacts based on the known, measurable concert sound levels, and explained why consideration of L_{eq} was more appropriate to understand the Project's impact under the relevant criteria. Ex. 009 at 24–25; *In re N. E. Materials Grp., LLC/Rock of Ages Corp. Act 250 Permit*, 2019 VT 55, ¶ 16 (2019) (holding that consideration of multiple types of relevant data such as L_{eq} and frequency of noise events is appropriate).⁴ The Smith Opponents rely on caselaw developed to address quarrying and other large industrial sound sources in rural areas—caselaw that the Supreme Court has cautioned “should not be applied rigidly.” *In re Gregory Hovey Act 250 Permit*, No. 2015-205, 2015 WL 7628685, at *7 (Vt. Nov. 20, 2015) (quoting *In re Lathrop Ltd. P'ship*, 2015 VT 49, ¶ 81). Ultimately, the context and setting of a project should inform the appropriate analysis and conditions. *Id.*⁵

At bottom, what the Smith Opponents are arguing is that RSG failed to model $L_{\max}$ for a number of speculated sound sources—such as honking horns and the conversational noise of 1,500 patrons queuing for an event. But these sources are not reasonable for RSG to model. The OMP provides that the building lobby will accommodate most patrons prior to a show, and in the event a limited outdoor queue is required, it will be supervised by security staff. Ex. 010a. The OMP provides further noise control measures for the parking lot, including ensuring all guests “exit the site as efficiently, rapidly, and quietly as possible.” *Id.* The possibility of honking horns is pure speculation. There is no evidence that is a likely behavior or reasonable assumption. Higher Ground is experienced in managing concert events and has consistently been well-received in the communities where it puts on concerts. Balderston H'g Testimony (3/10/21). Therefore, there is no evidence that RSG omitted any significant source of sound from its assessment.

Second, the Smith Opponents claim that Burton's noise analysis also fails to consider impacts to Red Rocks Park under Criteria 9(K). Citing *In re Hinesburg Hannaford Act 250 Application*, No. 113-8-14 Vtec, 2016 WL 4211465 at *4–5 (Sup. Ct. Envtl. Div., Jul. 7, 2016), the Smith Opponents argue that Burton did not establish the noise “baseline” within the Park. *Hinesburg Hannaford* is instructive on this point. The relevant baseline is the context of the area. *Id.* In that case, the court points out that the context surrounding the 9(K) resource is an important backdrop and the relevant starting point when considering potential change. *Id.* at *5 (“Appellants would have us ignore this [commercial] backdrop and solely consider the Project's

⁴ That RSG reported the $L_{\max}$ impacts at the most sensitive receptor, in comparison to the L_{eq} results of their comprehensive noise model detailing how Project noise impacts the area, is not the same as saying, as the Smith Opponents contend, that RSG only considered $L_{\max}$ impacts on one residence.

⁵ In *Hovey*, the court concluded that for an intermittent sound source such as dogs barking at a kennel, operational conditions that regulate frequency and duration of sounds were appropriate, in comparison to sound level limits that are more relevant to industrial operations. *Id.* To the extent Smith Opponents raise similar concerns about intermittent noise from patrons' behavior in the parking lot, the OMP provides the appropriate mitigation by regulating the duration of any disturbance. Similarly, Smith Opponents' proposed condition #1, imposing strict sound limits based on quarrying precedent, are inappropriate.

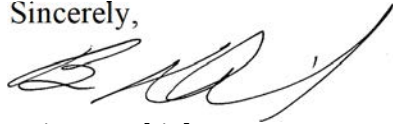
impacts on their idyllic characterization of the canal path. We decline to do so.”). Therefore, a recreational path built next to a commercial subdivision is not materially impacted when development appears next to it consistent with that planned subdivision. *Id.* Further, the investment in the path was made after the subdivision was in place and the potential for impacts was known. *Id.*

Here, RSG’s noise assessment included background sound levels in the area surrounding the Project, which is primarily an industrial park—a baseline—and reported sound impacts on Red Rocks Park that are consistent with existing sounds in the area. *Hinesburg Hannaford* is clear that the interference with a 9(K) resource must be considered in the context of the surrounding area. The Park was purchased and developed with public funds in 1970, Ex. 138 at 9, at which point the industrial park was already in place. Ex. 001b at 20. It is not reasonable to consider the Park in isolation given its location within a developed city and its immediate proximity to industrial development in Burlington. What is more, the Burton Project does not even contemplate new development as in *Hinesburg Hannaford*, but rather reuse of an existing building with noise levels similar to what already is present in the area.

The Smith Opponents have therefore not identified any deficiency in Burton’s burden of proof to support their requested conditions, nor have they presented evidence supporting the need for the requested conditions. The Commission should not impose the Smith Opponents’ proposed conditions as the evidence demonstrates the proposed Project—as conditioned by the DRB—complies with Act 250.

Please let me know if you or the Commission have any questions about this updated information.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dunkiel", written over a horizontal line.

Brian Dunkiel, Esq.

On behalf of the Burton Corporation

cc: Service List (via Email)

**STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION**

Act 250 Land Use Permit Application)
#4C0174-6 & 4C0368-3)
The Burton Corporation, Burlington)

CERTIFICATE OF SERVICE

I, Grace Grundhauser, certify that on May 11, 2021, I served copies of the *Letter Regarding Proposed Conditions* on behalf of Applicant, the Burton Corporation in the above-referenced proceeding to the service list below by the delivery method noted:

By Email:

District #4 Environmental Commission
Thomas A. Little, Chair
Monique Gilbert, Pam Loranger
111 West Street
Essex Junction, VT 05452
nrb.act250essex@vermont.gov
aaron.brondyke@vermont.gov
By Email and First Class Mail

The Burton Corporation
Justin Worthley, Mike Fialko-Casey, and
Eric Bergstrom
180 Queen City Park Road
Burlington, VT 05401
justinw@burton.com
mikef@burton.com
ericb@burton.com

John Caulo
LandPlan Development Services, LLC
61 Central Avenue
Burlington, VT 05401
john.caulo@gmail.com

Higher Ground
Alex Crothers, Alan Newman, and Mark
Balderston
1214 Williston Road
South Burlington, VT 05403
alex@highergroundmusic.com
alan@highergroundmusic.com
m.j.balderston@gmail.com

Kurt Muller, Jennifer Conley
VHB
40 IDX Drive
Building 100, Suite 200
South Burlington, VT 05403
kmuller@vhb.com
jconley@vhb.com

Eddie Duncan
RSG
55 Railroad Row
White River Junction, VT 05001
eddie.duncan@rsginc.com

Tyler Barnard, Paul Boisvert
Engineering Ventures
208 Flynn Ave, Suite 2A
Burlington, VT 05401
tylerb@engineeringventures.com
paulb@engineeringventures.com

Katherine Schad, Town Clerk
Joan Shannon, Kimberlee Sturtevant
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov
lolberg@burlingtonvt.gov
jshannon@burlingtonvt.gov
ksturtevant@burlingtonvt.gov

Susan Molzon, Senior Engineer
Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
smolzon@burlingtonvt.gov

Colin McNeil
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401
cmcneil@mcneilvt.com
Counsel for the City of South Burlington

Donna Kinville, Town Clerk
Andrew Bolduc, Paul Conner, Meaghan
Emery
City of South Burlington
575 Dorset Street
South Burlington, VT 05403
dkinville@sburl.com
abolduc@sburl.com
pconner@sburl.com
memery@sburl.com

Stephen Crowley, Sharon Behar, Steve
Caflisch
South Burlington Fire District #1
12 Pleasant Ave
South Burlington, VT 05403
steve.crowley1@gmail.com
sharon.behar@gmail.com
steve.caflischvt@gmail.com

Taylor Newton
Chittenden County Regional Planning
Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org
newton@ccrpcvt.org

Jennifer Mojo
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
anr.act250@vermont.gov
jennifer.mojo@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
aot.act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
psd.vtdps@vermont.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
agr.act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov
james.duggan@vermont.gov
accd.projectreview@vermont.gov

FOR YOUR INFORMATION

James Dumont
Law Office of James A. Dumont
15 Main St., P.O. Box 229
Bristol, VT 05443
dumont@gmavt.net
*Counsel for Smith, Waters, Turner, Logan,
de Terra, Goodman, Landauer, Bratt,
O'Neill, Walrath, Herrick, Ellis, and Copp*

Michael Santos
BSC Group
msantos@bscgroup.com

Luc Logan
39 Central Ave
South Burlington, VT 05403
lalogan@hotmail.com

Diane de Terra
39 Central Ave
South Burlington, VT 05403
deterrafirma@gmail.com

Lawrence Smith & Laura Waters
50 Central Ave
South Burlington, VT 05403
wlbsmithvt@gmail.com
waterslj@gmail.com

Almy Landauer
161 Austin Drive, Unit #139
Burlington, VT 05401
almy.landauer@gmail.com

Wendy Bratt
52 Central Ave
South Burlington, VT 05403
wbratt@gmavt.net

Doug Goodman/364 QCP Road LLC
66 Central Ave
South Burlington, VT 05403
douggoodmanphoto@gmail.com

Wendy Copp
11 Maple Ave
South Burlington, VT 05403
wendycopp@msn.com

Sabrinajoy Milbury
8 Maple Ave
South Burlington, VT 05403
sabrinajoymilbury@gmail.com

Sharon O'Neill
20 Arthur Court
Burlington, VT 05401
grayoak2@msn.com

Dana Walrath
42 Central Ave
South Burlington, VT 05403
dana.walrath@gmail.com

Stephanie Herrick
161 Austin Drive, Unit #151
Burlington, VT 05401
stephherrick@myfairpoint.net

Michael Turner
110 Central Ave
South Burlington, VT 05403
comittina@comcast.net

Janice Ellis
161 Austin Drive #83
Burlington, VT 05401
redosier@comcast.net

Kerry Anderson
3 Maple Ave
South Burlington, VT 05403
28sabre@comcast.net

Lori Hayes
3 Lyons Ave
South Burlington, VT 05403
lorihayes151515@gmail.com

Harris Roen
46 Scarff Avenue
Burlington, VT 05401
harris@roen.net

Mark Furnari
mark.furnari@gmail.com

Dated at Burlington, Vermont, this 11th day of May, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal

District 4 Environmental Commission

The Burton Corporation

Case No. 4C0174-6; 4C0358-3

**RESPONSE BY SMITH ET AL. TO LETTER
SUBMITTED BY BURTON ON 5-11-21**

Introduction

Burton's counsel has submitted a letter dated May 11, 2011 which argues that the conditions sought by Smith et al. are not based on the record evidence. Burton is incorrect. The proposed conditions are grounded in the record evidence. The letter also argues that Burton satisfied its burden of production. That too is incorrect.

A. The Record Evidence Supports the Proposed Conditions

1. Condition #3 - Hours of Operation

Burton complains first that the record evidence does not support a limit on hours of operation. Burton's expert testified that background noise levels are fairly constant and the projected one-hour Leq noise from events is fairly constant; therefore, according to Burton, it makes no difference whether events run until 2 am.

Burton's complaint contradicts the record evidence, ignores Smith's proposed findings 26-53, and cannot be reconciled with *In re Application of Lathrop L.P. I*, 2015 VT 49, 199 Vt. 19, 121 A.23d 630. Findings 26-63 cite to the record evidence showing that Burton submitted no modeling of the Lmax impacts at the property line, at residences, and at outside areas of frequent use. *In re Application of Lathrop L.P. I* holds that the Lmax impacts at the property line, at residences, and at outside areas of frequent use must be taken into consideration. *Id.* at ¶¶ 80-88. The Commission cannot do so, because Burton failed to submit the necessary evidence. The permit application must be denied. If the application is not denied, however, the Commission should limit hours of operation so they do not overlap with the nighttime hours when occupants of the affected

residences are likely to be trying to sleep. No record evidence is needed to prove that generally people sleep, or try to sleep, starting around 10 pm.

2. Condition # 4 -- Limit on Tickets Sold

Burton's second complaint is that there is no record evidence to support a limit on the number of tickets sold. Burton argues that the number of people in the parking lot will not affect noise, because Burton's evidence was that the principal source of noise will be rooftop mechanical equipment. This misrepresents the record. As pointed out in Smith's proposed findings 34-42, Burton's evidence showed that human voices can be a potent source of noise (50 voices produce the same sound pressure as 100 vehicles) and Burton's modeling and estimates completely failed to address the noise of 50, 100, 500, 1000 or 1500 or any number of people in the parking lot immediately adjacent to homes on Arthur Court. There was no modeling and no estimate of Lmax noise levels or Leq noise levels from these noise sources at the property line, at residences, or at outside areas of frequent use.

Burton also argues that Smith et al. lack evidence to suggest that parking regulations will be violated, causing parking on residential streets. This, too, ignores the record. Smith's proposed findings 67-90 cited undisputed evidence that Burton will have only 426 parking spaces, and using Burton's own vehicle occupancy rate of 3 persons per car, Burton will need 500 spaces – not counting a) vehicles bringing patrons to the Burton Campus for the proposed Cafés, which will be open to all during performance events; b) customers of the Talent Skate Park, which will be operating past the starting time of concerts; and c) buses and cars of the performers and of the employees of Higher Ground, Burton, the Talent Skate Park and the Cafés.

Using the FHWA vehicle occupancy factor of 2.5, 600 parking spaces are needed, on average, for full capacity performance events. This is a gap of 174 spaces -- without including

customers at the proposed cafes, the skate park, the performers or Burton's and Higher Grounds' employees.

No amount of good behavior by patrons or enforcement by Burton and Higher Ground can create the missing 74 to 174 spaces. The cars must park somewhere.

Burton argues that it will come up with the missing spaces by entering into agreements with other landowners. But there are no such agreements in the record. This is ironic – Burton claims that the proposed conditions lack footing in the record, but Burton's explanation for how it will supply the missing parking spaces is what lacks any basis in the record. Therefore, the condition proposed by Smith et al. was and is appropriate:

- A. Tickets sold shall be limited to 1000. This is the number of parking spaces approved by DRB, 426, times 2.5 = 1065, based on the FHWA guidance document, minus parking spaces for staff and entertainers and their trucks and buses.
- B. If additional parking spaces are leased, or use of shuttle buses from UVM or downtown parking garages has been demonstrated to reduce number of cars driven, Burton may return to the District Commission for amendment of permit.

B. Burton Failed to Meet its Burden of Production

Burton also argues that it did satisfy its burden of production because the Supreme Court and Environmental Board precedents requiring Lmax data only apply to “industrial” noise sources. Burton is wrong. The noise source in *In re Application of Lathrop L.P.* I was trucks traveling on a town road. The noise source in *Re: OMYA, Inc., and Foster Brothers Farm, Inc.*, Findings of Fact, Conclusions of Law and Order, No. 9A0107-2EB (May 25, 1999) was trucks on a state highway. Burton cites *In re Gregory Hovey Act 250 Permit*, a Supreme Court Entry Order by three Justices, issued November of 2015, that explicitly states it is “not be considered as precedent before any tribunal” – and even there, the noise source was dogs barking and the issue was Lmax impacts.

No opinion issued by the Environmental Board, the Environmental Division of the Superior Court, or the Supreme Court has ever held that the precedents requiring consideration of Lmax impacts are limited to industrial sources.

Burton also makes the extraordinary argument that Criterion 9(K) does not protect Red Rocks Park's current noise baseline (which Burton did not measure) because the Park was created only fifty years ago, in 1970. Burton argues that because the Burlington area was already urbanized in 1970, it would make no sense to protect a Park's quiet attributes. There exists nothing in the wording or the history of Act 250 that supports this outlandish argument. Where there has been public investment in lands adjacent to a proposed development, the statute prohibits development that would "materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service or lands." The preexisting condition of the surroundings may be relevant to determining whether there will be material jeopardy but does not excuse the developer from failing to submit any data on the baseline condition of the land at the time of application.

Conclusion

Burton's objections to the proposed conditions should be rejected. Burton failed to satisfy its burden of production.

Date: May 12, 2021

/s/James A. Dumont
James A. Dumont, Esq.
Law Office of James A. Dumont, Esq. PC
15 Main St./PO Box 229
Bristol, VT 05443
(802)453-7011
dumont@gmavt.net

CERTIFICATE OF SERVICE

District 4 Environmental Commission

Burton Corporation Applications 4C0174-6; 4C0358-3

I hereby certify on this 12th day of May, 2021, a copy of Response by Smith et al. to Letter Submitted by Burton on May 11, 2021, was sent by U.S. mail, postage prepaid to the following individuals by email to the following:

District #4 Environmental
Commission Thomas Little, Chair
Monique Gilbert/Pam
Loranger 111 West Street
Essex Junction, VT 05452
nrb.act250essex@vermont.gov

Aaron Brondyke
aaron.brondyke@vermont.gov

The Burton Corporation
Justin Worthley, Mike Fialko-Casey, Eric
Bergstrom
180 Queen City Park Road
Burlington, VT 05401
justinw@burton.com; MikeF@burton.com;
ericb@burton.com

John Caulo
LandPlan Development Services, LLC
61 Central Avenue
Burlington, VT 05401
John.caulo@gmail.com

Alex Crothers, Alan Newman, Mark
Balderston
Higher Ground
1214 Williston Road
South Burlington, VT 05403
alex@highergroundmusic.com;
alan@highergroundmusic.com;
m.i.balderston@gmail.com

Kurt Muller, Jennifer Conley
VHB
40 IDX Drive
Building 100, Suite 200
South Burlington, VT 05403
kmuller@vhb.com; jconley@vhb.com

Eddie Duncan
RSG
55 Railroad Row
White River Junction, VT 05001
eddie.duncan@rsginc.com

Tyler Barnard, Paul Boisvert
Engineering Ventures
208 Flynn Ave, Suite 2A
Burlington, VT 05401
tylerb@engineeringventures.com;
paulb@engineeringventures.com

Brian Dunkiel, Jonathan Rose, Malachi
Brennan
Dunkiel Saunders Elliott Raubvogel &
Hand, PLLC
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
bdunkiel@dunkielsaunders.com;
rose@dunkielsaunders.com;
mbrennan@dunkielsaunders.com

Katherine Schad, Town Clerk
Joan Shannon, Kimberlee Sturtevant
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov;
lolberg@burlingtonvt.gov;
jshannon@burlingtonvt.gov;
ksturtevant@burlingtonvt.gov

Susan Molzon, Senior Engineer
Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
smolzon@burlingtonvt.gov

Colin McNeil
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401
cmcneil@mcneilvt.com

Donna Kinville, Town Clerk
Andrew Bolduc, Paul Conner, Meaghan
Emery
City of South Burlington
575 Dorset Street
South Burlington, VT 05403
dkinville@sburl.com; abolduc@sburl.com;
pconner@sburl.com; memery@sburl.com

Stephen Crowley, Sharon Behar, Steve
Caflich
South Burlington Fire District #1
12 Pleasant Ave
South Burlington, VT 05403
steve.crowley1@gmail.com;
sharon.behar@gmail.com;
steve.caflichvt@gmail.com

Taylor Newton
Chittenden County Regional Planning
Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org;
TNewton@ccrpcvt.org

Jennifer Mojo
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov;
jennifer.mojo@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov;
PSD.VTDPS@vermont.gov

VTrans Policy, Planning & Research
Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 50
Montpelier, VT 05620
scott.dillon@vermont.gov;
james.duggan@vermont.gov;
ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION
Michael Santos BSC Group
msantos@bscgroup.com

Luc Logan
39 Central Ave
South Burlington, VT 05403
LALogan@hotmail.com

Diane de Terra
39 Central Ave
South Burlington, VT 05403
dettterrafirma@gmail.com

Lawrence Smith & Laura Waters
50 Central Ave
South Burlington, VT 05403
wbsmithvt@gmail.com;
waterslj@gmail.com

Almy Landauer
161 Austin Drive, Unit #139
Burlington, VT 05401
almy.landauer@gmail.com

Wendy Bratt
52 Central Ave
South Burlington, VT 05403
wbratt@gmavt.net

Doug Goodman/364 QCP Road LLC
66 Central Ave
South Burlington, VT 05403
douggoodmanphoto@gmail.com

Wendy Copp
11 Maple Ave
South Burlington, VT 05403
WendyCopp@msn.com

Sabrinajoy Milbury
8 Maple Ave
South Burlington, VT 05403
sabrinajoymilbury@gmail.com

Sharon O'Neill
20 Arthur Court
Burlington, VT 05401
grayoak2@msn.com

Dana Walrath
42 Central Ave
South Burlington, VT 05403
dana.walrath@gmail.com

Stephanie Herrick
161 Austin Drive, Unit #151
Burlington, VT 05401
stephherrick@myfairpoint.net

Michael Turner
110 Central Ave
South Burlington, VT 05403
comittina@comcast.net

Janice Ellis
161 Austin Drive #83
Burlington, VT 05401
redosier@comcast.net

Kerry Anderson
3 Maple Ave
South Burlington, VT 05403
28sabre@comcast.net

Lori Hayes
3 Lyons Ave
South Burlington, VT 05403
lorihayes151515@gmail.com

Harris Roen
46 Scarff Avenue
Burlington, VT 05401
harris@roen.net

Mark Furnari
mark.furnari@gmail.com

Dated: 5/12/2021

/s/ James A. Dumont, Esq.
James A. Dumont, Esq.
dumont@gmavt.net

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
OFFICE OF PLANNING**

RE: City of Burlington Parks, Recreation	)	DISTRICT ENVIRONMENTAL
& Waterfront	)	COMMISSION #4
	)	
	)	APPLICATION #4C0051-3
	)	
	)	May 14, 2021

ENTRY OF APPEARANCE

Please enter the appearance of the Agency of Natural Resources (“Agency”), State of Vermont, by and through its staff, Kevin Anderson, in the above-captioned matter.

COMMENTS

Criterion 1(B): Waste Disposal - Stormwater

The proposed widening and realignment of the bike path are covered under operational stormwater permit 7213-INDS.2. However, portions of the project, including the playground relocation and beach access, may require and lack operational stormwater permit coverage. The Applicant should contact Winn Wilson of the Department of Environmental Conservation’s Stormwater Program for a determination as to whether all aspects of the project require operational stormwater permitting. Mr. Wilson may be contacted at 802-490-8019 or william.wilson@vermont.gov.

Criterion 1(D): Floodways

Portions of the project fall within the Special Flood Hazard Area of Lake Champlain (Exhibit 001b at 15). The Agency respectfully requests that the Applicant show and label the base flood elevation contour line and datum on Exhibit 047, the grading plan for Pause Place. The base flood elevation for Lake Champlain is 102 feet for North American Vertical Datum of 1929 and 101.6 feet for North American Vertical Datum of 1988.

Criterion 1(E): Streams / Criterion 1(F): Shorelines / Criterion 1(G): Wetlands

The proposed land use permit states that a permit will not be issued for the project until the District Commission receives and reviews comments from the Agency regarding riparian and wetland buffers, including proposed permit conditions for each buffer. The project involves disturbance to riparian zones, wetland buffer zones, and wetlands; the Applicant’s Vermont Individual Wetland Permit application is currently under review (Exhibit 001b at 17-19).

The Agency is in the process of organizing a meeting with the Applicant to discuss proposed riparian zone and wetland/wetland buffer zone impacts. Topics to be discussed include: the

scope of wetland investigation (*i.e.*, whether all aspects of the project have been investigated for jurisdictional wetland presence); opportunities for and feasibility of further riparian zone and wetland/wetland buffer zone avoidance; and mitigation measures. The Agency will file supplemental comments with the District Commission under Criteria 1(E), 1(F), and 1(G) after this and any follow-on discussions have concluded.

Criterion 8(A): Necessary Wildlife Habitat and Endangered Species

The proposed land use permit states that a permit will not be issued for the project until the District Commission receives and reviews comments from the Agency regarding the impact of project tree cutting on bat habitat. The Agency's Fish and Wildlife Department reviewed the application and determined the project would not destroy or significantly imperil bats listed as threatened or endangered under 10 V.S.A. Chapter 123. Removal of the potential roost trees identified on project site plans between October 1 and April 15, when threatened or endangered bats are unlikely to be present, is encouraged; however, this need not be a land use permit requirement at this site given the number of trees being cut as part of the project.

Fish and Wildlife Department botanist Bob Popp is scheduled to visit the project site on May 17, 2021 to evaluate whether and how the proposed beach access may affect rare, threatened, or endangered plants. The Agency will file supplemental comments with the District Commission after Mr. Popp's site visit.

Respectfully submitted,
State of Vermont
Agency of Natural Resources

By: /s/ Kevin Anderson
Kevin Anderson
Regulatory Policy Analyst
Agency of Natural Resources
Office of Planning
(802) 798-2087

E-Notification CERTIFICATE OF SERVICE FILE #4C0051-3

I hereby certify that I, Kevin Anderson, Regulatory Policy Analyst for the Agency of Natural Resources Office of Planning, sent a copy of the foregoing **Comments and Entry of Appearance**, dated May 14, 2021, regarding File #4C0051-3 by U.S. mail, postage prepaid, to the individuals without email addresses and by electronic mail to those with email addresses as indicated:

City of Burlington Parks, Rec. & Waterfront
c/o Sophie Sauve
645 Pine Street
Burlington, VT 05401
ssauve@burlingtonvt.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
PSD.VTDPS@vermont.gov

Global Petroleum
22 Flynn Avenue
Burlington, VT 05401
sdecell@globalp.com

VTrans Policy, Planning & Research Bureau
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

Katherine Schad, City Clerk
Chair, Selectboard/Chair, Planning Comm.
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov
lolberg@burlingtonvt.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Chittenden Co. Regional Planning Comm.
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov
james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

District #4 Environmental Commission
111 West Street
Essex Junction, VT 05452
nrb.act250essex@vermont.gov
stephanie.monaghan@vermont.gov

/s/ Kevin Anderson
Kevin Anderson, Regulatory Policy Analyst
Agency of Natural Resources
Office of Planning



May 24, 2021

Stephanie H. Monaghan, District Coordinator
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452

Re: City of Burlington Parks, Recreation & Waterfront – Burlington Greenway
Response to Agency of Natural Resources Entry of Appearance, dated May 14, 2021,
Teleconference Comments from May 17, 2021, and Supplemental Filing: Application for Act 250
Land Use Permit #4C0051-3

Dear Ms. Monaghan:

This letter is provided in response to the Agency of Natural Resources ("ANR" or "Agency") Entry of Appearance, dated May 14, 2021 and to comments heard during a teleconference with Kevin Anderson, ANR Regulatory Policy Analyst, Tina Heath, DEC District Wetland Ecologist and Bernie Pientka, FWD Fisheries Biologist on May 17, 2021 as discussed under Criteria 1(E), 1(F), and 1(G) below. These comments are contained below as italicized text, followed by our responses.

Criterion 1(B): Waste Disposal - Stormwater

The proposed widening and realignment of the bike path are covered under operational stormwater permit 7213-INDS.2. However, portions of the project, including the playground relocation and beach access, may require and lack operational stormwater permit coverage. The Applicant should contact Winn Wilson of the Department of Environmental Conservation's Stormwater Program for a determination as to whether all aspects of the project require operational stormwater permitting. Mr. Wilson may be contacted at 802-490-8019 or william.wilson@vermont.gov.

Response:

BPRW and its consultant VHB have been actively coordinating with the DEC Stormwater Program, including Mr. Wilson, throughout the design and construction of the various Greenway segments and Pause Places. The portion of the Greenway and Pause Place elements located in Oakledge Park, which are proposed for summer of 2021 construction, are consistent with the issued stormwater permit 7213-INDS.2. Other elements proposed for Oakledge Park, the universal access playground and parking area, would be constructed during a future year, so a stormwater permit amendment for these contemplated and un-funded elements has not been obtained. Accordingly, the City is requesting that the District Commission authorize all improvements—except condition the pending permit #4C0051-3, that prior to construction of the playground and parking area, a stormwater permit amendment is obtained and furnished to the Commission via a subsequent Act 250 permit amendment.

Criterion 1(D): Floodways

Portions of the project fall within the Special Flood Hazard Area of Lake Champlain (Exhibit 001b at 15). The Agency respectfully requests that the Applicant show and label the base flood elevation contour line and datum on Exhibit 047, the grading plan for Pause Place. The base flood elevation for Lake Champlain is 102 feet for North American Vertical Datum of 1929 and 101.6 feet for North American Vertical Datum of 1988.

Response:

The current FEMA Flood Insurance Rate Map ("FIRM") Panel 50007C0253D, effective July 18, 2011, uses the North American Vertical Datum of 1988 ("NAVD88") and shows the Special Flood Hazard Area (aka base flood elevation or "BFE") at 102 feet, not 101.6 feet. The design plans use NAVD88 as the vertical datum. Therefore, to maintain consistency with the FIRM Panel, the 102-foot contour has been labeled on the plans listed below and a note provided for the source information:

- Planting Plan - original Exhibit 012
- Landscape Layout Plan - original Exhibit 024
- Landscape Lighting Plan - original Exhibit 030
- Grading Plan - original Exhibit 047

Criterion 1(E): Streams / Criterion 1(F): Shorelines / Criterion 1(G): Wetlands

The proposed land use permit states that a permit will not be issued for the project until the District Commission receives and reviews comments from the Agency regarding riparian and wetland buffers, including proposed permit conditions for each buffer. The project involves disturbance to riparian zones, wetland buffer zones, and wetlands; the Applicant's Vermont Individual Wetland Permit application is currently under review (Exhibit 001b at 17-19). The Agency is in the process of organizing a meeting with the Applicant to discuss proposed riparian zone and wetland/wetland buffer zone impacts. Topics to be discussed include: the scope of wetland investigation (i.e., whether all aspects of the project have been investigated for jurisdictional wetland presence); opportunities for and feasibility of further riparian zone and wetland/wetland buffer zone avoidance; and mitigation measures. The Agency will file supplemental comments with the District Commission under Criteria 1(E), 1(F), and 1(G) after this and any follow-on discussions have concluded.

May 17, 2021 Teleconference – Comment 1:

ANR Requests the proposed Pause Place be shifted out of riparian buffer, specially the stone fill associated with the pedestrian area down to Lake Champlain/Blanchard Beach access, located in the north west section of the buffer.

Response:

A similar question was asked of the U.S. Army Corps of Engineers during their review of the project. The design for the Pause Place purposefully sought to minimize encroachment on Lake Champlain and tree clearing by occupying areas of existing seawall and unvegetated beach. Moving the Pause Place to the south would result in the disturbance of relatively undeveloped land, including the removal of a far greater number of trees than the proposed plan, affecting shoreland vegetation. Moreover, it would likely result in greater encroachment into Lake Champlain. See Photo 1, following page.

Additionally, the sizing and layout of the Pause Place was carefully considered and subject to multiple design iterations. this location has been identified as a high-volume pedestrian area with Greenway and park visitors using this location as a drop-off. Recreational paddleboard users also drop-off their boats and access the beach in this location. Additionally, the boat rental vendor that currently uses the grassed portion of Blanchard Beach to the north will utilize this location for customers to access the beach and lake. The Pause Place was purposely designed to accommodate this variety of users and their associated spatial requirements, which includes minimizing potential conflicts with between pedestrians and cyclists

The ramp at the north end of the Pause Place provides Americans with Disabilities Act (“ADA”) compliant access down to the beach. BPRW will be installing ADA-compliant beach mats that will allow full ADA access for beach users. The stairs provide direct access to the beach for recreational paddlers, who need direct access when carrying canoes, kayaks and paddleboards.

Given the above considerations, the Pause Place minimizes encroachment on both Lake Champlain and the riparian buffer for the unnamed tributary and avoids the clearing of relatively mature woody vegetation along the shoreline to the south.



Photo 1. View of the waste block seawall and beach area proposed to be replaced by the Pause Place. View is to the west-southwest. Note the relatively intact shoreline vegetation in the background would be affected by shifting the Pause Place to the south. Photo by VHB, May 17, 2021.

May 17, 2021 Teleconference – Comment 2:

Proposed sloped areas through the riparian buffer zone are 2:1 (horizontal : vertical). Would it be possible to accommodate steeper slopes in order to minimize impact footprint?

VHB reevaluated the design plans where the Greenway improvements intersect the riparian buffer. Some locations have proposed 4:1 slopes. VHB revised the grading plan in these instances to achieve a

standard 2:1 slope through wetland and riparian buffer areas and thus further minimized permanent buffer impact from 5,307 to 3,902 square feet and overall wetland impact from 480 to 348 square feet.¹ A steeper slope of 1.5:1 would require the use of stone materials that are not recommended in this location for safety considerations, and not recommended due to the City's plan to replant the slope areas (see following Comment 3). Additionally, steeper slope would require the addition of barriers to protect path users, which would be an on-going maintenance issue for the City and would diminish the user experience in an area that has historically had no such barriers.

The following sheets have been revised to account for this new grading and are attached as part of this supplemental filing:

- VWP Impact Exhibit - original Exhibit 013
- EPSC Plans (Sheet 5 of 5) - original Exhibit 021
- Plan and Profile (Sheet 5 of 5) - original Exhibit 041

May 17, 2021 Teleconference – Comment 3:

ANR requests a planting plan for the upstream and downstream portions of the riparian buffer of the unnamed stream at Blanchard Beach, depicted as Stream 2013-SC-JB-3 on the permit application materials, to offset impacts to riparian and wetland buffer.

BPRW has already initiated riparian buffer planting in the area on the southwest corner of the culvert (see Photo 2) and provided a list of native plant species recommendations to VHB for expansion to other riparian buffer areas. VHB has prepared an amendment to the plan set to include a new Riparian Planting Plan sheet for the requested areas, attached. This plan includes the installation of a total of five deciduous trees, 128 shrubs, and 100 perennial herbaceous plants.

Future maintenance of the vegetation within the riparian buffer would consist of periodic mowing of the three-ft wide strip on the outside of the path (seeded with Conservation Seed Mix) as well as occasionally and selective trimming between plantings to suppress competition and for aesthetics until they have grown out. Furthermore, the City could perform control for non-native and invasive species as necessary and in accordance with applicable local, state, and federal regulations and remove hazard trees as necessary.

Criterion 8(A): Necessary Wildlife Habitat and Endangered Species

The proposed land use permit states that a permit will not be issued for the project until the District Commission receives and reviews comments from the Agency regarding the impact of project tree cutting on bat habitat. The Agency's Fish and Wildlife Department reviewed the application and determined the project would not destroy or significantly imperil bats listed as threatened or endangered under 10 V.S.A. Chapter 123. Removal of the potential roost trees identified on project site plans between October 1 and April 15, when threatened or endangered bats are unlikely to be present, is encouraged; however, this need not be a land use permit requirement at this site given the number of trees being cut as part of the project.

¹ Temporary Class II wetland buffer impacts increased somewhat from 660 square feet 1,031 square feet to reflect a refinement in the position of project demarcation fencing along the north side of the Flynn Avenue sidewalk.

Fish and Wildlife Department botanist Bob Popp is scheduled to visit the project site on May 17, 2021 to evaluate whether and how the proposed beach access may affect rare, threatened, or endangered plants. The Agency will file supplemental comments with the District Commission after Mr. Popp's site visit.

Response:

The City appreciates comments regarding the protection of habitat for listed bat species. As noted in the permit application, all tree clearing has already been completed within the timeframe noted.



Photo 2. View of the outfall of the unnamed stream looking south from the Bike Path, showing the installation of shrub and sapling riparian buffer plantings on the south bank Photo by VHB, May 17, 2021.

Carla Fenner, PWS, Environmental Scientist with VHB and Bob Popp, FWD Botanist, met at the location of the proposed Pause Place at Blanchard Beach on May 17, 2021. I understand that Mr. Popp will be filing comments separately, but that no plant surveys or additional mitigation efforts will be required beyond the salvaging and relocation of sand that may contain the seed bank for rare plant species. If determined to be feasible, the uppermost approximately six inches of the sandy beach under the proposed Pause Place will be scraped and temporarily stockpiled. This stockpile will then be redistributed within the area of temporary disturbance immediately lakeward of the Pause Place as a conservation measure proposed by the City and in a manner similar to that per prior consultation with the FWD for Corps-issued Individual Permit NAE-2013-01918-IP.



Sincerely,

A handwritten signature in black ink, appearing to read 'Sophie Sauv ', with a long, sweeping horizontal stroke extending to the right.

Sophie Sauv , BPRW Parks Comprehensive Planner

cc: Jon Adams-Kollitz, BPRW Parks Project Coordinator
Certificate of Service

Attachments

Exhibit Name (Revision Date)	Plan Sheet Name	Original Exhibit Number
Planting Plans - Flynn Intersection - Sheet 27 (rev. 05-12-2021)	Planting Plan	012
Wetland Impact Exhibit - Sheet 1 (rev. 05-18-2021)	VWP Impact Exhibit	013
EPSC Plans – Sheet 49 (rev. 05-18-2021)	EPSC Plans (Sheet 5 of 5)	021
Greenway Signage Plan - Sheet 18 (rev. 05-12-2021)	Landscape Layout Plan	024
Greenway Lighting Plan - Sheet 31 (rev. 05-12-2021)	Landscape Lighting Plan	030
Greenway Limits of Work - Sheet 17 (rev. 05-18-2021)	Plan and Profile (Sheet 5 of 5)	041
Pause Place Grading - Sheet 21 (rev. 05-12-2021)	Grading Plan	047
Riparian Planting Plan – Sheet 27B (05-21-2021)	Riparian Planting Plan	New



State of Vermont
Division for Historic Preservation
Deane C. Davis Building, 6th Floor
One National Life Drive, Montpelier, VT 05620-0501
<http://accd.vermont.gov/historic-preservation>

*Agency of Commerce and
Community Development*

**RE: City of Burlington Parks, Recreation & Waterfront Proposed Oakledge Park Improvements,
Flynn Avenue, Burlington, Vermont.**
DISTRICT #4 ENVIRONMENTAL COMMISSION
Application #4C0051-3

Entry of Appearance

Please enter the appearance of the Vermont Division for Historic Preservation (VDHP), by and through its staff, R. Scott Dillon, in the above captioned matter.

Preliminary Comments

Criterion 8 – Historic Sites

The proposed project contains elements that will impact archaeologically sensitive areas in Oakledge Park. VDHP understands that City of Burlington has hired a qualified archaeological consultant to complete all necessary archaeological investigation in the project area. However, that work has not yet been completed. Accordingly, VDHP respectfully requests that this application remain open regarding the historic site aspect of Criterion 8 until all necessary archaeological work is completed or there is sufficient information to include appropriate conditions in the land use permit.

Dated at Burlington, Vermont this 14th day of May 2021.

By: R. Scott Dillon
Senior Historic Preservation Review Coordinator
Vermont Division for Historic Preservation



CERTIFICATE OF SERVICE

I hereby certify on this 14th day of May 2021, a copy of the foregoing Vermont Division for Historic Preservation Entry of Appearance and Preliminary Comment for Land Use Permit #4C0051-3 was sent by email to the individuals and offices with emails listed below:

District #4 Environmental Commission
Thomas Little, Chair
Monique Gilbert/Scott Baldwin
111 West Street
Essex Junction, VT 05452
Stephanie.Monaghan@vermont.gov
NRB.Act250Essex@vermont.gov

Vt. Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

City of Burlington Parks, Recreation, & Waterfront
c/o Sophie Sauve
645 Pine Street
Burlington VT 05401
ssauve@burlingtonvt.gov

Dated at Burlington, Vermont this 14th day of
May 2021

R. Scott Dillon

R. Scott Dillon

Senior Historic Preservation Review Coordinator

Global Petroleum
22 Flynn Avenue
Burlington, VT 05401
sdecell@globalp.com

Katherine Schad, City Clerk
Chair, City Council/Chair, City Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov
lolberg@burlingtonvt.gov

Chittenden County Regional Planning
Commission c/o Charlie Baker, Exec. Dir. Regina
Mahony, Planning Program Manager
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Elizabeth Lord, Land Use Attorney
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
elizabeth.lord@vermont.gov
anr.act250@vermont.gov

Barry Murphy
Vt. Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
psd.vtdps@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N Main Street
Barre VT 05620
aot.act250@vermont.gov

E-Notification CERTIFICATE OF SERVICE

I hereby certify that I, the undersigned, sent a copy of the foregoing letter "*Response to Agency of Natural Resources Entry of Appearance, dated May 14, 2021, Teleconference Comments from May 17, 2021, and Supplemental Filing: Application for Act 250 Land Use Permit #4C0051-3.*" on May 24, 2021 by U.S. Mail, postage prepaid, to the individuals without email addresses and by electronic mail to those with email addresses as indicated:

Global Petroleum
22 Flynn Avenue
Burlington, VT 05401
sdecell@globalp.com

Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov
Kevin.Anderson@vermont.gov

Katherine Schad, City Clerk
Chair, Selectboard/Chair, Planning Comm.
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov
lolberg@burlingtonvt.gov

Chittenden Co. Regional Planning Comm.
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
PSD.VTDPS@vermont.gov

VTrans Policy, Planning & Research Bureau
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov
james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

District #4 Environmental Commission
111 West Street
Essex Junction, VT 05452
nrb.act250essex@vermont.gov
stephanie.monaghan@vermont.gov

By: 
Sophie Sauvé
Parks Comprehensive Planner
Burlington Parks, Rec. & Waterfront
ssauve@burlingtonvt.gov

**Natural Resources Board
111 West Street
Essex Jct., VT 05452**

**Act 250 Jurisdictional Opinion
#4-293**

This is a Jurisdictional Opinion based upon available information and a written request from the Landowner/Agent or Other Person. Any Notified Person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the District Coordinator (10 V.S.A. § 6007 (c) and Act 250 Rule 3 (b)) or an Appeal with the SUPERIOR COURT, Environmental Division within 30 days of the issuance of this opinion

☒ I hereby request a jurisdictional opinion from the District Coordinator or Assistant District Coordinator regarding the jurisdiction of 10 V.S.A. Chapter 151 (Act 250) over the project described below: Lani Ravin, UVM, Campus Planning Services

PROJECT DESCRIPTION:

The project includes a renovation of University of Vermont ("UVM") Centennial Field located on University Road in Burlington, Vermont. The Centennial Field Grandstand was constructed in the early 1900s but is not listed on the National Register for Historic Places. The proposed project includes the removal of existing batting cage and free-standing bleachers, construction of additional seating along the right field and left field fences, modification to the existing pavilion structure in right field to add a wood deck with table seating, adding tables in the right field area, replacing an existing concession stand with a new pizza oven concession, and restoring some pavement to vegetation. There is no net increase in the number of seats, no change to the existing water and wastewater flows, and no increase to impervious surfaces. There are no modifications to the existing Centennial Grandstand proposed.

Existing Act 250 permit: Permit series 4C1186, but none specifically for this property

Project Type: ☒ Commercial ☐ Residential ☐ Municipal/State ☐ Mixed
☐ Agriculture ☐ Silviculture ☐ Other

Has the landowner subdivided before? ☐ Yes ☐ No ☒ N/A

AN ACT 250 PERMIT IS REQUIRED: ☐ YES ☒ NO

BASIS FOR DECISION:

In a letter dated May 21, 2021, the Vermont Division for Historic Preservation ("VDHP") determined that the project will have no undue adverse effect on historic sites and does not require any further mitigation.

Based on the available information, the project as proposed will not increase the capacity of the site, will not increase impervious surfaces, and will have no undue adverse effect on historic sites. Therefore, the project as proposed does not constitute a substantial change to a pre-existing development.

SIGNATURE: /s/ Rachel Lomonaco DATE: 5/26/21

Rachel Lomonaco, District Coordinator
Environmental Commission District #4
111 West Street, Essex Junction, VT 05452
802-879-5658
rachel.lomonaco@vermont.gov

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed

with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Y:\NRB\Essex\DISTRICTS\DIST4\JO\JO 4-201 to JO 4-300\JO-4-293\JO 4-293.docx

CERTIFICATE OF SERVICE

I hereby certify on this 26th day of May, 2021, a copy of the foregoing ACT 250 JURISDICTIONAL OPINION #4-293, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to NRB.Act250Essex@vermont.gov

University of Vermont
c/o Lani Ravin
16 Colchester Avenue
Burlington, VT 05405
Lani.ravin@uvm.edu

Katherine Schad, Town Clerk
Chair, Selectboard/Chair, Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov;
lolberg@burlingtonvt.gov

Chittenden County Regional Planning Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov; PSD.VTDPS@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov; james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
111 West Street
Essex Junction, VT 05452

Natural Resources Board
Diane Snelling, Chair
Greg Boulbol, General Counsel
10 Baldwin Street
Montpelier, VT 05633-3201

Dated at Essex Junction, Vermont, this 26th day of May, 2021.



Jessica Mason
Natural Resources Board Technician
802-879-5614
Jessica.Mason@vermont.gov

Y:\NRB\Essex\DISTRICTS\DIST4\JO\JO 4-201 to JO 4-300\JO-4-293\JO 4-293
COS jo.docx

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
OFFICE OF PLANNING**

RE: City of Burlington Parks, Recreation	)	DISTRICT ENVIRONMENTAL
& Waterfront	)	COMMISSION #4
	)	
	)	APPLICATION #4C0051-3
	)	
	)	May 26, 2021

SUPPLEMENTAL COMMENTS

The Agency of Natural Resources (“Agency”), State of Vermont, by and through its staff, Kevin Anderson, offers the following supplemental comments in the above-captioned matter.

Criterion 1(B): Waste Disposal - Stormwater

The Applicant proposes to obtain an operational stormwater permit for the facilities not authorized in permit 7213-INDS.2 at a later date and would furnish that permit to the District Commission in a subsequent Act 250 amendment application (Exhibit 063 at 1). Provided that stormwater permit is obtained prior to construction of the facilities it would authorize, the Applicant’s proposal would comply with the Agency’s Stormwater Permitting Rule.

Criterion 1(D): Floodways

The Applicant identified the base flood elevation for Lake Champlain in relation to the project on the grading plan for Pause Place (Exhibit 047a). This satisfies the Agency’s May 14, 2021 request under Criterion 1(D).

Criterion 1(E): Streams / Criterion 1(F): Shorelines / Criterion 1(G): Wetlands

Following a meeting with Agency staff members on May 17, 2021, the Applicant submitted revised plans that depict a reduction in riparian and wetland buffer zone disturbance by approximately 1,400 square feet (Exhibits 013a, 041a, and 049) and a proposed Riparian Planting Plan (Exhibit 066). The Applicant also explained why further avoidance of the riparian zone for development of Pause Place would be unreasonable (Exhibit 063 at 2-3).

The Agency accepts the Applicant’s revised plans, Riparian Planting Plan, and explanation regarding Pause Place. The wetland permit application for the project, still under review, must be updated to incorporate the revised plans.

To ensure the project meets Criterion 1(E), the Agency respectfully requests that the District Commission include the following condition in any land use permit it issues for the project. The Agency intends for this permit condition to address the Commission’s request, from the proposed land use permit, for proposed permit conditions for riparian and wetland buffers.

The Permittee shall implement the Riparian Planting Plan (Exhibit 066) as part of project construction. Except for the existing and proposed improvements and vegetation management activities described in the Riparian Planting Plan, the Permittee shall maintain an undisturbed, naturally vegetated riparian buffer zone along the stream immediately north of the beach access. The riparian buffer zone shall be measured inland, perpendicular to, and horizontally 50 feet from the top-of-bank or, in areas where a wetland is contiguous to the stream, from the upland edge of the delineated wetland, and extend to the water's edge at base flow conditions. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing; and mowing.

The Agency also requests that condition 26 in the proposed land use permit, which requires maintenance of landscaping, be modified to extend to Exhibit 066 in the final land use permit.

Criterion 8(A): Necessary Wildlife Habitat and Endangered Species

Fish and Wildlife Department botanist Bob Popp visited the project site on May 17, 2021. He did not observe rare, threatened, or endangered plants and notes the area appears rarely inundated (frequent inundation is an indicator of rare plant occurrence). Nevertheless, the seeds for rare, threatened, or endangered plants may occur in sands to be impacted by the proposed beach access. Provided the Applicant collects and stockpiles sand under the beach access before construction commences and redistributes the stockpiled sand on the beach once construction is complete, Mr. Popp believes the project would not destroy or significantly imperil species listed as threatened or endangered under 10 V.S.A. Chapter 123. Consistent with Mr. Popp's recommendation, the Agency respectfully requests that the District Commission include the following condition in any land use permit it issues for the project:

The Permittee shall collect sand under the proposed beach access to a depth of approximately three to six inches prior to construction and shall temporarily stockpile the collected sand during construction. After construction, the Permittee shall redistribute stockpiled sand adjacent to the beach access.

Respectfully submitted,
State of Vermont
Agency of Natural Resources

By: /s/ Kevin Anderson
Kevin Anderson
Regulatory Policy Analyst
Agency of Natural Resources
Office of Planning
(802) 798-2087

E-Notification CERTIFICATE OF SERVICE FILE #4C0051-3

I hereby certify that I, Kevin Anderson, Regulatory Policy Analyst for the Agency of Natural Resources Office of Planning, sent a copy of the foregoing **Supplemental Comments**, dated May 26, 2021, regarding File #4C0051-3 by U.S. mail, postage prepaid, to the individuals without email addresses and by electronic mail to those with email addresses as indicated:

City of Burlington Parks, Rec. & Waterfront
c/o Sophie Sauve
645 Pine Street
Burlington, VT 05401
ssauve@burlingtonvt.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
PSD.VTDPS@vermont.gov

Global Petroleum
22 Flynn Avenue
Burlington, VT 05401
sdecell@globalp.com

VTrans Policy, Planning & Research Bureau
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

Katherine Schad, City Clerk
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149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov
lolberg@burlingtonvt.gov

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116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Chittenden Co. Regional Planning Comm.
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov
james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

District #4 Environmental Commission
111 West Street
Essex Junction, VT 05452
nrb.act250essex@vermont.gov
stephanie.monaghan@vermont.gov

/s/ Kevin Anderson
Kevin Anderson, Regulatory Policy Analyst
Agency of Natural Resources
Office of Planning

**Natural Resources Board
111 West Street
Essex Jct., VT 05452**

**Act 250 Jurisdictional Opinion
#4-296**

This is a Jurisdictional Opinion based upon available information and a written request from the Landowner/Agent or Other Person. Any Notified Person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the District Coordinator (10 V.S.A. § 6007 (c) and Act 250 Rule 3 (b)) or an Appeal with the SUPERIOR COURT, Environmental Division within 30 days of the issuance of this opinion

☒ I hereby request a jurisdictional opinion from the District Coordinator or Assistant District Coordinator regarding the jurisdiction of 10 V.S.A. Chapter 151 (Act 250) over the project described below: Lani Ravin, UVM, Campus Planning Services

PROJECT DESCRIPTION:

The project includes repairs to University of Vermont ("UVM") Given Hall located at 106 Carrigan Drive in Burlington, Vermont. Given Hall was originally constructed in 1963 but is not listed on the National Register for Historic Places. The proposed project includes improvements to the pedestrian plaza at the southwestern entrance to Given Hall including the repair of existing support columns, resurfacing the plaza, new paving, lighting improvements and landscaping improvements. The project includes ground disturbance and requires coverage under an Individual Construction Stormwater permit.

Existing Act 250 permit: Given Hall was included as involved land under Permit 4C0506-11 for the UVMHC (Fletcher Allen Health Care) Renaissance Project

Project Type: ☒ Commercial ☐ Residential ☐ Municipal/State ☐ Mixed
 ☐ Agriculture ☐ Silviculture ☐ Other
Has the landowner subdivided before? ☐ Yes ☐ No ☒ N/A

AN ACT 250 PERMIT IS REQUIRED: ☒ YES ☐ NO

BASIS FOR DECISION:

In a letter dated April 22, 2021, the Vermont Division for Historic Preservation ("VDHP") determined that the work related to the repair of existing support columns will have no adverse effect on historic sites and does not require any further mitigation.

Based on the available information, the project as proposed constitute a material change pursuant to Act 250 Rule 2(C)(6) and requires a permit amendment.

SIGNATURE: /s/ Rachel Lomonaco DATE: 6/9/21

Rachel Lomonaco, District Coordinator
Environmental Commission District #4
111 West Street, Essex Junction, VT 05452
802-879-5658
rachel.lomonaco@vermont.gov

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for

Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Y:\NRB\Essex\DISTRICTS\DIST4\JO\JO 4-201 to JO 4-300\JO-4-296\JO 4-296.docx

CERTIFICATE OF SERVICE

I hereby certify on this 9th day of June, 2021, a copy of the foregoing ACT 250 JURISDICTIONAL OPINION #4-296, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to NRB.Act250Essex@vermont.gov

University of Vermont
c/o Lani Ravin
16 Colchester Avenue
Burlington, VT 05405
Lani.ravin@uvm.edu

Katherine Schad, Town Clerk
Chair, Selectboard/Chair, Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov;
lolberg@burlingtonvt.gov

Chittenden County Regional Planning Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov; PSD.VTDPS@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov; james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
111 West Street
Essex Junction, VT 05452

Natural Resources Board
Diane Snelling, Chair
Greg Boulbol, General Counsel
10 Baldwin Street
Montpelier, VT 05633-3201

Dated at Essex Junction, Vermont, this 9th day of June, 2021.



Jessica Mason
Natural Resources Board Technician
802-879-5614
Jessica.Mason@vermont.gov

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Memorandum

To: John Caulo, Project Manager

Date: June 10, 2021

Project #: 58237.00

From: Jenn Conley, PE, PTOE

Re: ACT 250 Second Hearing Recess Order

VHB has reviewed the *Act 250 Second Hearing Recess Order* and provides the following information regarding item 3.

3. Please provide the following information to the Commission and Transportation Engineer Christopher Chow at the Vermont Agency of Transportation:

a. A reasonable estimate of the maximum number of people that could potentially be on campus during a sold-out PAC event, including, but not limited to, concert attendees, performers, performance crew members, Higher Ground employees, food/beverage concession employees, food/beverage concession patrons, and any other persons who might be employed at, or visiting the facility at the time of a performance.

The estimate of people who could potentially on campus includes:

Higher Ground attendees – 1500¹

Higher Ground staff – 20-25¹

Higher Ground talent – 20-25 people typically in 1 to 2 busses that can park in the loading dock

Food Court employees – 10

Food Court customers – at peak event, no outside customers

¹ Although the permitting documents use a vehicle occupancy rate of 3 ppl/vehicle for trip generation, the parking demand of the entire Higher Ground operation on Williston Road (1050 attendees, staff and talent) park in the 350 available spaces. Therefore, staff and talent are included in that parking rate.

For an event of 1500, the peak parking need is expected to be 500 spaces for Higher Ground attendees, staff and talent. Because the Food Court is a new offering, the 10 employee spaces were not included in the 3 attendee/vehicle parking demand estimate.

b. The average number of Burton employee vehicles or Burton fleet vehicles that might be parked on campus during a performance.

The estimate of Burton vehicles that could potentially be on site is as follows:

Burton Store employees – 4

Burton Vehicles - 1

Other Burton employees – 5²

² Higher Ground and Burton will communicate peak event night information in attempts to have all staff exit the site prior to 7pm, however 5 vehicles were counted as on site in the event that not all employees have vacated.

c. Evidence of commitments from area colleges to provide a campus shuttle system serving PAC events, should the Project be approved. Please also provide the number of parking spaces for which such a shuttle system will eliminate the need.

Burton has discussed campus shuttles with each of the colleges, but since that time, with Covid, no written agreements have been made regarding public transit and events. Burton remains committed to the provision of shuttles to accommodate students to and from peak events and is confident that agreements will be in place when necessary. In the interim, Burton has committed to providing shuttles to and from area colleges and downtown Burlington to accommodate up to 300 attendees at peak events. In order to accommodate this, at a minimum, Burton will run busses that make multiple trips and carry up to 48 passengers each trip. Between 6:00 and 8:00 PM, the route from UVM, Champlain College, and/or downtown Burlington is from 7 to 10 minutes long and requires a similar time on the reverse. Allowing five minutes on each end for boarding and alighting results in pickups every 30 minutes during that period. It is anticipated that the shuttle will continue to run during the event, but with longer headway. One hour before the anticipated completion of the event, the shuttle will begin half hour headways once again. These shuttles will require reservations to ensure that each person is on the correct shuttle and that all shuttle patrons are accommodated as reserved.

d. Evidence of commitments from public transit providers to provide bus service during PAC events, should the Project be approved. Please also provide the number of parking spaces for which that bus service will eliminate the need.

No commitments from transit providers have been made at this time, however, Burton has committed to hire shuttle service for the events as outlined above, until service is provided by colleges and transit providers and/or until off site parking is obtained.

e. Evidence of commitments from neighboring property owners to enter into written agreements to provide additional parking capacity during PAC events, should the Project be approved, including the number of parking spaces that will be provided by each neighboring property owner.

- i. Please explain how patrons will be directed to park in overflow parking areas on neighboring properties if written parking agreements are secured.*
- ii. Please explain how pedestrians will be safely directed from overflow parking areas on neighboring properties across any intervening roadways, to the proposed facility, if written parking agreements are secured.*

Off site parking has not been secured at this time. As such, Burton has committed to the provision of transit to reduce the parking demand on the site. In the event that parking is provided off site, the first vehicles to be relocated will be all staff and talent vehicles (Higher Ground, Burton, and Food Court). In the event that attendee parking is relocated, the parking will be managed with a detailed operations plan that outlines when the parking is used, who actively directs the attendees to the remote parking and Burton will work with the City regarding the sign package required for that condition. In addition, one additional outside staff

person will be needed to safely cross patrons if attendees will be parking on the opposite side of Queen City Park Road.

Table – Parking Calculations

Demand:

Higher Ground Patrons, Staff and Talent	one parking space per three attendees	500 spaces
Burton Staff	conservatively estimating one Burton vehicle, four in store, 5 additional staff vehicles	10 spaces
Food court	staff only, not open to others on peak event nights	10 spaces
Total Demand		520 spaces

Supply:

On site parking	426 spaces
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Net Demand in shuttle busses and/or remote parking at peak events	94 vehicles
--	--------------------

This corresponds to up to 282 attendees

Based on the information in the table above, when events are anticipated to have over 1200 attendees, shuttle busses and/or remote parking should be implemented to accommodate the final 300 attendees.

**STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION**

Act 250 Land Use Permit Application)
#4C0174-6 & 4C0368-3)
The Burton Corporation, Burlington)

CERTIFICATE OF SERVICE

I, Grace Grundhauser, certify that on June 11, 2021, I served copies of the *VHB Memo regarding Second HRO* on behalf of Applicant, the Burton Corporation in the above-referenced proceeding to the service list below by the delivery method noted:

By Email:

District #4 Environmental Commission
Thomas A. Little, Chair
Monique Gilbert, Pam Loranger
111 West Street
Essex Junction, VT 05452
nrb.act250essex@vermont.gov
aaron.brondyke@vermont.gov
By Email and First Class Mail

The Burton Corporation
Justin Worthley, Mike Fialko-Casey, and
Eric Bergstrom
180 Queen City Park Road
Burlington, VT 05401
justinw@burton.com
mikef@burton.com
ericb@burton.com

John Caulo
LandPlan Development Services, LLC
61 Central Avenue
Burlington, VT 05401
john.caulo@gmail.com

Higher Ground
Alex Crothers, Alan Newman, and Mark
Balderston
1214 Williston Road
South Burlington, VT 05403
alex@highergroundmusic.com
alan@highergroundmusic.com
m.j.balderston@gmail.com

Kurt Muller, Jennifer Conley
VHB
40 IDX Drive
Building 100, Suite 200
South Burlington, VT 05403
kmuller@vhb.com
jconley@vhb.com

Eddie Duncan
RSG
55 Railroad Row
White River Junction, VT 05001
eddie.duncan@rsginc.com

Tyler Barnard, Paul Boisvert
Engineering Ventures
208 Flynn Ave, Suite 2A
Burlington, VT 05401
tylerb@engineeringventures.com
paulb@engineeringventures.com

Katherine Schadt, Town Clerk
Joan Shannon, Kimberlee Sturtevant
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov
lolberg@burlingtonvt.gov
jshannon@burlingtonvt.gov
ksturtevant@burlingtonvt.gov

Jeff Padgett, Interim Assistant Director for
Parking & Traffic
Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
jpadgett@burlingtonvt.gov

Colin McNeil
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401
cmcneil@mcneilvt.com
Counsel for the City of South Burlington

Donna Kinville, Town Clerk
Andrew Bolduc, Paul Conner, Meaghan
Emery
City of South Burlington
575 Dorset Street
South Burlington, VT 05403
dkinville@sburl.com
abolduc@sburl.com
pconner@sburl.com
memery@sburl.com

Stephen Crowley, Sharon Behar, Steve
Caflisch
South Burlington Fire District #1
12 Pleasant Ave
South Burlington, VT 05403
steve.crowley1@gmail.com
sharon.behar@gmail.com
steve.caflischvt@gmail.com

Taylor Newton
Chittenden County Regional Planning
Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org
newton@ccrpcvt.org

Jennifer Mojo
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
anr.act250@vermont.gov
jennifer.mojo@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
aot.act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
psd.vtdps@vermont.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
agr.act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov
james.duggan@vermont.gov
accd.projectreview@vermont.gov

FOR YOUR INFORMATION

James Dumont
Law Office of James A. Dumont
15 Main St., P.O. Box 229
Bristol, VT 05443
dumont@gmavt.net
*Counsel for Smith, Waters, Turner, Logan,
de Terra, Goodman, Landauer, Bratt,
O'Neill, Walrath, Herrick, Ellis, and Copp*

Michael Santos
BSC Group
msantos@bscgroup.com

Luc Logan
39 Central Ave
South Burlington, VT 05403
lalogan@hotmail.com

Diane de Terra
39 Central Ave
South Burlington, VT 05403
deterrafirma@gmail.com

Lawrence Smith & Laura Waters
50 Central Ave
South Burlington, VT 05403
wlbsmithvt@gmail.com
waterslj@gmail.com

Almy Landauer
303 Redrock Dr.
Burlington, VT 05401
almy.landauer@gmail.com

Wendy Bratt
52 Central Ave
South Burlington, VT 05403
wbratt@gmavt.net

Doug Goodman/364 QCP Road LLC
66 Central Ave
South Burlington, VT 05403
douggoodmanphoto@gmail.com

Wendy Copp
11 Maple Ave
South Burlington, VT 05403
wendycopp@msn.com

Sabrinajoy Milbury
8 Maple Ave
South Burlington, VT 05403
sabrinajoymilbury@gmail.com

Sharon O'Neill
20 Arthur Court
Burlington, VT 05401
grayoak2@msn.com

Dana Walrath
42 Central Ave
South Burlington, VT 05403
dana.walrath@gmail.com

Stephanie Herrick
161 Austin Drive, Unit #151
Burlington, VT 05401
stephherrick@myfairpoint.net

Michael Turner
110 Central Ave
South Burlington, VT 05403
comittina@comcast.net

Janice Ellis
161 Austin Drive #83
Burlington, VT 05401
redosier@comcast.net

Kerry Anderson
3 Maple Ave
South Burlington, VT 05403
28sabre@comcast.net

Lori Hayes
3 Lyons Ave
South Burlington, VT 05403
lorihayes151515@gmail.com

Harris Roen
46 Scarff Avenue
Burlington, VT 05401
harris@roen.net

Mark Furnari
mark.furnari@gmail.com

Dated at Burlington, Vermont, this 11th day of June, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal

June 18, 2021

Burlington Planning Commission
149 Church Street
Burlington, VT 05401

Dear Commission Members:

I would like the opportunity to talk during the public forum at the June 22 Planning Commission meeting. I would like to discuss the wording in "Article 6 (h) Building Location and Orientation" of the Development Review Standards. More specifically, I'd like to discuss the wording that states: *"In residential areas, accessory buildings shall be located in such a way so as to be secondary and subordinate in scale and design to the principal structure. A parking structure—either attached or detached--shall be setback from the longest street-facing wall of the principal structure and be deferential yet consistent in character and design."*

I understand and I agree with the intent of preventing homes on smaller lots being built that are dominated in size by the garage. I believe the intent of this ordinance is to prevent prominent and or ill-proportioned garage dominance over the house. However, I think this "one size fits all" blanket approach language, that is currently in the Development Review Standards, of requiring any garage to be flat with, or recessed behind, the house is not appropriate on all lots. In particular, on those larger lot neighborhoods in parts of Burlington, this language sometimes has the opposite effect of what was intended. Residents are required to design a house that is flat in the front with very little character that does not fit in with the neighboring houses. This "recessed garage" requirement conflicts with the first section of Article 6(h) Building Location and Orientation which requires *new buildings and additions to maintain the existing development pattern and rhythm of structures along the existing streetscape*.

The replacement house that's been designed for my lot at 125 South Cove has less impervious surface area than the existing house located there (that unfortunately needs significant repair). My proposed new house would have an attached garage width that is less than 1/3 of the width of the total house/garage and is architecturally designed to be incorporated into the house and not stand out despite being 10-12' forward of the principal structure. The garage stands only 3-4' forward of the front door deck.

Most all homes on the lake side (west side) of my South Cove neighborhood have existing garages in the front of the house (including my current one there). This neighborhood is one of three in Burlington's RL Larger Lot Overlay Districts. Requiring that I set back my garage on this 100ft wide lot, will make this home not align with the neighboring homes on either side of this house. These lake-front lots have large lake-side setbacks, generous front yard setbacks and numerous other restrictions such as low mow zone and underground ledge that makes it difficult to move much from the existing footprint. My ultimate goal is to promote a pleasing architectural neighborhood and uphold the interesting streetscape in Burlington.

I have some suggestions that I would like to discuss with the Planning Commission that I believe would make this standard more in line with its intent for these unique, larger lot neighborhoods in Burlington.

Thank you in advance for your time,

David Michael Boardman
125 South Cove Rd, Burlington

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)

www.burlingtonvt.gov/pz

Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

Burlington Planning Commission

Tuesday, June 22, 2021, 6:30 P.M.

Remote Meeting via Zoom, with City Hall In-Person Option

Minutes

Members Present	A Montroll, B Baker, Y Bradley, A Friend, H Roen, E Lee
Staff Present	D White, M Tuttle
Attendance	S Bushor, M Boardman

I. Agenda

Call to Order	Time: 6:46 pm
Agenda	No Change

II. Chair Report

A Montroll	Thanked H Roen & J Wallace Brodeur for service to the Planning Commission.
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III. Director's Report

D White	Council will vote on budget 6/28. Includes additional funding for TDM study, but not for Assistant Planner. City staff is working to reopen City Hall after July 6.
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IV. Public Forum

Name(s)	Comment
S Bushor	Intended to provide comment on public hearing regarding changes to ADU standards, but will hold until rescheduled hearing. Thanked H Roen for service to Planning Commission.
M Boardman	Requested the Commission consider a zoning amendment regarding Article 6 design standards for garage placement, potentially within certain zoning districts. Commission requested staff to speak with M Boardman and bring a recommendation at a future meeting.

V. Public Hearing: Proposed CDO Amendment ZA-21-07 Heights, Dormers & Eaves

Action: Continue or re-warn the public hearing, due to incorrect Zoom link, per advice of City Attorney		
Motion by: Y Bradley	Second by: A Friend	Vote: Approved unanimously
Type: Public Hearing	Presented by:	
Chair opened the Public Hearing for Items V, VI and VII at 7:05 pm. Due to incorrect Zoom link posted in the Agenda, the Commission determined to continue or re-warn based on the advice of the City Attorney. No members of the public spoke to this item and there was no Commission discussion.		

VI. Public Hearing: Proposed CDO Amendment ZA-21-08 Act 179 Changes

Action: Continue or re-warn the public hearing, due to incorrect Zoom link, per advice of City Attorney

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

Tuesday, June 22, 2021

Motion by: Y Bradley	Second by: A Friend	Vote: Approved Unanimously
Type: Public Hearing	Presented by:	
Chair opened the Public Hearing for Items V, VI and VII at 7:05 pm. Due to incorrect Zoom link posted in the Agenda, the Commission determined to continue or re-warn based on the advice of the City Attorney. No members of the public spoke to this item and there was no Commission discussion.		

VII. Public Hearing: Proposed CDO Amendment ZA-21-09 Updates & Corrections to Article 14

Action: Continue or re-warn the public hearing, due to incorrect Zoom link, per advice of City Attorney		
Motion by: Y Bradley	Second by: A Friend	Vote: Approved Unanimously
Type: Public Hearing	Presented by:	
Chair opened the Public Hearing for Items V, VI and VII at 7:05 pm. Due to incorrect Zoom link posted in the Agenda, the Commission determined to continue or re-warn based on the advice of the City Attorney. No members of the public spoke to this item and there was no Commission discussion.		

VIII. Commissioner Items

- Next Meetings are on July 13 and July 27 at 6:30pm.
- In-person options for all remote public meetings are again required. The Chair requested that Commission meetings continue to be remote through the summer. Some Commissioners requested the option to be in person. Staff will follow up with the Commission to confirm what can be accommodated for the July 13 meeting.

IX. Minutes and Communications

Action: Approve the minutes and accept the communications		
Motion by: A Friend	Second by: H Roen	Vote: Approved unanimously
Minutes Approved: May 11, 2021		
Communications Filed: • Posted online		

X. Adjourn

Adjournment	Time: 7:18pm	
Motion: H Roen	Second: E Lee	Vote: Approved Unanimously



Signed: July 15, 2021

Andy Montroll, Chair

Respectfully submitted by:



Meagan Tuttle, Comprehensive Planner