



City of Burlington, VT
149 Church Street, 3rd Floor
Burlington, VT 05401
Phone: (802) 865-7144

www.burlingtonvt.gov/plan

Burlington Planning Commission

Ordinance Committee
Remote Meeting

Thursday, May 6, 2021 @ 5:15 PM

Zoom: <https://us02web.zoom.us/j/83751747127?pwd=NXpNN2hqCEFmTXhyb3RwbWhMb3JwQT09>

Webinar ID: 837 5174 7127

Password: 260095

Telephone: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799

AGENDA

1. Discussion of amendment package to:
 - Enable accessory sales within home occupations
 - Enable administrative review of flood zone applications (that otherwise qualify for administrative review)
 - Eliminate the conforming lot trigger for COA review of otherwise basic permits
 - Eliminate the permit requirement for change in one permitted non-residential use to another permitted non-residential use in certain cases
2. Article 14 corrections and adjustments amendment
3. Adjournment



TO: Planning Commission Ordinance Committee
FROM: Scott Gustin
DATE: April 1, 2021
RE: Permitting Adjustments

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

- Eliminate the zoning permit requirement for changes among permitted non-residential uses (only the use) where no standards apply;
 - Allow basic zoning permits for single-family uses on lots in the non-design review district (removing ‘conforming’ from the text);
 - Enable administrative review of flood hazard area zoning permits (unless otherwise trigger DRB review); and,
 - Allow some retail sales in home occupations for customers already visiting for a service (i.e. shampoos at a home salon).
1. Presently, any change from one use to another use requires a zoning permit. Oftentimes, the only zoning standard that changes when going from one permitted non-residential use to another permitted non-residential use is the parking standard. With the recent elimination of minimum parking requirements, there have been a number of non-residential changes in use that have received zoning permits without any standards to meet. In such cases, arguably, there is no need to require a zoning permit. The proposed amendment defines a narrow exemption from the need for a zoning permit for changes in use between permitted non-residential uses.

Begin Amendment Text

ARTICLE 3: APPLICATIONS, PERMITS, AND PROJECT REVIEWS

PART 1. GENERAL PROVISIONS AND ZONING PERMITS

Sec. 3.1.2 Zoning Permit Required

(a) Exterior Work:

As written.

(b) Interior Work:

As written.

(c) Exemptions:

The following shall be exempt from the requirements of this Ordinance and shall not be required to obtain a zoning permit:

1. Exterior modifications to a single family dwelling in a non-design review portion of the RL zoning district lawfully in existence ~~prior to the adoption of this ordinance on a conforming lot~~, and not on or

eligible for listing on the State or National Register of Historic Places. Such an exemption shall not be applicable to any of the following changes, which do require a zoning permit:

- A. Increased lot coverage;
 - B. Increased habitable living space;
 - C. Changes in setbacks or building footprints; and
 - D. Construction of additional stories to an existing structure.
 - E. Improvements in a Special Flood Hazard Area.
2. The removal of trees from any lot containing a single family home or duplex which consists of no more than three-quarters (3/4) of one acre.
 3. Within any city park within an RCO zone or Civic district, regular tree maintenance and removal not otherwise associated with land clearing for new development or site improvements, and regular turf maintenance including re-grading and reseeded.
 4. Individual tree removal projects that are included under an approved and valid “tree maintenance plan”.
 5. The maintenance or repair of any exterior architectural feature, or its replacement in-kind, which does not involve a change in the location, design, material, or the outward appearance of the feature;
 6. Temporary ramps to serve the handicapped or disabled, for a period of not more than 90 days.
 7. Public utility power generating plants and transmission facilities regulated under 30 V.S.A. §248.
 8. Accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 VSA §1021(f) and 1259(f) and 6 VSA §4810. Prior to the construction of farm structures the farmer must notify the Administrative Officer in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.
 9. The temporary stabilization and securing of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a written order of the same issued under the authority of the city building inspector.
 10. Where temporary stabilization is not reasonably available the emergency demolition of any structure, site, or building feature required to address an unsafe or dangerous condition which poses an imminent threat to public safety pursuant to a order of the same issued under the written authority of the city building inspector and with the written concurrence of the city engineer. This exemption does not extend beyond the required demolition, clearing of debris, securing or filling cellar holes, and related erosion control and stormwater management.
 11. All structures of 24 square feet or less and no taller than 15 feet, as long as they are located in compliance with applicable setbacks. This exemption is limited to 1 such structure, or multiple structures in aggregate up to 24 square feet, per property. This exemption does not apply to properties located within the Special Flood Hazard Area.
 12. Children’s play structures.
 13. Seasonal skating rinks
 14. Temporary Structures or Uses as per Sec. 5.1.2 (f).
 15. Urban agricultural exemptions:
 - a. Cold frames of 6 feet in height or less. This exemption does not apply to properties located within the Special Flood Hazard Area.
 - b. Up to 2 seasonal hoop houses, each 200 square feet or less, without foundations and as long as they are located in compliance with applicable setbacks. This exemption applies only to seasonal hoop

houses that are sheathed in translucent plastic or similar material for a maximum of 9 months per year and are maintained in an intact condition. The frame may remain in place year-round. This exemption does not apply to properties located in the Special Flood Hazard Area.

- c. Urban agricultural uses or structures located on building rooftops.
- d. Sale of food produced onsite or at an individual's community garden plot not to exceed \$1,000 per year. Food may be processed within the individual's residential kitchen.

16. Family day care homes.

17. Per Act 45: Sec. 15c. 24 V.S.A. § 4413(g), notwithstanding any provision of law to the contrary, nothing in this ordinance shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

18. A change in use from one permitted non-residential use to another permitted non-residential use, provided that no development is included, no minimum parking requirement applies, and impact fees are not applicable. This exemption does not apply to uses affected by Article 5, Part 4: Special Use Regulations.

(d) Determination of Non-Applicability:

As written.

End Amendment Text

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

Begin Amendment Text

ARTICLE 4: ZONING MAPS AND DISTRICTS

PART 5: OVERLAY ZONING DISTRICT REGULATIONS

Sec. 4.5.4 Natural Resource Protection Overlay (NR) District

(a) – (e) As written.

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

- 1. Additional Application Requirements

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

- A. Base flood elevation data for all subdivision proposals and other proposed new developments containing more than fifty (50) lots or covering more than five (5) acres;
- B. The elevation, in relation to mean sea level, of the lowest floor, including basement, of all new construction or substantial improvements of structures;
- C. Confirmation if such structures contain a basement; and
- D. The elevation, in relation to mean sea level, to which any structure has been flood proofed.
- E. A Vermont Agency of Natural Resources Project Review Sheet for the proposal should be filled out. The Project Review Sheet should identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the City permit application. The identified permits, or letters indicating that such permits are not

required, shall be submitted to the Administrative Officer and attached to the permit application before work can begin.

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

- F. Plans in triplicate, drawn to scale, showing the location, dimensions, contours and elevation of the lot; the size and location on the site of existing and/or proposed structures, fill or storage of materials; the location and elevations of streets, water supply and sanitary facilities; and the relationship of the above to the location of the channel, floodway and base flood elevation where such information is available;
- G. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel and cross-sectional areas to be occupied by the proposed development;
- H. A profile showing the slope of the bottom of the channel or flow line of the stream; and
- I. Specifications for building construction and materials, flood proofing, mining, dredging, filling, grading, paving, excavation or drilling, channel improvement, storage of materials, water supply and sanitary facilities.

2. Permitted Uses in Floodway Areas

The following open land uses shall be permitted within the floodway areas to the extent that they are permitted or conditionally permitted in the underlying zoning district, and provided that they do not require the erection of structures or storage of materials and equipment, the borrowing of fill from outside the floodway area, or channel modification or relocation, and do not obstruct flood flows, nor result in any increase in flood levels during the occurrence of the base flood discharge, decrease the water-carrying capacity of the floodway or channel, or increase off-site flood damage potential:

- A. Agricultural uses, such as general farming, pasture, orchard, and grazing, outdoor plant nurseries, truck farming, and forestry;
- B. Recreation uses, such as parks, camps, picnic grounds, tennis courts, golf courses, golf driving ranges, archery and shooting ranges, hiking and riding trails, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming areas and boat launching sites; and/or
- C. Accessory residential uses, such as lawns, gardens, and parking areas.

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

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

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

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

5. Mandatory DEC Notification and 30-Day Review Period

- A. Prior to issuing a permit a copy of the application and supporting information shall be submitted by the administrative officer to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

- B. Adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section shall be notified at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the VT National Flood Insurance Program Coordinator.
- C. No permit may be granted for new construction, substantial improvement, filling, installation of a residential structure, or the development of land in any area designated as a floodplain by the Federal Emergency Management Agency (FEMA) prior to the expiration of a period of thirty (30) days following the submission of the application and a report to the Department of Environmental Conservation. The application and report shall describe the proposed use, the location requested and an evaluation of the effect of such proposed use on Burlington's municipal development plan and the regional plan, if any.
- D. The subsection shall not be applicable to public utility generating stations and transmission lines which shall require the issuance of a certificate of public good under 30 V.S.A. Sec. 248 prior to any land filling or construction.

6. Evaluation

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

7. Special Review Criteria

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

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments;
- B. The danger that material may be swept on to other lands or down stream to the injury of others;
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
- E. The importance of the services provided by the proposed facility to the community;
- F. The availability of alternative locations not subject to flooding for the proposed use;
- G. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- H. The relationship of the proposed use to the municipal development plan;
- I. The safety of access to the property in times of flood of ordinary and emergency vehicles;
- J. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood-waters expected at the site; and,
- K. Conformance with all other applicable requirements of this ordinance.

8. Approval Conditions

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

In **Floodway Areas** such conditions require that:

- A. Along watercourses with a designated Floodway no encroachments, including fill, new construction, substantial improvements and other development are allowed within the floodway

unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

- B. The flood-carrying capacity within any altered or relocated portion of a watercourse shall be maintained;

In all **Special Flood Hazard Areas** (including Floodway areas) such conditions require that:

C. All development:

- (i) New construction and/or substantial improvements to structures shall be reasonably safe from flooding and be:
 - 1. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
 - 2. Constructed of materials resistant to flood damage;
 - 3. Constructed by methods and practices that minimize flood damage; and
 - 4. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (ii) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
- (iii) All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
- (iv) All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall:
 - 1. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
 - 2. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings of two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
- (v) All necessary permits shall be obtained from those governmental agencies from which approval is required by federal or state law.

D. Residential Development:

- (i) All new and substantially improved residential structures within Special Flood Hazard Area have the lowest floor, including basement, elevated one foot or more above, the base flood elevation;
- (ii) All new, replacement or substantially improved manufactured homes in the Special Flood Hazard Area shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement during the occurrence of the base flood. The manufactured home may be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is above the base flood elevation OR so that the lowest

floor is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than one foot in height above the base flood elevation.

E. Non-Residential Development:

- (i) All new construction and substantial improvements for nonresidential purposes shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation. Existing non-residential structures may be flood proofed where designed to be watertight to one foot or more above the base flood elevation, with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a proposed building to be flood proofed shall not be issued until a registered architect or engineer has reviewed the structural design, specifications and plans and has certified that the design and methods of construction are in accordance with meeting the provisions of this subsection.

F. Water Supply Systems:

New and replacement water supply and sanitary sewer systems shall be designed so as to prevent the infiltration of floodwaters into the systems and discharge from the systems;

G. On-Site Waste Disposal Systems:

On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;

H. Recreational Vehicles:

Recreational Vehicles placed on sites with special flood hazard areas shall either:

- (i) be on the site for fewer than 180 consecutive days, or
- (ii) be fully licensed and ready for highway use, or
- (iii) be permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in Sec. 4.5.4 (f).8.(D).

9. Records

The administrative officer shall maintain a record of:

- A. All permits issued in areas covered by this bylaw;
- B. An Elevation Certificate with the as-built elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement in the Special Flood Hazard Area; and
- C. The elevations, in relation to mean sea level, to which existing structures have been flood-proofed.
- D. Any certification of floodproofing.

10. Variances

Variances to the above standards may be granted in writing by the DRB only in accordance with Article 12 and 44 CFR Section 60.6, and after a hearing noticed in the same manner as for a conditional use.

A. Review Criteria.

A decision in favor of the appellant shall be granted if all the following facts are found, and the supporting findings are specified in the decision. The variance, if authorized shall be issued by the DRB only upon:

- (i) determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

- (ii) determination that the variance will not result in increased flood heights, increased susceptibility to flooding or erosion, additional threats to public safety or infrastructure (including emergency services during flood events), or extraordinary public expense;
- (iii) the variance will not increase the potential of materials being swept onto other lands or into the stream and causing damage to others; and,
- (iv) the variance if granted will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan;

B. Notice to Applicant.

Upon request for a variance the administrative officer shall notify the applicant in writing over the signature of the zoning administrator or his/her designee that:

- (i) The issuance of a variance to construct a structure below the base flood elevation will result in increased flood insurance premium rates up to amounts as high as \$25 for \$100 of coverage; and
- (ii) Such construction below the base flood elevation increases risks to life and property.

C. Annual Recording.

The administrative officer shall:

- (i) Maintain a record of all variance actions, including justification for their issuance; and
- (ii) Report such variances issued in its annual report

11. Warning of Disclaimer of Liability

These regulations do not imply those areas outside the flood hazard area or land uses permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of any city official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

End Amendment Text

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

Begin Amendment Text

ARTICLE 5: CITYWIDE GENERAL REGULATIONS
PART 2: DIMENSIONAL REQUIREMENTS

Sec. 5.2.1 Existing Small Lots

Any small lot of record existing as of April 26, 1973 may be developed for the purposes permitted in the district in which it is located even though not conforming to minimum lot size requirements if such lot is

not less than four thousand (4,000) square feet in area with a minimum width and depth dimension of forty (40) feet.

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

End Amendment Text

Home occupations can span a wide variety of forms, from counseling services, to woodcraft, to hair salons. Presently, sales of any goods are prohibited except for those made as part of the home occupation (i.e. sale of baked goods from a home bakery, sales of guitars from a guitar maker). There has been a long-standing request to make this standard more permissive so that goods associated with the home occupation, but not necessarily made there, may be sold onsite. Sale of hair care products at a home salon is a typical example. The proposed amendment adjusts the provision for onsite sales to include goods that are typically associated with the home occupation and incidental to it.

Begin Amendment Text

PART 4: SPECIAL USE REGULATOINS

Sec. 5.4.6 Home Occupations

Pursuant to the requirements of 24 VSA 4412(4), it is the intent of these regulations to provide for the use of a minor portion of a dwelling unit for a home occupation and to ensure compatibility with other permitted uses and with the residential character of the neighborhood. Such a home occupation must clearly be secondary or incidental to the principal residential use, and so located and conducted that the average neighbor, under normal circumstances, would not otherwise be aware of its existence.

(a) Administrative Approval:

Home occupations may be approved by the administrative officer subject to the following:

1. A home occupation not located within a residential or institutional district;
2. A home occupation located in a residential or institutional district as follows:
 - A. Home occupations that are low impact office in nature and including design studios, using normal office equipment such as computers, calculators, telephone, fax machines, desks, drafting tables or other similar office furnishings;
 - B. No clients or customers come to the premises;
 - C. There shall be no vehicles associated with the home occupation except:
 - (i) A personal vehicle with no commercial identification can be used; and,
 - (ii) An occasional delivery vehicle such as a Postal Service, UPS, or FedEx truck, but excluding semi trailers or 18 wheel vehicles;
 - (iii) deliveries or pick-ups shall occur no more than an average of one (1) time per day between the hours of 8 am and 6 pm;
 - D. No goods are located on site except for those customarily incidental to the home occupation, ~~samples or designs produced on site~~ and no such samples goods or other materials associated with the home occupation may be stored outside of an enclosed structure;
 - E. All employees shall be residents of the home where the home occupation is conducted. No outside employees are allowed on the premises;
 - F. No more than 25%, up to 500 square feet, of a residence can be used for the home occupation; and,

G. No signs are allowed.

(b) Conditional Use Review:

All home occupations not otherwise eligible for administrative approval above shall require review and approval by the DRB pursuant to the requirements of Art. 3, Part 5. In addition to the conditional use criteria, the following criteria must be met for any home occupation:

1. A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL districts, and no more than two (2) full-time equivalent employees in other districts. The home occupation shall be conducted entirely within an existing dwelling unit and/or one enclosed accessory structure;
2. No more than thirty-five per cent (35%) of the floor area of said residence, including accessory structures, up to a maximum of seven hundred fifty (750) square feet, whichever is less, shall be used for such purpose;
3. No home occupation shall require alterations, construction or equipment that would change the fire rating of the structure or the fire district in which the structure is located;
4. There shall be no outside storage of any kind related to the home occupation;
5. There shall be no exterior evidence of the conduct of a home occupation except for:
 - A. Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each); and
 - B. One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.
6. No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries. All parking shall be located off-street and shall maintain the required front yard setback;
7. No home occupation shall create sounds, noise, dust, vibration, smell, smoke, heat, humidity, glare, radiation, electrical interference, fire hazard or any other hazard, nuisance or unsightliness which is discernible from any adjacent dwelling unit;
8. The home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes and shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part.
9. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day;
10. With the exception of one delivery per day, as specified in subparagraph (9), no more than one (1) commercial vehicle shall be allowed on the premises at any one time; and
11. There shall be no sale of goods except for goods ~~fabricated on the premises as part of~~ customarily incidental to an approved home occupation.

End Amendment Text



City of Burlington, VT
149 Church Street, 3rd Floor
Burlington, VT 05401

www.burlingtonvt.gov/plan

TO: Planning Commission
FROM: David E White, FAICP, Dir. of Planning
DATE: April 21, 2021
RE: Proposed CDO Amendment: Updates and Corrections to Article 14 (will be ZA-21-09)

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 Planning 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
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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:

- 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

Proposed Amendments

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	Approve for Public Hearing	Public Hearing	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-XX – planBTV Downtown Code Update

As prepared by the City Planning Office – April 21, 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

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
Balcony and Decks		4-ft max. encroachment
Other Architectural Features ⁴	4-ft max.	4-ft max. encroachment
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) - *unchanged*

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. 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-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 minimize solar reflectance.

vi. Alternate Materials: Alternate 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. Regionally-available materials are 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.
- ii. Balconies shall be cantilevered or visibly supported by brackets or beams sized, shaped and proportioned to match the associated ~~b~~Balcony. Columns or posts extending to the ground within the public right-of-way are prohibited ~~on a Façade, except in the case of a Gallery Frontage Type.~~
- iii. Balconies shall provide 8-feet minimum clear height above the finished grade, or 13-feet 6-inches minimum clear height above the finished grade above any area used for vehicular parking or circulation, or emergency vehicle access.
- ~~iv.~~ The ~~b~~Balcony platform shall be at least 3-inches thick, and where the underside of a balcony is visible from a public way it shall be finished. Balconies may ~~or may not~~ incorporate a ~~roof~~, Canopy or Awning, but shall not be enclosed.
- v. Decks shall be permitted only in the Third Lot Layer or on rooftops.
- vi. Decks may include a Canopy, Awning or free-standing pergola, but shall not be enclosed.

h) **Awning and Canopies:** Awnings ~~s~~ and ~~e~~Canopies are encouraged as a traditional street-level store-front fitting to accent and provide shade and/or shelter over a primary entrance, display windows, or outdoor seating. Awnings and Canopies may also be found above upper story windows and Balconies, and over secondary entrances. Where provided, ~~such all~~ Awnings and Canopies ~~placed on a Façade~~ shall meet the following specifications:

- i. Awnings and ~~e~~Canopies shall provide 8-feet minimum clear height above the finished grade ~~(A)~~, and ~~shall project a minimum of 6 feet from the Façade (B) to a maximum of 2 feet from the curb (C)~~. 13-feet 6-inches minimum clear height above the finished grade shall be provided above any area used for vehicular parking or circulation, or emergency vehicle access (A).

- 185 ii. First floor Awnings and Canopies shall project a minimum of 3-feet from the Façade (B)
186 or Elevation to which it is attached to a maximum of 2-feet from the curb (C). Awnings
187 and Canopies on upper story windows may project no more than 5-feet from the Facade.
188 Awnings that cannot project a minimum of 3-feet due to the small size of the opening,
189 shall project a minimum of 50% of the height of the opening (e.g. a window that is 4-ft tall
190 shall project at least 2-ft).
- 191 ~~ii.~~iii. Awnings and ~~C~~eanopies shall be placed, sized, shaped, and proportioned to match the
192 associated openings or width of the associated Frontage, and shall be consistent in
193 materials, color, and design across the same Façade, Frontage Type, or architectural
194 bay.
- 195 ~~iii.~~iv. Awnings and ~~C~~eanopies that span across an entire ~~Façade~~ Frontage shall be fixed no
196 higher than the top of the first story.
- 197 ~~iv.~~ All awnings and canopies used within an individual Frontage Type shall be consistent in
198 materials, color, and design.
- 199 v. Awnings and ~~e~~Canopies shall not be internally illuminated or backlit, however they may
200 contain lighting fixtures intended to illuminate the ground beneath when covering a
201 Building entrance.
- 202 ~~v.~~vi. Awnings and Canopies may incorporate signage pursuant to the requirements of Article
203 7.
- 204 ~~vi.~~vii. Awnings shall have an ~~internal or external~~ structural framework of steel/aluminum or
205 other appropriate, durable structural material supporting a thin, non-translucent covering
206 material with a matte finish such as ~~painted~~ metal, acrylic, canvas, or synthetic fabric.
207 ~~The Awnings design should shall~~ not include a soffit, and c or side panels. Retractable
208 awnings are encouraged. Columns or posts extending to the ground are prohibited within
209 the public right-of-way. Retractable Awnings are encouraged.
- 210 ~~vii.~~viii. Awnings ~~shall be~~ are typically rectangular in elevation and triangular in cross-section, with
211 shall have straight edges with no arcs or curves, and may be pitched to shed water off to
212 the side when placed over a Building entrance. ~~The valance of the an A~~awning shall be
213 no more than 12-inches in height (D).
- 214 ix. Canopies are typically rectangular in both elevation and in cross-section, shall have
215 straight edges with no arcs or curves, and may be pitched enough to shed water off to
216 the side when placed over a Building entrance. The faces of the Canopy shall be no more
217 than 24-in in height (D).
- 218 x. Canopies shall be constructed of steel/aluminum or other appropriate, durable structural
219 material, and ~~The canopy~~ may be clad in metal panel, wood, or other durable finished
220 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 ~~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*

e) **Parking Structures and Garages**

- i. With the exception of individual Garages serving a Rowhouse Building Type which shall be located in the Third Lot Layer, all Parking Structures and Garages shall be located:
 - within a Principal Building Type and located Underground, above the second Story, and/or in the ground floor when located in the Third Lot layer and separated from the street by an Active Street-level Use; or,
 - behind a Perimeter Building (See Section 14.4.11), or enclosed below the finished grade or above the second story within a Principal Building that provides active uses (such as, but not limited to, residential lobby, retail, office, recreational, or services) at the street level along the width of the Frontage a minimum of 20 feet deep.

ii-vi – *unchanged*

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

i - ii – *unchanged*

iii. Stacked and Tandem Parking. – *otherwise unchanged*

Sec. 14.6.8- Site and Landscape Standards

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

b) **Site Standards:**

v. Fences and Free-standing Walls:

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

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

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

c) **Landscape 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*

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

335
336 *e) - unchanged*
337

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

339 The creation of new Civic Spaces or Civic Buildings, or the Substantial Modification of an existing
340 Civic Space or Civic Building, shall follow the process as defined below. Any other proposed
341 alteration to an existing Civic Space or Civic Building shall be reviewed and approved by the
342 ~~Director~~ Administrative Officer who shall ensure ongoing compliance with the intent and
343 standards of this Chapter as applicable.
344

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

- 347 • pre-application review and consultation with the departments of City Planning and Zoning,
348 Permitting and Inspections, Community and Economic Development, and Parks, Recreation,
349 Waterfront;
- 350 • a pre-application Neighborhood Public Meeting pursuant to Sec. 3.2.1 (d) of the BCDO;
351 • review and recommendation of the Design Advisory Board; and,
352 • final review and approval by the Development Review Board.
353
354

355 *Remaining section is unchanged*
356
357

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.

~~a)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)e)~~ 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 <u>Glazing voids</u>	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- A Street Activation = <u>Primary and Secondary Façade</u> , and Section 14.5: Specific to Frontage Types
Glazing Voids:	Maximum of 10% of the required linear distance between <u>windows voids</u>	The relief is necessary for the creation of stronger distinctions between	Section 14.4: Specific to Building Types, Table 14.4.13-

A reduction in the maximum
linear distance between
window openings ~~voids~~

individual Frontage Types
and/or at Building corners.

remaining unchanged

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.



Burlington Planning Commission

Ordinance Committee Meeting Minutes

Thursday, May 6, 2021 @ 5:15 PM

Remote Meeting

Attendance

- **Committee Members:** Matt Bushy (MB), Emily Lee (EL), Caitlin Halpert (CH)
- **Absent:** Yves Bradley (YB), Bruce Baker (BB)
- **Public:** None
- **Staff:** Scott Gustin, Mary O'Neil (Permitting & Inspections), David White (Planning Office)

1. Article 14 corrections and adjustments amendment

The Committee discussed the recent request to redraw the FD5 boundary as well as the proposed draft amendment language.

Motion by: MB Second by: CH

Defer action on the requestd FD5 boundary change.

Vote: 3-0-0

Motion by: MB Second by: CH

Recommend amendment language with changes as discussed.

Vote: 3-0-0

2. Disucssion of amendment package to:

- Enable administrative review of flood zone applications (that otherwise qualify for administrative review)
- Eliminate the conforming lot trigger for COA review of otherwise basic permits
- Eliminate the permit requirement for change in one permitted non-residential use to another permitted non-residential use in certain cases

Motion by: CH Second by: MB

Recommend amendment language as proposed.

Vote: 3-0-0

3. Adjournment

The Committee adjourned at 6:25 PM.