

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
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Sean McKenzie, (Alternate)
Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, April 18, 2023, 5:00 PM

PUBLIC HEARING NOTICE

In Person (at 645 Pine Street) Meeting

- 1. ZP-23-33; 120 Depot Street (RM-W, Ward 3C) Andrea Trombley / Steve Trombley**
Height variance request up to 60 ft.
- 2. ZP-23-104; 65 Scarff Avenue (RL, Ward 5S) Mark Kotorman / Laurie Kotorman**
Home occupation to conduct private Pilates classes in existing bedroom.

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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.

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Tuesday, April 18, 2023, 5:00 PM

AGENDA

In Person (at 645 Pine Street) Meeting

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Public Hearing**

- 1. ZP-23-33; 120 Depot Street (RM-W, Ward 3C) Andrea Trombley / Steve Trombley**
Height variance request up to 60 ft. (Project Manager, Scott Gustin)
- 2. ZP-23-104; 65 Scarff Avenue (RL, Ward 5S) Mark Kotorman / Laurie Kotorman**
Home occupation to conduct private Pilates classes in existing bedroom. (Project Manager, Garret King)

V. Certificate of Appropriateness

- 1. ZP-23-30; 483 Manhattan Drive (RM, Ward 2C) Green Mountain Habitat for Humanity / Chris Lane**
Demolition of existing structure for the construction of a new duplex. (Project Manager, Garret King)

VI. Adjournment

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Department of Permitting & Inspections

Zoning Division
645 Pine Street
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Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Garret King, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
Vacant, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Garret King
DATE: April 18, 2023
RE: ZP-23-104; 65 Scarff Avenue

=====

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 5S

Owner/Applicant: Laurie Kotorman

Request: Use existing bedroom to conduct private Pilates Classes as a home occupation.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 5 (Citywide General Regulations), Article 8 (Parking)

Background Information:

The building is a single family home and the applicant is requesting after-the-fact approval to use one of the bedrooms as a Pilates studio. There is currently parking for clients on the lot, and no renovations will be needed. The studio is used for single clients at a time, and no group sessions will be held.

Zoning Permit history

- N/A#, 5/13/1976: Erect a 30`x 35.5` addition to the rear of the house at 56 Scarff Avenue, to extent the kitchen and dining room, and add a new bath and bedroom. Includes a covered deck.
- ZP# 78-721, 5/15/1978: Install a 16`x 32` in ground swimming pool and erect a 4`x 80` chain link fence on one side of the property and a 4`x 20` stockade fence
- ZP# 87-627, 12/15/87: Remove swimming pool, garage and portion of driveway; Construct new 20`x 40` workshop/Garage.
- ZP# 87-685, 3/3/88: Replace a 61`x 42` kitchen window with a 44`x 42` window.
- ZP# 20-0642CA, 2/27/2020 Remove rear porch and mudroom, replace with two story addition. Add roof dormer and 2nd floor deck. Replace windows. Remove aluminum siding, garage roof replacement. Extend driveway with permeable pavers.
- ZPF# 21-32, 6/17/2021: Replace part of existing fence
- ZPR# 22-35, 11/15/2022: Replace south facing asphalt shingle roof with slate shingles.

Recommendation: Conditional use approval as per, and subject to, the following findings and conditions.

I. Findings

Article 3: Applications, Permits, and Project Reviews

Part 3: Impact Fees

Sec. 3.3.2, Applicability & Sec. 3.3.3, Exemptions & Waivers

Not applicable

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The property is served by municipal utilities. Electrical, water, and wastewater services are currently on site and will continue to be used for the home occupation. No adverse effects are expected for the use of one room as home occupation. **(Affirmative finding)**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The property is located within the Residential low density zone. This zone is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history. The home occupation is accessory to the residence and will be conducted entirely inside. The home occupation will not adversely impact the home's relationship to the character of this residential area. **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

The home occupation is contained entirely within the home and requires no exterior alterations. Clientele are limited. It been running for some time, and no complaints have been filed. Continuing use will likely continue to go unnoticed. **(Affirmative finding)**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

No traffic analysis has been provided or is required for this application. Very limited clientele traffic is associated with the home occupation. **(Affirmative finding)**

5. *The utilization of renewable energy resources;*
(Not applicable)

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances*
It is the applicant's responsibility to comply with other applicable city and state bylaws and ordinances as required. **(Affirmative finding)**

(b) Major Impact Review Standards

Not applicable.

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

The use of one room as a Pilates studio for one client at a time does not entail noise or glare impacts sufficient to require mitigation. See Sec.3.5.6(a) above. **(Affirmative finding)**

2. *Time limits for construction.*

No construction or renovation is proposed. Not applicable.

3. *Hours of operation and/or construction to reduce the impacts on surrounding properties.*

The hours of operation noted in the application are limited to 8:00 AM – 1:00 PM on Tuesdays and Thursdays. These hours are acceptable and entail minimal impact on neighboring residences, particularly with the limitation of 1 client at a time. **(Affirmative finding)**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,*

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time. **(Affirmative finding)**

5. *Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

See the recommended conditions. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.5.1, Nuisance Regulations

See Sec 3.5.6(a) above.

Sec. 5.4.6, Home Occupations

(b) Conditional Use Standards

1. *A home occupation conducted by...*

The owner of the property will be running the Pilates studio with no other employees.

(Affirmative finding)

2. *Floor area for Occupation use.*

Only one room of the home will be used for the Pilates studio using up only 8.2% of the residence total floor area. **(Affirmative finding)**

3. *Alterations and Construction.*

No renovation or construction will be needed to convert the room. **(Affirmative finding)**

4. *Outside storage.*

No outside storage will be needed or created. **(Affirmative finding)**

5. *Exterior evidence of home occupation.*

The home occupation has single client sessions only and has no exterior advertisements. No disturbances should be caused by the occupation. **(Affirmative finding)**

6. *Vehicular traffic.*

With only few clients a week a low number of sessions should not create any new traffic issues. There is current off street parking behind the home where clients will park. **(Affirmative finding)**

7. *Minimize nuisance.*

With only one client per session happening indoors. No disturbances should be created from the home occupation. **(Affirmative finding)**

8. *Home occupation secondary to the primary use.*

Only one room will be used for the Pilates studio. No construction will be needed, keeping the large majority of the structure dedicated to the primary residential use. **(Affirmative finding)**

9. *Deliveries and products.*

The home occupation will not be receiving deliveries. Not applicable.

10. *Commercial vehicles on the property.*

The home occupation does not have a commercial vehicle associated with the Pilates studio. **(Affirmative finding)**

11. *Sale of goods.*

(Not applicable)

Article 8: Parking

Sec. 8.1.9, Maximum On-Street Parking Requirements

The home occupation is accessory to the primary residence and does not affect applicable on-site parking maximums for the property. **(Affirmative finding)**

II. Conditions of Approval

1. Days and hours of operation for the home occupation are limited to Tuesdays and Thursdays, from 8:00 AM – 1:00 PM. Only one client at a time is on the property.
2. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required.
3. Standard permit conditions 1-15.



Department of Permitting and Inspections

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Home Occupation Application Questionnaire

Use this checklist for all applications for a home occupation - See Sec. 5.4.6 of the Zoning Ordinance. This questionnaire is provided to summarize details and is required to accompany a zoning permit application form and required fee (for either administrative approval or conditional use review).

Please note:

1. The specific requirements for home occupations can be found in Section 5.4.6 of the Comprehensive Development Ordinance which is available in its entirety on our website at www.burlingtonvt.gov/PZ
2. A 'Business Personal Property Registration Form' may be required to be submitted to the Assessors Office. This form is available at www.burlingtonvt.gov/assessor/businesses

Name of Business Proposed: Mind Your Body Pilates

Type of Business Proposed: Private Pilates Studio (only 1 client per session No class)

Provide a detailed description of the proposed Home Occupation such as: activities involved; materials and equipment used; quantities of materials and equipment stored on-site; methods of operation; hours of operation. This may be done on a separate piece of paper and attached.

Please respond to the following:

1. How many persons will be involved or employed in the conduct of the proposed Home Occupation:
Residents of premises: 1 Others Total Number
2. What type of product will be produced, serviced, or repaired in the conduct of your Home Occupation? (For example: repair of clocks or watches, making jewelry, etc.). Explain:
I instruct clients privately (no group classes) as a certified Pilates instructor program based on individual needs/goals
3. Describe any alterations to the home or premises that might be required to facilitate your Home Occupation:
None
4. Describe what rooms will be used in the conduct of the Home Occupation and how these rooms will be used. (For example: garage will be used to store supplies; or den will contain desk and file cabinets, etc.). Indicate the gross floor area(s) that will be used in the conduct of the Home Occupation. Indicate the total gross floor areas of your house and include any accessory structure(s) to be used for the Home Occupation, (Ex. Garage).
existing Bedroom - Pilates Reformer, a few small props, mat for floor work.
5. Describe the mechanical and/or electrical equipment that will be necessary to conduct your business activity:
None
6. Describe how, where and in what amounts the material, supplies and/or equipment related to your Home Occupation will be displayed or stored:
Reformer is against wall. Basket to hold props.

PLEASE TURN OVER

7. Will people come to your home to obtain any product or utilize any service connected with the proposed Home Occupation activity? Yes ☒ No ☐
If yes, please explain in detail:
tue. + thurs. I see clients from 8 AM to 1 PM typically
Sessions are 50 minutes. Currently I only have 3 clients
1-2x
8. Are any signs necessary or proposed relative to the Home Occupation?
Yes ☐ No ☒
If yes, you are required to file for a Sign Permit. An application form can be obtained at the Planning and Zoning Department or on our website.
9. If trucks or other equipment will be used in your Home Occupation, where will they be parked or stored?
W/A
10. Will the Home Occupation involve the use of commercial vehicles for delivery of materials to or from the premises? Yes ☐ No ☒
If yes, please explain:

11. How many parking spaces will be provided for the home occupation? One
Where will they be located? Indicate parking spaces on a site plan of this property as part of your application submission.
12. Is your proposed Home Occupation in conformance with the conditions, covenants and restrictions pertaining to your property? Yes ☒ No ☐
We suggest checking your deed for conditions, covenants and restrictions.

I have read and understand 'Sec 5.4.6 Home Occupations' under the City of Burlington Comprehensive Development Ordinance and believe that to the best of my knowledge my proposed Home Occupation would not violate any portion of said Ordinance:

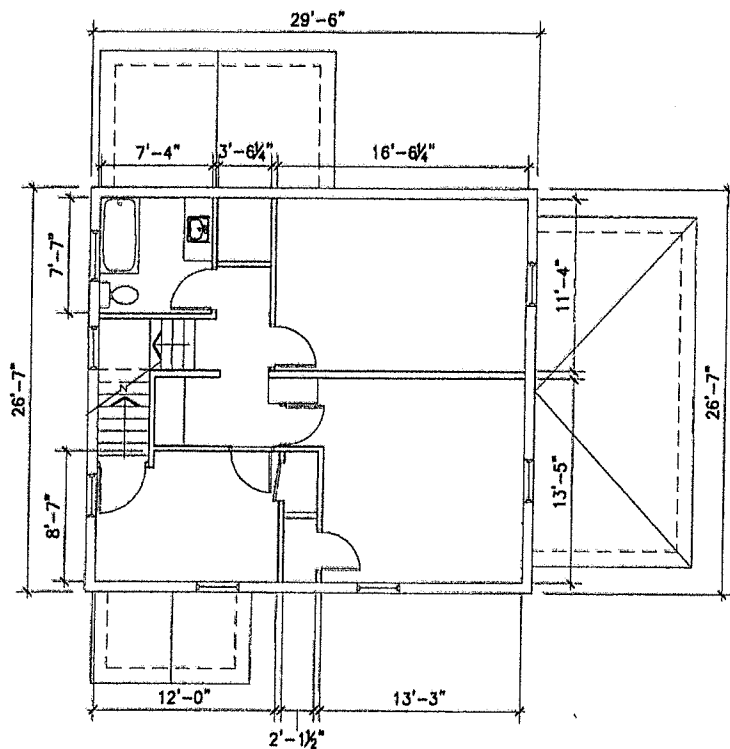
Applicant's Signature: Jamie Korman

Date: 3/14/23

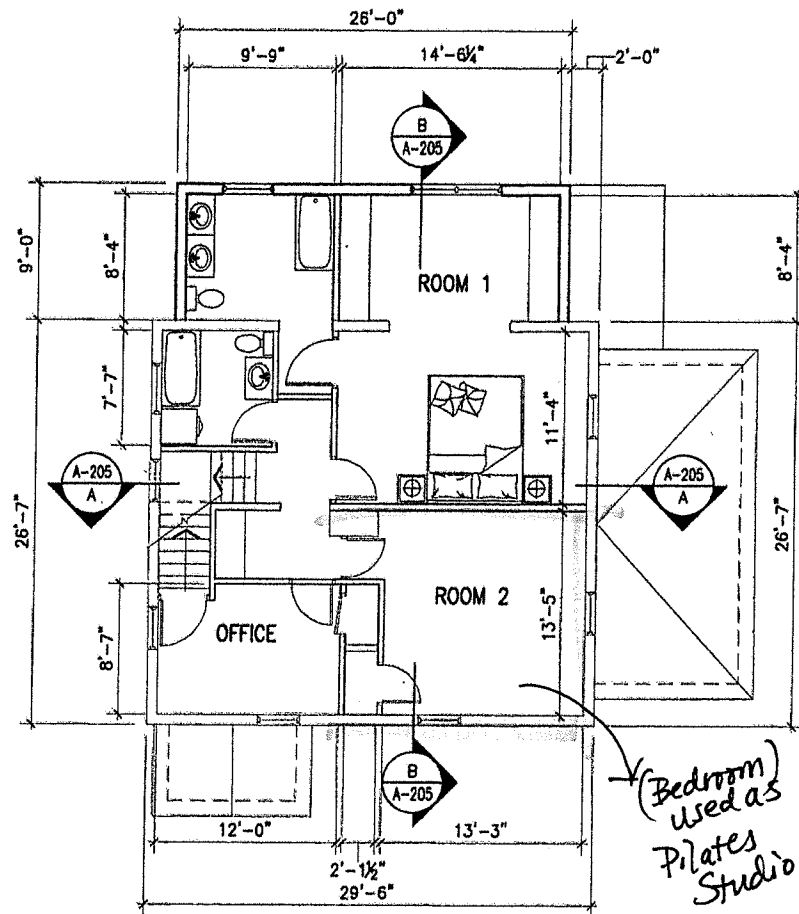
Property Owner's Signature: Jamie Korman

Date: 3/14/23

DESIGNED BY: AR
 PLOT DATE: 20 Jan 20
 C:\Users\Fredson\Documents\Kotormar\floor plans.dwg



1 PLAN - EXISTING SECOND FLOOR
 1/8" = 1'-0"
 0" 4'-0" 8'-0" 16'-0"



2 PLAN - PROPOSED SECOND FLOOR
 1/8" = 1'-0"
 0" 4'-0" 8'-0" 16'-0"

21 JAN 20 FILM

MARK: DATE: DES

OWNER:

MARK AND KOTORM

PROJECT TITLE:

KOTORM
 HOUSE
 65 SCARF
 BURLINGTON V

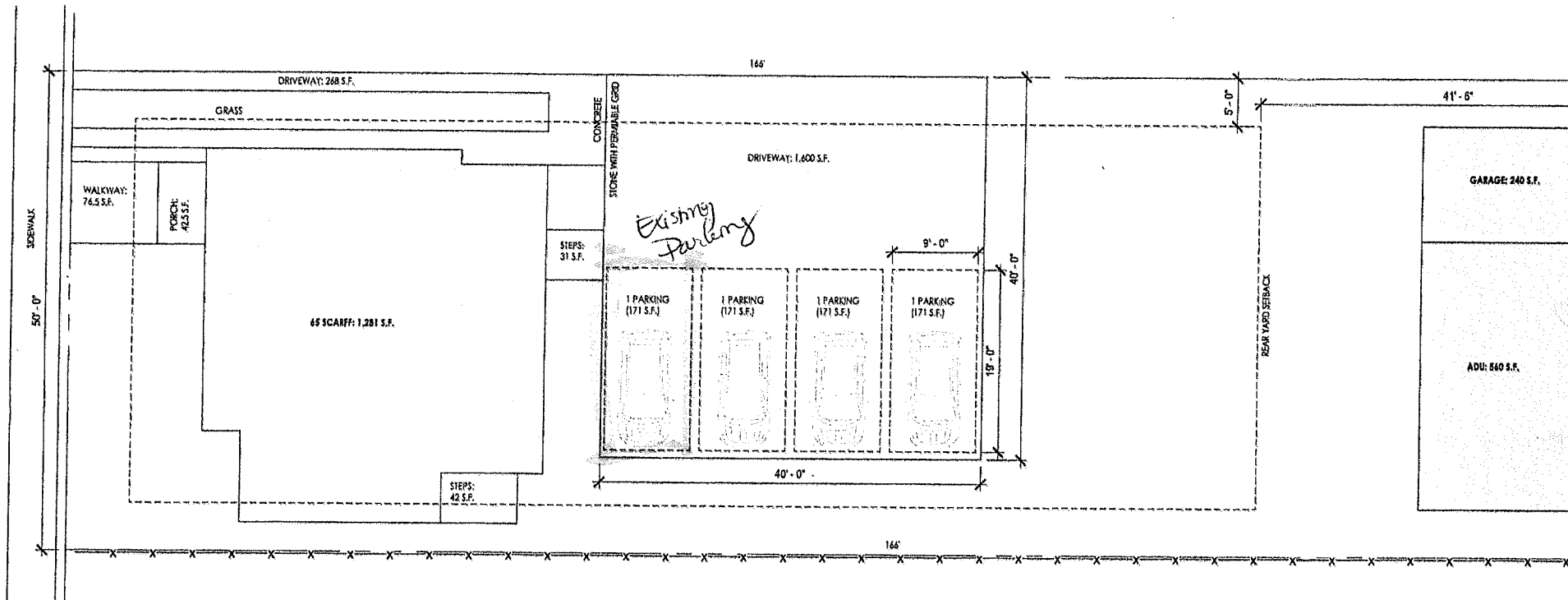
SHEET TITLE:

SECOND F
PLAN

PROJECT No.

SHEET No.

A-10



ZONING DISTRICT: RL	EXISTING LOT COVERAGE	PROPOSED LOT COVERAGE	DRAWING KEY
MIN. LOT SIZE: 6,000 S.F. MAX. LOT COVERAGE = 35%	EXISTING LOT SIZE: 8,300 S.F.*	LOT SIZE: 8,300 S.F.*	EXISTING STRUCTURE
FRONT: Max/Min: 4'-5 ft at ave. of 2 adjoining properties on both sides. SIDE: Min: 10% of 5' REAR: Min: 25% of 20'	EXISTING HOUSE: 1,281 S.F. EXISTING GARAGE: 800 S.F. EXISTING DRIVEWAY: 1,750 S.F.	HOUSE: 1,281 S.F. GARAGE: 240 S.F. (ADU: 560 S.F.) DRIVEWAY (NON PERM): 952 S.F.	ADDITION
	EXISTING PORCHES: 42.5 S.F. EXISTING STEPS: 31 S.F. EXISTING WALKWAYS: 76.5 S.F.	PORCHES: 42.5 S.F. STEPS: 31 S.F. WALKWAYS: 76.5 S.F.	PROPERTY LINE
	EX. LOT COVRG TOTAL: 3,981 S.F. = 48%	PROPOSED LOT COVRG TOTAL: 3,183 S.F. = 38%	SETBACK LINE
	EX. LOT COVRG TOTAL WITHOUT PORCH & WALKWAYS: 3,831 S.F. = 46%	EX. LOT COVRG TOTAL WITHOUT PORCH, WALKWAYS & ADU: 2,473 S.F. = 30%	FENCE LINE
	35% WOULD BE 2,467 S.F. + 10% for porches and walkways = 600 S.F. FOR ADU IS ALLOWED		ROW - EASEMENT
		* lot area is based off tax parcel map	

THE DESIGN, SPECIFICATIONS, AND CONSTRUCTION OF THIS PROJECT ARE THE SOLE RESPONSIBILITY OF THE ARCHITECT. THE ARCHITECT HAS CONDUCTED VISUAL VERIFICATION OF THE SITE AND HAS FOUND IT TO BE SUITABLE FOR THE PROJECT. THE ARCHITECT HAS NOT CONDUCTED ANY OTHER INVESTIGATION OR ANALYSIS OF THE SITE OR THE PROJECT. THE ARCHITECT HAS NOT CONDUCTED ANY OTHER INVESTIGATION OR ANALYSIS OF THE SITE OR THE PROJECT.

KOTORMAN RESIDENCE

65 SCARFF, BURLINGTON, VT



DATE: 06/14/21
SCALE: As Indicated
DRAWN BY: MA
CHECKED BY: MA
PHASE:

SIT PR
A

Department of Permitting & Inspections

Zoning Division
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Telephone: (802) 865-7188

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Ted Miles, Code Compliance Officer
Vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: April 18, 2023
RE: ZP-23-33; 120 Depot Street

=====

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Zone: RM-W Ward: 3C

Owner/Applicant: Steve & Andrea Trombley

Request: Height variance request up to 60 feet.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a variance from the applicable height limit. The subject property is located within the Residential Medium Density – Waterfront zone. Per Table 4.4.5-3: *Residential District Dimensional Standards*, the building height limit within this zone is 35.’ The applicant is seeking a variance from this height limit up to 60.’

Most of the application materials focus on zoning amendment 21-07, *Building Height Measurement*, and how that amendment supposedly affected the applicant’s prior (denied) application ZP-22-307 to build a home at the property. This amendment changed some of the parameters as to how building height is measured, such as from just the building front versus from the average finished grade around the entire building. The amendment did not change any building height limits. The prior application set the proposed home 10’ from the front property line as approved in the front yard setback variance ZP-21-508 granted to this property. At 10,’ building height is measured on just the front façade. Zoning amendment 21-07 extended the 10’ to 50.’ This change had no bearing on the applicant’s prior application. Zoning amendment 20-09, effective as of October 21, 2020, did affect height limits and lowered the prior 60’ RM-W height limit to 35.’ This change took place well before the applicant purchased the property or filed an application to build on it.

Previous zoning actions for this property are as follows:

- 9/7/22, Denial of new single family home
- 8/4/21, Re-approval of 10’ front yard setback variance
- 10/24/14, Approval of 10’ front yard setback variance

Recommendation: **Variance denial** as per, and subject to, the following findings:

I. Findings

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The subject property is dimensionally ordinary as a 4,180 sf rectangle; however, it is uniquely steep. It is also neighbored by through lots with frontage on Depot Street and North Avenue, hence the prior variance approval for the 10' front yard setback. Except for a small flat area at the top/eastern end of the lot, the property is uniformly steep. Any construction, anywhere on the slope will likely be challenging. **(Affirmative finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

The 10' front yard setback approved for this property previously, and currently, requires building height measurement of the building's front façade. Although the property is largely slopped, construction in compliance with the 35' height limit is possible. The applicant has submitted a project design for reference to demonstrate this possibility. Prior schematic project designs, predating the applicant's ownership, also demonstrate compliance with the height limit. **(Adverse finding)**

(c) The unnecessary hardship has not been created by the applicant.

The slope has not been created by the applicant. As noted above; however, it is possible to design a building utilizing the 10' front yard setback that complies with the 35' height limit. **(Adverse finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The requested variance is near double the applicable height limit. It would result in an uncharacteristically tall single family home. Its construction would not adversely impact the remainder of this criterion. It would not impair the appropriate use or redevelopment of adjacent properties, nor would it impact renewable energy resources or be detrimental to the public welfare. **(Adverse finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

As noted above, the requested 60' height variance is near double the applicable 35' height limit. It is not a minimal departure from the regulation, rather it is a substantial increase above the allowable limit. **(Adverse finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

Except for the excessive height requested in the variance application, the variance would not result in the extension of a non-complying situation. The would-be home is a conforming use of the property. **(Affirmative finding)**

II. Reasons for Denial

1. Per the adverse findings above.

Description Amendment: We are seeking a variance from the current applicable height requirements for the house we are planning to build on the vacant lot at 120 Depot St. We are asking for a variance that allows us to utilize a design with a height not to exceed the 60 ft. indicated in Article 4.4.5 Height Exception for Waterfront RM District. The site has a steep slope covering the majority of the lot with access only from Depot St. at the bottom of the slope. The newly updated height requirement will necessitate a significant portion of the living levels be underground . This application is an attempt to restart the permitting process after the original effort was derailed by the change in requirements for calculating the height of the building during the original application process.

Steve & Andrea Trombley

101 Collamer Circle
Shelburne, Vermont 05482
802-279-0278

24Feb23

RE: Height Variance Request

We are seeking a variance from the current applicable height requirements for the house we are planning to build on the vacant lot at 120 Depot St. We are asking for a variance that allows us to utilize a design with a height not to exceed the 60 ft. indicated in **Article 4.4.5 Height Exception for Waterfront RM District**. The site has a steep slope covering the majority of the lot with access only from Depot St. at the bottom of the slope. The newly updated height requirement will necessitate a significant portion of the living levels be underground. This application is an attempt to restart the permitting process after the original effort was derailed by the change in requirements for calculating the height of the building during the original application process.

Prior to purchasing the property, we did our due diligence to make certain it was possible to build a house that would meet our needs and vision for the project. I have included, with our submittals, a time line (see attached Doc # 12) of events to help clarify the sequence of events during our original application process that led to our current situation. (A summary is included at the end of this document.)

Topics we would like to be part of the deliberations regarding the merits of our request.

1. To achieve a design that provides a home of sufficient size to accommodate our family, a majority of the structure will be below ground level if no accommodation is made. (See attached sketches Doc# 13)
2. Lowering the overall height of the structure necessitates moving the solar panels from the roof to separate solar pedestals on the upper level of the lot. These in my opinion are much less desirable from an aesthetics perspective.
3. Significantly reduced passive solar gain in the lower profile.
4. Substantial reduction in the percentage of natural slope retained, from nearly complete to very little (see attached sketches.Doc # 13, 14 & 15)
5. There were many opportunities for the folks at **Planning and Zoning** to notify me that there were pending updates that would affect our project, beginning with my first meeting with Scott Gustin that occurred the day prior to the first public hearing on the changes to the height ordinance.
6. The change in the regulations leaves no mechanism for addressing a sloped lot like ours.
7. The additional excavation required creates a whole new level of challenges and expense to accommodate the design change.
8. Article 4.4.5 Height Exception for Waterfront RM District (See Doc # 10)
9. Article 6.6.2 Supporting the use of Renewable Energy Resources (See Doc # 11)

Sec. 12.1.1 Variance Responses

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The lot is steeply pitched with the slope beginning very close to the west edge of the property. The West side of the property (along Depot St) is the only access. The original design presented allowed for much of the natural slope to be maintained, significant passive solar exposure, high enough elevation to allow solar panels on the roof, a pleasant living space and met the height regulations that were in place at the time of application. To meet the new regulations and maintain a comparable design would require a significant portion of the building to be underground (see attached sketches). Underground to such an extent as to be as much an underground bunker as a traditional home design on Burlington's Waterfront. The variance is requested to allow for a building design that is primarily above ground, has sufficient living space to accommodate our family, allows for reasonable solar exposure, natural light and a pleasant living environment rather than the underground bunker. The owners did their reasonable due diligence prior to purchasing the property (see attached notes), verifying the ability to build a house that would suit the location and the owner's needs.

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

At the time of the application, the regulations in effect made allowances for designing a house on a steep slope, the new regulations do not. The new regulations necessitate that a similar design be substantially underground (see attached sketches Doc # 13). We submit that the requirement that the house be substantially underground is not reasonable.

c) The unnecessary hardship has not been created by the applicant.

The hardship relative to the new height regulations vs the regulations in place when we submitted our application is not a hardship created by the applicant.

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance from the new height calculation requirement would not alter the essential character of the neighborhood or district in which the subject property is located. The proposed design is similar in design approach to the new condo complex at 85North Ave.

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested height variance allows for a reasonable building envelope, minimizes encroachment into the steep slope on the property, allows for sufficient living space above ground and provides the minimum height necessary for solar panels to be mounted on the roof rather than the pedestal mounted style indicated on attached sketches along with the resolving the other issues mentioned above.

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

The variance from the new height requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single-family home.

Summary of events beginning with pre-purchase efforts:
(See enclosed Doc #12 Timeline for details)

I met with Scott Gustin on 21June21 to discuss our plans and get his feedback on the viability of our plan. He stated that he was very familiar with the property due to several other folks that had made efforts to develop the lot. At that time, he indicated that “the design was appropriate to the location”. Unbeknownst to me, there was a public hearing scheduled for the next evening to discuss proposed changes to the height calculations that would affect our lot and other similar sites. Uncertain as to why Scott did not share such relevant information with me at that time.

From 29June21 thru 4Aug21 I had further discussions with Scott Gustin and Mary O’Neil regarding the project and met with Caleb Mana from the DPW to get his insights regarding the requirements, from his perspective, for developing the lot. From these discussions, it seemed reasonable to move forward.

On 4Aug21 we received a setback variance that was needed in order to make it possible to build on the site. Once we had received this variance, we felt confident moving forward with the purchase.
19Aug21 we closed on the property.

26Aug21 Received Z-card for building permit.

[At no time during these discussions did anyone from Planning and Zoning inform me about the pending changes to the height ordinance or even that I should monitor your website for potential changes.](#)

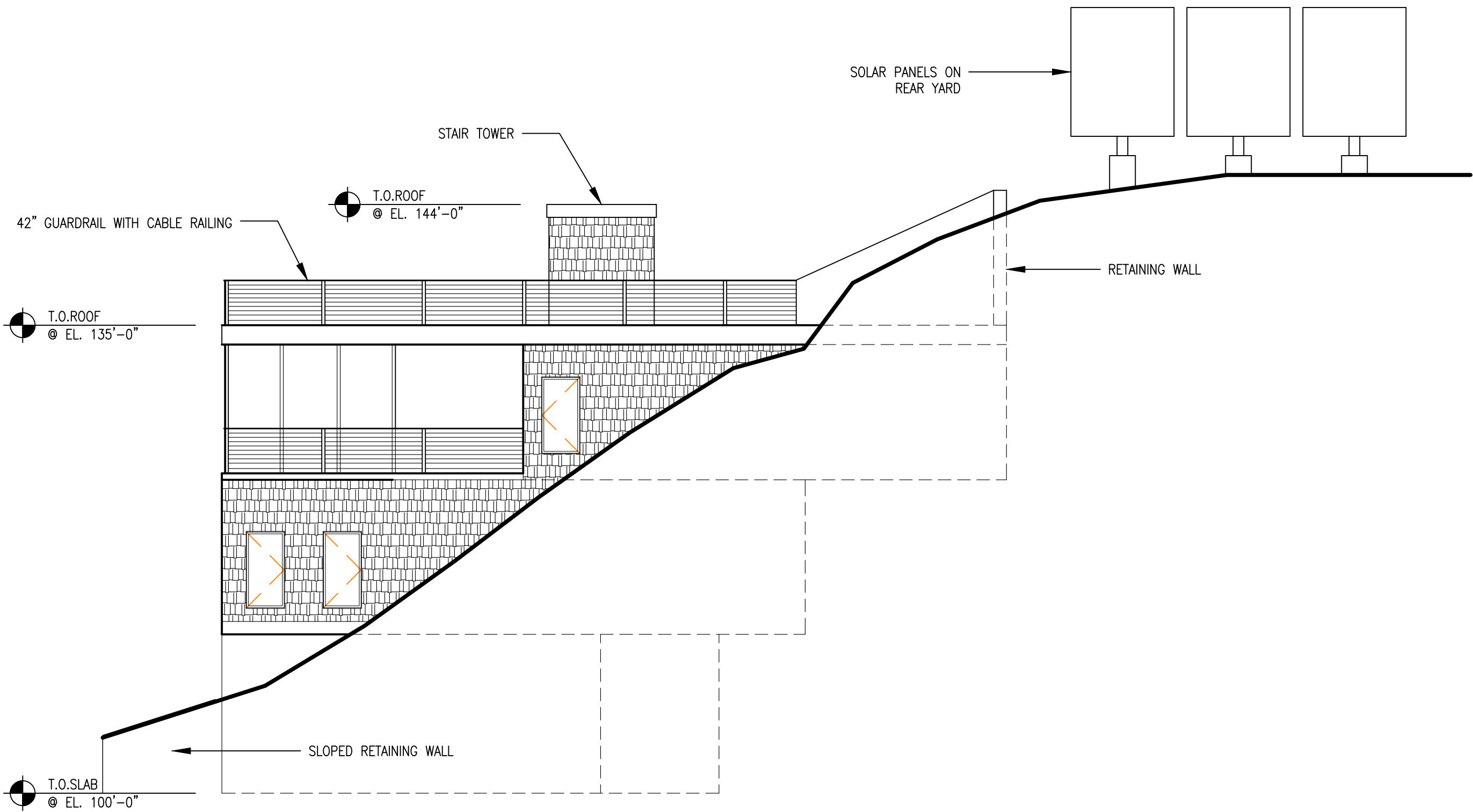
From Aug21 thru May22 Completed Architectural drawings, worked on engineering structure and various permits for utilities. Completed submittals for Building Permit Application 16May22.

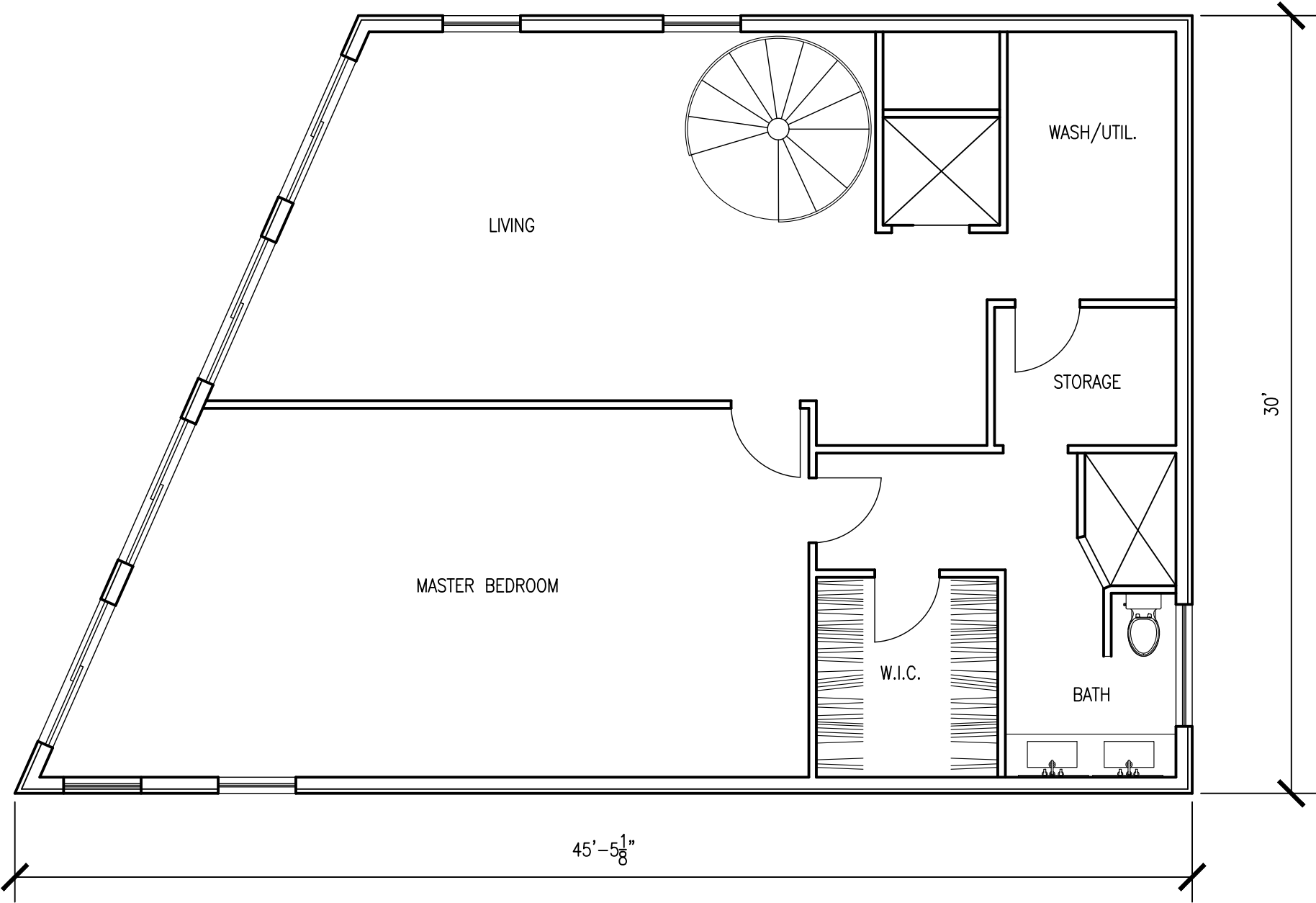
6July22 thru 8Aug22 worked with Ryan Morrison and DAB to refine application for submittal to DRB. 8Aug22 Ryan indicated application was ready for DRB

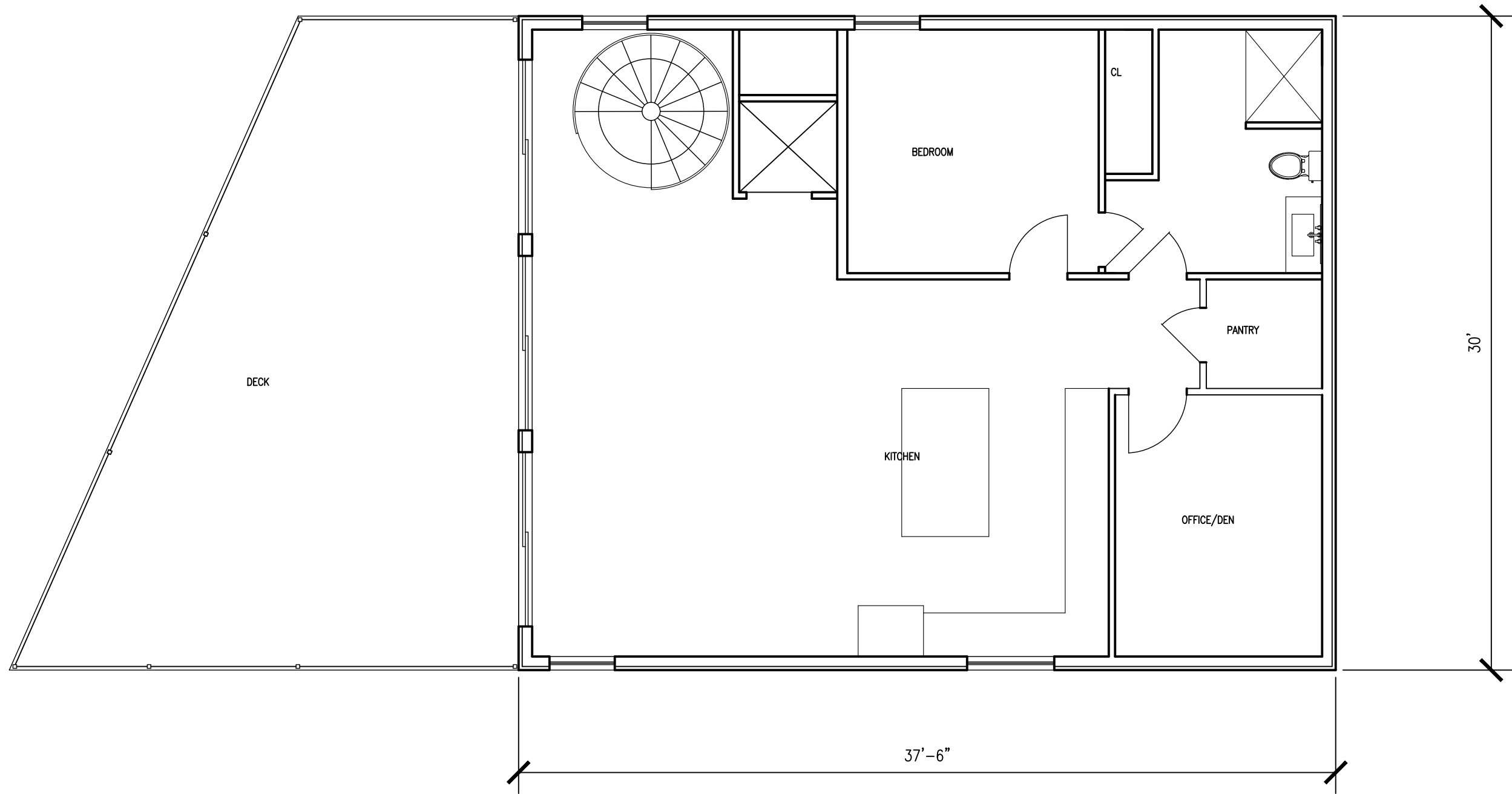
9Aug22 notified by Ryan that height regulations had changed and design would not meet code.

9Aug thru 12Aug Several discussions with Ryan. He indicated that the date of a completed application rather than the initial date of application was used to determine the codes to be applied. He also indicated that I would likely not be successful using a variance to address the height issue. Ryan also mentioned that I could request the application be sent to the DRB since the final decision was their call and they had the discretion to allow the design or not.

6Sept22 Online DRB meeting. Significant portion of the meeting involved discussion of issues that were not relevant to the agenda (storm drainage, traffic/pedestrian concerns). I didn’t do a particularly good job of presenting my “case”. (I am more effective working with folks in person) There seemed to be very little discussion during the deliberative session. Based on the minimal discussion, I was anticipating the application to be tabled with a request for more information and was dismayed to have the application rejected outright.

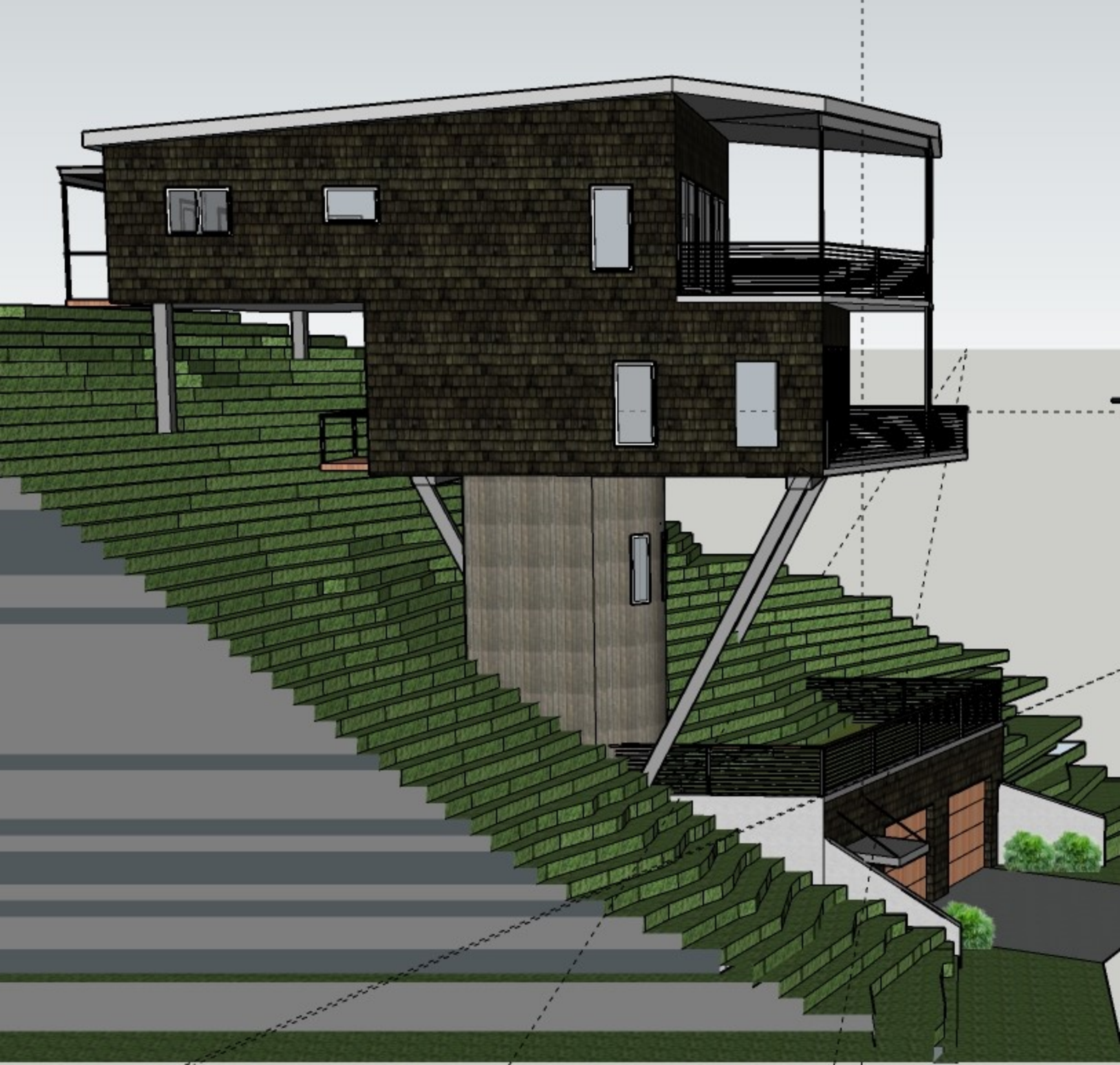




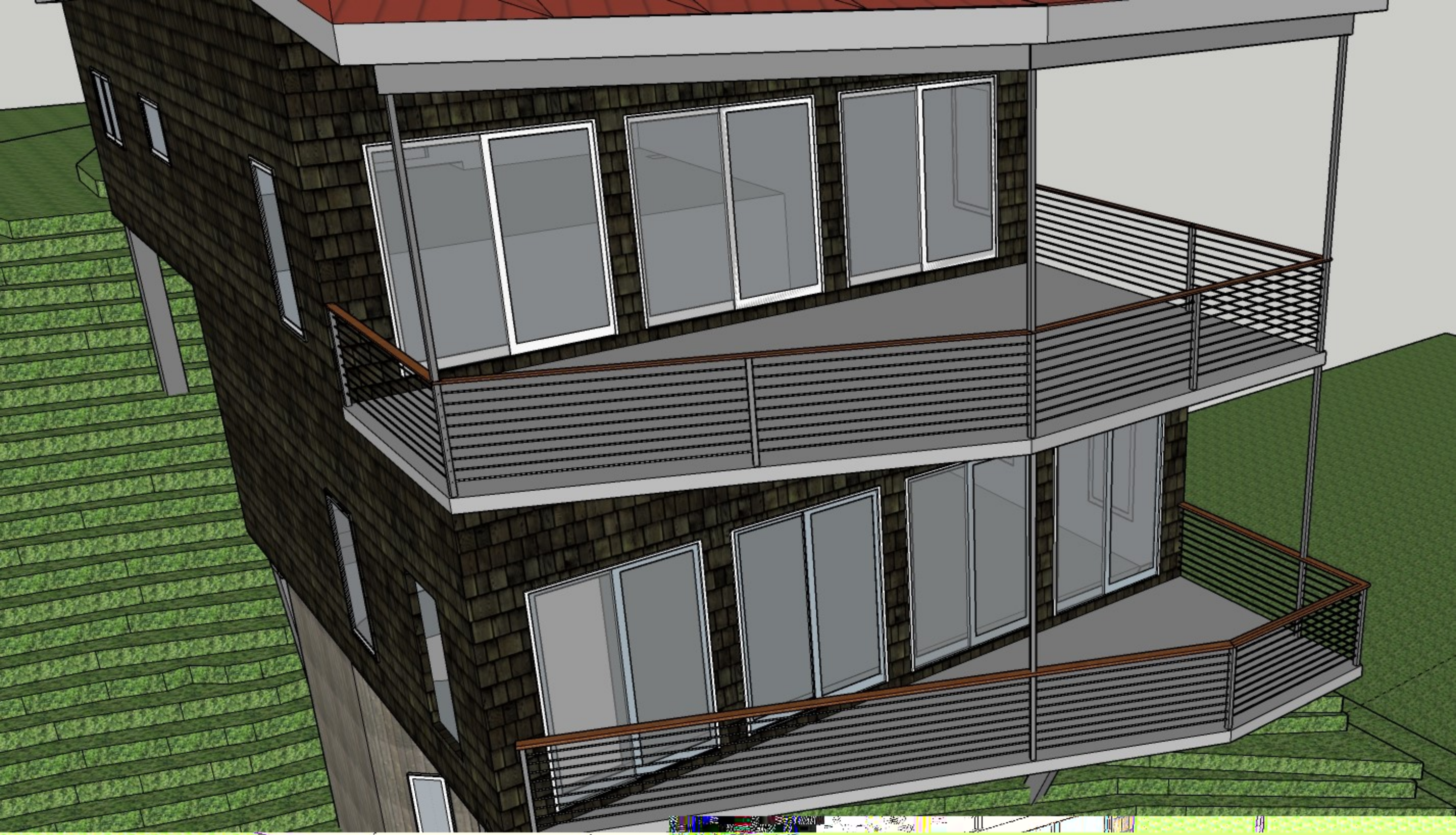










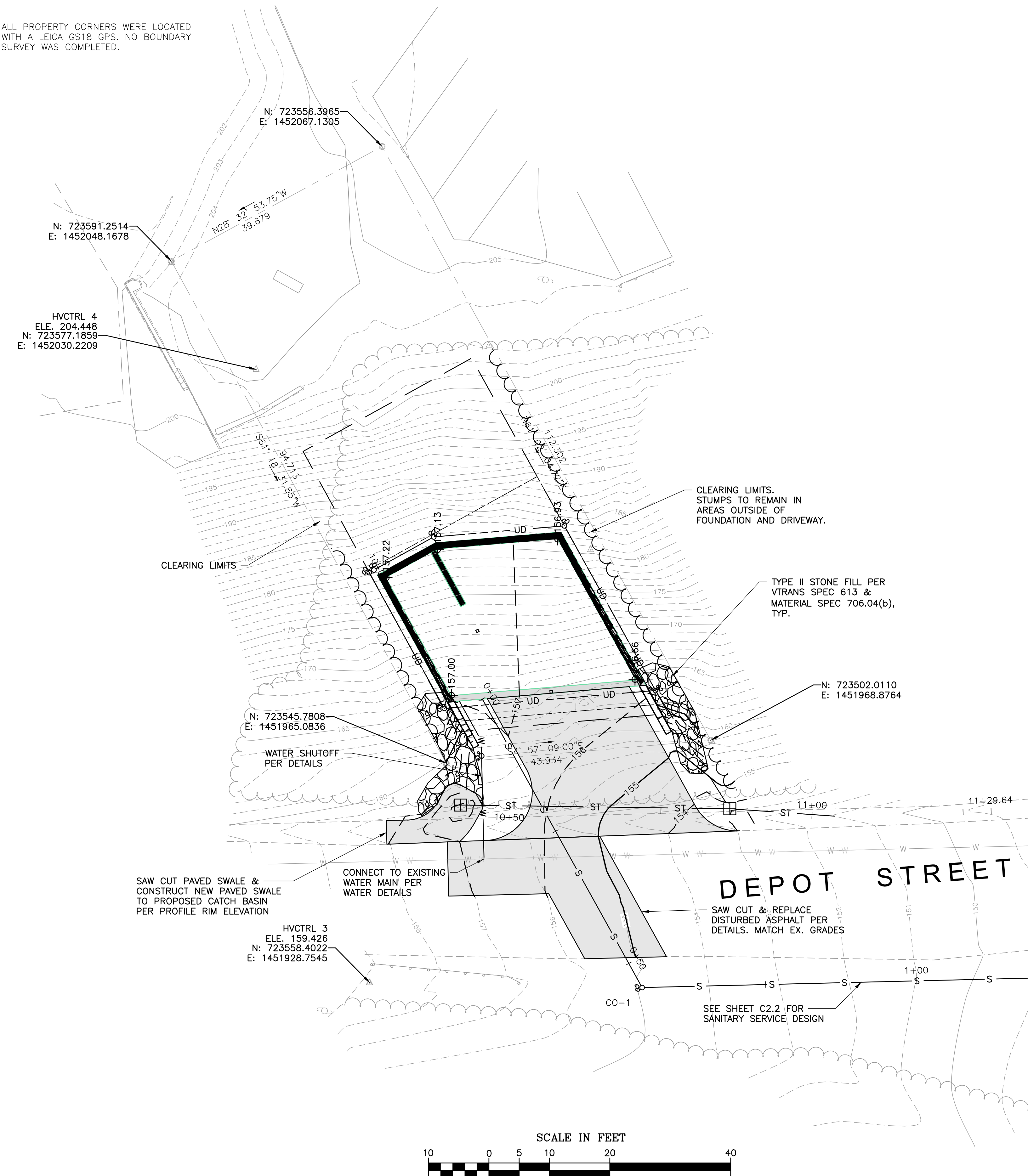




SHEET NUMBER

C1.1

ALL PROPERTY CORNERS WERE LOCATED
WITH A LEICA GS18 GPS. NO BOUNDARY
SURVEY WAS COMPLETED.



SCALE IN FEET

10 0 5 10 20 40

PROGRESS PRINTS
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[illegible]

PROJECT NAME: **TROMBLEY SITE PLAN**
DEPOT STREET, BURLINGTON, VT
LWI METALWORKS
STEVE TROMBLEY, PRESIDENT: steve@lwiweld.com

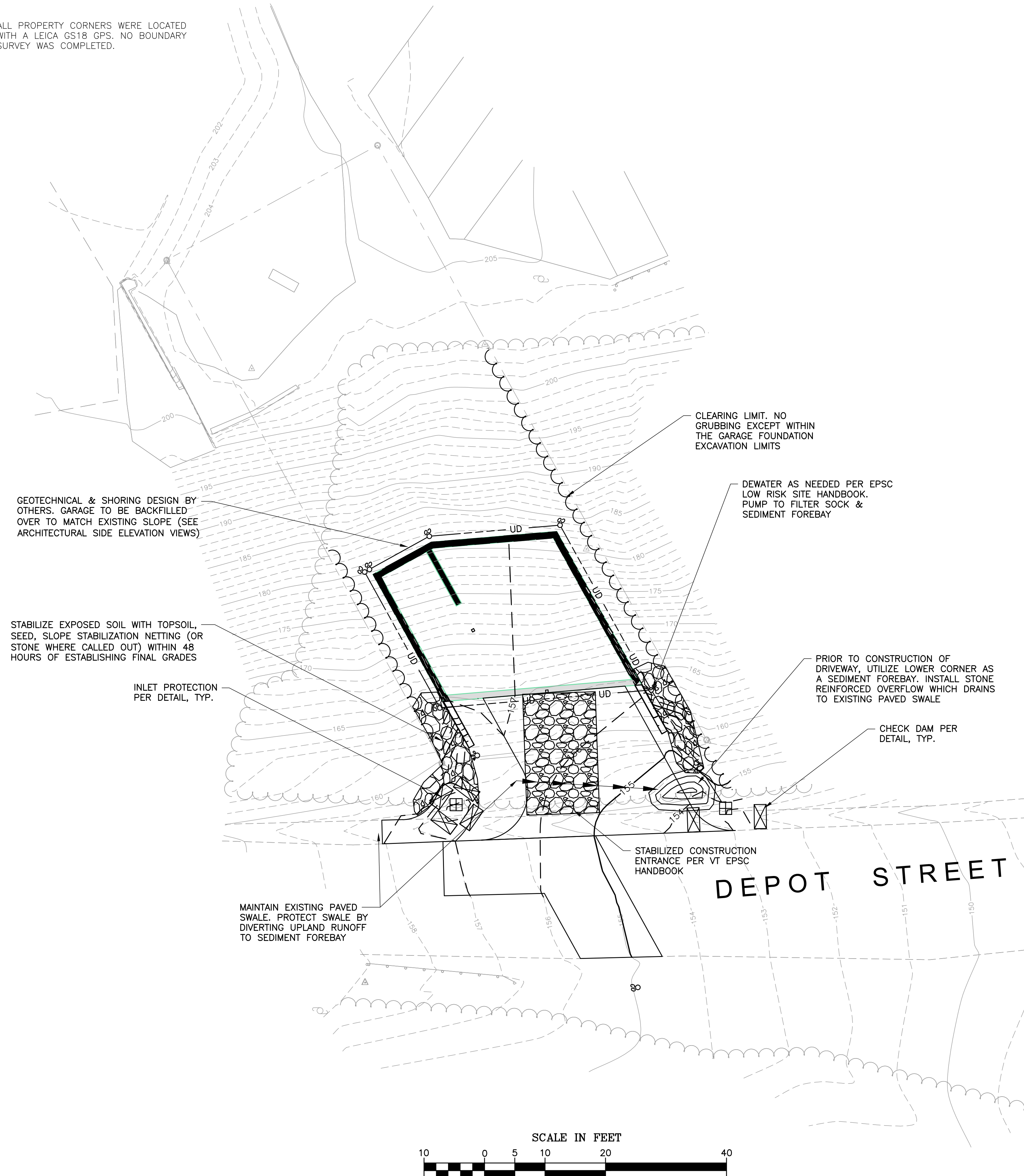
SHEET TITLE:
PROPOSED SITE PLAN

DRAWN BY MAM	DATE 04/22/22
CHECKED BY LDC	D&K PROJECT # 827848P
PROJ. ENG. MAM	SCALE AS NOTED

SHEET NUMBER

C2.1

ALL PROPERTY CORNERS WERE LOCATED
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SURVEY WAS COMPLETED.



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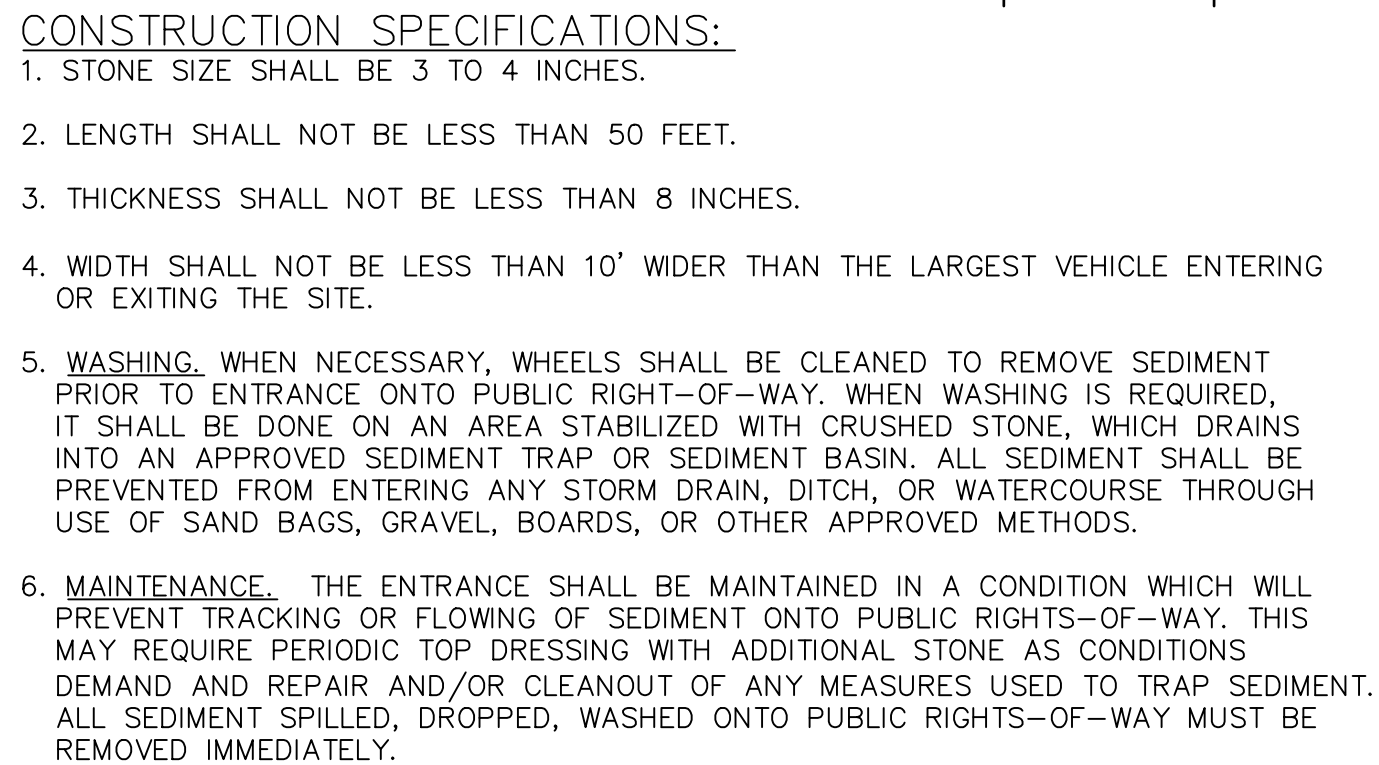
PROJECT NAME: **TROMBLEY SITE PLAN**
DEPOT STREET, BURLINGTON, VT
LWI METAL WORKS
STEVE TROMBLEY, PRESIDENT, steve@lwimetal.com

SHEET TITLE: **EPSC PLAN**

DRAWN BY MAM	DATE 04/22/22
CHECKED BY LDC	D&K PROJECT # 827848P
PROJ. ENG. MAM	SCALE AS NOTED

SHEET NUMBER

C2.3



1. THE PURPOSE OF MATTING ON SIDE SLOPES IS TO REDUCE EROSION AND AID THE ESTABLISHMENT OF VEGETATION.
2. EROSION CONTROL MATTING SHALL BE USED FOR THE FOLLOWING REASONS:
 - A. SIDE SLOPES > 3:1 (H:V)
 - B. AREAS WHERE SEED AND MULCH WILL NOT STAY IN PLACE ALONE
 - C. WHERE SEEDING IS OUTSIDE THE GROWING SEASON.
6. OVERLAP ADJACENT MATTING AS SHOWN.
7. CUT EXCESS MATTING AT END OF SLOPE AND ANCHOR THE END.
8. MEASURES SHALL BE INSPECTED EVERY SEVEN (7) CALENDAR DAYS MINIMUM AND WITHIN 24 HOURS OF A STORM EVENT GREAT ENOUGH TO CAUSE WATER TO LEAVE THE CONSTRUCTION SITE.
9. MATTING SHALL BE REPAIRED AND RESTAPED AS NECESSARY TO ENSURE PROPER

1. GRADE AND SMOOTH THE SLOPE TO PROVIDE GOOD MATTING TO SOIL SURFACE CONTACT.	COSTS ASSOCIATED WITH THE INSTALLATION, INSPECTION AND MAINTENANCE OF ALL EROSION PREVENTION AND SEDIMENT CONTROL MEASURES.
2. APPLY FERTILIZER, LIME, AND SEED PRIOR TO PLACING MATTING.	
3. ANCHOR MATTING AS SHOWN, UTILIZING ANCHOR STAPLES. STAPLE PLACEMENT SHALL BE DETERMINED BY THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.	11. DOUBLE-NET EROSION CONTROL BLANKETS SHALL BE COMPOSED OF PROCESSED BIODEGRADABLE NATURAL FIBERS MECHANICALLY BOUND TOGETHER BETWEEN TWO NATURAL FIBER NETTINGS OF PROCESSED NATURAL YARNS OR TWINES WOVEN INTO A CONTINUOUS MATRIX. THE BLANKETS SHALL HAVE A MIN. TENSILE STRENGTH OF 75 lbs/ft, A "C FACTOR" OF < OR EQUAL TO 0.20 AND SHALL HAVE A LONGEVITY OF 12 MONTHS.
4. UNROLL MATTING VERTICALLY DOWN SLOPE IN THE DIRECTION OF WATER FLOW.	
5. OVERLAP UPPER MATTING OVER LOWER MATTING AS SHOWN.	

1. IF DEWATERING IS REQUIRED A SITE SPECIFIC DEWATERING PLAN SHALL BE PROVIDED TO THE ON-SITE PLAN COORDINATOR AND EPSC PLAN SPECIALIST FOR APPROVAL.
2. EFFLUENT FROM DEWATERING OPERATIONS SHALL BE FILTERED OR PASS THROUGH AN APPROVED SEDIMENT TRAPPING DEVICE, OR BOTH, AND DISCHARGED IN A MANNER THAT DOES NOT VIOLATE WATER QUALITY STANDARDS OR CONTRIBUTE TO EROSION.

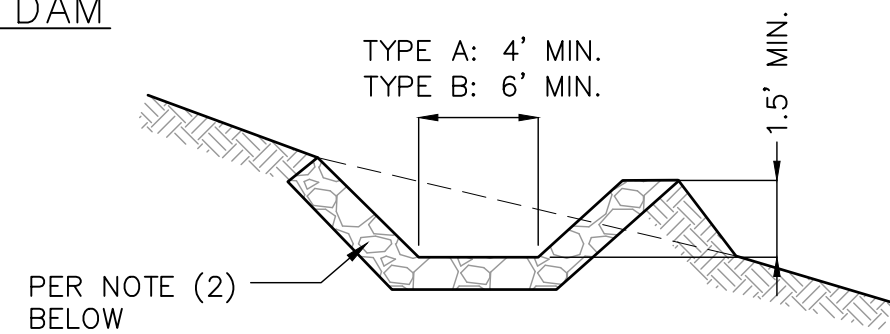


1. STONE WILL BE PLACED ON A FILTER FABRIC FOUNDATION TO THE LINES, GRADES, AND LOCATIONS SHOWN ON THE PLAN.
2. SET SPACING OF CHECK DAMS SO THAT THE CREST OF THE DOWNSTREAM DAM IS AT THE SAME ELEVATION OF THE TOE OF THE UPSTREAM DAM.
3. EXTEND THE STONE A MINIMUM OF 1.5 FEET BEYOND THE DITCH BANKS TO PREVENT CUTTING AROUND THE DAM.
4. PROTECT THE CHANNEL DOWNSTREAM OF THE LOWEST CHECK DAM FROM SCOUR AND EROSION WITH STONE OR LINER AS APPROPRIATE.
5. ENSURE THAT CHANNEL APPURTENANCE SUCH AS CULVERT ENTRANCES BELOW CHECK DAMS ARE NOT SUBJECT TO DAMAGE OR BLOCKAGE FROM DISPLACED STONE.

1. PLACEMENT SHALL FOLLOW VTRANS STANDARD SPECIFICATION 613.04(b)
2. RIP RAP MATERIAL SHALL MEET VTRANS STANDARD SPECIFICATION, STONE FOR RIP RAP, LIGHT TYPE 706.03(b).
3. OVERLAP THE FILTER BLANKET EDGES BY AT LEAST 2', AND SPACE ANCHOR PINS EVERY 3' ALONG THE OVERLAP. BURY UPPER AND LOWER ENDS A MIN. OF 12" BELOW GROUND.

Diagram illustrating a stockpile area layout. The central area is labeled "STOCKPILE AREA". It is enclosed by a "SILT FENCE ENCLOSED ENTIRE AREA". An arrow points to the "STOCKPILE ACCESS LOCATED UP SLOPE IF POSSIBLE". A dimension line indicates a "10' (TYP)" distance from the stockpile area to the silt fence.

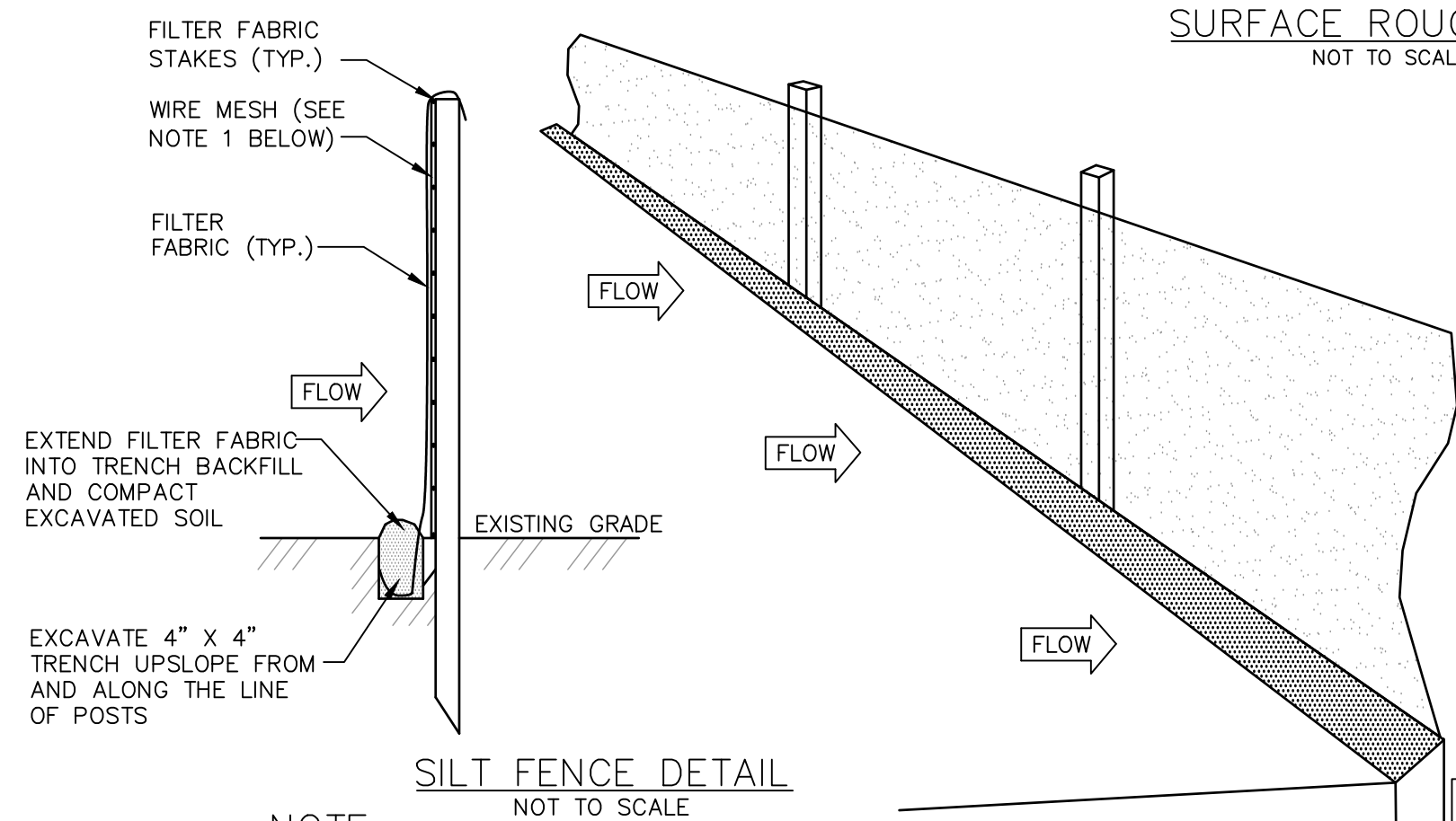
1. ALL AREAS NOT TO BE WORKED FOR 7 DAYS OR MORE SHALL BE TEMPORARILY STABILIZED WITH MULCH, MATTING, OR OTHER MEASURES SUITABLE TO THE LOCATION.
2. STOCKPILES MUST BE STABILIZED IN ACCORDANCE TO THE STABILIZATION SCHEDULE OF THE PERMIT.
3. IF STOCKPILE AREA IS WITHIN 100 FT. OF RECEIVING WATER, WIRE MESH IS REQUIRED.



NOTES:

1. SIDE SLOPES SHALL BE 2:1 OR FLATTER
2. EITHER LINE SWALE WITH VTRANS 706.04(g) STONE FILL TYPE 1, SOD, OR ESTABLISH VEGETATION PRIOR TO ALLOWING STORMWATER TO ENTER SWALE.
3. PLACEMENT SHALL FOLLOW VTRANS STANDARD SPECIFICATION 613.04(c) STONE MATERIAL SHALL MEET VTRANS STANDARD SPECIFICATION, STONE FOR STONE FILL, TYPE 1, 706.04(g).
4. IF SOD IS USED, SEEDING SHALL BE PROTECTED BY JUTE OR MATTING
5. MIN SLOPE = 1%. MAX SLOPE FOR SEED & MULCH = 3%.
6. MIN SLOPE FOR SOD = 8%. MAX SLOPE FOR STONE = 3%.
7. SWALES MUST BE INSPECTED FREQUENTLY & HAVE SEDIMENT REMOVED AS NEEDED.

NOT TO SCALE



NOTES:

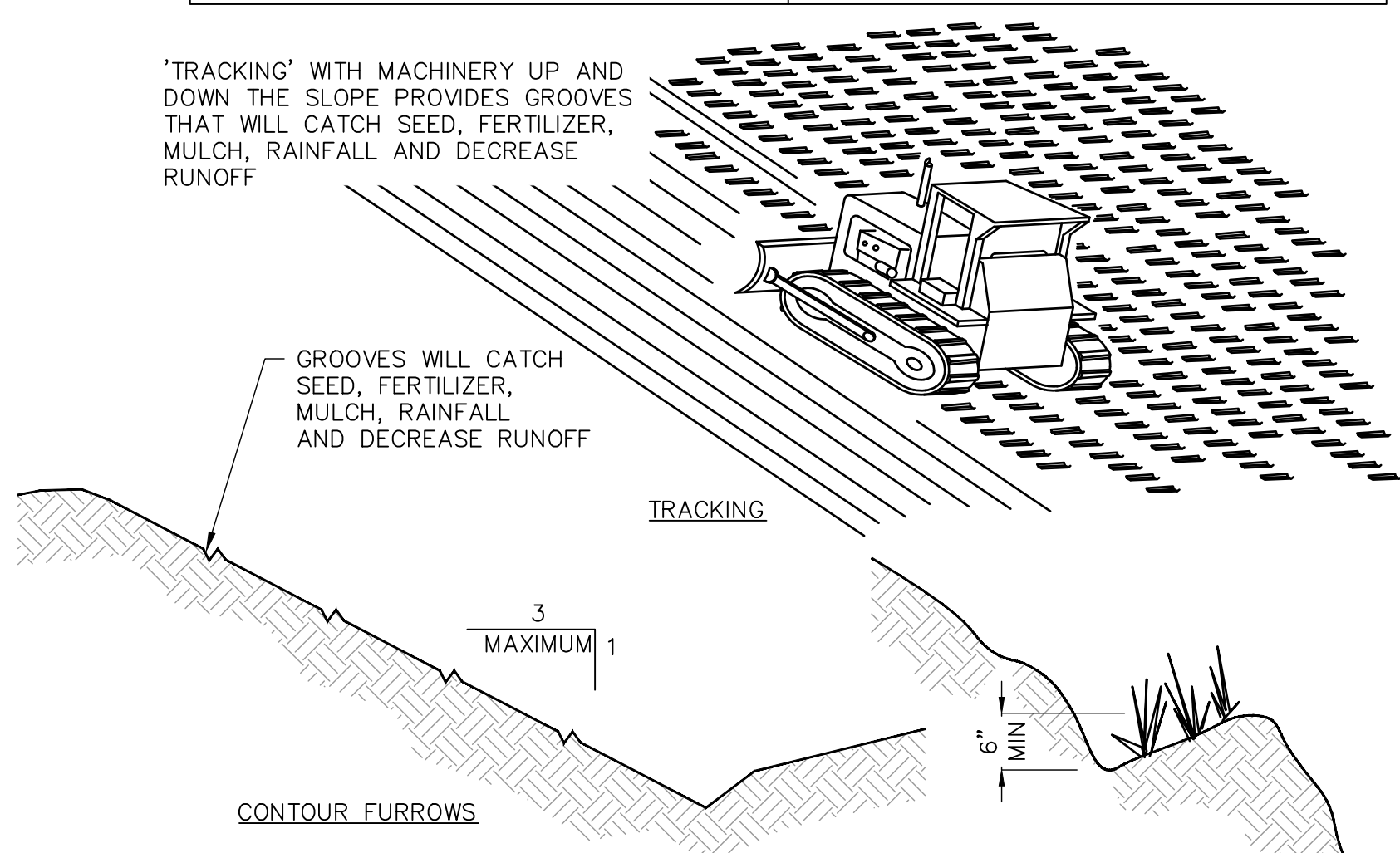
1. SEED AND MULCH ALL EXPOSED SOILS AS SOON AS FEASIBLE.

1. All areas of disturbance must have temporary or final stabilization within 7 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each work day. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours.

NOT FOR CONSTRUCTION

Today

EROSION CONTROL SCHEDULE	
FOR SITE CONDITIONS	USE TYPE
AREAS FLATTER UP TO 1:3 (33.33%) AND WITHIN WETLAND/WETLAND BUFFER AREAS	STRAW MULCH & SURFACE ROUGHENING
AREAS 1:3 (33.3%) OR STEEPER	MATTING/BLANKETS
ALL DISTURBED AREAS	SEED AND MULCH OR SOD
AREAS STEEPER THAN 1:2 (50%)	RIP RAP SLOPE PROTECTION
ACROSS SLOPES	SILT FENCE
AROUND STOCK PILE AND BORROW AREAS	
TOES OF SLOPE	
ALONG STREAMS AND WATER BODIES	
AROUND CATCH BASINS	INLET FILTERS
IN DRAINAGE DITCHES 9% SLOPE OR LESS – PLACE 100 FT. APART 10% TO 19% – PLACE 50 FT. APART 20% OR GREATER – PLACE 25 FT. APART AS SHOWN ON DRAWINGS	CHECK DAMS
IN DITCHES PRIOR TO DISCHARGE TO BODIES OF WATER AS SHOWN ON DRAWINGS	SEDIMENT BASINS
STABILIZED CONST. ENTRANCE AS SHOWN ON DRAWINGS	STABILIZED CONST. ENTRANCE



SURFACE ROUGHENING
NOT TO SCALE

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[illegible]

PROJECT NAME:
TROMBLEY SITE PLAN
DEPOT STREET, BURLINGTON, VT

DRAWN BY MAM	DATE 04/22/22
CHECKED BY LDC	D&K PROJECT # 827848P
PROJ. ENG. MAM	SCALE AS NOTED

	SHEET NUMBER
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C5.4



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Burlington Planning Commission

Ordinance Committee Meeting Minutes

Thursday, February 4, 2021 @ 5:15 PM

Remote Meeting

Attendance

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

1. Proposed dormer amendment

The Committee discussed proposed draft amendment language and forwarded the amendment to the full Planning Commission for consideration. A slight change was made to the draft Article 6 language to refer to dormers generally, rather than just doghouse dormers.

2. Building height measurement

Committee members reviewed several scenarios showing average grade measurement, stepped measurement along the street, and both together. Discussion will continue at a future meeting with draft amendment language and depiction of what that would look like in building form.

3. Adjournment

The Committee adjourned at 6:05 PM.



Burlington Planning Commission

Ordinance Committee Meeting Minutes

Thursday, March 4, 2021 @ 5:15 PM
Remote Meeting

Attendance

- **Committee Members:** Bruce Baker (BB), Matt Bushy (MB), Yves Bradley (YB)
- **Absent:** Ravi Venkataraman (RV), Emily Lee (EL)
- **Public:** Eric Farrell
- **Staff:** Scott Gustin, Mary O'Neil (Permitting & Inspections), David White (Planning Office), Kimberlee Sturtevant (City Attorney's Office)

1. Building height measurement

The Committee discussed proposed draft amendment language and forwarded the amendment to the full Planning Commission for consideration. They recommended deleting subsections (b) 1, 4, & 5 from the draft prepared by David White. Subsection (b) 1, in particular, needs additional thought and should be located with other retaining wall standards rather than with height standards.

2. Conditional use standards – character of the area

Committee members considered the four possible options for addressing the recent statutory change limiting the effect of “character of the area” criterion in conditional use review. The committee elected to pursue Option 4 that would make duplexes a permitted use in the RL zones and multi-family (up to 4 units) a permitted use in the Institutional zone.

3. Adjournment

The Committee adjourned at 6:20 PM.



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

www.burlingtonvt.gov/plan

TO: Planning Commission Ordinance Committee
FROM: Scott Gustin, Principal Planner & Zoning Division Manager
DATE: March 4, 2021
RE: Building Height Increments

Overview & Background

This amendment seeks to improve the connection between two existing sections of code pertaining to building height measurement in the Comprehensive Development Ordinance. Specifically, 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 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 is simply clarification that measurement of building height is done in increments along the street façade(s) in any case.

Proposed Amendment

Amendment Type

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

Purpose Statement

The purpose of this amendment is very simple. It seeks 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.

Proposed Amendments

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

[Begin text amendment]

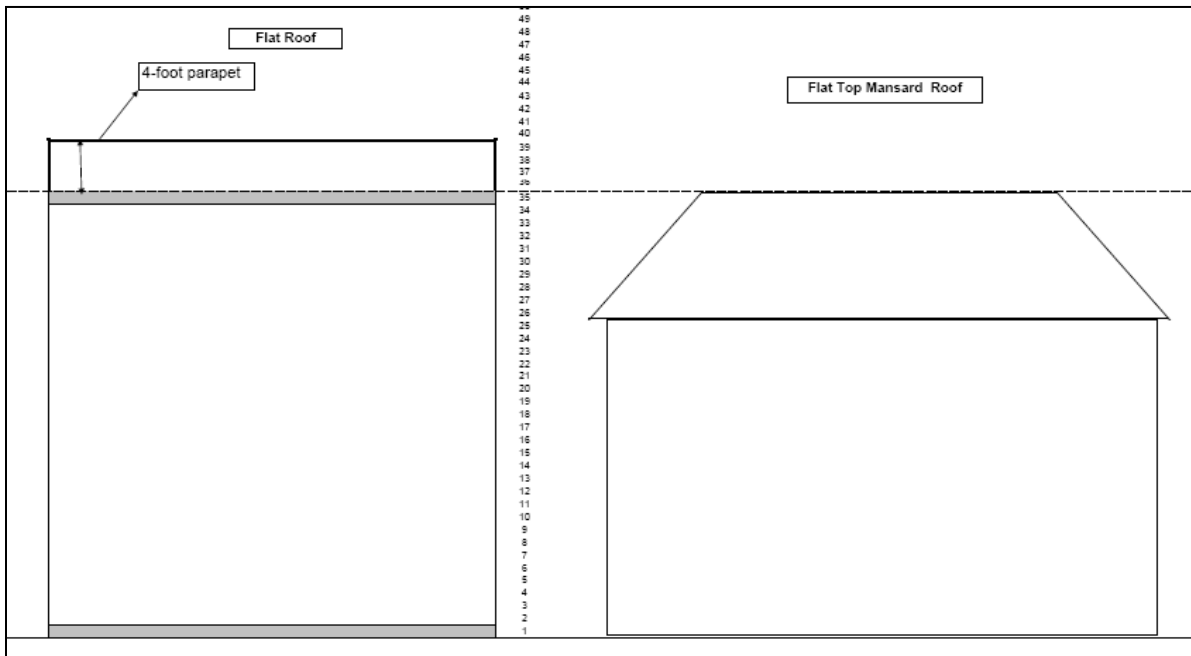
Sec. 5.2.6 Building Height Limits

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

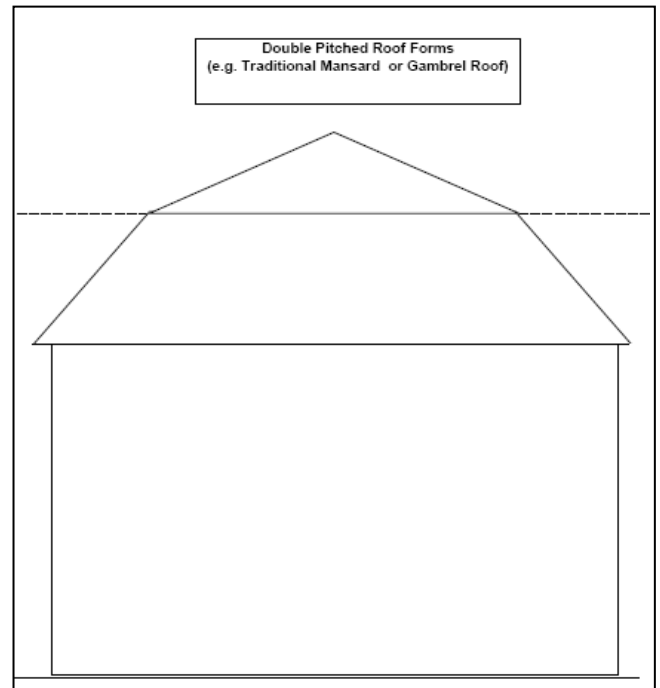
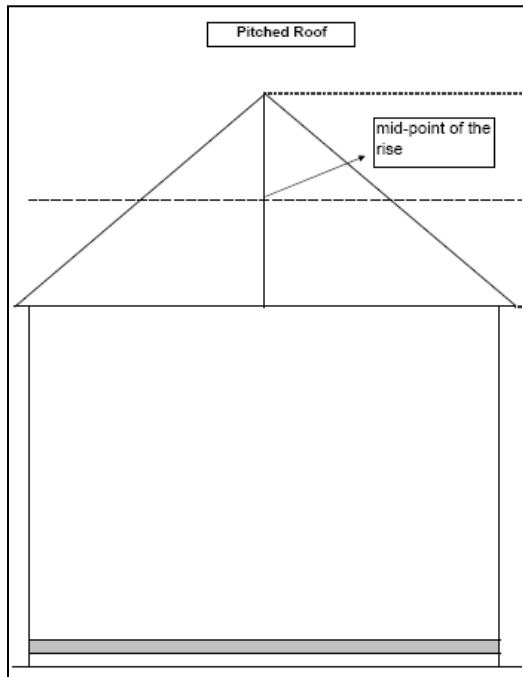
(a) Height Measurement:

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

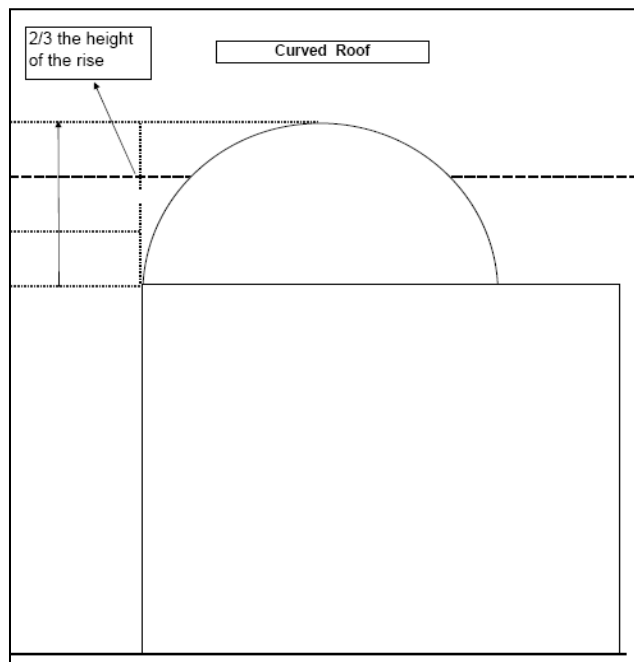
1. Starting Point: Building height shall be measured from:
 - A. a public sidewalk, alley, or other public way where it is within a ~~10~~⁵⁰-foot horizontal distance of an exterior wall on the front of the building; or,
 - B. the average finished grade within a 10-foot horizontal distance of all exterior 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).
2. Ending Point: Building height shall be measured to:
 - A. Flat Roof: the highest point of the decking of a flat or flat-topped mansard roof. A parapet no taller than four (4) feet shall not be considered part of a flat roof for the purposes of measuring building height;



- B. Pitched Roof: the midpoint of the rise between the roofplate and the ridge of the highest gable of a pitched or hipped roof. A double-pitched roof (e.g. gambrel or double-pitched mansard) shall be measured to the roofplate of the highest pitch; or,

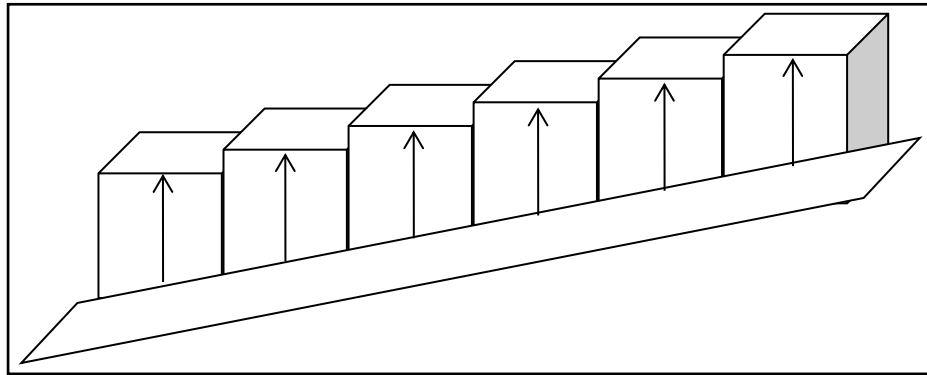


- C. Curved Roof: a point two thirds ($\frac{2}{3}$) the vertical distance from the point at which an exterior wall varies from a 100% slope and to highest point of the roof.

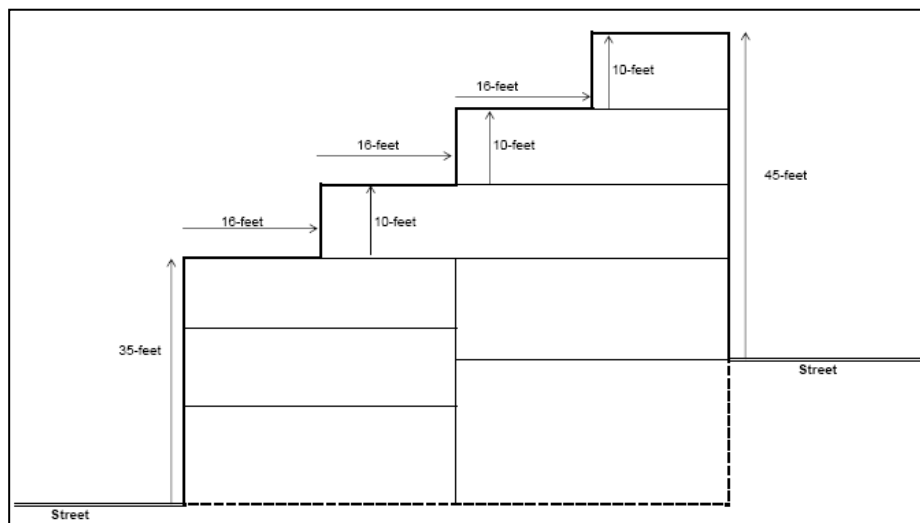


D. Other Roof Forms: Building height shall be measured as determined by the administrative officer in a manner that most closely reflects the intent of subsections (a) through (c).

3. 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 façade beginning **in increments of** 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 the entire length of the street façade (s). **This measurement interval applies when using either height measurement starting point as noted in (a) 1 of this section.**



4. 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 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 for every 10-feet of additional building height up to the maximum height allowed on the highest street.



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

[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. It clarifies that building height measurement is done in increments along a building's street façade(s) in all cases.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety or 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	Presentation to & discussion by Commission	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 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
Mary O'Neil, AICP, DPI Principal Planner

DATE: April 21, 2021

RE: Proposed CDO Amendment: Height Measurement, Dormers & Eaves (will be ZA-21-07)

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
----------------	---------------	----------------------

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:

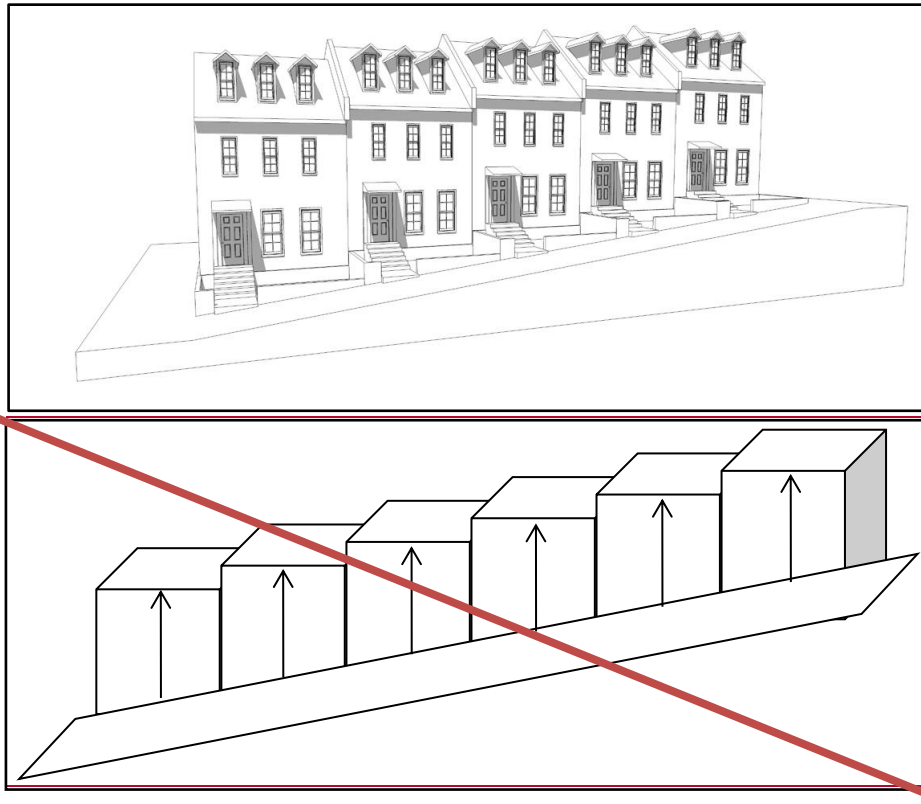
1. Starting Point: Building height shall be measured from:
 - A. a public sidewalk, alley, or other public way or space where the proposed building's street-facing façade is within a 1050-foot horizontal distance of the lot's street frontage of an exterior wall on the front of the building; or,
 - B. 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.
- 1-2. 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.

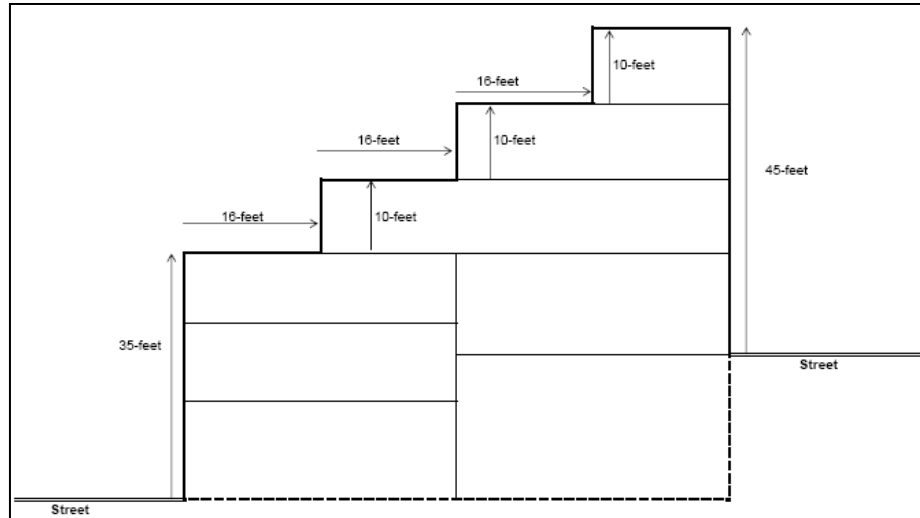
E. Other Roof Forms: As written.

(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 intervals 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	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 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: April 21, 2021

RE: Proposed CDO Amendment: Act 179 Changes to Ch. 117 (will be ZA-21-08)

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 the lot:

- can be served by municipal water and sewer service; and;
- such the lot is not less than at least four thousand (4,000) square feet in area; with or and,
- the lot has a minimum width and depth dimension of forty (40) feet or more, and
- the lot can connect to municipal water and sewer infrastructure.

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	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 recommend as modified	Second Read & Public Hearing	CCOC Recommends Approval & Adoption
				Rejected

Appendix A-Use Table – All Zoning Districts – PCOC Draft 03/04/2021

	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	Y CU ²	Y	Y	N	Y ³	N	Y	N	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N ¹	N	N	CU Y	N	Y	Y	N	Y	Y	Y	Y	N	N
Attached Dwelling(s) – Mixed Use ²⁶	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	Permitted Use in this district
CU	Conditional Use in this district
N	Use not permitted in this district
Abbreviation	Zoning District
RCO – A	RCO - Agriculture
RCO – RG	RCO – Recreation/Greenspace
RCO – C	RCO - Conservation
I	Institutional
RL/W	Residential Low Density, Waterfront Residential Low Density
RM/W	Residential Medium Density, Waterfront Residential Medium Density
RH	Residential High Density
DW-PT	Downtown Waterfront-Public Trust
NMU	Neighborhood Mixed Use
NAC	Neighborhood Activity Center
NAC-RC	NAC – Riverside Corridor
NAC-CR	NAC – Cambrian Rise
E-AE	Enterprise – Agricultural Processing and Energy
E-LM	Enterprise – Light Manufacturing

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



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 <u>public</u> Alley centerline |
| - Outbuildings | 0-ft min. or 15-ft from a rear <u>public</u> 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.

88

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

89

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 Canopies 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 Canopies 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 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 Aawning 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 *Remaining section is unchanged*
355
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

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

Burlington Planning Commission with City Council Ordinance Committee

Tuesday, April 13, 2021, 6:30 P.M.

Remote Meeting via Zoom

Draft Minutes

Members Present	A Montroll, B Baker, Y Bradley, A Friend, E Lee, H Roen, J Wallace Brodeur, C Mason, J Hanson, Z Hightower
Staff Present:	D White, M Tuttle, S Gustin, K Sturtevant, P Wehman, B Ward
Attendance:	J Fish, R Camara, K Van Woert, A Magyar, M Barlow, J Hinsdale, F Lee, K Hackett, J Heller, E Redic, B Redic, L Kettler, L Jenson, M Orleans, K Gauthier, S carpenter, B Foust, D Lyons, J Marks, B Gonyaw, K Casella, K Cavoretto, R Danielson, S Bushor, one additional phone number unidentified

I. Agenda

Call to Order	Time: 6:38pm
Agenda	No Changes

II. Public Forum

Name	Comment
B Redic	City says it is interested in supporting homeownership for people of color, but disappointed about amount of work required to purchase a 3-unit home. Due to lack of paperwork in the City, required to make a significant investment to turn it into a duplex, and most recent concern is that it has been vacant for 60 days, losing the opportunity to maintain it for this purpose. Looking for support from the committee.

III. Proposed CDO Amendment: Short Term Rentals

Action: Amend proposed STR regulations to require owner-occupancy for all unit types.		
Motion: E Lee	Second: A Friend	Failed 2-5. Lee, Friend in favor; Baker, Bradley, Montroll, Roen, Wallace Brodeur oppose.
Action: Amend proposed STR regulations to allow STR in 1 and 2 unit buildings when host does not live on-site if owner has owned property for 3 years.		
Motion: B Baker	Second: H Roen	Passed 4-3. Baker, Bradley, Montroll, Roen in favor; Friend, Lee, Wallace Brodeur oppose.
Action: Approve the Municipal Bylaw Amendment Report and forward proposed CDO and Ch. 18 amendments to Council as amended, with recommendation.		
Motion: Y Bradley	Second: J Wallace Brodeur	Passed 6-1. Lee opposed.
Staff provided an overview of the current proposal for both CDO and Ch. 18 amendments, which are posted online at: https://www.burlingtonvt.gov/CityPlan/PC/Agendas		
The Chair opened the Public Hearing at 6:51pm with the following comments received:		

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 802-865-7144.

- E Redic- Disappointed in lack of concern about who is being impacted and harm to the community. Say want affordable housing and safe places to live, but the only way to do that is relieve some of the regulations in place. City is making it difficult to be a landlord, and putting own family and tenants at risk.
- K Casella- Proposed STR regulations are draconian and overreach. Did not do work to document how many STRs have replaced housing units, how owner-occupancy requirement is addressing a problem. 38% of VT STR hosts use STRs as primary income; personally use STR income to pay increasing taxes. Proposal could make homeownership impossible in Burlington, and harm homeowners' livelihood. Ask committee to withdraw the proposal, reconsider impacts, and implement a registration process.
- J Heller- Applaud adoption of clear and understandable regulations; do not think ability to STR should be based on neighbors' relationships.
- J Marks- Request withdraw of proposal until more data and evidence based recommendations to improve living conditions. Proposal is unlikely to improve housing, but will economically impact property owners. Lack of affordability is due to lack of growth, stagnant wages, and cumbersome zoning ordinance. ARPA will bring money for affordable housing in state and S.79 is likely to pass the legislature and have a positive impact on housing and reveal the true nature of STRs. Many whole unit STRs in Burlington were never long-term housing before.
- L Jenson- Withdraw the recommendations because committee is not willing to create a truly progressive policy. Impacts have not been meaningful debated, housing summit report has not been satisfied. Need to know who will benefit vs. be harmed; how the policy will make housing more affordable; and impact on tenants, tax income, and tourism economy. Need to determine the process and benchmarks for evaluating changes to the policy. Concerned about why housing inspections are not required in partial unit STRs renting just 1 or 2 bedrooms.
- A Magyar- How will the city replace the loss of rooms and meals tax, money from tourism economy if STRs are reduced? Pandemic has caused economic ruin but STRs have a role in the recovery. Burlington is a tourist city, and tourism will roar back after the pandemic. STR guests stay longer and spend more than typical visitors, distribute economic impacts outside of downtown, and money stays in local area. STRs are not new; homes and camps have been around, but sharing platforms ensure that taxes are paid. Is the Committee willing to risk not knowing how this will impact the city's economy?
- D Lyons- Eliminate requirement for primary residence for single unit and duplexes. Landlord should be able to permit a building whether they live on site or not. Committee should consider proposal from last month to allow owners of a building for 3+ years to host STR if they don't live on site. It is a balanced approach. Otherwise, should wait to see what S.79 does at the state level.
- Jacob Hinsdale- Concerned about false choice suggested between STR and long-term rentals. STRs require a lot more resources on a day-to-day basis compared to a LTR rental. Don't believe that large landlords will ever convert housing units en masse, partially because there is not enough labor to keep up with the work required. Don't think it will impact overall availability of housing in the city if people can STR another property that they own. Should be more data and reflection about relationship to state level policies.

The Chair closed the Public Hearing at 7:31pm, with Committee discussion to follow:

- At request of Committee members, A Montroll reintroduced proposal to allow people that have owned a property for 3+ years to STR even if they do not live at the property.
- Some Committee members supported this idea as a way to reach compromise, to avoid putting existing STR hosts out of business, but to stem property speculation and with little impact on existing rental housing stock. Generally, these members felt this provided flexibility for people to STR to afford to stay in their home or keep up their properties.

- Other Committee members were concerned this would create an incentive not to convert a housing unit back to long-term, resulting in a loss of workforce housing, and concerns that it was benefitting property owners who have already been able to invest in the market while excluding new property owners. Some committee members suggested a willingness to loosen the rules in other ways, but did not support this approach.
- Some committee members noted that waiting is not an option, both due to the post-pandemic potential to see an increase in STRs, as well as a concern that state-level policy may not address Burlington specific issues.
- A Committee member noted that it is disingenuous to say people are going to lose "their" home, because the proposal allows people to STR their own home. Having a second property is a significant investment. It was noted by several committee members that precluding STRs in some properties does not preclude the opportunity to make money from long-term renting.
- Some Commissioners noted that the committee has only heard from hosts, but not the people who are looking for housing in the city, including the 60% of households that are renter-occupied, and that the Committee has the responsibility to consider everyone.
- At the conclusion of the discussion, a motion to require owner-occupancy for all STR scenarios failed, and a motion to enable off-site hosting for 1 and 2 unit properties that have been owned for 3+ years passed. It was clarified that this is a recommendation to send to the City Council, but that the Council will ultimately have the authority to amend or adopt the proposed regulations.

IV. Reapprove Municipal Bylaw Amendment Report ZA-21-06

Action: Reapprove Municipal Bylaw Amendment Report and forward to Council for adoption.		
Motion: A Friend	Second: E Lee	Vote: Approved Unanimously
At the recommendation of staff, Council Ordinance Committee modified the proposed amendment to replace term "no-mow" with "low-mow". Commissioners supported the amendment as being accurate to the intent of the definition.		

V. Commissioner Items

Action: N/A		
Motion: NA	Second: NA	Vote: NA
• H Roen noted he will not be seeking reappointment at the end of the term in June, will focus on work with Renewable Energy Vermont. • B Baker noted continued concerns about how zoning presents a barrier to the next generation of homeownership in Burlington, including that duplexes aren't allowed in some of the existing zoning districts. • E Lee requested an update to the rental housing code to include on the permit checklist the requirement for recycling totters for all rental buildings, and the requirement to have a physical barrier that defines parking areas.		

VI. Minutes & Communications

Action: Approved the minutes and accepted the communications		
Motion by: A Friend	Second: J Wallace Brodeur	Vote: Approved Unanimously
• Minutes Approved: March 9, 2021 • Communications filed enclosed in agenda packet, and additional communications posted online at https://www.burlingtonvt.gov/CityPlan/PC/Agendas		

VII. Adjourn

Adjournment		Time: 8:49
Motion: H Roen	Second: J Wallace Brodeur	Vote: Approved Unanimously

April 21st, 2021

Burlington Planning Commission
c/o Department of Planning and Zoning
149 Church Street
Burlington, Vermont 05401

Re: Expanding the FD5 boundaries to include buildings along Pine Street north of King Street

Dear Members,

Please accept this letter as a formal request to amend the 2019 extension of the downtown FD5 District to include 3 buildings on the west side of Pine Street north of King Street. This request is put forth by the two owners of these buildings:

Offenhartz Inc., 157-159 Pine Street; Offenhartz Inc., 161-163 Pine Street; Amy Gonyaw, 76 King Street.

The red outlined areas in the map below are the 2019 expansions of FD5. The green outlined area encompasses the buildings we request added to FD5:



We are requesting this change so that we can have the flexibility to use our buildings for purposes which are allowed in FD5 and not allowed in residential high density, the current zoning designation for these buildings. We strongly believe it is appropriate that these buildings are zoned FD5 as it is in keeping with the FD5 zoning on either side of this block and with the plan for future growth of Burlington as it is described in Burlington's Comprehensive Plan.

In 2019, the Commission voted to extend the FD5 boundaries in several locations on the edge of the FD5 District. One of additions to the FD5 District is a slice of the block which includes our buildings, the block between Main, King, South Champlain, and Pine Streets. You can see this in the image above. We question why the buildings facing Pine St. on this block were not added along with this strip. Burlington's Comprehensive Plan identifies Pine St as a major thoroughfare and area suitable to accommodate the city's future growth. The Plan goes on "we need to have places where we can accommodate and encourage future growth and development in order to maintain our vibrancy, tax base, and character." The parking requirements tied to building use were removed along Pine St recently in preparation for encouraging this intensity of use described in the Plan. It is only a matter of time before these buildings are designated FD5 as they are already part of downtown in character and it is the stated plan to encourage growth there.

To illustrate our position further, the following is the Purpose Statement from the 2019 FD5 zoning boundary amendment: "The purpose of this proposed amendment is to modify the boundaries of Form District 5 to include additional properties located along the boundary of the current district. Properties

considered for inclusion in the FD5 district were evaluated for their current use, future potential use, development intensity, and compatibility with adjacent properties. They have been recommended to be included in the FD5 in order to encourage the type and intensity of future infill or redevelopment consistent with adjacent properties, to enable greater flexibility for expansion or reuse of existing uses and structures, and/or reduce existing non-conformities.” We believe that not including these 3 buildings is directly at odds with this purpose statement.

Below are the buildings neighboring our 3 that are already designed FD5.

This is 168 Pine St. It is a 6 unit multifamily and is zoned FD5. It is directly across the street from our property.



This is 151-153 Pine St. It is a 5 unit multifamily. It is one building north of the 3 building we are requesting added to FD5. It was added to FD5 with the recent zoning changes.



It seems an oversight that these three buildings were not included in the 2019 expansion of FD5. We would like this corrected so that we can use our buildings in a way that is in keeping with their location in downtown Burlington as described in Burlington's Comprehensive Plan. Thank you for considering this amendment and for your dedication to ensuring Burlington grows in a thoughtful way.

Sincerely,

Steven Offenhartz, Bill and Amy Gonyaw

April 22, 2021

Rachel Lomonaco
District 4 Coordinator
Natural Resources Board
111 West Street
Essex Junction, Vermont 05452

Re: 410116-21H Burlington School District - Burlington

Dear Ms. Lomonaco:

VTrans has reviewed the proposed permit application as well as the VHB Traffic Impact Study (Exhibit 016, VHB-Burlington High School TIS, January 2021) and offers the comments below.

The proposed project consists of an after-the-fact change in use of former Filene's/Macy's store building into the host site for Burlington High School. According to the VHB traffic impact study, the proposed project is expected to generate 275 additional net trips per hour (vph) during the AM peak hour and a net *decrease* of 85 vehicles during the PM peak hour. These net trip calculations factor in the multimodal transportation of students and faculty (walking, buses, and bicycling) while also accounting for the AM and PM trips the previous land use (Macy's). In the case of the PM peak hour trips, the Macy's department store had created more trips than the school will create thus a net decrease of 85 vehicles was realized.

In reviewing the application and traffic impact study there are a few key points with the new high school location that should be noted:

- The school is not providing additional or new traffic to Burlington per se. It is shifting existing school traffic from its previous location approximately 1.5 miles away.
- The school traffic at the Macy's location will be for temporary use.
- As mentioned in the application description, this is an "after-the-fact" use. Students and faculty are currently using this building. This will form a good initial measure for monitoring traffic and multimodal behavior to see what is working or not working, respectively.
- The new school location is located in the downtown district with multiple town roads in a grid pattern to enhance traffic dispersion.

- The new downtown location of the school puts it within local street and sidewalk infrastructure for convenient bicycle and pedestrian access for students and faculty.
- The new downtown location of the school is in close proximity to the GMT downtown transit center for convenient transit access.

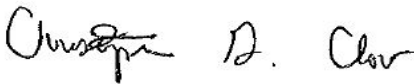
Based on these factors, VTrans concurs with net trip generation and traffic analysis from the VHB traffic impact study and has no concerns with this improvement relative to the impact of the project on traffic congestion, safety, or access for pedestrians, cyclists, and transit.

Act 145 Transportation Impact Fee

Based on our review of this permit application, VTrans does not recommend payment of a transportation impact fee pursuant to Act 145. A transportation impact fee is not required due to the fact that the school relocation is temporary, and the net PM trip generation will decrease relative to the traffic of the previous land use (Macy's). In the case where a project's net PM trip generation remains the same or decreases from that of the previous establishment, an Act 145 transportation impact fee is not warranted.

Please contact me with any questions or comments at 802-522-4901 or christopher.clow@vermont.gov

Sincerely,



Christopher G. Clow, PE
Transportation Engineer

Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE #4C0116-21H

I, Christopher Clow, of the Agency of Transportation hereby certify that on April 22, 2021, I sent a comment letter to the District #4 Environmental Commission concerning the applicant, Devonwood Cherry Street Associates, and the Burlington School District, 4C0116-21H by U.S. Mail, postage prepaid or by email to the following:

Burlington School District
150 Colchester Avenue
Burlington, VT 05401
mspauldi@bsdvt.org

Devonwood Cherry Street Associates, LLC
101 Cherry Street, Suite 440
Burlington, VT 05401
dave@btvspaces.com

David Farrington Jr.
4724 Spear Street
Burlington VT 05401
dave@btvspaces.com

Dave Marshall, PE
Civil Engineering Associates, Inc.
10 Mansfield View Lane
South Burlington, VT 05403
dmarshall@cea-vt.com

Amy Bovee, Assistant City Clerk
Chair, City Council/Chair, Planning Commission
City of Burlington
139 Church Street
Burlington, VT 05401
abovee@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

Agency of Natural Resources
One 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

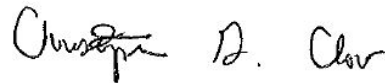
VTrans Policy, Planning, and Research Bureau
Barre City Place
219 N. Main St.
Barre, VT 05641
AOT.Act250@vermont.gov

Vt. Agency of Agriculture, Food, and Markets
16 State street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act20@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

Jennifer M.V. Fitch, PE, Commissioner
Judy Bruneau, Executive Assistant
Department of Buildings and General Services
2 Governor Aiken Avenue
Montpelier, VT 05633-5801
jennifer.fitch@vermont.gov
judy.bruneau@vermont.gov

Dated at Montpelier, Vermont this 22nd day of April 2021.



Christopher G. Clow, PE
Vermont Agency of Transportation

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, April 27, 2021, 6:30 P.M.

Remote Meeting via Zoom

To Join the Meeting on a Computer

Link: <https://us02web.zoom.us/j/84364677580?pwd=VVkrWEtaMmVldWx4UFI3TGpvZjFkZz09>

To Join the Meeting on a Phone

Number: +1 312 626 6799 Meeting ID: 843 6467 7580

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. Proposed CDO Amendment: Height Measurement, Dormers & Eaves

The Planning Commission will discuss a proposed amendment to the Burlington *Comprehensive Development Ordinance* regarding building height, roof dormers and eaves. Information related to this item is included in the agenda packet on pages 4-8.

Staff Recommendation: Approve the Municipal Bylaw Amendment Report and warn for public hearing.

VI. Proposed CDO Amendment: Act 179 Changes

The Planning Commission will discuss a proposed amendment to the Burlington *Comprehensive Development Ordinance* regarding changes based on the Vermont Legislature's 2020 Act 179. Information related to this item is included in the agenda packet on pages 9-13.

Staff Recommendation: Approve the Municipal Bylaw Amendment Report and warn for public hearing.

VII. Proposed CDO Amendment: Article 14 Updates

Staff will present a series of proposed amendments to Article 14 of the Burlington *Comprehensive Development Ordinance* which have been collected since the form code was first adopted in 2017. Information related to this item is included in the agenda packet on pages 14-33.

Staff Recommendation: Ask questions and provide feedback to staff on the proposed amendments for further discussion at a future meeting.

VIII. Commissioner Items

- Upcoming Meetings:** May 11 and 25, 2021 at 6:30pm (anticipated on Zoom)
- Reminder:** Deadline for Commissioner applications is May 14 at 4:30pm. Visit:

<https://www.burlingtonvt.gov/CityCouncil/Public-Boards/Vacancies>

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

IX. Minutes & Communications

- a. The minutes of the April 11, 2021 meeting are enclosed in the agenda packet on p. 34.
- b. Communications are enclosed in the agenda packet beginning on p. 37, with additional communications posted online at <https://www.burlingtonvt.gov/CityPlan/PC/Agendas>

X. Adjourn

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.

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: April 21, 2021

RE: Proposed CDO Amendment: Height Measurement, Dormers & Eaves (will be ZA-21-07)

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
----------------	---------------	----------------------

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~~ 50-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.

1-2. Ending Point: Building height shall be measured to:

A. Flat Roof: *As written.*

B. Pitched Roof: *As written.*

C. Curved Roof: *As written.*

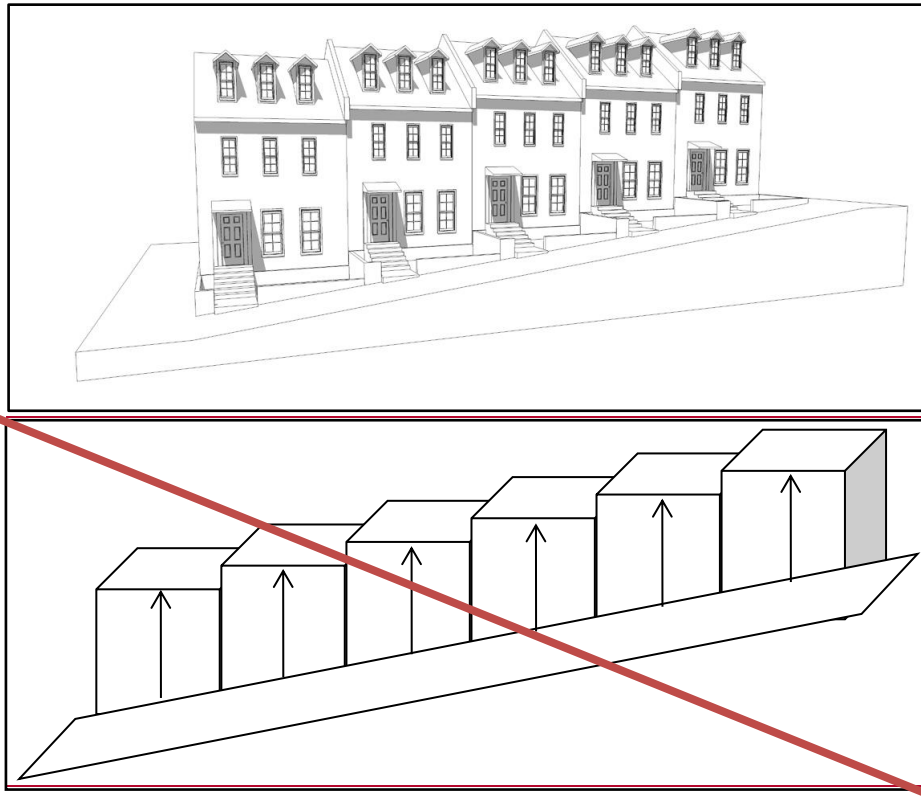
D. Roofs with Dormers: Building height will be calculated to the midpoint of the rise of any dormer that exceeds 50% of the width of

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.

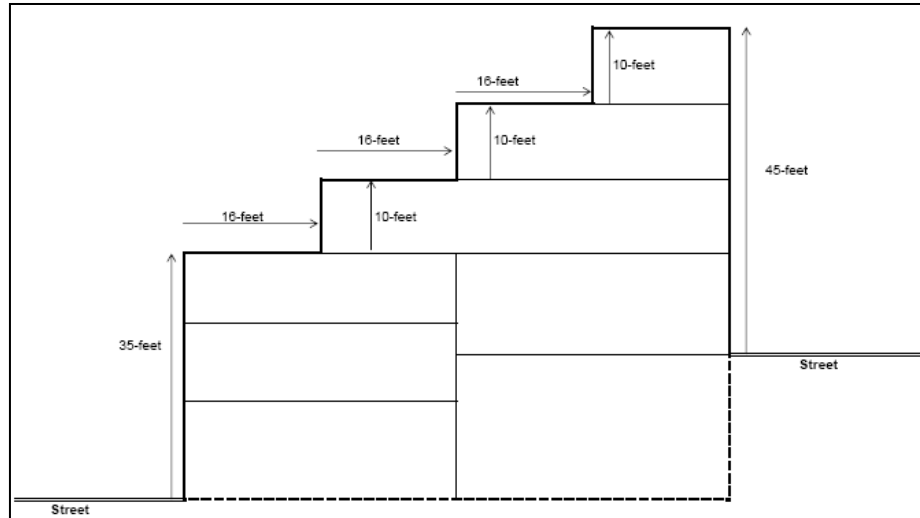
E. Other Roof Forms: As written.

(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 intervals 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	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 recommend as modified	Second Read & Public Hearing	CCOC Recommends Approval & Adoption
				Rejected



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
Scott Gustin, AICP, DPI Principal Planner & Zoning Division Manager

DATE: April 21, 2021

RE: Proposed CDO Amendment: Act 179 Changes to Ch. 117 (will be ZA-21-08)

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 the lot:

- can be served by municipal water and sewer service; and;
- such the lot is not less than at least four thousand (4,000) square feet in area; with
or and;
- the lot has a minimum width and depth dimension of forty (40) feet or more; and
- the lot can connect to municipal water and sewer infrastructure.

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	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 recommend as modified	Second Read & Public Hearing	CCOC Recommends Approval & Adoption
				Rejected

Appendix A-Use Table – All Zoning Districts – PCOC Draft 03/04/2021

	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	Y CU ²	Y	Y	N	Y ³	N	Y	N	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N ¹	N	N	CU Y	N	Y	Y	N	Y	Y	Y	Y	N	N
Attached Dwelling(s) – Mixed Use ²⁶	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	Permitted Use in this district
CU	Conditional Use in this district
N	Use not permitted in this district
Abbreviation	Zoning District
RCO – A	RCO - Agriculture
RCO – RG	RCO – Recreation/Greenspace
RCO – C	RCO - Conservation
I	Institutional
RL/W	Residential Low Density, Waterfront Residential Low Density
RM/W	Residential Medium Density, Waterfront Residential Medium Density
RH	Residential High Density
DW-PT	Downtown Waterfront-Public Trust
NMU	Neighborhood Mixed Use
NAC	Neighborhood Activity Center
NAC-RC	NAC – Riverside Corridor
NAC-CR	NAC – Cambrian Rise
E-AE	Enterprise – Agricultural Processing and Energy
E-LM	Enterprise – Light Manufacturing

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



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 <u>public</u> Alley centerline |
| - Outbuildings | 0-ft min. or 15-ft from a rear <u>public</u> 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.

88

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

89

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 *Remaining section is unchanged*
355
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 windows <u>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

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

Burlington Planning Commission with City Council Ordinance Committee

Tuesday, April 13, 2021, 6:30 P.M.

Remote Meeting via Zoom

Draft Minutes

Members Present	A Montroll, B Baker, Y Bradley, A Friend, E Lee, H Roen, J Wallace Brodeur, C Mason, J Hanson, Z Hightower
Staff Present:	D White, M Tuttle, S Gustin, K Sturtevant, P Wehman, B Ward
Attendance:	J Fish, R Camara, K Van Woert, A Magyar, M Barlow, J Hinsdale, F Lee, K Hackett, J Heller, E Redic, B Redic, L Kettler, L Jenson, M Orleans, K Gauthier, S carpenter, B Foust, D Lyons, J Marks, B Gonyaw, K Casella, K Cavoretto, R Danielson, S Bushor, one additional phone number unidentified

I. Agenda

Call to Order	Time: 6:38pm
Agenda	No Changes

II. Public Forum

Name	Comment
B Redic	City says it is interested in supporting homeownership for people of color, but disappointed about amount of work required to purchase a 3-unit home. Due to lack of paperwork in the City, required to make a significant investment to turn it into a duplex, and most recent concern is that it has been vacant for 60 days, losing the opportunity to maintain it for this purpose. Looking for support from the committee.

III. Proposed CDO Amendment: Short Term Rentals

Action: Amend proposed STR regulations to require owner-occupancy for all unit types.		
Motion: E Lee	Second: A Friend	Failed 2-5. Lee, Friend in favor; Baker, Bradley, Montroll, Roen, Wallace Brodeur oppose.
Action: Amend proposed STR regulations to allow STR in 1 and 2 unit buildings when host does not live on-site if owner has owned property for 3 years.		
Motion: B Baker	Second: H Roen	Passed 4-3. Baker, Bradley, Montroll, Roen in favor; Friend, Lee, Wallace Brodeur oppose.
Action: Approve the Municipal Bylaw Amendment Report and forward proposed CDO and Ch. 18 amendments to Council as amended, with recommendation.		
Motion: Y Bradley	Second: J Wallace Brodeur	Passed 6-1. Lee opposed.
Staff provided an overview of the current proposal for both CDO and Ch. 18 amendments, which are posted online at: https://www.burlingtonvt.gov/CityPlan/PC/Agendas		
The Chair opened the Public Hearing at 6:51pm with the following comments received:		

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 802-865-7144.

- E Redic- Disappointed in lack of concern about who is being impacted and harm to the community. Say want affordable housing and safe places to live, but the only way to do that is relieve some of the regulations in place. City is making it difficult to be a landlord, and putting own family and tenants at risk.
- K Casella- Proposed STR regulations are draconian and overreach. Did not do work to document how many STRs have replaced housing units, how owner-occupancy requirement is addressing a problem. 38% of VT STR hosts use STRs as primary income; personally use STR income to pay increasing taxes. Proposal could make homeownership impossible in Burlington, and harm homeowners' livelihood. Ask committee to withdraw the proposal, reconsider impacts, and implement a registration process.
- J Heller- Applaud adoption of clear and understandable regulations; do not think ability to STR should be based on neighbors' relationships.
- J Marks- Request withdraw of proposal until more data and evidence based recommendations to improve living conditions. Proposal is unlikely to improve housing, but will economically impact property owners. Lack of affordability is due to lack of growth, stagnant wages, and cumbersome zoning ordinance. ARPA will bring money for affordable housing in state and S.79 is likely to pass the legislature and have a positive impact on housing and reveal the true nature of STRs. Many whole unit STRs in Burlington were never long-term housing before.
- L Jenson- Withdraw the recommendations because committee is not willing to create a truly progressive policy. Impacts have not been meaningful debated, housing summit report has not been satisfied. Need to know who will benefit vs. be harmed; how the policy will make housing more affordable; and impact on tenants, tax income, and tourism economy. Need to determine the process and benchmarks for evaluating changes to the policy. Concerned about why housing inspections are not required in partial unit STRs renting just 1 or 2 bedrooms.
- A Magyar- How will the city replace the loss of rooms and meals tax, money from tourism economy if STRs are reduced? Pandemic has caused economic ruin but STRs have a role in the recovery. Burlington is a tourist city, and tourism will roar back after the pandemic. STR guests stay longer and spend more than typical visitors, distribute economic impacts outside of downtown, and money stays in local area. STRs are not new; homes and camps have been around, but sharing platforms ensure that taxes are paid. Is the Committee willing to risk not knowing how this will impact the city's economy?
- D Lyons- Eliminate requirement for primary residence for single unit and duplexes. Landlord should be able to permit a building whether they live on site or not. Committee should consider proposal from last month to allow owners of a building for 3+ years to host STR if they don't live on site. It is a balanced approach. Otherwise, should wait to see what S.79 does at the state level.
- Jacob Hinsdale- Concerned about false choice suggested between STR and long-term rentals. STRs require a lot more resources on a day-to-day basis compared to a LTR rental. Don't believe that large landlords will ever convert housing units en masse, partially because there is not enough labor to keep up with the work required. Don't think it will impact overall availability of housing in the city if people can STR another property that they own. Should be more data and reflection about relationship to state level policies.

The Chair closed the Public Hearing at 7:31pm, with Committee discussion to follow:

- At request of Committee members, A Montroll reintroduced proposal to allow people that have owned a property for 3+ years to STR even if they do not live at the property.
- Some Committee members supported this idea as a way to reach compromise, to avoid putting existing STR hosts out of business, but to stem property speculation and with little impact on existing rental housing stock. Generally, these members felt this provided flexibility for people to STR to afford to stay in their home or keep up their properties.

- Other Committee members were concerned this would create an incentive not to convert a housing unit back to long-term, resulting in a loss of workforce housing, and concerns that it was benefitting property owners who have already been able to invest in the market while excluding new property owners. Some committee members suggested a willingness to loosen the rules in other ways, but did not support this approach.
- Some committee members noted that waiting is not an option, both due to the post-pandemic potential to see an increase in STRs, as well as a concern that state-level policy may not address Burlington specific issues.
- A Committee member noted that it is disingenuous to say people are going to lose "their" home, because the proposal allows people to STR their own home. Having a second property is a significant investment. It was noted by several committee members that precluding STRs in some properties does not preclude the opportunity to make money from long-term renting.
- Some Commissioners noted that the committee has only heard from hosts, but not the people who are looking for housing in the city, including the 60% of households that are renter-occupied, and that the Committee has the responsibility to consider everyone.
- At the conclusion of the discussion, a motion to require owner-occupancy for all STR scenarios failed, and a motion to enable off-site hosting for 1 and 2 unit properties that have been owned for 3+ years passed. It was clarified that this is a recommendation to send to the City Council, but that the Council will ultimately have the authority to amend or adopt the proposed regulations.

IV. Reapprove Municipal Bylaw Amendment Report ZA-21-06

Action: Reapprove Municipal Bylaw Amendment Report and forward to Council for adoption.		
Motion: A Friend	Second: E Lee	Vote: Approved Unanimously
At the recommendation of staff, Council Ordinance Committee modified the proposed amendment to replace term "no-mow" with "low-mow". Commissioners supported the amendment as being accurate to the intent of the definition.		

V. Commissioner Items

Action: N/A		
Motion: NA	Second: NA	Vote: NA
• H Roen noted he will not be seeking reappointment at the end of the term in June, will focus on work with Renewable Energy Vermont. • B Baker noted continued concerns about how zoning presents a barrier to the next generation of homeownership in Burlington, including that duplexes aren't allowed in some of the existing zoning districts. • E Lee requested an update to the rental housing code to include on the permit checklist the requirement for recycling totters for all rental buildings, and the requirement to have a physical barrier that defines parking areas.		

VI. Minutes & Communications

Action: Approved the minutes and accepted the communications		
Motion by: A Friend	Second: J Wallace Brodeur	Vote: Approved Unanimously
• Minutes Approved: March 9, 2021 • Communications filed enclosed in agenda packet, and additional communications posted online at https://www.burlingtonvt.gov/CityPlan/PC/Agendas		

VII. Adjourn

Adjournment		Time: 8:49
Motion: H Roen	Second: J Wallace Brodeur	Vote: Approved Unanimously

April 21st, 2021

Burlington Planning Commission
c/o Department of Planning and Zoning
149 Church Street
Burlington, Vermont 05401

Re: Expanding the FD5 boundaries to include buildings along Pine Street north of King Street

Dear Members,

Please accept this letter as a formal request to amend the 2019 extension of the downtown FD5 District to include 3 buildings on the west side of Pine Street north of King Street. This request is put forth by the two owners of these buildings:

Offenhartz Inc., 157-159 Pine Street; Offenhartz Inc., 161-163 Pine Street; Amy Gonyaw, 76 King Street.

The red outlined areas in the map below are the 2019 expansions of FD5. The green outlined area encompasses the buildings we request added to FD5:



We are requesting this change so that we can have the flexibility to use our buildings for purposes which are allowed in FD5 and not allowed in residential high density, the current zoning designation for these buildings. We strongly believe it is appropriate that these buildings are zoned FD5 as it is in keeping with the FD5 zoning on either side of this block and with the plan for future growth of Burlington as it is described in Burlington's Comprehensive Plan.

In 2019, the Commission voted to extend the FD5 boundaries in several locations on the edge of the FD5 District. One of additions to the FD5 District is a slice of the block which includes our buildings, the block between Main, King, South Champlain, and Pine Streets. You can see this in the image above. We question why the buildings facing Pine St. on this block were not added along with this strip. Burlington's Comprehensive Plan identifies Pine St as a major thoroughfare and area suitable to accommodate the city's future growth. The Plan goes on "we need to have places where we can accommodate and encourage future growth and development in order to maintain our vibrancy, tax base, and character." The parking requirements tied to building use were removed along Pine St recently in preparation for encouraging this intensity of use described in the Plan. It is only a matter of time before these buildings are designated FD5 as they are already part of downtown in character and it is the stated plan to encourage growth there.

To illustrate our position further, the following is the Purpose Statement from the 2019 FD5 zoning boundary amendment: "The purpose of this proposed amendment is to modify the boundaries of Form District 5 to include additional properties located along the boundary of the current district. Properties

considered for inclusion in the FD5 district were evaluated for their current use, future potential use, development intensity, and compatibility with adjacent properties. They have been recommended to be included in the FD5 in order to encourage the type and intensity of future infill or redevelopment consistent with adjacent properties, to enable greater flexibility for expansion or reuse of existing uses and structures, and/or reduce existing non-conformities.” We believe that not including these 3 buildings is directly at odds with this purpose statement.

Below are the buildings neighboring our 3 that are already designed FD5.

This is 168 Pine St. It is a 6 unit multifamily and is zoned FD5. It is directly across the street from our property.



This is 151-153 Pine St. It is a 5 unit multifamily. It is one building north of the 3 building we are requesting added to FD5. It was added to FD5 with the recent zoning changes.



It seems an oversight that these three buildings were not included in the 2019 expansion of FD5. We would like this corrected so that we can use our buildings in a way that is in keeping with their location in downtown Burlington as described in Burlington's Comprehensive Plan. Thank you for considering this amendment and for your dedication to ensuring Burlington grows in a thoughtful way.

Sincerely,

Steven Offenhartz, Bill and Amy Gonyaw

April 22, 2021

Rachel Lomonaco
District 4 Coordinator
Natural Resources Board
111 West Street
Essex Junction, Vermont 05452

Re: 410116-21H Burlington School District - Burlington

Dear Ms. Lomonaco:

VTrans has reviewed the proposed permit application as well as the VHB Traffic Impact Study (Exhibit 016, VHB-Burlington High School TIS, January 2021) and offers the comments below.

The proposed project consists of an after-the-fact change in use of former Filene's/Macy's store building into the host site for Burlington High School. According to the VHB traffic impact study, the proposed project is expected to generate 275 additional net trips per hour (vph) during the AM peak hour and a net *decrease* of 85 vehicles during the PM peak hour. These net trip calculations factor in the multimodal transportation of students and faculty (walking, buses, and bicycling) while also accounting for the AM and PM trips the previous land use (Macy's). In the case of the PM peak hour trips, the Macy's department store had created more trips than the school will create thus a net decrease of 85 vehicles was realized.

In reviewing the application and traffic impact study there are a few key points with the new high school location that should be noted:

- The school is not providing additional or new traffic to Burlington per se. It is shifting existing school traffic from its previous location approximately 1.5 miles away.
- The school traffic at the Macy's location will be for temporary use.
- As mentioned in the application description, this is an "after-the-fact" use. Students and faculty are currently using this building. This will form a good initial measure for monitoring traffic and multimodal behavior to see what is working or not working, respectively.
- The new school location is located in the downtown district with multiple town roads in a grid pattern to enhance traffic dispersion.

- The new downtown location of the school puts it within local street and sidewalk infrastructure for convenient bicycle and pedestrian access for students and faculty.
- The new downtown location of the school is in close proximity to the GMT downtown transit center for convenient transit access.

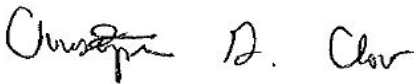
Based on these factors, VTrans concurs with net trip generation and traffic analysis from the VHB traffic impact study and has no concerns with this improvement relative to the impact of the project on traffic congestion, safety, or access for pedestrians, cyclists, and transit.

Act 145 Transportation Impact Fee

Based on our review of this permit application, VTrans does not recommend payment of a transportation impact fee pursuant to Act 145. A transportation impact fee is not required due to the fact that the school relocation is temporary, and the net PM trip generation will decrease relative to the traffic of the previous land use (Macy's). In the case where a project's net PM trip generation remains the same or decreases from that of the previous establishment, an Act 145 transportation impact fee is not warranted.

Please contact me with any questions or comments at 802-522-4901 or christopher.clow@vermont.gov

Sincerely,



Christopher G. Clow, PE
Transportation Engineer

Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE #4C0116-21H

I, Christopher Clow, of the Agency of Transportation hereby certify that on April 22, 2021, I sent a comment letter to the District #4 Environmental Commission concerning the applicant, Devonwood Cherry Street Associates, and the Burlington School District, 4C0116-21H by U.S. Mail, postage prepaid or by email to the following:

Burlington School District
150 Colchester Avenue
Burlington, VT 05401
mspauldi@bsdvt.org

Devonwood Cherry Street Associates, LLC
101 Cherry Street, Suite 440
Burlington, VT 05401
dave@btvspaces.com

David Farrington Jr.
4724 Spear Street
Burlington VT 05401
dave@btvspaces.com

Dave Marshall, PE
Civil Engineering Associates, Inc.
10 Mansfield View Lane
South Burlington, VT 05403
dmarshall@cea-vt.com

Amy Bovee, Assistant City Clerk
Chair, City Council/Chair, Planning Commission
City of Burlington
139 Church Street
Burlington, VT 05401
abovee@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

Agency of Natural Resources
One 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

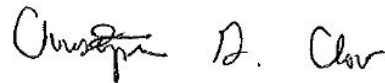
VTrans Policy, Planning, and Research Bureau
Barre City Place
219 N. Main St.
Barre, VT 05641
AOT.Act250@vermont.gov

Vt. Agency of Agriculture, Food, and Markets
16 State street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act20@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

Jennifer M.V. Fitch, PE, Commissioner
Judy Bruneau, Executive Assistant
Department of Buildings and General Services
2 Governor Aiken Avenue
Montpelier, VT 05633-5801
jennifer.fitch@vermont.gov
judy.bruneau@vermont.gov

Dated at Montpelier, Vermont this 22nd day of April 2021.



Christopher G. Clow, PE
Vermont Agency of Transportation

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>

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: July 21, 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.

Since the Commission referred this amendment to a Public Hearing, staff has noted the need for a minor change to the language regarding dormers which is highlighted in yellow below.

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
----------------	---------------	----------------------

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:

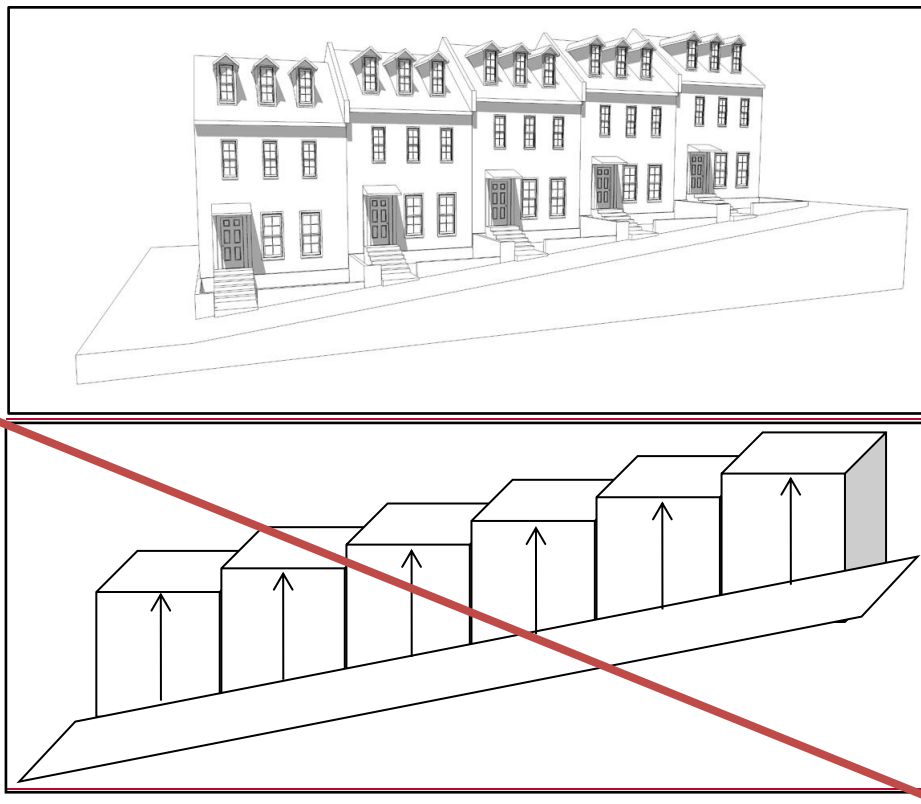
1. Starting Point: Building height shall be measured from:
 - A. a public sidewalk, alley, or other public way or space where the proposed building's street-facing façade is within a 1050-foot horizontal distance of the lot's street frontage, of an exterior wall on the front of the building; or,
 - B. 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 dormers that either individually or collectively exceed 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.

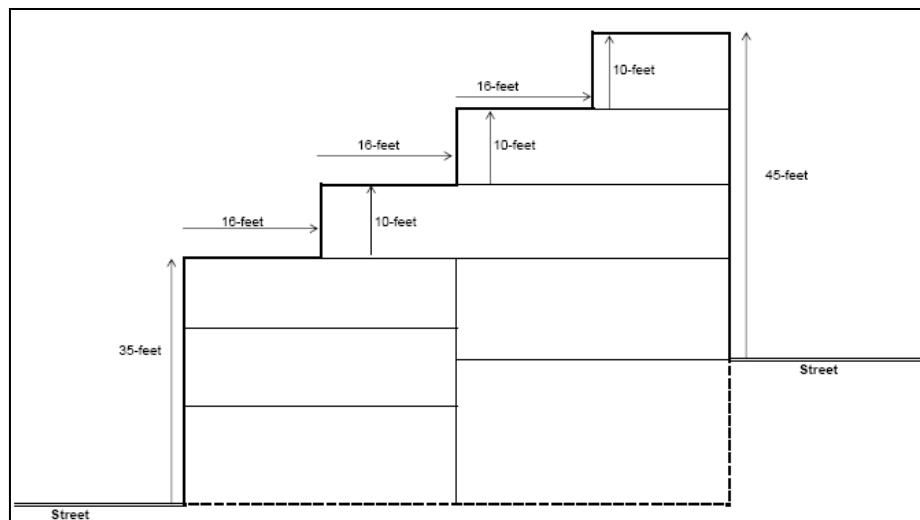
E. Other Roof Forms: As written.

(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 shall be set back a minimum of 1-foot from the edges of the underlying roofline. Individual dog house dormers shall be limited 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 & 7/27/21	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: June 21, 2021
RE: ZA-21-08 Act 179 Changes to Ch. 117

Overview & Background

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

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

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

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

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

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

Proposed Amendment

Amendment Type

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

Purpose Statement

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

Proposed Amendments

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

1. Amend Sec. 5.2.1 Existing Small Lots

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

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

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

3. Amend Appendix A- Use Table

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

[Begin text amendments]

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

Sec. 5.2.1 Existing Small Lots

Any small lot of record existing as of April 26, 1973 may be developed for the purposes permitted in the district in which it is located even though not conforming to minimum lot size requirements if ~~such lot is not less than four thousand (4,000) square feet in area with a minimum width and depth dimension of forty (4) feet. the lot:~~

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

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

Sec. 5.4.5 Accessory Dwelling Units

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

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

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

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

Sec. 13.1.2 Definitions.

Accessory Dwelling Unit or Apartment: ~~An efficiency or one-bedroom apartment~~ 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 7/27/21	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	Permitted Use in this district
CU	Conditional Use in this district
N	Use not permitted in this district
Abbreviation	Zoning District
RCO – A	RCO - Agriculture
RCO – RG	RCO – Recreation/Greenspace
RCO – C	RCO - Conservation
I	Institutional
RL/W	Residential Low Density, Waterfront Residential Low Density
RM/W	Residential Medium Density, Waterfront Residential Medium Density
RH	Residential High Density
DW-PT	Downtown Waterfront-Public Trust
NMU	Neighborhood Mixed Use
NAC	Neighborhood Activity Center
NAC-RC	NAC – Riverside Corridor
NAC-CR	NAC – Cambrian Rise
E-AE	Enterprise – Agricultural Processing and Energy
E-LM	Enterprise – Light Manufacturing

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



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: July 21, 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
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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:

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 7/27/21	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.

88

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

89

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 VLR - 15% VLR - 15%
80% of the glazing max₂ max₂
per floor.

(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.

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) 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.

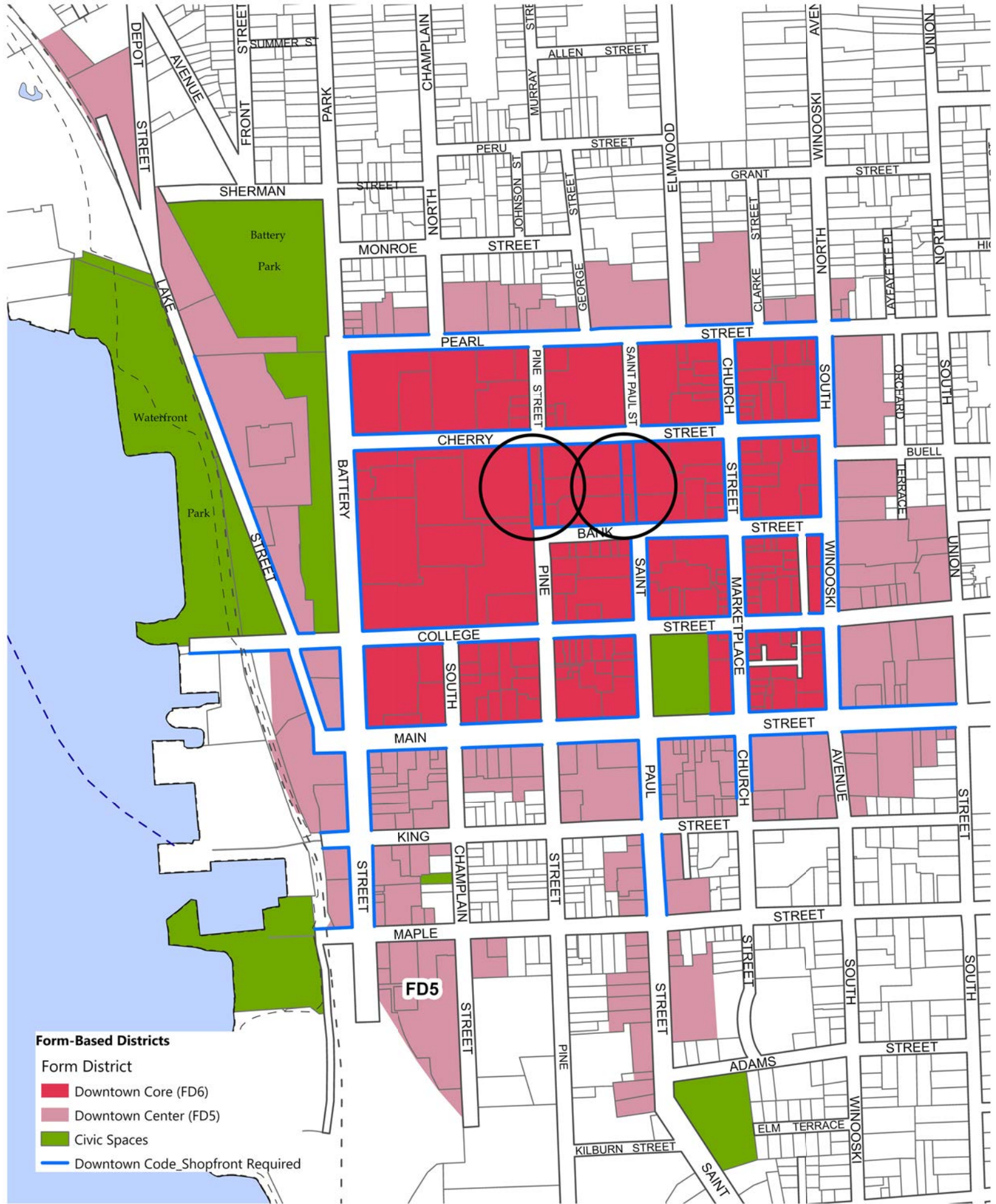
Canopy: A fixed wall mounted or stand-alone rigid structure that provides decoration and shade and weather protection over a patio, window, storefront, or building entrance.

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.~~



- Form-Based Districts**
- Form District
- Downtown Core (FD6)
 - Downtown Center (FD5)
 - Civic Spaces
 - Downtown Code Shopfront Required



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

BYLAWS OF THE BURLINGTON PLANNING COMMISSION

(A) Establishment of Bylaws

The Bylaws of the Burlington Planning Commission, hereafter referred to as the "Commission," are hereby established pursuant to 24 V.S.A. S. 4323 (C) and Sec. 2.2.2 of the *Burlington Comprehensive Development Ordinance*. These bylaws shall be effective from the date of adoption, and may be amended from time to time by a two-thirds vote of the Commission.

(B) Membership

In accordance with 24 V.S.A. Chapter 117 and Sec. 120 of the *Burlington City Charter*, the Commission shall consist of seven (7) residents of the City of Burlington appointed by the City Council. Any appointment to the Commission shall be for a term of three (3) consecutive years. Members may be appointed to successive terms without limitation. Any member desiring reappointment, or city resident desiring an appointment to the Commission, must apply to the City Clerk's office and obtain a nomination from a member of the City Council.

(C) Vacancies/Removal

Vacancies shall be filled by the City Council upon the expiration of such term or an unexpired portion of any term. Any member of the Commission may be removed at any time by unanimous vote of the City Council.

(D) Abstentions from Participation and Voting

In order to secure, protect, and preserve the highest level of public trust in the deliberation and decision of the Burlington Planning Commission, it is incumbent upon each member not only to scrupulously avoid any act which constitutes a conflict of interest established in law, but also to avoid any act which gives the appearance of bias, favoritism, or of interest.

- (1) A member shall withdraw from all participation, including all formal and informal discussion and voting, in any deliberation of the Commission or its committees or any issue upon declaration of a conflict of interest or upon the assertion that there is a reasonable public presumption that bias, favoritism, or a conflict of interest may exist. Circumstances under which this provision shall be exercised include, but are not limited to, the following:
 - (a) If the member has a direct or indirect financial interest in the outcome of the matter at issue. A direct financial interest shall include, but not be limited to, circumstances in which the member is an applicant, a provider of professional or business service to the applicant, serves on the board of directors, or receives any form of remuneration or benefit from the applicant. Indirect financial interest shall include, but is not limited to, if an [As amended: November 7, 2002] immediate family relative or close personal friend has, or is likely to have, a direct financial interest in the outcome of the matter; or
 - (b) If the matter at issue involves the member's own official conduct; or
 - (c) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
 - (d) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

BYLAWS OF THE BURLINGTON PLANNING COMMISSION

(G) Offices

At the first meeting in July of each year, the Planning Commission shall elect, by majority vote, a Chairperson and Vice-Chairperson from among its members, and shall also elect a Clerk who may or may not be a Commission member or municipal employee. Terms of office shall be for one year. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the Commission.

(H) Committees

1. Standing Committees

There shall be three standing committees of the Planning Commission: Executive, Ordinance, and Long Range Planning. Membership comes from those serving on the Planning Commission, the Development Review Board, the Design Advisory Board and/or Conservation Board. With the exception of the Executive Committee, each standing committee shall be composed of a minimum of three (3) persons with a maximum of five (5) persons, of which three (3) must be members of the Commission. The Commission Chairperson may not serve, as the Committee Chairperson for either the Ordinance Committee or Long Range Planning Committee. Each standing committee shall report on its activities and/or recommendations within its purview to the full Commission for its disposition at each Commission meeting. Except as noted, the establishment of standing committees does not constitute a delegation of any responsibility of the full Commission, which retains the exclusive agency for the City under law and ordinance.

- 1) Executive: The Executive Committee shall be composed of three members consisting of the Commission Chairperson, who shall serve ex-officio as Chairperson of the Committee; the Commission Vice-Chairperson, who shall serve ex-officio as Vice-Chairperson of the Committee; and a Planning Commissioner selected at-large by the Commission at its organizational meeting. The duties and functions of the Committee shall be as follows:
 - i. Appointment of standing committees and ad hoc committees including chairpersons unless noted otherwise herein, and appointment of special liaisons as the Commission shall establish, and oversight of committees and liaisons;
 - ii. Oversight, including preparation of the annual department budget; supervision and the annual review of the department director; such other tasks as the Commission shall assign.
 - iii. Relationship of the department and Commission to city, regional, and state departments and commissions, including scheduling of special work sessions as necessary;
 - iv. Commission bylaw revisions and amendments;
 - v. Oversight of all contracts as the Commission or department shall enter into or be delegated responsibility for;
- 2) Ordinance: The Ordinance Committee shall have at least four (4) and no more than five (5) members. Members may be appointed from the following: one (1) member each from the Development Review Board, the Design Advisory Board, or the Conservation Board, in addition to one (1) member from the Planning Commission Executive Committee, and two (2) at-large of the Planning Commission elected by the Commission at its organizational meeting. The chairs of the Development Review Board, Design Advisory Board or the Conservation Board may appoint a member of their board to serve on the Ordinance Committee. If all boards appoint a member the Planning Commission, by election at its organizational meeting will confirm which appointee(s) will serve on the Ordinance Committee. The Chairperson and Vice-Chairperson of the Ordinance Committee shall be elected by a majority of committee members. The duties and functions of the Committee shall be as follows:

BYLAWS OF THE BURLINGTON PLANNING COMMISSION

- i. Preparing and reviewing all revisions of the Zoning and Subdivision Ordinances, Official Map and the Zoning Map;
 - ii. The enforcement of the zoning and subdivision ordinances and the zoning map, and;
 - iii. Such other tasks as the Commission shall assign.
- 3) Long Range Planning: The Long Range Planning Committee shall have at least four (4) and no more than five (5) members including one (1) member from the Development Review Board appointed by the Board's Chairperson. The Committee shall have one member from the Executive Committee, and two (2) at-large members of the Planning Commission elected by the Commission at its organizational meeting. The chair of the Design Advisory Board or the Conservation Board may appoint a member of their board to serve on the Long Range Planning Committee. If both boards appoint a member the Planning Commission will decide which appointee(s) will serve on the Long Range Planning Committee. The Chairperson and Vice-Chairperson of the Long Range Planning Committee shall be elected by a majority of committee members. The duties and functions of the Committee shall be as follows:
- i. The development of an implementation plan for the Municipal Development Plan.
 - ii. Develop a process with a budget for each eight year revision to the Municipal Development Plan;
 - iii. Review plans of other departments and the regional planning commission and provide comments to the Planning Commission; and
 - iv. Such other tasks as the Planning Commission shall assign.

2. Ad hoc Committees and Commission Liaisons:

From time to time ad hoc committees and commission liaisons may be established by the Commission for special assignments that do not fall within the general purview of standing committees.

3. Committee Meetings:

When appropriate, standing committees should have regularly scheduled meeting times. All committee activity should be ratified by vote of the committee before presentation to the Commission. All substantive actions of the committees should be recorded in the written minutes kept current by the committee chairperson or designee. At the request of the committee chairperson, a committee meeting shall be taped.

(I) Annual Work Plans

The Planning Commission and each of the standing committees shall set work plans every year. These work plans shall be reviewed periodically. The schedule for work plans and their evaluation follows:

May: Each standing committee evaluates the extent to which it fulfilled its old work plan and a brief (1-2 page) evaluation report is written and submitted to P.C. in time to be part of the packet for the first P.C. meeting in June.

June: Standing committee work plans are evaluated by the P.C. at the first meeting. Feedback for recognition, encouragement and improvement is provided.

Standing committee work plans end at the end of the month.

The work plan for the following year (July – June) is written during June and early July. It is submitted to P.C. in time to be part of the packet for the first P.C. meeting in July.

BYLAWS OF THE BURLINGTON PLANNING COMMISSION

July: New work plans are discussed, modified if necessary, and approved by the P.C. at the first meeting of the P.C. New work plans begin in July and run through June.

(J) Powers and Duties

In accordance with 24 V.S.A. Chapter 117, and the *Burlington Code of Ordinances*, the Burlington Planning Commission:

- (1) Shall prepare a Municipal Development Plan and amendment thereof for consideration by the City Council and to review any amendments thereof initiated by others as set forth in 24 V.S.A. 4384;
- (2) Shall prepare and present to the City Council, from time to time, proposed bylaws and make recommendations to the City Council on proposed amendments to such bylaws;
- (3) Shall undertake studies and make recommendations on matters of land development, urban renewal, transportation, economy, and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy, and the development of renewable energy resources;
- (4) Shall prepare and present to the City Council recommended construction specifications for streets and related public improvements pertaining to subdivision development;
- (5) Shall prepare and present to the City Council a recommended annual capital budget and future capital programs for a period of not less than five (5) years;
- (6) Shall hold public meetings;
- (7) Shall undertake comprehensive planning, which may include related preliminary planning and engineering studies;
- (8) Shall prepare and present to the City Council, from time to time, recommended fees for the administration of zoning and subdivision regulations;
- (9) Perform such other acts or functions as it may deem necessary or appropriate to fulfill the duties and obligations imposed by, and consistent with, the intent and purpose of 24 V.S.A. Chapter 117 and the *Burlington Code of Ordinances*.
- (10) May require from other departments and agencies of the City such available information as it relates to the work of the Planning Commission;
- (11) May, in the performance of its functions, enter upon land to make examinations and surveys;
- (12) May participate in a regional planning program;
- (13) May retain staff and consultant assistance in carrying out its duties and powers.

(K) Meetings/Minutes

Meetings of the Planning Commission shall be held at the call of the Chairperson on the second and fourth

BYLAWS OF THE BURLINGTON PLANNING COMMISSION

Tuesday of each month unless otherwise determined by majority vote of the Commission. The Chairperson may also call special meetings of the Commission. All meetings of the Commission shall be open to the public, except as provided by law. The Commission shall keep minutes of every regular or special meeting. The minutes shall include, but not be limited to, the names of the persons appearing and addressing the Commission, any action taken by the Commission, the findings, if any, made by the Commission and reasons thereof. The minutes shall, thereafter, be made available for public inspection during normal business hours at the office of the Administrative Officer. Any interested party shall have the right to a reproduction of the minutes in an amount sufficient to cover the costs of such reproduction.

(L) Notice

No regular or special meeting of the Commission shall be held without providing at least twenty-four (24) hours written notice to the City Clerk. Public hearings shall require no less than fifteen (15) days prior notice including advertising in a newspaper of general publication within the City and posting on the City Hall community board(s).

(M) Quorum

For the conduct of any meeting or hearing and the taking of any action, a quorum shall be no less than a majority of the members of the Commission and any action thereof shall be taken by a majority of the members of the Commission.

(N) Public Hearing

Prior to Planning Commission action on the adoption of any amendment to the City's Zoning Ordinance, Subdivision Regulation, Official Map, or Municipal Development Plan, a public hearing shall be held by the Planning Commission after public notice.

(O) Ex-Officio Member

The Mayor of the City of Burlington shall be a non-voting ex-officio member of the Commission.

(P) Special Meetings

Special meetings of the Commission may be called by the Chairperson, when he or she deems it expedient, or upon the request of two (2) members of the Commission for the purpose of transacting any business designated in the call. Notice to each member of the Commission for a Special Meeting may be by telephone or otherwise at least twenty-four (24) hours prior to the date of such special meeting. At such special meeting, no business shall be considered other than specified in the call. Additionally, if more than three (3) members of the Commission participate in a meeting with staff, conduct a site visit, or participate in other activities related to the responsibilities of the Planning Commission outside of a regular meeting, the gathering must be warned as a special meeting with proper notice given.

(Q) Governance Procedures

Robert's Rules of Order, as revised, shall govern proceedings of the Commission in all cases which are not specifically covered by other laws, ordinances, bylaws, or regulations.

History:

Established: June 26, 1986

Amended: October 10, 1991

BYLAWS OF THE BURLINGTON PLANNING COMMISSION

Amended: February 12, 1998

Amended: May 10, 2001

Amended: November 7, 2002

Amended: October 14, 2003

Amended: July 10, 2008

Amended: October 12, 2016

Burlington Planning Commission

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www.burlingtonvt.gov/pz

Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Michael Gaughan
Emily Lee
Brynne Martin

Burlington Planning Commission

Tuesday, July 13, 2021, 6:30 P.M.

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

Draft Minutes

Members Present	B Baker, A Friend, E Lee, M Gaughan, B Martin
Staff Present	D White, M Tuttle
Attendance	R Scully, J Caulo, S Bushor, C Hilliard, K Devine, L Campriello, D Caulo, E Caulo, T Sarandos

I. Agenda

Call to Order	Time: 6:32pm
Agenda	Postpone Item V to July 27 meeting

II. Public Forum

Name(s)	Comment
	No comments

III. Chair Report

B Baker	Welcome to the new Planning Commissioners Brynne Martin and Michael Gaughan
---------	---

IV. Director's Report

D White	City Council approved FY22 budget on Jun 28. Department now has two new members from the I&T team. Offices are now open to the public with new security features; make an appointment to meet with us in-person.
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V. Annual Organizational Meeting

Action: Postponed to July 27 meeting		
Motion by:	Second by:	Vote:
Type:	Presented by:	

VI. Presentation & Proposed E-LM Amendment by Hula

Action: Request staff to review proposal and bring recommendation to Planning Commission		
Motion by: E Lee	Second by: A Friend	Vote: Unanimous
Type: Presentation, Discussion	Presented by: R Scully, J Caulo	
Representatives from Hula presented a proposed zoning amendment to create a Neighborhood Activity Center in the area of the E-LM district near the intersection of Pine St & Lakeside Ave. The presentation slides can be found online at: https://www.burlingtonvt.gov/CityPlan/PC/Agendas .		

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.

Commission Discussion included:

- Commissioners were generally supportive of the concept presented by Hula representatives. However, it was noted that housing was originally envisioned in the planBTV: South End process, but removed due to intense backlash.
- Commissioners noted that transit connections, especially for job growth; housing of all types, tenures, and particularly affordable housing; and replacing surface parking with spaces for housing, jobs, and to improve stormwater were all positive aspects of what was proposed.
- In response to a question about why Hula is pursuing this request, representatives noted that they wish to build on economic development being built at Hula's site, bring more opportunities for employees to live close to work, reverse challenges around cost of living and low vacancy rates, and provide housing for low-income, early professional, and retail/service employees.
- A Commissioner suggested that rezoning this area might present an opportunity to focus more on form than the prescriptive nature of some of the NAC zones elsewhere in the city.
- In response to a question about why the boundaries for this zoning amendment were proposed, Hula representatives indicated the focus was on vacant and underutilized properties, including where other property owners share an interest in exploring policy changes, but didn't want to be too expansive and include properties that might feel pressure to change their use.
- Staff noted that planBTV envisions an innovation district in this area, as one of three "sub-areas" the Enterprise District. It was noted that this area has the most open-ended opportunity to be re-envisioned, but also where the most difficult decisions about the future of the district were likely to focus. It may be the most appropriate location to consider housing, but we also need to understand what makes sense at the edges, and consider the long-discussed questions of what happens in the rest of this district. Helpful that some of the footwork has already been done by Hula Representatives, and while not entirely sure an NAC the way currently proposed makes sense, it directionally makes sense.

VII. Commissioner Items

- Commissioner Lee recommend that the city change policy to enable property owners to purchase their own recycling totes, since the City is unable to supply them to meet demand.
- Commissioner Lee requested more information about how many short-term rentals have been permitted, what units they've replaced, and why Housing Replacement Fees have not been paid. Staff provided some information on the Housing Replacement policy, and indicated more research would be needed into the question of other permitted STRs.
- Next Meetings are on July 27 and Aug 10 at 6:30pm.

VIII. Minutes and Communications

Action: Approve the minutes and accept the communications

Motion by: A Friend

Second by: E Lee

Vote: Approved by Lee, Friend, Baker.
Gaughan, Martin abstain.

Minutes Approved: June 22, 2021

Communications Filed:

- Enclosed in agenda packet, and additional communications posted online

IX. Adjourn

Adjournment

Time: 7:50pm

Motion: A Friend

Second: M Gaughan

Vote: Approved Unanimously



LAND USE PERMIT AMENDMENT

State of Vermont
Natural Resources Board
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
<https://nrb.vermont.gov/>

[phone] 802-879-5614

CASE NO: 4C0051-3

City of Burlington Parks, Recreation &
Waterfront
645 Pine Street
Burlington, VT 05401

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment #4C0051-3, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 205, Page 239; and Book 361, Page 776, of the land records of the City of Burlington, Vermont, as the subject of deeds to the City of Burlington.

This permit specifically authorizes the rehabilitation of the existing multi-use path through Oakledge Park and construction of a new universally accessible playground, path connections, 8 new universally accessible parking spaces, ADA compliant beach access, restroom improvements, landscaping, and lighting upgrades. The project is located on Flynn Avenue in Burlington, Vermont.

Jurisdiction attaches because the Project constitutes a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the project as approved by the District 4 Environmental Commission (the "Commission") in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with the conditions of this permit and the permit application, plans, and exhibits on file with the Commission and other material representations.



The approved plans are:

“Site Plan for Oakledge Park,” dated 12/13/20 (Exhibit #004);
Sheet 18 - “Landscape Layout Plan,” dated 4/12/21 (Exhibit #010);
Sheet 26 - “Planting Plan,” dated 4/12/21 (Exhibit #012);
Sheet 1 - “VWP Impact Exhibit,” dated 5/18/21 (Exhibit #013a);
Sheet 41 - “EPSC Narrative (Sheet 1 of 2),” dated 4/13/21 (Exhibit #014);
Sheet 42 - “EPSC Narrative (Sheet 2 of 2),” dated 4/13/21 (Exhibit #015);
Sheet 43 - “EPSC Details,” dated 4/13/21 (Exhibit #016);
Sheet 44 - “EPSC Plans (Sheet 1 of 5),” dated 4/13/21 (Exhibit #017);
Sheet 45 - “EPSC Plans (Sheet 2 of 5),” dated 4/13/21 (Exhibit #018);
Sheet 46 - “EPSC Plans (Sheet 3 of 5),” dated 4/13/21 (Exhibit #019);
Sheet 47 - “EPSC Plans (Sheet 4 of 5),” dated 4/13/21 (Exhibit #020);
Sheet 48 - “EPSC Plans (Sheet 5 of 5),” dated 4/13/21 (Exhibit #021);
Sheet 18 - “Landscape Layout Plan,” dated 5/12/21 (Exhibit #024a);
Sheet 20 - “Landscape Layout Plan,” dated 4/12/21 (Exhibit #025);
Sheet 32 - “Traffic Sign Summary Sheet,” dated 4/13/21 (Exhibit #026);
Sheet 33 - “Sign Detail Sheet,” dated 4/13/21 (Exhibit #027);
“Signage for Playground,” dated 4/1/21 (Exhibit #028);
Sheet 31 - “Landscape Lighting Plan,” dated 5/12/21 (Exhibit #030a);
Sheet 31 - “Lighting Details,” dated 4/12/21 (Exhibit #031);
Sheet L1-1 - “Playground Lighting Plan,” dated 4/1/21 (Exhibit #032);
Sheet 27 - “Planting Plan,” dated 4/9/21 (Exhibit #033);
Sheet 27 - “Landscape Plan,” dated 4/12/21 (Exhibit #034);
Sheet L 1-1 - “Materials Plan,” dated 8/4/17, last revision 11/20 (Exhibit #035);
Sheet 13 - “Plan and Profile (Sheet 1 of 5),” dated 4/13/21 (Exhibit #037);
Sheet 14 - “Plan and Profile (Sheet 2 of 5),” dated 4/13/21 (Exhibit #038);
Sheet 15 - “Plan and Profile (Sheet 3 of 5),” dated 4/13/21 (Exhibit #039);
Sheet 16 - “Plan and Profile (Sheet 4 of 5),” dated 4/13/21 (Exhibit #040);
Sheet 17 - “Plan and Profile (Sheet 5 of 5),” dated 5/18/21 (Exhibit #041a);

- Sheet 5 - "Typical Sections (1 of 2)," dated 4/13/21 (Exhibit #045);
- Sheet 6 - "Typical Sections (2 of 2)," dated 4/13/21 (Exhibit #046);
- Sheet 21 - "Grading Plan," dated 5/12/21 (Exhibit #047a);
- Sheet L 3-1 - "Grading & Drainage Plan," dated 8/4/17, last revision 11/20 (Exhibit #048);
- "Illustrative Plan," dated 8/4/17, last revision 11/20 (Exhibit #050);
- Sheet 49 - "EPSC Plans (Sheet 5 of 5)," dated 5/18/21 (Exhibit #064);
- Sheet 27 - "Planting Plan," dated 5/12/21 (Exhibit #065); and
- Sheet 27B - "Riparian Planting Plan," dated 5/12/21 (Exhibit #066).
3. All conditions of Land Use Permit #4C0051 and amendments are in full force and effect except as further amended herein.
 4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Authorization of Notice of Intent (NOI #7213-9020.5) under Construction General Permit 3-9020 issued on May 18, 2021 by the ANR Watershed Management Division;
 - b. Authorization to Discharge Stormwater #7213-9050 under General Permit 3-9050 (3-Acre General Permit), issued on July 15, 2021 by the ANR Watershed Management Division; and
 - c. Individual Wetland Permit #202-453 issued on June 29, 2021 by the ANR Watershed Management Division.
 5. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
 6. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
 7. A copy of this permit and plans shall be on the site at all times throughout the construction process.
 8. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
 9. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.

10. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Control Plan on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
12. No new floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
13. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
14. The Permittee shall comply with Exhibits #001b, 014-021, and 047a-048 (Revised Schedule B; EPSC Narratives and Plans (8); Pause Place Grading; and Playground Grading) for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas.
15. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
16. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each workday. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e., no outlet) with a depth of 2 feet or greater (e.g., house foundation excavation, utility trenches).
17. All disturbed areas of the site shall be stabilized, seeded, and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 15. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction" standards and specifications of the Vermont Department of

Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).

18. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snow fencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
19. Starting at the commencement of construction, a Professional Engineer or other soil erosion expert approved in writing by the District Commission shall inspect the site at least once per week and at critical times until the project is completed to ensure that the erosion prevention and sediment control plans are being followed. He or she shall certify by submitting a monthly site inspection report to the Commission that all erosion prevention and sediment controls are in place as specified and approved herein, properly maintained, and effective. Any corrective measures noted by the Professional Engineer shall be implemented immediately.
20. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
21. 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. Exhibit #061a (May 26, 2021 ANR Supplemental Comments).
22. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
23. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits #033-035, 065 and 066 (Planting Plans – Austin Drive; Planting Plans- Upper Parking Lot; Playground Landscaping Plan; Planting Plans

- Flynn Intersection; and Riparian Planting Plan) by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
24. Prior to any site work, the Permittee shall install and maintain temporary fencing along the tree line and around trees to be retained as depicted on Exhibits #033-035, 065 and 066.
 25. 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. Exhibit #061a (May 26, 2021 ANR Supplemental Comments).
 26. The installation of exterior light fixtures is limited to those approved in Exhibits #029-032 (BPRW Lighting Standards; Greenway Lighting Plans (2); and Playground Lighting Plan) and shall be mounted no higher than 14 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
 27. The installation of exterior signage is limited to those approved in Exhibits #023-028 (BPRW Signage Standards; Greenway Signage Plans (4); and Playground Signage Plan). The Permittee shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
 28. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment before any written contract of sale is entered into.
 29. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
 30. All site work and construction shall be completed in accordance with the approved plans by **October 1, 2024**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
 31. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 16th day of July, 2021.

By /s/Thomas A. Little
Thomas A. Little, Chair
District 4 Commission

Members participating in this decision:
Monique Gilbert
Pam Loranger

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division 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. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also 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.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at:
<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

Y:\NRB\Essex\DISTRICTS\DIST4\PROJECTS\300001-4C0250\4C0051\4C0051-3\Published Documents\District Commission Documents\4C0051-3 final permit.docx

Exhibit List

Application #	4C0051-3 (7/15/21)
Applicant(s)	City of Burlington Parks, Recreation & Waterfront (BPRW)
Landowner(s)	City of Burlington Parks, Recreation & Waterfront (BPRW)
Project Town(s):	Burlington



Natural Resources
Board

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	4/16/21	001 Act 250 Application; and cover letter	Applicant
001a	4/16/21	001a Act 250 Application Revised 4-16-21	Applicant
001b	4/20/21	001b Act 250 Application Revised 4-20-21	Applicant
002	4/16/21	002 Schedule G	Applicant
003	4/16/21	003 Location Map (12/13/2020)	Applicant
004	4/16/21	004 Site Plan (12/13/2020)	Applicant
005	4/16/21	005 Oakledge Adjoiner Mailing Labels and Project Adjoiner Map (04/01/2021)	Applicant
005a	4/20/21	005a Oakledge Adjoiner Mailing Labels and Project Adjoiner Map (04/20/2021)	Applicant
006	4/16/21	006 Municipal Impact Letter - DPW	Applicant
007	4/16/21	007 Municipal Impact Letter - Fire	Applicant
008	4/16/21	008 Municipal Impact Letter - BPD	Applicant
009	4/16/21	009 BPRW Restroom Standards	Applicant
010	4/16/21	010 Pause Place - Sheet 18 (04/12/2021)	Applicant
011	4/16/21	011 Correspondance - Lake Encroachment Permit	Applicant
012	4/16/21	012 Planting Plans- Flynn Intersection - Sheet 26	Applicant
013	4/16/21	013 Wetland Impact Exhibit - Sheet 1 (02-26-2021)	Applicant
013a	5/24/21	013a Wetland Impact Exhibit - Sheet 1 (Rev. 5-18-21)	Applicant
014	4/16/21	014 Erosion Control Narrative - Sheet 41 (04-13-2021)	Applicant
015	4/16/21	015 Erosion Control Narrative - Sheet 42 (04-13-2021)	Applicant
016	4/16/21	016 Erosion Control Narrative - Sheet 43 (04-13-2021)	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
017	4/16/21	017 EPSC Plans - Sheet 44 (04-13-2021)	Applicant
018	4/16/21	018 EPSC Plans - Sheet 45 (04-13-2021)	Applicant
019	4/16/21	019 EPSC Plans - Sheet 46 (04-13-2021)	Applicant
020	4/16/21	020 EPSC Plans - Sheet 47 (04-13-2021)	Applicant
021	4/16/21	021 EPSC Plans - Sheet 48 (04-13-2021)	Applicant
022	4/16/21	022 Playground Perspective Rendering	Applicant
023	4/16/21	023 BPRW Signage Standards	Applicant
024	4/16/21	024 Greenway Signage Plan- Sheet 18 (04-12-2021)	Applicant
024a	5/24/21	024a Greenway Signage Plan- Sheet 18 (Rev. 5-12-21)	Applicant
025	4/16/21	025 Greenway Signage Plan- Sheet 20 (04-12-2021)	Applicant
026	4/16/21	026 Greenway Signage Plan- Sheet 32 (04-12-2021)	Applicant
027	4/16/21	027 Greenway Signage Plan- Sheet 33 (04-12-2021)	Applicant
028	4/16/21	028 Playground Signage Plan (04-01-2021)	Applicant
029	4/16/21	029 BPRW Lighting Standards	Applicant
030	4/16/21	030 Greenway Lighting Plan - Sheet 30 (04-12-2021)	Applicant
030a	5/24/21	030a Greenway Lighting Plan - Sheet 31 (Rev. 5-12-21)	Applicant
031	4/16/21	031 Greenway Lighting Plan - Sheet 31 (04-12-2021)	Applicant
032	4/16/21	032 Playground Lighting Plan - Sheet L1 (04-01-2021)	Applicant
033	4/16/21	033 Planting Plans- Austin Drive- Sheet 27 (04-12-2021)	Applicant
034	4/16/21	034 Planting Plans- Upper Parking Lot - Sheet 27 (04-12-2021)	Applicant
035	4/16/21	035 Playground Landscaping Plan	Applicant
036	4/16/21	036 Greenway Limits of Work - Sheet 1 (04-13-2021)	Applicant
037	4/16/21	037 Greenway Limits of Work - Sheet 13 (04-13-2021)	Applicant
038	4/16/21	038 Greenway Limits of Work - Sheet 14 (04-13-2021)	Applicant
039	4/16/21	039 Greenway Limits of Work - Sheet 15 (04-13-2021)	Applicant
040	4/16/21	040 Greenway Limits of Work - Sheet 16 (04-13-2021)	Applicant
041	4/16/21	041 Greenway Limits of Work - Sheet 17 (04-13-2021)	Applicant
041a	5/24/21	041a Greenway Limits of Work - Sheet 17 (Rev. 5-18-21)	Applicant
042	4/16/21	042 Burlington Greenway EOF 2019	Applicant
043	4/16/21	043 Primary Agricultural Soils Map for PAS Analysis	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
044	4/16/21	044 Existing Site Conditions Photos	Applicant
045	4/16/21	045 Greenway Typical Sections - Sheet 5 (04-13-2021)	Applicant
046	4/16/21	046 Greenway Typical Sections - Sheet 6 (04-13-2021)	Applicant
047	4/16/21	047 Pause Place Grading - Sheet 21 (04-12-2021)	Applicant
047a	5/24/21	047a Pause Place Grading - Sheet 21 (Rev. 5-12-21)	Applicant
048	4/16/21	048 Playground Grading	Applicant
049	4/16/21	049 Playground Rendered Plan	Applicant
050	4/16/21	050 Playground Illustrative Plan	Applicant
051	4/16/21	051 4C0051 Permit-1972	Applicant
052	4/16/21	052 4C0051 Plan-1972	Applicant
053	4/16/21	053 4C0051-1 Permit-1978	Applicant
054	4/16/21	054 4C0051-1 Plan-1978	Applicant
055	4/16/21	055 4C0051-2 Permit-1987	Applicant
056	4/16/21	056 4C0051-2 Plan-1987	Applicant
057	4/16/21	057 Stormwater Construction Discharge General Permit Application	Applicant
058	4/16/21	058 Vermont Wetlands Permit Application	Applicant
059	4/16/21	059 AAFM Correspondance (4/16/21)	Applicant
060	4/20/21	060 Oakledge Pk Playground Ph1 SOW VDHP Concur	Applicant
061	5/14/21	061 ANR Entry of Appearance Comments (5/14/21)	ANR
061a	5/26/21	061a ANR Supplemental Comments (5/26/21)	ANR
062	5/17/21	062 VDHP Entry of Appearance Preliminary Comments (5/14/21)	DHP
063	5/24/21	063 Cover Letter re Response to ANR Comments of 5-14-21 & Teleconference of 5-17-21	Applicant
064	5/24/21	064 EPSC Plans - Sheet 49 (Rev. 5-18-21)	Applicant
065	5/24/21	065 Planting Plans - Flynn Intersection - Sheet 27 (Rev. 5-12-21)	Applicant
066	5/24/21	066 Riparian Planting Plan (5-21-21)	Applicant
067	6/17/21	067 End-of-Field Letter Report for Archaeological Phase I Site Identification Survey Revised 6-2-21	Applicant
068	6/18/21	068 VDHP Comment Letter (6/18/21)	DHP
069	6/30/21	069 Individual Wetland Permit #202-453 Issued 6-29-2021	Applicant
070	7/15/21	070 Operational Stormwater Permit #7213-9050 Issued 7-15-2021	Applicant
071		071	

CERTIFICATE OF SERVICE

I hereby certify on this 16th day of July, 2021, a copy of the foregoing ACT 250 LAND USE PERMIT #4C0051-3, 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

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

Global Petroleum
2 Flynn Avenue
Burlington, VT 05401
sdeccl@globalp.com

Katherine Schadt, City 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@ccrprcvr.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
Thomas Little, Chair
Monique Gilbert/Pam Loranger
111 West Street
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 16th day of July, 2021.



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

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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
Michael Gaughan
Emily Lee
Brynne Martin

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). The public hearing will take place during the Planning Commission meeting on **Tuesday, July 27, 2021, with the hearing starting at Time Certain 6:45pm**. You may access the hearing/meeting as follows:

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

Link: <https://us02web.zoom.us/j/88316224232> **Webinar ID:** 883 1622 4232

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

Number: +1 312 626 6799 **Webinar ID:** 883 1622 4232

To join the meeting in person:

Sharon Bushor Room, Room 102, City Hall, 149 Church Street, Burlington, VT 05401

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

- **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. 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>

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
Michael Gaughan
Emily Lee
Brynne Martin

Regular Meeting Burlington Planning Commission

Tuesday, July 27, 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 Meeting on a Computer

Link: <https://us02web.zoom.us/j/88316224232>

To Join the Meeting on a Phone

Number: +1 312 626 6799 Meeting ID: 883 1622 4232

AGENDA

I. Agenda

II. Chair's Report

III. Director's Report

IV. Public Forum

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 staff changes to proposed amendment, re-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 Act179 of the 2020 VT Legislative session. Information related to this item is in the agenda packet on page 12.

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

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

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 17.

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

VIII. Annual Organizational Meeting

The Planning Commission will elect officers and appoint members to its committees to serve for FY2022.

Election of Officers: Chair & Vice Chair

- Election of Executive Committee At- Large Member
- Appointment of Commission Clerk: Meagan Tuttle
- Appointment of Committees:
 - Long Range Planning Committee
 - One member of the PC Executive Committee and Two At-Large Members
 - One member of the DRB
 - Nominee:
 - One member of the Conservation Board.
 - Nominee: Ryan Crehan
 - Ordinance Committee
 - One member of PC Executive Committee and Two At-Large Members
 - Two additional members from DRB, DAB, or CB.
 - DAB Nominee: Jay White; DRB Nominee:

Planning Commission bylaws are enclosed for reference in the agenda packet on page 39.

IX. Commissioner Items

- a. Upcoming Meetings –
 - i. Tuesday, August 10, 2021 at 6:30pm (TBD)
 - ii. Tuesday, August 24, 2021 at 6:30pm

X. Minutes & Communications

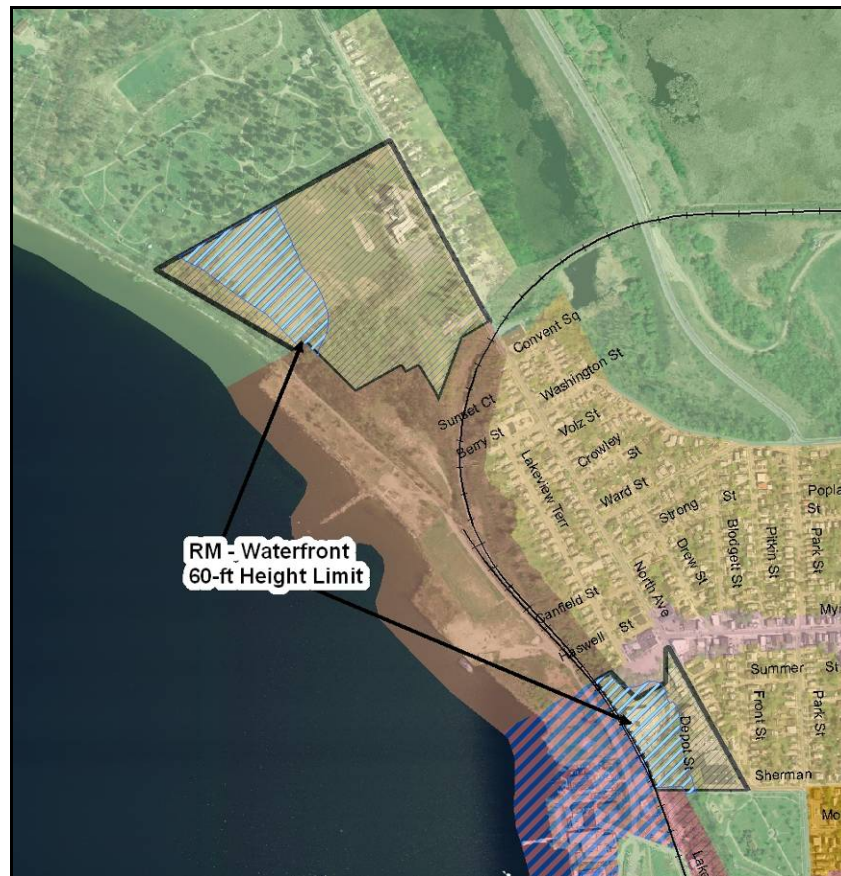
- a. The minutes of the July 13, 2021 meeting are enclosed in the agenda packet on page 45.
- b. Communications are enclosed in the agenda packet on page 47.

XI. Adjourn

2. Height

A. Exceptions in the Waterfront RM District.

In order is to preserve vistas of harbor activity within the breakwater area and to panoramic views of the mountain and lake from adjoining areas yet provide for additional development opportunities near the downtown area of the city, the maximum building height which may be permitted by the DRB shall be no more than sixty (60) feet in the area beyond two hundred (200) feet inland from the ordinary high water mark and below a base elevation of one hundred eighty (180) feet in the Waterfront Residential – Medium Density district.



Map 4.4.5-2 Waterfront RM Height Exceptions

3. Lot Coverage

A. Exceptions for Accessory Residential Features.

In the RL, RL-W, RM and RM-W districts, an additional ten (10) per cent of lot coverage above the otherwise applicable limit may be permitted for the following amenity features accessory to residential uses provided that such features shall at no time be enclosed or be used for parking:

- (i) Decks;
- (ii) Patios;

(e) Supporting the Use of Renewable Energy Resources:

Where feasible, the site plan should be so designed as to take advantage of the site's inherent potential to utilize sources of renewable energy including direct sunlight, wind, or running water. The site plan should also incorporate site planning and landscaping decisions intended to minimize energy demand such as siting buildings to maximize solar access or the use of deciduous and coniferous trees to create shade and windbreak.

Buildings should, where appropriate within the context of the neighborhood development pattern, maximize their solar exposure by being oriented to maximize natural light and heat gain during winter months, and to minimize casting shadows into ground floor living space of a building on an adjacent property.

(f) Brownfield Sites:

Where a proposed development involves a known or suspected brownfield, the site plan shall indicate areas of known or suspected contamination, and the applicant shall identify completed or planned remediation necessary to support the intended use(s).

(g) Provide for nature's events:

Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.

Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.

(h) Building Location and Orientation:

The introduction of new buildings and additions shall maintain the existing development pattern and rhythm of structures along the existing streetscape. New buildings and additions should be aligned with the front façade of neighboring buildings to reinforce the existing "street-edge," or where necessary, located in such a way that complements existing natural features and landscapes. Buildings placed in mixed-use areas where high volumes of pedestrian traffic are desired should seek to provide sufficient space (optimally 12-15 feet) between the curblineline and the building face to facilitate the flow of pedestrian traffic. In such areas, architectural recesses and articulations at the street-level are particularly important, and can be used as an alternative to a complete building setback in order to maintain the existing street wall.

Principal buildings shall have their main entrance facing and clearly identifiable from the public street. The development of corner lots shall be subject to review by the city engineer regarding the adequacy of sight distances along the approaches to the intersection. To the extent practicable, development of corner

Timeline for 120 Depot St Activities

Red – Planning and Zoning Activity

Black - 120 Depot St Activity

Blue – Relevant comments

4Feb21 - Planning Commission Mtg discussed building ht. measurements (See attached Doc. #1)

4Mar21 - Planning Commission Mtg further discussions regarding building ht. measurements (See Docs #2 & 3)

21April21 – Letter from Planning & Zoning to Planning Commission: Proposed CDO Amendment for Ht. Measurement. (See doc #4)

27April21 – Planning Commission Mtg to discuss proposed amendment to height measurement. Recommends Approval and warn for Public Hearing) (See Docs #5 & 6)

16June21 – Signed a contract with contingencies for purchase of property.

21June21 - Stopped in at Zoning office, met with Scott Gustin. Discussed the site and its associated challenges for development. He stated he was very familiar with the site, having had several different parties looking into developing it. When I showed him the preliminary drawings of our design, he stated that it looked like the design was “appropriate to the site”. (Scott made no mention of the public hearing scheduled for the next day).

22June21 – Public Hearing on Height Measurement Amendment (See Doc #6)

29June21 – Began communications with Mary O’Neil, Scott Gustin, BED and Caleb Mana regarding development of the lot

21July21 – Planning & Zoning letter regarding AmendmentZA-21-07 Height Measurement (See Doc# 7)

27July21 – Planning Commission Mtg. & Public Hearing on Height Measurements (See Docs # 8 & 9)

29June21 – 4Aug21 - Continued conversations with Zoning, DPW, BED, engineers and contractors to make certain we had a viable plan for moving forward.

4Aug21 – Variance for set-back approved by DRB

19Aug21 - Closed on property

26Aug21 – Received Z- Card for building permit (At no time, thru all our discussions, did anyone mention the ongoing revision process for the height formula)

Aug21 thru May22- Completed Architectural drawings, worked on engineering structure and various permits for utilities.

6April22 – Amended Height Ordinance Published

16May22 – Completed building permit application

2July22 thru 8Aug - worked with Ryan Morrison and DAB to refine plan for presentation to DRB. Completed soil engineering/boring

14July22 - During this process, met with Ryan and Scott to discuss the need for the second level to be forward of the garage level, asked Scott if the gap between the garage level and the next level would be acceptable/conform to the regulations, he said it would.

8Aug22 - Ryan indicated it was ready for DRB on the 8th of Aug

9Aug2 - Email from Ryan indicating that, unbeknownst to him, the height regulations had changed and my design would not meet the new codes.

9Aug thru12Aug – Discussions with Ryan. He indicated that the date of a completed application rather than the initial date of application was used to determine the codes to be applied. He also indicated that I would likely not be successful using a variance to address the height issue. Ryan also mentioned that I could request the application be sent to the DRB since the final decision was their call and they had the discretion to allow the design or not. I asked him to go ahead and send it along, as I didn't seem to have any other options and it seemed like a reasonable expectation that they would allow it based on the circumstances.

6Sept22 – Online DRB meeting. Significant portion of the meeting involved discussion of issues that were not relevant to the agenda. I didn't do a particularly good job of presenting my "case". (I am more effective working with folks in person) There seemed to be very little discussion during the deliberative session. I was anticipating the application to be tabled with a request for more information and was dismayed to have the application rejected outright.

Burlington Development Review Board

645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Phone: (802) 865-7188

Brad Rabinowitz
AJ LaRosa
Geoffrey Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Chase Taylor
Sean McKenzie (Alt.)



Burlington Development Review Board

Findings of Fact Deliberative Hearing Tuesday, August 2, 2021

In RE: 21-508; 31 North Avenue (Ward 3C, RM) (Tax Lot No. 043-3-188-000)

Owner/Applicant: Wendy Hakken / Steve Trombley

Request: Variance from front yard setback on existing vacant lot.

Members Present:

Brad Rabinowitz
Geoff Hand
Brooks McArthur
Kienan Christianson
Chase Taylor
Sean McKenzie

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is seeking a variance from the applicable front yard setback on an existing vacant lot. The subject property fronts on Depot Street, but all of its neighboring properties front on both North Avenue and Depot Street. The buildings on these neighboring properties are set close to North Avenue and relatively far from Depot Street and, therefore, create a prohibitive front yard setback requirement for the subject property.

No development is included in this application. The variance is sought as a precursor to a potential single family home to be filed under separate permit application if the variance is granted.

An identical variance was approved in 2014. It was extended and ultimately expired without any subsequent development of the property.

Previous zoning actions for this property are as follows:

- 10/24/14, Approval of variance from front yard setback

- 12/18/97, Application for, and subsequent withdrawal of, permit to construct home

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The lot is small at just 4,180 sf and 44' of road frontage. The lot is also steeply pitched except for the upper, easternmost end. The requested variance, however, does not relate to these particular characteristics. The subject property is the only one along the eastern side of Depot Street that does not also front on North Avenue. The buildings on these other properties are set close to North Avenue with relatively deep setbacks from Depot Street. The variance is requested because of the way the front yard setback is calculated per Table 4.4.5-3: *Residential District Dimensional Standards*. The front yard setback is based on the average of 2 adjacent lots on both sides of the subject lot, +/- 5'. In this case, the front yard setback is based on the average of three properties at 33, 55, and 1 North Avenue. These properties all have two front yards – on North Avenue and on Depot Street. Their front yard setbacks along Depot Street are 63', 56', and 116', respectively. The average of these setbacks is 78'. A 78' (+/- 5') on a 95' – 114' deep lot, combined with a rear yard setback of 25% results in an unbuildable lot. Compliance with the front yard setback is impossible. **(Affirmative finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As noted above, a 78' (+/- 5') front yard setback combined with a 25% rear yard setback results in virtually no building envelop. Compliance with the front yard setback is impossible. **(Affirmative finding)**

(c) The unnecessary hardship has not been created by the applicant.

The hardship relative to the front yard setback is related to the fact that front yard setback requirements are based on neighboring properties. It is not a hardship created by the applicant. **(Affirmative finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance from the requirements of the front yard setback would not alter the essential character of the neighborhood or district in which the subject property is located. The variance

would enable the construction of a single family home on a vacant lot located within the waterfront medium density residential zone. **(Affirmative finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested 10' front yard setback allows for a reasonable building envelope and minimizes encroachment into the steep slope on the property. **(Affirmative finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

The variance from the front yard setback requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single family home. **(Affirmative finding)**

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Kienan Christianson

I move that the Board grant approval for a variance from the front yard setback on an existing vacant lot at 31 North Avenue based on the findings in Section I above and subject to the following conditions:

1. This variance approval is for relief from the front yard setback requirement of Table 4.4.5-3, *Residential District Dimensional Standards*.
2. No development is included in this approval. All development is subject to a separate zoning permit and must meet all other dimensional requirements.
3. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

Seconded: Brooks McArthur

Vote: 6-0-0, motion carried

Dated at Burlington, Vermont, this 4th day of August, 2021

Respectfully Submitted,



Brad Rabinowitz, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

April 11, 2023

Christopher D. Roy
croy@drm.com

VIA ELECTRONIC MAIL

Scott Gustin, Zoning Division Manager
City of Burlington
Permitting & Inspections
645A Pine Street
P.O. Box 849
Burlington, VT 05402-0849

Re: Keye & Lucy Wong/98 Sunset Cliff
File No. ZP-23-9

Dear Scott:

At its April 4 meeting, the Development Review Board (the “DRB”) directed that any supplemental information to be presented regarding the above-referenced matter should be submitted by April 11. Pursuant to that direction, I am submitting this letter and supplemental information on behalf of Applicants Keye and Lucy Wong (the “Wongs”) for consideration by the DRB. This letter summarizes the clear basis for granting the Wongs’ application (the “Application”), and responds to various assertions advanced by the neighbors in opposition.

The Application proposes to demolish and replace a single family residence located at 98 Sunset Cliff (the “Project”) in the Waterfront Residential Low Density (“WR-L”) zoning district. While the Project opponents certainly feel strongly about the issues that they raised during the DRB’s prior hearing, a fair review of the Project as proposed and the clear language of the Burlington Comprehensive Development Ordinance (the “Ordinance”) amply demonstrates that the DRB should approve the Project – as was recommended by you and staff on both February 21 and April 4, as was previously recommended by both the Conservation Board and Design Advisory Board, and as was originally decided by the DRB on February 21.

As noted by staff, the Project proposes a permitted residential use in a residential district. The Project complies with all dimensional, lot coverage and related requirements. The Wongs propose to move the footprint of the residence further back from the lakeshore and adopt all design strategies recommended and required under the Ordinance. No work is proposed beyond

the boundaries of the lot.¹ In response to a question raised at the April 4 hearing, the Wongs' engineers have confirmed the calculation that lot coverage will not exceed 35%. *See Ordinance*, Table 4.4-5-3. Attached hereto is a memorandum from Krebs & Lansing confirming the previous coverage calculations. On February 27, 2023 Krebs & Lansing submitted its analysis regarding site conditions and stormwater. All associated permits have been secured, or will be secured, before construction commences.

There is no question that a pickleball court is deemed an accessory residential feature permitted within the WR-L district. *See Ordinance* § 4.4.5(B)(2)(A)(v) (identifying “[t]ennis or other outdoor game courts” as “accessory residential features”); *Ordinance* § 4.4.5(B)(3) (identifying structures, buildings and/or uses as “accessory” when they are “customarily incidental and subordinate to a principal residential structure, building and/or use including but not limited to . . . tennis courts [and] swimming pools”). *See also Ordinance*, § 13.1.2 (defining “accessory use” and “residential”).²

As the DRB members and others know from common experience, any number of activities on a residential lot may, from time to time, generate louder noises. Family picnics, middle school birthday parties, swimming pool gatherings, tennis matches, wiffle ball and touch football games, and high schoolers playing basketball – not to mention lawn mowers, leaf blowers, snowblowers, and amplified music – all have the potential to generate louder noises from time to time in a typical residential setting. The potential that ordinary, residential life may occasionally entail louder noises, however, does not subject such residential activities to special zoning review.

To the contrary, the City of Burlington (the “City”) has opted to enact its Noise Control Ordinance (the “NCO”) to regulate *all* activities within the City, not just as a function of zoning. The Wongs understand that they will be subject to the NCO *like every other resident in the City*. There is no basis, however, for speculative, potential, intermittent future noise violations conjured up by neighbor-opponents constituting valid grounds for denying a permitted residential use that otherwise complies with all zoning requirements.³

¹ The first site plan submitted to the DRB inadvertently depicted the existing stairway leading down to the lake as encroaching upon the neighbor's land to the east. A corrected site plan was then submitted to confirm that no part of the stairway and access to the lake, existing or proposed, encroaches upon the neighbor's parcel.

² Importantly, the Wongs' single family residential project in the WR-L district is not subject to conditional use or major project review.

³ It should also be noted that, as acknowledged by the Project opponents themselves, Sunset Cliff residences are year-round homes which have been constructed on nonconforming small lots along the lakeshore where seasonal camps used to be located. Having elected to reside in a neighborhood characterized by nonconforming small lots and residences constructed on preexisting, nonconforming building footprints, there is no reasonable expectation that the same degree of quietude will prevail in their enclave as if the residents lived on large lots in the countryside.

The Project opponents have themselves identified the proper method for regulating the construction and placement of pickleball courts in their materials – a method appropriately employed by the City in the past when deemed to be warranted. In Park City, Utah, it was determined as a matter of prospective policy that their zoning regulations should be amended to implement specific zoning restrictions relating to pickleball courts. Thus, Park City did not attempt to cobble together such restrictions on an *ad hoc* basis under their existing zoning ordinance; instead, they recognized the need for **new** regulations to address the issue. The Project opponents prefer to bypass the public process of prospectively implementing new zoning regulations and prefer to retroactively apply such a change of policy without the inconvenience of complying with the procedures for enacting forward-looking zoning amendments.

The City, in fact, has recently employed this very process when a new policy was required with reference to certain kinds of noise in residential areas. Chapter 21 of the City's Code of Ordinances relates to offenses and miscellaneous provisions. Article 21-13 is where the NCO was first codified in 1996. In 2021, the City recently enacted an ordinance relating specifically to leaf blowers (Art. 21-14). Thus, if as a matter of prospective public policy the City wishes to implement specific rules and regulations regarding pickleball, there is a proper way to do so. That way is **not** to retroactively impose unwritten, *ad hoc* mandates in response to a residential zoning application.

The Project opponents offered a brief presentation by their expert, Dr. Willis, from Tucson, Arizona.⁴ Dr. Willis has not visited Sunset Cliff, and has not spoken to the Wongs about their anticipated use of the pickleball court. ***No evidence was presented that other pickleball courts located across the City or elsewhere in Chittenden County have given rise to actual noise complaints.*** Nor is there any evidence of a single private pickleball court on a residential lot ever being denied under zoning regulations. Instead, the Project opponents presented Dr. Willis and a random collection of articles from the internet in an effort to have the DRB create out of whole cloth a new set of pickleball court regulations. It is important to note that nearly all of the information presented by the Project opponents relates to large parks, clubs or complexes with multiple pickleball courts that are in continuous use throughout the day by multiple unrelated players. In comparison, the impact of a single, private, residential court will be significantly diminished in scope.

Finally, it should also be noted that pickleball is often played on tennis courts that have had pickleball lines added to the court.⁵ There is no question that the Wongs could have proposed a

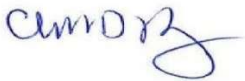
⁴ The Wongs were provided no advance warning of the Project opponents' voluminous submission on April 4, and were provided only a minimal opportunity to question Dr. Willis about the information presented to the DRB. Much of the information presented was either speculative or had little in common with the actual context of the Project.

⁵ From a personal perspective, I can relate that my own residential neighborhood in Williston recently added pickleball lines to a neighborhood tennis court in close vicinity to residences and there have been no noise complaints by the neighbors.

tennis court for their front lawn, painted pickleball lines on the court along with tennis lines, and then proceeded to play pickleball on the court. As previously stated, this activity would be subject to the NCO, like all other residential activities within the City. But, under this scenario, there would have been no basis whatsoever for opposing a zoning permit for the proposed tennis court. This emphatically underscores that the proper way to address any concerns that may exist regarding pickleball within the City is through a public ordinance process, not the retroactive, scattershot imposition of *ad hoc* rules.

The Wongs are proud of the design for their future home on Sunset Cliff. They are proud that everyone to review their Project to date has recommended its approval. They look forward to moving in as soon as they can once all regulatory approvals have been secured. Therefore, since there is no basis under the Ordinance for denying the Application for construction of a single family residence with an allowed accessory feature, they ask that the DRB promptly approve their Application. They thank you and the DRB for your careful attention to this important matter.

Very truly yours,



Christopher D. Roy

cc: Claudine C. Safar, Esq. (via electronic mail)

21991043.1

164 Main Street, Suite 201 | Colchester, Vermont | P: (802) 878-0375 | email@krebsandlansing.com

Date: April 11, 2023

To: Chris Roy, DRM

From: Seth Goddard, PE - Krebs and Lansing Consulting Engineers, Inc.

Re: 98 Sunset Cliff Road – Lot Area & Coverage Summary

The lot area for 98 Sunset Cliff Road is 31,646 s.f..

The area is based on a plan by Warren Robenstien titled "Plat of Survey R. James Bennett Jr, Portion of Lot No. 5 "Sunset Cliff" Subdiv, Sunset Cliff Rd. Burlington, VT" dated Aug. 20, 2009 and boundary monumentation found during a topographic survey by Krebs and Lansing. The lot lines legally extend down to lake elevation 95.5' (NGVD 29) or elev. 95' when using the NAVD88 datum as shown on our plans.

The existing impervious area is based on a topographic survey by Krebs and Lansing on October 20, 2021.

Lot Coverage Calculations:

Lot area = 31,646 s.f.

Existing Impervious Area = 6,696 s.f.

Proposed Impervious Area (Post Construction) = 9,874 s.f.

PROPOSED LOT COVERAGE = $(9,874 \text{ s.f.} / 31,646 \text{ s.f.}) \times 100 = \mathbf{31.2\%}$

JEREMY S. GRANT
ADMITTED IN VT AND ME
jgrant@primmer.com
TEL: 802-864-0880
FAX: 802-864-0328

30 Main Street, Suite 500 | P.O. Box 1489 | Burlington, VT 05402-1489

April 11, 2023

Attn Scott Gustin
Burlington Development Review Board
645 Pine Street
Burlington VT 05401

Re: 98 Sunset Cliff, Burlington:

Dear Members of the Board:

I am writing on behalf of my clients, John and Carol Clark (the “Clarks”). The Clarks own the real property located at 104 Sunset Cliff Road, which abuts 98 Sunset Cliff (the “Property”). The Property is owned by Lucy and Keye Wong and Elizabeth Herrmann (collectively, the “Applicant”). On or about January 6, 2023, the Applicant submitted a proposal (the “Application”) to demolish an existing single family residence and replace it with a new single family residence (the “Project”).

As the Board is well aware, the Project also seeks approval for the construction of a new pickle ball court that is located mere feet from the Clarks’ property (less than 20 feet). The Clarks are aware that other neighbors have submitted additional comments detailing the problems with and their concerns about the proposed pickle ball court. The Clarks will not repeat those comments herein, but wish to adopt them and incorporate them herein. Instead, the Clarks just want to clarify that there is no need for a pickle ball court at the Property because, as set forth in Exhibit A attached hereto, there are public pickle ball courts less than 2,000 feet from the Applicant’s Property. At the hearing on April 4, 2023, neighbors testified that they frequently walked or biked to these public pickle ball courts.

In addition to their concerns about the pickle ball court, the Clarks also believe that the Applicant’s Project will exceed the maximum lot coverage permitted for the zoning district.

On March 1, 2023, the Applicant submitted a Residential Stormwater Management Plan (the “Stormwater Plan”), attached hereto as Exhibit B. In the Stormwater Plan, the Applicant calculated the total amount of impervious surface that will cover the Property after the Project is finished to be 9,874 sq. ft. Unfortunately, the Applicant’s calculation did not break out the square footage of each building and other improvement associated with the Project, so it is difficult to know what is or is not included in the figure. The applicable zoning regulation explains that the calculation of lot coverage requires computing “the square footage of all parts of the lot . . . covered by all buildings including accessory structures, decks, patios, paved or unpaved walkways and parking areas and any other paved surface.” Section 5.2.3(a). For

instance, based on the Applicant's Stormwater Plan, it is not clear whether the Applicant's calculation includes the pickle ball court or walk ways associated with the Project.

Even assuming the Applicant's calculation is correct and the Project would result in the Property being covered by 9,874 sq. ft of impervious surface, this Board must deny the Application because it exceeds the maximum permissible lot coverage under the zoning regulation.

The Property is located in the RL-W district. The maximum lot coverage permissible in the RL-W zoning district is 35%. Table 4.4.5-3; *see also* Scott Gustin & Garret King memoranda to the Burlington Development Review Board dated April 4, 2023 (the "Staff Report"), attached hereto as Exhibit C. The Staff Report and prior findings by this Board determined that the Property is a parcel that is 27,000 square feet, which is consistent with the size of the lot for property tax purposes. *See* Assessors Record Card for the Property, together with a printout from the City of Burlington's Property Database, attached hereto as Exhibit D.

Accordingly, the proper lot coverage calculation should be:

$$9,874 \div 27,000 = 0.3657 \times 100 = \underline{\mathbf{36.57\% \text{ lot coverage}}}.$$

Thus, even assuming the Applicant properly calculated the amount of impervious surface that will exist after completion of the Project, the Project should be denied because it exceeds the maximum lot coverage permitted in the zoning district. At the very least, the Board should exercise its authority to require the Applicant to submit more detailed calculations and evidence to support the 9,874 sq. ft. of total area of impervious surface on the Property as a result of the Project, which should include a calculation for each discrete feature or building on the Site Plans. Section 2.4.8. In addition, the Board should require the Applicant to submit sufficient evidence to support the Applicant's calculation of the maximum lot coverage so that the Board can determine whether the Applicant's Project complies with the applicable maximum lot coverage for the RL-W zoning district.

As a result, the Clarks respectfully request that the Board deny the Application or, in the alternative, require that the Applicant submit additional evidence sufficient to determine whether the Project will comply with the maximum lot coverage permissible in the zoning district.

Sincerely,

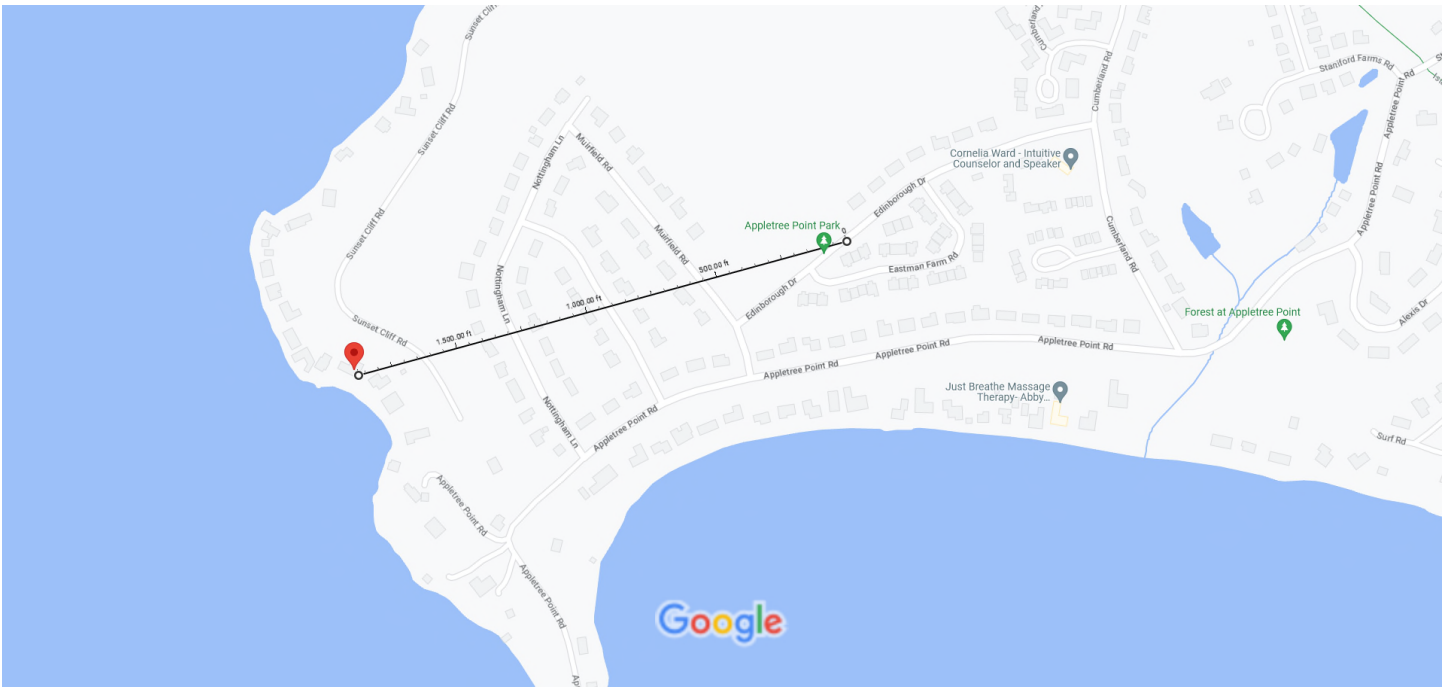
/s/ Jeremy S. Grant

Jeremy S. Grant

EXHIBIT A



98 Sunset Cliff Rd



Map data ©2023 Google 200 ft

Measure distance

Total distance: 1,878.53 ft (572.58 m)

EXHIBIT B**Burlington Department of Public Works****Stormwater Program**

234 Penny Lane

Burlington, VT 05401

P.O. Box 878 (05402)

PH: 802-863-4501 Email: stormwater@burlingtonvt.gov**Residential (R1 & R2) Stormwater Management Plan**

This questionnaire is required for single family detached dwellings or duplex properties where additional impervious surface is proposed and the total lot impervious surface area is greater than 2500 sq. ft. This form should be submitted directly to the DPW Stormwater Program above. If you need help completing this form, please contact stormwater@burlingtonvt.gov or 863-4501 for technical assistance.

YOU MUST INCLUDE A SKETCH OR SITE PLAN OF YOUR EXISTING AND PROPOSED SITE AND INCLUDE THE EXISTING AND PROPOSED FLOW PATHS OF STORMWATER ON YOUR PROPERTY

Project Location: 98 SUNSET CLIFF ROAD

Impact Review: Impervious Surface Area Breakdown

<u>Type of Surface</u>	Area (sq. ft.)	
	Existing	Proposed
Total impervious surface	6,696	9,874
Change in Total impervious surface		
Connected Impervious Surfaces		
Rooftop area that drains to impervious surface and runoff reaches city street or property boundary	400	0
Driveway area that drains directly to city street or property boundary	0	0
Walkway/Patio/Deck/other area that drains to impervious surface and runoff reaches city street or property boundary	637	0
Total connected impervious		
Change in total connected impervious (proposed – existing)		
Disconnected Impervious Surfaces		
Rooftop area that drains to pervious surface where runoff soaks in	2,732	3,695
Driveway area that drains to pervious surface where runoff soaks in before reaching the city street or the property boundary (or a driveway made of pervious material)	1,939	2,022
Walkway/Patio/Deck/Other area that drains to pervious surface where runoff soaks in before reaching the city street or the property boundary (or is made of pervious material)	988	4,157
Total disconnected impervious	6,696	9,874
Change in total disconnected impervious (proposed – existing)		3,178

Impervious surfaces are areas that prevent the infiltration of water into the ground and shall include, but not be limited to, roofs, patios, garages, storage sheds and similar structures. Impervious surfaces also include compacted dirt and gravel surfaces. Decks that allow water to seep through onto pervious surfaces can be considered disconnected.

Pervious surfaces are areas such as grass, clean gravel, pervious concrete, permeable pavers that allow water to infiltrate rather than runoff.

EXHIBIT C

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Garret King, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin & Garret King
DATE: April 4, 2023
RE: ZP-23-9; 98 Sunset Cliff Road

=====

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: WRL Ward: 4N

Owner/Applicant: Keye & Lucy Wong / Elizabeth Herrmann

Request: Demolish existing single family residence and replace with new single family residence.

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicants are looking to demolish the current single family home and to build a new single family residence. The project plans show sensitivity to the lakeshore by setting the new home further back from the water's edge than the existing home and by establishing a front yard meadow and the required lakeshore low mow zone.

The proposed site plan also shows a new pedestrian path down to the existing sea wall with the addition of new steps that will reach into the flood zone. A revised site plan adjusts these steps to be entirely on the subject property (rather than extending onto the neighboring property). Except for these steps, no changes will be made to the existing sea wall. As required, project plans for this small encroachment into the flood zone have been sent to VT Agency of Natural Resources for review and comment. The Agency has recommended confirming that all materials within the flood zone are constructed of flood resistant materials and are anchored in place. The applicant has confirmed the steps will be concrete. Potential wooden treads would be anchored to the concrete.

The Conservation Board reviewed this application February 6, 2023 and again March 6, 2023. At their initial review, the Board recommended continuation of review to a future date to allow the applicant additional time to conduct soils analysis as to stormwater infiltration potential. By March 6, that analysis had been done and provided for Board review. At their February 6 meeting, the Board unanimously recommended project approval.

The Design Advisory Board reviewed this application February 14, 2023 and unanimously recommended approval as proposed.

The Development Review Board reviewed and approved this application March 7, 2023. Within the 30-day appeal period, several neighbors requested that the Board re-open review of the application. Mailed meeting notice had not been provided to them as required. Therefore, they had not participated in the March 7 DRB meeting. On March 21, 2023, the Board voted to re-open review of the application. This report is updated to include ANR flood zone comment, Conservation Board recommendation, and adjustment of the lake access steps onto 98 Sunset Cliff.

Prior zoning permit actions for this property.

- 5/15/2011, Approval for replace a 20`x8`x10” sea wall section
- 6/29/1988, Approval for repair by replacement of 20` section of concrete sea wall
- 7/26/1984, Approval for demolition of existing single family home and to construct a new single family home with attached garage
- 9/13/1976, Approval to erect a 6`x40` stockade fence
- 5/28/1975, Approval to replace 8`x100` concrete sea wall
- 5/12/1975, Approval to erect single family house and remove existing house

Recommendation: **Certificate of appropriateness approval** as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications, Permits, and Project Reviews

Part 3: Impact Fees

Applicant will be required to pay impact fees set forth and calculated by the Impact Fee Administrative Regulations based on the net new square footage of the proposed residence. There is a net new square footage of 3,398 sf as compared to the existing home. **(Affirmative finding as conditioned)**

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Waterfront Residential Low Density (RL-W)

The property is in the RL-W zone and is subject to the development standards of this zone. The district is intended primarily for low density development in the form of single-family detached dwellings and duplexes. The proposed construction of a new home fits within the district’s purpose. **(Affirmative finding)**

(b) Dimensional Standards & Density

Residential density will remain unchanged at one residential unit for the 27,000sf lot.

Prior/Current lot coverage is 23.22%, and proposed lot coverage will be 33.8% as calculated on project plans. The proposed increase in lot coverage complies with the 35% maximum permissible in this zone.

The home's setback from the road will be beyond 50.' At this distance, averaging of neighboring front yard setbacks is not required. Side setbacks will be 14ft which is slightly greater than the district requirement of 10% of lot width (13.5' side setback). The lakeshore setback is greater than the minimum required 75' from the 100' elevation mark.

The tallest point of the proposed home is noted at 25' 10 61/64" and is under the 35' maximum permitted height. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The replacement single family home is a permitted use in the RL-W zone. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

See above

2. Lot Coverage

See above

3. Accessory Residential Structures and Uses

Connected porches as accessory uses are permitted in the RL-W zone. **(Affirmative finding)**

4. Residential Density

No change of density to previous permitted use, and the single family home is still limited to occupancy by a family as defined in Article 13 of the Comprehensive Development Ordinance. **(Affirmative finding)**

5. Uses

Not applicable

6. Residential Development Bonuses

Not applicable

Sec. 4.5.4, Natural Resource Protection Overlay (NR) District

(c) District Specific Regulations: Riparian and Littoral Conservation Zone

The property is subject to the *Riparian and Littoral Conservation Zone* as it is within the 250' of Lake Champlain lakeshore. Almost all existing trees will be retained, and several new trees will be planted. As required, a low mow zone will be established between the residence and the existing retaining walls. Note the calculated size of the low mow zone is 5,386.39 sf and complies with the area requirement relative to the size of redevelopment.

The proposed lot coverage exceeds 2,500 sf, so a residential stormwater management plan will be needed, subject to review and approval by the stormwater administrator. The project plans depict a bioretention area on the lakeside of the proposed home that will collect and attenuate stormwater runoff. The Conservation Board recommended approval of the project. Stormwater management is subject to final review and approval by the stormwater administrator. **(Affirmative finding as conditioned)**

Sec. 4.5.4, Natural Resource Protection Overlay (NR) District

(a) District Specific Regulations: Special Flood Hazard Area

(7) Special Review Criteria

A. The danger to life and property...

The current sea wall and proposed steps pose no danger to life and protects the property from shoreline erosion. The addition of stairs alongside the current sea wall will cause no changes to lake behavior. **(Affirmative finding)**

B. The danger that material may be swept onto other lands...

The current sea wall is solid reinforced concrete, and the addition of concrete stairs will not cause pieces to dislodge from the wall or cause pieces to end up on other properties. **(Affirmative finding)**

C. The proposed water supply and sanitation systems...

The proposed plans show that there will be connection to the existing sewer line. **(Affirmative finding)**

D. The susceptibility of the proposed facility and its contents to flood damage...

The current sea wall was made to protect the shoreline against flooding and erosion, and additional access stairs will not change the effectiveness of the wall. **(Affirmative finding)**

E. The importance of the services provided...

New steps allow for access to the water's edge. **(Affirmative finding)**

F. The availability of alternative locations...

In order to provide the intended access, the steps must descend into the floodplain. **(Affirmative finding)**

G. The compatibility of the proposed use with existing development...

The current sea wall and proposed stairs fit with current and adjacent properties. Seawalls with lakeshore access are a common element along the city's shoreline. **(Affirmative finding)**

H. The relationship of the proposed use to the Municipal Development Plan

The construction of new stairs conforms to current uses and does not conflict with the Municipal Development Plan. **(Affirmative finding)**

I. The safety of access to the property in times of flood of ordinary and emergency vehicles.

The construction of new stairs will not affect emergency vehicle access to the property. **(Affirmative finding)**

J. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood-waters expected at the site

The new steps will not affect water levels or associated flood effects of the lake. **(Affirmative finding)**

K. Conformance with all other applicable requirements of this ordinance

The construction of new stairs will conform to all requirements of this ordinance. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

The applicant is not seeking additional lot coverage. **(Not applicable)**

Sec. 5.2.4, Buildable Area Calculation

The lot is not subject to the steep slope overlay and is not over 2 acres in size so it does not qualify for buildable area calculation. **(Not applicable)**

Sec. 5.2.5, Setbacks

See above.

Sec. 5.2.6, Building Height Limits

See above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See above

Sec. 5.5.1, Nuisance Regulations

The proposed project will not create any nuisance, as the land use will not change. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

Outdoor lighting fixture specifications have been provided. Lighting locations are shown in the elevations drawings. Fixtures include: Type 1 (Recessed 700 lumen output), Type 2 (Decorative sconce 100 lumen output), Type 3 (Discreet wall sconce 701 lumen output). All proposed outdoor lighting fixtures utilize low output lamps and are acceptable for this residential installation.

(Affirmative finding)

Sec. 5.5.3, Stormwater and Erosion Control

See Sec 4.5.4 (c) for stormwater management.

Over 400sf of land disturbance is proposed, so an Erosion Prevention and Sediment Control plan is required. This plan is subject to final review and approval by the stormwater administrator.

(Affirmative finding as conditioned)

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The subject property is located along the Lake Champlain shoreline north of Appletree Point. The shoreline is an identified significant natural area. Much of the property is affected by the Natural Resource Protection Overlay District, specifically the riparian and littoral conservation zone, which stretches inland 250' from the 95.5' lakeshore elevation. A new low-mow area will be established along the property's lakefront as required. The only work being done in the flood zone

is the construction of new stairs that will grant pedestrian access to the water's edge.

(Affirmative finding)

(b) Topographical alterations

Much of the lot slopes gently towards the lake but drops steeply nearest the lakeshore. Existing topographic conditions will remain largely unchanged. **(Affirmative finding)**

(c) Protection of important public views

Distant terminal views of Lake Champlain and the Adirondack mountains will remain essentially unchanged. There are no public views associated with this property. The proposed home is modest in scale, and most mature vegetation will be retained. Its construction will not adversely affect public views from the lake towards shore. **(Affirmative finding)**

(d) Protection of important cultural resources

The property contains no known archaeological resources. Much of the lakeshore is archaeologically sensitive. If, during construction, artifacts are unearthed, it is the applicant's responsibility to stop earthwork and to contact the Vermont Division for Historic Preservation for further guidance. **(Affirmative finding as conditioned)**

(e) Supporting the use of alternative energy

There is no indication that the proposed home will utilize alternative energy. Solar energy utilization is encouraged. In any event, the home will not adversely impact the actual or potential use of alternative energies by neighboring properties. **(Affirmative finding)**

(f) Brownfield sites

The subject property is not an identified brownfield. **(Not applicable)**

(g) Provide for nature's events

See Sec. 4.5.4 (c) for stormwater.

The project plans depict a sheltered entry for the front entryway as well as over the front of the garage. **(Affirmative finding)**

(h) Building location and orientation

The location of the proposed home will be shifted inland as compared to the existing home. It will be set essentially in the middle of the lot. The new home will have an open front entryway facing inland towards the front yard and private road beyond.

As required, the attached garage is set behind the front of the house. **(Affirmative finding)**

(i) Vehicular access

The existing driveway will be reconstructed and reconfigured to serve the proposed home. Sight lines at the driveway's intersection with the road remain essentially unchanged. **(Affirmative finding)**

(j) Pedestrian access

This criterion requires that a pedestrian walkway be provided from the front door to the public sidewalk or street. This property is along a private road without sidewalks. No front walkway is

proposed. Consistent with past practice in such situations, no front walkway is required. Convenient access between the driveway and side and front entries is proposed. **(Affirmative finding)**

(k) Accessibility for the handicapped

No handicap accessibility is evident or required with this proposal. **(Not applicable)**

(l) Parking and circulation

Parking will be provided within the attached garage and the driveway. Parking spaces are dimensionally compliant. Circulation and access is provided via the private driveway.

Residential driveways are generally limited to 18' in width but are allowed to widen as they approach the garage. Such is the case in this proposal. There is a turn-around that causes the driveway to reach ~ 32' width. This problem has been remedied in revised plans that depict the turn-around area with concrete pavers to contrast with the gravel driveway. This solution is similar to others in the past used for turn-around areas. **(Affirmative finding)**

(m) Landscaping, fences, and retaining walls

A complete landscaping plan has been provided and notes that most of the current trees will be retained. As noted above, a low-mow zone will be established along the property's lakeshore with additional shrubs planted to soften the edge with the existing seawall. The proposed landscaping plan depicts a variety of new plantings to accent the building and its front entrance. Some landscaping will provide screening. Proposed species are not invasive and appear to be acceptable. **(Affirmative finding)**

(n) Public plazas and open space

No public plaza or open space is included or required in this proposal. **(Not applicable)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

Existing electric lines appear to be aboveground. This new construction will require buried electrical service as confirmed by the applicant. Utility connections to the house are shown on the plans as well as locations of all applicable utility lines and pipes. Locations of mechanical equipment is noted and will be screened with material to match the siding of the house.

(Affirmative finding)

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The proposed home, along with its accessory porches, is similar in size and mass to the current home. The mass of the house will be defined by straight lines and square edges that clearly define the individual components of the house. It appears to have a symmetrical appearance when viewed from the front with two floors in the center and lower single stories extending off to the right and left sides. The proposed structure will be two stories just like the current building. The scale of the home is similar to nearby properties on the street including the

additional attached porches. The reduced setback from the road is less than adjacent properties which pulls the new build away from the lakeshore. **(Affirmative finding)**

2. Roofs and Rooflines

The roof will be a dark colored flat membrane roof squared off with parapets matching the building siding that conceal the roof deck. This style is different from the more common hip and gable type roofs on the adjacent properties. The proposed roof design; however, is consistent and matches the modern style of the building. **(Affirmative finding)**

3. Building Openings

The windows and doors are of matching style to the rest of the home's contemporary design. The windows appear as single pane windows without muntins and sit in unadorned frames. Overall, large amounts of glazing will be present with the majority on the lakeside portion of the house to provide views of the lake for the residents. **(Affirmative finding)**

(b) Protection of important architectural resources

The existing building is not listed on the state or national historic register, nor has it been deemed eligible for listing. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

As with most other homes along Sunset Cliff Road, the proposed home is set back relatively far from the road. There is little perceptible streetscape in this neighborhood. As proposed, several trees and a row of flowering shrubs will stretch across the majority of the property's frontage. Behind this landscaping, the proposed home incorporates a readily identifiable front entrance facing the street. At the entrance to the house, there is a covered walkway to the main door along with pavers to the front lawn and porch. **(Affirmative finding)**

(e) Quality of materials

The color and material for the new construction will mainly consist of dark charred wooden siding. The parapet extending above the flat roof deck will be clad in the same material. Accent siding for the covered entry and porch will be a stained wooden material. The aluminum clad wooden windows will be a black/dark color to match the siding of the house. The materials proposed are of acceptable quality and durability for this new construction. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed building must comply with the current energy efficiency standards of Burlington and the State of Vermont. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

No advertising is included in this proposal. **(Not applicable)**

(h) Integrate infrastructure into the building design

All mechanical equipment for the structure will be attached to the building and screened to merge with the siding of the rest of the structure. **(Affirmative finding)**

(i) Make spaces safe and secure

The proposed building must comply with the city's current egress requirements. Building entries will be illuminated. **(Affirmative finding)**

Article 8: Parking

Sec. 8.1.9, Maximum On-Site Parking Spaces

The construction of the new home will conform to the maximum limit of 3 parking spaces for single family homes in neighborhood districts. **(Affirmative finding)**

II. Conditions of Approval

1. **Prior to release of the zoning permit**, both the erosion prevention and sediment control plan and the stormwater management plan shall be reviewed and approved by the stormwater administrator.
2. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Planning & Zoning Department the impact fee as calculated by staff based on the net new square footage of the proposed development.
1. Per Sec. 4.5.4, (f) 8, construction within the Special Flood Hazard Area is subject to the following conditions:
 - 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) Not applicable.
 - E. Non-Residential Development:
 - (i) Not applicable.
 - F. Water Supply Systems:
 - Not applicable;
 - G. On-Site Waste Disposal Systems:
 - Not applicable;
 - H. Recreational Vehicles:
 - (i) Not applicable.
3. If, during construction, artifacts are unearthed, it is the applicant's responsibility to stop earthwork and to contact the Vermont Division for Historic Preservation for further guidance.
 4. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state.
 5. Standard permit conditions 1-15.

PROPERTY LOCATION

98 SUNSET CLIFF RD
BURLINGTON, VT 05401

OWNERSHIP

WONG KEYE
WONG LUCY
1015 YALE AVENUE
SARASOTA, FL 34236

PREVIOUS OWNER

BENNETT R JAMES JR
98 SUNSET CLIFF ROAD
BURLINGTON, VT 05408-0000

NARRATIVE DESCRIPTION

This parcel contains 27000.00000 SF of land mainly classified as Single Fam It has 1 building(s) first built in 1984 with a total of 2,471 square feet. There are 1 living unit(s), 1 Bath, 3 Rooms, and 2 Bdrms.

OTHER ASSESSMENTS

Code	Desc	Amt	Comm Int Amt

PROPERTY FACTORS

Item	Code	Item	Code	%
Util 1	S - NO SEWER	Dis 1	B	0000
Util 2		Dis 2	SH	0000
Util 3		Dis 3		
Census		Zone 1	RLW	100
F. Haz		Zone 2		
Topo	4 - ENHANCING	Zone 3		
Street	U - UNIMPROVED			
Traffic				
Exempt				

LAND SECTION

LUC	LUC Desc	Ft.	# Units	Depth	U. Type	L. Type	Ft.	Base V.	Unit Prc	Adj Prc	NBC	Ft.	Mod.	Inf 1	%	Inf 2	%	Inf 3	%	Appr	Alt LUC	%	Spec L.V.	Juris	L. Ft.	Assessed	Notes
R1	Single Fam	1	27,000		SF	SITE	1		039.8	22.74	WF-10	1		SCL	-36	BA	-2			614,100			0		1	614,100	corrected la
Total AC/HA			0.62	Total SF/SM		27,000.00		Parcel LUC R1 - Single Fam						P. NBC Desc WATERFRON Tot					614,100	Tot		0	Tot		614,100		

Disclaimer: This Information is believed to be correct but is subject to change and i

EXHIBIT D

Building Location98 SUNSET CLIFF RD

IN PROCESS APPRAISAL SUMMARY

Use Code	Building Val	Yard Items	Land Size	Land Val	Total Val
R1	436,800	0	27,000.00	614,100	1,050,900
Building Total	436,800	0	27,000.00	614,100	1,050,900
Parcel Total	436,800	0	27,000.00	614,100	1,050,900
Source	0 - Mkt Adj Cost	Tot Val SF/Bld	425.29	Tot Val SF/Prcld	425.29

PREVIOUS ASSESSMENTS

[illegible]

SALES INFORMATION

[illegible]

BUILDING PERMITS

[illegible]

ACTIVITIES

[illegible]

Patriot
PROPERTIES INC.

User Account
GIS Coord 1 297593
GIS Coord 1 731809
Insp Date

Print Date / Time
7/7/2022 1:42 am

Last Date / Time
4/29/19 3:10 pm

Calculaton

USER DEFINED

RAD:
135
OLD PID:
022380
State District:
3-01
CAD:
610
SPAN:
114-035-11396
Accessory Dw

PriorID1c
0
PriorID2c
0
PriorID3c
03172008
Assessor Map

Property: 1396 | Bld: 1423 | Seq: 1 | Year: | Data As Of Date: 07/06/2022 | User: sa | DB: Assess50Burlington

Exterior Information

Type	CT - CONTEMPORAR	
Strv Hght	1 - One Stv	
(Liv) Units	1	Tot 1
Found	C - CONCRETE	
Frame	W - Wood	
P. Wall	BR - BRICK	
Sec Wall		0
Roof Str	HP - HIP	
Roof Cvr	AS - ASPHALT SH	
Color		
View	EX - EXCELLENT	
Shape		
Bld Name		

General Information

Grade	G- - GOOD MINUS		
Year Blt	1984	Eff Yr	
Alt LUC			
Juris			
Con Mod			

Interior Information

Avg Ht / Fl			
P. Int Wall	DW - DRYWALL		
Sec Int Wall			
Partition			
P. Floor	CA - CARPET		
Sec Floor			
Bmt Floors	C - CONCRETE BM		
Sub Floors			
Bmt Garage	0		
Electric	T - TYPICAL		
Insulation	T - TYPICAL		
Int Vs Ext	S		
Heat Fuel	O - OIL		
Heat	HW - HOT WATER		
# Heat Sys	1		
Heated %	100	AC %	
Sol HW %		Ctrl Vac %	
Com Wall %		Sprink %	

Special Features / Yard Items

Code	Desc	A	Y/S	Qty	Size	Qual	Con	Year	Unit Prc	D/S	Depr %	LUC	Ft.	NBC	Ft.	Juris	Ft.	Appr Val	Assessed
Building Totals					Yard Item Appr							Special Feature Appr							
Parcel Totals					Yard Item Appr							Special Feature Appr							

Disclaimer: This Information is believed to be correct but is subject to change and i

Condo Information

Location	
Tot Units	
Floor	
% Own	
Name	

Bath Features

Full Bath	1	Rtnng
Add Full	0	Rtnng
3/4 Bath	0	Rtnng
Add. 3/4	0	Rtnng
1/2 Bath	0	Rtnng
Add. 1/2	0	Rtnng
Other Fix	0	Rtnng

Other Features

Kitchens	1	Rtng
Add Kit.	0	Rtng
Fireplaces	1	Rtng
WS Flues	0	Rtng

Depreciation

Phys Con	GD	16.28
Functional	L	5
Economic		
Special		
Override		
Total		20.47%

Comparable Sales

Rtnq	Parcel ID	Type	Sale Date	Price
69	059-1-040-000	Default Mc	05/20/2019	1,235,000
69	031-1-014-000	Default Mc	05/07/2021	1,250,000
68	028-1-101-000	Default Mc	12/30/2019	270,000
68	024-2-132-000	Default Mc	09/30/2020	365,000
68	054-2-136-000	Default Mc	05/14/2021	955,000
68	032-1-024-000	Default Mc	10/30/2020	1,475,000
Avg Rtnq	68.33		Ind Val	6,354,900

Comments

1-FAMILY HOUSE

Res Breakdown

Floor	No. Unit	Rooms	Bdrms
U	1	3	2
Bld Total	1	3	2
Prcl Total	1	3	2

Calc Ladder

Base Rate	65.00	Depr	112,436
Size Adj	1.00469	Depr'd Total	436,838
Con Adj	1.02990	Juris Ft.	1.0000
Adj Prc	\$67.26	Spec. Features	\$0
Grade Ft.	1.15000	Lump Sum	
Other Feat	\$11,500	Final Total	\$436,800
NBH Mod	1.0000	Override Val	
NBC Infl	1.9600	Assmnt Ft.	1.0000
LUC Ft.	1.0000	Assessed Val	\$436,800
Adj Tot (RCN)	549,274	Total \$/SF	\$176.77
Depr %	20.47%	Undepr \$/SF	77.34900

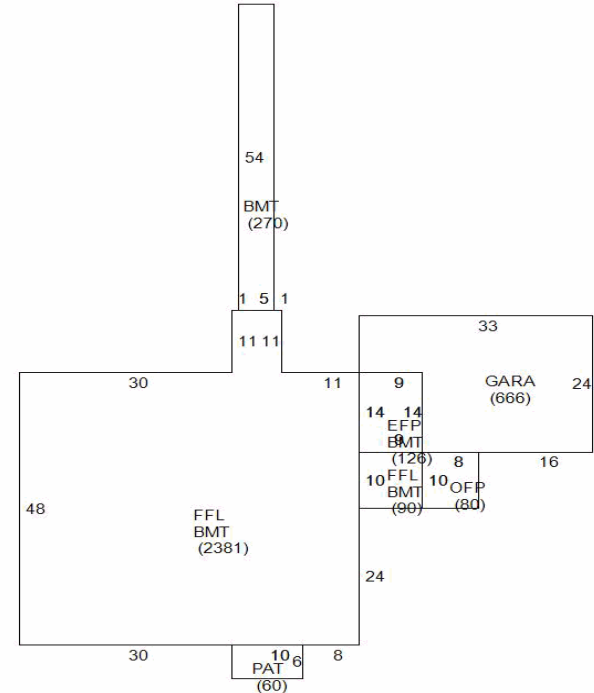
Sub Areas

Code	Desc	Net Area	Gross A.	F. Area	Sz Adj A.	Rate AV	Undepr Val
FFL	1ST FLOOR	2,471	2,471	2,471	2,471	67.26	166,199
GARA	GARAGE ATTCH	666	666	0	0	23.54	15,678
OPF	OPEN PORCH	80	80	0	0	40.23	3,218
PAT	PATIO	60	60	0	0	6.71	403
BMT	BASEMENT	2,867	2,867	0	0	13.45	38,561
EFP	ENCL PORCH	126	126	0	0	76.43	9,630
Building Totals		6,270	6,270	2,471	2,471		233,689
Parcel Totals		6,270	6,270	2,471	2,471		233,689

Remodeling

Exterior	
Interior	
Add.	
Kitchen	
Bath	
Plumb	
Electric	
Heating	
General	

Sketch



Mobile Home

Make	Model	Serial	Year	Color
------	-------	--------	------	-------

Alt Areas

[illegible]

d Image



Property: 1396 | Bld: 1423 | Seq: 1 | Year: | Data As Of Date: 07/06/2022 | User: sa | DB: Assess50Burlington

Property Summary					
Parcel ID	026-4-004-000	Address	98 SUNSET CLIFF RD	Owner(s)	WONG, KEYE WONG, LUCY
SPAN Number	114-035-11396	Land Use	R1 - Single Fam		
Lot Area	27,000 SF - SQ FT	Mail Address	1015 YALE AVENUE, SARASOTA, FL 34236		

Appraised Values & Taxes							
Total Value *	\$1,050,900	Building Value	\$436,800	Land Value	\$614,100	Yard Items	\$0
Total Property Taxes (FY 2022)	\$22,201.32	HS-131		Pct. Business		Pct. Rental	
Tax amounts updated on 7/15/2022. Names and addresses will continue to be updated weekly. For questions regarding property taxes, contact the Clerk/Treasurer's Office at (802) 865-7000							

Sales					
Grantor	Grantee	Date	Type	Amount	Book & Page
BENNETT R JAMES JR	WONG KEYE / WONG LUCY	07/26/2021	WarrantyDeed	\$1,200,000	1611-188
LANGEVIN KIM MARIE	BENNETT R JAMES JR	07/21/2005	Quit Claim	\$0	925-200
BENNETT RAYMOND J JR	LANGEVIN KIM MARIE	04/26/2005	WarrantyDeed	\$0	913-15

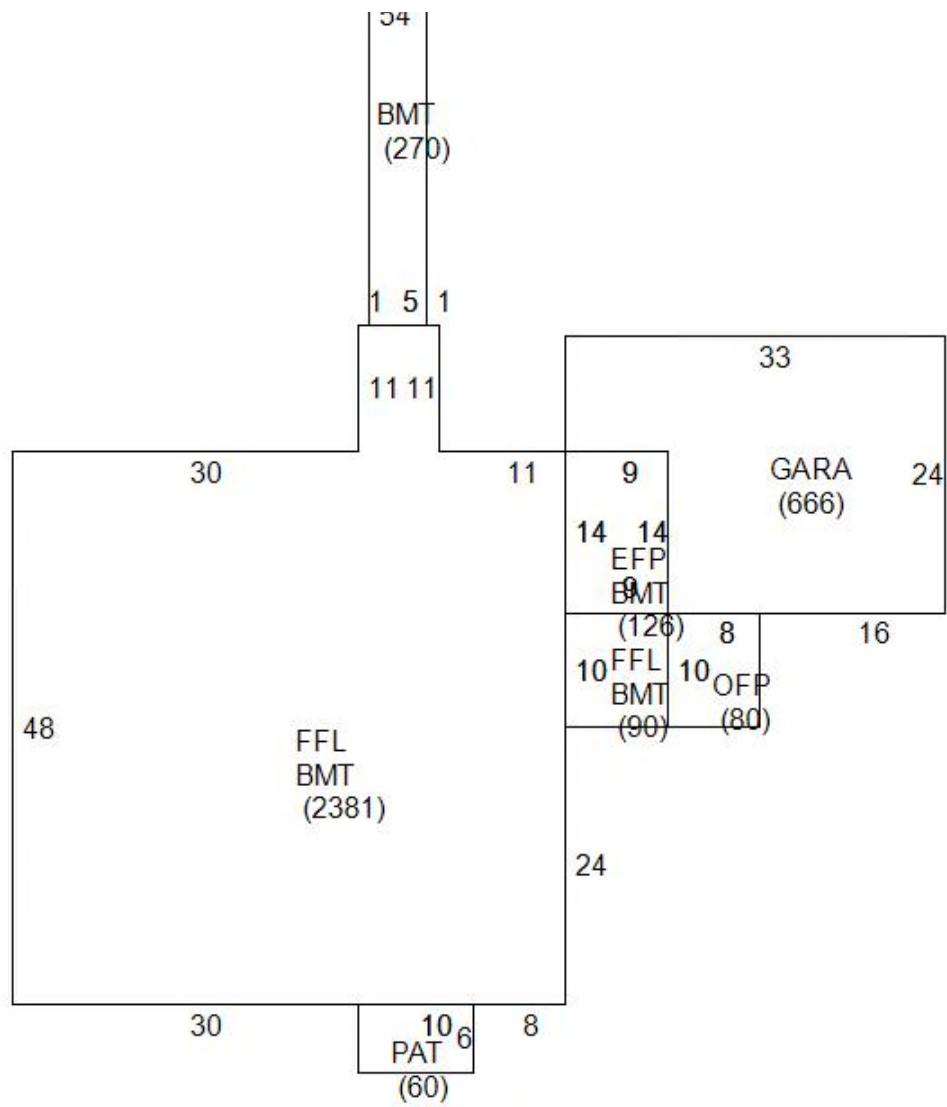
Building Details					
Condition	Good	Heat Type	HW - HOT WATER	Heat Fuel	O - OIL
Building Type	CONTEMPORARY	Year Built	1984	Units	1
Rooms	3	Bedrooms	2	Baths (Full/Half)	1 / 0
Zoning	RESIDENTIAL - LOW DENSITY - WATERFRONT	Foundation	C - CONCRETE	Depreciation	20.47%



**Sketched Areas**

Area	Description	Gross Area	Finished Area
BMT	BASEMENT	2867	0
EFP	ENCL PORCH	126	0
FFL	1ST FLOOR	2471	2471
GARA	GARAGE ATTCH	666	0
OFP	OPEN PORCH	80	0
PAT	PATIO	60	0
Totals		6,270	2,471





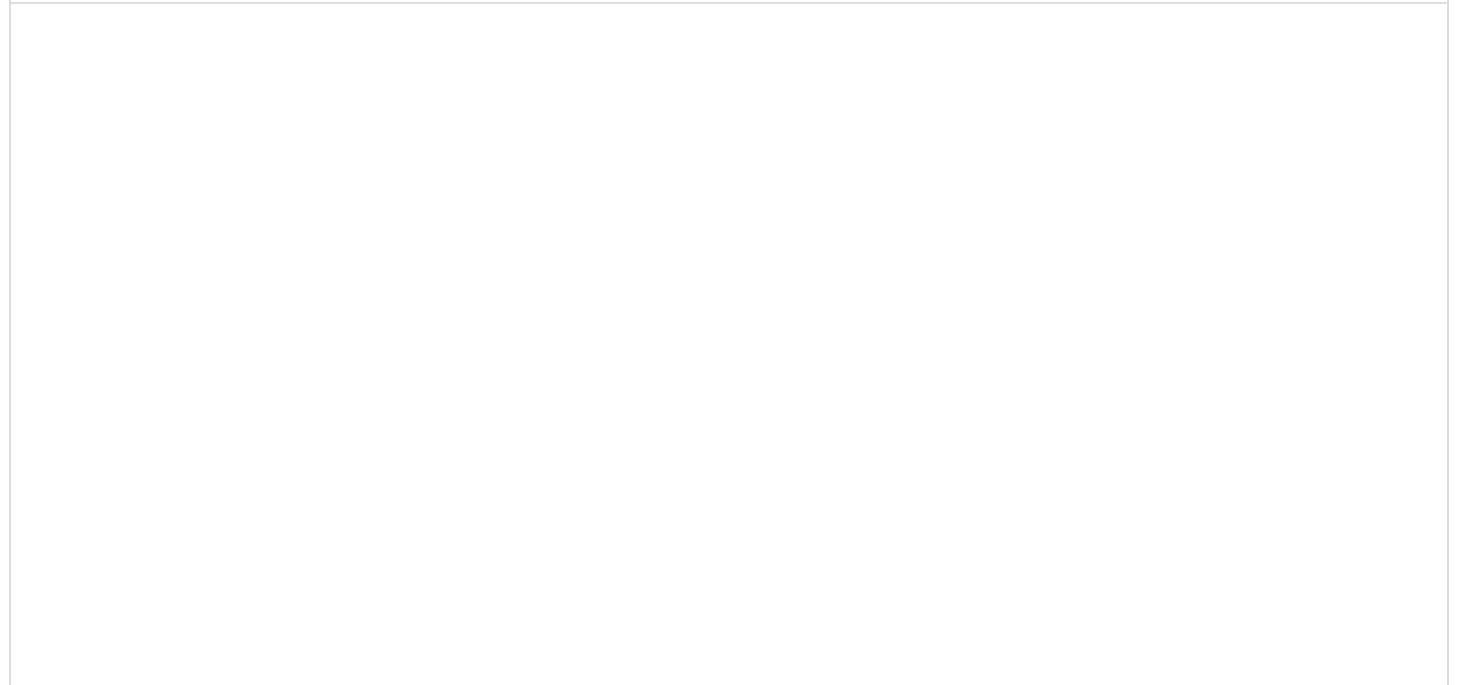
Parcel Map

Parcel Map



View Map Fullscreen [↗](https://burlingtonvt.maps.arcgis.com/apps/webappviewer/index.html?id=7b5d58069ca9477db906514f42fb885c&level=5&query=Parcels_3546_0%2CPIN%2C297593731809) (https://burlingtonvt.maps.arcgis.com/apps/webappviewer/index.html?id=7b5d58069ca9477db906514f42fb885c&level=5&query=Parcels_3546_0%2CPIN%2C297593731809)

Location Overview



Please Note/Disclaimer:

Parcel maps that are depicted on the Assessor's website are for informational use only. They are a representation of property boundaries, not an authoritative source. They are not valid for legal description or conveyance. In addition, the Parcel Data may not be the most up to date information, please contact the Assessor's Office if you find any discrepancies with the data.

From: Bob Fisher <fish1900@comcast.net>
Sent: Monday, April 10, 2023 11:45 AM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Subject: 98 Sunset Cliff Road

[You don't often get email from fish1900@comcast.net. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Scott,

A final few words from me regarding ZP-23-9. Please take into account the cities' obligation to ensure that these projects are completed within a “reasonable” timeframe and that as a citizen of Burlington I have the right to “peaceable enjoyment of my property”.

Thank you for your consideration.

Bob Fisher

From: J Smith <jacobwarrensmith@gmail.com>
Sent: Tuesday, April 11, 2023 8:11 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Subject: Re: 98 Sunset Cliff - ZP -23- 9

[WARNING]: This email was sent from someone outside of the City of Burlington.

Mr. Gustin,
Hope all is well. It is my understanding that the DRB deliberates next week regarding the proposed plan for 98 Sunset Cliff.

I'll spare you a long message as I am aware you and DRB have already received extensive comment.

However, a conversation with a neighbor this evening inspired me to reach out again.

We, the residents of 76 Sunset have no qualms with any component of the proposed project at 98 Sunset Cliff except for the "Pickleball Court" piece of the puzzle.

I hope this ill conceived and inappropriate improvement is not approved.

Thank you,
Jacob Smith and Stephanie Aubert

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Garret King, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
Vacant, Permitting & Inspections Administrator



MEMORANDUM

TO: Development Review Board
FROM: Garret King, Associate Planner
DATE: April 18, 2023
RE: ZP-23-30; 483 Manhattan Drive

=====

Zone: RM **Ward:** 2C

Owner/Applicant: Chris Lane / Green Mountain Habitat for Humanity

Request: At their April 11, 2023 meeting, the DAB decided to table the application and requested the applicant to make revisions to the front façade and parking. Revisions will be reviewed at a future DAB date TBD. As a result, DRB review of the application will be deferred to a future date TBD following completion of DAB review.

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax: (802) 863-0466

AJ LaRosa
Caitlin Halpert
Geoff Hand
Brooks McArthur
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Sean McKenzie, (Alternate)
Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, April 18, 2023, 5:00 PM

AGENDA

In Person (at 645 Pine Street) Meeting

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Public Hearing**

- 1. ZP-23-33; 120 Depot Street (RM-W, Ward 3C) Andrea Trombley / Steve Trombley**
Height variance request up to 60 ft. (Project Manager, Scott Gustin)

Deferred until 6/6/2023

- 2. ZP-23-104; 65 Scarff Avenue (RL, Ward 5S) Mark Kotorman / Laurie Kotorman**
Home occupation to conduct private Pilates classes in existing bedroom. (Project Manager, Garret King)

Approved

V. Certificate of Appropriateness

- 1. ZP-23-30; 483 Manhattan Drive (RM, Ward 2C) Green Mountain Habitat for Humanity / Chris Lane**
Demolition of existing structure for the construction of a new duplex. (Project Manager, Garret King)

Deferred until a date to be determined

- 2. ZP-23-9; 98 Sunset Cliff Road (RL-W, Ward 4N) Keye & Lucy Wong / Elizabeth Herrmann**
Demolish existing single-family residence and construct new single-family residence with associated site improvements. (Project Manager, Scott Gustin)

Approved, except for the pickle ball court (that will require subsequent review and approval by the Development Review Board)

VI. Adjournment

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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.

Burlington Development Review Board

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Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, April 18, 2023, 5:00 PM

MINUTES

In Person (at 645 Pine Street) Meeting

Board Members Present: AJ LaRosa, Brooks McArthur, Sean McKenzie, Brad Rabinowitz, and Chase Taylor

Board Members Absent: Caitlin Halpert, Geoff Hand, and Leo Sprinzen

Staff Members Present: Scott Gustin, Garret King, and Joseph Cava

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Public Hearing**

- 1. ZP-23-33; 120 Depot Street (RM-W, Ward 3C) Andrea Trombley / Steve Trombley**
Height variance request up to 60 ft. (Project Manager, Scott Gustin)
Steve Trombley, owner, present

Steve Trombley: I see that there are a limited number of board members here tonight. Will this impact the decision of this application?

AJ LaRosa: No, we have a quorum, but can continue this if that is what you'd prefer.

Steve Trombley: I would.

AJ LaRosa: Motioned to defer to June 6th DRB meeting, Brooks McArthur 2nd. Vote 5-0. Motion carried.

- 2. ZP-23-104; 65 Scarff Avenue (RL, Ward 5S) Mark Kotorman / Laurie Kotorman**
Home occupation to conduct private Pilates classes in existing bedroom. (Project Manager, Garret King)
Laurie Kotorman, owner, present

AJ LaRosa: This project seems relatively simple. Have you had time to review the staff report?

Laurie Kotorman: Yes.

AJ LaRosa: How many clients would you be working with?

Laurie Kotorman: Only one at any given time during operational hours.

Scott Gustin: To clarify, this application is only for the use. There are inconsistencies in the site plan that need to be addressed.

AJ LaRosa: Okay, so to clarify, we would approve the home occupation only. Is it conditional use because it's not a traditional home office?

Scott Gustin: Correct.

Brad Rabinowitz: Can you tell us about the background for classes on Tuesday and Thursday?

Laurie Kotorman: The hours occasionally go past 1:00 PM, because I manage my husband's business when he's not around.

AJ LaRosa: What is the earliest/latest that you'd be working with clients?

Laurie Kotorman: 8:00 AM to 4:00 PM.

AJ LaRosa: I recommend amending the operational days to Monday thru Friday from 8:00 AM to 4:00 PM to address operational times outside the proposed schedule.

Brad Rabinowitz: Motioned to approve and adopt staff recommendations with the amended schedule of Monday thru Friday from 8:00 AM to 4:00 PM, Brooks McArthur 2nd. Vote 5-0. Motion carried.

V. Certificate of Appropriateness

1. ZP-23-30; 483 Manhattan Drive (RM, Ward 2C) Green Mountain Habitat for Humanity / Chris Lane

Demolition of existing structure for the construction of a new duplex. (Project Manager, Garret King)

AJ LaRosa: The applicants have requested a deferral while they continue to work with the Design Advisory Board (DAB).

VI. Adjournment

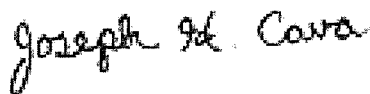
Hearing closed at 5:25 PM.



Alexander J. LaRosa, Chair of Development Review Board



Date



4-20-23

Joseph H. Cava, Permitting & Inspections Permit Technician

Date

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