

**Burlington Planning Commission
Ordinance Committee**

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*Alexander Friend
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Burlington Planning Commission
Ordinance Committee

Thursday, February 7, 2019 @ 5:15 PM
Planning & Zoning Conference Room, Ground Floor, City Hall

AGENDA

1. Continued discussion of “accessory” and potential revisions
2. Review of City Council Ordinance Committee’s change to Sec. 8.1.12 (c), Front Yard Parking Restricted
3. Pending amendments list
4. Adjournment (6:15)

Next Meeting – March 7, 2019

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TO: Planning Commission Ordinance Committee
FROM: Scott Gustin
DATE: February 7, 2019
RE: Deletion of Sec. 8.1.12 (c)

At its November 20, 2018 meeting, the City Council Ordinance Committee reviewed the proposed changes to Article 8 articulated in zoning amendment ZA-19-03: Parking Amendments. Most of the revisions contained in the proposed amendment were supported by the committee. Sec. 8.1.12 (c); however, was problematic. The committee recommended deletion of the section.

Sec. 8.1.12 (c), *Front Yard Parking Restricted*, contains the city's long standing provision limiting residential front yard parking in the city's zoning code. Following several DRB decisions on appeal finding ambiguity within the section, discussion was had by the Planning Commission Ordinance Committee as to clarifying the section or simply deleting it. The PC OC found merit in the standard and elected to clarify the section. The Planning Commission recommended adoption of the clarified language at its August 28, 2018 meeting as part of the package of changes to Article 8.

ZA-19-03: Parking Amendments moved through the City Council's first read without comment and was forwarded to the City Council Ordinance Committee for discussion. Committee members felt that the provision was problematic in two ways. 1) By forcing at least one parking space (9' X 20') behind the front yard setback, it may artificially extend the length of driveways; and 2) Committee members felt that many existing shorter driveways are likely nonconforming. Given the dimensional standards of Table 8.1.11-1, *Minimum Parking Dimensions*, and the residential driveway standards of Sec. 6.2.2 (i), *Vehicular Access*, the CC OC felt that the front yard parking provision should be deleted.

In the event that the front yard parking provision is deleted, staff recommends that the residential driveway limitations of Sec. 6.2.2 (i), *Vehicular Access*, (i.e. minimum of 7' wide and no more than 18' wide) replace it. Doing so would result in applicability throughout the residential zones rather than just in design control areas.

CDO Amendments

- Appropriate refinement to section 5.2.4 (b) regarding **the measurement of steep slopes** and the determination of whether there ought to be delineated exceptions to the standards specified in the ordinance. (dew)
- Lighting standards for sidewalks within Xft of parking lots or streets – walkway standard is low next to an otherwise brighter place. (DW)
- Schools in residential districts – non-conforming. (DW)
- Deal with occupancy of dwelling units by family (vs. group quarters) as defined in Article 13
Underway
- Vacation rentals (Air B&B, VRBO, etc) **Attorney's Office**
- There is no parking requirement defined for Art Studio in Article 8. **Underway**
- Revamp Article 7: Signs **Underway**
- Correct definition of “frontage” in Article 13. Should refer to “public” right-of-way.
- Redefine method to measure ADUs, Section 5.4.5 (a) 2. From *The unit does not consist of more than 30 percent of the total habitable floor area of the building, inclusive of the accessory dwelling unit*; to *The unit does not consist of more than 30 percent of the **gross (or gross finished) floor area** of the building, inclusive of the accessory dwelling unit*. Also, consider removal of CU trigger for new parking/additions. Leave DRB review to COA level I vs II trigger. Also, remove ADU from Appendix A.
- Fix accessory apartment limitation in RH zone (fix nonconforming residential use expansion restriction in Article 5).
- Definition of accessory dwelling unit in Article 13 needs to be updated—reads “does not exceed 30 percent of total habitable floor area of the single-family dwelling”. However, 5.4.5. says “does not consist of more than 30 percent of the total habitable floor area of the building, inclusive of the accessory dwelling unit.” (MT)
- Revamp sign lighting provisions of Article 7 (Emily Lee) **Address with Article 7 revamp**
- Inclusionary zoning provisions (CEDO) **Underway**
- Allow some retail sales in home occupations for customers already visiting for a service (i.e. shampoos at a home salon)
- Clarify height measurement methodology when based on the average finished grade and correction subsections to that they are consistent with one another (i.e. item 1 consistent with item 4)
- Clean up conflict between “vehicle salvage yard” and “automobile salvage/junkyard” definitions
Underway
- Reexamine parking standard for small daycares/preschools (per CC OC) **Underway**
- Clarify recently adopted mobile home/conditional use amendment language to be closer to that in the explanatory memo (per CC OC)
- Correct references to “downtown” and “downtown transition” zones with reference to FD6 and FD5 (such as in Sec. 5.4.13)
- Put rooftop mechanical screening standards of Sec. 5.2.6 (b) 4 into the Urban Design Standards of Article 14.
- Deal with “accessory” structure size limitations for commercial vs. residential uses. **Underway**
- Clean up tree cutting provisions between Articles 3, 5 and 6. Also, relocate Article 4 RCO tree removal/maintenance exemption under Article 3, zoning permit exemptions. **Underway**
- Sec. 6.2.2 (p) refers to Part 4 – Performance Standards. Should be Part 5. **Underway**
- Delete at least part of the last paragraph of 5.3.5 (a) *A non-conforming residential structure may be enlarged up to the dimensional standards of the underlying zoning district, subject to review*

and approval by the DRB pursuant to Art. 3 Part 4 Design Review **and Art. 3 Part 5 Conditional Use Review.**

- Clarify or delete front yard parking provision of Sec. 8.1.12 (c). Underway
- Allow for tandem parking per dwelling in multi-family buildings. Underway
- Define “eave” and “roof overhang” in Article 13.
- Enable PUD in E-LM (E-AE?) zone.
- Disjoin the status of Planning & Zoning Director from that of Administrative Officer Underway
- “Accessory” reference to Article 5: Part 2 should be to Article 5 (or Article 5, Parts 1 & 2). Underway
- Swimming pools as accessory residential structure issue & spelling error: (MT)
 - Sec. 4.4.5 (d) 3. A. allows additional 10% lot coverage for accessory residential features including swimming pools and swimming pool aprons; however, Sec. 5.2.3 (b) 5 exempts the pool itself from lot coverage calculation (retains apron as lot coverage)
 - Generally, the list of lot coverage exemptions for residential structures, and the list of lot coverage exemptions for all uses aren’t the same. I wonder if the following amendments to 4.4.5 (d) 3 make sense:

3. Lot Coverage

A. Exceptions for Accessory Residential Features.

1. All lot coverage exceptions as applicable per Sec 5.2.3 (b); and

2. 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;
- (iii) Porches;
- (iv) Terraces;
- (v) Tennis or other outdoor game courts;
- (vi) ~~Swimming pools and~~ Swimming pool aprons;
- (vii) Walkways;
- (viii) Window Wells; and/or
- (ix) Pervious pavement designed and maintained to infiltrate the 1-year/24-hour storm event onsite, subject to review and approval by the Stormwater Administrator.

With the exception of the additional lot coverage allowances provided for under Inclusionary Zoning, requirements such additional lot coverage shall not be permitted for any development where bonus provisions of this ordinance are applicable.

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TO: Planning Commission Ordinance Committee
FROM: Scott Gustin
DATE: February 7, 2019
RE: Revisions to "Accessory" (continued discussion)

The Comprehensive Development Ordinance makes multiple references to the term "accessory" in a variety of different scenarios such as accessory uses, accessory structures, and accessory dwelling units. The idea is predicated on the distinction between principal and accessory, whether in reference to structures or uses. Within the context of the CDO, the term "principal" refers to the main structure or use of a property. "Accessory" refers to an adjunct structure or use that is customary and incidental to the principal structure or use. A principal use or structure may stand on its own. An accessory use or structure must always be associated with a primary use or structure.

Some common examples of an accessory/principal relationship include a shed associated with a single family home or administrative office space associated with a grocery store use. The focus here is on "accessory;" however, it bears noting that the term "principal" (or primary) is not defined in Article 13. Providing such definition is recommended.

Consistency is lacking in the application of the term "accessory" in the CDO and in the parameters defining what qualifies as accessory. Defining clear and consistent guidelines as to "accessory" is recommended.

The Ordinance Committee first reviewed this proposed amendment December 6, 2018. The Committee sought to retain the 25% limitation referred to in the Article 13 definition and cleaned up some of the myriad accessory provisions within the CDO. A couple of incorrect uses of the term "accessory" are to be corrected as well in Articles 11 and 13.

Accessory is essentially about a feature's scope and context as it relates to the primary feature. The term should be plainly and simply defined to establish clear guidelines while affording necessary flexibility for any particular set of circumstances. Over-defining the term or trying to articulate standards for particular situations lessens flexibility.

The CDO defines the term "accessory" as follows:

Accessory Appurtenance, Building or Use: A use or detached building that:

- (a) Is located on the same lot as the principal use or building served;
- (b) Is clearly incidental to and customarily found in connection with the principal use or building; and
- (c) Is subordinate in area, extent, or purpose to the principal use or building served, and is not to exceed twenty-five percent (25%) of the gross area or sales of the principal use or building served.

Items (a) and (b) offer guidance as to what sorts of things are “accessory.” Item (c) gets at size and use limitations. The 25% limitation for accessory features is intended to ensure that they remain subordinate to the principal structure or use. The Ordinance Committee suggested inserting the term “temporal” into item (c) as a qualifier to “extent” (i.e. to read “is subordinate in area, temporal extent, or purpose...”). Temporal extends the application of “accessory” beyond structure and use into time, such length of time devoted to an event or series of events.

The Ordinance Committee agreed that the term “Principal (also primary) structure or use” should be defined. Suggested language is below:

- A structure that accommodates the principal use of the lot or use that is the main purpose for which a site is developed and occupied.

Insofar as accessory dwelling units and home occupations are uniquely addressed as “Special Uses” under *Part 4: Special Use Regulations* of Article 5, no adjustments to these different “accessory” limitations are warranted.

There are a handful of incorrect or unwarranted references to “accessory” in the CDO. Committee members agreed with the recommended changes.

- **Sec. 11.1.6, Accessory Facilities**, allows for a building or buildings intended for use as a community center, recreation facility, child care center and/or business office within a PUD regardless of size. The same section also allows for a convenience store with a 1,000 sf size limitation. The term “accessory” in this instance should be replaced with “non-residential.” The PUD is not a use, and the uses referred to in Sec. 11.1.16 are not “accessory” as defined in Article 13. They are simply allowed as part of an overall mix of uses within a PUD.
 - **Sec. 11.1.6 Accessory Non-Residential Facilities**
(a) – (b) As written.
- **Article 13, Definitions**, the term “animal” refers to both “kennel” and “barn or coop” as within an accessory building. Of course, either may be present as a primary feature. Modifying the reference to “accessory” is recommended.
 - **Animal**
 - **Boarding:** An establishment involving any structure, land, or combination thereof used, designed, or arranged for the keeping of five (5) or more domestic pets more than three (3) months of age for profit or exchange, inclusive of equines but exclusive of other livestock used for agricultural purposes in areas approved for agricultural uses. The keeping of four (4) or less such animals more than three (3) months of age for personal enjoyment shall not be considered “boarding” for the purposes of this ordinance.
 - **Domestic Pet:** Any canine, feline, or European ferret (*Mustela putorius furo*) and such other domestic animals as the Secretary of the Agency of Agriculture, Food and Markets shall establish by rule and that has been bred or raised to live in or about the habitation of humans, and is dependent on people for food and shelter.
 - **Livestock:** Animals used for food production (including eggs, milk, honey, and meat) or fiber.

- **Grooming:** Any establishment where domestic pets are bathed, clipped, or combed for the purpose of enhancing their aesthetic value or health.
- **Hospitals:** An establishment for the care and treatment of the diseases and injuries of animals and where animals may be boarded during their convalescence. (See Veterinarian Office)
- **Kennel:** Accessory building or enclosure for the keeping of domestic pets.
- **Barn or coop:** Accessory building or enclosure for the keeping of livestock.
- **Shelter:** A facility used to house or contain stray, homeless, abandoned, or unwanted domestic pets or livestock for the purpose of providing temporary kenneling and finding permanent adoptive homes and that is owned, operated, or maintained by a public body, an established humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and human treatment of animals.
- **Store, Pet:** A retail sales establishment primarily involved in the sale of domestic pets, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and livestock.

Sections containing standards for “accessory” are listed below. Prior recommendation was to delete them in an effort to reduce redundancy. Committee members declined to recommend deletion.¹ Some limited revision; however, is proposed as noted below.

- **Sec. 4.4.5 (d) 4, Accessory Residential Structures and Uses**
- **Sec. 5.1.1 (g), Accessory Uses**
- **Sec. 5.1.2 (d), Accessory Residential Structures, & (e), Accessory Nonresidential Structures**

Sec. 4.4.5 (d) 4, Accessory Residential Structures and Uses

4. Accessory Residential Structures and Uses

An accessory structure and/or use as defined in Article 13 and provided under Sec. 5.1.1 and 5.1.2 customarily incidental and subordinate to a principal residential use, including but not limited to private garages, carriage houses, barns, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and detached fireplaces may be permitted as follows:

- A. Accessory Structures shall meet the dimensional requirement set forth in the district in which they are located pursuant to Sec. 4.4.5(b) of this Article and related requirements in Art 5, Part 2;
- B. Any accessory structure that is seventy-five percent (75%) or greater of the ground floor area of the principle structure shall be subject to the site plan and design review provisions of Art. 3, Part 4 and the applicable standards of Art 6;
- C. Private garages shall be limited to as many stalls as there are bedrooms in the

¹ Retention of this language supports the user-readiness of the CDO. It may appear redundant to seasoned reviewers, but it is an anticipated location and articulation of what ordinance-viewers are seeking.

dwelling to which it is accessory, provided that the ground floor area is less than seventy-five percent (75%) of the ground floor area of the principle structure;

- D. The outdoor overnight storage of commercial vehicles not otherwise associated with an approved home occupation or made available for the exclusive use of the residential occupants, or the outdoor storage of more than one unregistered vehicle, shall be prohibited. Any and all vehicles shall be stored in an approved parking space; and,
- E. ~~Uncovered play structures, seasonal skating rinks, raised planting beds shall not require a zoning permit.~~ [This provision to be located with all other exemptions in Sec. 3.1.2 (c).]

Sec. 5.1.1 (g), Accessory Uses (General accessory standards)

(g) Accessory Uses:

1. Accessory Dwelling Units. Accessory dwelling units as mandated by 24 VSA 4412 (1)(E) shall be regulated as set forth in Sec. 5.4.5 hereof.
2. Accessory Residential Uses: Except as specified in 1 above and subject to the restrictions of 3 below, accessory residential uses shall also be governed by Sec. 4.4.5(d)4.
3. Other Accessory Uses. Except as specified in 1 above, any use may be an accessory use provided in Article 3, Part 5 provided each of the following standards are present:
 - A. The accessory use is subordinate and customarily incidental to the principal use;
 - B. The accessory use is reasonably necessary to the conduct of the principal use;
 - C. Except for home occupations as regulated by Sec. 5.4.6, no accessory use, or combination of accessory uses, shall occupy more than twenty-five (25%) per cent of the total gross area dedicated to the principal use;
 - D. The accessory use shall not include the outdoor storage of more than one unregistered vehicle;
 - E. The accessory use does not result in, or increase the extent of, any pre-existing non-conformity or violation of the provisions of this ordinance; and,
 - F. The combination of uses on any given property shall meet all of the other provisions of this ordinance.

Sec. 5.1.2 (d), Accessory Residential Structures, & (e) Accessory Nonresidential Structures

(d) Accessory Residential Structures:

An accessory structure customarily incidental and subordinate to a principal residential use shall also be governed by the provisions of Sec. 4.4.5(d)4.

(e) Accessory Nonresidential Structures:

An accessory structure customarily incidental and subordinate to a principal nonresidential use may be permitted subject to the provisions of Article 4 ~~provided the gross floor area of~~

~~any accessory structure does not exceed five hundred (500) square feet or contain living space.~~

Sec. 3.1.2 (c), *Exemptions*

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

(1) – (15) As written.

(16) Seasonal skating rinks

[Renumbering to place seasonal skating rinks as # 12, following #11 Children's play structures, may be more intuitive than simply tagging on at the end.]

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Ordinance Committee Meeting Minutes

Thursday, February 7, 2019 @ 5:15 PM

Planning & Zoning Conference Room, Ground Floor, City Hall

Attendance

- **Committee Members:** Alexander Friend (AF), Leo Sprinzen (LS), Bruce Baker (BB), Austin Hart (AH), Andy Montroll (AM)
- **Absent:** none
- **Public:** none
- **Staff:** Scott Gustin, Mary O'Neil (Planning & Zoning), Kim Sturtevant (City Attorney's Office)

1. Continued discussion of "accessory" and potential revisions.

Committee members reviewed the changes to the draft proposal since their initial review in December.

Ordinance Committee members recommended sending the amendment to the full Planning Commission for review and adoption.

2. Review of City Council Ordinance Committee's change to Sec. 8.1.12 (c), Front Yard Parking Restricted.

Committee members discussed the CC OC's recommended deletion of Sec. 8.1.12 (c). They accepted the deletion; however, they also recommended that the 18' width limitation for residential driveways found in Sec. 6.2.2 (i) apply citywide via Article 8 (rather than just within the design control areas). The committee also supported retention of a screening requirement for front yard parking but did not specify a particular standard.

3. Pending amendments list

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Committee members reviewed the most current list of potential amendments to the Comprehensive Development Ordinance.

4. Adjournment

The Committee adjourned at 6:15 PM.