

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

Yves Bradley, Chair
Bruce Baker, Vice Chair
Lee Buffinton
Andy Montroll
Harris Roen
Andrew Saba
Jennifer Wallace-Brodeur
vacant, Youth Member



PUBLIC HEARING NOTICE

Burlington Comprehensive Development Ordinance

PROPOSED

ZA-16-04 – Zoning Administrative Officer

ZA-16-05 – UVM Medical Center

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 two proposed amendments to the City of Burlington's *Comprehensive Development Ordinance* (BCDO). The public hearing will take place on **Tuesday, January 26, 2016** beginning at **7:00pm** in Room #12, on the ground floor of Burlington City Hall, 149 Church Street, Burlington VT.

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

Statement of purpose: The amendments are proposed to the Burlington CDO as follows:

- **ZA-16-04 – Zoning Administrative Officer:** This amendment removes reference to a "Chief Assistant Administrative Officer" reflecting the Council-approved reorganization of the Planning & Zoning Department, and to conform to state statute regarding the appointment of the Administrative Officer.
- **ZA-16-05 – UVM Medical Center:** This amendment (1) reflects the name change from Fletcher Allen Health Care to University of Vermont Medical Center; (2) modifies the boundary between the UVM Central Campus Core Campus Overlay and the UVM Medical Center Campus Core Campus Overlay to reflect a recent property line adjustment; and (3) makes a correction with regard to the regulation of signs within the Institutional District.

Geographic areas affected: the proposed amendments are applicable to the following areas in the City of Burlington:

- ZA-16-04 has effect across the entire City of Burlington
- ZA-16-05 has effect only within the Institutional District and the Institutional Core Campus Overlay Districts

List of section headings affected:

- Article 2: Administrative Mechanisms, Part 3: Administrative Officer
- Sec. 4.3.2 Overlay Districts Established
- Sec. 4.5.2 Institutional Core Campus Overlay Districts
- Sec. 7.2.1 Regulation by District

The full text of the *Burlington Comprehensive Development Ordinance* and the proposed amendments are available for review at the Department of Planning and Zoning, City Hall, 149 Church Street, Burlington Monday through Friday 8:00 a.m. to 4:30 p.m. or on the department's website at www.burlingtonvt.gov/pz/CDO.

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Burlington Planning Commission

Regular Meeting

Tuesday, January 26, 2016 - 6:30-8:00 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

REVISED AGENDA

Note: times given are
approximate unless
otherwise noted.

I. Public Forum - Time Certain: 6:35 pm

The Public Forum is an opportunity for any member of the public to address the Commission on any relevant issue.

II. Report of the Chair (5 min)

III. Report of the Director (5 min)

IV. Agenda

V. Proposed CDO Amendment: Animal Boarding/Kennel/Shelters (5 min)

The Planning Commission will discuss a proposed amendment to permit animal boarding/kennel/shelter use as a conditional use in downtown mixed use zones.

VI. Proposed ZA-16-04 Zoning Administrative Officer Public Hearing Time Certain: 7:00pm

The Planning Commission will hold a public hearing on a proposed amendment to reflect the Council-approved reorganization of the Planning & Zoning Department, and to conform to state statute regarding the appointment of the Administrative Officer.

VII. Proposed ZA-16-05 UVM Medical Center Public Hearing Time Certain: 7:05pm

The Planning Commission will hold a public hearing on a proposed amendment to: reflect the name change from Fletcher Allen Health Care to University of Vermont Medical Center; modify the boundary between UVM Central Core Campus Overlay and the UVM Medical Center Core Campus Overlay to reflect a recent property line adjustment; and more a correction with regard to the regulation of signs in the Institutional District.

VIII. Proposed CDO Amendment: 15 Year Statute of Limitations

The Commission will continue its discuss a proposed amendment to Part 3: Non-Conformities, of the Comprehensive Development Ordinance, to introduce additional provisions regarding zoning violations on uses, structures and lots which are deemed to be controlled by the statute of limitations within 24 V.S.A. §4454 (so-called *Bianchi* controlled uses, structures and lots). The Commission may convene to an Executive Session for confidential attorney/client communications.

IX. Proposed CDO Amendment: Low Impact Design (TIME PERMITTING)

The Commission will discuss a proposed amendment to allow an additional 10% lot coverage in RL and RM zones for pervious pavement. This amendment intends to provide a small incentive for installing pervious

This agenda is available in alternative media forms for people with disabilities. Individuals with disabilities who require assistance or special arrangements to participate in programs and activities of the Dept. of Planning & Zoning are encouraged to contact the Dept. at least 72 hours in advance so that proper accommodations can be arranged. For information, call 865-7188 (865-7144 TTY). Written comments may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401.

pavement for improved on-site stormwater management. The PC Ordinance Committee recommended approval of this amendment at their December 3, 2015 meeting.

X. Committee Reports (5 min)

XI. Commissioner Items (5 min)

XII. Minutes/Communications (5 min)

The Commission will review communications and approve minutes from the December 8, 2015 and January 12, 2016 meetings.

XIII. Adjourn (8:00 p.m.)

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Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Principal Planner
Mary O'Neil, AICP, Principal Planner
Anita Wade, Zoning Clerk
Elsie Tillotson, Department Secretary*



TO: Planning Commission
FROM: Scott Gustin
DATE: January 8, 2016
RE: Animal Boarding/Kennel/Shelter in Downtown zones

Megan Stearns has requested that the Comprehensive Development Ordinance (CDO) be amended to allow for animal boarding/kennel/shelter use in the city's downtown zones. This use is already defined within the CDO, but it is presently not allowed in the downtown zones. Following favorable consideration by the Planning Commission on October 6, 2015 and by the Planning Commission Ordinance Committee on December 3, 2015, the Ordinance Committee voted January 7, 2016 to forward the amendment to the full Planning Commission.

The requested animal boarding/kennel/shelter use would be allowed as a conditional use in the downtown mixed use zones, subject to certain criteria aimed at lessening the potential for offsite impacts. New language is shown in red, and deleted language is ~~crossed out~~.

Proposed CDO Language:

Appendix A – Use Table – All Zoning Districts [excerpt]

	D	DW	DW-PT	DT	BST
Animal Boarding/Kennel/Shelter	N <u>CU</u>	N <u>CU</u>	N	N <u>CU</u>	N <u>CU</u>

Footnotes

1-26 as written.

29. Must be fully enclosed within a building and is subject to licensure by the City Council.

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Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, Project Planner/GIS
Mary O'Neil, AICP, Senior Planner
Anita Wade, Planning & Zoning Clerk
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Burlington Planning Commission Report Municipal Bylaw Amendment

ZA-16-04 – Zoning Administrative Officer

This report is submitted in accordance with the provisions of 24 V.S.A. §4441(c).

Explanation of the proposed bylaw, amendment, or repeal and statement of purpose:

This proposed amendment removes reference to a “Chief Assistant Administrative Officer” reflecting the Council-approved reorganization of the Planning & Zoning Department, and to conform to state statute regarding the appointment of the Administrative Officer.

Conformity with and furtherance of the goals and policies contained in the municipal development plan, including the availability of safe and affordable housing:

This proposed amendment to the Comprehensive Development Ordinance (CDO) is administrative only and does not directly relate to implementation of the City’s Municipal Development Plan

Compatibility with the proposed future land uses and densities of the municipal development plan:

This proposed amendment is not applicable to future land uses and densities of the Municipal Development Plan.

Implementation of specific proposals for planned community facilities:

This proposed amendment is not applicable to any plan for community facilities.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-16-04 – Zoning Administrative Officer

As approved for the Planning Commission Public Hearing – 24 Nov 2015.

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 the BCDO to remove reference to a “Chief Assistant Administrative Officer” reflecting the Council-approved reorganization of the Planning & Zoning Department, and to conform to state statute regarding the appointment of the Administrative Officer.

Article 2: Administrative Mechanisms, Part 3: Administrative Officer

Sec. 2.3.1 Authority

This part is enacted under the provisions of 24 V.S.A. Section 4448.

Sec. 2.3.2 Appointment

The director of planning and zoning shall serve, ex officio, as the city’s zoning administrative officer (ZAO or administrative officer), and upon the recommendation of the planning commission shall be appointed by the legislative body for a term of three years. The ZAO may be removed for cause at any time by the legislative body after consultation with the planning commission.

~~A chief assistant administrative officer shall be appointed annually by the city council upon the recommendation of the ZAO and the planning commission. Additional assistant administrative officers may also be appointed by the city council upon the recommendation of the ZAO and planning commission. Any and all references in this ordinance to the ZAO or administrative officer shall mean to include the chief assistant administrative officer and any other assistant administrative officers assigned to a matter by the administrative officer unless otherwise specified in this ordinance.~~

Sec. 2.3.3 Powers and Duties

The administrative officer shall administer the provisions of this ordinance and any amendments thereto and other applicable bylaws literally, and shall have no power to permit any land development that is not in conformance with this ordinance.

(a) Referrals.

The administrative officer may refer questions of interpretation to the DRB if it is determined that the answer to the question has a bearing upon the jurisdiction of the

DRB. Any such referral shall be considered an appeal of a decision of the administrative officer.

(b) Zoning Enforcement.

The administrative officer shall have ultimate responsibility for all matters relating to the enforcement of the zoning ordinance pursuant to **Part 7** of this article. While protocols may be adopted by which the city's code enforcement office assists in zoning enforcement, the administrative officer shall retain the exclusive jurisdiction to make administrative interpretations (subject to appeal) concerning the terms of such ordinance.

(c) Assistant Administrative Officers

~~The chief assistant administrative officer and other a~~ One or more assistant administrative officers maybe appointed by the ZAO, and shall have such authority and duties as shall be delegated to them by the ZAO.

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Burlington Planning Commission Report Municipal Bylaw Amendment

ZA-16-05 – UVM Medical Center

This report is submitted in accordance with the provisions of 24 V.S.A. §4441(c).

Explanation of the proposed bylaw, amendment, or repeal and statement of purpose:

This proposed amendment (1) reflects the name change from Fletcher Allen Health Care to University of Vermont Medical Center; (2) modifies the boundary between the UVM Central Campus Core Campus Overlay and the UVM Medical Center Campus Core Campus Overlay to reflect a recent property line adjustment; and (3) makes a correction with regard to the regulation of signs within the Institutional District.

Conformity with and furtherance of the goals and policies contained in the municipal development plan, including the availability of safe and affordable housing:

This proposed amendment to the Comprehensive Development Ordinance (CDO) reflects a recent name change and minor property boundary adjustment for the state's academic medical center, and conforms with the goals and policies contained in the City's Municipal Development Plan. The proposed amendment does not limit the ability to provide safe and affordable housing within the community.

Compatibility with the proposed future land uses and densities of the municipal development plan:

This proposed amendment is consistent with the proposed future land uses and densities of the Municipal Development Plan by enabling concentrated institutional development within institutional core campuses.

Implementation of specific proposals for planned community facilities:

This proposed amendment is consistent with plans for concentrating and expanding community medical and health care facilities within institutional core campuses.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-16-05 – UVM-MC

As warned for the Planning Commission Public Hearing – 08 Dec 2015.

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 the BCDO generally to reflect the name change from Fletcher Allen Health Care to University of Vermont Medical Center; to modify the boundary between the UVM Central Campus Core Campus Overlay and the UVM Medical Center Campus Core Campus Overlay to reflect a recent property line adjustment; and to make a correction with regard to the treatment of signs within the Institutional District.

Sec. 4.3.2 Overlay Districts Established:

Overlay districts are overlaid upon the base districts established above, and the land so encumbered may be used and altered in a manner permitted in the underlying district only if and to the extent such use or alteration is permitted in the applicable overlay district. The following districts are established as overlay districts as further described in **Part 5** below:

(a) A **Design Review Overlay (DR)** district;

(b) A series of five (5) **Institutional Core Campus Overlay (ICC)** districts, as follows:

- ~~FAHC-UVM~~ Medical Center Campus (ICC-~~UVM~~~~MC~~~~FAHC~~);
- UVM Central Campus (ICC-UVM);
- UVM Trinity Campus (ICC-UVMT)
- UVM South of Main Street Campus (ICC-UVMS); and,
- Champlain College (ICC-CC);

(c) through (g) remain unchanged

Sec. 4.5.2 Institutional Core Campus Overlay Districts

(a) *Purpose*

The Institutional Core Campus Overlay (ICC) districts are intended to provide for reasonable future growth for institutions within the core of their respective campuses without further intrusion into surrounding residential neighborhoods. This overlay allows increased development than would typically be found in the underlying districts. Development is intended to be more intense than the surrounding neighborhoods with higher lot coverage and larger buildings. New development should provide sensitive transitions to the historic development pattern and scale of the surrounding campus. Buildings both large and small should be designed with a high level of architectural

detailing to provide visual interest and create enjoyable, human-scale spaces. Sites should be designed to be pedestrian friendly and encourage walking between buildings. Circulation should largely emphasize the needs of pedestrians and bicycles, and parking should be very limited and generally provided offsite. Where parking is provided, it should be hidden either within or underneath structures.

(b) *Areas Covered.*

The Institutional Core Campus Overlays as delineated on **Map 4.5.2-1**, and are further described as follows:

1. ~~Fletcher-Allen Health-Care~~University of Vermont **Medical Center Campus (ICC-UVMMCFAHC)** allows for an increased development scale and intensity than would typically be found in the adjoining and underlying districts to support continued growth and expansion of the state's academic medical center. As a regional tertiary-level care facility, on-site parking is expected to play a larger role than otherwise would be expected for other institutional campus overlays in order to accommodate the needs of patients and visitors. While outdoor spaces and circulation systems should be inviting and accommodating for pedestrians, the overall development of the campus would be expected to emphasize the needs of internal circulation and functions in order to meet patient care requirements;

2 through 5 remain unchanged

(c) *District Specific Regulations: ~~Fletcher-Allen Health-Care~~University of Vermont Medical Center Campus (ICC-~~FAHC~~UVMMC);*

1. **Transitional Buffer:**

- A. The Transitional Buffer shall include all property within the area as measured from the centerlines of Colchester Avenue and East Avenue, and extending 150 feet into the ICC-~~FAHC~~UVMMC District as delineated on **Map 4.5.2-2 Transitional Buffer.**
- B. Lot coverage shall not exceed 40% for the aggregate of all land owned by an institution and located within the Transitional Buffer.
- C. Unless replaced on site, no housing unit in a residential structure located within the Transitional Buffer shall be demolished or converted to a nonresidential use, except for housing units which are exempt from the provisions of **Article 9**. The Housing Replacement standards of this ordinance shall apply to any such activity.

2. **Lot coverage**

Maximum lot coverage shall be applied to the aggregate of all lots owned by a respective institution and located within the ICC-~~FAHC~~UVMMC District. Lot coverage shall not exceed 60% except as provided below.

The maximum lot coverage for the entire tract of land owned by an institution within the ICC-~~FAHC~~UVMMC District may be increased by one percent for each one percent that the Transitional Buffer coverage is less than 40%, up to a maximum of 65%.

3. Setbacks

Minimum side and rear yard setbacks in the underlying zoning district shall not be applicable within the ICC-~~FAHC~~-UVM District.

Front setbacks shall be fifteen (15') feet measured only along any street defining the Transitional Buffer.

4. Surface Parking

No new outdoor surface parking spaces shall be permitted unless the number of the new outdoor surface parking spaces is offset by a corresponding removal of outdoor surface parking spaces existing as of January 1, 2007, and upon the approval by the DRB.

5. Building Height

No portion of any building within the ICC-~~FAHC~~-UVM Height Overlay (as delineated on Map 4.5.2-3 ICC-~~FAHC~~-UVM Height Overlay) shall exceed the elevation of a plane running parallel to the earth at 540-feet above mean sea level. The provisions of Sec. 5.2.5 Building Height Limits shall not be applicable within the ICC-~~FAHC~~-UVM Height Overlay.

No portion of any building outside of the ICC-~~FAHC~~-UVM Height Overlay may exceed the elevation of a plane running parallel to sea level from the highest point of the tallest structure at the highest elevation within the ICC-~~FAHC~~-UVM District as depicted as of January 1, 2009.

6. Density

In the ICC-~~FAHC~~-UVM District, density restrictions set forth in Article 4, Sec. 4.4.4 shall not apply to dormitories and rooming houses as defined in Chapter 18 of the Burlington Code of Ordinances. The restrictions on the non-residential equivalent set forth in Art. 5, Sec. 5.2.7 (a) 2 shall not apply in the ICC-~~FAHC~~-UVM District.

(d) through (g) remain unchanged

All of the following maps are also changed to reflect the name and boundary change

- Map 4.5.2-1: Institutional Core Campus Overlay
- Map 4.5.2-2: Transitional Buffer
- Map 4.5.2-3 ICC-FAHC Height Overlay
- Map 4.5.2-4 ICC-UVM Central Campus and Height Overlay

Sec. 7.2.1 Regulation by District

Signs shall be permitted in each district as specified in [Table 7.2.1-1](#) below and as further regulated by the provisions of this Part. Where other provisions in this Article are more restrictive than [Table 7.2.1-1](#), the more restrictive provisions shall apply.

Table 7.2.1-1: Sign Regulation Summary

Sign Type	Dimensional Requirements	Zoning District ⁴			
		All RCO <u>and</u> Residential, <u>and</u> Institutional Districts	All Mixed Use <u>Districts and</u> <u>Institutional</u> <u>Districts</u>	All Enterprise Districts	(Reserved)
Parallel	Size	20-sf	2-sf ¹	2-sf ¹	-
	Maximum Height	14-ft ²	14-ft ²	14-ft ²	-
	Illumination	No	Yes	No	-
Projecting	Size	4-sf	4-sf	4-sf	-
	Maximum Height	12-ft ²	14-ft	14-ft	-
	Illumination	No	Yes	No	-
Freestanding	Size	20-sf	½-sf ¹	1-sf ¹	-
	Maximum Height	6-ft	14-ft	6-ft	-
	Illumination	No	Yes ³	No	-
1. Size is determined per each linear foot of building frontage allocated to the establishment 2. Or ceiling height of the first floor, whichever is less, except in D, D-T, E-LM and NMU-NAC where the sign may be above 14 feet as per Sec 7.2.3(a)4, Sec. 7.2.4 (c)2D, or Sec. 7.2.4(c)6C. 3. Illuminated freestanding signs are not permitted in NMU district. 4. No signs shall be permitted in the Urban Reserve District.					

University of Vermont Medical Center
Comments on Proposed Amendments to the City of Burlington
Comprehensive Development Ordinance (CDO), Last Updated July 18, 2014
January 15, 2016

We have noticed that there are several minor references regarding the UVM Medical Center name change that need to be incorporated into the proposed CDO changes as follows.

PROPOSED: ZA-16-05 – UVM-MC

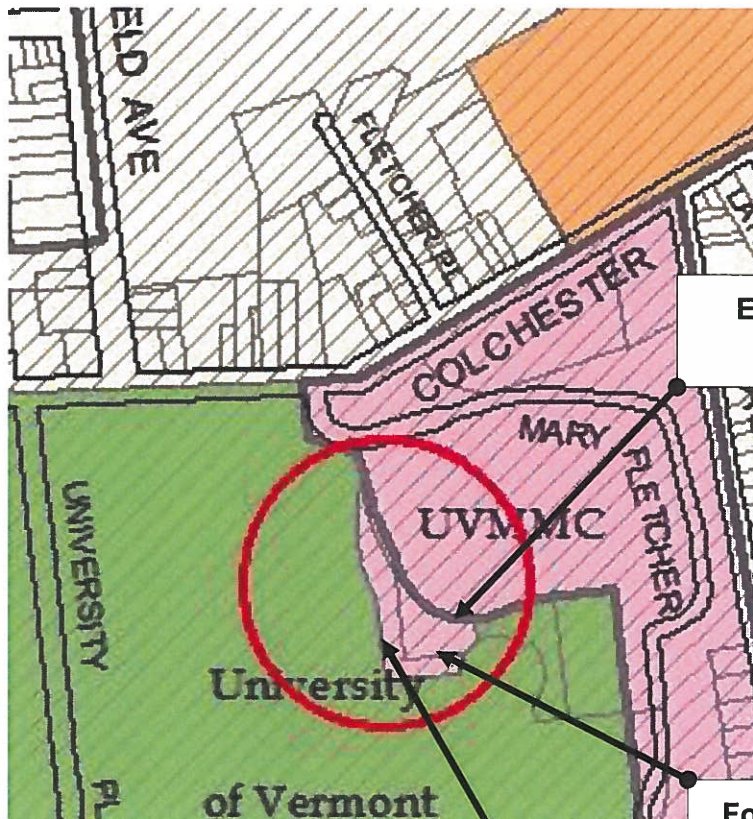
As warned for the Planning Commission Public Hearing – 26 January 2016.

Purpose: This amendment is to revise the BCDO generally to reflect the name change from Fletcher Allen Health Care to University of Vermont Medical Center; to modify the boundary between the UVM Central Campus Core Campus Overlay and the UVM Medical Center Campus Core Campus Overlay to reflect a recent property line adjustment; and to make a correction with regard to the treatment of signs within the Institutional District.

- A. In **Sec. 4.5.2 Institutional Core Campus Overlay** Districts, under (b) Areas Covered, Section 2 needs to change as follows:
2. **UVM Central Campus (ICC-UVM)** allows for an increased development scale and intensity than would typically be found in the adjoining and underlying districts to support continued growth and expansion of the state's flagship academic institution. In contrast to the ICC-~~FAHC~~UVM~~MC~~, this core campus would be expected to be dominantly pedestrian-oriented, with all but the most essential parking provided off-site. Development within this core campus should reflect the institution's core educational values in both design and quality;
- B. Proposed Map changes are shown correctly on the Institutional Core Campus Overlay District map, but are labeled incorrectly on the enlargements. See the marked up map with comments.
- C. Other changes needed for where FAHC is used:

Appendix B – Dimensional Standards – All Zoning Districts

Under Institutional Districts, ~~FAHC~~UVM Medical Center Core Overlay needs to be changed in chart.



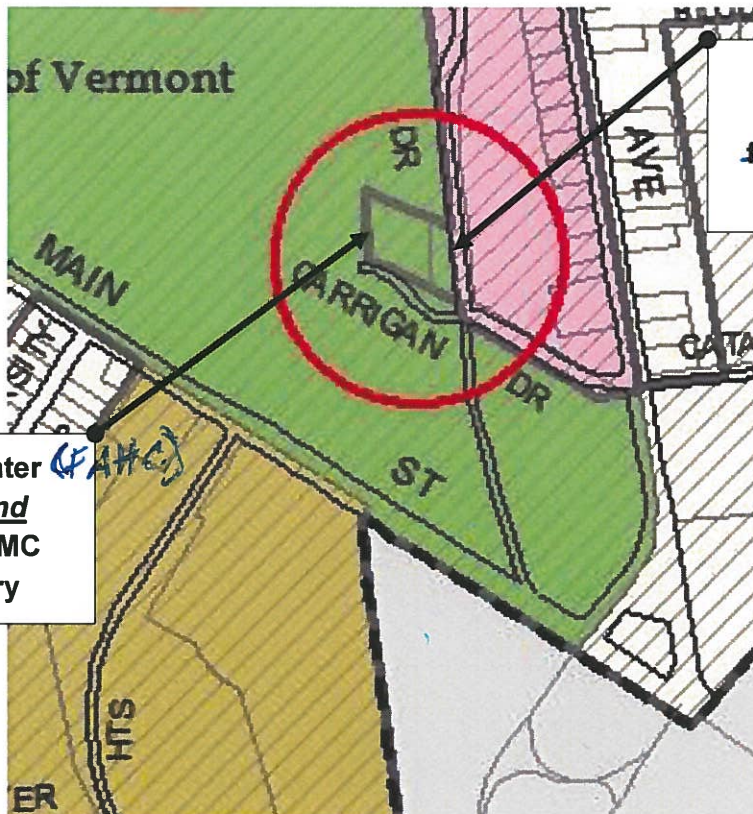
Existing UVMHC (FAHC)
ICC Overlay boundary

Former UVM Medical Center
property boundary

New UVM Medical Center
property boundary and
PROPOSED new UVMHC
ICC Overlay boundary

1/14/16
Changes
Needed to
map

proposed
New



Existing UVMHC (FAHC)
ICC Overlay boundary and
New former UVM Medical Center
boundary

Existing

New UVM Medical Center
property boundary and
PROPOSED new UVMHC
ICC Overlay boundary

former

To: Planning Commission
From: Kimberlee Sturtevant, Assistant City Attorney
Date: January 11, 2015
Re: Proposed Amendment to CDO Regarding So-Called Bianchi Controlled Situations

Pursuant to the request of the Planning Commission and the suggestions/comments received from the Planning Commission Ordinance Committee and the Planning Commission, the following amendment has been drafted to address so-called Bianchi controlled situations where a zoning violation has existed for more than 15 years. This amendment is not drafted to address or modify the City's treatment of legal pre-existing non-conformities (grandfathered situations), just those that potentially fall within a 15 year statute of limitation.

PART 3: NON-CONFORMITIES

Sec. 5.3.1 Purpose

These regulations are enacted for the purpose of governing all aspects of nonconformity, regardless of whether it is a use, a structure or a lot. As defined under Article 13, nonconformity means a use, structure or lot that was legal at the time it was constructed or laid out, but would not be lawful under the requirements of this ordinance as currently in effect. This Part will also address “*Bianchi*-controlled Situations”, in which a zoning violation may not be subject to enforcement under the standards set forth by the Vermont Supreme Court in the case entitled *Bianchi v. Lorentz* and later codified in 24 VSA Sec. 4454.

In combination, these standards are intended to establish the property rights of individuals and organizations in a manner consistent with the overall goals of zoning and to promote the City's general health, safety, and welfare.

Sec. 5.3.2 “*Bianchi*” controlled uses, structures, and lots.

Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the *Bianchi* decision, and the subsequent enactment of 24 VSA Sec. 4454, Enforcement; limitations, ~~are shall be considered~~ violations and do not have any legal protection that are not considered legal to any extent. The following apply to so-called *Bianchi*-controlled uses, structures, and lots:

- (a) Any zoning violation determined to be unenforceable under 24 V.S.A. §4454 shall not be “grandfathered” as a legally pre-existing nonconformity and, therefore, shall ~~in not event~~ be granted the consideration or allowances of nonconforming structures, uses, and lots.
- (b) If a property owner can demonstrate that a zoning violation, use or dimensional, has occurred continuously for 15 years or more, and the City’s Department of Planning and Zoning, Code Enforcement Office, Inspection Services Division of the Department of Public Works or Assessor’s Office has been made aware of the violation throughout the 15 years as demonstrated by written city records within those departments, the City shall take no enforcement action.
- (c) Notwithstanding (b) above, where City records conflict (i.e. the zoning records identify a property as a single family home while the Assessor’s records identify it as a duplex), the zoning records shall control and an enforcement action shall still be appropriate.

- (d) ~~Thus, n~~ No change, alteration, enlargement, ~~or~~ and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.
- (e) No violation that has been determined to be unenforceable may be used to count towards the requirements for a new application (i.e. an illegal parking space while unenforceable, is not legal and cannot be used toward the parking requirements for a new application).
- (f) Nothing in this section shall prevent any action, injunction, or other enforcement proceeding by the city under any other authority it may have, including, but not limited to its authority under Title 18 of the Vermont Statutes Annotated (abatement or removal of public health risks or hazards).

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*David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Principal Planner
Mary O'Neil, AICP, Principal Planner
Anita Wade, Zoning Clerk
Elsie Tillotson, Department Secretary*



TO: Planning Commission
FROM: Scott Gustin
DATE: December 4, 2015
RE: Low Impact Development (LID) Amendment to CDO

Following several reviews and iterations beforehand, the Planning Commission Ordinance Committee recommended approval of this LID amendment at their December 3, 2015 meeting.

This amendment simply allows an additional 10% lot coverage in RL and RM zones for pervious pavement. The purpose of the amendment remains to provide at least a small incentive for installing pervious pavement for improved onsite stormwater management. The amendment merely affords an extra 10% for pervious pavement, like the provisions for decks, patios, and the like.

Proposed CDO Language:

Article 4: Zoning Maps and Districts

Sec. 4.4.5, Residential Districts

(d) District Specific Regulations

3. Lot Coverage

A. Exceptions for Accessory Residential Features

i – vi as written.

vii. Walkways; ~~and/or,~~

viii. Window wells; and/or,

ix. Pervious pavement designed and maintained to infiltrate the 1-year storm event onsite, subject to review and recommendation by the Stormwater Administrator.

Article 6: Development Review Standards

Part 2: Site Plan Design Standards

Sec. 6.2.2, Review Standards, (i) Vehicular Access:

Paragraph 1: as written.

Residential driveways shall be a minimum of 7 feet in width or consist of two 2' driveway strips made of pavement or pervious pavement. ~~Driveway strips shall be accompanied by a paved area for the parking and/or storage of motor vehicles.~~ The maximum width for single or shared access driveways shall be 18'. In a residential district, driveways and parking areas shall be set back a minimum of 5' from side and rear property lines. Driveways that have a slope of 5% or greater (towards the right of way) shall be made of a solid surface including conventional pavement, pavers or pervious pavement.

Paragraph 3: as written.

Article 13: Definitions

Stormwater Administrator: The administrative officer of Chapter 26: Wastewater, Stormwater, and Pollution Control for the City of Burlington.

Pervious pavement: Pervious pavement is a permeable pavement surface with an underlying stone reservoir that temporarily stores surface runoff before infiltrating into the subsoil. Pervious pavement includes porous asphalt, pervious concrete, grass pavers, and plastic grid systems, or their equivalents as deemed acceptable by the Stormwater Administrator.

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/planning

*Yves Bradley, Chair
Bruce Baker, Vice-Chair
Lee Buffinton
Emily Lee
Andy Montroll
Harris Roen
Jennifer Wallace-Brodeur
Holly Ransom, Youth Member*



Burlington Planning Commission

REGULAR MEETING

Tuesday, December 08, 2015 - 6:30 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

MINUTES

Present: B. Baker, A. Montroll, H. Roen, L. Buffinton, J. Wallace-Brodeur

Absent: Y. Bradley, E Lee

Staff: D White, M Tuttle, E Tillotson

I. Report of the Chair

B. Baker opened the meeting at 6:00 pm. A little bit too early to start public forum, so move to reports. The Chair is absent and the Vice Chair has no report.

II. Report of the Director

D White outlined many ongoing projects of the Planning & Zoning department.

M Tuttle is organizing event on January 5th for the Burlington Mall which will include updated design and associated information. The meeting will be held at 5:30 in the Mall.

Form Based Code (FBC) work continues, several more meetings are anticipated before the public process begins. A Montroll reports that they are making progress on the public process portion.

The Burlington College agreement was approved by the City Council at their last meeting.

I Avilix: Is there a meeting regarding the mall next week?

D White: A meeting of the DAPAC is scheduled for Dec 22. It will be announced on the City's event calendar.

M Tuttle: There is a meeting about the Railyard Enterprise Project on Wednesday at 6:30pm at ArtsRiot.

D White: Also of note, on Tuesday, Dec 15th, there is a joint meeting of the Boards involved with the planning and zoning process to update on projects.

III. Public Forum

B Baker opened the Public Forum at 6:36 pm.

S Bushor, City Councilor, Ward I: Ms. Burshor addressed the Commission regarding email chatter about proposed changes in the process for development projects and the consensus that the changes are being driven by the Planning and Zoning Director. She has been asked to speak at the Ward 1 NPA and doesn't wish to add to confusion, but it appears that people are concerned about being shut out from the process. She has also been on the other side before that and experienced not being heard at public meeting which was a motivator for her to run for the City Council. She recognizes the struggles that staff and the community go through to make projects better. There is great concern from the public about the process. The City Council

Tuesday, December 8, 2015

has asked for streamlined permitting process but she would like more clarity from the Director since this is a really important topic. It appears that some specific proposal has sparked this dialogue.

D White: At the last Planning Commission meeting, a proposed amendment to the Major Impact process was reviewed and it seems this kicked off the chatter. He shared an email with Councilor Coburn, explaining that the changes are an attempt to eliminate duplication and redundancy in the process. It doesn't affect the public's ability to participate, but rather changes thresholds for when a project must go through the Major Impact review process.

S Bushor: It is important that the City Council understand that. The NPAs city-wide will be discussing this and the changes need to be clarified. A chart showing the changes, the process and opportunities for public participation would be a great help.

Maggie Standley, Ward 3: Ms. Standley presented information to the Commission members regarding zoning ordinance definitions for day care facilities. She discussed that she has been trying to resolve an issue with her neighbor's home occupation for the last year and a half. She requested that the Commission revise requirements of day care centers operated out of homes, by having all daycares as a conditional use, and requiring a schedule that is agreed upon with their neighbors. She suggests that the Commission revise the code to include some way to verify conditions and provide protections for homeowners.

I Avilix: This conversation and the email chatter also have a relationship to Form Based Code; it's a part of the same concern. The more clarity before the City Council vote, the better.

L Buffinton: It seems that these are good points from M Standley, perhaps this is a subject for the Ordinance Committee. Thought that Police Department had a decibel reader; if it is part of the ordinance, it would seem necessary.

B Baker: Presently, there is a City-wide ordinance that governs noise, not the zoning ordinance.

L Buffinton: That works during the day when there is someone to enforce them, but what about when the Code Enforcement staff is not working.

D White: The Noise Ordinance is enforced by the Police Department, not Code Enforcement. The zoning ordinance currently doesn't apply standards for noise, but could look at tying some type of performance standards to this use if desired.

IV. Agenda

No changes.

V. Committee Reports

Ordinance Committee – A Montroll: Met last week and discussed two items. Shared parking, which has come to the Commission previously, is almost done, but waiting for B Baker to attend to have a discussion about the leasing aspect. Also continued discussion Low Impact Design ordinance, reworked it to focus on RL and RM only. Will come back to the Commission in January.

Long Range Planning Commission – H Roen: This committee hasn't met since the last meeting. M Tuttle is trying to find a schedule for the group to meet based on the Commission's discussion of the economic development element of planBTV South End.

The Joint FBC Committee – Provided by D White's report.

VI. Commissioner Items

None.

VII. Minutes/Communications

On a motion by A. Montroll, seconded by J Wallace-Brodeur, the Commission unanimously accepted the minutes of November 24, 2015.

VIII. Proposed ZA-16-03: Grocery Stores in ELM Public Hearing

B Baker opened the public hearing at 7:00 pm.

D White: This proposed ordinance change makes specific changes to the ELM district at the request of City Market as part of their proposal to establish a second store on Flynn Avenue. It allows for a large grocery, more than 10,000 sq.ft. as a conditional use in the ELM zone only between Home Avenue and Flynn Avenue provided that it does not to exceed 30,000 sq.ft. There is a new footnote #26 to reflect this.

I Avilix: There is a lot of power to be had in changing ordinances. Ward 5 NPA meeting was very supportive of City Market, as is Mr. Avilix. However he also loves Dave's Antiques and the Missing Piece. There is a lot of room on the site and the grocery could be shifted back to maintain the existing buildings. It would be good to give the public, as well as the Commission, a choice through the zoning ordinance to maintain existing uses as well as adding new. Mr. Avilix would like to see a feasible way for the existing businesses to coexist with the proposed grocery store. The buildings represent the South End character, and the having both would provide the multi-use aspect that's discussed. They are allowed uses now, and permitting grocery stores will drive them out. Mr. Avilix hopes the Commission will ask to see an alternative which would examine how the proposed plan and existing businesses can coexist.

C Bates, Ward 3: Ms. Bates is a long-standing City Market member, but completely agrees with Mr. Avilix that she would like to have the existing buildings maintained. She would also like City Market to have a pharmacy and appreciates all the time the Commission has spent on this issue.

LBuffinton: The proposal doesn't limit mixed use, and other uses can continue as far as the Commission is concerned. It is a private decision to relocate those businesses. However, question why the proposal allows grocery stores only 10,000 sq. ft. and larger, but not less than 10,000 sq.ft.? Small markets could be welcome, too.

A Montroll: It doesn't make sense not to include both.

M Standley: Her business is in Ward 5 and she has been active in planBTV South End project as well as being an advocate for the Old North End. She would like clarify that the proposal does include all existing businesses.

M Tuttle: The change does not affect existing uses. Without this ordinance change, a grocery store would not be permitted and City Market may not be submitting a proposal for it. However, another permitted use might make a proposal that would impact the business instead. What businesses the property owner wants on the property is a private decision.

I Avilix: The change would permit the grocery store use, and City Market's plans show the elimination of two small businesses.

C Bates: Can't zoning just allow grocery stores on one part of the property to maintain the existing businesses?

D White: We can't rezone just one small area.

I Avilix: There could be some language for supporting the coexistence of businesses. This is the beginning of changing the way the district is used. How do we value architectural history and mixed use?

A Weinhagan, City Market: Could D White describe the process following this zoning piece? Seems more appropriate for a discussion of the Market's proposal and what mix of uses to occur during the plan review process rather than this zoning amendment.

D White: Creating areas with a mix of uses is the responsibility of the broader context of zoning. The purpose of this hearing is not to address specific design for the proposal, but whether or not this use should be permitted. Design is best explored with the property owner. It is good to raise concerns early in order to engage the property owner and the developer.

B Baker: Somehow need to reach out to the parties involved since we can't zone based on individual lots.

H Roen: I support this change because Ward 5 showed support for the project at the meeting.

B Baker closed the public hearing.

On a motion by L Buffinton, seconded by A Montroll, the Commission unanimously voted to forward the proposed amendment to Council with the addition small grocery stores added as a conditional use in the ELM district between Home and Flynn Avenues.

IX. Proposed CDO Amendment: UVM Medical Center

D White: This is not a public hearing, but a discussion on a number of proposed ordinance changes requested by UVM Medical Center. The Executive Committee directed staff to take on three of the four requests from the hospital. These include:

- Fletcher Allen (FAHC) is now UVM Medical Center (UVMC), so all references to FAHC need to be updated.
- A mistake was discovered in the sign table that conflicts the text, so the correction is recommended to be made to move institutional zones into the mixed use category for sign provisions rather than the residential category.
- A property line was moved that impacts the boundary between UVMC and UVM Core Campus, as well as a piece of land changed hands between the two institutions. It is recommended to change the boundaries of the two overlays to reflect the current ownership.

L Buffinton: So there are two different boundary changes?

D White: One proposed change extends the UVMC overlay boundary and the other extends the UVM Core Campus overlay boundary.

A Montroll: Can you remind us of the differences between the two overlays?

D White: An overlay district modifies the underlying zoning district. Height, the mechanism for measuring height, use, setbacks and lot coverage are the differences. The core campus overlay allows greater lot coverage, restrictions on parking, and building height.

M Lang, Ward 1: Ms. Lang attempted to initiate a dialogue with UVMC in February to point out that a hospital cannot be built on this piece of land. After attempting to settle with FAHC, she appealed to environmental court because FAHC did not ask for a change of use, whether it was a misstatement or oversight. Permits given under false pretenses are not retroactive. Ms. Lang asked the Commission delay this change or require UVMC to reapply and be truthful on their application. The Green Mountain Care Board can take away their CON since the hospital stated that all permits were in place when they applied; the environmental court could adversely affect this.

L Buffinton: If there is a legal case pending, do we compound this if we take action?

D White: Changing the ordinance now doesn't affect the past. The Institutional zone allows hospitals—there is a difference of opinion between the parties. Despite being in two overlays, the hospital was permitted because the height did not exceed the lower of the two overlay provisions. We had not made the overlay boundary change because we had been waiting to see where the hospital expansion would be located.

I Avilix: How is this different from spot zoning?

D White: A hospital use is allowed in either overlay zone. The boundary change does not meet the many tests that apply to spot zoning. There are large swaths of land to which these provisions apply.

M Tuttle: These properties are already contiguous to the overlay that is proposed in each of the changes. Not a small "spot" of zoning that is vastly different from what is surrounding.

I Avilix: Where would there be a definition of spot zoning?

B Baker: It is based on case law, but some basic information could be found online.

H Roen: Would it make sense for the City Attorney to give an opinion on whether this is a change of use?

D White: M Lang's issue is whether the permit constitutes a change of use, not the ordinance change.

On a motion by J Wallace-Brodeur, seconded by H Roen the Commission unanimously agreed to warn a public hearing on the proposed changes.

X. planBTV: South End Master Plan Draft Update/Revisions

M Tuttle: At our last meeting economic development was discussed. At the conclusion of the meeting there was some good direction on a discussion of the Shelburne corridor as a business area as well as a transportation corridor, and some consensus to look at a strategy regarding the policies for land use throughout the Enterprise Zone. Other strategies recommended by staff are to help the plan more explicitly state other goals, such as prioritizing redevelopment and infill sites.

J Wallace-Brodeur: During the process, we heard comments from the public about a conflict between a brewery and a neighborhood. Is there any way to speak to how to mitigate those issues in the plan?

M Tuttle: One element in the reworked housing element is to consider the zoning on the periphery of the ELM district and determine what is most appropriate for a transitional area to create a buffer.

J Wallace-Brodeur: That works for new or redeveloped neighborhoods, but what about existing neighborhoods that aren't likely to change.

D White: There may be a need for a transitional area with some performance standards within the ELM. The City Council is responsible for granting alcohol and special event permits, though.

S Bushor: Remembers when Riverside Avenue became commercial. There were lots of lessons learned at that time which might fit nicely with the South End corridor. Presently we are reacting to a situation; perhaps we can try to integrate activities within neighborhoods in advance of any issues.

L Buffinton: It is really important to incentivize results that we do want and not make the definition of sub-areas too restrictive. Are schools allowed in ELM? Having skills-based schools could help with workforce development.

D White: Vocational and professional schools are allowed, like Champlain's Emergent Media Center.

L Buffinton: Noted a grammatical error on page 11 of the agenda.

J Wallace-Brodeur: Page 40 of the plan talks about setting up for success, but we want technical assistance for more than just artists.

M Tuttle: This is a summary of the arts and affordability tool kit, but it could be better defined within the context of the Plan. Ultimately, the Arts & Affordability toolkit will likely be an appendix to the plan.

D White: There is a need for technical assistance in the arts and for the development to create affordable spaces. The tool kit will bring them together, create new approaches and alliances.

M Standley: At the last LRPC meeting the arts tool kit seemed to be presented as more of an implementation plan. A more diverse group of people involved would improve its function.

M Tuttle: As we discussed, it recommends a number of strategies that will help with the transition to implementation. The toolkit starts with a recommendation to form a collaborative working group.

M Standley: Would like input on the working group members.

M Tuttle: LRPC is working through the draft right now and strengthening the strategies in the plan. This is somewhat different than the working group for implementation.

I Avilix: So then in the future, does the public have to ask to have an item on the Long Range Planning Committee agenda?

M Tuttle: The LRPC will not become the implementation working group. The public can form a working group. The important part is activating the partners that have been involved in this planning process to lead that forward. This can and should have involvement and support from the City in some way, but will not necessarily be led by it.

S Bushor: Did CEDO play a role in other plans that have been developed? Perhaps they should be involved in the next step after this.

C Bates: Has the Blodgett oven property been sold?

D White: It is unclear.

C Bates: Would like to get the steering committee going now.

M Standley: Would second that.

H Roen: Yes, it is good to have an implementation committee.

D White: Would suggest the arts community and SEABA join together to get this to happen, but this is independent of the LRPC.

M Tuttle: LRPC revised the draft housing piece and circulated it to a lot of stakeholders. We envision doing the same thing when we have a revised version of the economic development section. Purpose is to get feedback as we are rewriting the draft.

H Roen: Having the City Council involved as well would be recommended.

L Buffinton: The process needs to be as inclusive as possible.

M Standley: Would suggest asking major businesses to send delegates to meetings of this steering committee.

M Tuttle: Suggests that the Commission continue to work through this element of the draft plan so the LRPC can work on an update.

A Montroll: Is the steering committee proposed to be a strategy included in the plan?

D White: Yes.

I Avilix: There should be a detailed list of who should be on this committee and there should be funding available to help these individuals with the transition to implementation.

H Roen: Agrees that the more it can be fleshed out the better.

B Baker: Purpose of the plan is to describe the program at a broader level, not to include all of that detail. If one of the organizations changes, then the plan is out of date.

J Wallace-Brodeur: This is a very comprehensive plan that needs multiple stakeholders stepping up, all sectors need to be involved so that it is a collaborative effort to get things done. There is a difference between articulating strategies in the plan and setting up a steering committee for implementation, which is more related to our outreach strategy.

D White: The parking studies going on now is a good example. The downtown and waterfront plan talked about the need for a parking study, but was not specific to what those parking needs were.

M Standley: Thanks for the comments from J Wallace-Brodeur. M Standley feels that all parties are ready to come together, and as has been happening for over a year now. She hopes there is some funding left to help support the work and input of these smaller entities.

M Tuttle: Is the Commission ready to refer these elements to the LRPC to rework?

Nods of general agreement by the Commission members.

XI. Adjourn

On a motion by L Buffinton, seconded by A Montroll, the Commission unanimously adjourned at 8:34 pm.

Bruce Baker, Vice Chair

Signed: December XX, 2015



Elsie Tillotson, Recording Secretary

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
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(802) 865-7144 (TTY)
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Burlington Planning Commission Minutes

Tuesday, January 12, 2016 - 6:30 pm,

PC Present: L. Buffinton, H. Roen, J. Wallace-Brodeur, Y. Bradley, A. Montroll, B. Baker, E Lee
Staff: D White, M Tuttle, E. Tillotson, S Gustin

I. Public Forum

Y Bradley opened the public forum at 6:35 pm.

John Alden, representing Rick Bove: Bove is owner of a property on George Street. This property is under appeal from a Development Review Board decision. Alden presented a four page request to the Planning Commission to move the zoning boundary line in relation to the Bove's property on the Pearl Street corridor. Alden stated that the area is not as vibrant as it should be and requested that the Planning Commission evaluate this request.

Y Bradley: Which Planning Commission committee should receive this request?

Commissioners referred the request to its Ordinance Committee to review and return to the Commission with a recommendation.

II. Report of the Chair

Y Bradley reported that the Commission has been preoccupied with form based code and planBTV South End discussions, and that he appreciates the Commission's diligence in the proceedings. Y Bradley also reported that there is a long list of additional items that will be coming before the Commission.

Finally, Y Bradley reported that he, A Montroll, and D White met with the Mayor and Lee Einsweiller, a consultant for form-based codes and that it should be a great public discussion regarding the code on Wednesday evening.

III. Report of the Director

D White reported that the last few weeks had been very busy with mall and form-based code meetings. The Burlington Town Center redevelopment presentation on January 5 was a very positive evening. Due to lack of space for all who wanted to attend, there will be another open house on January 21, 5:00 pm in Contois Auditorium. This week has included many form-based code meetings. The next two mornings are an open Q & A with area planners and design professionals.

A Montroll: When will the mall project come to the Planning Commission?

D White: After the City and the owner have established a Memorandum of Understanding.

A Montroll: What changes are proposed?

D White: Building height and encroachment into the view corridors are the biggest concerns.

J Wallace-Brodeur: Are there categories of public concerns about the project?

D White: As this point, height, including concerns about uphill residents' views being blocked by a large structure, and the Pine Street Arcade. There have been questions about whether the City could do more to support a vehicular connection at Pine. D White and the directors of Public Works and CEDO spent

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discussing the possibilities and will ask the Technical Team to continue to consider this challenging and complex issue.

M Tuttle: Concerns have also been shared about how the Mall will manage the retail sector in the interim and how implementation of the affordable housing requirements will occur.

L Buffinton: When Pine Street is being considered, will we look at all possibilities?

D White: Yes.

IV. Agenda

No changes.

V. Health Impact Assessment of planBTV South End

Amy Malinowski, VT Department of Health: A Malinowski provided a presentation about planning for community health and the Health Impact Assessment (HIA) tool.

She shared that in 2015, the department conducted an assessment of the South End in conjunction with the planBTV South End process. The HIA examines planning, the built environment, and behavior/lifestyle in a systematic process. planBTV South End was the third HIA that the local office has conducted. For Burlington, improving physical activity and mental health were determined to be the most important aspects for health. Street connectivity, the opportunity for recreation and affordable housing were the components with the strongest interest expressed by the public.

L Buffinton: Are recommendations about increased connectivity incorporated into planBTV South End?

D White: Yes. Important for the Commission to be thinking broadly about we make plans and how that impacts the health of the community when we're building new places.

A Malinowski: One aspect is to include health-supporting language in the master plan which at present is not explicitly stated. Full report of recommendations on the planBTV South End Health Impact Assessment have been submitted to the Planning Department and on the online tool.

D White: Affordable housing impacts mental health in terms of the stress associated with ensuring a safe and affordable place to live.

A Malinowski: Recreation recommendations, the concept of blue space, (Lake Champlain) is a great resource. Community services could be enhanced to allow people to be able to enjoy the lake.

M Tuttle: The report and specific feedback has been provided on the website where all feedback on the plan have been posted.

A Malinowski: While this tool does not need to be used for every study or plan, this is a great use of the state health department. Please contact in the future.

Y Bradley: Thanks for great presentation.

VI. Proposed CDO Amendment: 15 Year Statute of Limitations

M Tuttle: You received a memo on this item in the revised agenda this morning.

Kim Sturtevant, City Attorney: Would we like to have a background discussion on this proposed amendment?

B Baker: I assume that Marc Weiner who is a title attorney is here for this discussion?

M Weiner: Affirmative

K Sturtevant: This is the third discussion of this issue. The draft was initiated by the Commission in an attempt to address the interpretation of statute of limitations, relative to continuing violations. These changes apply to the non-conformity section. Does not eliminate non-conforming uses or change enforcement of Bianchi-controlled violations. Language is an attempt to establish a bright-line for the 15 year statute of limitations.

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L Buffinton: In section b, of the proposed language, says "throughout" 15 years, which seems problematic due to implied continuity.

D White: That is the intent. It refers to the continued activity associated with the violation.

L Buffinton: Implies continued awareness on the part of the City. Also, section c, the statement about conflicting records, seems to be problematic, in the example of zoning records conflicting with a tax record. And finally, concerned with section d, if a historic building burns down, are we saying that it can't be rebuilt the way that it was?

E Lee: Does a complaint about a property initiate the 15 year clock? Property for which neighbors have submitted a complaint as an example.

Commissioners discussed whether or not a specific example should be discussed to help the Commission understand the discussion; Commissioners permitted E Lee to share materials brought to the meeting.

E Lee: Provides an example of a property for which the site plan permits five cars, with photos of 14 cars. Neighbors have filed with Planning & Zoning in 2012, but no response. Does this 2012 letter begin the 15 year clock for something that is illegal to be permitted?

D White: As an example, if there is no zoning permit on file, but 20 years ago there was a building permit issued or a minimum housing inspection that ensures that this "thing" that was built was safe and routinely inspected. That is the kind of documentation that the City would use to determine whether or not the 15 years had been met. Additionally, the clock doesn't start when the City learns about it, but rather, look back into historical records to see when the "thing" started.

Y Bradley: We need to address E Lee's question about whether a complaint does/does not start the clock.

D White: Need to provide clarifying language about what constitutes notification of a violation.

B Baker: Official submissions should matter.

E Lee: What about situations in which someone doesn't get a permit for something and a neighbor complains but the City never acts on it?

B Baker: Need a legal standard for what constitutes awareness.

J Wallace-Brodeur: There is a difference between a letter of complaint and an actual notice of violation. Just because a neighbor complains about a violation, doesn't mean there's actually a violation. Filing a letter of complaint is questionable in terms of how it is used in this case.

H Roen: There is agreement that we are talking about a zoning violation as notification, not a letter of complaint.

E Lee: How is a decision made to determine whether or not the violation has taken place?

B Baker: The point is that Planning & Zoning and Code Enforcement have to evaluate whether or not they act on a complaint.

M Weiner: Issue is if we know there's a problem and we haven't done anything about it for 15 years, that's the point when the homeowner needs relief from potential enforcement of a violation. 15 years is a long time to not do anything.

B Baker: It is easy to write a violation memo. This memo and associated fines exerts enormous pressure on a property owner to settle a problem. City should be obligated to write that letter.

D White: Yes, the City should respond either as a notice of a violation or that there's no violation. We are not making these things legal; we're just not enforcing them. They do not enjoy the benefit of being non-conforming, which is that it is legal. These situations do not get to rebuild if it is lost, where non-conforming uses are entitled to.

K Sturtevant: They enjoy provisions to be expanded, to count towards a new use of property, to rebuild.

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B Baker: Can we agree that complaint submitted to the City should not be deemed a city record?

A Montroll: Unless the City responds to a complaint to confirm it as a violation.

Y Bradley: In reality we're talking about the principle of what does the city know and do? There are a tremendous amount of properties which are non-conforming. 15 year status goes hand-in-hand with the Clean Hands issue. There are problems with the City's records. Title's need to be certified and this seems too murky for that to happen.

B Baker: When the Bianchi ruling first came out it was difficult to have access to zoning records; it is somewhat easier now. One thing that is concerning is that advisory opinions have been relied on for years.

M Weiner: Problems with records are another reason to allow relief to the owner after 15 years; not appropriate for innocent property owner to be penalized for poor records. Some owners want more than an advisory opinion, should ask for a formal determination.

D White: Every question that gets asked of the Planning & Zoning Office takes the form of an opinion or interpretation. When we're talking about these issues, should be applying for a decision. This gives the office a mechanism to answer questions about these issues, by giving a determination.

B Baker: But the Department has been issuing advisory opinions and leading people to believe that they're determinations. People haven't been led to believe that they need to follow a process for getting a determination. This is the problem.

S Gustin, Planner: For a determination depending on where you look, you find different answers. The records are inconsistent. When someone comes in to request a determination, there is notice to their neighbors. Advisory opinions can be issued at any time.

B Baker: Should include a disclaimer that if want a formal determination, need to request one.

D White: This all speaks to why we need to outline this process.

L Buffinton: Confusion about the difference between written opinion and a determination. Has an opinion or determination ever been reversed or do they stand?

D White: A determination ought to stand on its own.

K Sturtevant: They're made based on the information provided and available.

A Montroll: But if there's no notification about an opinion, and there's an oversight in information provided, there's no mechanism for a neighbor or other party to weigh in.

Y Bradley: We are talking about two different things. Concern is in the transfer of a property and you have something in writing that says one thing, but find out that it's not. Saying it's not a determination and doesn't have weight is not acceptable. Will need to continue this discussion; however, not willing to live with section c in the proposed language. Planning & Zoning should not trump Assessor's Office just because there isn't a zoning permit.

J Wallace-Brodeur: We have to pick one source as the authority. We may disagree with how this is written, but we do need to say which document will provide the foundation to resolve the issue.

D White: The assessor's record is based on actual inspections; it is what exists, not what may have been permitted to exist. The conflicting nature of these records could be the proof of a violation.

A Montroll: Section c is simply saying there is saying there is a conflict between two sources of city records. We need to answer the question about how do we resolve the conflict.

B Baker: The principle of the Bianchi ruling is that the City does know, but does not act. Therefore, needs to be resolved in favor of the property owner. If the City has known about it consistently for 15 years and has not acted on it, then they're not able to enforce it.

K Sturtevant: We need to know whether there's direction for the City to revise this language. E Lee provided language about notifications and a response-back trigger.

As approved by the Burlington Planning Commission on January 26, 2016.

D White: Points of discussion include: resolution of conflict in City records and that complaints that have not been responded to do not constitute knowledge on the part of the City.

Y Bradley: This discussion will continue at our next meeting. This will be the first agenda item on the next meeting.

D White: Two public hearings at next meeting so this will follow.

VII. Proposed CEDO Amendment: Low Impact Design (LID)

Deferred to next meeting

VIII. planBTV South End Master Plan Draft Update/Revisions

Deferred to next meeting.

IX. Committee Reports

No reports.

Commissioner Items

No reports.

X. Minutes/Communications

No action.

XI. Adjourn

On a motion by A Montroll, seconded by L Buffinton, the Commission unanimously adjourned at 8:07 pm.

Y Bradley, Chair

Date

E Tillotson, recording secretary

As approved by the Burlington Planning Commission on January 26, 2016.

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

Yves Bradley, Chair
Bruce Baker, Vice-Chair
Lee Buffinton
Emily Lee
Andy Montroll
Harris Roen
Jennifer Wallace-Brodeur
vacant, Youth Member



Burlington Planning Commission Minutes

Regular Meeting

Tuesday, January 26, 2016 - 6:30-8:00 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

Present: J Wallace-Brodeur, L Buffinton, H Roen, A Montroll, B Baker, Y Bradley, E Lee
Staff: D White, M Tuttle, E Tillotson, S Gustin, K Sturtevant

I. **Agenda**

No changes

II. **Report of the Chair**

Y Bradley shared that he was in touch with a member of the public that was interested in discussing an item regarding small daycares and an item that may have been overlooked in the zoning ordinance.

Y Bradley hopes that Commissioners have been able to attend the Burlington Town Center presentations that have been making the rounds. L Buffinton noted that she spoke only as a Burlington resident.

M Tuttle: With a smaller group at the January 21 event, they were able to have more focused discussions and a lot more time for on one-on-one discussion. The public was supportive of the proposals.

III. **Public Forum**

Y. Bradley opened the public forum at 6:35 pm.

Barbara Collins, Ferguson Avenue resident: B Collins shared that in April 2015 she received notification of a small day care permit application in her neighborhood, and understood it to be the same as a home day care care with a maximum of six children. However, she has since discovered that five employees, and up to 26 children are allowed under zoning ordinance section 5.4.1. B Collins advises the PC to consider an amendment that permits child cares of that size only in the enterprise and mixed-use zones, and limits a small day care in residential zones to 6 or 8 children.

L Buffinton: All day care sizes are allowed in all residential zones?

K Sturtevant: Yes, and up to 6 children are allowed by state law.

B Baker: A key factor to consider is whether day care is now available.

E Lee: There is a day care crisis, most day cares have a year-long waiting list.

On a motion by A Montroll, seconded by B Baker, the Commission unanimously agreed to refer this issue to the Planning & Zoning Ordinance Committee for consideration.

S Gustin: On Thursday, February 5, the Ordinance Committee will take up the small day care issue regarding another request and invited B Collins to attend the discussion.

This agenda is available in alternative media forms for people with disabilities. Individuals with disabilities who require assistance or special arrangements to participate in programs and activities of the Dept. of Planning & Zoning are encouraged to contact the Dept. at least 72 hours in advance so that proper accommodations can be arranged. For information, call 865-7188 (865-7144 TTY). Written comments may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401.

Eric Morrow, Ward 2 resident and architect: Concerned about the height of the proposed mall. He has sent an email to Commission members and would be happy to help with massing models and height considerations.

A Montroll: E. Morrow has the best attendance of anyone including committee members at the FBC meetings. Thank you for coming and introducing yourself to the full Commission.

Y Bradley: Thank you very much, impressive effort.

Joel Rippa, resident: Has anything happened with Item 8 on the agenda by the Commission?

Y Bradley: It is getting close. It is still being polished with a few items to be resolved and is on tonight's agenda for discussion. Planning sometimes takes a long time.

J Rippa: His situation goes back to early 80s when he bought an apartment house for his parents and unbeknownst to him it contained a non-conforming third unit. He needs resolution to this status.

Jill Diemer, landlord in Burlington: Wishes to address the 15 year statute of limitations on a property that she and her husband own on Hickock Place. The property is an 1894 structure that has historically operated as an apartment house. In order to sell the property, they wished to have a report to grandfather the occupancy of the building. Since they've owned the property beginning in 2003, the Code Enforcement has done housing inspections, and she has signatures from departments that there were no zoning violations at the time of purchase. She was referred by Bill Ward, Director of Code Enforcement to Scott Gustin, in Planning & Zoning to get a determination for occupancy; she has provided leases and other pertinent records but the City continues to ask for additional records dating further back to 1970 and 1946. The previous owner passed away, but she does have a detailed affidavit as evidence. Despite communications with Code Enforcement and Planning & Zoning, the city attorney reviewed this and she was asked to provide information dating back to 1946. J Diemer expressed her disbelief at the situation and shared that this will represent a sales loss of \$100,000 if she is not able to obtain grandfathered status. City departments need to communicate better, records need to be better, the 15 year statute of limitations will help a lot. She hopes this matter is on the forefront of the Commission discussions. She shared paperwork regarding her property with the Commission members.

Y Bradley: Thank you for coming. We hear you loud and clear, and you are welcome to stay for discussion.

B Baker: Do we have zoning ordinances back to 1946?

D White: Yes.

Y Bradley: Suggested a change to the agenda since the time certain for the public hearings was missed. Skip to hearing on ZA-16-05 regarding UVM and then to the hearing on ZA-16-04 regarding the Zoning Administrative Officer.

IV. Proposed ZA-16-05 UVM Medical Center Public Hearing

Y Bradley opened the hearing at 7:07 pm.

D White: Provided a brief summary of the amendments to the Institutional Core Campus Overlay. This amendment was previously discussed and warned. Agenda includes a memo from G Henderson-King, of White & Burke, delineating a few corrections to the original map provided to the Commission.

There were no members of the public present to speak on the proposed amendment.

On a motion by J Wallace-Brodeur, seconded by L Buffinton, the Commission unanimously approved the closing of the public hearing, and forwarding the amendment as drafted with corrections, and the required report, to City Council for public hearing.

V. Proposed ZA-16-04 Zoning Administrative Officer Public Hearing

Y Bradley opened the hearing at 7:15 pm.

D White: Reiterated that the amendment was intended to reflect recent changes in the department. We now have two principal planners and an assistant planner for development and permit review, and there are others in Code Enforcement who cover some of these duties.

On a motion by A Montroll, seconded by H Roen, the Commission unanimously approved the closing of the public hearing, and forwarding the amendment and required report to City Council for public hearing.

VI. Report of the Director

D White: A few weeks ago, we hosted Lee Einsweiller to discuss the Form Based Code. In addition to meetings with the FBC Committee and Planning Commission, his visit included meetings with area planners and with the Burlington design professional community. It was a very valuable opportunity to discuss the Code.

Department has filled its last vacancy with the addition of Ryan Morrison, formerly employed by the Town of Waterbury as the Zoning Administrator; he has additional experience in Washington State.

The permit review/reform process is beginning, and is being led by Chief Innovation Officer Beth Anderson. There have been three responses to an RFP, and narrowing of the applicants quickly in order to hire a firm to begin the process. He expects a contract to be signed within the next three weeks.

Last week there was an encore meeting regarding plans for the Burlington Town Center. There was a more engaged conversation with the public. Department continues conversations about what the zoning amendment could look like to accommodate the redevelopment. The developer has started the process by attending a technical review meeting, and representatives will begin meeting with the Neighborhood Planning Assemblies.

Another upcoming zoning amendment involves Burlington College. The Department is currently working on this with hopes to have something in place this spring. Both the Burlington College and Burlington Town Center amendments will be important and time sensitive.

A Montroll: For the Town Center amendment, what aspects of zoning other than height will be addressed?

D White: FAR (floor area ratio) and setbacks. Additionally, working to incorporate urban design standards similar to what will be required with FBC.

A Montroll: The FBC process continues, the committee is still working and need to have a few more meetings. At this point they are talking about the public process with the awareness that people will get involved when it goes to City Council. It makes sense to bring it to the NPAs. He believes it will be ready for the Commission in a month or two, possibly March or April as they are getting close to conclusion. After that it will then move to the City Council.

H Roen: This is the time to get people involved.

VII. Proposed CDO Amendment: Animal Boarding/Kennel/Shelters

S Gustin: This is pretty straight forward based on a request by Megan (Masha) Sterns to permit a downtown doggie daycare. The Ordinance Committee has discussed this proposal for the daycares as conditional use, with the assumption that it be fully enclosed.

L Buffinton: Will this be subject to licensure, perhaps from a different department, and will there be any limit on the number of dogs?

A Montroll: Is there an animal limit under the kennel description? The City Council would need to create a licensure process.

Y Bradley: Council should include an agreed upon maximum capacity.

H Roen: There should be a maximum number, there should be a definition.

D White: To be considered a a kennel, definition states that there are more than four dogs. There is likely to be a reference to AKC standards. If there is no licensure system in place, then an amendment that refers to one means nothing until that is established. It still needs to be warned for public hearing so it will come back to the Commission again.

Y Bradley: We should send a memo to City Council to consider a limit on capacity as well as a process for licensing and inspection.

L Buffinton: Have other cities done this?

On a motion by A Montroll, seconded by J Wallace-Brodeur, the Commission, with recommendation to provide Council a memo with additional details, unanimously approved a motion to warn this amendment for a public hearing.

J Rippa: Will traffic to accompany this activity be a concern?

S Gustin: That should be addressed as part of the conditional use process.

VIII. Proposed CDO Amendment: 15 Year Statute of Limitations

L Buffinton: Has two concerns, and thinks the Commission needs to work on this. Need to continue to discuss what constitutes the City having knowledge based on 15 years of records and the provision about discontinuance or reconstruction or after 50% or more is burned. Is it not possible to rebuild in the same footprint if it is non-conforming?

D White: The difference is between a legally non-conforming use which becomes grandfathered, and a use that was not legal at the time it was created. The key is how does that change over time? With 15 year limitations we're saying that either it wasn't legal at the time, or we can't determine if it was legal, and we are precluded against taking action against them—it's an unenforceable violation.

L Buffinton: We need better explanations.

K Sturtevant: There is a lot more to this whole section.

B Baker: I don't think it is clear enough. When you drill down, you come out with more questions; it forces staff to make decisions which require extreme depth of information. The Town of Colchester issues a certificate to say that they will not enforce a violation. Burlington's situation is fundamentally unfair; people have made good faith efforts so there needs to be a standard of proof and the ability for the department to make a determination based on clear standards.

D White: We are not talking about situations in which something is okay. These are still violations but won't be enforced against. A separate issue is that perhaps we need to do anything that occurred previous to a certain time we put a CO in place without a fee. It's important to understand whether something is grandfathered, meaning it had approval, or if it is a violation.

A Montroll: What is the practical difference?

D White: I don't know that there is for Burlington, a determination documents that research has been done.

A Montroll: Is one of the practical differences that a grandfathered property can be changed but an unenforceable violation cannot be?

D White: Yes, the violation can't be altered in any way except to bring it into full compliance.

B Baker: All of these situations should be spelled out precisely. There's no definition of unenforceable violation.

D White: That's what we're trying to do with this ordinance amendment.

Y Bradley: I understood that there was a common consensus for the Commission that distinguishing between departments is not fair to the average person. People see the City as the City and then get blindsided based on an understanding of the City representing something different from a previous opinion. Perhaps these should just be grandfathered. Seems to be resistance on the part of the department to do what the Commission is asking you to do. Our Commission's job is to get a solution for the public.

D White: We all want a solution. But non-conforming uses are defined by statute and case law.

A Montroll: Can we have another category of non-conformity?

J Wallace-Brodeur: We don't want to create a situation where we can't address an egregious violation. We want to be sure; (d) might be the critical section, but we need to be careful about unintended consequences for things that were illegal in the first place.

H Roen: J Wallace-Brodeur has a good point.

E Lee: One thing that keeps coming back is that there should be public notice and process. There is no public input.

K Sturtevant: The difference is between RH and the other residential zones.

B Baker: J. Diemer's issue is a different issue.

E Lee: I agree we need a different avenue. But, community pushback created the maximum of four unrelated persons amendment. But if doing this overturns this ordinance, and all you have to do is get a letter from staff that you can keep doing it, there will be a lot of people upset.

B Baker: Staff didn't raise the issue that we would have to go back to 1947 when we considered the unrelated persons ordinance.

K Sturtevant: The reason 1946 definition was raised was because of a question by a Development Review Board member. The family definition came in 1970, in the form of a court order, and stayed that way until 2000.

J Diemer: This situation creates a huge black mark and she wouldn't have bought her property if she had realized the situation.

E Lee: We want to help, but need to understand the consequences and think about if there is a middle ground.

A Montroll: Fine with the concepts described in (d). What is our experience with these types of violation/compliance? What kinds of situations have occurred beyond correcting windows, where we have discovered a 20 to 30 year old violation and imposed a violation for an owner to bring into compliance?

K Sturtevant: There have been situations with additional units, and the occupancy questions is becoming more predominant.

A Montroll: Which ones have caused major concerns? Yes, they're violations, but where have the caused major issues in the neighborhood or health and safety issues.

K Sturtevant: There have been situations about safety of units in basements or attics.

A Montroll: What we are discussing doesn't excuse this kind of situation, right?

D White: It should not.

K Sturtevant: The other is occupancy which has become more of an issue. There was a period of time where people were trying to come into compliance after the 2000 ordinance change. But now, City departments have received more and more complaints about this.

B Baker: But it's impossible to come into compliance on these things without writing a \$100,000 check.

A Montroll: It is important to understand what kind of violations we need to bring into compliance. It seems that there are two levels of complexity in this question. Some are easy and less controversial—things that are not technically correct but don't have an impact on neighborhoods. And then there are ones that have a major impact on neighborhoods and safety.

Y Bradley: Do we refer this to ordinance committee?

Commission disagreed.

H Roen: Based on concerns voiced by E Lee and J Wallace-Brodeur about grandfathering everything, should we thread that needle by basing decisions on whether the City knew and tried to do anything?

E Lee: A solution could be where someone could go to the DRB, resulting with conditions put on property. Any process needs to be transparent so that the neighbors know what is going on. Mitigation is a reasonable approach.

Y Bradley: Why should someone have to go to the DRB have to give permission when you purchased a property that the City said was ok. When the four unrelated occupant regulation was passed, it was meant to send a message and stop speculation that people could increase density in buildings. It was meant to be a different thing than it has turned out to be.

E Lee: Disagree. The people who worked on it meant it to do just what it does.

Y Bradley: There was a general understanding that properties that already existed that way would be grandfathered as long as they were legal under the previous ordinance.

L Buffinton: If there is a written determination then things should be ok. There must be a way to make it cleaner, more secure.

D White: The Colchester letter is not saying that the property is in compliance; it's recognizing an unenforceable violation. This is not a hard thing to do—our records for 15 years are pretty good.

A Montroll: How would a letter like this impact neighbors' rights to issue a complaint?

Y Bradley: This discussion needs to continue at the next meeting.

K Sturtevant: Suggests that she work on revising the ordinance based on some items the Commission seems to be in consensus on.

IX. Proposed CDO Amendment: Low Impact Design

This item was postponed to a future meeting.

X. Committee Reports

Long Range Committee: H Roen reports a very good meeting at SEABA concerning planBTV South End. People were talking about four sub zones within the South End area and he anticipates most of the discussion at the meeting this Thursday afternoon will involve this subject.

Ordinance Committee: B Baker reports that the Ordinance Committee talked about dog kennels.

XI. Commissioner Items

E Lee: The Residential Parking Plan was accepted by the DPW Commission last week. Process went really well and a lot of changes have been made to original proposal.

M Tuttle: Addresses the traffic studies conducted by the Department of Public Works. The DPW Commission has accepted the study despite the consideration that parking permit numbers are too high. The Commission will implement the recommendations with the understanding that they can be changed in the future.

E Lee: It seems that the number of parking permits is higher than they should be, but overall the study produced quite good results.

XII. Minutes/Communications

On a motion by L Buffinton, seconded by H Roen, the Commission unanimously approved the minutes of December 8, 2015.

On a motion by A Montroll, seconded by B Baker, the Commission unanimously approved the minutes of January 12, 2016.

XIII. Adjourn

On a motion by L Buffinton, seconded by E Lee, the Commission unanimously voted to adjourn at 8:31 pm.



Y Bradley, Chair

Signed: February 11, 2016



E Tillotson, Recording Secretary