

Burlington Planning Commission

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www.burlingtonvt.gov/pz

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

Special Meeting of the Burlington Planning Commission with Development Review Board, Design Advisory Board, & Conservation Board

**Tuesday, January 7, 2020, 5:00 P.M.
Contois Auditorium, City Hall, Burlington**

AGENDA

I. Agenda

II. Public Forum- Time Certain 5:15 p.m.

III. Update on Department Reorganizations

The staff will provide an update to the boards on the ongoing reorganization of the former Planning & Zoning Department and the creation of the Department of Permitting and Inspections and the Office of City Planning.

IV. 15 Year Statute of Limitations

The City Attorney will provide an update to the Commissions about the 2019 VT Supreme Court decision regarding the application of the 15-year statute of limitations to use violations.

V. Housing Summit Zoning Ordinance Reforms

Staff will provide an update on the three zoning-related policy reforms that emerged from the Mayor's Housing Summit in 2019.

VI. Update on FY19 & FY20 CDO Amendments

Staff will provide an update on amendments to the *Burlington Comprehensive Development Ordinance* that were adopted by the City Council in FY19 and to-date in FY20.

VII. Commissioner Round Table

VIII. Adjourn

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

Burlington Comprehensive Development Ordinance

Summary of Amendments in 2019

Joint PC, DRB, DAB, CB Meeting | January 7, 2020

Amendments considered in 2019

ZA-18-07: Conditional Use Exemptions **Adopted**

Remove an exemption in Article 3 to ensure that change of use and rehabilitation involving Conditional Uses are subject to Conditional Use standards.

ZA-19-02: Additional Unit in RL **Expired**

Remove a provision that enables an additional unit to be added to existing two-family or multifamily properties in Residential Low Density districts.

ZA-19-03: Parking Amendments **Expired**

Revise parking requirements to include standards for art studio, revise daycare/preschool standards, enable expanded provision for tandem parking for residential uses, clarify standards for front yard parking.

ZA-19-04: Trees, Junkyards, Cross Reference **Adopted**

Relocate tree cutting standards, correct a cross reference, and revise junkyard definition and provisions.

ZA-19-05: Density Calculation **Adopted**

Clarify the methodology used to calculate the permitted number of units based on lot size and permitted density. (Was ZA-18-04, which expired.)

ZA-19-06: Article 7 Signs **Adopted**

Comprehensive revision to the sign ordinance.

ZA-19-07a: Commercial Uses in ELM **Adopted**

Allow performing arts centers up to 15,000 sq.ft. along Industrial Parkway, creating new R&D and Technical Office uses, establishing a req. that more than 50% of GFA on lots south of Home Ave in the Enterprise District are industrial/R&D/arts.

ZA-19-07b: Commercial Uses in ELM- Banks **Adopted**

Permit banks within the Enterprise District.

ZA-19-09: Zoning Administrative Officer **Adopted**

Update CDO to reflect result of March 2019 Charter Change regarding the appointment of the ZAO.

ZA-19-10: Inclusionary Zoning **Adopted**

Comprehensive update to Article 9 regarding Inclusionary Zoning Requirements, and related sections of the CDO. Result of a 2+ year study/public process.

ZA-20-01: Form District 5 Boundaries **Adopted**

Clarify the methodology used to calculate the permitted number of units based on lot size and permitted density. (Was ZA-18-08, which expired.)

Article 7: Signs

Summary of Comprehensive Revision to BTV's Citywide Sign Ordinance (ZA-19-06)



Objectives

- A comprehensive revision to Article 7 pertaining to Signs, and related BCO sections
- Content Neutrality
 - *In response to Reed v. Gilbert (2015) and other First Amendment-related case law*
 - **Time, Place and Manner** restrictions
 - *Commercial speech primarily*
- Consistent with Current Requirements/Specifications/Limitations
- Clarity and Flexibility for ease of use, consistent across city
- Focused on Objective Standards based on Sign Type
 - *Quantity, Dimensions, Location, Total Area, Lighting*

General Provisions: Part 1

Exemptions *(expanded)*

Repair/Replace Content, Highway Signs, Flags, Address, Property Management and Directional, Inside Buildings, Vending Machines and Gas Pumps, Within an Athletic Field or Complex, Historic Marker, Temporary Signs, and Murals (non-commercial artistic expression)

Prohibited

On roof, off-site, interfere with pedestrian/vehicle movement, flashing/animated/moving, wind blown, inflatable

Temporary *(new/expanded)*

30-day signs & banners

Construction Site – Freestanding Site, Site Wrap, Window Wrap

Elections and Real Estate

While content-based, SCOTUS has recognized special distinctions for these types of signs

Must be allowed and treated fairly

Time and manner restrictions – number of signs and duration/frequency distinctions

Non-Conforming

Discontinuance and Removal *(new)*

Application & Submission

Calculation of Area and Height

Lighting

*Luminance, Internal/External/Direct Illumination
Electronic Changeable Message (gas stations,
Marquee and Monument dep. on use)*

Alternative Compliance *(new)*

Sign Types: Part 2

Awning and Canopy

Band Sign

Blade Sign

Directory Sign

Freestanding Sign

Freestanding Yard Sign

Marquee

Monument Sign

Outdoor Display Case

Projecting Sign

Sandwich Board

Wall Sign

Window Sign



Sign Types: Part 2

Includes objective standards for each Sign Type regarding:

- *Description*
- *Quantity*
- *Dimensions (max & min) - Height, Depth, Width, Projection, Area*
- *Location*
- *Height*
- *Total Area*
- *Lighting*

Allows multiple Sign Types on a building/property in a variety of combinations

Identifies zoning districts where each Sign Type is permitted

7.2.2: Awning & Canopy Sign



Description

This Sign type consists of one or more faces, and is integrated within or part of an Awning or Canopy extending over a principal entrance and/or first floor windows on a Primary or Secondary Frontage, or spanning across an individual storefront or an entire building façade.

Specifications

Location	Only Awnings and Canopies on ground floor doors or windows may contain signs.
Quantity (max)	• 1 per Awning • 3 per Canopy
Area, Lettering (max)	• 75% of the area of the Valance or Canopy face • 25% of the area of the sloping plane of an Awning
Height, Lettering (min/max)	• 5-in min; 10-in max on the Valance, or 18-in max on sloping plane of an Awning • 24" max. on a Canopy

Miscellaneous

Canopy Signs may be placed on the face and sides of the Canopy, or extend above or below the Canopy face provided 8-ft min. clear height above the sidewalk is maintained.

Awning Signs may only be placed on the Valance or sloping plane of the Awning, not both.

Awning Signs shall not be internally illuminated or backlit. Canopy Signs may only be backlit.

Awning or Canopy Signs in a Residential district shall not be illuminated.

Any encroachment into or over the public right-of-way must also be approved by the Dept. of Public Works and/or City Council as may be applicable.

Sign Type Combinations

	Awning & Canopy Sign	Band Sign	Blade Sign	Directory Sign	Freestanding Sign	Freestanding Yard Sign	Marquee	Monument Sign	Projecting Sign	Outdoor Display Case	Sandwich Board	Wall Sign	Window Sign
Awning & Canopy Sign		●	●	●	●	●	○	●	●	●	●	●	●
Band Sign	●		●	●	●	●	●	●	●	●	●	●	●
Blade Sign	●	●		●	●	○	○	○	○	●	●	●	●
Directory Sign	●	●	●		●	●	●	●	●	●	●	●	●
Freestanding Sign	●	●	●	●		○	○	○	○	●	●	●	●
Freestanding Yard Sign	●	●	○	●	○		○	○	○	●	●	●	●
Marquee	○	●	○	●	○	○		○	○	●	●	●	●
Monument Sign	●	●	○	●	○	○	○		○	●	●	●	●
Projecting Sign	●	●	○	●	○	○	○	○		●	●	●	●
Outdoor Display Case	●	●	●	●	●	●	●	●	●		●	●	●
Sandwich Board	●	●	●	●	●	●	●	●	●	●		●	●
Wall Sign	●	●	●	●	●	●	●	●	●	●	●		●
Window Sign	●	●	●	●	●	●	●	●	●	●	●	●	
○ - Sign Types are not permitted on the same frontage or elevation. ● - Sign Types are permitted on the same frontage or elevation.													

Sign Types by District

Sign Type	<u>FD6</u>	<u>FD5</u>	<u>DW-PT</u>	<u>NAC</u>	<u>NAC-CR</u>	<u>NAC-RC</u>	<u>NMU</u>	<u>E-LM</u>	<u>E-AE</u>	<u>I</u>
<u>Awning & Canopy Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Band Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Blade Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Directory Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Freestanding Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Freestanding Yard Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Marquee</u>	●	●	●	●	○	○	○	○	○	●
<u>Monument Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Outdoor Display Case</u>	●	●	●	●	●	●	●	●	●	●
<u>Projecting Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Sandwich Board</u>	●	●	●	●	●	●	●	●	●	●
<u>Wall Sign</u>	●	●	●	●	●	●	●	●	●	●
<u>Window Sign</u>	●	●	●	●	●	●	●	●	●	●
● - Sign Type is permitted						○ - Sign Type is not permitted				

Sign Types by District Cont.

Sign Type	<u>RH</u>	<u>RM/ RM-W</u>	<u>RL/ RL-W</u>	<u>RCO-R/G</u>	<u>RCO-A</u>	<u>RCO-C</u>	<u>UR</u>	Standard
<u>Awning & Canopy Sign</u>	●	○	○	○	○	○	○	<u>7.2.2</u>
<u>Band Sign</u>	○	○	○	○	○	○	○	<u>7.2.3</u>
<u>Blade Sign</u>	●	●	●	●	●	●	○	<u>7.2.4</u>
<u>Directory Sign</u>	●	●	●	●	●	○	○	<u>7.2.5</u>
<u>Freestanding Sign</u>	○	○	○	○	○	○	○	<u>7.2.6</u>
<u>Freestanding Yard Sign</u>	●	●	●	●	●	●	●	<u>7.2.7</u>
<u>Marquee</u>	○	○	○	○	○	○	○	<u>7.2.8</u>
<u>Monument Sign</u>	●	○	○	●	○	○	○	<u>7.2.9</u>
<u>Outdoor Display Case</u>	○	○	○	●	●	○	○	<u>7.2.10</u>
<u>Projecting Sign</u>	○	○	○	●	○	○	○	<u>7.2.11</u>
<u>Sandwich Board</u>	○	○	○	●	●	●	●	<u>7.2.12</u>
<u>Wall Sign</u>	○	○	○	●	○	○	○	<u>7.2.13</u>
<u>Window Sign</u>	●	●	●	●	●	●	○	<u>7.2.14</u>
● - Sign Type is permitted					○ - Sign Type is not permitted			

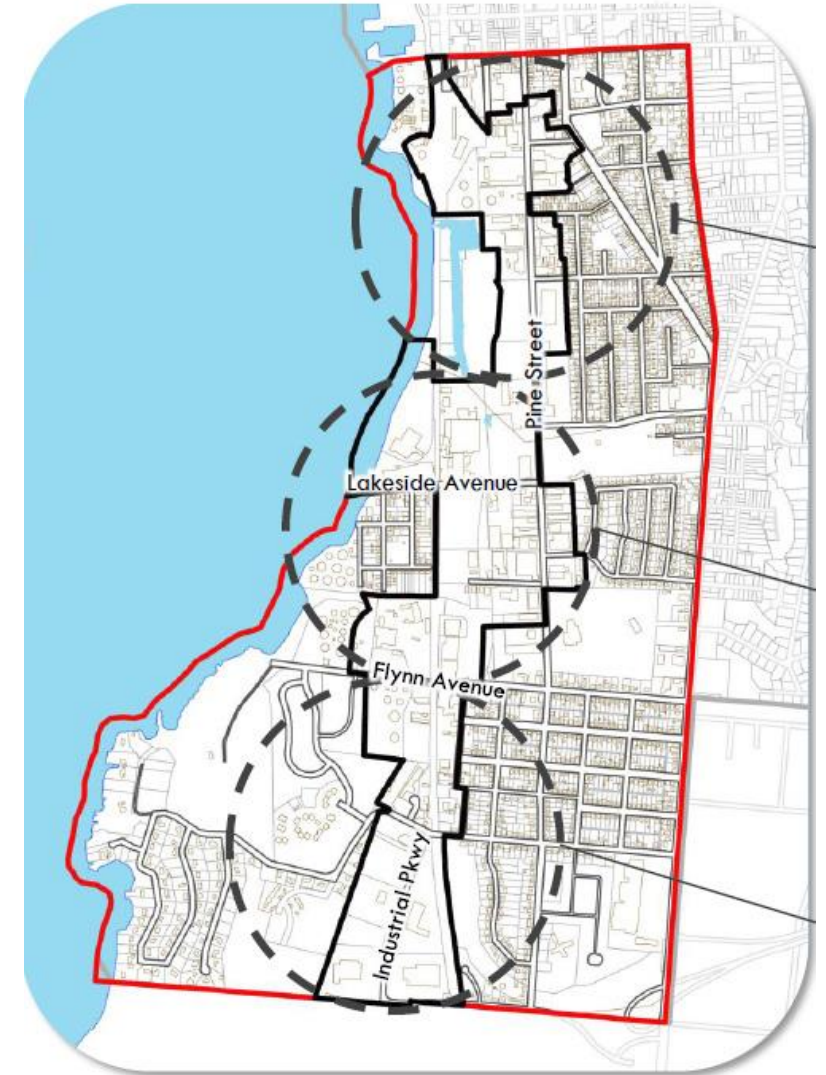
Sign Master Plans: Part 3

- An option for applicants
- Within any Mixed Use, Enterprise, or Institutional zoning district
- Property or complex with 3 or more tenants
- Added any City property and departments
- Subject to DRB Review & approval
- Flexibility in dimensional and locational requirements of each Sign Type
 - *Cannot be located on the roof, or project above the roof or parapet line, of a Building or Structure*
 - *Not to exceed the maximum area limitations*
- Appeals heard “On the Record”

Uses in the Enterprise Zone

Approach to ZA-19-07a and ZA-19-07b:

- Resulted from a series of requests from business/property owners in the South End, regarding allowing banks & performing arts centers
- Amendments seek to balance requests with the guidance from *planBTV* and realities of market dynamics for industrial/general commercial space
- Find a solution that is timely in response to requests, but acknowledges that a broader revamp of the ELM standards is needed



Traditional & Emerging Industry

- Simplifies definitions for traditional industrial uses, recognizes common incidental business activity
 - *Manufacturing, Light-Manufacturing, Research & Development*
 - May include show room, tours, incidental storage, distribution, sales
 - *Complements other uses permitted in ELM including Food & Beverage Production, Warehousing, Operations, Plants, etc.*
- Created new definition for, and permits Technical Office
 - *Recognize the evolving nature of production-based businesses*
- Allows a broader range of arts and maker uses, as permitted or conditional uses

Prioritizing Industry south of Home Ave

- Does not prohibit uses which are currently permitted or conditionally permitted. However, limits those general retail, office, service uses to a supporting role.
 - *Must be on a lot with an industrial, R&D, or arts production use*
 - *Cannot exceed 49% of the GFA on a lot*
- “Group A” includes banks, and “Group B” includes Performing Arts Centers

Group “A”

The core Industrial, Manufacturing & Art Production uses.

Allowed or conditionally permitted in the E-LM District, including south of Home Ave.

Group “B”

General commercial & retail uses.

Allowed or conditionally permitted in the E-LM District. However, south of Home Ave, intended to support and offer flexibility to Industrial, Manufacturing, Production uses.

Limits on Performing Arts Centers

- Limited to 5,000 sq.ft. fronting on Pine St (existing), and 15,000 sq.ft. on Industrial Pkwy (new)
- South of Home Avenue, limited by the “Group A/Group B” relationship to other uses
- Conditional Use review by DRB
- Limit on accessory food & beverage

Group “A”

The core Industrial, Manufacturing & Art Production uses.

Allowed or conditionally permitted in the E-LM District, including south of Home Ave.

Group “B”

General commercial & retail uses.

Allowed or conditionally permitted in the E-LM District. However, south of Home Ave, intended to support and offer flexibility to Industrial, Manufacturing, Production uses.

Inclusionary Zoning Amendments

Summary of comprehensive revamp of Article 9 (ZA-19-10):

- Some adjustment to income eligibility.
- Threshold remains 5 or more dwelling units.
- Greater flexibility for off-site and payment-in-lieu options.
- Provisions for off-campus institutional student housing.
- Administrative changes.

Applicability & Thresholds

- 5 or more dwelling units within a building.
- Optional applicability for fewer units.
- Current IZ target rent price of 65% AMI is maintained.
- Present IZ target for-sale price of 75% AMI is reduced to 70%.
- IZ percentages within a project remain largely the same at 15%.

Location Standards

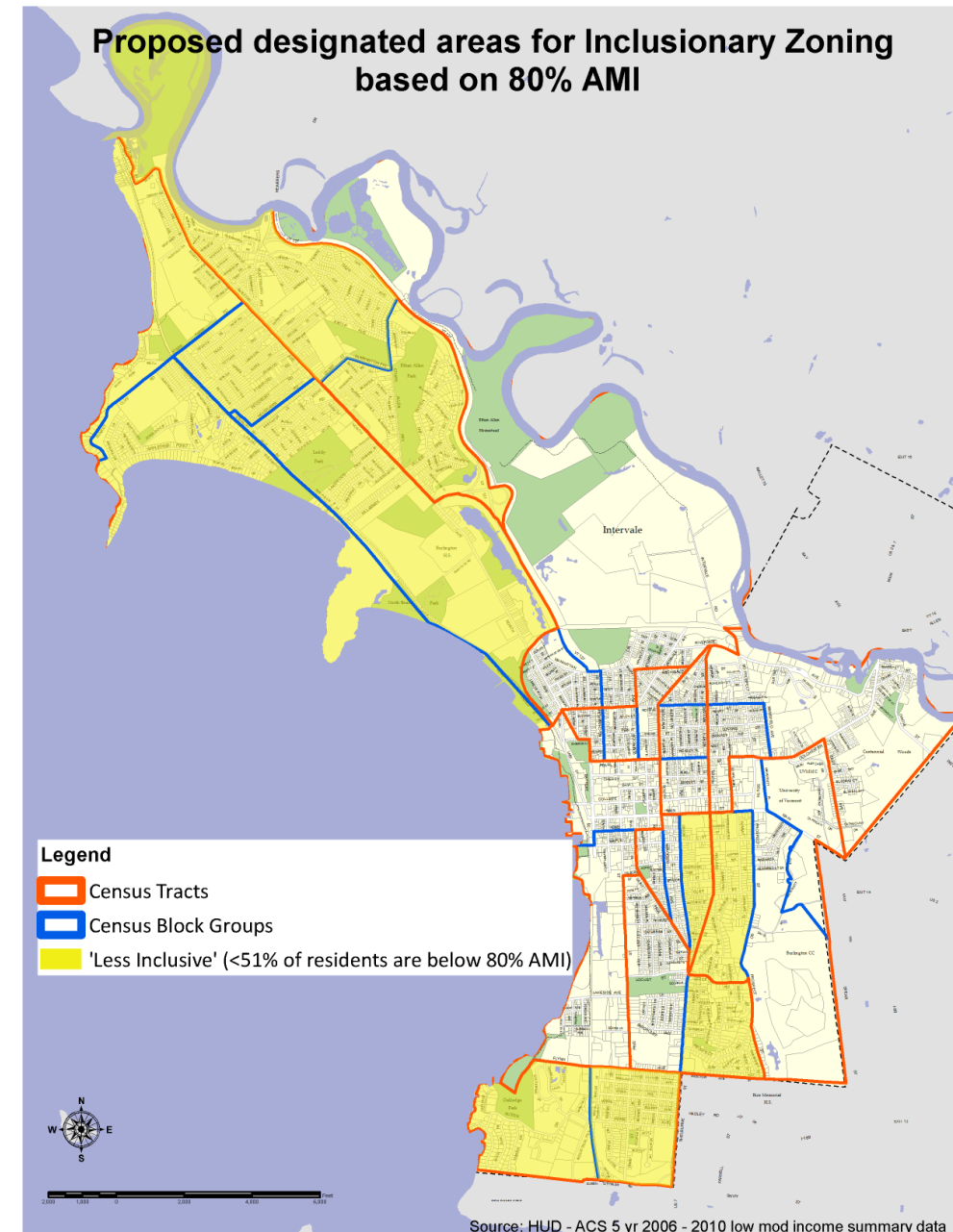
IZ units are typically located on-site and incorporated within a project.

Off-Site Option

- Enabled for projects located in “more inclusive” areas.
- Prohibited for projects in “less inclusive” areas, waterfront areas, and for off campus student housing.

Payment-In-Lieu Option

- Enabled in “more inclusive” areas.
 - *Tiered payments based on project size (small, medium, & large).*
- Restricted to small projects in “less inclusive” areas.
- Prohibited in waterfront districts.



IZ Unit Standards

- Tiered square footage requirements replaced with a 90% equivalency standard for IZ units relative to market rate units.
- Density and dimensional bonuses are by right.
- Minimum off-street parking requirements are reduced.
- Impact fees are eliminated.
- Rental IZ units may “float” within a project, whereas for-sale units must be specifically designated.

Off-Campus *Institutional* Student Housing

- Housing developed and managed by a post-secondary educational institution, or developed, managed, or leased in partnership between the institution and a private developer, for the exclusive use and occupancy by that institution's students.
- Exclusive use by students means that fewer than 5% of beds within a project are leased to individuals not enrolled at the institution.
- Rather than AMI, affordability is determined in comparison to off-campus housing cost.
- 15% of beds provided at or below 80% of the off-campus housing cost to students with a need-based financial aid award

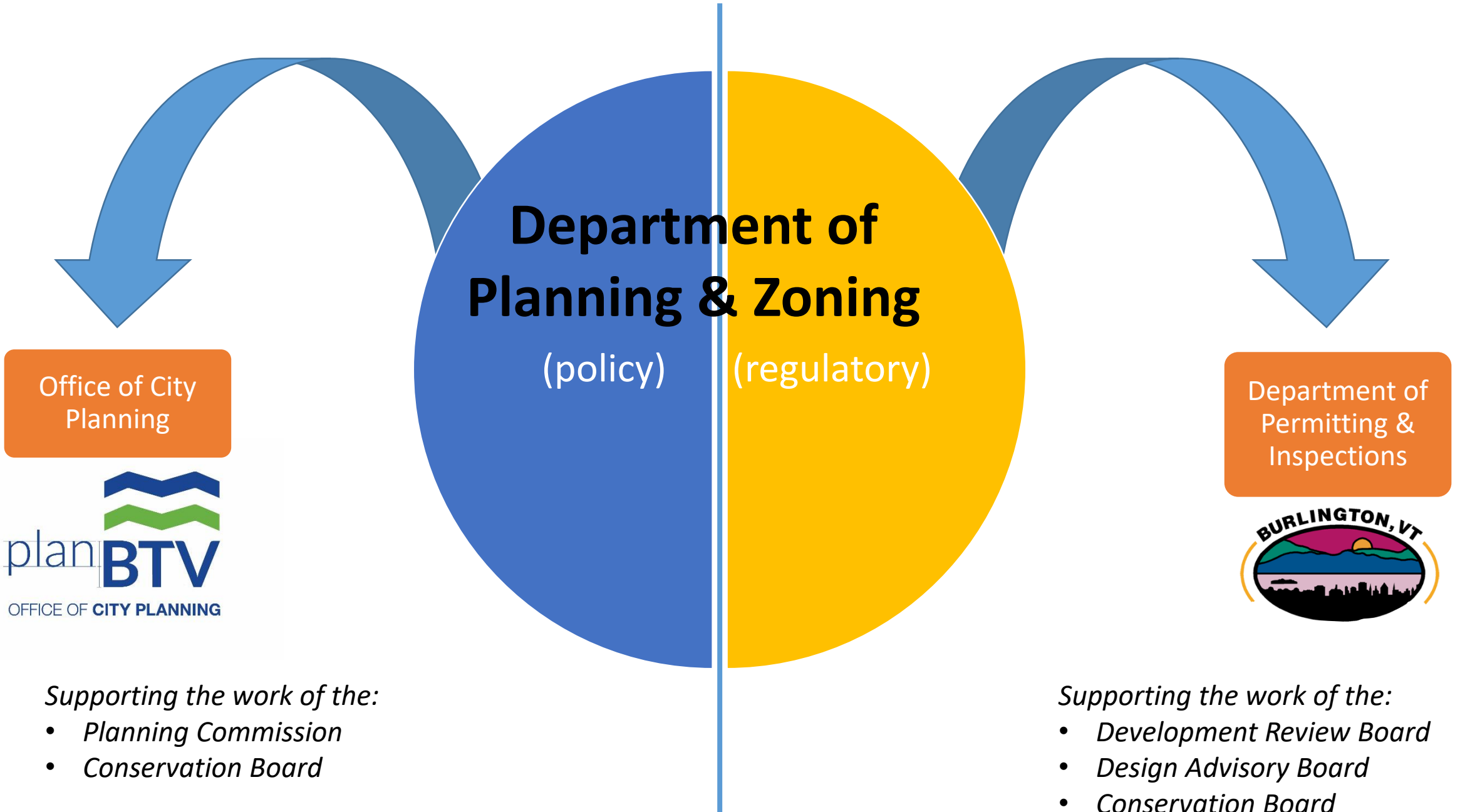
Administrative Changes

Designee may be used in place of Housing Trust Fund Manager.

Unit calculations / rounding practices are codified when fractions result.

Consideration of income in preference for IZ unit sales.

Rents and Section 8 vouchers.



The diagram features a central circle divided vertically by a thin blue line. The left half is blue and labeled '(policy)', while the right half is yellow and labeled '(regulatory)'. Above the circle, two large blue curved arrows point downwards from the left and right sides towards the central circle. Below the circle, two orange rounded rectangular boxes are positioned on either side. The left box is labeled 'Office of City Planning' and contains the 'planBTV' logo and the text 'OFFICE OF CITY PLANNING'. The right box is labeled 'Department of Permitting & Inspections' and contains the 'BURLINGTON, VT' logo. At the bottom of each side, there is a list of entities supported by the respective department. A vertical blue line runs through the center of the diagram, passing through the middle of the central circle.

Department of Planning & Zoning

(policy) (regulatory)

Office of City
Planning



Supporting the work of the:

- *Planning Commission*
- *Conservation Board*

Department of
Permitting &
Inspections



Supporting the work of the:

- *Development Review Board*
- *Design Advisory Board*
- *Conservation Board*

Department of Permitting & Inspections

*Burlington Department
of Permitting &
Inspections - supporting
peaceful enjoyment in a
safe environment for
Burlington citizens*

**“One-Stop
Shop” Permit
Center
@ 645 Pine St**

Customer Service

Permit Specialists
(Combined Zoning
and Building
Trades)

Zoning

Zoning

Subdivision

Design and Historic
Review

Trades

Building

Plumbing /
Mechanical

Electrical

Code

Minimum
Housing

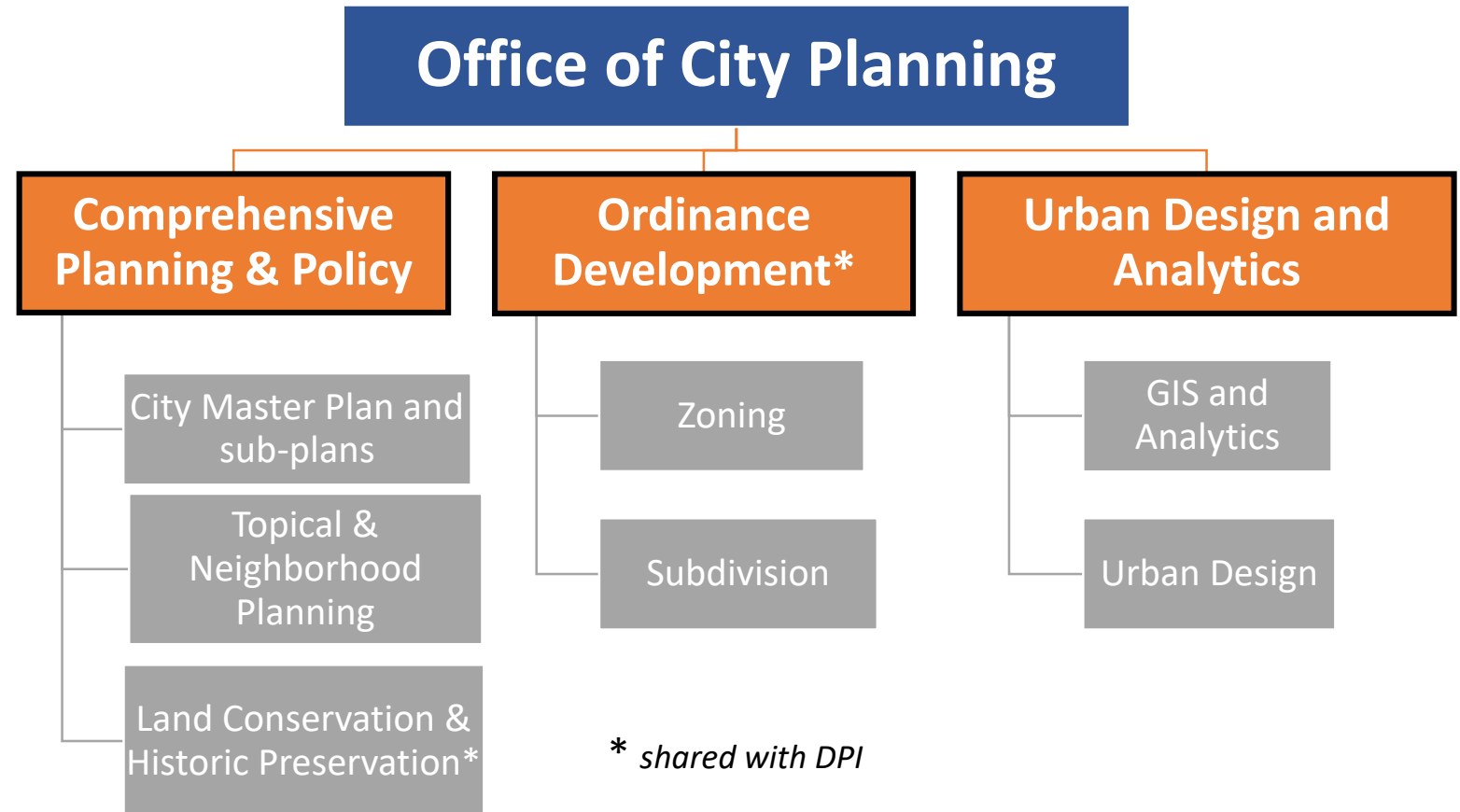
Health Officer

Compliance &
Enforcement

Vacant Buildings

City Planning works collaboratively with all members of our community to ensure that Burlington continues to be a **dynamic** city of opportunity at the heart of a regional population, and that as it evolves over time it preserves its **distinctive** identity, becomes more **inclusive**, and strengthens its **connections**.

Co-located with
CEDO and the
Mayor's Office
@ 149 Church St





BTV HOUSING SUMMIT

www.burlingtonvt.gov/mayor/burlingtonhousingsummit2019

2019 Housing Summit Reforms

- **Updating standards for energy efficiency in rental housing**
- **Restoring the level of funding for the City's Housing Trust Fund**
- **Making it easier to build Accessory Dwelling Units**
- **Implementing regulations for short-term rental**
- **Reforming requirements for building new parking**

Energy Efficiency in Rental Housing

We heard a lot about the opportunity to make an impact on the “split incentive paradigm” by linking weatherization improvements to the Minimum Housing code.

Proposed Policy Reform:

- Require Time of Sale energy efficiency improvements to occur more routinely, as part of minimum housing code inspections
- Apply to dwelling units where tenant is responsible for paying space heating costs, and if rental building uses more than 50,000 BTU's per square foot of energy
- Leverage existing infrastructure to accelerate weatherization, without creating a brand new City process:
 - *Minimum rental housing code inspection & enforcement system*
 - *Minimum Rental Housing Energy Efficiency Standards Ordinance (TOS)*

Housing Trust Fund

We've heard near-unanimous support for increasing level of funding, and strong support for increasing the rate to 1 penny or more with a tie to inflation.

Proposed Policy Reform:

- Restore Housing Trust Fund to 1 penny/\$100 assessed value (consistent with pre-2006 levels)
- Reconsider the limitation that the Fund be revenue-neutral if/when reappraisals occur

Restoring dedicated tax to 1 penny could increase dedicated HTF annual contribution from \$200,384 to \$371,081

Single Family Home
Median Value: \$230,000

\$12.42/yr
@ 1/2 penny/ \$100 assessed value

↓
\$23.00/yr
@ 1 penny/ \$100 assessed value

3+ Unit Rental Property
Median Value: \$439,100

\$23.71/yr
@ 1/2 penny/ \$100 assessed value

↓
\$43.91/yr
@ 1 penny/ \$100 assessed value

Commercial Property
Median Value: \$608,000

\$32.83/yr
@ 1/2 penny/ \$100 assessed value

↓
\$60.80/yr
@ 1 penny/ \$100 assessed value

Accessory Dwelling Units (ADU's)

We've heard significant interest in making ADU's easier to build, and specific feedback on the limitations of current zoning rules.

Proposed Policy Reform:

- ADU's allowed in conjunction with single-family home **in all zoning districts**
- Streamline permitting; creating **an ADU not a primary reason for a project to go to DRB**, but only if other requirements triggered
- **No parking space required** for an ADU, and **allow stacked parking** for ADUs
- Alternative max ADU size: **30% of principal home, or 800 sq.ft.**, whichever is greater
- **Up to 650 sq.ft. of lot area exempt from lot coverage limit** if stormwater impacts are mitigated

Short Term Rentals

We've have heard a lot of very different opinions; key is to find balance between a legal pathway for these rentals, while limiting the burden on the city's housing stock.

Proposed Policy Reform:

- **For Rooms:** Permitted use in most cases, by revising “bed & breakfast” definition to recognize this rental type, and applying B&B standards
- **For Whole Units:** Conditional Use (establish as a new special use type), limit number in a bldg based on total # of units in bldg, 1 parking space per rental city-wide

Other Regulatory Considerations:

- Whole Unit rental triggers housing replacement if converting an existing unit
- Allow tenants as hosts, with owner/association permission
- All units required to register as a business (pay applicable taxes), and register as a rental *(apply minimum housing standards)
**in most cases*

Minimum Parking Requirements



We've heard support for better accommodating the variability of parking demand by location, as well as strong interest in funding alternative modes of transportation.

Proposed Policy Reform:

- No longer mandate a minimum number of new parking spaces for development in Downtown, Neighborhood Activity Centers, and along major thoroughfares, and for permanently affordable housing, rehabilitation of listed historic buildings, and ADU's
- Lower the maximum number of parking spaces permitted & modernize standards for size and layout of parking spaces
- Incorporate Transportation Demand Management requirements for projects in new parking district over a specified size
- Modernize the Traffic Impact Fee as a more comprehensive parking & transportation impact fee

Next Steps

A number of Committees have been meeting to review, discuss, and make recommendations on each of these proposals over the last several months.

- **Joint Committee of the Planning Commission & City Council Ordinance Committee** working on zoning and housing code amendments associated with the short-term rental, ADU, and parking proposals.
 - *ADU Reforms have been referred back to Council for discussion & potential action*
- **City Council Ordinance Committee** to discuss housing code amendments associated with the energy efficiency proposal.
- **Charter Change Committee** has recommended, and Council approved, charter change language to put before voters in March 2020 regarding the Housing Trust Fund proposal.
- **Community Development & Neighborhood Revitalization Committee** to review a CEDO report on Burlington's tenant protections, and a series of recommendations for strengthening.

For updates, see www.burlingtonvt.gov/btv-housing-policy

City of Burlington

Zoning Statute of Limitations

& Grandfathering Policy

Duty to Enforce

“If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the administrative officer shall institute in the name of the municipality any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation. A court action under this section may be initiated in the Environmental Division, or as appropriate, before the Judicial Bureau, as provided under section 1974a of this title.” 24 V.S.A. §4452.

Affirmative Defenses

- 15 year statute of limitations per 24 V.S.A. §4454(a)
- “Grandfathered”—pre-existing legal non-conformity

Statute of Limitations versus Grandfathering

- The zoning statute of limitations and grandfathering are two different legal concepts. Each status carries a different significance for a property.
- The statute of limitations, when applicable, bars the City from enforcing against a zoning violation. The violation becomes an unenforceable violation.
- A use or structure that does not conform to the current regulations, but did at one time, is considered a legal pre-existing nonconformity--grandfathered. While nonconforming, it is not considered a violation as it was legally conforming at one time.

Statute of Limitations

“An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.” 24 V.S.A. §4454(a)

Use Exception

For more than a decade, it was the interpretation of the Superior Court-Environmental Division that use violations were not time-barred by the statute of limitations. The distinction was based upon the theory that use violations are analyzed as continuing or recurring violations.

In Re 204 North Avenue NOV, 2019 VT 52

In an August 30, 2019 decision, the Vermont Supreme Court, reviewing this issue for the first time, reversed the Environmental Division's interpretation regarding the use exemption.

In Re 204 North Avenue NOV, 2019 VT 52

- In *204 North Avenue*, the City issued a NOV in July of 2017 to the property owner for the conversion of the property from a duplex to a triplex without zoning approval. In response, the owner argued that the City was barred from enforcement by the statute of limitations.
- Included in the facts developed during the review of the matter was that the physical conversion occurred in 1992 and the assessors became aware of the conversion during an inspection in 1993.

In Re 204 North Avenue NOV, 2019 VT 52

- The City argued that it was not barred to enforce the NOV by the statute of limitations as this was a use violation and pursuant to Environmental Division precedent, use violations were an exemption to the 15 year statute of limitations.
- The Environmental Division agreed and found for the City. The property owner appealed.

In Re 204 North Avenue NOV, 2019 VT 52

Supreme Ct. logic:

- The plain language of the statute did not distinguish between use and structural violations.
- There is no purpose to the “first occurred” language if the statute of limitations doesn’t apply to uses.
- Creating an exception for use violations would circumvent legislative intent to streamline title searches and increase confidence in property ownership.

What Didn't In re 204 North Avenue Address?

- Grandfathering
- Other exemptions specifically written or not written within §4454(a)
- Unknown violations
- The status of unenforceable violations
- Timeline for discontinuance

What is Grandfathering?

- A nonconformity that was legally in existence prior to a change to the zoning ordinance.
- Grandfathering status may also be obtained if the zoning administrator authorizes a lot, parcel, structure or use that does not comply with the applicable laws, ordinances and regulations, and does so in error.

Treatment for Grandfathered Nonconformities

- Special considerations may be given to these properties within a municipality's bylaws pursuant to 24 V.S.A. §4412(7).
- CDO Article 5, Part 3 provides for the treatment of pre-existing legal non-conformities in the City of Burlington.
- Pursuant to CDO §5.3.4 (b) there is generally an one (1) year or longer period for discontinuance of a legally pre-existing nonconforming use (2 years in the E-LM district for uses). There is also a provision to apply for a possible extension.

Grandfathering—1973 Policy

- Pertains to a condition that was legal at the time, but required a permit, and the only issue is whether or not a permit was properly obtained (as opposed to a condition that would not have been legal at the time).
- Because of concerns over the availability of information/records prior to 1973, any nonconformity that 1) may have been subject to obtaining zoning permits prior to April 26, 1973, 2) can be documented to have existed prior to that date, 3) has continuously existed thereafter, and 4) has no City or other germane record to the contrary will be considered a pre-existing non-conformity.

Statute of Limitations—Statutory Exceptions

Remaining exceptions include:

- A violation of subchapter 10 of chapter 61 (salvage yards)—in the plain language of 24 V.S.A. §4454(a).
- Abatement or removal of public health risks or hazards (includes Title 18, Health)—in the plain language of 24 V.S.A. §4454(c).
- Action pursuant to 24 V.S.A. §4470(b)—enforcement of appropriate municipal panel decisions by means of mandamus, injunction, process of contempt, or otherwise. 24 V.S.A. §4470(b) is not included in the plain language of 24 V.S.A. §4454(a)—only lists §§1974a, 4451 and 4452.

Status of Unenforceable Violations

- Unenforceable violations are not considered legal, not granted consideration or allowances of “grandfathered” properties. See CDO §5.3.2.
- Unenforceable violations are not used for calculations to support new development. See *In re Keenan Conditional Use*, 2009 WL 4396753 (Vt. Env'tl. Ct. June 4, 2009).

Timeline for discontinuance

- 24 V.S.A. §4454(a) does not give a specific timeline for discontinuance.
- Pursuant to CDO Section 5.3.2, an unenforceable violation that is discontinued for more than 60 days loses its unenforceable status.
- The 60 day discontinuance has upheld by the Environmental Division. *Purvis Nonconforming Use*, No. 45-5-15 Vtec, slip op. at 7-9 (Vt. Env'tl. Div. Jan. 27, 2016 (Durkin, J.)).

Summary

- *204 North Avenue* removed the recognized use exemption from the 15 year statute of limitations.
- Use violations subject to the 15 year statute of limitations will now be barred from enforcement.
- *204 North Avenue* did not address other exemptions or status.

Burlington Planning Commission

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

Burlington Joint Planning Commission, Development Review Board, Design Advisory Board, & Conservation Board Meeting

Tuesday, January 7, 2020, 5:00 P.M.

Contois Auditorium, City Hall, 149 Church Street, Burlington, VT

Draft Minutes

Members Present	Planning Commission: E Lee, B Baker, J Wallace Brodeur, H Roen, A Friend, A Montroll Development Review Board: S Mckenzie, B Rabinowitz, G Hand, B McArthur, K Christianson, A LaRosa, Z Hightower Design Advisory Board: M Bushey, T Cullins, S Offenhartz, R Wanamaker, E Morrow, P Wagner Conservation Board: H Brislin, R Roman, Z Richards
Staff Present:	M Tuttle, D White, S Durmick, S Gustin, W Ward, K Sturtevant, A Davis, R Morrison, M O'Neil, T Miles, P Wehman, C Orton

I. Agenda

Call to Order	Time: 5:02
Agenda	No changes

II. Public Forum

Name	Comment	Commission Action
Steve Lipkin – Realtor	RE Item IV: Property owners may elect not to list property for sale in fear that the City could determine an unenforceable violation. Wants to know how many properties are suspected of having units without permits. K Sturtevant responded that City does not have a sense of how many properties applicable, but explained that presentation is regarding a Supreme Court case, not city policy, and that Courts have extended an exemption to use violations not previously covered under the statute.	NA
Liam Murphy –Land Use & Real Estate Attorney	Described various issues with property transfers in Burlington involving missing City records, the burden of documentation on a property owner/title searcher, the application of the “Clean Hands” policy, and the 60 day discontinuance period for unenforceable violations. Recognizes the burden of proof is on the landowner, but need to know what evidence is sufficient for the city to prove continuance of use and suggested that the City uses a date (e.g. the date of the Bianchi Decision in 1996) for historic record research.	

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Jeff Wick – Real Estate Attorney	Advised that the City reflect the Town of Colchester’s process for issuing a letter regarding unenforceable violations. Concerned the City needs a more reliable and workable approach which gives certainty to property owners and is consistent with the statute of limitations.	
Beth Demas – Real Estate Attorney	Asked why there is such a difference between the way grandfather properties and unenforceable violations are treated. Recommended that the City revamp their AMANDA system to more reliably collect & organize land records and that the City record their permit notices in the land records in a way that cannot be updated once it is inputted.	
Andy Mikell - Risk Underwriter	Concurred with the previous suggestions made because they would create certainty for buyers, sellers, lenders, title insurers, etc. involved in the property transactions	

III. Update on Department Reorganizations

No action.	
Type: Presentation	Presented by: D White, B Ward
Discussion/Notes:	
D White & B Ward presented upon the recent reorganization of their respective departments. The presentation can be seen here: https://www.burlingtonvt.gov/CityPlan/PC/Agendas	

IV. 15 Year Statute of Limitations

No action	
Type: Presentation, Discussion	Presented by: K Sturtevant
Discussion/Notes:	
- K Sturtevant presented upon the 15 year statute of limitations. The presentation can be seen here: https://www.burlingtonvt.gov/CityPlan/PC/Agendas - B Baker: Requested the city issue a policy that identifies its standards for sufficient evidence in proving continuance, emphasized that people need predictability and prompt resolution. K Sturtevant replied that there is not a specific list, but that the City has offered to give determinations upon request. - A LaRosa expressed concerns about the City’s position on enforcement, the landowner’s obligation to seek a determination, and the City not making clear to property owners what the rules are, and that the Planning Commission should discuss what constitutes discontinuance. K Sturtevant responded that Statute says that the burden of proof is on the person against whom the enforcement action is taken. W Ward clarified that when a property is suspected of being in violation, the Notice of Violation letter indicates that the owner may respond to the City and supply evidence that the violation has continued for 15 years. - E Lee asked why the discontinuance period is 60 days rather than a year. K Sturtevant replied that City ordinance establishes 60 days discontinuance period for unenforceable violations, rather than a year for legal nonconformities. She clarified that if it is a grandfathered property, the discontinuance period is a year rather than 60 days. - In response to comments by members of the public, K Sturtevant revisited part of her presentation describing a city policy that establishes 1973 as the cut-off date for historic record searches, and explained how the city preserves documents & land records. - M O’Neil added that the City has come a long way in zoning enforcement, especially as original permits did not include details that are relied upon today, and is still working to fill gaps. She noted that it requires some background to navigate the permit records.	

V. Housing Summit Zoning Ordinance Reforms

No action	
Type: Presentation	Presented by: M Tuttle, D White, S Gustin
Discussion/Notes: • M Tuttle, S Gustin & D White presented about Housing Summit Zoning Ordinance reforms that are underway. The presentation is online: https://www.burlingtonvt.gov/CityPlan/PC/Agendas • G Hand asked about the relationship between Accessory Dwelling Units (ADUs) and Short Term Rentals (STRs). S Gustin responded that the City wants to foster ADUs, but not necessarily as STRs, so if someone converted an ADU into an STR, they would have to pay a housing replacement fee. • E Lee asked if the number of STR whole units is increasing in Burlington, and what the market capacity is for STRs. S Gustin responded that the number of STR they have been increasing. • S Offenhartz asked where they get data on STRs, and how accurate they think the data is. S Gustin responded that they have been working with HostCompliance - a national company that invented an algorithm to track STRs for municipalities – that claims 95% accuracy • A public attendee asked about the proposal for fees. S Gustin indicated a potential \$50 registration fee annually, and housing replacement fees range based on the size of a unit. • Z Hightower asked if there is a max lot coverage associated with the waiver for ADUs. M Tuttle indicated that setbacks will not be waived, which will provide some impervious. • Z Hightower asked about the modernization of the traffic impact fee. D White responded that the impact fee ordinance was adopted in 1990, and the City needs to study the capital needs and what the impact fees can be used for, and decide the appropriate fee amount and how to allocate funds across various needs. • K Christianson asked if part of the traffic impact fee would go towards improving public transportation access. D White responded that impact fees can only be used for capital improvements, so staff is planning to studying ways to support for transit outside of operations, such as contributing funds for shelters, vehicles, etc.	

VI. Update on FY19 & FY20 CDO Amendments

No action	
Type: Presentation	Presented by: M Tuttle, D White, S Gustin
Discussion/Notes: • M Tuttle, S Gustin & D White presented FY19 & FY20 CDO Amendments that were adopted, with a specific focus on the comprehensive amendments to the Sign Ordinance and Inclusionary Zoning standards, as well as an amendment related to uses in the Enterprise Light Manufacturing zone. The presentation is online: https://www.burlingtonvt.gov/CityPlan/PC/Agendas	

VII. Commissioner Round Table

There were no items for discussion.

VIII. Adjourn

Adjournment	Time: 7:17pm
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