State of Vermont
Agency of Commerce & Community Development
Department of Housing & Community Development
Provisional Frequently Asked Questions - Act 47 (S.100) of 2023

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https://accd.vermont.gov/community-development/resources-rules/planning/HOME

Contacts

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About

This provisional resource is designed to answer frequently asked questions (FAQs) about Act 47, the HOME Act. The Department will continue to collect questions via the submission form and update the FAQ periodically. If you think the Department has erred, please reach out to the contact above. The Department aims to finalize the FAQs this fall.

Disclaimer

As a general caveat, the Department of Housing and Community Development (the Department) cannot provide individuals, businesses, or municipalities with legal advice. The Department is collecting FAQ's via a submission form and will publish the Department's non-binding perspective on the answers here. Entities seeking to interpret the Act's impact on municipal bylaws must consult an attorney for a legal opinion.

Regarding changes to municipal bylaws and decisions derived from Title 24 Chapter 117, the Department recommends that until a municipality adopts interim or permanent bylaws concerning a specific provision which leaves the municipality with discretion, the municipality should apply the most

permissive reading of the provision(s) in its permitting decisions. Applying restrictive readings of statutory provisions may result in appeals and litigation from permit applicants.

Regarding temporary changes to Act 250, The Natural Resources Board will ultimately make determinations regarding new or changed provisions and will separately publish their determinations and guidance.

Please note that any entity seeking to utilize the exceptions to Act 250 in Act 47 must apply for a Jurisdictional Opinion from the appropriate District Commission before July 1, 2026 and must complete their project before July 1, 2029.

Frequently Asked Questions

Title 24 Questions:

1. **Duplexes & Multi-Unit Dwellings**

Act 47 Section 2 – amended §4412 (Required Provisions and Prohibited Effects) in part:

> "(D). . . *In any district that allows year-round residential development, duplexes shall be an allowed use with the same dimensional standards as a single-unit dwelling. In any district that is served by municipal sewer and water infrastructure that allows residential development, multiunit dwellings with four or fewer units shall be a permitted use, unless that district specifically requires multiunit structures to have more than four dwelling units.*"
>
> "*(12) In any area served by municipal sewer and water infrastructure that allows residential development, bylaws shall establish lot and building dimensional standards that allow five or more dwelling units per acre for each allowed residential use, and density standards for multiunit dwellings shall not be more restrictive than those required for single-family dwellings.*"
>
> *39) "Duplex" means a residential building that has two dwelling units in the same building and neither unit is an accessory dwelling unit.*
>
> *(41) "Multiunit or multifamily dwelling" means a building that contains three or more dwelling units in the same building*

1.1 Question: If a municipality already allows duplexes on the same size lots as single-family homes in certain areas, will [this change] effectively double the maximum residential density in those areas?

Answer: No. If a municipality already allows duplexes with the same dimensional standards as a single-unit dwelling in certain areas, those areas will not be affected.

The Act says in any district that allows year-round residential development, duplexes shall be an allowed use with the same dimensional standards as a single-unit dwelling. Because minimum lots sizes are dimensional standards, duplexes must be allowed on the same minimum lot size as

a single-unit dwelling under bylaws establishing minimum lot sizes. If the municipality presently allows duplex uses on the same sized lot as a single-unit dwelling use -- as in the questioner's scenario -- there is no change to the effective dwelling unit density.

In areas that are zoned for year-round single-unit dwelling uses that are also served by water and sewer, the bylaws must establish lot and building dimensional standards that allow 5 or more dwelling units per acre for each allowed residential use. Although a duplex must be allowed to be built on the same sized lot as a single unit dwelling statewide, in areas served by water and sewer, each allowed use must also be allowed at a dwelling unit density of ***at least*** a density of 5 dwelling units per acre. In municipalities that establish a dwelling unit density standard of 0.2 acres per unit (5 dwelling units per acre) in conformance with the Act's dwelling unit density standards, a duplex on the same sized lot as a single-family home may be disallowed – despite the statewide allowance based on the density standard.

Any areas that remain zoned exclusively for single-unit dwelling uses will be affected and the municipality must now allow duplexes on the same sized lot as a single-family dwelling if other applicable dimensional are met, like dwelling unit density.

1.2 Question: What does "allowed use" mean in the context of "In any district that allows year-round residential development, duplexes shall be an allowed use with the same dimensional standards as a single-unit dwelling."

Answer: Allowed use means a municipality may consider duplex uses as"permitted" or "conditional" use. This provision gives municipalities discretion in how to permit duplexes. As noted above, the Department recommends applying the most permissible reading until the municipality passes bylaws that clarify any sections left to their discretion. In this case, the Department recommends municipalities consider duplexes a permitted use until it is clarified in the municipal bylaws – especially since the Act establishes that multiunit dwellings with four or fewer units must be a permitted use.

1.3 Question: Does the requirement to allow duplexes supersede maximum density limitations? For example, what happens if a homeowner with a single-family home on 1/5 of an acre in a district with a maximum density of 5 units/acre applies for a permit to convert their house into a duplex. It seems that we will simultaneously be required to permit that conversion (assuming it continues to meet the SFH dimensional standards) and required to deny it (since that proposal would exceed the maximum density for that district).

Answer: The Act does not establish maximum dwelling unit densities or density caps. It establishes that within year-round residential zoning districts served by water and sewer, the municipality must at least allow five dwelling units an acre for each allowed use. If a municipality has established a 5 unit per acre density cap, then the municipality may prohibit further development in that area if the density is met (i.e., the municipality could deny a conversion to a duplex for a single-family home on a $1/5^{th}$ acre if the municipality has established a 5 unit per acre maximum density). If the municipality has not established a maximum density in its bylaws, then the duplex should be allowed.

The 5 unit per acre density is a minimum, not a maximum. A municipality may allow more density. The Department recommends removing density caps, or maximum unit density, from bylaws-- applying the most permissive reasonable interpretation of the statute in relation to a municipality's bylaws. The rationale behind Department's recommendation to eliminate density caps can be found the Department's Enabling Better Places Guide, alongside other important topics of reform: https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/CD/CPR/Planning-Your-Towns-Future/CPR-Z4GN-Guide-Final-web.pdf.

1.4 Question: (A): Regarding §4412(12) how does this section treat single unit, duplex and multi-unit dwellings with regard to density standards?

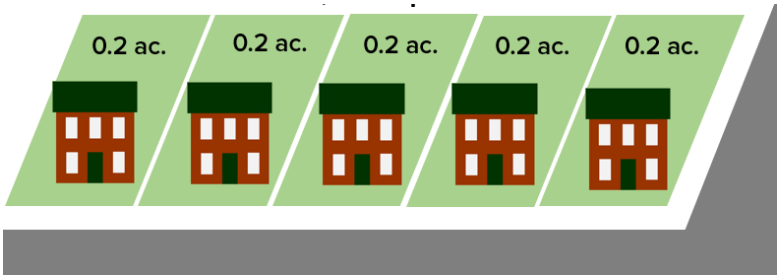
Answer: The Act establishes a minimum dwelling unit density of five dwelling units per acre for all allowed uses where applicable, whether single-unit, duplex, or multi-unit dwellings. The Act prohibits municipalities from applying more restrictive dwelling unit density standards to duplexes and multi-dwelling units than for single-family units. This means that a municipality cannot require more land area per unit (the density calculation) for a duplex or multiunit dwelling than would be required for a single-unit dwelling. For example, the municipality could not require a dwelling unit density of 0.2 acres for every single-unit dwelling and then require a dwelling unit density of 0.3 acres for each duplex unit (a two-unit dwelling) or each unit of a multi-family dwelling use.

1.5 Question: What are example development scenarios to achieve a dwelling unit density of 5 units an acre?

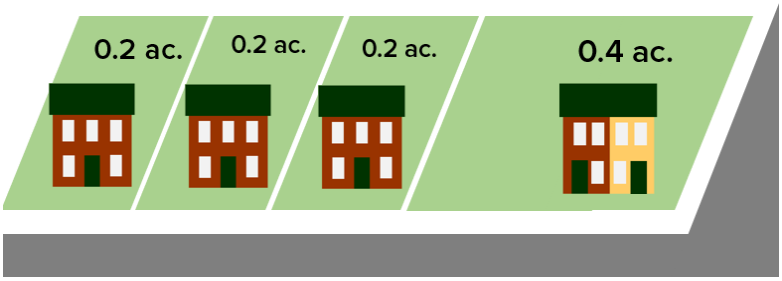
Answer: To illustrate how a density of 5 dwelling units per acre can be achieved through different combinations of uses and lot sizes, below are several examples of the conventional subdivision of a 1-acre 'parent' lot for a single principal use.

Bylaws allowing multiple principal uses on a lot may be able to achieve different configurations without the subdivision of land. The examples below are simplified to illustrate the conventional subdivision and buildout of a vacant 'parent' lot. Redevelopment scenarios could include existing buildings, adaptive re-use, changes in use, demolition and re-development, lot mergers for development, and/or mixed-use development.

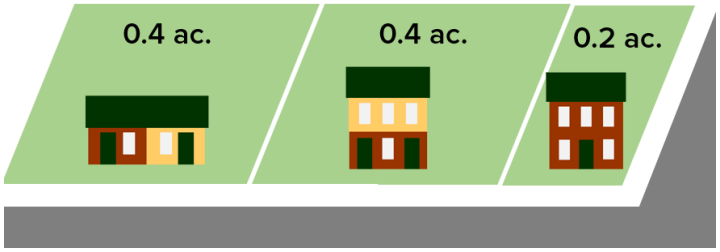
Example 1: The subdivision of a 1-acre parent lot for the construction of 5 single-unit dwellings on 0.2 (1/5th) acre lots equals a density of 5 dwelling units an acre.



Example 2: The subdivision of a 1-acre parent parcel for the construction of 3 single-unit dwellings on 0.2 ($1/5^{th}$) acre lots, and a duplex on a 0.4 ($2/5^{th}$) acre lot equals a density of 5 dwelling units an acre.



Example 3: The subdivision of a 1-acre parent lot for the construction of 2 duplexes on 2, 0.4 ($2/5^{th}$) acre lots, respectively, and 1 single unit dwelling on a 0.2 ($1/5^{th}$) acre lot equals a density of 5 dwelling units an acre.



Example 4: The subdivision of a 1-acre parent lot for the construction of 1 duplex on 1, 0.4 ($2/5^{th}$) acre lot and 1, 3-unit multi-unit/family dwelling on a 0.6 ($3/5^{th}$) acre lot equals a density of 5 dwelling units an acre.

Example 5: The subdivision of a 1-acre parent lot for the construction of 1 single unit dwelling on a 0.2 ($1/5^{th}$) acre lot and a 4-unit multi-unit/family dwelling on a 0.8 ($4/5^{th}$) acre lot equals a density of 5 dwelling units an acre.

Example 6: The construction of a 5-unit multi-unit/family dwelling on 1-acre lot equals a density of 5 dwelling units an acre.

1.6 Question: Does a 5-unit multi-unit dwelling on one acre fulfill the density minimum?

Answer: Yes, any combination of units that equals 5 units per acre on one acre meets the density standard.

1.7 Question: Does the minimum 5 unit per acre density standard establish a minimum lot size of 1/5 of an acre?

Answer: Although municipalities have the discretion to establish minimum lot sizes or not, minimum lot sizes must not disallow a density of at least 5 dwelling units an acre for each allowed residential use in areas zoned for year-round residential uses served by sewer and water infrastructure. If the bylaws establish a minimum lot size, or any other dimensional standard, that disallows a dwelling unit density of 5 or more dwelling units per acre for an allowed residential use, then the bylaws do not meet the Act's standard that bylaws must *establish lot and building dimensional standards that allow five or more dwelling units per acre for each allowed residential use.* For example, if the zoning district allows single-unit dwellings as one principal building on a lot, and the bylaws establish a minimum lot size greater than 0.2 (1/5th) acre, then the lot dimensional standards prohibit a dwelling unit density of five per acre for an allowed use and would not be in compliance with the Act. This section may impact bylaws differently based on the presence of and interactions between provisions on minimum lot sizes, dwelling unit density calculations, prohibitive setbacks or building coverage standards, residential use classifications, or allowances for multiple principle uses on a lot.

2. "Served by municipal sewer and water"

Act 47 Section 4, amended §4403 (Definitions) in part:

"(42)(A) An area "served by municipal sewer and water infrastructure" means:

> *(i) an area where residential connections and expansions are available to municipal water and direct and indirect discharge wastewater systems and not prohibited by:*
>
> *(I) State regulations or permits;*

(II) identified capacity constraints; or
(III) municipally adopted service and capacity agreements; or

(ii) an area established by the municipality by ordinance or bylaw where residential connections and expansions are available to municipal water and direct and indirect discharge wastewater systems and which may exclude: . . .”

(ii) an area established by the municipality by ordinance or bylaw where residential connections and expansions are available to municipal water and direct and indirect discharge wastewater systems and which may exclude: (III) areas served by sewer and water to address an identified community-scale public health hazard or environmental hazard;”

2.1 Question: Regarding the “served by municipal sewer and water” provisions: does the area mean any existing zoning district which allows residential uses?

Answer: Not all areas zoned for residential use have access to municipal sewer and water service. Municipalities will need to make new determinations regarding the areas served. Municipalities have discretion regarding how to amend municipal bylaws or municipal water/wastewater ordinances to define areas served by water and sewer. Until bylaws are amended, municipalities should consider whether the area for a permit application and site in question may be feasibly connected to municipal water and sewer service.

2.2 Question: How do these provisions apply to parcels of land served by municipal water, but with private septic systems, rather than municipal sewer? Or with access to municipal sewer, but not municipal water?

Answer: The “served by municipal sewer and water” provision creates allowances for only those areas feasibly served by <u>both</u> municipal water AND sewer service. If the proposed development only meets one of the requirements, it does not fall within the scope of the provision unless the municipality determines that the development falls within the “district” generally served by municipal sewer and water. Municipalities can exercise defined discretion in how to define these districts. The Department encourages districts to be extended to anywhere municipal sewer and water can be feasibly connected to developments.

2.3 Question: Are there projects that qualify for the allowances created in the section if no area has been "established by the municipality by ordinance or bylaw."

Answer: Yes. Provision (A)(i) is framed so any project may benefit from the allowances in areas where “residential connections and expansions are available to municipal water and direct and indirect discharge wastewater systems” and not otherwise prohibited by state permits, identified capacity constraints, or municipally adopted service or capacity agreements. A municipality does not need to establish a specific area for these allowances to be utilized by developers but may do so in accordance with the provisions of A(ii). The municipality may further define an area, which may contemplate future expansions of sewer and water service.

2.4 Question: What defines connections and expansions as "available" if no established area has been defined?

Answer: Until municipalities develop standards in their bylaws or ordinances, the Department recommends applying a permissive standard based upon whether a connection or expansion to municipal water or sewer service is feasible based upon proximity and system capacity.

2.5 Question: If an established area is considered to exist based on the provision of services to a certain area of the Village, can the area be re-defined?

Answer: Municipalities have discretion to define areas served using the criteria in A(ii), however municipalities likely cannot artificially limit development in areas served that currently exist unless there are legitimate and demonstrable environmental or capacity concerns. Policymakers should keep in mind that municipally adopted service areas that limit sewer and water connections and expansions must not result in the unequal treatment of housing by discriminating against a year-round residential use or housing type otherwise allowed in Chapter 117. An potential example of such discrimination would be a water/wastewater connection ordinance that allows single-unit dwelling connections but prohibits multi-unit dwelling connections.

2.6 Question: If an established area is considered to exist based on the provision of services to a certain area of the Village, does the Act intend for any area established exclusively "to address an identified community-scale public health hazard or environmental hazard" to be excluded from the otherwise established area or areas?

Answer: The Statute provides that areas established by the municipality may exclude “areas served by sewer and water to address an identified community-scale public health hazard or environmental hazard.” The municipality will have discretion on how to define exclusion areas, but must establish such exclusions through the adoption of an ordinance or bylaw.

3. Housing Needs Assessment (Act 47 Section 11, §4348a Elements of a Regional Plan):

(9) A housing element that identifies the regional and community-level need for housing for all economic groups in the region and communities. In establishing the identified need, due consideration shall be given to that will result in an adequate supply of building code and energy code compliant homes where most households spend not more than 30 percent of their income on housing and not more than 15 percent on transportation. To establish housing needs, the Department of Housing and Community Development shall publish statewide and regional housing targets or ranges as part of the Statewide Housing Needs Assessment. The regional planning commission shall consult the Statewide Housing Needs Assessment; current and expected demographic data; the current location, quality, types, and cost of housing; other local studies related to housing needs; and data gathered pursuant to subsection 4382(c) of this title. If no such data has been gathered, the regional planning commission shall gather it.

3.1 Question: Will the regional housing targets or ranges be published when the next Statewide Housing Needs Assessment is published in 2025?

Answer: Regional housing targets will be published in the next Statewide Housing Needs Assessment. Individual municipalities and regional planning commissions (RPC) are encouraged to develop their own housing targets to contribute to the tally and provide a more detailed regional and municipal level view of the housing need.

3.2 Question: Will the Statewide Housing Needs Assessment also factor in transportation cost? Or does each RPC have to figure out a methodology for determining how "not more than 15% on transportation" is calculated?

Answer: Applying a consistent methodology statewide for use in the Statewide Housing Needs Assessment targets would support more consistency among the regional plans, if possible, and the Act tasks the Department with giving this due consideration to support the establishment of targets that meet the housing & transportation benchmarks. Prior to contracting for the next Housing Needs Assessment, the Department welcomes input from the Vermont Association of Planning & Development Agencies, the Agency of Transportation, the Vermont Energy Investment Corporation, and the Public Service Department on a methodology to establish targets that will result in an adequate supply of building code and energy compliant homes where most households spend not more than 30 percent of their income on housing and not more than 15 percent on transportation. The regional planning commission is tasked by the Act with gathering data if no such data has been gathered.

4. **Historic Properties and Height:** Amendments to Sec. 2. 24 V.S.A. § 4412 7 (A) iii.

4.1 Question: How does 24 V.S.A. § 4412 7 (A) iii. affect historic or potentially historic properties:

Answer: The Act does not amend the §4412 7 (A) iii provision on the treatment of nonconformities.

4.2 Question: Are structures listed on the state or National Register included in the issues viewed as acceptable modifiers to this provision such as wetlands, flood hazard regulations and river corridors?

Answer: Municipalities are limited to non-discretionary standards when modifying the applicable municipal standards established in the Act. 24 V.S.A. § 4464(b)(7)(B)(i) states the municipality must provide an explanation:

> *"(i) why the modification is necessary to comply with a prerequisite State or federal permit, municipal permit, or a **nondiscretionary standard** in a bylaw or ordinance, including requirements related to wetlands, setbacks, and flood hazard areas and river corridors; . . ."*

Municipalities have discretion regarding development and application of historic resource ordinances and developing restrictions on modifications to historic properties. Having the

building listed on a Federal and State register does not necessarily prohibit the building owner from modifying the building (aside from the possibility of being removed from the list). Therefore, the exclusion of buildings listed on the National or State Historic Registers likely does not qualify as a non-discretionary standard.

5. Parking

Act 47 Section 1 – amended §4414 (Zoning; Permissible Types of Regulation) in part:

In any district that is served by municipal sewer and water infrastructure that allows residential uses, a municipality shall not require more than one parking space per dwelling unit. However, a municipality may require 1.5 parking spaces for duplexes and multiunit dwellings in areas not served by sewer and water and in areas that are located more than one-quarter mile away from public parking rounded up to the nearest whole number when calculating the total number of spaces.

5.1 Question: Can municipalities still restrict parking to 1.5 cars per "guest" room for all lodging use (motels, bed and breakfast, and other short term rentals such as airBNB)?

Answer: Yes, the statute only affects residential use. Municipalities may regulate parking for lodging in their discretion, subject to Vermont Law.

5.2 Question: Complicating this most of our short-term rentals are mixed-use meaning they are residential most of the summer and rented in the winter for short, 3-5 night stays for tourists. So these properties have residential use and lodging use permits. Related, would a bed and breakfast house (seen as one unit, but lodging use for 10 guest rooms, hosting ten families) have only one parking spot we could require? I am the Zoning Admin.

Answer: The Act establishes maximum parking spaces for a residential dwelling unit and does not consider units permitted for a dual residential and lodging purpose. The Department recommends that the Municipality should apply the most permissive reading of the provision(s) in its permitting decisions.

6. Minor Subdivisions

6.1 Question: Is there a definition for minor subdivisions

Answer: No. This may be defined by the municipal bylaws.

7. Deed Restrictions:

Act 47, §20, amended 27 V.S.A. § 545 in part:

> *"(a) Deed restrictions, covenants, or similar binding agreements added after March 1, 2021 that prohibit or have the effect of prohibiting land development allowed under 24 V.S.A. § 4412(1)(E) and (2)(A) shall not be valid."*

7.1 **Question:** Can Homeowner's Associations (HOAs) continue to exclude duplexes in their covenants given that the new law prohibits excluding duplexes from anywhere that single family homes are allowed?

Answer: Existing deed restrictions and covenants (such as covenants created by a Homeowners Association and encumbering the land and premises of an HOA) are not affected by the new Act 47 provisions. Any future HOA may not create restrictions on development that would otherwise be allowed in under 24 V.S.A. § 4412(1)(E) and (2)(A) and 27 V.S.A. § 545(b). Therefore, a future HOA may exclude the development of duplexes as they are covered under § 4412(1)(D), not 4412(1)(E) -- relating to ADUS and (2)(A) -- relating to existing small lots.

Act 250 Questions:

All questions related to Act 250 should be directed to the Natural Resources Board (NRB). The NRB can provide guidance regarding the provisions of Act 250 amended or affected by Act 47. Please consult the NRB's website for more information: https://nrb.vermont.gov/.