

VERMONT DOWNTOWN DEVELOPMENT BOARD FINDINGS & DECISION

Application for New Town Center Development District Designation Town of Berlin, Applicant

SUMMARY & OVERVIEW

Application Summary. The Town of Berlin comes before the Vermont Downtown Development Board (referred to as the ‘Board’) for designation of a new town center development district (referred to as a ‘new town center’ or ‘NTC’) pursuant to [24 V.S.A. §2703b](#) in order to advance the [policies and purposes](#) established in Chapter 76A of Title 24.

New Town Center Overview. The NTC designation is a State program that recognizes areas planned for development of a walkable community center in municipalities lacking a historic downtown. The program confers and enables benefits to support development in the center. The designation’s requirements focus on local planning, local capital programming and budgets, and regulations that promote a pedestrian-oriented development pattern characteristic of a traditional Vermont downtown. Full program information is available [here](#).

New Town Center means the area planned for or developing as a community’s central business district, composed of compact, pedestrian-friendly, multistory, and mixed use development that is characteristic of a traditional downtown, supported by planned or existing urban infrastructure, including curbed streets with sidewalks and on-street parking, stormwater treatment, sanitary sewers and public water supply.

24 V.S.A. § 2791

New Town Center Designation Benefits. NTC designation confers or enables the following benefits:

- Special assessment districts (24 V.S.A. §2793b(c)(1))
- Vermont Buildings and General Services State office buildings priority when a designated downtown is not feasible (24 V.S.A. §2793b(c)(2))
- Land gains tax exemption (32 V.S.A. 10002(p))
- Tax increment financing district location criteria presumption (32 V.S.A. § 5404a(h)(3)(B))
- Act 250 permit exemption for ‘Priority Housing Projects’ (10 V.S.A. §6081(p)(2))
- Act 250 reduced mitigation fee for loss of primary agricultural soils (10 V.S.A. §6093(a)(1))
- Act 250 presumption of existing settlement criterion “9L” (smart growth) compliance (10 V.S.A. § 6001(16)(a)(i) & 10 V.S.A. §6086(a)(9)(L))
- Eligibility for an ‘add-on’ neighborhood development area designation
- And many other technical and financial benefits made available by State agencies, such as priority for Municipal Planning Grants and Transportation Alternatives Grants.

Board Authority. The Board reviews NTCs according to [24 V.S.A. § 2793b](#) and the Board’s adopted [program guidelines](#) as authorized by 24 V.S.A. §2792(d). Program guidelines have been revised since the last NTC designations.

BOARD PROCEDURE

Deadline to Finalize a Decision. Within 45 days of receipt of a complete application, the Board must issue a decision (24 V.S.A. 24 V.S.A. § 2793b(b)). A complete application was received and considered by the Board on March 22, 2021.

Conditions of Approval. Although the growth center is the only designation program statute that includes Board authority to establish conditions of approval to be satisfied prior to the effective date of a designation, the Board has conditioned prior NTC approvals.

Some prior NTC past conditions were framed by the Board in ways that resulted in lengthy reviews, considerable administrative staff time, and divided votes by the Board. Lessons learned throughout these proceedings informed Board amendments to the NTC program guidelines. Although Board decisions have functioned best with unconditioned decisions, the conditions proposed in this report recognize past precedent and aim for specific, measurable, and time-bound administration.

Finality of Board Decision. Designation decisions of the Board are not subject to appeal (24 V.S.A. § 2798). The Board reserves the right to reconsider approvals or denials where an applicant revises its submission to cure matters of concerns in the Board's decision. The Board retains authority to approve the application, approve the application with conditions (as proposed or modified), or deny the application – inviting the applicant to return with revisions.

Designation Duration. Designation remains effective for eight (8) years with a four-year (4) check-in. Note: this designation becomes effective upon satisfaction of certain conditions.

Designation Maintenance. If at any time the Board determines the NTC no longer meets the standards for designation it may take any of the following actions:

- (1) Require corrective action;
- (2) Provide technical assistance through the Vermont Downtown Program;
- (3) Limit eligibility for the benefits pursuant to subsection (c) of this section without affecting any of the NTC's previously awarded benefits; or
- (4) Remove the NTC's designation without affecting any of the town center's previously awarded benefits (24 V.S.A. 2793b(d)).

APPLICATION INFORMATION

Application & Applicant. The application comes before the Board for NTC designation from the Town of Berlin.

Notice of Meeting. Department of Housing & Community Development (DHCD) issued notice of the Board's meeting and hearing on the application in accordance with Vermont's Open Meeting Law and the Board's procedures.

Meeting. Following a February cancellation, the Downtown Board considered the application at its regular meeting on March 22, 2021, beginning 1PM via a publicly accessible online meeting during a declared state of emergency.

Continuation of Meeting. The Board continued the application's consideration to a special meeting to be held on April 12, 2021 at 1PM via a publicly accessible online meeting to further review the substantial material and allow coordination between DHCD and the Town. Prior to the continued meeting, DHCD and the Town met, and the Town consents to and does not contest the conditions of approval as presented.

Statement on Delay. The applicant's statement that DHCD has intentionally sought to delay designation consideration is not true. The February Board meeting cancellation simply resulted from staff availability limitations during a declared state of emergency that has prompted exceptional work by the Department's staff to adequately respond to the pandemic for the well-being of the State of Vermont and all 251 municipalities. Despite this, DHCD has intentionally sought to maintain normal operations and support standing programs, including the NTC program.

Participation. The Board's meeting minutes document board members, applicant representatives, staff, and public present and participating in a meeting and are available for public inspection. Attendance by members of the public is welcomed and encouraged.

Staff Review. DHCD staff, Planning & Policy Manager Jacob Hemmerick, reviewed the application and materials in coordination with staff from the Agency of Natural Resources, Agency of Transportation, and the Natural Resources Board. Staff also reviewed supplemental materials submitted by the applicant at the March 22, 2021 hearing. To avoid any conflict of interest or appearance of a conflict of interest, DHCD herein discloses that staff holding municipal roles have recused themselves from any municipal decision related to Berlin Town Center matters.

Pre-Application Assistance. DHCD staff offered the following training, assistance, and funding to support the Town's new town center planning project. DHCD:

- Offered two pre-application meetings (one required);
- Visited the proposed NTC and affordable housing project site with Evernorth, Vermont Housing Finance Agency, the Vermont Community Development Program, and Downstreet Housing;
- Presented to the Planning Commission on the program and project design;
- Presented to an all-boards and commissions meeting at the Berlin Grange Hall with the Vermont Economic Progress Council (Tax Increment Financing) Program Director;
- Provided technical assistance on project funding sources, data, and sprawl repair approaches;
- Nominated Berlin's Municipal Plan for Vermont Planners Association and the Northern New England Chapter of the American Planning Association 'Plan of the Year';
- Organized a weekend visit to South Burlington's designated NTC with the City's program manager and DHCD staff;
- Funded the Town's NTC planning through the Municipal Planning Grant (MPG) program in the maximum amount;
- Hosted the MPG program's first-ever award ceremony in Berlin with the Governor;
- Reviewed and provided feedback on Berlin's RFP for consultant services;
- Met with the Town of Berlin & Central Vermont Regional Planning Commission on NTC and NDA coordination; and
- Extended several offers to provide incremental and coordinated inter-agency feedback during the planning project.

DHCD strives to support program access and equity. DHCD acknowledges that the program's requirements are substantial and is proud to have been able to support Berlin's planning. It is DHCD's consistent goal to bring complete and clearly compliant applications to the Board.

Draft Application. In accordance with the program's guidelines:

- The Town submitted a 92-page draft application on November 12, 2020, at least three months prior to seeking designation;
- Notice of the draft application was issued to the Regional Development Corporation and the Regional Planning Commission by the applicant and DHCD; and
- DHCD provided coordinated inter-agency comments to the Town on December 11, 2020.

The draft application was complete except for the following items:

- Final adoption of the Selectboard's application authorization;
- Final adoption of the draft regulatory and non-regulatory instruments (i.e. design regulations, official map, capital plan, and water/sewer ordinance);
- Execution of the community investment agreement;

- ANR-approved wastewater form; and
- Reserve commitment/dedication of water and wastewater.

Final Application. A final application was received by DHCD on February 1, 2021. The application is complete and maintained by DHCD in the application file. It is available for public inspection. The 159-page final application includes significant updates to the draft application, including original elements not previously reviewed or commented upon by DHCD prior to adoption and submission. This means that this staff report provides original review and comments not previously coordinated with DHCD prior to submission. Although these changes were grounds for a second draft review, staff recognized the application as final and scheduled it for Board consideration.

Applicant Submissions. The material submitted by the applicant is available [online](https://accd.vermont.gov/community-development/designation-programs/new-town-centers) [https://accd.vermont.gov/community-development/designation-programs/new-town-centers] under the “NTC application” section of the page under “Berlin”. The applicant’s submission satisfies the checklist in the application form listed below and includes some supplemental information unrelated to the requirements or findings:

1. Cover letter
2. Notification to regional planning commission and regional development corporation
3. Authorization from Selectboard
4. Municipal plan integration
5. Confirmed planning process
6. Community investment agreement
7. Map of proposed NTC
8. Municipal center plan
9. Official map
10. Regulations
11. Mixed-income housing plan
12. Capital improvement program
13. Evidence of a civic or public building
14. Water & wastewater compliance
15. Description of NTC definition & benefits sought
16. Map of center

At the March 22, 2021 meeting the Town also submitted a rebuttal to the draft staff report at the meeting.

Statement on Jurisdiction. The final application says certain inter-agency draft review questions overreach the State’s jurisdiction. It is true that some Board standards of review are very specific -- as shown below -- and other standards are subject to interpretation and written for discretion, over which the Board retains authority.

The questions raised in the draft review by DHCD and partner agencies are based on pre-application consultation content, program guidelines, and statute -- including the statements of purpose and intent of [24 V.S.A. §2790](#). This report is written to apply, in the public trust, duly enacted legislation; it is not based on an understanding that the program’s statute is legislated for each application by staff, the applicant municipality, individual landowners, or the Board (except as authorized). Broadly, these underpin the Board’s responsibility associated with extending special State benefits and incentives to planned locations where local, regional, state, and private interests align for smart planning, public investment, and development.

DESIGNATION HISTORY

Village Centers. Berlin gained its first Board designations in June 2019 with two village centers: Berlin Corners and Riverton.

New Town Center. Approval of this application would create the Town’s third designated area and center.

Add-on Neighborhood Development Area Designation (NDA). The Town intends to request approval of an NDA around its proposed NTC. NTC designation is a pre-requisite to the proposed NDA. Approval of an NTC and associated NDA does not preclude additional NDAs around the designated village centers in Berlin.

FINDINGS ON STANDARDS OF REVIEW

Applicable Standards of Review. An NTC is reviewed according to the standards set forth in [24 V.S.A. § 2793b](#) and the [program guidelines](#) (*italicized*, **highlighted**, and **bolded** below).

(24 V.S.A. §2793b(a)) A municipality, by its legislative body, may apply to the State Board for designation of an area within that municipality as a new town center development district, provided no traditional downtown or new town center already exists in that municipality.

Lack of Traditional Downtown or New Town Center. Statute defines ‘downtown’ distinctly from that of a village center. The Town of Berlin has no traditional downtown or NTC, making Berlin eligible to apply for NTC designation.

(24 V.S.A. §2793b(a)(1)). The State Board shall not approve an application filed by a municipality on or after July 1, 2014 unless the municipality has stated in its town plan that it intends to apply for designation under this section, and the town plan explains how the designation would further the plan's goals and the goals of section 4302 of this title.

Town Plan Statement of Intent to Seek Designation. The Town’s adopted [2018-2026 Plan](#) makes clear statements on the intent to seek designation outlined in the application in accordance with this standard.

The Plan’s introduction states, “Berlin will be a town with an identifiable and vibrant town center – a place where people can live, work, eat, shop, and gather – that promotes a greater sense of community and attracts residents”. The plan’s future land use chapter includes a section on the NTC and states, “To further their shared goals, the Town of Berlin and the Berlin Mall LLC have agreed to seek a new town center designation for the area from the state (see “New Town Center Map” on page 14).” This intent carries through to the implementation program, which outlines the action “to seek an NTC designation [...]”.

Designation’s Furtherance of Plan and Title Goals. The application includes passages from the Municipal Plan, and the Plan explains how the designation would further the community’s goals, including statements like:

- Reinforce the area as a regional service center;
- Offer higher density housing;
- Reduce the area devoted to surface parking;
- Infill undeveloped land, and underutilized parcels and parking lots;
- Be more competitive for seeking grant funding for projects benefiting the NTC;
- Allow the creation of a special taxing district for improvements in the center;
- Open eligibility for neighborhood development area designation; and
- Increase the number of housing units that could be built without an Act 250 permit [using the priority housing project exemption].

In addition to the Plan’s narrative, statements of intent, and implementation actions, it also includes a table outlining the State’s 14 municipal planning goals and the local policies and objectives related to each. Local objectives and statements of policy supporting the vision for an NTC are found throughout the plan. In relation to the State’s foremost goal to plan development so as to

maintain the historic settlement pattern of compact villages surrounded by rural countryside, the Plan cites eight objectives and ten policies embedded in six chapters. Land use, for instance, includes a policy to “implement the recommendations for maintaining, evolving and transforming land use set forth in Section 2D of the plan,” listing statements of policy, like:

- *Evolve the development pattern from a suburban, auto-oriented commercial and service center to a more urban, pedestrian-oriented, mixed-use town center;*
- *Evolve the built form through infill development with multistory, mixed-use buildings; more efficient use of land by reducing, redesigning and relocating surface parking; and improved walkability with sidewalks, crosswalks, paths, streetscaping, greens and pocket parks;*
- *Transform existing roads into complete streets so that people can safely walk or bike, including crossing Route 62 to link this area with Berlin Corners and the airport business park; and*
- *Transform the existing intersections with Route 62 to expand their capacity as needed to accommodate planned development, reduce congestion and maintain traffic flow, and better accommodate pedestrians and bicyclists.*

(24 V.S.A. §2793b(a)(2). A preapplication meeting shall be held with Department staff before an application is filed to review the program requirements and to identify possible designation boundaries. The meeting shall be held in the municipality unless another location is agreed to by the municipality.

Pre-Application. DHCD held two pre-application meetings with the Town of Berlin on April 19, 2016 and January 11, 2019, reviewing program requirements, identifying possible designation boundaries, and issuing memos on the status of Berlin’s readiness to apply. Both consultations made recommendations on how to proceed based on experience and best planning practice and were referred to by DHCD at each step in the application process for consistency.

(Program Guidelines, 7) Benefits that the municipality hopes to obtain from the new town center designation.

Benefits Sought. The Town seeks designation as a tool to facilitate private and public investment. The Town’s application memo highlights a variety of benefits that the municipality hopes to obtain from the NTC designation, including but not limited to:

- Continue to plan, engineer, permit and fund projects;
- Increase the taxable value;
- Integrate challenged retail properties into the surrounding community and convert vacant and underutilized space for mixed-uses;
- Provide a central place for workforce housing;
- Sustain and grow the student population;
- Create a recognizable center for Berlin;
- Meet tax increment financing district location eligibility criteria;
- Gain funding priority for grants;
- Gain recognition in Act 250;
- Prospective exemption from Act 250 in legislation and other Act 250 reform benefits;
- Prospective amendment of the Vermont ‘Billboard Law’ restrictions on on-premise & internally illuminated signs, to allow advertisement along Route 62; and
- Greater visibility from Route 62 through prospective relief from Route 62 screening requirements in the Act 250 permit.

Consideration of the Board’s endorsement of prospective benefits is addressed in more detail below.

(24 V.S.A. §2793b(a)(3)) *The application shall verify that the regional planning commission and the regional development corporation have been notified of the municipality's intent to apply for designation.*

RPC & RDC Notice. The Town notified the Regional Planning Commission and Regional Development Corporation on August 24, 2020.

(24 V.S.A. §2793b(b)(1)) *[The municipality has] a confirmed planning process under section 4350 of this title, developed a municipal center plan, and adopted bylaws and ordinances that implement the plan, including an official map, and a design review district created under this title or other regulations that adequately control the physical form and scale of development.*

Confirmed Planning Process. The application includes a confirmation of the 2018 Municipal Plan by the Central Vermont Regional Planning Commission dated October 30, 2018.

(24 V.S.A. §2793b(b)(2)) *[The municipality has] provided a community investment agreement that has been executed by authorized representatives of the municipal government, businesses and property owners within the district, and community groups with an articulated purpose of supporting downtown interests, and contains the following: [requirements below].*

Community Investment Agreement. Berlin's application notes that it is a small town with less than 3,000 residents and emphasizes the Town's expectation that improvements needed to serve the proposed NTC will be constructed and maintained primarily by the private sector (p.16).

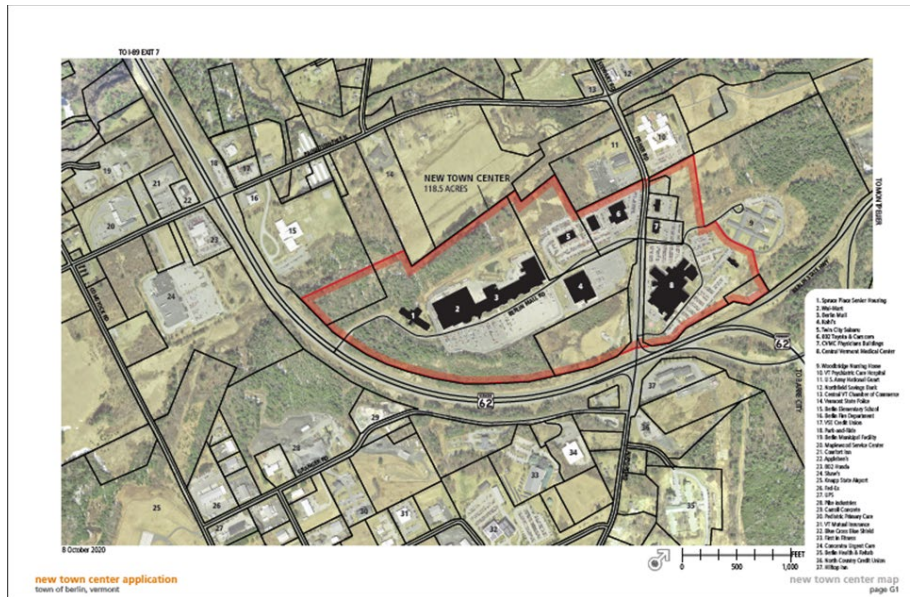
The Town's community investment agreement is signed by the Berlin Mall, LLC; Central Vermont Medical Center, Inc.; Berlin S1 Realty, LLC; Berlin T1 Realty, LLC; Dousevicz, Inc.; Washington Central Unified School District Corp.; Downstreet Housing Community Development; and Evernorth.

The agreement affirms the parties' commitment to activities and programs that support and enhance the economic and social health and viability of the town center designation and acknowledge and affirm the maps, land use and development regulations, capital improvement plan, official map, town plan, municipal center plan, wastewater letter, and wastewater ordinance. Similar instruments were signed by NTC parties in Colchester and South Burlington.

The final application also includes a letter from Berlin Mall, LLC to make clear that "we do not consider our entering into this agreement as obligating us to expend money or incur expenses without prior approval from a duly authorized representative of Berlin Mall, LLC." This is not read as a statement that the mall will not accept expenses in redevelopment and indicates that aspirational features not implemented by the Town's regulations or capital program depend on future decisions by the Mall, the primary NTC landowner.

(24 V.S.A. §2793b(a)(3)). *An application for designation shall contain a map that delineates the boundaries of the proposed district and is consistent with the guidelines produced by the Department under subsection [2792\(d\)](#) of this title.*

Map of NTC. The application includes an NTC boundary map, shown below, that complies with the standard above, delineating the boundaries of the NTC district and showing the building and properties that are within the NTC district. The map identifies streets by names; includes significant buildings; contains a north arrow, scale, and current date; and shows property boundaries.



(24 V.S.A. §2793b(b)(2)(A)). A map of the designated new town center. The total area of land encompassed within a designated new town center shall not exceed 125 acres. In a municipality with a population greater than 15,000, the total area of land encompassed within a designated new town center may include land in excess of 125 acres provided that the additional area is needed to facilitate the redevelopment of predominately developed land in accordance with the smart growth principles defined under subdivision [2791\(13\)](#) of this title and shall not exceed 175 acres.

Acreage. Mentioned earlier, the population of Berlin is less than 15,000. The proposed NTC is 118.5 acres, less than the allowed maximum for a municipality with a population under 15,000. The Town of Colchester received approval for a 38-acre NTC, which focused on greenfield areas planned for compact development around a proposed CIRC highway intersection, since cancelled. The City of South Burlington received approval for a 100-acre NTC, and the Board later approved an amendment to the center to the maximum 175 acres – including a mix of greenfield areas proposed for infill as well as existing development, principally around Dorset Street.

NTC statute and guidelines do not draw a direct connection between acreage maximums and areas planned for improvements, and Berlin’s proposed center includes some areas with no plans for initial public investment or immediate redevelopment – not dissimilar to South Burlington’s mall – but which would be governed by regulations that do not ensure a compact, pedestrian-friendly, multistory, and mixed-use development that is characteristic of a traditional downtown (see regulatory review below).

The application also notes that the Central Vermont Medical Center property is currently undergoing an independent master-planning process. This planning process is expected to be complete in 12 to 24 months. This allows time to study and plan for multi-modal corridor improvements on Fisher Road, the medical campus extension’s Fisher Road access, pedestrian crossing alternatives between medical campus extension and the hospital, a mapped regulating street type in the medical campus extension under §2101, and integrated stormwater. It also allows time for the community to finalize programmed capital improvement project studies to prepare for a Tax Increment Financing District application and plan.

(Guidelines Checklist, 6). A municipal center plan (an articulated vision for the New Town Center – a graphic depiction is optional and next steps for implementing it).

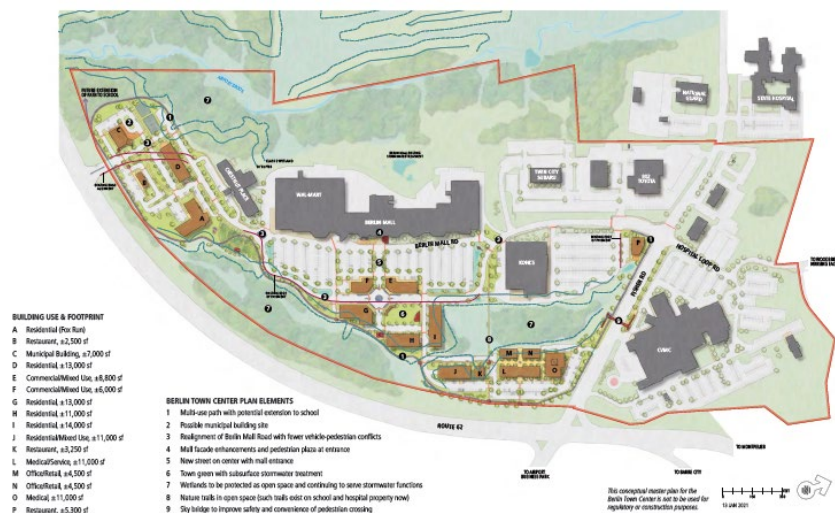
Municipal Center Plan. The Town has prepared an attractive and detailed proof-of-concept plan to articulate Berlin's 20-year vision for the NTC. Note that the *municipal center plan* is not the same as the town-wide *municipal plan*.

Because the municipal center plan standard is subject to interpretation, DHCD provided early and ongoing advice over the past five years on best practices learned throughout Vermont and from the program's history to build a common understanding about the municipal center plan's function and best practices that anticipate constraints to support an implementable concept.

Since offering pre-application memos, presentation materials, and advising the Town on its MPG grant and granting funding to support the project's implementation, the project evolved independently during the past year's state of emergency and pandemic. This is noted because the application states that there is not a shared understanding of this standard (p. 41) – pushing back on requests for a plan that functions to:

- 1) Display what is intended to be implemented through public policy & investments and what is intended to be implemented privately and be held privately; and
- 2) Incorporate the NTC's regulatory and investment instruments into a graphic that communicates the functions of the implementation program.

Accordingly, the plan provided shows a vision for a possible outcome but should be read cautiously as a graphic depiction of the NTC's policy implementation. This is left to the official map, regulations, and capital improvement plan – as well as future private decisions or future action by the Town. Build-out of the NTC could be substantially different than what is shown here under the proposed implementation instruments. Items shown on the concept below that do not appear in implementation instruments are noted in those sections below. When a concept plan, regulations, capital plan, and official map are aligned with NTC priorities, successful implementation is more likely.



(Guidelines Checklist, 6). Planning requirements: adopted bylaws and ordinances that implement the plan, including: An official map adopted according to 24 V.S.A. §4421

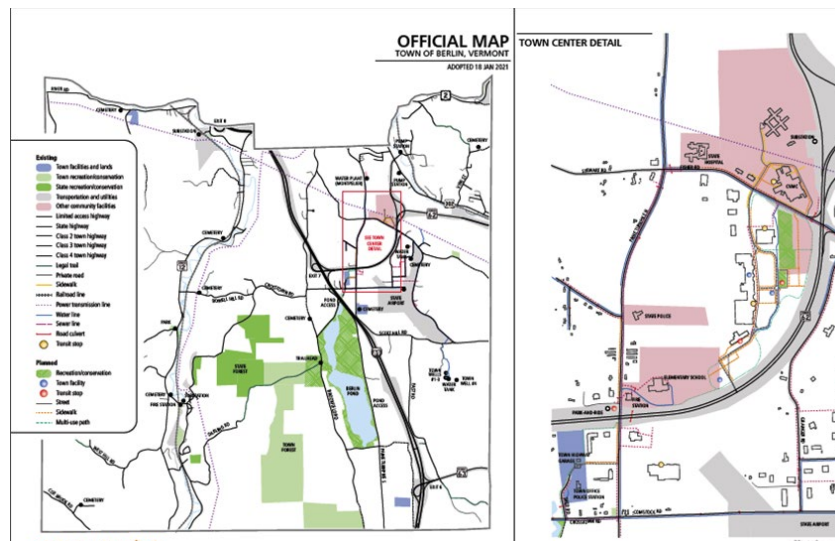
Official Map. An [official map](#) is a regulatory tool that identifies future municipal utility and facility improvements (such as road or recreational path rights-of-way, parkland, utility rights-of-way, and other public improvements) to provide an opportunity for the municipality to acquire land identified for public improvements prior to development for other use and to identify the locations of

required public facilities for new subdivisions and other development under review by the municipality.

An official map is not a guarantee but can be very effective when applicants accommodate the facilities, appropriate municipal panels (such as Development Review Boards) issue denials for applications that do not accommodate facilities, and legislative bodies (such as Selectboards) apply the rights -- or partner with developers -- to accommodate the facilities with capital funding in the Capital Improvement Program and Budget. It works like this:

Any application for subdivision or other development review that involves property on which the official map shows a public facility shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's bylaws. Failure to accommodate the mapped public facility or obtain a minor change in the official map shall result in the denial of the development or subdivision. The legislative body shall have 120 days from the date of the denial of the permit to institute proceedings to acquire that land or interest in land, and if these proceedings are not started within that time, the appropriate municipal panel shall review the application without regard to the proposed public facilities.

Section 2003 of the Berlin Land Use Regulations includes language referencing the Berlin's official map adopted January 18, 2021. The map shows six new features: recreation/conservation areas, town facility points (3), transit stop points (2), streets, sidewalks, and a multi-use path. The recreation/conservation area identifies the conceptual town green. The planned town facility locations, transit stops, and green are all located on the mall property or depend upon access from mall property. The new streets do not depict the full grid shown on p.7, excluding the Route 62 gateway block, and thereby make this block less certain. The sidewalk system is networked and includes a curvilinear, circumambulatory multi-use path with probable wetland impacts.



The following municipal center plan elements do not appear in the official map (and therefore are not intended to be accommodated as part of a municipal land use permit at this time):

- Secondary segments of the sidewalk/crosswalk network
- The street grid at Route 62 Gateway
- Playgrounds/nature-play areas
- Community gardens
- Food truck court
- Tennis court/basketball park

- Any streets or street grid serving the medical campus extension
- Stormwater treatment for new impervious

(Guidelines Checklist, 6). Planning requirements: adopted bylaws and ordinances that implement the plan, including: A design review district or other regulations that adequately control the physical form and scale of development.

Regulations. For those items not implemented by municipal investment, regulations are the planning implementation instrument most likely to ensure outcomes in accordance with the definition of an NTC.

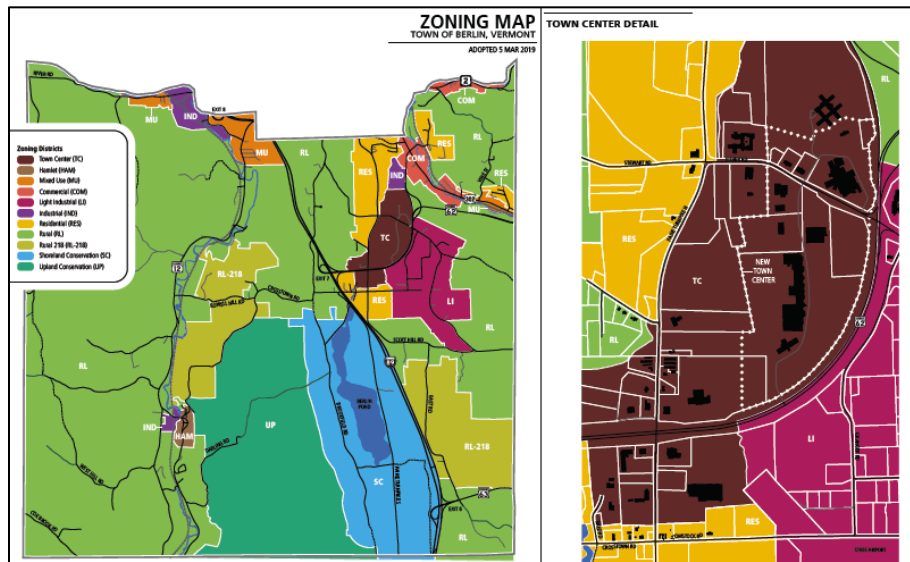
As a quick primer, land use regulations/ordinances (commonly referred to as bylaws in Vermont) establish jurisdiction over different land development and structure review processes for different approvals (such as zoning, subdivision, or site plan review). Municipal regulations commonly include standards that apply to all land development, certain uses, and certain activities. Subdivision governs the division of lots and zoning functions to divide the community into districts for specified purposes. Zoning district standards usually define permitted and conditional uses, and dimensional standards for the buildout of lots – such as lot line setbacks, lot sizes, lot widths, how much of the lot can be covered by development, building heights, and more.

The objective of this review is to ensure that the regulations control the physical form of development to function as *“a central business district, composed of compact, pedestrian-friendly, multistory, and mixed-use development that is characteristic of a traditional downtown, supported by planned or existing urban infrastructure, including curbed streets with sidewalks and on-street parking.”*

Although features of pedestrian-friendly places are subject to interpretation and an increasing amount of study, Vermont recognizes such areas in the [neighborhood development area designation checklists](#), DHCD’s [Enabling Better Places](#) zoning guide (designed to make zoning for designated areas easier), VTrans guidance on [complete streets](#), and Act 250 criterion [9L guidance](#) – the latter of which this designation would grant a presumption of compliance as not contributing to a pattern of auto-oriented and highway strip development. Overall walkability (a proxy for a pedestrian-friendly and compact center) tends to be recognized as a street network connected by *small* blocks, buildings brought to lots’ street frontage/sidewalk, reduced frontage width, and reduced gaps between buildings.

Bylaws & Design Review. The Town’s adopted regulations have been amended since the draft application submission and review by DHCD. They were amended January 28, 2021, and include several features reviewed for the first time in this report. Overall, the regulations are very sophisticated for a small-town volunteer board with limited professional planning staff to interpret and apply easily and consistently. If professional, experienced, and certified planners and development experts misinterpret them, there may be opportunities for the Town to enhance clarity, which has the added benefit of limiting grounds for litigation and protracted permitting.

Zoning District: The NTC is within the town center zoning district, shown below.

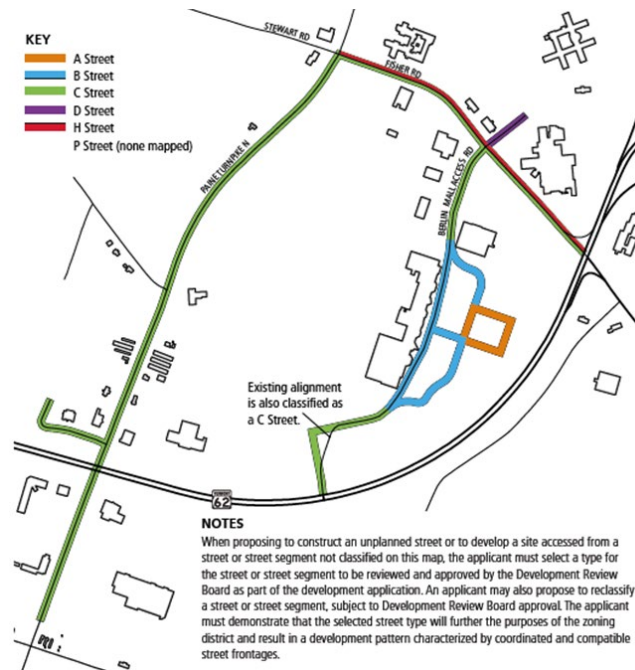


Uses. The regulations include conventional district-base permitted and conditional uses, as well as conditional use review thresholds related to the scope of development (pp.57 & 58, 2101.B(32) & 2101.C). The district includes many uses very characteristic of a mixed-use NTC, as well as some permitted uses less characteristic of NTCs but found in traditional downtowns like: *rental and leasing, lumberyard and building material sales, and sales lot*. In new development scenarios these are typically defined as uses that occur on large lots with an outdoor inventory of vehicles, equipment, machinery, and material and may merit from conditional use review within the NTC. This is encouraged but not proposed as a condition.

Regulating Street Map. The town center zoning district establishes dimensional standards by street type – a regulatory feature used to apply form and design-oriented techniques. The district identifies six street types (A, B, C, D, H, & P), which function somewhat like six sub-zoning districts within the town center zoning district (for lot & building development) and establish an additional three regulated sub-areas for H streets. A through H streets are identified on the regulating map (shown below), P is not.

There are also street standards in Section 2101.E applicable to most of the lettered street types mentioned above. The street standards classify three right-of-way/street designs and include exemptions in the notes section for things like on-street parking, curbing, sidewalks, and streetscaping.

This is a complex and nuanced approach -- and where regulated streets are identified within the NTC, a targeted approach to govern buildout according to certain standards in certain locations within the town center zoning district's proposed NTC. Not all streets shown on the concept plan appear in the official map or regulating street map below, making those streets less likely.



Block Standards. Unlike Colchester & South Burlington, Berlin’s regulations do not include block standards to guide a connected street network, and instead designate streets including two prescribed blocks at the mall core – partially implementing the Town’s vision for blocks on p. 8 and in the municipal center concept plan.

Applicability & Exemptions. The general street regulation makes additional connected blocks less likely. For instance, the regulations provide an exemption (p.58, section 2101.D(1)(c)) from establishing new streets in cases when a developer proposes a service and circulation drive instead of a street for vehicular ways serving up to 3 lots, 6 dwellings, or 3 non-residential principal buildings, under the related definitions of “street”, “road”, and Section 3505.A.

Section 2101.D(1)(d) of the regulations also allow an applicant the option to define development envelopes on a site plan for the purpose of substituting envelopes for lot lines on parcels with multiple principal buildings (p.58, 2101.D(1)(d)). Identifying “envelope lots”, however, does not trigger subdivision review or establish street frontage for an envelope or building using clear language a volunteer board can easily understand and consistently apply. This is read to mean that new envelopes and the building(s) within envelopes can occur in some locations within the district without the creation of frontage along a connected street or meeting other standards that would normally apply in a subdivision review and guide connected street development. On large lots like those in the town center district with permissive dimensional standards, this could result in large lots or envelopes with large, back-lot buildings surrounded by parking lots and service drives.

Further, where streets are not shown on the regulating map (such as the streets at the Route 62 gateway shown or within the medical campus extension shown in the concept municipal center plan) and a developer does not opt for available circulation drive street exemptions above, s/he may apply any street type with DRB approval. There is also an option to re-classify any mapped street with DRB approval. As explained below, “C” and “D” streets are more permissive than anything that exists in the other NTCs and allow auto-oriented, drive-through, and franchise development patterns with large buildings, deep setbacks and parking in front of the buildings. An unconditioned approval would extend tax subsidies, public funding, and regulatory recognition, identifying this as a preferred Vermont development pattern by the Board.

Street-Type Dimensional Regulation. The town center zoning district's A, B, and P (pedestrian) streets are the most characteristic of an NTC pattern -- allowing smaller lots, narrower lots, greater lot coverage, minimal lot setbacks, taller buildings, and standards that bring the building to the street and prioritize parking to the side or rear (pp.60 & 61). Although B streets allow lot frontage width as wide as 600 feet, the approximate width of the Statehouse's frontage on State Street or the approximate façade of two Berlin Wal-Marts, the primary street façade build-to-line coverage is 50% (requiring a building to cover a percentage of a lot's width on a primary street near the front of the lot). P Streets are pedestrian streets very characteristic of an NTC, are not identified on the regulating map (and therefore a menu option) and seen in many mall sprawl repair projects throughout the country. The Town's rebuttal states that "it would not be physically possible to build to the edge of the street right of way", opposing the application of A & B Streets. However, A streets allow a setback up to 30' and B streets up to 40'. Further, where the municipal center plan shows concept buildings and parking, they are shown very close to the streets -- including buildings A, B, C, D & P.

C streets are not characteristic of an NTC, allowing off-street parking in front of buildings and permissive dimensional standards (including up to 80-foot setbacks) that enable auto-oriented development patterns (such as parking in front of a building). This would allow development characteristic to sites on Berlin's Barre-Montpelier Road (see image below). The Town's application and rebuttal state that C street dimensional standards *only* allow enough space for a single bay of parking. However, a standard parking space is 9'x18'. With a 24' center aisle and 2 - bays of parking, 20' remains for landscaping and sidewalks, as shown in the site below which appears principally C-street compliant.

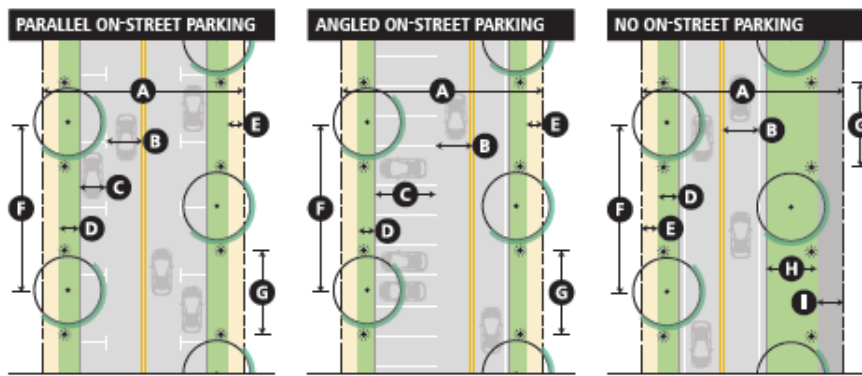


D streets were not presented in the draft application and would apply to the hospital's Fisher Road entrance from the signalized intersection, as a 'menu' option when a street is not identified but a developer wishes to apply to this street type, or as a menu option when an applicant requests to reclassify a street. D streets establish the most permissive standards (e.g., no maximum setbacks, no build-to-line coverages, and no maximum lot widths). Like C streets, D streets do not adequately control for physical form to function as an NTC.

H streets were not presented with the draft application and would apply to existing medical campus facilities on the north side of Fisher Road. H streets present a layered approach that segments a lot into three layers, creating three sub-street type districts; for instance, the first 80 feet of a lot's depth from the street (the front layer), is regulated differently than middle and rear layers. Unlike C streets, H streets are more characteristic of an NTC in the front layer, which orients buildings to the street and limits off-street parking except in limited situations (e.g. parking for emergency services or to meet Americans with Disabilities Act requirements). The *existing* built pattern of medical facility buildings on H streets are setback between 40 feet and 80 feet (within the front layer) and the remainder is lawn or surface parking. In the middle and rear layers, H street standards would also allow future development to focus inward, away from Fisher Road -- allowing for an interior campus orientation and buildout away from street frontage.

The needs of a regionally significant healthcare institution are unique and forwarding an institutional campus plan that also conforms with NTC standards will require a deliberate and balanced approach in partnership with stakeholders and regional entities. At this time, no vision for H street development or NTC adaptation is shown on the municipal center plan, and completion of hospital planning will help inform the best path forward. Noted above, the hospital is currently undertaking a master planning process (p.18) that could inform how hospital leadership and the Green Mountain Care Board will advance development that is characteristic of an NTC as well as improve healthcare quality and stabilize costs. The Town does not intend to fund any scoping, engineering, construction for Fisher Road pedestrian improvements (p.17), and the concept plan proposes a Fisher Road pedestrian overpass to be funded and likely monitored for security by the hospital.

New & Reconstructed Street Standards. Last, the district establishes §2101.E street standards (which refer to streets on the regulating map and regulate right-of-way/street design, not building design). §2101.E street standards establish three street type standards based on sidewalk and on-street parking configurations for new or reconstructed vehicular streets, with several notes on applicability providing exemptions (p.66).



New streets that appear on the regulating street map include A & B streets, to which §2101.E street standards would apply. The remainder are *existing non-conforming* streets. Developers seeking to avoid the costs associated with the street standards (such as on-street parking, sidewalks,

streetlamps, and street trees) would have an interest in avoiding proposals that involve new streets or street reconstruction, for which there are driveway exemptions (as noted above). Although some site plan and subdivision standards are in place to support sidewalk construction, street trees and streetlights are not otherwise required in site plan review, and with the flexibility extended through the creation of development envelopes and lots without street frontage, future subdivision review seems less likely. The capital plan's investment in streets, therefore, is the most likely tool to ensure §2101.E street development and includes funding for a renamed Berlin Mall Access Road: "Center Street". Renaming the "Berlin Mall Access Road" to "Center Street" will help redefine the area as an NTC.

Although local project stakeholders have requested a four-year waiver of the full street requirements associated with the Berlin Mall Road at the Route 62 gateway, this approval allows the Town to implement the NTC now, not in four years. The Town has presented a municipal center plan to the Board and regional stakeholders for a gridded block at the Route 62 gateway; it would be atypical to fully reconstruct the existing street in its current configuration (as recently proposed) only to re-build it in the envisioned configuration later. Street reconstruction in Vermont tends to occur every 50 to 100 years (if not longer) because it is disruptive and costly. In the meantime, maintenance and resurfacing of the Route 62 gateway access and entrance drive allows the street to continue as-is until the planning to make this node development-ready as an NTC street is complete. It also does not affect street reconstruction as an NTC street between Chestnut Place and Fox Run, which is not proposed for realignment later.

Sidewalks & Curbing. NTC statute also establishes an expectation for curbed streets with sidewalks and on-street parking. The regulations allow, but do not require on-street parking on A, B, and C streets -- and on-street parking is not allowed on D streets. Although it is unclear if any of the streets will be private or public at this time, the Town states that it is the intent that the private market remain largely responsible for creating and maintaining parking in the Berlin Town Center (p.15). Also, the regulations allow curbing waivers on streets designed for slow traffic speeds (which would seem to be all streets) or where an uncurbed design would result in improved stormwater management. Like on-street parking, curbing is a clearly stated standard in NTC statute and used in centers to manage vehicles, protect pedestrians, protect green strips from vehicle-caused erosion, and manage stormwater. Curbing is also recognized by Vermont Green Streets concepts and remains important where green strips (between the road and sidewalk) are narrow, such as those shown on §201.E streets design.

Sidewalks are required on A & H streets. They are not required for D streets unless the street is serving as the sole access to a building open to the public. This exemption functionally eliminates a sidewalk requirement from D streets as mapped (and in most other locations where a D street could be applied) because all mapped D street frontage is currently served by four other accesses from Fisher Road and the regulations encourage cross-access connectivity. For B and C streets, sidewalks may be waived for one side of the street if the other side of the street is undeveloped or has a large parking lot.

Building Design Standards. Last, under the proposed regulations, new or renovated development subject to major site plan review would have to meet architectural standards on (1) orientation and compatibility, (2) articulation, (3) facades, and (4) materials. These standards would create visual interest, soften the massing of large buildings, improve visual permeability through façade features, promote durable and interesting materials, and create visual interest. These are approaches that apply broader design principles and allow flexible solutions in accordance with NTC goals, while also allowing large buildings. Like South Burlington's NTC, Berlin's regulations allow drive-through service windows with regulating standards.

To conclude, key elements of the street-based district regulations lack control for physical form and development consistent with an NTC.

(24 V.S.A. §2793b(b)(2)(B)). Regulations enabling high densities that are greater than those allowed in any other part of the municipality.

The proposed 118-acre NTC is located within an approximate 380-acre town center zoning district, which includes areas along Paine Turnpike and south of Route 62, a limited access highway and major trucking route. Areas outside the NTC and within the town center zoning district contain principally auto-oriented development hosting a diverse mix of uses, from self-storage, to banking, to traveler conveniences.

Lot Density. The adopted regulations regulate lot density according to street type. A streets allow minimum lots of 10,000 s.f. (quarter-acre lots) with minimum lot width of 90 feet, and maximum of 400 feet. B streets allow 15,000 s.f. minimum with minimum width of 75 feet, and maximum of 600 feet. C streets establish a minimum lot size of 20,000 s.f. with minimum lot width of 90 feet and maximum of 600 feet. Overall, the district and streets within the NTC enable higher lot density, greater than in other zoning districts.

Building Dimensional Standard Density. The district's dimensional standards applicable to all street typologies addressed above enable building density/massing characteristic of a traditional downtown and greater than other parts of the municipality. Minimum setbacks are generally low, lot coverages high, and floor area ratios eliminated. The district enables high building dimensional standard density, greater than in other zoning districts.

Unit Density. The district applies no maximum residential unit density per 2101(D)(1)(a) on p.58. This is denser than in other parts of the municipality. Functionally, density is limited by the building dimensional standards within which a dwelling or commercial unit could meet other regulations. Overall, the district enables high unit density, greater than in other zoning districts.

(24 V.S.A. §2793b(b)(2)(C)) Regulations enabling multistory and mixed use buildings and mixed uses which enable the development of buildings in a compact manner.

Multi-Story Buildings. Building height is regulated according to street type. "A" streets allow for building heights of 2 story minimum and 60 ft. maximum. B streets allow for 1.5 story or 25 ft. minimum and 60 ft. maximum. C, D, & P streets allow for 20 ft. min and 60 ft. maximum. H would allow for 20' minimum and 100 ft. maximum. The regulations enable (but do not require) multi-story buildings, except on A streets.

Mixed-Use Lots & Buildings. Section 2005.B states "Property owners may use a lot for any combination of uses allowed in the zoning district." and 2005.D states, "Property owners may locate more than one principal building on a lot" [subject to some limitations]. The district identifies 30 permitted uses and 8 conditional uses. There are no specified regulatory limits on the density of residential or non-residential units within a building or on a lot. The regulations enable mixed-used buildings on mixed-use lots and envelopes.

(24 V.S.A. §2793b(b)(2)(D)) A capital improvement program, or a capital budget and program under this title, showing a clear plan for providing public infrastructure within the center, including facilities for drinking water, wastewater, stormwater, public space, lighting, and transportation, including public transit, parking, and pedestrian amenities.

Capital Improvement Program (CIP). A municipal CIP lists and describes projects to be undertaken, estimated costs, and proposed methods of financing for each of the next five years. CIPs can include projects for the physical improvements, equipment, studies, land rights, etc.

The application includes a capital program adopted January 18, 2021. It includes some activities complete in FY21, three proposals for in FY22, and the remaining projects funded beyond FY26.

- Municipal Building (study in **FY22**, funding beyond FY26)
- Center Street (study in **FY22**, funding beyond FY26),
- Town Center Path (study in **FY22**, funding beyond FY26),
- Town Green (funding beyond FY26),
- BTC Stormwater & Wetland Mitigation (funding beyond FY26)
- Municipal Sewer Improvements for Town Center Area (funding in FY21)
- Municipal Water System Improvements (funding in FY21)
- Route 62 Intersection Improvements (study in FY26, funding beyond FY26)

BERLIN TOWN CENTER CAPITAL IMPROVEMENT PROGRAM
FY2021 to FY2026 | ADOPTED 18 JAN 2021

BERLIN TOWN CENTER PROJECTS OVERVIEW			CHANGES FROM PRIOR YEAR CIP						
Berlin anticipates working in FY21 to secure funding for several scoping studies for transportation improvements in the Berlin Town Center and a municipal facilities needs assessments in hope of undertaking those projects in FY22. Work will be continuing on the water and sewer improvements in the Berlin Town Center in FY21. See individual project pages for fund source breakdown.			FY2021 is the first year of the Town Center CIP.						
			NOTES Amounts expressed in current year \$1,000. Berlin's fiscal year runs Jul 1 to Jun 30.						
SUMMARY CIP EXPENDITURES	PRIOR TO	CURRENT	5-YEAR PLAN					BEYOND	TOTAL
	FY 21	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 26	FY21-26
1. Municipal Building	-	-	24.2	-	-	-	-	1,975.8	24.2
2. Center Street	-	-	75.0	-	-	-	-	1,925.0	75.0
3. Town Center Path	-	-	60.0	-	-	-	-	415.0	60.0
4. Town Green	-	-	-	-	-	-	-	100.0	-
5. BTC Stormwater and Wetland Mitigation	-	-	-	-	-	-	-	300.0	-
6. Municipal Sewer Improvements	2,200.0	354.0	73.8	73.8	73.8	73.8	73.8	2,172.3	722.8
7. Municipal Water System Improvements	7,021.4	372.6	182.6	182.6	182.6	182.6	182.6	4,911.0	1,285.4
8. Route 62 Intersections	-	-	-	-	-	-	40.0	115.0	40.0
									-
									-
									-
									-
									-
TOTAL	9,221.4	726.6	415.5	256.3	256.3	256.3	296.3	11,914.0	2,207.3

The following municipal center plan elements do not appear in the capital plan (and therefore rely on future municipal funding or private investment where not required by the regulations or implemented by the official map):

- Tree plantings
- Tennis court
- Basketball court
- Gateway features
- Municipal facility on the green
- Pedestrian plaza
- Playgrounds
- Nature-play areas
- Fisher Road Skybridge (pedestrian overpass project)

Additional capital programming will help ready the Town for a tax increment financing district plan and proposal.

Drinking Water. The capital plan includes a well, funded in FY21 for construction and listed for ongoing debt service. The well is shown on the official map with water lines.

Wastewater/Sewer. The capital plan includes sewer system improvements funded in FY21 with ongoing debt service to serve the town center and surrounding area. Sewer capacity is provided by the City of Montpelier.

Stormwater Treatment. No stormwater planning has been done, and the conceptual master plan was not vetted for proof of concept but does show some stormwater features. Also, the capital plan includes town center stormwater and wetland mitigation funding beyond FY26. The existing mall site will likely need to comply with the State's 3-acres stormwater standards, and the proposed infill/expansion would need to meet the full suite of stormwater standards including but not limited to the 100-year storm due to the large common plan at this location. Given the likely need for extensive stormwater treatment and the presence of extensive wetland and buffer areas, it is unclear whether the draft plan has allocated enough buildable space for stormwater infrastructure or whether infiltration is being considered more broadly across the site. Delaying stormwater capital funds beyond FY26 could delay implementation of NTC development. A phased approach to designation boundaries should not discourage and does not preclude integrated and cooperative stormwater and wetland planning among the Town and landowners. This will help demonstrate how the municipal center plan can be implemented, and what modifications may be necessary to accommodate boundary extensions.

Wetland Impacts. The conceptual master plan depicts significant project elements located within state significant (Class II) wetland buffer areas, and in some instances within the wetland itself. Large sections of the pedestrian path and portions of buildings G, H, I, J, K, M and N, along with associated parking and likely yet-to-be designed stormwater infrastructure, are located within state significant wetland or buffer areas. The Vermont Wetland Rules require that impacts to state significant wetland and buffer areas are avoided to the extent practicable. ANR has asked the Town on multiple occasions to redesign the project to avoid wetland and buffer impacts, or to provide some rationale for why avoidance of those impacts is impracticable, but the Town has not provided a clear response. There is a strong likelihood that many, if not all, of the project components currently proposed in state significant wetland and buffer area will need to be relocated in the future as a result of the state wetland permitting process.

Public Space. The growth of sprawl repair master-planned communities and open-air lifestyle malls has raised questions around the commons and public access. Improvements shown on the official map and capital plan support a publicly funded municipal building, town center path, and town green. The municipal building is slated for study in FY22 with funding beyond FY26. The path is slated for study in FY22 with funding beyond FY26. The green is slated for funding beyond FY26. The building and green relate to the civic building discussion below.

Lighting. Lighting is not separately addressed from other improvements in the capital plan but is integrated into the regulatory requirements for new and reconstructed streets (2101.E street standards). Berlin's regulations include provisions on outdoor lighting.

Transportation (including public transit, parking, and pedestrian amenities). The capital plan includes funding for the proposed multi-use path, and Center Street (the spine of the NTC), with FY22 funding for study and implementation funds beyond FY26. The capital plan also includes funding for study in FY26 to improve Route 62 intersections. The official map indicates bus stops and the application includes support from Green Mountain Transit, no funding is dedicated to additional transit features at this time. No funding is dedicated for public parking, but if Center Street (Berlin Mall Road) is reconstructed using CIP funds under the regulating street standards as

conditioned below and the Town accepts ownership of the street, this would result in reasonable on-street public parking and create a ‘main street’ characteristic of an NTC.

Noted above, the Town’s municipal plan includes policies to “*Transform existing roads into complete streets so that people can safely walk or bike, including crossing Route 62 to link this area with Berlin Corners and the airport business park and to transform the existing intersections with Route 62 to expand their capacity as needed to accommodate planned development, reduce congestion and maintain traffic flow, and better accommodate pedestrians and bicyclists.*” Currently, the Town does not identify funding or intend to fund any scoping, engineering, construction for Fisher Road improvements (p.17).

As it relates to the medical campus extension land south of Fisher Road, a multi-modal corridor study and plan for Fisher Road using a phased designation boundary approach will support a connection to the mall property, support identification of an NTC regulating street, support optimal Fisher Road access and ambulatory care needs, and support the identification of the most cost-effective, convenient, and safe pedestrian crossing design.

(24 V.S.A. §2793b(b)(2)(E)) A clear plan for mixed income housing in the new town center.

Mixed-Income Housing Plan. The Town is partnering with Evernorth and Downstreet Housing on a residential development and intends to pursue a neighborhood development area designation as an add-on to the NTC designation to promote mixed-income housing. Included in the draft application is an MOU (p.140) between the Town, Downstreet Housing and Evernorth to establish a proposed 30-dwelling unit project labeled on the concept plan as Fox Run. This demonstrates a clear plan for mixed-income housing in the center.

(24 V.S.A. §2793b(b)(2)(F)) Evidence that civic and public buildings do exist, or will exist in the center, as shown by the capital improvement plan or the capital budget and program, and the official map.

Public Buildings. The Board has interpreted ‘public buildings in this context to include buildings that are open to the public including stores, restaurants, health clubs, hospitals, etc. These exist in the proposed NTC.

Civic Buildings. The application includes an adopted resolution of support signed by a majority of the Selectboard (p.132) committing to giving priority consideration to the NTC for the location of a future civic building or municipal facilities. Three civic building location points are identified on the official map: one in the mall building, one at the Route 62 gateway, and one in the core block by the green. Like Colchester’s initial designation, these sites are owned or depend on access from one private landowner Berlin Mall, LLC. The capital improvement plan identifies study in FY22 for a municipal building, and the Town Green is identified for funding beyond FY26.

The civic building requirement became a continued matter of discussion between the Board and the Town of Colchester between 2015 and 2019. The Board acknowledged, in this case, that a Town-owned and programmed green and gazebo with full public access meets the requirements for a civic building in the NTC, and the Board required that the Town acquire the green and gazebo and solidify the Town’s commitment to continue civic use of the green by implementing the programming proposal.

The Town is now in the early stages of municipal facilities needs study; implementation depends on how this study will guide future steps, including amendments to the capital plan.

(24 V.S.A. §2793b(b)(2)(H)) Evidence that any private or municipal sewage system and private or public water supply serving the proposed new town center are in compliance with the requirements of 10 V.S.A. chapters 47 and 56, and that the municipality has dedicated a portion of any unallocated reserve capacity of the sewage and public water supply necessary to support growth within the proposed new town center. Any municipality proposing a municipal sewage system and public water supply to serve the proposed new town center shall provide evidence to the State Board of a commitment to construct or maintain such a system and supply in compliance with requirements of 10 V.S.A. chapters 47 and 56, or a commitment to construct, as applicable, a permissible potable water supply, wastewater system, indirect discharge, or public water supply within no more than ten years. A commitment to construct does not relieve the property owners in the new town center from meeting the applicable regulations of the Agency of Natural Resources regarding wastewater systems, potable water supplies, public water supplies, indirect discharges, and the subdivision of land. In the event a municipality fails in its commitment to construct a municipal sewage system or public water supply, or both, the State Board shall revoke designation, unless the municipality demonstrates to the State Board that all good faith efforts were made and continue to be made to obtain the required approvals and permits from the Agency of Natural Resources, and failure to construct was due to unavailability of sufficient State or federal funding.

System Overview. The proposed NTC is served by wastewater treatment operated by the City of Montpelier and a drinking water system operated by the Town of Berlin. The draft application includes a municipal water & wastewater allocation ordinance, water system permits from DEC, and draft compliance forms.

System Compliance. The final application includes evidence that the public sewage system and public water supply system serving the proposed district follows state requirements through a response from ANR. The compliance forms have been approved by ANR officials.

Reserve Commitment. The final application provides evidence that the municipality has dedicated a portion of any unallocated reserves for both the wastewater and drinking water systems (p.128). The town has allocated 30% of uncommitted wastewater reserve of 360,000 gallons, providing an allocation estimated to meet a demand of approximately 100,000 gallons per day for 330 residential units, 11,000 square feet of restaurant space, 1,000 square feet of medical office space, a 100-person childcare facility, and 32,000 square feet of commercial space.

(24 V.S.A. §2793b(a)(3)) The application shall also demonstrate that the proposed district meets the requirements set forth in subdivision [2791\(11\)](#) [definition of new town center] of this title, as well as the standards for designation established in subsection (b) of this section.

(24 V.S.A. §2791(11)) "New town center" means the area planned for or developing as a community's central business district, composed of compact, pedestrian-friendly, multistory, and mixed use development that is characteristic of a traditional downtown, supported by planned or existing urban infrastructure, including curbed streets with sidewalks and on-street parking, stormwater treatment, sanitary sewers, and public water supply.

NTC Definition/Overview. The application outlines the Town's approach to a walkable, mixed-use town center, mostly in conformance with the definition above. The approach includes planning for streets, creation of pedestrian connections, infill, and certain regulations enabling multi-story and mixed-use development served by urban infrastructure.

Special focus has been given to pedestrian features and the proposal enables more compact development than exists today. The application notes that this is a sprawl repair project containing a mix of redevelopment and adjacent infill.

Noted above, the Town seeks greater visibility of the proposed center from Route 62, but the ecosystem services, environmental quality, and livability of the proposed multi-unit housing next to a high speed, high-volume, limited access, and regionally significant highway and trucking route is

enhanced by the maintenance of some vegetative buffering within the wetlands and reduced highway exposure.

The Town also seeks to use the designation as a basis to exempt on-premises and internally illuminated advertising along limited access highways from the State's Billboard Law -- and although some narrow exemptions have been extended under the law for certain designations, this prospective benefit would be counter to the bill's general intent to limit outdoor advertising visible from highways, found to be detrimental to the state's economic base and highway safety.

Board endorsement of prospective benefits not extended by statute, rules, or guidelines unnecessarily involves the Board in policy advocacy and potential controversy unrelated to the matter at hand.

Act 250 Permit & Other State Permits. Last, the Town's application highlights a procedural consideration not anticipated or directly addressed in the program's statute or guidelines: the proposed NTC contains lands presently jurisdictional under Act 250 with existing Act 250 permit constraints that disallow the municipal center development plan as proposed in this application. For instance, the plan calls for a walking path, which will require vegetative clearing, and to be constructed in a sensitive buffer that the existing Act 250 permit series expressly prohibits. Similarly, the proposed center plan also calls for the construction of several buildings within the wetland or wetland buffer, which may be inconsistent with Act 250 permitting and Act 250 criteria 1(g). The Town summarizes its understanding of these constraints and has elected to propose an NTC application that depends on a future Act 250 permit amendment (or amendments) that address these matters rather than addressing these constraints by way of alternative design or an Act 250 permit amendment prior to seeking NTC designation.

It is unknown if the Act 250 amendments to implement the NTC will be authorized by the District Environmental Commission, because the purposes and functions of State designation are distinct from the purposes and functions of Vermont's Act 250 and state development review (with some intersections, like municipal and regional plan recognition, Act 250's criterion 9L presumption of compliance [recognition of the designation's location for smart growth], reductions in agricultural soil mitigation impacts fees, or exemptions for priority housing projects). The District Commission has independent jurisdiction, evaluates different standards of review than that of the Board, and will determine whether the proposed NTC plan can be permitted as planned.

An Act 250 permit amendment to implement the proposed NTC would likely require: 1) a ['Stowe Club Highlands' analysis](#), 2) a [master plan](#) review prior to any further subdivision/alteration/development, and 3) review under the applicable criteria. In addition, the proposed plan will trigger several Department of Environmental Conservation (DEC) permits, typically sought prior to going to Act 250, such as the State Wetland Permit.

The NTC program guidelines do not ask that the municipal center plan be permissible or that the NTC approval be compatible with permits (such as an Act 250 master plan) -- but as a pragmatic matter -- the more due diligence that can be done to prove compatibility between the NTC plan and regulatory requirements, the more likely an NTC designation can be successful and the public interest in coordinated government served. As seen in stalled major redevelopment projects throughout the state, the larger and more complex a redevelopment site is, the more important coordination and partnership becomes to mitigate risk and build programmatic success.

STATE BOARD DECISION

The Vermont Downtown Development Board finds and concludes that the Town of Berlin's proposed new town center sufficiently meets the standards for new town center designation subject to the following conditions:

1. The area of initial designation will apply to the boundaries shown below, including the concept plan's "Route 62 Gateway", the "Berlin Mall", and the "Core Block".



2. The proposed "medical campus extension" and properties south of Fisher Road may be considered for designation boundary expansion after the Central Vermont Medical Center (CVMC) has completed its master plan for its lands south of Fisher Road (p.18), the Town and/or landowners have finalized the proposed integrated stormwater planning (p.17), and the Town has completed a multi-modal corridor study of Fisher Road (a Town road) that implements complete streets principles and prioritizes pedestrian-friendly features characteristic of a traditional downtown by evaluating pedestrian crossing alternatives.
3. Lands located north of Fisher Road may be considered for designation boundary expansion after CVMC has completed its master planning process for lands north of Fisher Road and a contiguous area south of Fisher Road is designated or proposed for designation.
4. The Chair will issue a memorandum to the applicant and interested persons recognizing the effective date of the designation upon satisfaction of the following:
 - a. The regulating street map must establish all streets as A, B, and P streets in the NTC (including the §2101.E street standards as they apply to A, B, and P streets), and A, B, and P streets must apply when proposing to construct an unmapped street;
 - b. A and B streets may establish necessary dimensional waivers to accommodate permanently affordable housing development;
 - c. A and B streets must require on-street parking;
 - d. §2101.E street standard curbing waivers must only be allowed in situations where developments implement street stormwater treatment approaches in [Vermont's Green Streets Guide](#) and the center's proposed integrated stormwater plan;

- e. The NTC regulations must not allow a development envelope without street frontage, or otherwise allow an envelope or lot to front parking lots or service and circulation drives without connected street frontage (2101.D).
 - f. The NTC regulations must not allow a second, detached principal building to be constructed on large lots or envelopes (such as lots greater than 1,000% (10x) the minimum lot size for the regulating street) without connected street frontage, or otherwise allow the build-out of a large lot or envelope with multiple “back lot” buildings surrounded by parking lots or service and circulation drives, without connected street frontage (2101.D & 3505.A). 1,000% = 2.3 ac. on A streets, 3.4 ac. on B streets, and 1.3 ac. on P streets.
 - g. The Route 62 gateway must include the street block on the official map and regulating street map (as envisioned on p.8 of application and the center plan) unless a traffic/engineering study (done in partnership and coordination with the RPC and VTrans) or other State regulations demonstrate that it is not feasible as envisioned.
5. The Town must present a progress report to the Board on the New Town Center at the two-year point.
 6. At the first four-year review, the Town will present to the Board an update on:
 - a. The proposed municipal facility and needs assessment and clear future actions that will implement the civic building requirement;
 - b. The capital improvement program;
 - c. Public access rights or public ownership of capital-funded items; and
 - d. Development review activity, including official map application.
 7. If State of Vermont regulatory permit approvals substantially affect the facts upon which the Board based its findings as determined by the Board Chair, the Town will return to the Board to amend the NTC.
 8. Designation must not be used as a basis to increase exposure of new residents to the adjacent limited access highway by means of vegetative clearing in protected wetlands, or to seek exemptions from Vermont’s Billboard law, or to expand advertising visible from a limited access highway otherwise restricted.
 9. Designation must not be used as a basis to limit or otherwise impact the feasibility or practicability of alternative designs, including the relocation or reduction of structures, that may be necessary to comply with state wetland rules or stormwater rules in the future.

Written decision signed and dated at Montpelier Vermont, this 12th day of April, 2021.

Josh Hanford, Vermont Downtown Board Chair

Commissioner, Department of Housing & Community Development

/jmh