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Burlington Planning Commission Report Municipal Bylaw Amendment

ZA-13-08 – Residential Side/Rear Yard Setback Encroachments

ZA-13-09 – Community Centers

ZA-13-10 – Accessory Dwelling Units

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

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

The proposed amendment to the City's zoning regulations is as follows:

1. **ZA-13-08 – Residential Side/Rear Yard Setback Encroachments** - This proposed amendment to the Comprehensive Development Ordinance allows for a pre-existing encroachment into a side or rear yard residential district setback to be expanded vertically (up) provided it does not increase the horizontal encroachment and the height does not exceed the height of the pre-existing structure. The second part of this amendment also allows for an alternative calculation of required residential side yard setbacks based on the average of neighboring properties. (Modify Section 5.3.5 (a) 1, Table 4.4.5-3 & Section 5.2.5 (a) 2 & (b) 7)
2. **ZA-13-09 – Community Centers** – This proposed amendment to the Comprehensive Development Ordinance restores “community centers” as a permitted use in the High-Density Residential districts. (Modify Appendix A – Use Table)
3. **ZA-13-10 – Accessory Dwelling Units** - This proposed amendment to the Comprehensive Development Ordinance encourages the creation of accessory dwelling units by reducing the required on-site parking, clarifying their treatment with respect to density calculations, and incorporating a deed restriction to facilitate compliance. (Modify Section 5.4.5 (a), (b), (c) & (d))

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

ZA-13-08 - This revision of the ordinance will allow for vertical and horizontal expansions of existing nonconforming buildings, providing for more context sensitive development or rehabilitations of residential properties.

ZA-13-09 – This revision to the ordinance will have no direct impact on affordability of housing.

ZA-13-10 – This revision to the ordinance will give relief and more easily enable the creation of accessory dwelling units, therefore having a direct effect on the affordability of housing in Burlington. With the reduction in parking requirements and the exemption

of density calculation for such units, accessory units will hopefully be much easier and cheaper to create.

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

ZA-13-10 will allow for increased density, with the creation of accessory dwelling units, which are well in line with the policies and goals set in the MDP.

Implementation of specific proposals for planned community facilities:

Revisions to the bylaws are not specifically intended to make accommodations for planned community facilities.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-13-08 Residential side/Rear Yard Setback Encroachments

As warned by the Planning Commission for public hearing on March 26, 2013

Changes shown (underline to be added, ~~strike-out~~ to be deleted) are proposed changes to the *Burlington Comprehensive Development Ordinance*.

Purpose: This proposed amendment to the Comprehensive Development Ordinance allows for a pre-existing encroachment into a side or rear yard residential district setback to be expanded vertically (up) provided it does not increase the horizontal encroachment and the height does not exceed the height of the pre-existing structure. The second part of this amendment also allows for an alternative calculation of required residential side yard setbacks based on the average of neighboring properties.

Article 5: Citywide General Regulations

Sec. 5.3.5, Nonconforming Structures

(a) Changes and Modifications:

... Any change or modification to a nonconforming structure, other than to full conformity under this Ordinance, shall only be allowed subject to the following:

1. Such a change or modification ~~should seek to~~ may reduce the degree of nonconformity and shall not increase ~~expand~~ the ~~degree of~~ nonconformity;

Within the residential districts, and subject to Development Review Board approval, existing nonconforming buildings that project into side and/or rear yard setbacks may be vertically expanded so long as the expansion does not encroach further into the setback than the existing structure. Such expansion shall be of the existing nonconformity (i.e. setback) and shall:

- i) Be subject to conformance with all other dimensional requirements (i.e. height, lot coverage, density and intensity of development);
- ii) Not have an undue adverse impact on adjoining properties or any public interest that would be protected by maintaining the existing setbacks; and,
- iii) Be compatible with the character and scale of surrounding structures.

Existing accessory buildings of 15 feet in height or less shall not exceed 15 feet tall as expanded.

Article 4: Maps and Districts

Sec. 4.4.5, Residential Districts

(b) Dimensional Standards and Density

Table 4.4.5-3: Residential District Dimensional Standards

Zoning District	Max. Lot Coverage ¹	Setbacks ^{1, 3, 4, 5}				Max. Height ¹
		Front ²	Side ³	Rear	Waterfront	
RL; WRL	35%	Min/Max: Ave. of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width, but in no event less than 5-feet <u>Or ave. of side yard setback of 2 adjacent lots on both sides</u> Max required: 20-feet	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	Min: 75' feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet
RM	40%	Min/Max: Ave of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width, but in no event less than 5-feet <u>Or ave. of side yard setback of 2 adjacent lots on both sides</u> Max required: 20-feet	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	NA	35-feet
WRM	60%	Min/Max: Ave of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width, but in no event less than 5-feet <u>Or ave. of side yard setback of 2 adjacent lots on both sides</u> Max required: 20-feet	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	Min: 75' feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet <i>(60-feet under Sec. 4.4.5(d)2A)</i>

Table 4.4.5-3: Residential District Dimensional Standards

Zoning District	Max. Lot Coverage ¹	Setbacks ^{1, 3, 4, 5}				Max. Height ¹
		Front ²	Side ³	Rear	Waterfront	
RH	80%	Min/Max: Ave of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width, but in no event less than 5-feet <u>Or ave. of side yard setback of 2 adjacent lots on both sides</u> Max required: 20-feet	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	NA	35-feet
<ol style="list-style-type: none"> 1. An additional ten per cent (10%) lot coverage may be permitted for accessory residential features per (d)3A below. Measurement of and exceptions to coverage, setback, and height standards are found in Art 5. 2. Average front yard setback of the principal structures on the 2 adjacent lots within the same block having the same street frontage. See Sec. 5.2.4. 3. In no event shall the side yard setback be required to exceed 20-feet, or the rear-yard setback be required to exceed 75-feet. 4. Additional setbacks from the lakeshore and other water features may be applicable per the requirements of the Sec 4.5.4 Riparian and Littoral Conservation Overlay Zone 5. <u>Average side yard setback (left or right – not both together) of the principal structures on the 2 adjacent lots within the same block having the same street frontage. See Sec. 5.2.5.</u> 						

Article 5: Citywide General Regulations

Sec. 5.2.5, Setbacks

(a) Setbacks Required:

2. Side yard. The minimum side yard setback for any principal structure shall be as required under the provisions of Article 4. Where the side yard setback is expressed as a percent of lot width, such width shall be measured parallel to the lot frontage. Alternatively, where provided for under Article 4, the minimum side yard setback may be the average of the side yard setback (left or right – not both together) of principal structures in lawful existence as of the adoption of this ordinance on the two (2) neighboring lots on either side and within the same block having the same street frontage.

(b) Exceptions to Yard Setback Requirements:

7. Additional exceptions for nonconforming structures under Sec. 5.3.5.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-13-09 - Community Centers

As warned by the Planning Commission for public hearing on March 26, 2013.

Changes shown (underline to be added, ~~strike-out~~ to be deleted) are proposed changes to the *Burlington Comprehensive Development Ordinance*.

Purpose: This proposed amendment to the Comprehensive Development Ordinance restores “community centers” a permitted use in High-Density Residential districts.

Appendix A-Use Table – All Zoning Districts

USES	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use				Neighborhood Mixed Use			Enterprise		
	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	D	DW	DW-PT ¹⁶	DT	BST	NMU	NAC	NAC-RC	E-AE	E-LM
NON-RESIDENTIAL USES	UR ²¹	RCO - A	RCO - RG	RCO - C	I	RL/W	RM	RH	D	DW	DW-PT ¹⁶	DT	BST	NMU	NAC	NAC-RC	E-AE	E-LM
Community Center	N	N	CU	N	CU	CU ¹³	CU ¹³	CU⁸⁻¹³ <u>Y</u>	Y	Y	N	Y	Y	Y	Y	Y	N	CU

1. Residential uses are not permitted except only as an accessory use to an agricultural use.
2. Duplexes may be constructed, or a single unit may be converted into a duplex, on lots existing as of January 1, 2007 and which meet the minimum lot size of 10,000 square feet.
3. Duplexes shall only be allowed as a result of a conversion of an existing single family home. New duplexes are prohibited.
4. No more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use. No more than 3 rooms permitted to be let in the RL district.
5. An existing fraternity, sorority, or other institutional use may be converted to dormitory use subject to conditional use approval by the DRB.
6. Must be owner-occupied.
7. Must be located on a major street.
8. Allowed only on the ground floor level of structures in the district.
9. Automobile sales not permitted as an accessory use.
10. Exterior storage and display not permitted.
11. All repairs must be contained within an enclosed structure.
12. No fuel pumps shall be allowed.
13. Permitted hours of operation 5:30 a.m. to 11:00 p.m.
14. Such uses not to exceed ten thousand (10,000) square feet per establishment.
15. Excludes storage of uncured hides, explosives, and oil and gas products.
16. See Sec.4.4.1(d) 2 for more explicit language regarding permitted and conditional uses in the Downtown Waterfront – Public Trust District.
17. Allowed only as an accessory use.
18. A permitted use in the Shelburne Rd Plaza and Ethan Allen Shopping Center.
19. Cafes not permitted as an accessory use. Retail sales and tasting are permitted as an accessory use.
20. Accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 VSA §1021(f) and 1259(f) and 6 VSA §4810 are exempt from regulation under local zoning.
21. See Sec. 4.4.7 (c) for specific allowances and restrictions regarding uses in the Urban Reserve District.
22. See Sec. 4.4.5 (d) 6 for specific allowances and restrictions regarding Neighborhood Commercial Uses in Residential districts.
23. Allowed only on properties with frontage on Pine Street.
24. Such uses shall not exceed 4,000 square feet in size.
25. Dormitories are only allowed on properties contiguous to a school existing as of January 1, 2010.

Legend:	
Y	Permitted Use in this district
CU	Conditional Use in this district
N	Use not permitted in this district
Abbreviation	Zoning District
RCO – A	RCO - Agriculture
RCO – RG	RCO – Recreation/Greenspace
RCO – C	RCO - Conservation
I	Institutional
RL/W	Residential Low Density, Waterfront Residential Low Density
RM/W	Residential Medium Density, Waterfront Residential Medium Density
RH	Residential High Density
D	Downtown
DW	Downtown Waterfront
DT	Downtown Transition
BST	Battery Street Transition
NMU	Neighborhood Mixed Use
NAC	Neighborhood Activity Center
NAC-RC	NAC – Riverside Corridor
E-AE	Enterprise – Agricultural Processing and Energy
E-LM	Enterprise – Light Manufacturing

Burlington Comprehensive Development Ordinance

PROPOSED ZA-13-10 - Accessory Dwelling Units

As warned by the Planning Commission for a public hearing on March 26, 2013

Changes shown (underline to be added, ~~strike-out~~ to be deleted) are proposed changes to the *Burlington Comprehensive Development Ordinance*.

Purpose: This proposed amendment to the Comprehensive Development Ordinance is to encourage the creation of accessory dwelling units by reducing the required on-site parking, clarifying their treatment with respect to density calculations, and incorporating a deed restriction to facilitate compliance.

Sec. 5.4.5 Accessory Dwelling Units

(a) Accessory Units, General Standards/Permitted Uses:

Where there is a primary structure on a lot which exists as an owner-occupied single family residence, one accessory dwelling unit, that is located within or appurtenant to such single family dwelling, shall be allowed as a permitted use if the provisions of this subsection are met. An accessory dwelling unit means efficiency or one bedroom apartment that is clearly subordinate to the primary dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. No accessory unit shall be inhabited by more than 2 adult occupants. An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation. Additionally, there must be compliance with all the following:

1. The property has sufficient wastewater capacity as certified by the department of public works;
2. The unit does not ~~exceed 30 percent of~~ consist of more than 30 percent of the total habitable floor ~~the total gross floor area of the dwelling with the apartment of the primary dwelling, minus square footage associated with storage or utility spaces and similar un-insulated or un-inhabitable areas;~~
3. Applicable setback and coverage requirements are met;
4. ~~Two~~ One additional parking spaces which may be legally allocated to the accessory unit must be ~~in existence and~~ provided for the accessory unit; and,
5. A deed or instrument for the property shall be entered into the land records within 90 days of approval containing a reference to the permit granting the accessory unit. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy.

(b) Conditional Use Approval for Accessory Units:

If any of the following are also proposed, conditional use approval, as well as development review provisions of **Article 6** shall be required:

1. A new accessory structure;
2. An increase in the height or habitable floor area of the existing dwelling;
- ~~3. An increase in the dimensions of any parking area;~~
4. ~~A parking waiver is requested. If a parking waiver is requested, not more than one of the two required parking spaces for the accessory unit may be waived by the DRB for any of the following reasons:~~
 - ~~A. Where one occupant of the accessory unit is disabled as defined in **33 V.S.A. §1991(b)** or is at least 65 years of age, and the accessory unit is 750 sq. ft. or less; and/or,~~
 - ~~B. Under waiver provisions of **Sec. 8.1.15.**~~

(c) Additional Conditions of Waiver:

~~If a waiver is granted, the applicant shall also comply with the following:~~

- ~~1. A deed or instrument for the property shall be entered into the land records within 90 days of approval containing a reference to the permit granting the accessory unit and the parking waiver. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions; and,~~
- ~~2. The lease for the accessory apartment contains a clause stating that no vehicle parking is provided for or allowed on site except in an approved parking space and that violation of that condition of the lease shall be grounds for eviction.~~

(d) Loss of Waiver:

~~Any parking waiver granted is automatically void where there has been a change in the underlying facts that supported the waiver and the reference shall be removed from the land records. When there has been such a change in circumstances, the standards of the ordinance without waiver provisions are applicable and a reapplication is required.~~

(ec) Discontinuance of Accessory Units:

Approval of an accessory dwelling unit is contingent on owner occupancy of the single-family dwelling unit as a primary residence. For purposes of this section, owner occupancy means that, after the creation of the accessory unit all individuals listed on the deed for the property must reside in the primary unit or in the accessory unit. If either the primary unit or the accessory unit is no longer owner occupied as a primary residence, the approval for the accessory dwelling unit is void and the kitchen of the accessory dwelling unit must be

removed within 90 days with the entirety of the property being occupied as a single unit. When an accessory unit that is the result of additional square footage and/or a new accessory structure is proposed to be removed, revised floor plans and a revised site plan shall be required to be submitted for review and approval. Furthermore, where additional square footage is added to a single family home for purposes of creating an accessory unit and the accessory unit is at any point discontinued, none of the additional square footage shall be eligible for the purposes of increasing the number of unrelated adults that may be allowed to inhabit the property.