Town of Richmond
Planning Commission Meeting
AGENDA
Wednesday, May 19th, 2021, 7:00 PM

Due to restrictions in place for COVID-19, and in accordance to Act 92, **this meeting will be held by login online and conference call only**. You do not need a computer to attend this meeting. You may use the "Join By Phone" number to call from a cell phone or landline. When prompted, enter the meeting ID provided below to join by phone. For additional information and accommodations to improve the accessibility of this meeting, please contact Ravi Venkataraman at 802-434-2430 or at rvenkataraman@richmondvt.gov.

Join Zoom Meeting: https://us02web.zoom.us/j/83503119719
Meeting ID: 835 0311 9719
Join by phone: (929) 205-6099

1. Welcome, sign in and troubleshooting (7:00 pm)

2. Adjustments to the Agenda

3. Public Comment for non-agenda items

4. Approval of Minutes - May 5, 2021

5. Discussion on Accessory Dwelling Units, State Permits, Nonconforming Lots (7:10 pm or upon completion of Item 4)

6. Recap on Village Commercial and Residential/Commercial Districts (7:30 pm or upon completion of Item 5)

7. Update on Zoning For Affordable Housing project (8:10 pm or upon completion of Item 6)

8. Discussion on Residential Building Energy Standards (8:25 pm or upon completion of Item 7)

9. Presentation and Discussion on Richmond Mobil Gas Station Redevelopment Plan (8:40 pm or upon completion of Item 8)

10. Discussion on June 2nd Meeting Agenda (8:55 pm or upon completion of Item 9)

11. Other Business, Correspondence, and Adjournment (9:00 pm or upon completion of Item 10)

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- Page 10: Draft zoning on Accessory Dwelling Units

6. Recap on Village Commercial and Residential/Commercial Districts
- Page 12: Recap of ongoing zoning work on Village Commercial (VC) and Residential Commercial (R/C), prepared by Virginia Clarke

8. Discussion on Residential Building Energy Standards
- Page 17: Memo on Residential Building Energy Standards
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- Page 39: Correspondence with other planners in Vermont - Janet Hurley, Planning & Zoning Director, Town of Manchester; Dalila Hall, Zoning Administrative Officer, City of South Burlington; Taylor Newton, Senior Planner, Chittenden County Regional Planning Commission; and Mike Miller, Director of Planning & Community Development, City of Montpelier
- Page 42: 24 V.S.A. §4411
- Page 45: 24 V.S.A. §4414, with relevant sections highlighted
- Page 54: 24 V.S.A. §4449, with relevant sections highlighted
- Page 57: 24 V.S.A. §3101, with relevant sections highlighted
- Page 58: 26 V.S.A. §898, with relevant sections highlighted
- Page 60: 30 V.S.A. §51, with relevant sections highlighted
- Page 65: EV Charging Requirements from the Vermont Residential Building Energy Standards
- On a standalone document: "Local Electric Vehicle Charging Stations: A Welcoming Approach to Electric Vehicle Plug-In Technology" from Vermont Department of Housing and Community Development

9. Presentation and Discussion on Richmond Mobil Gas Station Redevelopment Plan
- Page 66: Draft regulations on nonconforming structures and nonconforming uses
- On standalone documents:
  - "Summit Richmond VT DRAFT Existing Conditions Plan 11-3-2020.pdf"
  - "Summit Richmond VT DRAFT - Existing Developed Area 4-16-21.pdf"
  - "Summit Richmond VT DRAFT - Proposed Developed Area 5-10-21.pdf"

Richmond Planning Commission
REGULAR MEETING MINUTES FOR May 5, 2021

Members Present:	Chris Cole, Virginia Clarke, Chris Granda, Alison Anand, Caitlin Littlefield, Joy Reap, Jake Kornfeld
Members Absent:	Mark Fausel,
Others Present:	Ravi Venkataraman (Town Planner/Staff), Kendall Chamberlin, Lisa Miller, Rod West, Bard Hill, Bob Reap

1. Welcome and troubleshooting

Virginia Clarke called the meeting to order at 7:03 pm.

Clarke announced Chris Cole's return and Brian Tellstone's resignation. Caitlin Littlefield announced that she will not be returning to the Planning Commission after her term expires at the end of the month, that she has accepted a new job that will require travel, and that she intends to attend meetings in the future to help the commission.

2. Adjustments to the Agenda

None

3. Public Comment for non-agenda items

None

4. Approval of Minutes

Motion by Littlefield, seconded by Jake Kornfeld to approve the April 7, 2021 meeting minutes.

Discussion: Cole said that abstentions count in the "yes" column for quorum purposes according to a recent court case in a town he used to live in. Chris Granda said that in the second sentence of the second paragraph of the energy standards discussion item, "requirements of the" should be included before "standards".

Voting: 6-0 (Joy Reap abstained). Motion carried.

Motion by Granda, seconded by Alison Anand to approve the April 21, 2021 meeting minutes.

Discussion: Granda highlighted that during the April 21, 2021 meeting, he had wanted the building energy standards to be a standing item at upcoming meetings and requested that the item be included in the next Planning Commission meeting. Clarke suggested adding "all new and substantially renovated" before "houses" in the fifth sentence from the top of page 9.

Voting: 6-0 (Kornfeld abstained). Motion carried.

5. Recommendations for Planning Commission appointments

Clarke said that there is one applicant and asked Ravi Venkataraman about which vacancy the applicant would assume. Venkataraman said that the applicant would take on the seat Littlefield is

vacating and that he will be advertising the vacancy left by Brian Tellstone later this week. Lisa Miller said she had no preference for the vacancy. Clarke asked Venkataraman for comment. Venkataraman said he had no comment and deferred to the commission. Clarke asked Miller to introduce herself. Miller discussed her past experiences on a planning commission and as a township supervisor in Pennsylvania and her recent move to Richmond. Granda welcomed Miller to the commission, and appreciated her experience and her willingness to serve as a newcomer. Miller said she will further study the town planning documents if the Selectboard appoints her. Clarke asked Venkataraman about procedure. Venkataraman said that in past practice, the Planning Commission voted to recommend appointees to be appointed by the Selectboard. Venkataraman added that the commission members have four-year terms, the term that was advertised is a four-year term beginning in June, and that Tellstone's term expires in June 2022.

Motion by Granda, seconded by Anand, to recommend to the Selectboard the appointment of Lisa Miller to a four-year term starting June 2021 on the Planning Commission. Voting: unanimous. Motion carried.

6. Discussion on Accessory Dwelling Units, State Permits, Nonconforming Lots

Clarke began discussions on the accessory dwelling units section. Clarke said that the proposal removes the owner occupancy requirement, and that Venkataraman confirmed that the removal of the requirement is legal per Vermont League of Cities and Towns. Cole asked if the owner could rent out both dwelling units if they do not need to live in either unit. Clarke affirmed. Clarke said she had concerns about incorporating the term "residential use" into the definition for "habitable floor area", and that the usage of "residential use" was not appropriate in this context. Clarke presented her own definition. Littlefield asked about decks and porches. Clarke said that she would not include decks and porches under habitable floor area and that she would only include indoor spaces.

Granda suggested regulating "conditioned floor area" instead of "finished floor area". Cole asked for clarification on conditioned. Granda said he referred to spaces in which internal temperatures could be manipulated. Reap said that with heat pumps, spaces need not be conditioned. Cole said that his mudroom was not conditioned. Cole asked about basements. Reap asked if the definition will be used in other parts of the zoning regulations. Venkataraman said that he would like to apply this definition to any aspect that requires portioning a residence for a particular use, like home occupations and cottage industries. Reap asked about zoning fees. Venkataraman affirmed that he would like this to apply for zoning fees to standardize the application of fees. Clarke said she thought one would not want to incorporate the square footage of accessory structures into habitable floor area. Cole suggested syntactical changes and asked about how one could determine if a garage was finished. Clarke suggested not including accessory structures in habitable floor area. Granda said that conditioning a space makes a space habitable in the Vermont context. Clarke asked Venkataraman about why accessory structures are included in the definition. Venkataraman said that it was to treat structures equally. Venkataraman said that the commission may be overthinking the issue, and that the discussions on conditioned spaces is veering more towards building standards instead of zoning standards. Reap asked if this item was an issue or a debate. Venkataraman said no, and that people should know what they are paying for when they apply for a zoning permit. Clarke asked the commission about their sentiments on accessory structures. Reap said that if an applicant pulls a permit to finish a space, that space is included in the habitable area. Cole said that if the space does not have a heating system, the space is not finished in Vermont. Reap suggested including language to reference spaces in which one could sleep within yearround. Clarke suggested including finished and conditioned spaces. Others concurred. Kornfeld asked about the purpose of defining habitable floor area if the intent is to allow more options for developing accessory dwelling units. Reap connected it to permit fees and taxes. Venkataraman said that zoning permits have no bearing on taxes due to differing definitions on spaces.

Anand asked if duplexes could host accessory dwelling units. Clarke said that in this iteration, that

aspect is not being considered. Anand asked for clarification on single-family dwellings with accessory dwellings and duplexes. Clarke clarified the difference between accessory dwellings and accessory structures and that accessory dwellings are not necessarily within accessory structures. Cole recommended removing the reference to accessory structures because it adds confusion, and suggested defining habitable floor area as the conditioned and finished floor area within residential dwellings. Others concurred. Clarke said that she will provide a revision for the next meeting.

7. Introduction to the Gateway District

Clarke introduced Bard Hill and Kendall Chamberlin. Hill overviewed the current water and sewer service area, and proposed extension area in the Gateway. Hill said that the plan is to extend sewer service along Route 2 all the way to the mobile home park in three phases. Hill said that to do so would require a vote among residents within the water/sewer service district and the expansion area, and a town-wide vote on a bond to fund expanding the water/sewer district. Hill said that the water/sewer commission would prefer to build parallel to Route 2 because the line would be more accessible for connections and maintenance, and that there is the option of expanding from the school directly to the Reaps' property across Richmond Land Trust land since they own easements. Clarke asked Hill if water service will be expanded, noting that Hill focused on sewer service. Hill said that the focus has been on sewer because both the Richmond Mobil station and the mobile home park are not interested in water service. Hill said that residents between the Reaps' property and the mobile home park may be interested in water service, and that water service is easier to manage than sewer service. Reap asked about the location of Resourceful Renovator. Hill clarified that there are properties within the boundaries of the district that are not served by town water and sewer. Cole asked about the likelihood that the lines would go along Route 2. Hill said that the Water/Sewer Commission is in favor of building the lines along Route 2, that building the infrastructure will depend on the bond vote, that ARPA funds may play a role, and that he has had conversations with VTrans about conjoining and coordinating the projects. Granda noted past issues of coordination with VTrans. Chamberlin discussed the installation of lines via boring, that installation would have minimal disruption, and that coordination with the Route 2 project is not vital. Clarke asked about sequencing changing the zoning in the Gateway. Hill said that the intent is to move forward with the project sooner rather than later based on the Reaps' and the Richmond Mobil timelines, and that he cannot say if and when the project would commence. Clarke said that the commission is aware of the Richmond Mobil project, and that the Richmond Mobil project team is slated to discuss revisions to their project at the next Planning Commission meeting. Hill said that with the project, the Water/Sewer Commission is looking towards next year's construction season. Granda asked about the financial impacts of the project. Hill referred to past Water/Sewer Commission meetings, that the current rate payers would not pay for the extension, that the expansion would benefit current rate payers, and that they have conducted analyses to determine future costs. Cole asked about requiring commercial property owners paying for the extensions. Hill said that in theory this is possible, and that it could be tapped into cover any funding gaps.

Clarke asked about extending the water and sewer lines to the Farr property. Hill said this conversation would be similar to the Gateway extension, and investigation into the costs, the uses, and who would take on the costs are necessary. Venkataraman said that for the Farr property, tying in would be feasible and that a cost-benefit analysis would be necessary. Hill noted that there are towns as a whole subsidize the water/sewer service because it provides an economic benefit as a whole, and that Richmond has one of the highest water/sewer rates in the state.

Granda asked for clarification on the plan and possible changes in use. Hill said that changes in use are not part of the Water/Sewer Commission's plan. Clarke asked Rod West for comment. West said that he has anticipated water/sewer expansion for decades, that the size of the properties in the Gateway curtail commercial development, that he would appreciate flexibility in allowances, that the Gateway would be the location to place traffic-intensive developments, that the Village is built out, and that housing is needed. Reap concurred

Hill said he can provide the Planning Commission regular updates on the project, and that he appreciates the time and effort the commission puts into the work. Hill left the meeting.

Clarke said that the commission should discuss the Route 2 repaving project for the next meeting, and asked Cole to provide an update. West said that the Selectboard is working on a letter to VTrans regarding the town's concerns. Venkataraman said that he, Josh Arneson, and Hill worked on that letter West referenced, that the conversations with VTrans are a work in progress, and that he and Hill should have an update for the commission in the coming weeks.

8. Other Business, Correspondence, and Adjournment

Motion by Granda, seconded by Cole to adjourn the meeting. Voting: unanimous. Motion carried. The meeting adjourned at 8:53 pm.

Respectfully submitted by Ravi Venkataraman, Town Planner

Chat Log

19:04:37 From Lisa Miller to Everyone : Lisa Miller is here
19:16:48 From Lisa Miller to Everyone : Hi! Can you hear me?
19:17:17 From Lisa Miller to Everyone : Not sure if my mic is on/working
19:17:29 From Caitlin Littlefield to Everyone : Lisa haven't heard you yet.
19:17:37 From Chris Granda to Everyone : I haven't heard you yet Lisa
19:17:38 From chriscole to Everyone : I couldn’t hear you.
19:17:50 From Lisa Miller to Everyone : Oh dear...
19:18:07 From Lisa Miller to Everyone : No I don't care which seat. Whateve

TO: Planning Commission

FROM: Ravi Venkataraman, Town Planner

DATE: May 13, 2021

SUBJECT: Discussion on Zoning Amendments

Items under consideration

For your consideration, I have enclosed:

- Draft language regarding state permit references, as previously discussed,
- Draft language regarding nonconforming lots, as previously discussed,
- Draft language regarding accessory dwelling units, as previously discussed, and

Recommendations for Action

If you are satisfied with the enclosed draft language, I recommend that you move to warn a public hearing for June 16, 2021.

To facilitate action, I have prepared the following draft motion:

> *I,_____, move to warn a public hearing for June 16, 2021 on the amendments to the Richmond Zoning Regulations Sections 3.8.5, 4.6, 5.2.1, 5.6.2, 5.6.3, 5.8, 5.9, and 7.*

State permit references

3.8.5 Other Requirements Applicable to Lots in the MHP District

~~d) State Approval of Mobile Home Parks - No Zoning Permit may be issued for Land Development within a mobile home park unless satisfactory evidence is produced to the DRB that all applicable state laws and regulations relating to Land Development have been met.~~

5.2.1 ***[Application, Fees, Reimbursement for Technical Review]***

d) State Permits - ~~All required state permits shall be a part of and made a condition of each local permit. Unless otherwise required, state permits may be obtained after local permits.~~ In no case shall a project or use commence without all necessary state water and wastewater ~~and local~~ permits. Local permits do not absolve the applicant from obtaining applicable state and federal permits, and the applicant is responsible for obtaining relevant state and federal permits. The applicant should contact the regional permit specialist employed by the Agency of Natural Resources for additional information on related state permits.

5.6.2 ***[Conditional Use Review Specific Standards]***

~~**d)** Applicable state permits for water supply and sewage disposal shall have been obtained, and any other applicable state permits, before the use commences.~~

~~**e)**~~ **d) ...**
~~**f)**~~ **e) ...**
~~**g)**~~ **f) ...**
~~**h)**~~ **g) ...**
~~**i)**~~ **h) ...**
~~**j)**~~ **i) ...**
~~**k)**~~ **j) ...**

5.6.3 Performance Standards

~~**h)** Industrial wastes shall be so stored and removed from the lot in manners as to not be reasonably objectionable to adjacent lots or create a public nuisance, or pollute the environment. These shall be stored within a structure.~~

~~**i)** All uses shall comply with all Federal and State laws and regulations for the use, storage, hauling and disposal of hazardous materials and wastes.~~

h) No fire, explosive or safety hazard shall be permitted that endangers public health, safety or welfare, public facilities, or neighboring properties; or that results in a significantly increased burden on municipal facilities and services shall be permitted.

i) No radioactive emission or other hazard that endangers public health, safety or welfare, public facilities, or neighboring properties; or that results in a significantly increased burden on municipal facilities and services shall be permitted.

j) The storage of any highly flammable liquid in above ground or below ground tanks shall comply with applicable provisions of these regulations and all applicable state and federal regulations. All hazardous materials shall be stored within a structure.

~~**j)**~~ **k)...**

5.8 Boundary Adjustments

~~**5.8.4 State Permits** - All state permits must be approved prior to submission of application and state permit numbers must be included on the application.~~

~~**5.8.5**~~ **5.8.4 New Lot Configuration**

~~**5.8.6**~~ **5.8.5 Appeals**

4.6 Nonconforming Lots

4.6.1 Existing Small Lots - ~~In accordance with the Act [§4412(2)], a~~Any lot that is legally subdivided, is in individual and separate and non-affiliated ownership from surrounding properties~~,~~ ~~that~~ is ~~legally~~ in existence on June X, 2021 may be developed for the purposes permitted in the district in which it is located, with exception to lots as described in Section 4.6.1.1, even though the small lot no longer conforms to the minimum lot size requirements of the respective district in which the lot is located ~~on the Effective Date of any Richmond Bylaw may be developed for the purposes permitted in the Zoning District in which the lot is located, even though the lot does not conform to minimum lot area requirements of the Zoning District~~ .

4.6.1.1. For existing small lots which are not served by municipal water and sewer service, and are unable to connect to municipal water and sewer service, land development may be permitted if said existing small lots have both of the following dimensional requirements
a) At least one-eighth (1/8) acre in area; and
b) A width or depth dimension of at least 40 feet.

~~. Notwithstanding this exception to minimum lot area requirements, no Zoning Permit shall be issued for Land Development on an existing small lot unless such Land Development complies with all other provisions of these Zoning Regulations.~~

Amendments to Accessory Apartment Allowances

5.9. Accessory Dwellings. The Administrative Officer may issue a zoning permit for one accessory dwelling unit to a single-family dwelling use if:

a) The single-family dwelling use is not located within the Flood Hazard Overlay District.
b) The accessory dwelling will be located within the single-family dwelling primary structure, within an addition to that single-family dwelling primary structure, or within an existing or new detached accessory structure on the lot hosting the single-family dwelling use.
c) The accessory dwelling will not exceed 1,000 square feet or 30 percent of the total habitable floor area of the single-family dwelling, whichever is greater;
d) The property will have sufficient wastewater capacity;
e) The accessory dwelling will meet all applicable dimensional standards and parking requirements for accessory dwellings.

~~**5.9.1 Permitted Use -** In accordance with the Act [§4412(1)(E)], one accessory dwelling within or appurtenant to a single-family dwelling, or within or appurtenant to an existing accessory structure to the single-family dwelling, may be allowed as a permitted use to a single-family dwelling, except within the Flood Hazard Overlay District (new Accessory Dwellings are prohibited within the Flood Hazard Overlay District), subject to the issuance of a Zoning Permit by the Administrative Officer, and all of the following requirements:~~

~~a) Either the single-family dwelling or the accessory dwelling must be occupied by the owner or by the owner's spouse, civil union partner, parents or legal children. In the event that the owner or relative is forced to leave the dwelling, or accessory dwelling, or dies, there shall be no change in status of the accessory dwelling for a period not to exceed twelve months at which time the familiar occupancy rule will be enforced.~~

~~b) The accessory dwelling must be at all times owned by the same party that owns the single-family dwelling.~~

~~c) The accessory dwelling shall be an efficiency, one-bedroom, or two-bedroom apartment that is clearly subordinate to the single-family dwelling and has facilities and provisions for independent living, including sleeping, food preparation and sanitation.~~

~~d) The accessory dwelling shall not exceed 75% of the total habitable floor area of the single-family dwelling or up to 1,000 square feet, or whichever is less. In cases where the State Statutory minimum of 30% of the total habitable floor area of the single-family dwelling exceeds the Town maximum, the State minimum shall take precedence over the Town maximum. c) The property shall have sufficient wastewater capacity.~~

~~e) The accessory dwelling shall meet all applicable setback, coverage and parking requirements for the principal dwelling as specified in these Zoning Regulations. If the accessory dwelling is to be located in a nonconforming structure, it shall not increase the degree of nonconformance, except in accordance with Section 4.7~~

~~**5.9.2 Conditional Use -** Conditional use approval by the DRB under Section 5.6 shall be required for an accessory dwelling for which any of the following also apply:~~

a) ~~the accessory dwelling is to be located within a new single-family dwelling in a district in which conditional use review is required for single-family dwellings.~~

~~**5.9.3 Conditions of Approval** – In addition to any other conditions of approval, the Zoning Permit issued for an accessory dwelling shall clearly state that the dwelling is allowed only as an accessory to the primary, principal single-family residential use of the property and as such shall be retained in common ownership. An accessory dwelling may be converted and/or subdivided for conveyance or use as a principal dwelling only if it is found to meet all requirements of applicable municipal and state regulations for a two-family dwelling (for an attached unit) or for two single-family dwellings (for a unit in an accessory structure), including all lot, density and dimensional requirements for the zoning district in which it is located. All applicable municipal permits and approvals shall be obtained prior to conversion or conveyance as a principal single-family dwelling.~~

Section 7 proposed amendments:

Accessory Dwelling - A distinct residential dwelling unit on the same lot as a single-family dwelling use that is clearly incidental and subordinate to the single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. ~~One accessory dwelling per lot includes effieiency, one-bedroom, or two-bedroom apartment that is located within or appurtenant to, and is clearly subordinate to, a single-family dwelling; is on the same lot as the single-family dwelling; has the facilities and provisions necessary for independent living, including sleeping, food preparation, and sanitation; and that also meets the requirements of these Zoning Regulations (see Section 5.9), in accordance with the Act (§4412).~~

Habitable Floor Area - The sum of the finished and conditioned floor areas within a building hosting one or more dwelling units.

Recap of ongoing zoning work on Village Commercial (VC) and Residential Commercial (R/C) for PC meeting 5.5.21:

Discussion issues:

1. *Goodwin-Baker – R/C or VC?*
2. *Farr uplands – R/C?*
3. *Pros and cons of having residential uses in the VC*
4. *Compatibility standards for the R/C to allow residential and commercial to coexist?*
5. *Multiple uses allowed on a lot in both these districts? (as in the Jolina Court and Village Downtown zoning districts)*
6. *Are the uses and dimensional standards appropriate?*

The following are based on input thus far received and are FOR DISCUSSION PURPOSES ONLY. The goal is to figure out what further information we need to make our recommendations for these districts.

Village Commercial

Proposed Area:

1. most of Railroad St – Hardware St// lumber yard & Grocery Store, and Richmond Rescue (currently in Village Commercial)
2. Round Church Corners Complex (currently in Commercial)

Proposed Purpose: The purpose of this district is to retain and encourage commercial activities within the central village area, to allow for changing needs within the commercial sector and to promote the possibility of walking between dwellings and commercial services. Retail, wholesale, and light manufacturing activities that meet performance standards, as well as service sector businesses will be allowed. Parking, pedestrian and biking facilities will be provided. Greenspace and screening standards that will keep the district attractive to residents and visitors will be encouraged when feasible.

Features:

- Diverse businesses, services and light industrial uses located in or near the center of town but outside the residential neighborhoods
- Designated for a busy mix of pedestrians and vehicles

Permitted uses:

Multiple permitted uses may be permitted on a lot.

Artist/craft studio
Automobile or engine repair services
Bank
Catering
Commercial multiuse building
Educational
Equipment supply or rental (CU if outdoor storage)
Funeral parlor
Hotel or motel
Light manufacturing
Museum

Office, professional or medical
Personal services
Pharmacy
Pub or tavern
Religious facility
Retail sales
Recreation, indoor
Research lab
Restaurant
State or community-owned facility
Theater
Veterinary Clinic

Conditional:
Multiple conditional uses may be allowed on a lot with conditional use review.

Automobile or marine sales
Brewery
Car wash
Gasoline fueling station
Lumber yard/building supply
Outdoor storage as accessory to any allowed use
Warehouse facility (any indoor storage use including self-storage, wholesale, distribution center)
(adaptive use)
(PUD)

Dimensional Standards:
minimum lot size: 1/3 A 1/4A?
lot coverage: 50%
lot frontage: 75'
setbacks:
front 5' - 25'
side: 10'
rear: 10'

Other requirements:

All lots shall be served by municipal water and sewer

Also could be discussed:
Any additional performance standards?
traffic
parking
sidewalks and bike lanes
greenspace, landscaping and screening

Residential/Commercial

Name – Village (?) Residential/Commercial Zoning District

Proposed Area: – (see map)

North of river:

- current (both sides of E. Main St; both sides of Bridge St from Railroad St to Volunteers' Green/river)
- 2 parcels next to Greensea on south side of E Main St
- 6 parcels next to MMCTV on south side of W Main St
- 4 parcels on north side of W Main St Ski Express to Millet St
- 4 parcels on Depot St
- 4 parcels on south side of Railroad St
- west side of Jericho Rd from the ski shop to School St
- east side of Jericho Rd from the Harley Brown building to Burnett Ct
- *Goodwin-Baker building/ Millet St?*

South of river:

- O'Brien block ("A" *on attached map*)
- Farr uplands ("B")?

Proposed Purpose – The purpose of this district is to allow residential and residential-compatible commercial uses to coexist in a traditional village center, with housing of varied types in moderate density and flexibility of commercial and residential building uses. The district encourages walkability between residents, businesses and community amenities.

Features:

- residential-compatible commercial uses on the main arterials to promote economic vitality,
- increased and varied housing opportunities, including multi-family structures,
- "mixed use" structures that will allow more flexibility in use of property to meet changing needs in commercial real estate and live/work strategies,
- increased walking, biking and public transit options both within and into the village area to meet climate change and livability goals,
- street trees, landscaping and green space to keep the village attractive for residents and visitors,
- plentiful gathering spaces and recreational opportunities to meet community needs

Permitted Uses:

- accessory dwelling
- accessory structures or uses except outdoor storage
- arts/craft studio
- bank
- bed and breakfast
- family-based child care facility
- funeral parlor

- group home
- home occupation
- inn
- large family-based child care facility
- museum
- office, medical
- office, professional
- personal services
- single- family dwelling
- two-family dwelling (duplex)
- multifamily dwelling with 3-4 dwelling units
- mixed use building with up to 4 compatible permitted uses

3.3.3 **Conditional Uses:**

Multiple permitted or conditional uses may be allowed on a lot with conditional use review.

- catering service
- cemetery
- fitness facility
- health care services
- laundromat
- mixed-use building including up to 4 compatible permitted or conditional commercial uses and/or residential units
- pharmacy
- outdoor recreational facility or park
- religious or educational facility
- restaurant
- retail business
- retirement community
- state or community owned facility
- veterinary clinic

  (other uses we should consider? Self-storage?)
- (adaptive use)
- (PUD or PRD)
-

Dimensional requirements:

- Minimum lot size: 1/3 or 1/4A (all served by municipal water and sewer)
- Maximum density for multifamily (>2 dwelling units) housing: 5,000sf of land per dwelling unit
- Maximum lot coverage: 40%
- Minimum lot frontage: 75'
- Minimum lot shape: must be able to inscribe circle with radius of 35' within lot lines
- setbacks for principal structure – front minimum = 5' maximum = 25'
  side = 10'
  rear = 10'
- setbacks for accessory structures including accessory dwelling unit, (but not including fences)
  front = no closer to front of lot than 10' behind front of principal structure
  side – 10'

rear -- 10’

- residential parking: 1 space per dwelling unit

Development standards: (also called “compatibility,” “character of the neighborhood” or “design standards”) *(currently, must look like a residence)*

- Principal structures shall have windows and principal entrance facing the road and shall have windows on all sides facing inhabited properties
- Front façade >50’ of new principal structure shall be broken down into a series of smaller facades that incorporate changes in color, texture, materials or structural features
- Sloping roofs shall ensure that falling snow or ice does not endanger pedestrians.
- Front and side setbacks that are not covered with impervious surfaces should be vegetated, and landscaping and/or screening shall be required for outside storage, parking and loading areas, or if needed to protect privacy of residents or neighbors

Other requirements :

- all served by village water and sewer

What other information do we need to know to make these decisions?

TO: Richmond Planning Commission

FROM: Ravi Venkataraman, Town Planner

DATE: May 13, 2021

SUBJECT: Residential Building Energy Standards

Background

Throughout April, I have investigated the legality and feasibility of incorporating energy standards into zoning as Jeff Forward and Chris Granda have proposed. Enclosed are my findings from:

- Vermont Department of Public Service
- Vermont League of Cities and Towns
- Town Attorney, Dave Rugh of Stitzel, Page, and Fletcher, P.C.
- Geoff Martin, Intermunicipal Regional Energy Coordinator of Two Rivers-Ottauquechee Regional Planning Commission
- Other planners in Vermont, namely Janet Hurley, Planning & Zoning Director, Town of Manchester; Dalila Hall, Zoning Administrative Officer, City of South Burlington; Taylor Newton, Senior Planner, Chittenden County Regional Planning Commission; and Mike Miller, Director of Planning & Community Development, City of Montpelier
- Vermont Department of Housing and Community Development (DHCD)
- 24 V.S.A. §4411
- 24 V.S.A. §4414
- 24 V.S.A. §4449
- 24 V.S.A. §3101
- 26 V.S.A. §898
- 30 V.S.A. §51
- Vermont Residential Building Energy Standards

I also spoke with Regina Mahony and Melanie Needle of Chittenden County Regional Planning Commission (CCRPC) about this issue. Since my conversation with them was through a video call, I do not have a record of that conversation. However, their input is reflected in the response other planners in Vermont provided.

Originally, I had provided these materials to Chris Granda and Jeff Forward to inform their research. Granda recommended that I forward my response to you. My correspondence with Granda and Forward are enclosed.

Axioms

In addition to the findings, you need to hold in consideration these two axioms:

1. Municipalities only have powers that are explicitly enumerated in statute - Vermont is a Dillon's Rule state. This is referenced in the Vermont Constitution §2 and §69, and directly reinforced in City of Montpelier v. Barnett, 191 Vt. 441. Per Dillon's Rule,

anything not explicitly allowed in statute is not allowed.

2. Zoning is a tool to regulate the built environment - By definition, zoning is for the form and use of the built environment in a broad level, not for elements within structures. Ideally, zoning is not supposed to regulate bedrooms and the conditioning of spaces.

Summary of Findings

My correspondence to Granda and Forward include a summary of findings. But to recap some of those findings:

- Enabling statute under 24 V.S.A. Chapter 117 allow municipalities to enact zoning bylaws. Zoning bylaws can regulate the construction of structures in terms of size, location, and use. The general limits of zoning bylaws are under 24 V.S.A. §4411 and §4414 which are enclosed for your review.
    - Under 24 V.S.A. §4414, municipalities can adopt zoning and subdivision bylaws to encourage energy conservation and renewable energy harvesting. However, the limitations of zoning under §4411 would apply.
- Enabling statute under 24 V.S.A. Chapter 83 allow municipalities to enact building codes. Building codes can regulate the construction, maintenance, repair, and alteration of buildings and structures. Building codes can also regulate building materials, structural design, passageways, stairways and exits. The general limits of building codes are under 24 V.S.A. §3101. This is enclosed for your consideration.
- Enabling statute under 26 V.S.A. Chapter 15 allow municipalities to establish electrical inspection procedures. This is separate from building codes and 24 V.S.A. Chapter 83 does not enable municipalities to regulate electrical inspections. The section of statute that enables municipalities to regulate electrical inspections, 26 V.S.A. §898, is enclosed.
- Statute to require the provision of a Residential Building Energy Standards (RBES) Certificate prior to the issuance of a certificate of occupancy is in 30 V.S.A. §51. This section of statute also enables municipalities to adopt stretch code into zoning bylaws.
- Under 30 V.S.A. §51, while RBES certification is required prior to the issuance of the Certificate of Occupancy, municipalities cannot state how applicants must self-certify.
- Under 30 V.S.A. §51(g), the responsibility to enforce noncompliance with the filing of the RBES certificate or with the applicable energy standards is on individuals, not with municipalities.
- As a whole, 30 V.S.A. Chapter 2 does not mention the ability for municipalities to administer and regulate building energy standards in a similar fashion to zoning bylaws, building codes, and electrical inspections.
- The Residential Building Energy Standards are not statute.
- In practice, the adoption of stretch code into zoning bylaws raises the energy standards buildings must meet. The adoption of stretch code does not give municipalities any authority to administer and regulate energy standards.
- Per 24 V.S.A. §4449, Certificates of Occupancy can only be granted if the development is in conformance with the zoning bylaws.
- To determine if a development is in conformance with the zoning bylaws before

issuance of the certificate of occupancy, municipalities have adopted zoning bylaws that require additional materials to determine conformance, such as as-built plans.
- Per the Residential Building Energy Standards stretch code, multifamily dwelling projects with more than 10 units must have Level 1 or Level 2 EV Charging capabilities for four percent of the parking spaces required for the project. This section of the stretch code is enclosed.

Conclusions

Based on these findings and clarifications on these findings from the Town Attorney, Department of Public Service, CCRPC, and other planners in Vermont, I arrived at the following conclusions regarding Granda's and Forward's zoning amendment proposals:

- HERS Rating - Municipalities can require in addition to and separate from the RBES Certificate a HERS Rating report. This would separate statutory RBES requirement from additional requirements per the zoning bylaws. This HERS rating report would be akin to the provision of as-built plans with a certificate of occupancy application--a common requirement in other municipalities.
    - My understanding is that municipalities cannot stipulate the required HERS rating. However, under 24 V.S.A. §4414(14), municipalities might be able to provide incentives for developments with lower HERS ratings through housing density bonuses, or relief from permitting pathways. I need to verify this.
- EV Charging - Municipalities can require the allocation of spaces for EV charging similar to requiring specific amounts of ADA parking spaces or bicycle parking. But zoning has no purview over the wiring of charging stations. This understanding is bolstered by material from Vermont Department of Housing and Community Development (DHCD): EVSE-Friendly Development Regulations.VT .DHCD .Sep2018.pdf (vermont.gov)
- Solar-ready Structures - This proposal is not implementable within zoning and is in the purview of building codes.

Based on my conversations with other planners in Vermont and CCRPC, I'm not aware of other municipalities having regulations that encourage energy efficiency and conservation as concluded. Any zoning amendment proposals stemming from these conversations should be reviewed by the Town Attorney

Energy Standards Research

2 messages

Ravi Venkataraman <rvenkataraman@richmondvt.gov> Fri, Apr 30, 2021 at 9:45 AM
To: Jeff Forward <forward@gmavt.net>, Chris Granda <chris@grasteu.net>
Cc: Chris Cole <ccole.pc@gmail.com>, Virginia Clarke <vclarke@gmavt.net>

Jeff and Chris,

Here's everything I've found so far. Here are the findings and conclusions I've drawn from these conversations and statute:

- The Residential Building Energy Standards are not statute and municipalities can only do what is enabled in statute.
- Enabling statute under Chapters 24, 26, and 30 allow for:
  - Zoning regulations that include the construction of structures in terms of size, location and use (in summation: building exterior)
  - Building code regulations, including regulations on building materials, structural design, passageways, stairways and exits, heating systems, and fire protection procedures (in summation: building interior)
  - Local electrical inspections
  - Adoption of stretch code into zoning
- Taylor Newton's response is included in the attachment. Regina Mahony at CCRPC gave me a similar response in our conversations.
- Since the Residential Building Energy Standards apply to aspects within buildings or under the purview of building codes, I've concluded that the "code official and authority granting jurisdiction" applies to municipalities with building codes. Tangentially, "authority granting jurisdiction" is a common term used in building codes and not used in zoning regulations.
- I really hope your contact with DPS has more to say. This statement from DPS doesn't instill confidence for me: "If they aren't explicitly given authority to appoint 'an authority having jurisdiction' I'm not sure what the process is – do you have to ask the Legislature for permission if you're not explicitly given authority to do something?"
- HERS Rating Compliance - Like I said during the Planning Commission meeting, it seems to me that the best practice would be to separate the HERS rating requirement from the RBES requirement, and have applicants provide a HERS report with a Certificate of Occupancy in addition to an RBES. Legally, it appears that municipalities can tell applicants to provide self-certification but cannot tell applicants how they can self-certify (unless the municipality has adopted building codes.
  - 24 V.S.A. 4414(6) does allow the implementation of zoning and subdivision bylaws to encourage energy conservation. This is my basis for requiring a HERS report in addition to the RBES. But I don't think this enables us to modify the RBES requirement to tell applicants how they can fill the RBES.
- EV Charging - My only issue with this is the electrical wiring component. If you were to simplify this request to requiring one parking space with a level two charging station per use (as though it were bicycle parking or ADA parking), we should be able to implement it. This would be in compliance with 24 V.S.A. 4414(6) without treading on building code requirements and electrical inspections.
- Solar-ready structures - Based on all the information in your request and the attached statutes, this does not seem to be implementable. The allowance under 24 V.S.A. 4414(6) is still under the general rules of 24 V.S.A. 4411. The only ways I can see this request being legally possible is by adopting stretch code or by adopting building codes and then adopting above-code requirements for the structure.

At this point, I'm not going to do any more research. I'll leave it to you. If your proposal is to be forwarded for approval, I strongly recommend that it be reviewed by the Town attorney before a public hearing. No town without a building code has put in place regulations like your proposal and I want to make sure it's legally possible.

Some additional opinions on this: I'm curious about the equity and scaling of these technologies. Based on how much progress has occurred with EVs and (especially) solar in the last five years, and the EV and energy goals the government and companies are putting in place, I'm beginning to wonder if EV wiring and solar-ready roofing is going to be relevant in five to 10 years. As these technologies become cheaper, more accessible, lighter, and more efficient, I would think that these regulations you're proposing could become obsolete in five to 10 years (probably 10 years, but I'm hoping for five years). And if they are, are we going to put in place regulations that may place a burden on the developer and the cost of new construction without a salient benefit on the homeowner? I don't expect and answer to this because I don't think our

predictions are going to match up with hindsight (just like with cell technologies, Internet of Things, and microprocessors); it's more so food for thought.

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)
Town Planner
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office: 802-434-2430
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10 attachments

- **DPS Correspondence.pdf** 89K
- **24VSA3101.pdf** 40K
- **VLCT Correspondence.pdf** 160K
- **Vermont Planners Correspondence.pdf** 149K
- **Legal Opinion.pdf** 141K
- **24VSA4411.pdf** 48K
- **24VSA4414.pdf** 81K
- **30VSA51.pdf** 62K
- **26VSA898.pdf** 45K
- **Correspondence - Geoff Martin.pdf** 250K

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chris@grasteu.net <chris@grasteu.net> Tue, May 4, 2021 at 8:43 PM
Reply-To: chris@grasteu.net
To: Ravi Venkataraman <rvenkataraman@richmondvt.gov>, Jeff Forward <forward@gmavt.net>
Cc: Virginia Clarke <vclarke@gmavt.net>

Ravi,

Thanks for this useful summary. I think this is a good way to share your official perspective on our proposal with the Planning Commission, except that you only copied three of the nine members of the PC on your email. I understand that you don't intend to do additional research, but if you do reengage on this issue I hope that you will continue to communicate in writing and with all members of the PC. As a voting member of the PC I am copying only my vice-chair

(in addition to you and Jeff who are not PC members) on this message to avoid violating open-meeting statute. Please forward your message to the remaining members of the PC.

The PC will need to do some additional research regarding the town's jurisdiction regarding energy efficiency and renewable energy requirements we are able to impose beyond the base RBES code. As you note, you are not a lawyer and this is a question that it will take lawyers to resolve. The PC (and possibly the select board) will figure out how to get these legal questions answered in a cost-effective way.

A few questions:

1. You believe that it is possible for the town to require a HERS rating in addition to the RBES form. Does that mean that you also believe that town can set a maximum HERS score (less being better)?

2. With regards to the EV charging, it sounds like you think we can require that a level 2 charger be installed, which I assume would also ensure that the house's wiring is configured to accommodate it. Is this correct?

3. I understand your general concerns about technological change and any requirements imposed now remaining relevant in the future. It's impossible to predict the future, but we also regularly make investments based on common-sense expectations about the future and enjoy reasonable returns, which is what we are proposing. I don't think it is likely that electric vehicles will evolve to not require electricity. Electric vehicle supply equipment (EVSE) is now being installed in large numbers all over the country. Electric vehicles will be designed to take power from this first generation of EVSE. Future EVSE will have more capabilities, but will perform the same basic function of transferring power. Do you disagree? Regarding solar, I think if you look at the history of rooftop solar arrays over the last 10 years that while the efficiency has increased, and the price has dropped tremendously, that a new array still weighs about the same as a 10-year-old one and therefore requires the same structural support. The racking for a solar array weighs as much or more than the panels themselves. Do you think that one way to address concerns about a solar-ready regulation's requirements becoming outdated could be to make an exception to solar-ready for homes that come with photovoltaic systems of a minimum rated output installed and operating? That way whatever advances solar technology have made can be appropriately incorporated into the home by the builder.

Regards,

Chris Granda

Member, Richmond Planning Commission

[Quoted text hidden]

Gmail

Ravi Venkataraman <rvenkataraman@richmondvt.gov>

Residential Building Energy Standards Question

Launder, Kelly <Kelly.Launder@vermont.gov> Wed, Apr 21, 2021 at 11:08 AM
To: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Cc: "Levenson, Keith" <Keith.Levenson@vermont.gov>

Ravi,

My answers to your questions are below in red.

Regards,

Kelly

Kelly Launder

Assistant Director

Efficiency and Energy Resources Division

Vermont Department of Public Service

Office: 802-828-4039

Cell: 802-522-3651

From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Wednesday, April 21, 2021 10:58 AM
To: Launder, Kelly <Kelly.Launder@vermont.gov>
Cc: Peterson, Christine <Christine.Peterson@vermont.gov>; Levenson, Keith <Keith.Levenson@vermont.gov>
Subject: Re: Residential Building Energy Standards Question

Thanks, Kelly. To follow up:

- If a town that doesn't have a building code wanted to administer and enforce the standards of the energy code, how would it go about granting authority to a person to administer and enforce the energy code? I don't know municipal government law to answer the question about how it would grant authority, you would have to ask the

town. I'm assuming it would be done in the same way they grant authority to Zoning Administrators, etc. I'm also not sure what you mean about "doesn't have a building code". There isn't a statewide residential building construction code, but there is a residential building energy standard that has to be met. Do you mean if a town doesn't require permitting?

- Do you know if any towns that do not have a building code have done this? We aren't notified when municipalities choose to adopt a standard above RBES, whether they have code officials, etc. so I'm not award of any, but that doesn't mean it doesn't exist.
- If, hypothetically, the authority having jurisdiction wanted to enforce above-code requirements, how would they go about doing that? The town would have to adopt them.

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)

Town Planner

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On Wed, Apr 21, 2021 at 10:38 AM Launder, Kelly <Kelly.Launder@vermont.gov> wrote:

> Ravi,
>
> The town/municipality or the state can designate someone to be the "authority having jurisdiction". Its left broad to allow flexibility for that designation beyond just a code official.
>
> Regards,
>
> Kelly
>
> ---
>
> *Kelly Launder*
>
> Assistant Director

Efficiency and Energy Resources Division

Vermont Department of Public Service

Office: 802-828-4039

Cell: 802-522-3651

From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Tuesday, April 20, 2021 3:13 PM
To: PSD - Consumer <PSD.Consumer@vermont.gov>
Subject: Residential Building Energy Standards Question

Hi,

I'm going through the Residential Building Energy Standards and questions about the "code official or authority granting jurisdiction". Who exactly is this? Is this a building inspector or a zoning administrator? Does anyone in a town without a building code have the authority to administer and enforce the Residential Building Energy Standards? How does one become a "code official or authority granting jurisdiction"?

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)

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Ravi Venkataraman <rvenkataraman@richmondvt.gov>

Residential Energy Codes

Susan Senning <ssenning@vlct.org> Thu, Apr 15, 2021 at 11:11 AM
To: Ravi Venkataraman <rvenkataraman@richmondvt.gov>

Hi Ravi,

Unfortunately, I'm not sure we are the best source for these questions as practitioners of general municipal law. However, hopefully some of the information I can provide is a helpful start.

The Vermont Residential Building Energy Standards are developed pursuant to 30 V.S.A. Section 51 are under the jurisdiction of the Vermont Department of Public Service, and the Commissioner adopts the standards. https://publicservice.vermont.gov/energy_efficiency/rbes.

The statute includes reference to adopting base or stretch codes, which the Commissioner adopts. The statutory provisions touch on the role of municipalities as follows:

(d) Stretch code. The Commissioner may adopt a stretch code by rule. This stretch code shall meet the requirements of subdivision (c)(1) of this section. The stretch code shall be available for adoption by municipalities under 24 V.S.A. chapter 117 and, on final adoption by the Commissioner, shall apply in proceedings under 10 V.S.A. chapter 151 (Act 250) in accordance with subsection (e) of this section.

***

(f)(1) ….The certificate shall certify that the residential building has been constructed in compliance with the requirements of the RBES. The person certifying under this subsection shall provide a copy of each certificate to the Department of Public Service and shall assure that a certificate is recorded and indexed in the town land records.

(2) Condition precedent. Provision of a certificate as required by subdivision (1) of this subsection shall be a condition precedent to:

(A) issuance by the Commissioner of Public Safety or a municipal official acting under 20 V.S.A. § 2736 of any final occupancy permit required by the rules of the Commissioner of Public Safety for use or occupancy of residential construction commencing on or after July 1, 2013 that is also a public building as defined in 20 V.S.A. § 2730(a); and

(B) issuance by a municipality of a certificate of occupancy for residential construction commencing on or after July 1, 2013, if the municipality requires such a certificate under 24 V.S.A. chapter 117.

Therefore, it seems to me that the role of the town is largely process-based. If the town doesn't have building codes, the ZA just ensures the certificate is recorded before issuing a CO and doesn't get into the actual validity of the certificate. If the town adopts the stretch code that the Commissioner adopts pursuant to (d) above, then they are still going to be deferring to the certifications. So, that is to say that I think your last bulleted question is most accurate. If the town doesn't adopt the base or stretch code, oversight is minimal and only if the town issues COs. I do not believe there would be authority to apply any above-code standards beyond those adopted by the Commissioner because this is the framework that's been adopted for energy efficiency codes by the Legislature. As a Dillon's Rule state, municipalities can only do what the Legislature says they can do. Going above and beyond this framework without authorization would not be permitted.

However, as I mentioned, this is specific enough that we are not experts. I would refer you to the Department of Public Service and/or your regional planning commission to advise you on how technical the town's role is in ensuring standards are met (versus just confirming certifications are received), the process by which compliance with standards is done and by whom if there is any question, etc. Sorry I can't be more specific; as Waitsfield's ZA several years ago, I just provided the information and verified recording of the certificates before issuing a CO, as we didn't adopt standards, so I don't know more. Hope this is helpful as a starting point, though.

Sincerely,
Susan

Quick Reference Links: 2021 Town Meeting, COVID-19. Answers to most questions can be found within these webpages.

Note: Due to COVID-19 and Town Meeting, the VLCT Municipal Assistance Center (MAC) is experiencing a high number of legal questions so it may take longer than usual for MAC to respond. Please also understand that if your question is unrelated to COVID-19, town meeting, or is not an urgent matter, our response time will be extended. If you have an urgent matter and you haven't received a response from MAC, please contact your municipal attorney.

Susan E. Senning, Esq. (she/her)

Staff Attorney I, Municipal Assistance Center

89 Main Street, Suite 4

Montpelier, VT 05602-2948

1-800-649-7915

www.vlct.org

From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Wednesday, April 14, 2021 1:56 PM
To: VLCT <info@vlct.org>
Subject: Residential Energy Codes

Hello,

I hope you're doing well these days and enjoying the spring weather. I've got some questions for you about the residential energy codes.

- The Residential Building Energy Standards give a lot of latitude to the "code official or authority having jurisdiction" in enforcing the code. The definition of this term doesn't help clarify who this is. Could you clarify who this is? (My read is that the "authority having jurisdiction" is for municipalities that have building codes. A representative from Efficiency Vermont gave the impression that any town is an "authority having jurisdiction" at a Planning Commission meeting)
- For towns that don't have a building code, how much authority do towns have to put in place above-code requirements? Specifically--and hypothetically--could a town require all builders to self-certify through one particular compliance method?
- If a town wanted to adopt some above-code requirements but not all, could it adopt stretch code into zoning on a per-standard basis? Or does a town have to adopt the stretch code in full?
- If a town adopts the stretch code into zoning, is the zoning administrator (or anyone designated by the Selectboard) a "code official or authority having jurisdiction" that would enforce the stretch code standards?
- Tangentially, does adopting stretch code simply raise the standards without any bearing on administration and enforcement on a local level?

Do feel free to let me know if you have any questions.

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)

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Energy Codes

Ravi Venkataraman <rvenkataraman@richmondvt.gov> Fri, Apr 2, 2021 at 3:17 PM
To: Virginia Clarke <vclarke@gmavt.net>, Chris Granda <chris@grasteu.net>

Chris,

To follow up the emails we were trading about 30 V.S.A. §51, I did seek out a legal opinion from the town attorney. All in all, even though HERS is a method builders can use to check compliance with the energy code, as prescribed by the energy code (and as much as I want the town to have more energy-efficient buildings) I don't have the authority to require all builders to use the HERS option.

Feel free to let me know if you have any questions.

Thanks,

Ravi

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---------- Forwarded message ---------
From: **David W. Rugh** <drugh@firmspf.com>
Date: Fri, Apr 2, 2021 at 2:10 PM
Subject: RE: Energy Codes
To: Ravi Venkataraman <rvenkataraman@richmondvt.gov>

Hi Ravi,

No, you are not missing anything. There is no role in the statute for municipalities to confirm RBES compliance. Instead, enforcement of the RBES is a remedy only available to the homeowner. The statute is also clear that the builder can protect themself by contracting with a licensed P.E., architect or accredited energy ratings organization under 30 V.S.A. § 51(f)(1).

The only real remedy available to the Town is to refuse to issue the Certificate of Occupancy if no RBES is recorded. For better or worse, there's really no way for the municipality to check compliance with the energy code. Also, from a practical point of view, that seems overly burdensome unless the Town also has a building code and building inspector. Because compliance with the code for residential dwellings depends on installing proper installation, inspections would need to occur before dry wall gets hung on any new construction. It's easy to see how that could be a full-time job in the construction season.

Please let me know if you have further questions on this.

Thanks,

Dave

David W. Rugh, Esq.

Stitzel, Page & Fletcher, P.C.

171 Battery Street

P.O. Box 1507

Burlington, VT 05402-1507

Phone: 802-660-2555

Fax: 802-660-2552

drugh@firmspf.com

Website: www.firmspf.com

From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Wednesday, March 31, 2021 1:08 PM
To: David W. Rugh <drugh@firmspf.com>
Subject: Energy Codes

Hi Dave,

The Planning Commission is having discussions about implementing methods to check for compliance with the state energy codes. One consideration is to require builders to go through one of the three prescribed options for compliance in the energy code--the Home Energy Rating Compliance option, instead of RESCheck or Package-Plus-Points. Based on my read of 30 V.S.A. §51, it doesn't seem like towns can place requirements on how builders issue a certification, as long as they issue a certification in general and the certification is provided with the CO. Is that correct? Or am I missing something?

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)

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RBES/HERS Requirement

Ravi Venkataraman <rvenkataraman@richmondvt.gov> Tue, Apr 20, 2021 at 3:59 PM
To: Geoff Martin <gmartin@trorc.org>

I'm thinking that the town can require a HERS rating with a CO without any bearing on the RBES--similar to how towns can require as-built plans with a CO. So, hypothetically, an applicant can fill out a RBES using prescriptive method (or any other method they'd like) pursuant to 30 V.S.A. §51 and 24 V.S.A. §4449 but they'd also be required to provide a HERS rating (as though it were an as-built plan). I'm getting a legal opinion on this.

Whether towns can adopt above-code programs is actually not clear. In the Residential Building Energy Standards, the authority to implement above-code requirements is in the "code official or authority granting jurisdiction". Towns can adopt stretch code. However, the advice I got from VLCT was that towns without building codes could not adopt-code programs on a standard-by-standard basis. If a town wanted to adopt above-code programs, it'd have to adopt stretch code in full. My understanding from VLCT is that stretch code simply raises the bar. Builders on RBES and CBES would be held to a higher standard when they self-certify, but towns wouldn't really enforce the stretch code standards.

Sidebar: I'm on Vermont Planners Association's Professional Development Committee and I'm thinking one day down the road, we should try to hold a workshop on implementing energy plans. Last time I surveyed the membership on topics, I got the sense that people were tired of talking about Comprehensive Plans and the required energy component. But there seems to be a knowledge gap on bridging the energy plan with zoning ordinances.

Thanks,

Ravi

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On Tue, Apr 20, 2021 at 3:25 PM Geoff Martin <gmartin@trorc.org> wrote:

> Hi Ravi,
>
> You read my mind! I mentioned that idea or a similar one to Jeff Forward last week. I didn't know if it had any merit, but it's reassuring to hear you say it might.
>
> I was thinking that if the hang up was on a town's ability to restrict the compliance pathways specified in the RBES, but it is clear that towns can adopt above code programs (that is clear, right?), then couldn't a town just require a HERS rating that is just slightly above-code? I think the requirement in the code is less than or equal to 61 for a HERS score. So, couldn't a municipality just require a rating of less than or equal to 60? Now they've adopted an above-code program, and the issue of whether a town can restrict the pathways provided in the code is avoided.
>
> Is that similar to what you had in mind? Also, I still haven't heard back from DPS, but I did ask a lawyer at Vermont Law School to review the original idea, so we'll see what she says.

Thanks,

Geoff Martin

Intermunicipal Regional Energy Coordinator |**Two Rivers-Ottauquechee Regional Commission**

128 King Farm Road | Woodstock, Vermont 05091

(802) 457-3188 - phone

gmartin@trorc.org| trorc.org| TRORC facebook

From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Tuesday, April 20, 2021 3:08 PM
To: Geoff Martin <gmartin@trorc.org>
Subject: Re: RBES/HERS Requirement

Hi Geoff,

Just wanted to circle back on this item, and ask you about an idea that you may have already considered. Have you or your colleagues considered requiring a HERS rating with a CO separate from the RBES? It seems to me that municipalities can ask for additional items--including a HERS rating--with the required items--like RBES--for COs. Let me know your thoughts on this.

Thanks,

Ravi

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office: 802-434-2430
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http://www.richmondvt.gov/

On Fri, Apr 9, 2021 at 12:36 PM Geoff Martin <gmartin@trorc.org> wrote:

> I see - I'm sorry that it was conveyed that way. Maybe the confusion stemmed from Woodstock's desire to take this on. Their Planning Commission reviewed the draft ordinance a few weeks ago and were happy with it. At that point they were planning to bring it to the Selectboard. They have since paused because of this concern over legality. I'm going to poke DPS now to see if I can get a response from them. I have also asked Vermont Law School to review and weigh in.
>
> **Geoff Martin**
>
> 
>
> **Intermunicipal Regional Energy Coordinator** |**Two Rivers-Ottauquechee Regional Commission**
>
> 128 King Farm Road | Woodstock, Vermont 05091
>
> (802) 457-3188 - phone

gmartin@trorc.org| trorc.org| TRORC facebook

From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Friday, April 9, 2021 8:03 AM
To: Geoff Martin <gmartin@trorc.org>
Subject: Re: RBES/HERS Requirement

Steve was there. I didn't mention any of this to him or the Planning Commission. He and the Planning Commission members presented this topic as though the draft zoning was implemented in towns in your region, and I didn't have enough information to make any counterpoints.

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)
Town Planner
Town of Richmond
203 Bridge St.
Richmond, VT 05477
office: 802-434-2430
cell: 802-448-0211
http://www.richmondvt.gov/

On Thu, Apr 8, 2021 at 2:40 PM Geoff Martin <gmartin@trorc.org> wrote:

> You raise some great points. Was Steve Spatz at the meeting last night, and did you mention the point about "code official or authority having jurisdiction" not applying to towns that don't have code officials or building codes? I wonder what he would think about that. Yes, I'm very anxious to hear back from DPS. I will keep you posted.
>
> **Geoff Martin**
>
> **Intermunicipal Regional Energy Coordinator** |**Two Rivers-Ottauquechee Regional Commission**
> 128 King Farm Road | Woodstock, Vermont 05091
> (802) 457-3188 - phone
> gmartin@trorc.org| trorc.org| TRORC facebook

From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Thursday, April 8, 2021 1:27 PM
To: Geoff Martin <gmartin@trorc.org>
Subject: Re: RBES/HERS Requirement

Yes, we had a Planning Commission meeting last night. Based on the attendees, the idea was popular; but I can't say that the attendance represented an accurate sample of town.

My follow up to your follow up is below in *italics*. I do like this idea a lot. It's a low-cost solution that has long-term benefits for towns like Richmond that doesn't have a building code. I'm still unconvinced that it's legally possible.

It'd be great if you could let me know what you find from DPS. I'll be sure to let you know if I find additional information too.

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)
Town Planner
Town of Richmond
203 Bridge St.
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http://www.richmondvt.gov/

On Thu, Apr 8, 2021 at 10:25 AM Geoff Martin <gmartin@trorc.org> wrote:

> Hi Ravi,
>
> Thanks for reaching out! Did you have a meeting on this last night? I'm very curious how that went.
>
> To be clear, none of the municipalities that I am working with have adopted a zoning regulation like this yet. Like you, we're having conversations with Planning Commissions, but nothing adopted yet.
>
> See my answers in red below. Unfortunately, I don't have any definitive answers. This is all a new idea that hasn't been tested yet. It would be great if Richmond and some of the towns in our region could lead the way and prove the concept for the rest of the state. Let's stay in touch about this!
>
> Best,
>
> **Geoff Martin**
>
> **Intermunicipal Regional Energy Coordinator | Two Rivers-Ottauquechee Regional Commission**
> 128 King Farm Road | Woodstock, Vermont 05091
> (802) 457-3188 - phone
> gmartin@trorc.org | trorc.org | TRORC facebook
>
> ---
>
> **From:** Ravi Venkataraman <rvenkataraman@richmondvt.gov>
> **Sent:** Thursday, April 8, 2021 8:16 AM
> **To:** Geoff Martin <gmartin@trorc.org>
> **Subject:** RBES/HERS Requirement
>
> Hi Geoff,
>
> Here in Richmond, we've been having discussions on ways to enforce the energy code. One way that was discussed was restricting builders to the HERS method for compliance with the Residential Energy Code. Steve Spatz of Efficiency Vermont mentioned that you have been helping municipalities enact zoning regulations

> restricting builders to the HERS method for compliance in your region. To get a better understanding of how this would work, I was wondering if you'd be able to answer some questions:
>
> - How is this legally possible? - I've been advised under 30 V.S.A. §51 that this isn't legally doable. Is there something I'm missing?
>
> I don't know if it is legally possible! That's the question I am trying to get a definitive answer to. I've reached out to DPS but haven't heard back yet. Efficiency Vermont thinks it's legal. A town counsel in one of the towns I'm working with thinks it's not. May I ask who advised you that it's not?

Dave Rugh from Stitzel, Page and Fletcher. We're both reading 30 V.S.A. §51 the same way I think, in which towns require the builder provide certification pursuant to 30 V.S.A. §51 and 24 V.S.A. §4449, but towns cannot say how the builder provides certification. There's also this portion of 30 V.S.A §51: "A builder may contract with a licensed professional engineer, a licensed architect, or an accredited home energy rating organization to issue certification and to indemnify the builder from any liability to the owner of the residential construction caused by noncompliance with the RBES." This underscores that the onus is on the builder to prove compliance--not the town--because they have the right to protect themselves from possible liability by partnering with a professional engineer, a licensed architect, or an accredited home energy rating organization. I'd be curious to hear of any contrasting legal opinions from lawyers who specifically work with energy issues.

> I am hopeful that it is legal. I would point to the code itself. See the two attachments that are directly from the code. It literally says, "This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective" (this objective being the conservation of energy). It also says that towns "shall be permitted to deem a national, state, or local energy-efficiency program to exceed the energy efficiency required by this code" and that these programs are in compliance with the code. So, if we deem the HERS rating system as exceeding the efficiency required by code, shouldn't we then be in compliance with the code? I guess the question is, just because towns can deem a program as above code and that those programs are then compliant, can they *require* those programs? Towns are given the authority under 30 V.S.A. §51 to adopt (require) Stretch Code...we'll see what DPS says.

I'm also curious about what DPS says about your point. Under R101.2: "While many sections of this code (e.g., inspections, review of construction documents, compliance, etc.) do not pertain to most of Vermont that lacks a code official or authority having jurisdiction, these sections are included to provide guidance for those jurisdictions that do have a code official or authority having jurisdiction". R102.1.1 gives authority to "the code official or authority having jurisdiction" to exceed energy code requirements. The definition for "code official or authority having jurisdiction" doesn't really help. My guess is that "code official or authority having jurisdiction" is synonymous with building inspector or municipalities with a building code. I would be very surprised if DPS or an E-Court determination deems that a zoning administrator is a "code official" who therefore can administer and enforce the code. If so, planners and ZAs will need a lot of support from you and your RPC colleagues to get them up to speed on RBES.

> - Are there any additional provisions per the energy code that would have to be adopted in order to restrict builders to the HERS method?
>
> I don't think so. Again, this all hangs on municipalities' authority to adopt above-code programs. If the HERS pathway can be considered above-code, I'm hopeful this is a straightforward, legal thing that towns can do to encourage compliance with RBES.
>
> - Could you share with me any regulations that municipalities in your region have adopted regarding this?
>
> Like I said above, no municipality has adopted this yet. I believe you have the draft language that I came up with, since it was included in the overview that I believe Jeff Forward provided to everyone in Richmond. If you don't let me know and I will send it to you.

Thanks. Jeff provided it to me ahead of yesterday's meeting.

> Do feel free to let me know if you have any questions.
>
> Thanks,
>
> Ravi
>
> Ravi Venkataraman, AICP (he/him)
> Town Planner
> Town of Richmond

203 Bridge St.
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office: 802-434-2430
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Re: [VPA] EXTERNAL: Re: [VPA] Energy Code Compliance

Michael Miller <MMiller@montpelier-vt.org> Wed, Mar 31, 2021 at 10:57 AM
Reply-To: Michael Miller <MMiller@montpelier-vt.org>
To: VPA@list.uvm.edu

I agree with Taylor. The best way to be effective is to adopt building codes. It was very disappointing when the state adopted such an ineffective program as the “RBES Cert for all Cos” requirement. This is a feel good paper pushing effort. Most renovations of existing spaces do not require zoning permits so there will not be any check of energy code compliance. Weatherization, new windows or changing utilities (say a new furnace) all are exempt from zoning and therefore the municipality will not be looking at them for compliance. Not only do you miss a lot of the key projects that impact energy efficiency but checking for compliance after the fact is a difficult or impossible exercise again. You need to look at walls before they are closed if you want to verify. If you are showing up afterwards then you are still relying on the word of the homeowner to attest that there is r-25 in that wall or r-60 in that ceiling.

We have building codes in Montpelier and are considering expanding it to include energy codes as well (for residential as well as commercial). Then the building inspector simply requires inspection before closing a wall (same is true for electrical work already). Capturing all projects and field verifying with inspections is the proper way to go if a community is serious about meeting energy goals. We have conversations about requiring the stretch code and again some people in town are trying to contort zoning and zoning COs to make some construction meet higher standards. Incorporating them into the building codes is far and away the cleanest and most effect way to have the flexibility to do those. A trusted contractor could get approval to move on by snapping a picture and emailing it to the inspector so the burden of slowing down projects or having enough staff to manage in minimized.

A small community like Richmond could let the state keep all its jurisdiction over commercial development and just adopt the residential building codes and energy codes. You could share that position with one or more communities in the area as well or tie it to a paid energy coordinator position. When someone applies for a residential building permit the Building inspector/energy coordinator is perfectly positioned to make energy improvement recommendations or to point out EV programs that could help them save money. There are lot of similar models of developing a good program to be effective. Doing more with the Zoning CO/RBes is a waste of energy in my view. Montpelier eliminated the CO for zoning permits intentionally in 2018 to avoid this paper exercise. I’m keeping focused on expanding code enforcement instead (hopefully 2022).

Mike

Mike Miller, AICP CFM

Please note that the City’s Planning & Community Development Office will be shifting back to remote starting Monday November 16th. The office will not be open to the public at this time except through appointment. Please contact any of the staff to schedule a time on a day that City Hall is open. Thank you for you patience during this time.

Director of Planning & Community Development

City of Montpelier

39 Main Street

Montpelier, VT 05602

(802) 262-6269

From: Vermont Planners Association [mailto:VPA@list.uvm.edu] **On Behalf Of** Taylor Newton
Sent: Wednesday, March 31, 2021 9:49 AM
To: VPA@LIST.UVM.EDU
Subject: Re: [VPA] EXTERNAL: Re: [VPA] Energy Code Compliance

Ravi –

My two cents: I don't think 24 V.S.A. 4449 or 30 V.S.A. 51 enables the municipality to put any restrictions on who fills out the RBES certificate (or CBES certificate).

The statute that discusses RBES and CBES is in Title 30 (Public Service) and it seems to put all rulemaking authority regarding the energy certification process in the hands of the Commissioner of Public Service.

If a municipality really wants to have its own energy and building rules/certification process: adopt a local building code.

-Taylor

From: Vermont Planners Association <VPA@list.uvm.edu> **On Behalf Of** Dalila Hall
Sent: Wednesday, March 31, 2021 9:44 AM
To: VPA@LIST.UVM.EDU
Subject: Re: [VPA] EXTERNAL: Re: [VPA] Energy Code Compliance

Hi Ravi:

South Burlington follows the same process as what Janet describes below. However, if a person comes in to request a Certificate of Compliance (aka Zoning Compliance form/letter) and we know they had a project which required they file the RBES or CBES with the Clerk, we do not issue the certificate if they have not filed the self-certification form.

Dalila Hall, AICP

Zoning Administrative Officer

City of South Burlington

P: (802) 846-4115

From: Vermont Planners Association <VPA@list.uvm.edu> **On Behalf Of** HURLEY, JANET
Sent: Wednesday, March 31, 2021 9:37 AM
To: VPA@LIST.UVM.EDU
Subject: EXTERNAL: Re: [VPA] Energy Code Compliance

Hi Ravi,

We simply require (as state law requires) that the CBES or RBES is recorded in the land records prior to our issuance of a certificate of compliance for zoning. We do not get into whether the CBES or RBES is properly certified, as our in-house staff are not qualified to make such determinations.

I have tried unsuccessfully to help permittees access help in completing the form by calling the state numbers provided and have never received any help or response from the state. I now refer people to Efficiency Vermont for help, but I don't know the results of these referrals.

Best, Janet

Janet M. Hurley

Planning & Zoning Director

Town of Manchester

j.hurley@manchester-vt.gov

802-362-1313, option 3

On Wed, Mar 31, 2021 at 9:31 AM Ravi Venkataraman <rvenkataraman@richmondvt.gov> wrote:

> Hi all,
>
> I'm in the middle of a discussion with the Richmond Planning Commission about checking for compliance with the energy code through a third party prior to the issuance of a CO. Does your municipality have a system in place that requires a builder, an engineer, an architect, or an accredited home energy rating organization other than the builder on the subject property to issue a certification? How does your system work?
>
> Thanks,
>
> Ravi

Ravi Venkataraman, AICP (he/him)

Town Planner

Town of Richmond

203 Bridge St.

Richmond, VT 05477

office: 802-434-2430

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The Vermont Statutes Online

Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 007 : Bylaws

(Cite as: 24 V.S.A. § 4411)

§ 4411. Zoning bylaws

(a) A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to public health, safety, or welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development, including the following:

(1) specific uses of land and shoreland facilities;

(2) dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures;

(3) areas and dimensions of land to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;

(4) timing or sequence of growth, density of population, and intensity of use;

(5) uses within a river corridor and buffer, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

(1) To make transitional provisions at and near the boundaries of districts.

(2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.

(3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

(A) Major thoroughfares, their intersections and interchanges, and transportation arteries.

(B) Natural or artificial bodies of water.

(C) Places of relatively steep slope or grade.

(D) Public buildings and public grounds.

(E) Aircraft and helicopter facilities.

(F) Places having unique patriotic, ecological, historical, archaeological, or community interest or value, or located within scenic or design control districts.

(G) Flood or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors, river corridor protection areas, and buffers, as the term "buffer" is defined in 10 V.S.A. § 1422.

(4) To regulate, restrict, or prohibit uses or structures in overlay districts, as set forth in subdivision 4414(2) of this title. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2009, No. 110 (Adj. Sess.), § 6; 2011, No. 138 (Adj. Sess.), § 12, eff. May 14, 2012.)

The Vermont Statutes Online

Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 007 : Bylaws

(Cite as: 24 V.S.A. § 4414)

§ 4414. Zoning; permissible types of regulations

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

(1) Zoning districts. A municipality may define different and separate zoning districts, and identify within these districts which land uses are permitted as of right, and which are conditional uses requiring review and approval, including the districts set forth in this subdivision (1).

(A) Downtown, village center, new town center, and growth center districts. The definition or purpose stated for local downtown, village center, new town center, or growth center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, new town center, or growth center districts without seeking State designation under chapter 76A of this title. A municipality may adopt a manual of graphic or written design guidelines to assist applicants in the preparation of development applications. The following objectives should guide the establishment of boundaries, requirements, and review standards for these districts:

(i) To create a compact settlement oriented toward pedestrian activity and including an identifiable neighborhood center, with consistently higher densities than those found in surrounding districts.

(ii) To provide for a variety of housing types, jobs, shopping, services, and public facilities with residences, shops, workplaces, and public buildings interwoven within the district, all within close proximity.

(iii) To create a pattern of interconnecting streets and blocks, consistent with historic settlement patterns, that encourages multiple routes from origins to destinations.

(iv) To provide for a coordinated transportation system with a hierarchy of appropriately designed facilities for pedestrians, bicycles, public transit, and automotive vehicles.

(v) To provide for natural features and undisturbed areas that are incorporated into the open space of the neighborhood as well as historically compatible squares, greens, landscaped streets, and parks woven into the pattern of the neighborhood.

(vi) To provide for public buildings, open spaces, and other visual features that act as landmarks, symbols, and focal points for community identity.

(vii) To ensure compatibility of buildings and other improvements as determined by their arrangement, building bulk, form, design, character, and landscaping to establish a livable, harmonious, and diverse environment.

(viii) To provide for public and private buildings that form a consistent, distinct edge, are oriented toward streets, and define the border between the public street space and the private block interior.

(B) Agricultural, rural residential, forest, and recreational districts. Where, for the purposes set forth in section 4302 of this title, it is deemed necessary to safeguard certain areas from urban or suburban development and to encourage that development in other areas of the municipality or region, the following districts may be created:

(i) Agricultural or rural residential districts, permitting all types of agricultural uses and prohibiting all other land development except low density residential development.

(ii) Forest districts, permitting commercial forestry and related uses and prohibiting all other land development.

(iii) Recreational districts, permitting camps, ski areas, and related recreational facilities, including lodging for transients and seasonal residents, and prohibiting all other land development except construction of residences for occupancy by caretakers and their families.

(C) Airport hazard area. In accordance with 5 V.S.A. chapter 17, any municipality may adopt special bylaws governing the use of land, location, and size of buildings and density of population within a distance of two miles from the boundaries of an airport under an approach zone and for a distance of one mile from the boundaries of the airport elsewhere. The designation of that area and the bylaws applying within that area shall be in accord with applicable airport zoning guidelines, if any, adopted by the Vermont Transportation Board.

(D) Shorelands.

(i) A municipality may adopt bylaws to regulate shorelands as defined in 10 V.S.A. § 1422 to prevent and control water pollution; preserve and protect wetlands and other terrestrial and aquatic wildlife habitat; conserve the scenic beauty of shorelands; minimize shoreline erosion; reserve public access to public waters; and achieve other municipal, regional, or State shoreland conservation and development objectives.

(ii) Shoreland bylaws may regulate the design and maintenance of sanitary facilities; regulate filling of and other adverse alterations to wetlands and other wildlife habitat areas; control building location; require the provision and maintenance of vegetation; require provisions for access to public waters for all residents and owners of the development; and impose other requirements authorized by this chapter.

(E) Design review districts. Bylaws may contain provisions for the establishment of design review districts. Prior to the establishment of such a district, the planning commission shall prepare a report describing the particular planning and design problems of the proposed district and setting forth a design plan for the areas which shall include recommended planning and design criteria to guide future development. The planning commission shall hold a public hearing, after public notice, on that report. After this hearing, the planning commission may recommend to the legislative body a design review district as a bylaw amendment. A design review district may be created for any area containing structures of historical, architectural, or cultural merit, and other areas in which there is a concentration of community interest and participation such as a central business district, civic center, or a similar grouping or focus of activities. These areas may include townscape areas that resemble in important aspects the earliest permanent settlements, including a concentrated urban settlement with striking vistas, views extending across open fields and up to the forest edge, a central focal point and town green, and buildings of high architectural quality, including styles of the early 19th century. Within such a designated design review district, no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without approval of the plans by the appropriate municipal panel. A design review board may be appointed by the legislative body of the municipality, in accordance with section 4433 of this title, to advise any appropriate municipal panel.

(F) Local historic districts and landmarks.

(i) Bylaws may contain provisions for the establishment of historic districts and the designation of historic landmarks. Historic districts shall include structures and areas of historic or architectural significance and may include distinctive design or landscape characteristics, areas, and structures with a particular relationship to the historic and cultural values of the surrounding area, and structures whose exterior architectural features bear a significant relationship to the remainder of the structures or to the surrounding area. Bylaws may reference National and State Registers of Historic Places, properties, and districts. A report prepared under section 4441 of this title with respect to the establishment of a local historic district or designation of an historic landmark shall contain a map that clearly delineates the boundaries of the local historic district or landmark, justification for the boundary, a description of the elements of the resources that are integral to its historical, architectural, and cultural significance, and a statement of the significance of the local historic district or landmark.

(ii) With respect to external appearances and other than normal maintenance, no structure within a designated historic district may be rehabilitated, substantially altered, restored, moved, demolished, or changed, and no new structure within an historic district may be erected without approval of the plans therefor by the appropriate municipal panel. The panel shall consider the following in its review of plans submitted:

(I) The historic or architectural significance of the structure, its distinctive characteristics, and its relationship to the historic significance of the surrounding area.

(II) The relationship of the proposed changes in the exterior architectural features of the structure to the remainder of the structure and to the surrounding area.

(III) The general compatibility of the proposed exterior design, arrangement, texture, and materials proposed to be used.

(IV) Any other factors, including the environmental setting and aesthetic factors that the panel deems to be pertinent.

(iii) When an appropriate municipal panel is reviewing an application relating to an historic district, the panel:

(I) Shall be strict in its judgment of plans for those structures deemed to be valuable under subdivision (1)(F)(i) of this section, but is not required to limit new construction, alteration, or repairs to the architectural style of any one period, but may encourage compatible new design.

(II) If an application is submitted for the alteration of the exterior appearance of a structure or for the moving or demolition of a structure deemed to be significant under subdivision (1)(F)(i) of this section, shall meet with the owner of the structure to devise an economically feasible plan for the preservation of the structure.

(III) Shall approve an application only when the panel is satisfied that the proposed plan will not materially impair the historic or architectural significance of the structure or surrounding area.

(IV) In the case of a structure deemed to be significant under subdivision (1)(F)(i) of this section, may approve the proposed alteration despite subdivision (1)(F)(ii)(III) of this section if the panel finds either or both of the following:

(aa) The structure is a deterrent to a major improvement program that will be of clear and substantial benefit to the municipality.

(bb) Retention of the structure would cause undue financial hardship to the owner.

(iv) This subdivision (1)(F), and bylaws issued pursuant to it, shall apply to designation of individual landmarks as well as to designation of local historic districts. A landmark is any individual building, structure, or site that by itself has a special historic, architectural, or cultural value.

(v) The provisions of this subdivision (1)(F) shall not in any way apply to or affect buildings, structures, or land within the "Capitol complex," as defined in 29 V.S.A. chapter 6.

(G) River corridors and buffers. In accordance with section 4424 of this title, a municipality may adopt bylaws to protect river corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427, in order to protect public safety; prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands and waterways; maintain and protect natural channel, streambank, and floodplain stability; minimize fluvial erosion and damage to property and transportation infrastructure; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and

aesthetics; and achieve other municipal, regional, or State conservation and development objectives for river corridors and buffers. River corridor and buffer bylaws may regulate the design and location of development; control the location of buildings; require the provision and maintenance or reestablishment of vegetation, including no net loss of vegetation; require screening of development or use from waters; reserve existing public access to public waters; and impose other requirements authorized by this chapter.

(2) Overlay districts. Special districts may be created to supplement or modify the zoning requirements otherwise applicable in underlying districts in order to provide supplementary provisions for areas such as shorelands and floodplains, aquifer and source protection areas, ridgelines and scenic features, highway intersection, bypass, and interchange areas, or other features described in section 4411 of this title.

(3) Conditional uses.

(A) In any district, certain uses may be allowed only by approval of the appropriate municipal panel, if general and specific standards to which each allowed use must conform are prescribed in the appropriate bylaws and if the appropriate municipal panel, under the procedures in subchapter 10 of this chapter, determines that the proposed use will conform to those standards. These general standards shall require that the proposed conditional use shall not result in an undue adverse effect on any of the following:

(i) The capacity of existing or planned community facilities.

(ii) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan.

(iii) Traffic on roads and highways in the vicinity.

(iv) Bylaws and ordinances then in effect.

(v) Utilization of renewable energy resources.

(B) The general standards set forth in subdivision (3)(A) of this section may be supplemented by more specific criteria, including requirements with respect to any of the following:

(i) Minimum lot size.

(ii) Distance from adjacent or nearby uses.

(iii) Performance standards, as under subdivision (5) of this section.

(iv) Criteria adopted relating to site plan review pursuant to section 4416 of this title.

(v) Any other standards and factors that the bylaws may include.

(C) One or more of the review criteria found in 10 V.S.A. § 6086 may be adopted as standards for use in conditional use review.

(D) A multiunit dwelling project consisting of four or fewer units located in a district allowing multiunit dwellings may not be denied solely due to an undue adverse effect on the character of the area affected.

(4) Parking and loading facilities. A municipality may adopt provisions setting forth standards for permitted and required facilities for off-street parking and loading which may vary by district and by uses within each district. These bylaws may also include provisions covering the location, size, design, access, landscaping, and screening of those facilities. In determining the number and size of parking spaces required under these regulations, the appropriate municipal panel may take into account the existence or availability of employer "transit pass" and rideshare programs, public transit routes, and public parking spaces in the vicinity of the development.

(5) Performance standards. As an alternative or supplement to the listing of specific uses permitted in districts, including those in manufacturing or industrial districts, bylaws may specify acceptable standards or levels of performance that will be required in connection with any use. These bylaws shall specifically describe the levels of operation that are acceptable and not likely to affect adversely the use of the surrounding area by the emission of such dangerous or objectionable elements as noise, vibration, smoke, dust, odor, or other form of air pollution, heat, cold, dampness, electromagnetic, or other disturbance, glare, liquid, or solid refuse or wastes; or create any dangerous, injurious, noxious, fire, explosive, or other hazard. The land planning policies and development bylaws manual prepared pursuant to section 4304 of this title shall contain recommended forms of alternative performance standards, and the assistance of the Agency of Commerce and Community Development shall be available to any municipality that requests aid in the application or enforcement of these bylaws.

(6) Access to renewable energy resources. Any municipality may adopt zoning and subdivision bylaws to encourage energy conservation and to protect and provide access to, among others, the collection or conversion of direct sunlight, wind, running water, organically derived fuels, including wood and agricultural sources, waste heat, and geothermal sources, including those recommendations contained in the adopted municipal plan, regional plan, or both. The bylaw shall establish a standard of review in conformance with the municipal plan provisions required pursuant to subdivision 4382(a)(9) of this title.

(7) Inclusionary zoning. In order to provide for affordable housing, bylaws may require that a certain percentage of housing units in a proposed subdivision, planned unit development, or multi-unit development meets defined affordability standards, which may include lower income limits than contained in the definition of "affordable housing" in subdivision 4303(1) of this title and may contain different affordability percentages than contained in the definition of "affordable housing development" in subdivision 4303(2) of this title. These provisions, at a minimum, shall comply with all the following:

(A) Be in conformance with specific policies of the housing element of the municipal plan.

(B) Be determined from an analysis of the need for affordable rental and sale housing units in the community.

(C) Include development incentives that contribute to the economic feasibility of providing affordable housing units, such as density bonuses, reductions or waivers of minimum lot, dimensional or parking requirements, reductions or waivers of applicable fees, or reductions or waivers of required public or nonpublic improvements.

(D) Require, through conditions of approval, that once affordable housing is built, its availability will be maintained through measures that establish income qualifications for renters or purchasers, promote affirmative marketing, and regulate the price, rent, and resale price of affordable units for a time period specified in the bylaws.

(8) Waivers.

(A) A bylaw may allow a municipality to grant waivers to reduce dimensional requirements, in accordance with specific standards that shall be in conformance with the plan and the goals set forth in section 4302 of this title. These standards may:

(i) allow mitigation through design, screening, or other remedy;

(ii) allow waivers for structures providing for disability accessibility, fire safety, and other requirements of law; and

(iii) provide for energy conservation and renewable energy structures.

(B) If waivers from dimensional requirements are provided, the bylaws shall specify the process by which these waivers may be granted and appealed.

(9) Stormwater management and control. Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1264.

(10) Time-share projects. The bylaws may require that time-share projects consisting of five or more time-share estates or licenses be subject to development review.

(11) Archaeological resources. A municipality may adopt bylaws for the purpose of regulating archaeological sites and areas that may contain significant archaeological sites to make progress toward attaining the goals in the municipal plan concerning the protection of archaeological sites.

(12) Wireless telecommunications facilities and ancillary improvements. A municipality may adopt bylaws to regulate wireless telecommunications facilities and ancillary improvements in a manner consistent with State or federal law. These bylaws may include requiring the decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements, and may establish requirements that a bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.

(13)(A) Wastewater and potable water supply systems. A municipality may adopt bylaws that:

(i) prohibit the initiation of construction under a zoning permit unless and until a wastewater and potable water supply permit is issued under 10 V.S.A. chapter 64; or

(ii) establish an application process for a zoning or subdivision permit, under which an applicant may submit a permit application for municipal review, and the municipality may condition the issuance of a final permit upon issuance of a wastewater and potable water supply permit under 10 V.S.A. chapter 64.

(B) For purposes of an appeal of a permit issued under a bylaw adopted under this subdivision (13), the appealable decision of the municipality shall be the issuance or denial of a final zoning or subdivision permit and not the requirement to condition issuance of a permit on issuance of a wastewater and potable water supply permit under 10 V.S.A. chapter 64.

(14) Green development incentives. A municipality may encourage the use of low-embodied energy in construction materials, planned neighborhood developments that allow for reduced use of fuel for transportation, and increased use of renewable technology by providing for regulatory incentives, including increased densities and expedited review.

(15) Solar plants; screening. Notwithstanding any contrary provision of sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt a freestanding bylaw to establish screening requirements that shall apply to a ground-mounted plant that generates electricity from solar energy. In a proceeding under 30 V.S.A. § 248, the municipality may make recommendations to the Public Utility Commission applying the bylaw to such a plant. The bylaw may designate the municipal body to make this recommendation. Screening requirements and recommendations adopted under this subdivision shall be a condition of a certificate of public good issued for the plant under 30 V.S.A. § 248, provided that they do not prohibit or have the effect of prohibiting the installation of such a plant and do not have the effect of interfering with its intended functional use.

(A) Screening requirements under this subdivision shall not be more restrictive than screening requirements applied to commercial development in the municipality under this chapter or, if the municipality does not have other bylaws except flood hazard, 10 V.S.A. chapter 151.

(B) In this section, "plant" shall have the same meaning as in 30 V.S.A. § 8002 and "screening" means reasonable aesthetic mitigation measures to harmonize a facility with its surroundings and includes landscaping, vegetation, fencing, and topographic features.

(C) This subdivision (15) shall not authorize requiring a municipal land use permit for a solar electric generation plant, and a municipal action under this subdivision shall not be subject to the provisions of subchapter 11 (appeals) of this chapter. Notwithstanding any contrary provision of this title, enforcement of a bylaw adopted under this subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of 30 V.S.A. § 248. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2005, No. 183 (Adj. Sess.), § 5; 2007, No. 32, § 4; 2007, No. 79, § 15; 2007, No. 32, § 4a, eff. May 18, 2007; 2007, No. 79, § 15a, eff. June 9, 2007; 2007, No. 209 (Adj. Sess.), § 11; 2009, No. 110 (Adj. Sess.), § 7; 2009, No. 145 (Adj. Sess.), § 2, eff. June 1, 2010; 2013, No. 147 (Adj. Sess.), § 14, eff. June 1, 2014; 2015, No. 56, § 26d, eff. June 11, 2015; 2019, No. 179 (Adj. Sess.), § 2, eff. Oct. 12, 2020.)

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Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 009 : Adoption, Administration, And Enforcement

(Cite as: 24 V.S.A. § 4449)

§ 4449. Zoning permit, certificate of occupancy, and municipal land use permit

(a) Within any municipality in which any bylaws have been adopted:

(1) No land development may be commenced within the area affected by the bylaws without a permit issued by the administrative officer. No permit may be issued by the administrative officer except in conformance with the bylaws. When an application for a municipal land use permit seeks approval of a structure, the administrative officer shall provide the applicant with a copy of the applicable building energy standards under 30 V.S.A. §§ 51 (residential building energy standards) and 53 (commercial building energy standards). However, the administrative officer need not provide a copy of the standards if the structure is a sign or a fence or the application certifies that the structure will not be heated or cooled. In addition, the administrative officer may provide a copy of the Vermont Residential Building Energy Code Book published by the Department of Public Service in lieu of the full text of the residential building energy standards.

(2) If the bylaws so adopted so provide, it shall be unlawful to use or occupy or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this chapter, within the area affected by those bylaws, until a certificate of occupancy is issued therefor by the administrative officer, stating that the proposed use of the structure or land conforms to the requirements of those bylaws. Provision of a certificate as required by 30 V.S.A. § 51 (residential building energy standards) or 53 (commercial building energy standards) shall be a condition precedent to the issuance of any such certificate of occupancy.

(3) No permit issued pursuant to this section shall take effect until the time for appeal in section 4465 of this title has passed, or in the event that a notice of appeal is properly filed, no such permit shall take effect until adjudication of that appeal by the appropriate municipal panel is complete and the time for taking an appeal to the Environmental Division has passed without an appeal being taken. If an appeal is taken to the Environmental Division, the permit shall not take effect until the Environmental Division rules in accordance with 10 V.S.A. § 8504 on whether to issue a stay, or until the expiration of 15 days, whichever comes first.

(b) Each permit issued under this section shall contain a statement of the period of time within which an appeal may be taken and shall require posting of a notice of permit on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal in section 4465 of this title has passed. Within three days following the issuance of a permit, the administrative officer shall:

(1) deliver a copy of the permit to the listers of the municipality; and

(2) post a copy of the permit in at least one public place in the municipality until the expiration of 15 days from the date of issuance of the permit.

(c)(1) Within 30 days after a municipal land use permit has been issued or within 30 days of the issuance of any notice of violation, the appropriate municipal official shall:

(A) deliver the original or a legible copy of the municipal land use permit or notice of violation or a notice of municipal land use permit generally in the form set forth in subsection 1154(c) of this title to the town clerk for recording as provided in subsection 1154(a) of this title; and

(B) file a copy of that municipal land use permit in the offices of the municipality in a location where all municipal land use permits shall be kept.

(2) The municipal officer may charge the applicant for the cost of the recording fees as required by law.

(d) If a public notice for a first public hearing pursuant to subsection 4442(a) of this title is issued under this chapter by the local legislative body with respect to the adoption or amendment of a bylaw, or an amendment to an ordinance adopted under prior enabling laws, the administrative officer, for a period of 150 days following that notice, shall review any new application filed after the date of the notice under the proposed bylaw or amendment and applicable existing bylaws and ordinances. If the new bylaw or amendment has not been adopted by the conclusion of the 150-day period or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under existing bylaws and ordinances. An application that has been denied under a proposed bylaw or amendment that has been rejected or that has not been adopted within the 150-day period shall be reviewed again, at no cost, under the existing bylaws and ordinances, upon request of the applicant. Any determination by the administrative officer under this section shall be subject to appeal as provided in section 4465 of this title.

(e) Beginning October 1, 2010, any application for an approval or permit and any approval or permit issued under this section shall include a statement, in content and form approved by the Secretary of Natural Resources, that State permits may be required and that the permittee should contact State agencies to determine what permits must be obtained before any construction may commence. (Added 2003, No. 115 (Adj. Sess.), § 100; amended 2009, No. 146 (Adj. Sess.), § F27; 2009, No. 154 (Adj. Sess.), § 236; 2013, No. 89, §§ 9, 11.)

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Title 24 : Municipal And County Government

Chapter 083 : Building Inspectors And Regulation Of Building

(Cite as: 24 V.S.A. § 3101)

§ 3101. Bylaws and ordinances; penalties

(a) The mayor and board of aldermen of a city, the selectboard of a town, or the trustees of an incorporated village, may, in accordance with this chapter, establish codes and regulations for the construction, maintenance, repair, and alteration of buildings and other structures within the municipality. Such codes and regulations may include provisions relating to building materials, structural design, passageways, stairways and exits, heating systems, fire protection procedures, and such other matters as may be reasonably necessary for the health, safety, and welfare of the public, but excluding electrical installations subject to regulation under 26 V.S.A. chapter 15.

(b) Any code or regulation under subsection (a) of this section shall be adopted, amended, or repealed and enforced pursuant to the provisions of chapter 59 of this title.

(c) When any municipality adopts or amends a building code, it shall impose requirements consistent with the current rules and standards adopted by the Commissioner of Public Safety under 20 V.S.A. chapter 173, subchapter 2.

(d) Upon the adoption or amendment of any code or regulation, at least one copy shall be filed in the office of the building inspector, and the office of the municipal clerk.

(e) The General Assembly may incorporate amendments to the code into the ordinance of all municipalities which have adopted the code, or designate allowable exceptions to the code.

(f) On or before January 1, 1984, each municipality which has in effect a building code which is not consistent with the rules and standards adopted by the Commissioner of Labor, shall substitute for such code a code which is consistent. (Amended 1967, No. 295 (Adj. Sess.), § 1, eff. March 20, 1968; 1969, No. 284 (Adj. Sess.), § 2, eff. date, see note set out below; 1973, No. 196 (Adj. Sess.),§§ 1, 2, eff. April 2, 1974; 1981, No. 121 (Adj. Sess.), § 6, eff. March 3, 1982; 2003, No. 141 (Adj. Sess.), § 10, eff. April 1, 2005; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006.)

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Title 26 : Professions And Occupations

Chapter 015 : Electricians And Electrical Installations

Subchapter 002 : Regulation Of Electrical Installations By Licensing Board

(Cite as: 26 V.S.A. § 898)

§ 898. Municipal inspection

(a) A legislative body may establish inspection procedures and appoint trained and qualified municipal inspectors to conduct electrical inspections. If the Commissioner determines that the inspection procedures and the training and qualifications of the municipal inspectors are sufficient, the Commissioner may assign the Department's responsibility for conducting inspections of electrical installations regulated by the Board within that municipality to the municipality. An assignment of responsibility under this section shall not affect the authority of the Commissioner under this subchapter. If the Commissioner assigns responsibility for municipal inspections under this section, the Commissioner may exempt all electrical installations within the municipality from inspection by the State under section 893 of this title. The legislative body may establish reasonable fees for inspections for the purpose of defraying the cost of the same. Such fees will be in lieu of fees established under subsection 893(a) of this title.

(b) Work notices, certificates of completion, and energizing permits shall be issued by municipal inspectors in the same manner and subject to the same conditions that they are issued by the State electrical inspectors under sections 893 and 894 of this title.

(c) A municipal inspector shall have authority to enter any premises in which an electrical installation subject to rules adopted under section 891 of this title is being installed, replaced, or repaired for the purpose of making such inspection as is necessary to carry out his or her responsibilities under this subchapter.

(d)(1) If, after inspection of the electrical installation, a violation of the rules of the Board is found, a municipal inspector may:

(A) issue an order directing the electrician of record or the owner of the premises in which the violation is found, to correct or remove the violation;

(B) withdraw validation of the work notice; or

(C) order the owner, any public utility, or any private party furnishing electricity to such installation to disconnect electrical energy from all or any portion of the electrical system until the violation is removed or corrected.

(2) A municipal inspector may order any one or combination of these options set forth in subdivision (1) of this subsection, as necessary to effect compliance with the Board's rules.

(e) Acceptance of an assignment of responsibility under this section shall not preclude a municipality from conducting its own electrical inspection program.

(f) A person aggrieved by a refusal of a municipal inspector to issue a certificate of completion or by any other action of a municipal inspector or the municipality relating to this section may appeal to the Commissioner by filing a written application for a hearing with the Commissioner within 15 calendar days after written notice of such refusal or action. A person filing an application in accordance with this subsection shall be entitled to notice and an opportunity for a hearing before the Commissioner within 45 calendar days. Within 30 calendar days after the hearing, the Commissioner shall issue an order amending, modifying, or affirming the action by the municipal inspector or municipality.

(g) The results of all inspections conducted by municipal inspectors under this section shall be reported monthly to the Commissioner. Reports shall include the date of inspections, locations of the work inspected, the name and license number of the contractor performing the work, violations found, orders issued, and the date of any completion certificates or energizing permits issued.

(h) Municipal inspectors shall participate in training provided by the Department of Public Safety. The Department shall also provide continuing consultation, review, and assistance as may be necessary to municipal inspectors.

(i) The Commissioner may revoke an assignment of responsibility to a municipality granted under this section if the Commissioner determines that the training or qualifications of the municipal inspectors or the inspection procedures adopted by the legislative body are insufficient. (Added 1969, No. 284 (Adj. Sess.), § 3; amended 1987, No. 274 (Adj. Sess.), § 10; 2003, No. 141 (Adj. Sess.), § 10b, eff. April 1, 2005; 2019, No. 131 (Adj. Sess.), § 273.)

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Title 30 : Public Service

Chapter 002 : Building Energy

Subchapter 001 : Building Energy Standards

(Cite as: 30 V.S.A. § 51)

§ 51. Residential building energy standards; stretch code

(a) Definitions. In this subchapter, the following definitions apply:

(1) "Builder" means the general contractor or other person in charge of construction, who has the power to direct others with respect to the details to be observed in construction.

(2) "Residential buildings" means one-family dwellings, two-family dwellings, and multi-family housing three stories or less in height.

(A) With respect to a structure that is three stories or less in height and is a mixed-use building that shares residential and commercial users, the term "residential building" shall include the living spaces in the structure and the nonliving spaces in the structure that serve only the residential users such as common hallways, laundry facilities, residential management offices, community rooms, storage rooms, and foyers.

(B) "Residential buildings" shall not include hunting camps.

(3) "Residential construction" means new construction of residential buildings, and the construction of additions, alterations, renovations, or repairs to an existing residential building.

(4) "IECC" means the International Energy Conservation Code of the International Code Council.

(5) "Stretch code" means a building energy code for residential buildings that achieves greater energy savings than the RBES and is adopted in accordance with subsection (d) of this section.

(b) Adoption of Residential Building Energy Standards (RBES). Residential construction shall be in compliance with the standards adopted by the Commissioner of Public Service in accordance with subsection (c) of this section.

(c) Revision and interpretation of energy standards. The Commissioner of Public Service shall amend and update the RBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. On or before January 1, 2011, the Commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential construction must be designed and constructed in a manner that complies with

the 2009 edition of the IECC. After January 1, 2011, the Commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for residential construction under the IECC. The Department of Public Service shall provide technical assistance and expert advice to the Commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES. Prior to final adoption of each required revision of the RBES, the Department of Public Service shall convene an Advisory Committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The Advisory Committee may provide the Commissioner with additional recommendations for revision of the RBES.

(1) Any amendments to the RBES shall be:

(A) consistent with duly adopted State energy policy, as specified in section 202a of this title, and consistent with duly adopted State housing policy;

(B) evaluated relative to their technical applicability and reliability; and

(C) cost-effective and affordable from the consumer's perspective.

(2) Each time the RBES are amended by the Commissioner, the amended RBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. Persons commencing residential construction before the effective date of the amended RBES shall have the option of complying with the applicable provisions of the earlier or the amended RBES. After the effective date of the original or the amended RBES, any person commencing residential construction shall comply with the most recent version of the RBES.

(3) In the first cycle of revision of the RBES, the Commissioner shall establish standards for ventilation and shall consider revisions, including:

(A) a requirement for sealed combustion, induced or forced draft combustion equipment when exhaust-only ventilation systems are installed; and

(B) a requirement for adequate replacement air ducted directly to the combustion area of wood and pellet stoves and fireplaces.

(4)(A) As the Model Energy Code is primarily a performance-based code, the Department of Public Service shall develop and disseminate criteria that builders may use in lieu of any computer software, calculations and trade-off worksheets, or systems analysis to comply with the Code. An example package which complies with the Code shall be included in the rules and updated as appropriate.

(B) To provide for flexibility, additional packages which are equivalent to the example package under chapter 9 of the Model Energy Code and which satisfy the performance approach shall be developed by July 1, 1997 and disseminated by the Department of Public Service. Each time the RBES are amended by the Commissioner, the Department of Public Service shall develop modified compliance packages which will become available to the public by the date that the amendment becomes effective.

(5) A home energy rating conducted at the time of construction by a Vermont-accredited home energy rating organization shall be an acceptable means of demonstrating compliance if the rating indicates energy performance equivalent to the RBES.

(6) The Advisory Committee convened under this subsection, in preparing for the RBES update required on or about January 1, 1999, shall advise the Commissioner of Public Service with respect to the coordination of the RBES amendments with existing and proposed demand-side management programs offered in the State.

(d) Stretch code. The Commissioner may adopt a stretch code by rule. This stretch code shall meet the requirements of subdivision (c)(1) of this section. The stretch code shall be available for adoption by municipalities under 24 V.S.A. chapter 117 and, on final adoption by the Commissioner, shall apply in proceedings under 10 V.S.A. chapter 151 (Act 250) in accordance with subsection (e) of this section.

(e) Role of RBES and stretch code in Act 250. Substantial and reliable evidence of compliance with the RBES and, when adopted, the stretch code established and updated under this section shall serve as a presumption of compliance with 10 V.S.A. § 6086(a)(9)(F), except no presumption shall be created insofar as compliance with subdivision (a)(9)(F) involves the role of electric resistance space heating. In attempting to rebut a presumption of compliance created under this subsection, a challenge may only focus on the question of whether or not there will be compliance with the RBES and stretch code established and updated under this subsection. A presumption under this subsection may not be overcome by evidence that the RBES and stretch code adopted and updated under this section fail to comply with 10 V.S.A. § 6086(a)(9)(F).

(f) Certification.

(1) Issuance; recording. A certification may be issued by a builder, a licensed professional engineer, a licensed architect, or an accredited home energy rating organization. If certification is not issued by a licensed professional engineer, a licensed architect, or an accredited home energy rating organization, it shall be issued by the builder. Any certification shall certify that residential construction meets the RBES. The Department of Public Service will develop and make available to the public a certificate that lists key features of the RBES. Any person certifying shall use this certificate or one substantially like it to certify compliance with RBES. Certification shall be issued by completing and signing a certificate and permanently affixing it to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these three areas. The certificate shall certify that the residential building has been constructed in compliance with the requirements of the RBES. The person certifying under this subsection shall provide a copy of each certificate to the Department of Public Service and shall assure that a certificate is recorded and indexed in the town land records. A builder may contract with a licensed professional engineer, a licensed architect, or an accredited home energy rating organization to issue certification and to indemnify the builder from any liability to the owner of the residential construction caused by noncompliance with the RBES.

(2) Condition precedent. Provision of a certificate as required by subdivision (1) of this subsection shall be a condition precedent to:

(A) issuance by the Commissioner of Public Safety or a municipal official acting under 20 V.S.A. § 2736 of any final occupancy permit required by the rules of the Commissioner of Public Safety for use or occupancy of residential construction commencing on or after July 1, 2013 that is also a public building as defined in 20 V.S.A. § 2730(a); and

(B) issuance by a municipality of a certificate of occupancy for residential construction commencing on or after July 1, 2013, if the municipality requires such a certificate under 24 V.S.A. chapter 117.

(g) Action for damages.

(1) Except as otherwise provided in this subsection, a person aggrieved by noncompliance with this section may bring a civil action against a person who has the obligation of certifying compliance under subsection (e) of this section. This action may seek injunctive relief, damages, court costs, and attorney's fees. As used in this subdivision, "damages" means:

(A) costs incidental to increased energy consumption; and

(B) labor, materials, and other expenses associated with bringing the structure into compliance with RBES in effect on the date construction was commenced.

(2) A person's failure to affix the certification as required by this section shall not be an affirmative defense in such an action against the person.

(3) The rights and remedies created by this section shall not be construed to limit any rights and remedies otherwise provided by law.

(h) Applicability and exemptions. The construction of a residential addition to a building shall not create a requirement that the entire building comply with this subchapter. The following residential construction shall not be subject to the requirements of this subchapter:

(1) Buildings or additions whose peak energy use design rate for all purposes is less than 3.4 BTUs per hour, per square foot, or less than one watt per square foot of floor area.

(2) Homes subject to Title VI of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401-5426).

(3) Buildings or additions that are neither heated nor cooled.

(4) Residential construction by an owner, if all of the following apply:

(A) The owner of the residential construction is the builder, as defined under this section.

(B) The residential construction is used as a dwelling by the owner.

(C) The owner in fact directs the details of construction with regard to the installation of materials not in compliance with RBES.

(D) The owner discloses in writing to a prospective buyer, before entering into a binding purchase and sales agreement, with respect to the nature and extent of any noncompliance with RBES. Any statement or certificate given to a prospective buyer shall itemize how the home does not comply with RBES and shall itemize which measures do not meet the RBES standards in effect at the time construction commenced. Any certificate given under this subsection (h) shall be recorded in the land records where the property is located and sent to the Department of Public Service within 30 days following sale of the property by the owner.

(i) Title validity not affected. A defect in marketable title shall not be created by a failure to issue certification or a certificate, as required under subsection (f) or subdivision (h)(4) of this section, or by a failure under that subsection to: affix a certificate; to provide a copy of a certificate to the Department of Public Service; or to record and index a certificate in the town records. (Added 1997, No. 20, § 1; amended 2005, No. 208 (Adj. Sess.), § 7; 2007, No. 92 (Adj. Sess.), § 8; 2009, No. 45, § 11, eff. May 27, 2009; 2009, No. 159 (Adj. Sess.), § 18b, eff. June 4, 2010; 2011, No. 47, § 20t, eff. May 25, 2011; 2013, No. 89, §§ 6, 11; 2017, No. 74, § 121.)

404.3 Electric vehicle charging.

New parking lots serving *multifamily* developments of 10 or more dwelling units shall provide either Level 1 or Level 2 electrical service within 5 feet (1524 mm) of the centerline of the parking space (EV charging parking space) with the capacity to serve the number of electric vehicle charging parking spaces in Table R404.3. Electrical service capacity includes use of a listed cabinet, box or enclosure connected to a conduit linking the parking spaces with the electrical service.

Exception: Parking spaces are not counted in Table R404.3 if one of the following conditions applies:

1. Parking spaces intended exclusively for storage of vehicles for retail sale or vehicle service.
2. Parking spaces are separated from the meter by a public right-of-way.
3. Parking spaces which are limited to parking durations of less than one hour.

Parking spaces with *electric vehicle supply equipment* (EVSE) shall be marked for EV use only.

Exception: The number of parking spaces with EVSE that are marked for "EV use only" need not exceed the number of EV cars driven by occupants of the building. This exception does not reduce the number of EVSE spaces required, just the number that are marked for EV use only.

Level 1 electric vehicle charging parking requires one 120V 20 amp grounded AC receptacle, NEMA 5-20R or equivalent, within 5 feet (1524 mm) of the centerline of each EV charging parking space.

Level 2 electric vehicle charging parking requires one 208/240V 40 amp grounded connection for electric vehicle charging through dedicated EVSE with J1772 connector or AC receptacle, NEMA 14-50, or equivalent, within 5 feet (1524 mm) of the centerline for each EV charging parking space.

TABLE R404.3 REQUIRED ELECTRIC VEHICLE CHARGING PARKING SPACES FOR MULTIFAMILY BUILDINGS (BASE and STRETCH CODE)

NUMBER OF PARKING SPOTS	REQUIRED NUMBER OF EV CHARGING PARKING SPACES
10–25	1
26–50	2
51–75	3
76–100	4
> 100	4% of parking spots, rounded up to the nearest whole number

4.7 Nonconforming Structures

~~The following shall apply to all nonconforming structures, except for those within the Flood Hazard Overlay District, which also must comply with the provisions of Section 6.8 of these regulations:~~

a. ~~May undergo normal repair and maintenance without a permit if such action does not increase the structure's degree of nonconformity~~
b. ~~May be restored or reconstructed after damage to its prior condition from any cause provided that the reconstruction does not increase the degree of nonconformity that existed prior to the damage, and provided that a zoning permit is obtained within 12 months of the date the damage occurred.~~

~~A Nonconforming structure may be replaced or restored after damage or destruction by fire or other casualty, and expansion may be permitted as long as the noncompliance of any aspect of the structure is not increased; provided, however, that such replacement or restoration shall be substantially complete within 365 days of the date of the damage or destruction. The DRB may permit such extensions of the 365-day time period as may be equitable, if the lot owner is prevented from commencing or substantially completing construction due to circumstances beyond the lot owner's control. A damaged or destroyed Nonconforming structure which is not substantially replaced or restored in compliance with this section shall not thereafter be used and shall be removed.~~

4.7.1. The regulations under this section does not construe or imply the permitting the use of a structure declared unsafe by an appropriate governmental authority or the continuation of an establishment declared to be health hazard by an appropriate governmental authority.

4.7.2 Non-conforming structures may continue to exist unchanged indefinitely.

4.7.3 Nonconforming structures may undergo normal repair and maintenance without a zoning permit provided that it does not increase the structure's degree of nonconformity.

4.7.4 The Administrative Officer may approve the replacement, restoration, or reconstruction of a nonconforming structure provided that the reconstruction does not increase the existing degree of nonconformity.

4.7.5 For nonconforming structures not located within the Flood Hazard Overlay District, the Development Review Board may grant conditional use approval to expand a nonconforming structure provided that the expansion does not increase the existing structure's degree of nonconformity.

4.7.6 For the purposes of this section, the existing degree of nonconformity is:

1) The nonconforming setback of the existing nonconforming structure;
2) The total area of building footprint of the existing nonconforming structure that encroaches into the required setback; and
3) The total floor area of the existing nonconforming structure within the required setback.

4.7.7 Nonconforming structures located within the Flood Hazard Overlay District are subject to the provisions of Section 6.8.

4.7.8 If the use within a nonconforming structure has been abandoned for a continuous period of two years, the nonconforming structure shall not be reoccupied.

4.7.8.1 A nonconforming structure shall be considered abandoned if it is unoccupied, not actively offered for sale, not and not regularly maintained.

4.7.9 Nonconforming structures damaged or destroyed by fire, collapse, explosion or other similar unintended catastrophe may be replaced, restored, or reconstructed provided that:

1) The replacement, the restoration, or reconstruction results in a structure that is no more nonconforming than the original structure; and,
2) A zoning permit is obtained for the replacement, restoration or reconstruction within one year of the damage or destruction to the original structure.

4.8 Setback Modifications

Purpose - Richmond contains a large number of buildings that were built prior to the enactment of Richmond's Zoning Regulations and do not conform to setback and/or lot coverage requirements. Current zoning may prohibit even small increases in these buildings due to the restrictions on setbacks and lot coverage. Small increases in the size of these buildings may, in appropriate cases, be beneficial to landowners without adversely affecting neighbors or the interests protected by Richmond's Zoning Regulations. It is the purpose of this section to allow for such increases subject to conditional use review under Section 5.6, as needed to authorize the modification or waiver of district front, side and rear yard setback and lot coverage requirements in accordance with the Act [§4414(8)].

4.8.1 Applicability - The DRB may issue conditional use approval for the expansion of any nonconforming structure substantially completed prior to April 1, 1969 (an "existing building"). If lawful additions were made to any existing building after April 1, 1969, the term "existing building" shall include the original building and such additions. The conditional use approval may allow expansion of an existing building to occur no closer than five (5) feet to any lot line or edge of a public or private right of way and increases in lot coverage as a result of the expansion by no more than 10% of the total ground area of the lot. (For example, if the lot is 8,000 square feet, conditional use approval could allow an increase of 800 square feet in lot coverage.)

4.8.2 Selectboard Notification - The Administrative Officer shall notify the Selectboard of applications to modify setbacks that are adjacent to land owned by the Town and Town rights-of-way whether held as a right-of-way or fee title, at the same time such application is referred to the DRB.

4.8.3 Review Criteria - Prior to issuing conditional use approval for the waiver or modification of setback and coverage requirements, the DRB must find that the proposed expansion:

a) is in compliance with conditional use criteria of these Zoning Regulations, including the general standards, specific standards and performance standards outlined under Section 5.6, and with state law, and
b) the structure must be found to be otherwise in compliance with these Zoning Regulations.

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4.8.4 Conditions of Approval - The DRB may require design modifications, screening or other conditions to mitigate Undue Adverse Effects to adjoining properties or public rights-of-way.

4.9 Nonconforming Uses

A Nonconforming Use may continue to exist, subject to the following:

~~A Nonconforming Use shall not be changed to other than a permitted use. Any Nonconforming Use that ceases for 365 consecutive days shall not be permitted to resume, and intent to abandon the use shall be conclusively presumed for such non-use unless it qualifies under the "Adaptive Use" section (5.6.8) of these Zoning Regulations. If it can be shown that the usage has traditionally been intermittent, the historical rate will be used to assess abandonment and continued use.~~

~~Any increase or expansion of a Nonconforming Use may occur only after DRB approval. The DRB may approve increases in nonconforming uses that involve an increase of 25% or less in physical characteristics such as, but not limited to, square footage or traffic flow, after Conditional Use Review.~~

4.9.1 Non-conforming uses may be continued indefinitely provided it remains unchanged.

4.9.2 If a nonconforming use has been abandoned for a continuous period of 12 months, or has been changed to or replaced by a conforming use, the nonconforming use may not be reestablished.

4.9.2.1 A nonconforming use shall deemed abandoned if the use is not actively pursued on the lot hosting the nonconforming use.

4.9.3 Nonconforming uses may undergo normal repair and maintenance without a zoning permit provided that it does increase the size and intensity of the nonconforming use.

4.9.4 The Administrative Officer may approve the replacement, restoration, or reconstruction of a structure hosting a nonconforming use after damage or destruction by fire, flood, explosion, collapse, or other similar casualty to its prior condition provided that

1) the reconstruction does not expand the nonconforming use in any way; and
2) a zoning permit is obtained within 12 months of the date the damage or destruction occurred.

4.9.4 No building or structure hosting a nonconforming use shall be increased by an addition or a separate structure, unless the additional space is wholly occupied by a conforming use.

5.6.8 Adaptive Use of Existing Structures -

~~**Purpose -** The purpose of this section is to enable the continued viability of certain old structures in the Town of Richmond which have outlived their original function by allowing additional uses within the current dimensions of such structures, subject to conditional use review and approval. Structures which shall be considered appropriate for adaptive use include any structure which: (i) has historical or architectural significance to the Town, and (ii) has a minimum of 4,000 square feet, and (iii) is no less than fifty (50) years old.~~

a) ~~**Additional Uses -** Structures determined to be appropriate for adaptive use may be put to the following additional uses, or combination of uses, in any Zoning District provided conditional use approval is obtained from the DRB:~~

   i. ~~Two-family or multi-family dwelling. The minimum lot area per dwelling unit of the Zoning District in which the building is situated shall apply; if the building is in a Zoning District where two-family or multi-family dwellings are not normally allowed, the HDR minimum lot area per dwelling unit requirements shall apply.~~

   ii. ~~Uses which involve historic materials or relate to the attraction provided by an historic atmosphere, such as museums, local arts and crafts shops, antique~~

~~shops, woodworking, furniture repair, or restaurants.~~

iii. ~~Enterprises whose principal use is the sale of agricultural products, such as greenhouses, orchards, nurseries, food co-ops, or farm products stores.~~
iv. ~~Enterprises whose principal use is the sale of products produced in Vermont.~~
v. ~~Professional offices.~~
vi. ~~Community resources such as banks, churches, schools, or libraries.~~
vii. ~~Storage uses such as for boats or furniture.~~

~~The foregoing list is meant to suggest appropriate uses not otherwise allowed and is not intended to be all inclusive. Nevertheless, uses such as bowling alleys, drive-in theaters, bars, motels, gas stations, fuel or chemical storage and distribution, heavy industry or heavy manufacturing and other similar uses shall be considered incompatible with the structures in question.~~

b) ~~**Additional Requirements -** The DRB may grant conditional use approval for prospective uses of structures in order that owners may renovate for approval for specific businesses or tenants. Evidence shall be provided that the project is in accordance with the guidelines set forth in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1983) (36CFR67) in terms of the rehabilitation of the building and its site.~~

5.6.8.1 For nonconforming structures that are larger than 4,000 square feet and either listed National Register of Historic Places and/or the State Register of Historic Places or qualifies for inclusion into the National Register of Historic Places and/or the State Register of Historic Places, the Development Review Board may grant conditional use approval for the structure to host multiple of the following uses:

a) [reserved]

5.6.8.2 If the nonconforming structure that qualifies under this section hosts a nonconforming use, the nonconforming use may continue to exist along with one or more uses listed under Section____.

5.6.8.3 The Development Review Board may also grant conditional use approval for the renovation or modification of the nonconforming structure that qualifies under this section, provided that:

a) the proposal to renovate or modify the nonconforming structure is submitted simultaneously with the proposal to host multiple uses within the qualifying nonconforming structure under this section; and
b) the proposed renovations and modifications are in accordance with the guidelines set forth in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.