**Ordinance Committee**

**Monday, July 29, 2013**

**Draft Minutes**

# **Councilors present:** Chip Mason (chair) (CM), Sharon Bushor (SB), Karen Paul (KP)

# **Councilor absent:** none

**Staff:** Gene Bergman (GB) (CA), David White (DW) (PZ), Sandrine Thibault (ST) (PZ), Nathan Wildfire (NW) (CEDO)

**Public:** Jen Mincar ([mincer@gmavt.net](mailto:mincer@gmavt.net) (ZA 13-07--50% residential limit); Dave Farrington ([dave@btvspaces.com](mailto:dave@btvspaces.com)); (ZA 13-07--50% residential limit); Kelly Devine (KD) (BBA) (ZA 13-07--50% residential limit)

5:40 p.m. CM convened the meeting

1. Approval of Agenda & 7/25/13 Minutes
2. CM amended the agenda to add a Public Forum as item 1(a). SB moved to approve the agenda with the amendment to add the forum and to remove consideration of the 7/25 minutes, KP seconded and the committee unanimously approved the motion.

CM noted that the committee would take up the downtown parking amendment in September.

1. Public Forum:

Kelly Devine (KD), Burlington Business Association executive director: I support the Planning Commission's proposal to eliminate the 50-50 rule. I worked on it with a group in 2009 and we were opposed to it then because it caused a chill factor in ability of developers to develop in downtown core.

I know from Plan BTV and other things that we have desperate need for downtown housing. We need a work, live, play downtown environment.

Walkability is very important and the more people live downtown the more vibrant it will be. Burlington scores so high in surveys yet we don't have a lot in downtown core. This is critical to development overall. When this proposal came to the Council in 2009, it was done in concert with an increased height allowance which I believe was the reason for the 50/50 not being eliminated at that time. I think it's very possible that had the rule been eliminated then, I am not sure that Plan BTV would have ever happened and Plan BTV has been a great step forward in developing our downtown's vitality.

Nathan Wildfire (NW), Assistant Director for Economic Development at CEDO & a Maple St resident: Speaking for CEDO, we are in favor of eliminating the 50-50 rule. A strong downtown core is tied to residents living in the core. People who spend the most downtown are those who live there. We think this 50-50 requirement is a barrier to people living downtown. We believe in a 24/7 downtown because people who live downtown have eyes on things. It is important for safety and livability. Studies show that a good average of space for residential occupancy in the downtown is 30% yet we see very little residential development downtown despite favorable conditions like the low interest rates.

Speaking as a downtown resident, I tried to live downtown when moved I here with my wife. The housing product is so limited that we are likely to move when our lease is up. Existing housing is either too expensive or too poor quality. We will probably have to move out. Our situation is similar to other friends and acquaintances.

SB asked what type housing he’d like to find downtown. NW said they would like to rent a unit with newer amenities and storage for bikes and kayaks; we want to be able to walk to places. SB asked if this was a condo style unit. NW: not necessarily. It has to be affordable, up to code, and not surrounded by students.

Dave Farrington (DF), owner of buildings downtown with 500 tenants: People ask me if I am going to build housing downtown. I’ve thought about building housing in a property that I newly bought at 77 College St. and the existing ordinance makes it hard. Also I have a surface lot on Pine St. that I would like to develop and if I had to do commercial there I don’t know if can do it; the lot stands alone and if 50-50 rule stays I would keep it as a parking lot but if I could do housing I would do 24-30 units, loft type. I agree with NW that people want to invest downtown. I like to build but I would like it to be unrestricted.

NW: it is also a challenge to force a developer to build for 2 different functions—commercial and residential. The rule creates a forced marriage within a single building envelope. Mandating that a whole building be half and half is different than when just the first floor has to be commercial. CEDO has limited city money to help and would like it to be used more effectively and eliminating the requirement will help do that.

1. Zoning Amendment ZA 13-07 –50% Residential Limitation

DW: This is one of 2 or 3 most important recommendations to come out of the planning process. In all sessions, this rule has been identified as a big problem. I agree with the prior comments. Also, I see that in the Mayor’s memo [see file] that federal financing guidelines can’t accommodate the existing requirement. The amendment will allow all above ground floors to be residential. It touches all aspects of life, transportation, housing, livability. Housing is one of the most important elements missing downtown.

CM: why the change now? DW: This was created by the City Council in the zoning rewrite. The Planning Commission didn’t support it then and the council did the best it could but the rule has not proved to be productive. Plan BTV really looked at this and recommended its elimination.

KD: the committee that looked at it supported an 80-20 rule but that was blocked because it was coupled with height proposals and the opposition to the height proposal led to this being defeated.

CM entered Mayor’s and a memo from developer Erik Hoeskstra into the file.

SB: I was on original committee that looked at this. I looked at mayor’s memo and noted that the residential inventory was done in 2008 and it shows that our concerns were not well founded. Then we wanted to have a healthy mix of housing and commercial. I don’t recall seeing the 2008 inventory or the 30% mix guideline when we looked at this before. I support the change but want to know that we will monitor the mix and if the mix changes to an unhealthy mix I want us to relook at it. I want to have it happen automatically so we don’t drift and wake up and find out we have a problem. I want to eliminate the existing rule but I want to insure that we’re watchdogging it to make sure we remain healthy. Also, DW showed me that first floor will continue to remain commercial.

DW: part of our job in PZ and CEDO is to look at both sides of the coin. If you want to add a periodic reporting back as part of a resolution, can. Plan BTV looks at the downtown holistically.

NW: this all revolves around data and we can track the percentage of parcels or the square footage, etc. of residential & commercial. You don’t have a problem until the indicators show otherwise, i.e. increasing vacancy rates or unstable rents, and we can commit staff to track the data. Then you can pick a threshold where you reconsider the policy.

SB: I don’t know if 30% is the right number and don’t know how to determine the right figure. Can this be rolled into the annual CEDO housing report? We need to keep tracking this and not let it get lost in shuffle.

KD: CEDO has subscribed to Allen/Brooks report that has the data you are looking for. It is published each fall and is the best place to get the data for a starting point.

KP: I think Kelly did a great job of summarizing the rule, the mix & height compromise in 2009. The elimination of this rule was stopped due to the height issue; on how high the buildings would be and where they'd be. As Kelly stated, it's very probable that had the 50/50 rule been eliminated back in 2009, Plan BTV might never have happened. The resulting product, Plan BTV, is a comprehensive plan and a good one. I've always wanted to eliminate the 50-50 rule and feel good about going forward at this time.

CM: I also know older people who would like to move into downtown and there would be a strong market for it.

**Action: KP moved to recommend the proposed amendment as recommended by the Planning Commission to the City Council for a public hearing and 2nd reading and adoption, SB 2d the motion, and the motion passed unanimously.**

1. Zoning Amendment ZA 13-10—Accessory Dwelling Units

DW: This was unanimously recommended by the Planning Commission. The intent is to make easier to create these units. Facilitating accessory dwelling units is required by state statute. They are an important part of housing market. They are small sized. The commission tried to clarify the size, it reduced the parking per unit given the number of people living there and the recognition that the demand for parking is smaller. The Planning Commission also streamlined the deed restriction requirements and tried to make this easier to use.

SB: why change the language under (a)(2)? DW: this involves the existing unit and when you add the accessory unit, the accessory unit can’t be more than 30% of total.

SB: Joan Shannon was passionate about mandating 2 parking spaces. This had come to the council previously and we wanted to be more restrictive on the parking to address the spillover of cars into street. The resident-only parking issue comes into play. How would this impact that?

DW: We know from census that 30% of people in 1 bedroom households live without a car. The 2 parking space requirement sets the bar very high—1/3 people may not use it, people don’t need it. The space on the street is public for all people and should look at street parking from a parking management perspective. This change makes it easier to create these units.

SB: if go to 1 parking space, do we eliminate the waiver? GB: yes.

SB: I think the requirement in number 5, the deed or instrument for land records, is important.

GB: please amend that section to clarify, add, that recording is done by the owner and that no certificate of occupancy can be issued until the notice is recorded.

SB agreed and offered amendment language.

CM: why is 90 day recording deadline required? DW: I can see no reason why it is needed if the owner can’t get a CO unless it is recorded.

CM: how is this linked to the 4 unrelated requirement? SB: I know of a situation where there is a link between the buildings, a walk way. DW: the units have to be separate.

KP: how many applications for these are there on an annual basis? DW said about 10.

CM: the concerns about this are noise and parking. KP: I don’t know how to get around them. SB: state law limits what we can do and parking is one way we can control the negative effects. I think it is dangerous business.

DW: the downtown housing options will pull the pressure off the hill section with regard to student housing. CM: what besides parking is there to deal with unintended consequences? DW: the noise ordinance, the minimum housing ordinance are the ways to deal with the problems, to treat the consequences head on. CM: I’m concerned that we’re undoing the 4 unrelated restrictions. DW: I understand because we can’t control who is being rented to under the zoning ordinance.

SB: I don’t think that if we eliminate 1 space that it will open it up that much to abuse. The people who want to do it will do it anyway, they don’t care.

SB: why did increase in parking area get eliminated? I think it is a trigger to look at more carefully. DW: sprinkled throughout the ordinance is the need to go to the DRB. But when you look at the use, there’s no relationship between how much space is required and how it impacts municipal services. Conditional use doesn’t focus on real concerns of stormwater and loss of greenspace.

SB: so if want to add a unit what have to do? DW: file an application with the required information. The staff reviews it administratively unless the cost is more than $24k. SB: I’m concerned if add a lot of parking. DW: the rules are the same. SB: DRB is where neighbors can watchdog this and I would like to add the increase back in for conditional review.

KP: I’m ok with that.

SB: I’m ok if add back the conditional use requirement for increasing parking and make the other changes.

**Action: SB moved to refer it the council for public hearing and 2d reading, recommending adoption as amended as follows:**

**(a)(2) to read as follows:** The unit does not ~~exceed 30 percent of~~ consist of more than 30 percent of the total habitable floor ~~the total gross floor~~ area of the building, inclusive of the accessory dwelling unit ~~of the primary dwelling, minus square footage associated with storage or utility spaces and similar un-insulated or un-inhabitable areas~~;

**(a)(5) to read as follows:** A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit prior to the issuance of the certificate of occupancy for the unit. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.

**(b)(3) to read as follows:** An increase in the dimensions of any parking area:

**KP seconded the motion and the committee unanimously passed it.**

1. Any other business: none
2. Adjournment: 7:05