

MEMORANDUM

To: Mayor John Hollar and City Council
From: Mike Miller, Director of Planning & Community Development
Re: Review of first set of Comments Goldman
Date: October 6, 2017

Due to the number of comments presented by Mr. Goldman, I chose to provide comments as briefly as possible to each. Where a comment is addressed in another item on the matrix I referenced it. Where the comment can be answered quickly I did so. Where something should be added to the full matrix I will highlight and make that recommendation as well.

Section 1101 General Exemptions

1101 A (2) does this jump the sprinkler code? This only discusses zoning exemptions. Sprinkler codes enforced through a separate ordinance. Not clear what “jumping the sprinkler code” would mean.

1101 A (8) 20 yards is too small for my farm and land. See #8 on the matrix.

1101 A (9) Please allow private maintenance of same existing structures outside of public right of way. #9 is an exemption for DPW to not need zoning permits for its work on maintaining the roadway. Although maintenance is listed here for public projects it is not listed for private projects in section 1004 which governs applicability for zoning meaning maintenance (provided a project does not otherwise trigger one of the other standards in section 1004) does not require a permit and therefore does not require an exemption from a permit in 1101.A.

1101 B (1) would this be covered by my request above? If not please consider it. ?? There was no request above that would relate to this.

1101 B (2) (a) are there limits in number... my place is huge and needs these to work effectively. No. But they must meet ALL the requirements [(a), (b), AND (c)] to get an exemption.

1201 A (1) is this enforceable and is it fair? Does not seem to be reasonable. I’m not an attorney but many towns have expirations of permits. If you don’t commence the project the permit expires. If you commence the project then you need to complete the project otherwise developers may build their project but decide never to build the required parking or stormwater management or screening as required in the permit because “they haven’t finished their project yet”. This provision is specifically looking at the timing with respect to regulations. If you get a permit under the old zoning then you have two years to complete that project or you need to come back for permits under the new rules.

1201 B (1) Impossible for developer for there is so much uncertainty. Many projects take longer like Stone Wall meadows. This provision is discussing phased projects. If a project was approved in phases under the old zoning (e.g. phase 1 will be done by 2010; phase 2 will be done by 2020; and phase 3 will be done by 2030) then these rules say that even though new rules have been passed, the phased project that was approved under the old zoning can continue as approved provided they meet the deadlines in that approval. If not they need to come in for a new permit. Using Stonewall Meadows as the example, because that phasing has expired they will need to come in for a new permit.

1203 G (1) Please define "DRB may grant conditional use approval" standards. Those are the conditional use standards in Chapter 330.

1203 G (2) Please define "DRB may grant conditional use approval" standards. Those are the conditional use standards in Chapter 330.

1205 A This is unreasonably short. What if there is illness or a lawsuit. Do we really want to punish our people? Please consider a longer time. This is 6 months past the two year permit effective period and past any extensions that may have been granted. If a building is mostly complete then it can be secured and no more needs to be done regarding this provision. If a project is not complete enough to be secured then it should be removed. If the site is disturbed for 2.5 years and not vegetated then it should be. Chances are good it will violate the public nuisance ordinance after having a partially constructed site for 2.5 or 3.5 years.

2105

Part 3 Development Standards

3001 B Mixed Uses. This is great but many of the rural or large land uses that should happen on my parcel do not because of its size, multiple zones and the limitations in the use table that do not work consistently for a parcel of my size. Please add all uses that would work on large rural like parcels regardless of the district because rural is by character not name or lines. ie stable, green houses, ect.... On a large parcel in multiple districts the uses apply to the district in which the use is proposed. Mr. Goldman has a small part of his very large Terrace Street property by State Street that is in the Mixed Use Residential District. His request would allow him to put offices, take out restaurants, and personal and professional services (as an administrative permit) anywhere on his property including rural areas that are far from State Street. Clearly Mr. Goldman can place those MUR uses on the parts of his land that are zoned MUR and meet the Rural limitations and requirements for the parts of land in that district.

In this case Rural is a district and parts of his property can be developed as the character is defined for that district. If he would like more of his property zoned in a different manner we can examine any specific proposals.

3002 C Residential Density.

3002 C (2) Dear Council, this is most troubling and I believe problematic for us all as property owners, tax payers and citizens dependent upon raised taxes to pay our bills as a City. This an essence becomes a taking if one is not allowed to use protected land towards the count of a single family home or PUD properly

clustered, respectful of all our other regulations and the other impacts as protected by act 250 and chapter 117 ... our Bible. This also affects all Homes with slopes to steep by this sections definition. This has not been done before by the State for many reasons. Please consider the implications of this and seek Council to prevent exposure to Class lawsuit to lower taxes on all such affected lands. [This question has specifically been reviewed by the City attorney and will likely stand up to takings claims. Our attorney has said this is a policy decision NOT a legal decision to be made. Other communities in fact do have similar \(though not exact\) provisions including the town of Norwich \(for example\).](#)

3002 E Lot Size. This example is not clear and in the negative. Since this affects me deeply hundreds of acres in 3 zones, can you please explain this more clearly? Thanks! [Mr Goldman will simply have the proportional amount of development in each zone. Total square footage divided by minimum lot size. The example was looking a small lots proposed to be in two districts. In that case the percentages must make a whole lot.](#)

3002 F street frontage

[3002 G \(4\) Please define standard for "Administrative officer may" Well... if the proposal for a new principal building matches the average setback of the two closest principal buildings on the side of the street then the Administrator may reduce the setback to match that line. If what Mr. Goldman is saying in a roundabout way is that we should use the "shall" instead of "may" then I would agree. There is nothing discretionary about that action. If applicant meets the requirement then they get the benefit.](#)

3002 H (6) (a) 16' max for the first story is too low and prescriptive. Many of the Victorians we cherish with grand front two story front halls would not comply. Please consider form based zoning and worry about the outside character, not the inside dream that has not happened. [# 224 removes \(6\) all together because we no longer measure anything in stories in this draft.](#)

3002 H (6)(b) 12' minimum is too high. We are all rethinking scale and energy efficiency. Such as; cottage style housing. This goes against that philosophy. Please consider 10' adequate. [# 224 removes \(6\) all together because we no longer measure anything in stories in this draft.](#)

3003 C (1) (a) what about a gazebo or patio under so many feet in size having a reduced setback requirement like they do for lakes. They reduce the setback on lakes from 75' to 25'. This is what the State requires. This does give reduced requirements. [Under today's zoning accessory structures need to meet the same setbacks as primary structures. Under the draft zoning here we provide reduced setbacks for accessory structures: Gazebos can be a close as 10 feet and a patio as close as 5 feet to a property line. In Res-6 for example the side setback would be 10 feet and rear setback would be 20 feet for primary structures. This draft does therefore give reduced requirements for accessory structures like gazebos.](#)

Fig 3-07 Accessory structures and uses. Can you please explain "Garages, carports, pole barns, and similar large accessory structure (max 2 per lot unless meeting all dimensional standards for principle buildings in the applicable district." Does this allow me to have more than two garages, carport, pole barns, and similar large accessory structures on my 300 acre lot? [#67 on the matrix](#)

3005 B applicability. Please consider protecting the riparian setbacks along the Winooski and our other rivers. This is important to prevent erosion and flooding. [#69 and #182 on the matrix](#)

3006 D (1) Vernal pools are regulated as a class 2 wetlands. The 500' setback for vernal pools the CC has recommended is 10 times the setback the State sets for all class 2 wetlands which is 50 feet and 75 feet for class ones. How will this work? This is quite excessive since a one foot vernal pool with a 500' setback would grab 18 acres to do so. That is a 1 square foot vernal pool would need 780,000 square feet to protect it by the Conservation Commissions proposal! Please consider all wetland setbacks follow State Standards for ease of understanding and enforcement until science has changed. [See Goldman Comments- 1 Memo for discussion of vernal pools.](#)

3006 D (6) what about when pattern is a trespass from the City's impervious surface onto a private land owners property? The City should please keep its untreated storm water Laden with hydrocarbons and other pollutants from polluting private wetlands or land. [The first is a civil matter \(trespass\). D\(6\) is actually talking about development proposals designed to drain wetlands \(changing patterns that will direct water away from wetlands\).](#) The city does not require a permit for maintenance and reconstruction of the roads in the public right of way so these provisions will not apply anyways. The City is regulated separately through its general stormwater permit that will require certain standards be met.

3007 A (3) Makes no sense since we require developer to pay for the cost of installing all services. [Provision of services is more than installing services. If we need to buy special emergency services equipment to access properties in steep locations then the builder may build the steep driveway but the tax payers would need to pay for the new ambulance or fire truck to service the site.](#)

3007 C definition. please include harvesting timber for commercial use too. [Section 1102 already exempts forestry from needing a zoning permit therefore change is not needed here.](#)

3007 D measuring slopes.

3007 D (1) how accurate is map? [This is a LiDAR map created last year. Its as accurate as you can get.](#)

3007 D (4) 15% is too restrictive. We have roads that are 15% and so are many yards. This even includes adjacent properties. This reaches too far. Please change. [This is providing options in \(1\) through \(4\) for how a developer may choose to meet this requirement. If someone doesn't like #4 they don't need to use it.](#)

3007 E conditional use. Not realistic. A land owner would not be able to cut a tenth of an acre or roughly an area the size of the room we meet in at City Hall with going thru conditional review. Please make this less restrictive. [The Council Chambers in city hall is 27 X 57 or 1,539 square feet \(less than half the size of the area allowed to be disturbed for slopes over 15% before needing DRB approval\). The Commission felt 4,000 square feet was a good size and would encourage developers to avoid disturbing large contiguous areas of steep slopes.](#)

Fig 3-08 and fig 3-09 are too restrictive. Look how small an area we are talking about. 4000 sf is about the size of the city hall room we gather in. Also No clearing beyond 30% is a taking of my land and not a State practice.. I believe this exposes the City to taking lawsuits and tax relief lawsuits. If the land cannot be used towards density count and cannot be logged according to the forestry practices approved by the State of Vermont, then I say the land has no usable value thus no taxable value. Please consider removing these two sections. [Again, City Council Chambers is less than 1,600 square feet. Much less than the 4,000 square foot minimum. I'm not an attorney and cannot comment on takings claims but on similar complaints our](#)

attorney was comfortable with the approach the city was taking. His claim that it cannot be logged is not accurate because forestry is exempt from zoning and therefore this will not limit his ability to operate a commercial forestry operation.

Section 3010 Access and Circulation

3010b (2) (b) what about existing curb cuts like mine on State street that were traded for land the state needed to expand the road? **Any existing curb cuts not meeting these requirements are grandfathered.**

3010 B (3) I have more than one access point now. How will this work for me? **Any existing curbcuts not meeting these requirements are grandfathered.**

3010 B (3) (b) Please define “DRB may approve more than one access point ” standards. **If a lot has one of the 3 three stated characteristics then the DRB can approve another access. The applicant has the burden to prove one of them is relevant.**

3010 B (7) emergency vehicle access. Please define “DRB may require the applicant to...” standards. **#83 on the Matrix**

3011 C (3) good example of how the “DRB may” defined by standards. This needs to please happen for all these situations to achieve clarity.

(3) The Development Review Board may waive some or all off-street parking requirements to that extent that:

(a) The applicant submits a parking study demonstrating that less parking will be needed;

(b) The applicant meets the requirements for shared parking in Paragraph 3011.E.

(c) There is adequate on-street or public parking available within 1,000 feet of the proposed development to meet all or a portion of the demand;

(d) There is an existing or proposed public transit stop within ¼ mile of the proposed development; and/or

(e) The proposed development will provide secure, enclosed bicycle storage and shower facilities for employees who bicycle, jog or walk to work.

While it is poor practice to word it the way it does (saying “the DRB may approve a waiver” rather than “an applicant may apply for a waiver”) there are standards listed in (a) through (e).

3011 E (3) shared parking. 20 years is not enough. When it expires the tenant/user will be screwed and can be exploited by the owner of the parking.

Don't see why. The tenant can negotiate with someone else for parking. Also, this is a minimum requirement. In 20 years many conditions may change making this rule unnecessary. Zoning rules can be changed between now and then to account for any unexpected outcomes of this rule.

3011 G (5) (a) locational standards. This is not reasonable and will affect many existing projects. The rule clearly states no ADDITIONAL parking can be added. Existing projects already have parking and will therefore not be impacted. Consider adding to Matrix.

3011 G (5) (b) not reasonable or always possible. Only with Major site plans which apply in a limited setting especially in the Urban Core and Riverfront. Consider adding to Matrix

3011H (1) Please define compact car size Compact cars are an automotive standard (compact, sub compact, etc.). We have compact car parking in other parking lots already.

3011 I (b) Please define "DRB may modify the surface requirements" standards. If the applicant shows the area will be lightly used then the DRB can modify the surface requirements which are currently asphalt and concrete.

3011 I (1) (a) why surface at 20 cars. This is a very small amount of land. Roughly 2000 SF ??? 8.5 feet wide times 18 feet long (standard parking space) times 20 parking spaces is 3,060 square feet. That's quite a bit more than your claim and only counts the spaces itself! That 3,000 square feet does not count any required isle space which is needs to be a minimum of 20 feet wide (24 for dual access). So 8.5 feet times 10 spaces (assuming the isle went down the middle of the lot) times 24 feet is another 2,040 square feet. Now we are looking at a lot with more than 5,100 square feet. If someone is making the expense of building a parking lot of this size it would not be unreasonable to require a hard surface.

3011 J does this apply to the City? Depends on the project and site. Even if it does that is a clear statement that this is to the maximum extent feasible. If you can't do it then you don't have to.

3101 D 4.5 feet is too low for privacy in the front. What about a corner lot or front that is 4 feet lower than the first floor. The intent of the rule is to prevent stockade fences on the front lot line so yes it would not provide privacy. Nothing detracts for neighborhood appeal like a 6 foot stockade fence at the back of the sidewalk to prevent people from seeing the house. It's a policy decision. As written you can have privacy in the side and rear yards but the front yard should not have tall stockade fences.

3101 E we have never had a problem why change it now? The corner of terrace and bailey has a 6 foot fence and it looks fine. Please consider removing this unneeded section ... and (assuming I found the one you were talking about) it's a six foot fence which would be allowed under 3101E??? With no rule they could put up a 10 foot fence (I was in Barre City when someone wanted a 12 foot fence made of wood pallets stacked on top of each other and screwed together). I think this is reasonable.

3104 A Please consider changing "may" to "Shall" That's a change we should make.

3104 A (4) for how long we die... then what happens. #99 on the matrix

3108 A Camping (1)

3105 E (2) (a) Please define "DRB may" These are ok as they are permissive in authorizing conditions of approval.

3105 E (3) Please define "DRB may" These are ok as they are permissive in authorizing conditions of approval.

3105 E (4) (a) please define "DRB may" These are ok as they are permissive in authorizing conditions of approval.

3108 A (1) what about a private party with friends and family? #101 on the matrix

3108 A (2) 7 consecutive days is not reasonable. I camp on our land longer than that and so do others who live on large or rural parcels. We also have many people trying to use RV as rental units on lots much smaller in the city. We need a threshold at which it is ok and at what point it is not (without a permit).

3108 A (3) is this singular? Grammatically I think it works.

3109 Campgrounds.

3109 A (1) I have more than 3 now- is this fair for such large parcel? Please do not punish me for what has happened on smaller parcels or in town. I suggest maybe 50 acres or 100 acres or 200 acres please be treated differently' No one is punishing you. If you are operating a campground then it would mean you need a permit. A large parcel will easily show that it will not impact abutting properties.

3110 bed and breakfast or Inn

3110 A "a single family" does this exclude an apartment building(s) from being converted to a bed and breakfast? Agreed that we should remove single family as a qualifier.

3110 A (1) Why limit to 5 rooms. Betsy's bed and breakfast advertises the following and it works very well. It's a policy decision. I would think there should be some limit but we did agree at Council to revisit B&B in light of air B&B.

"The 12 guest rooms all have private baths, Direct TV, and WiFi. Many rooms have adjacent kitchens and living rooms and can be rented as suites."

3111 A (1) why can a boarding house have a chance for the DRB to allow more rooms when a B&B cannot? They are so similar in use I suggest they have the same advantages. That's an option for Council to consider.

3113 B Many already do such as Perry's or Bob's Sunoco and others. These already exist and are grandfathered. Question is- do we want to continue to have more of them built this way in the future. The Planning Commission felt no.

3113 C (2) most stations need to store cars where they can. This would severely affect Perry's, Bob's, Cody's and the Ford dealerships. Again, these already exist. If they were to be built from an empty lot we would want them to design their facilities in such a way as to have storage of vehicles for repair to not be in front of the buildings. This also adds an encouragement to put the building close to the street. The closer the building is to the street, the more room they have to store vehicles.

3113 (d) did we speak with Cody's. bob's Sunoco, who frequently works on our police cars, ford and Perry's? Sometimes parts take 5-10 days alone. I am not aware of any direct conversations with these repair shops. The intent of the provisions is to put a limit on how long a junk car can be allowed to sit. I see many shops in communities where I have worked where junk cars populate the side and back yards. If they need to keep pulling it into their garage every night then they have an incentive to fix it or junk it but not to store it.

3114 D Does this effect the self-Wash on River Street? That means you could never do that again. This does not seem fair. I don't understand how this would not be fair. I see many car washes around the state that face the sides of the lot.

3116 A How does this effect existing ones? Ones smaller than that would be grandfathered. Many are larger (Cumbies is 0.7 acres, DJ's is 0.5, the station next to Agway is 1.1 acres).

3116 B this is not always possible please look at Champlain farms, Perry's and Bob's, and the newly renovated Mobile station. Existing stations will be grandfathered. Those on larger parcels have the ability to position a building on the street with pumps to the side (like Cumberland farms). I will point out that we have Jon Anderson on the Planning Commission who is an attorney who represents many gas stations. We made adjustments to the rules to reflect his comments and needs of gas station owners.

3116 D Convenience stores must not exceed 3500 sf why? This seems tight after storage, a place to sit and prep needs. Let's look at Cumberland farms, and Champlain farms to see what they have. Jon Anderson provided input and we increased the square footage to a number he felt developers would be more comfortable with.

3118 A Why not more than 5 acres. What if the only used portion is 5 acres or less but part of s larger lot. Please change to the land used for storage- not size of the lot. That is a change that should easily be able to be made.

3118 B (1) my barn is now not in Rural. We should please let all rural activities happen on lots that are so big that they are rural in character no what district you call it. Not true (your barn not being in rural). Mr. Goldman specifically requested that we change the designation of the boundary to put his prime agricultural land and barn into the rural district. We modified it a few times at his request to make sure the boundary was where he wanted it. B(1) is allowed in rural and the barn is in Rural.

3118 B (2) this should be able to happen on any parcel besides rural if the parcel is large enough to be rural in character please. Other districts allow or do not allow self-store based on the character of the neighborhood. If Mr. Goldman would like his entire property to be treated as rural then we can consider rezoning it be rural.

3118 E what about boats, fire wood, farm equipment... ect. If they cannot be seen why would we care? These rules are designed to provide limits on what people can do. Mr. Goldman can store as many of his own boats and farm equipment outside. If he wants to operate a commercial storage business then he will need to store things inside.

3123 B please define standards for "allowed in all districts following DRB approval." The provisions of the section actually read "Rural enterprises not otherwise provided for in these regulations may be allowed in any district following review and approval by the Development Review Board as a conditional use with the provisions of this section." The answer is therefore the conditional use standards (found in Chapter 330) and the standards of this section which are found in 3123. C and labeled "standards".

3123 C (4)

Chapter 320 site plan standards.

Section 3201 major/minor site plan determination

does the one and two family dwellings exclusion include accessory buildings to them ... garages, tennis court, shed, pole barns, internal private drives/roads and trails? How does the 2000 sf of impervious area apply to the above? [The site plan exemption applies to parcels used as single and two family including any accessory uses. These uses may still require permits and be regulated in other places in these regulations but will not need site plan approval. For example, internal private drives for a single family home will be exempt from site plan but the rules governing driveways are generally found in section 3010 of the general standards and will therefore require permits and require minimum standards. The 2000 square feet is a trigger for major site plan. A commercial use that will create more than 2,000 square feet of new impervious cover will trigger major site plan \(it does not mean it will not be allowed- just that it will need to go to the DRB for approval rather than an administrative permit\). As long as Mr. Goldman is classified as a house or duplex he will not need to meet site plan requirements.](#)

3201 A (1) (c) 10 parking spaces is too small as well as 2000 square feet for this kind of review. A tennis court is 60"x 120" or 7200 sf . How are we defining impervious surface. Does this include dirt roads and paths? I Have many miles of both. My drive off Crestview is an 18 ft. minimum drive so a 120 feet would trigger this review. [Anything Mr. Goldman already has is grandfathered. This is measuring new impervious cover \(note that it says "construction of" these items\). Again, this is simply defining what is an administrative permit \(i.e. no public input\) and what is something that should be warned for public input and have a hearing.](#)

Section 3202 circulation

3202 A (2) Please explain standards of DRB "may" [These are ok as they are permissive in authorizing conditions of approval.](#)

3202 B (1) Please explain standards of DRB "may" [These are ok as they are permissive in authorizing conditions of approval.](#)

3203 landscaping plans. This is not fair and burdensome to the applicant since some of the thresholds are so low for major review. 24 feet high, 2000 sf of impervious surface... Please look at 3201 A (1) (c), (d) and (e) Will I need a landscape plan for my own driveway? [If you are a single family home or two family then no you will not need to meet these standards. Only NEW construction of uses other than one and two family will need to meet these standards.](#)

3203 F street trees. Because the thresholds are so low if I build a tennis court will I have to line the streets with trees? If I create 2000 sf of impervious surface with my own drive will I have to plant trees on the street? [If you are a single family home or two family then no you will not need to meet these standards. Only NEW construction of uses other than one and two family will need to meet these standards.](#)

3203 F (4) Please define the standards for this waiver. ??? If an applicant demonstrates that a mature large tree would conflict with existing buildings or similar obstructions then the DRB can waive the large tree requirement in lieu of medium or small trees.

3203 H parking lot landscaping. This is most difficult to do. What about existing lots when changes are proposed. Such as the City's lots, Mr. Jacobs lot, my lot on Court Street, Mr. Heney's lot or the hotel?

If the proposed application would trigger Major site plan then they would need to be planted to shade the parking. Chances are good that changes to these parking lots could trigger state stormwater where they will need to modify these areas anyways and rain gardens and other stormwater treatments would be integrated into the design along with trees.