

MEMORANDUM

To: Mayor John Hollar and City Council
From: Mike Miller, Director of Planning & Community Development
Re: Review of second set of Comments Goldman
Date: October 10, 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.

3203 I screening (2) please define DRB “may” and what is the standard please? It is standard in conditions of approval to require additional screening when a more intensive use is located next to a less intensive use (e.g. a car dealership located next to a house). This is simply enumerating that power to condition screening. I don’t see anything wrong with this one.

3203 I (3) parking lots: this is not always possible. Suggest adding to the best of the sites ability. Agreed. It should read “to the maximum extent feasible”.

3203 I (4) utilities. How can one screen a pump station? It depends on the size and location. We could add “to maximum extent feasible here” as well.

3203 (6) (b) this is not always possible. Suggest allowing for extreme situations to be considered I would not consider this a big ask for developers. Considering the public comments on flat roofs, allowing flat roofs to have visible utilities mounted on them is probably not something I would recommend allowing.

3202 (7) (b) fences and walls. Corrugated metal and sheets are in and sheik. Please look at stone cutter’s way and Barre Montpelier road new construction. It’s a policy question. The Council can choose to regulate materials or not. For every “sheik” fence I can show a couple of fences made of scrap roofing. Screening is meant to protect neighbors and the public from a private (presumably unsightly) use that is seeking a permit. Putting up corrugated metal fencing next to a residential property is not going to be looked upon kindly by the neighbors in my opinion.

3204 B (2) applicability. This is not always possible. Many exceed 90 days such as Royal Orchard uses them all year and so do others. (1), (2), and (3) are exemptions to the lighting rules. Holiday lighting (not to exceed 90 days) is exempt from zoning permits. If it is up year round then it is not really holiday lighting and is now “outdoor lighting”. This does not say they can’t do it, only that they need a permit because they are putting up permanent lighting.

3204 C Lighting plan. Because the bar for major site plan review is so low, this is an unfair burden to the applicant. What about impervious trigger of 2000 sf. This would affect a tennis court and basketball court. If these are not visible from neighbors is the relevant? We do not believe the bar for Major Site Plan is low. A project to build a commercial basketball court or tennis court with night time lighting would be required to go through major site plan (and provide notice to abutters) because they should have the right to comment on a potentially disruptive use. Personal courts for single and two family homes are exempt from site plan and don't need to meet these standards. Even if it is not visible it still impacts night sky and energy efficiency. The point of the rules is to turn down the amount of light many developers put on their property.

3204 D previously developed site. Again this bar is so low. To make applicant reduce all the lites with a professional seems unfair. Again, a previously developed site is grandfathered until it makes changes. What this says is that when you change out those non-conforming lights you will need to upgrade all lights. Nothing in this section says that a professional is required. If the proposal is only to replace lights then it will be an administrative permit.

3204 H security lighting.

(2) Please define the standard for "may". There is a (1), (2), and (3) listed.

Section 3205 outdoor seating, display and storage.

3205 A 24 hours is a very short time. Please consider as longer period. What about fire would? A few cords looks fine; but 20 cords does not. Should this be in view? Is the front yard ok? What about a corner lot? Again, it does not apply to single family and two family. This is also defining at what point someone needs to apply for a permit for outdoor storage. If something is outside for a day then it doesn't need a permit for outdoor storage. It could be longer than 24 hours but we generally need some line for administration where we know someone needs a permit to store, sell, advertise, etc. things outside.

3205 D again 24 hours is a very short time. Please consider a longer period. Can be longer but we need some time limit.

Section 3206 solar access and shading and energy conservation.

3206 C Please consider changing "must not shade" to "should not shade" All I will say that this provision was debated a lot by the Planning Commission. If the council wants to soften this provision then it will be a policy decision.

3206 D Please define the standards for DRB "May" Unlike the Administrative Officer the DRB may exercise a certain amount of discretion. I think this wording is ok in this case.

3206 F Please define what the DRB standards are for this decision. It states site specific conditions. The burden would be on the applicant to meet the standards or show a site condition that explains why he or she cannot.

3206 G Please define DRB standards for this demonstration It is established as a performance standard and leaves the how to the applicant. Guidelines could be helpful but are not required.

3207 design and compatibility.

3207 B again the standard for Major site plan approval is quite low and thus tough on applicant.

3207 C (3) (b) Please define the standard for this. This one may not have enough to avoid a vagueness claim. Should be rewritten or removed.

3207 C (3) (d) Please define the standard to achieve this goal. Unlike 3(b) I think this one has clarity and should be ok.

3207 C (3) (e) this is subjective and I ask to please define the standards how this will be applied and achieved. Clarity is not an issue with this one but rather how applicable it is. Should this apply to windows 10 feet apart? What about 25 feet? Or 50 feet? Considering properties in design review are already exempt from these provisions and they are the ones in buildings that are the closest, I wonder if the provision is needed at all.

3207 C (4) (a) please define “quality building materials that convey a sense of durability” and what is the reasonable life of building? Matrix #109

3207 C (6) (b) please define the standard for the “applicant demonstrates” This could be reworded but there are standards to be met in the provision. Performance standards is a style of regulation that sets a target but does not set the “how”. Applicants are left to demonstrate how they will meet the requirement. An applicant will need to demonstrate that their roof will be appropriately oriented and structurally capable of supporting solar collectors.

3207 C (7) (a) what size storage secured bulk storage? I respectfully suggest a formula per SF/ unit. Matrix #110

Chapter 330. Conditional Use Standards

3301 (a) is a “must conform” Please take a good look, is this too tough of a standard to meet for all conditional use applications? This is applicability and I think this fine as written.

3302 A Does the applicant have to use a Professional to “demonstrate that the proposed development will not cause a disproportionate or unreasonable burden on the city’s ability to provide community facilities and utilities.” Please define how to measure and comply with 3302 A (1-5)? There is no requirement to hire a professional in this provision. People meet these requirements every day. For small projects its generally easy to prove no unreasonable burden. State law simply reads that conditional uses “shall not result in an undue adverse effect upon the capacity of existing or planned community facilities”. These rules add some additional guidance to help direct responses to specific items of interest.

3303 Traffic

3303 A standards. The state standard is “shall not result in an undue adverse effect upon the traffic on roads and highways in the vicinity.” I would argue this is providing much more guidance to applicants.

3303 A (1) Please explain how to measure and define. For most small projects this is never an issue to demonstrate. Conditional use standards are not new and have been given additional guidance here.

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3303 A (3) Please explain how to measure and define. For most small projects this is never an issue to demonstrate. Conditional use standards are not new and have been given additional guidance here.

3303 B traffic impact study. Please define the standards for the DRB “may require” Suggest the Council change this to a “shall” for all intersections at a level E or F which is a failed intersection like Barre and Main. Matrix #111

3303 C mitigation measures. Please define the standards of the DRB “may require” and “as deemed necessary” The DRB can condition applications and have discretion in assigning conditions. I think this one is ok.

3305 A conditions of approval. Please define the standards for the “DRB may place conditions on any approval as deemed necessary to further the purposes of these regulations.” The DRB can condition applications and have broad authority to place conditions on projects. This one is good.

3305 B please define the standards for “the DRB may require the applicant to mitigate any impacts of the proposed development as a condition of approval through measures that may include but are not limited to”:
3303 B (1) thru (5) The DRB can condition applications and have broad authority to place conditions on projects. This one is good.

Chapter 340 Planned Unit development Standards

3401 B My home is literally 5 feet from the road but I was put into rural district which does not match either side of my home and I have active sewer and water. Please treat me equally as my neighbors and put my front land back into a MDR like density and uses as it has been for 30 years. Your property was zoned Res-9 and you specifically asked to NOT be in Res-9. We worked with you to negotiate a new Rural boundary which you agreed to. If you would like a different boundary then you are welcome to propose one.

3401 F (1) please define standards for DRB “may waive” The standard is in the text.

3401 F (2) please define standards for DRB “may waive” The standard is in the text.

3401 F (5) please define standards for DRB “may waive” The standard is in the text.

Cottage Cluster

3402 B This is much of our city and my land. If these Lands have sewer and water that the developer will extend, like Sabin's, and they can do a nice job by our standards, please consider allowing cluster in these more rural areas that comprise about 50% of our city. This is why folks usually move to Vermont. [Matrix #120](#)

3402 D (1) please define the standards for how the DRB "may" [DRBs have some discretionary authority within which to act. I don't think these are a problem as they are tied to planned unit development standards.](#)

3402 D (1) (a) please define the standards for how the DRB "may" [There is no "may" in D\(1\)\(a\) and is not discretionary. DRB MAY waive requirements in D\(1\) BUT CANNOT WAIVE \(a\) AND \(b\)](#)

3402 D (1) (b) please define the standards for how the DRB "may" [There is no "may" in D\(1\)\(b\) and is not discretionary. DRB MAY waive requirements in D\(1\) BUT CANNOT WAIVE \(a\) AND \(b\)](#)

3402 D (2) please define the standards for how the DRB "may" [DRBs have some discretionary authority within which to act. This is permissive and expected for changes to dimensional requirements. I don't think these are a problem.](#)

3402 J please define the standards for how the DRB "may" [There is no DRB "may". This is a permissive provision it doesn't say you must provide community facilities- just that you may have them. It states that PUDs can have community buildings. Without that it could be difficult to allow a community facility like laundry. This one is fine.](#)

Section 3404 New Neighborhood Development

3404 A Purpose. Please define neighborhoods built in Montpelier before 1940 [A neighborhood whose buildings were built before 1940.](#)

3404 A (4) Please define "may not be appropriate" [It's a purpose statement and is not regulatory and therefore does not need to meet regulatory requirements.](#)

3404 B Applicability (1) please define standards for "may be counted when calculating" [I think it is clear. A property with land in Res-9 and Rural can calculate density using the land in rural \(even though rural is not allowed for New Neighborhoods\). Those development rights can be transferred into Res-9 for use in the New Neighborhood PUD but you cannot transfer development rights from res-9 to Rural.](#)

3404 C Density Bonus. please define the standards for how the DRB "may approve" (1) thru (6) [The standards are in the provision.](#)

3404 E (3) is a good example of clarity for the applicant and the DRB!

3404 G street Design

3404 G (2) Please let me know if this would allow me to develop Crestview as we did in the past with singular access but an alternative emergency pedestrian path that can be used for emergency access when needed instead of a second access point? I cannot make comments on specific examples without an application but if it is not feasible to put in a second access then it may impact how the DRB conditions the permit application. The emergency access may satisfy their concerns. These are decisions by the DRB and staff cannot predict how a DRB will make decisions. If it was a fully defined provision without any discretion then it could be administered without the DRB and hearings.

3404 G (2) and 3404 G (6) seem to contradict each other. Not necessarily. One is desiring a grid of streets over cul de sacs and one wants to minimize pavement. In most cases cul de sacs increase the amount of pavement per foot of road.

3404 H Building Design.

3404 H (1) What if the neighborhood stands alone or can stand alone like a Crestview, may we think outside the box? What neighborhood would we reflect? Crestview/ Pinewood happened in the fifties and sixties. Not pre world war 2 Its discussing patterns of development not the developments themselves. It discusses what is meant. What is not desired are the subdivisions that are found in some communities where 200 identical houses with identical colors line the streets.

3404 H (2) Very prescriptive. Why? These are design elements to require good neighborhoods. To get density bonus you need to meet design minimums.

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3404 I Parking and Garages.

3404 I (2) Please consider garage doors not facing the street if the site/owner are better served. Please consider the same for where the door is placed. Montpelier has many homes that do not meet this standard and look lovely. The rule is that that cannot face the street unless they are at least 8 feet behind the front line of the building. The habitat of putting garage doors as the most dominant feature of houses is a sign of automobile oriented culture and really became popular at the end of the last Century. No front door. No walkways to the street. Houses designed for cars and suburban life. The design principle of forcing garages to side and back yards is an effort to take back neighborhoods and make them pedestrian oriented. This idea dates to the traditional neighborhood developments that started in 1990s after all the placeless subdivisions of the 1960s, 1970s and 1980s. TNDs looked to recreate the great neighborhoods built at the start of the century. Studying those they found that great neighborhoods had a lot of features in common including having garages that were truly accessory structures (small and found to the side or rear) making the house the statement from the street. The other key feature was porches. Great porches make great neighborhoods. This PUD is the New Neighborhoods PUD and the goal is to create those great walkable neighborhoods.

3404 I (3) Please consider some parking in front if the site is better served and so demands. [See comment above on auto oriented subdivisions vs. pedestrian oriented subdivisions.](#)

3404 J Open Space

3404 J (2) This is a complex paragraph and a little confusing. Can you please explain how that applies to my land. [If a new neighborhood PUD is proposed then a minimum of 5% \(now amended by Council to be 40%\) must be conserved as open space. Land on the Natural Resources Inventory map must be conserved first up to 40%. If that land on the Natural Resources Inventory map is less than 40% then land on any official map \(not yet adopted\) would be conserved next up to the 40%. If that is still less than 40% then any other land must be used to make it 40%.](#)