



Town of Middlebury

MIDDLEBURY PLANNING COMMISSION

77 Main Street, Middlebury VT 05753 | www.townofmiddlebury.org

MEMORANDUM

TO: Middlebury Selectboard, Surrounding Towns, other Interested Parties
FROM: Town of Middlebury Planning Commission
DATE: April 22, 2022
RE: Amendments to the Town of Middlebury Zoning & Subdivision Regulations

This report provides a summary of the changes the Planning Commission has proposed to the Middlebury Zoning & Subdivision Regulations. It constitutes the written report necessary to satisfy the requirements of 24 V.S.A. § 4441(c), requiring that the Planning Commission prepare a written report explaining the proposed amendments to the regulations:

“When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection including bylaw amendments and subsection 4384 (c) of this title concerning plan amendments... This report shall provide a brief explanation of the proposed bylaw, amendment, or repeal and shall include a statement of purpose as required for notice under § 4444 of this title, and shall include findings regarding how the proposal:

- (1) Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on safe and affordable housing.
- (2) Is compatible with the proposed future land uses and densities of the municipal plan.
- (3) Carries out, as applicable, any specific proposals for any planned community facilities.”

STATEMENT OF PURPOSE

On April 21, 2021 the Planning Commission completed its work revising the Middlebury Zoning and Subdivision Regulations adopted 2/28/2018. The primary purpose of the proposed amendments is to clarify the existing zoning and subdivision regulations, meet the requirements of state planning laws (24 VSA, Chapter 117), and to comply with the Middlebury 2017 Town Plan. These revisions will encourage a wider variety of housing types for increasing residential density in the Downtown area and improve the overall vitality of Downtown in accordance with the recommendations in the 2020 Downtown Master Plan. These zoning changes will also satisfy the minimum requirements for qualifying for a Neighborhood Development Area (NDA) designation from the State of Vermont, Department of Housing and Community Development, which would provide development incentives for affordable housing projects.

The Planning Commission finds that the bylaw changes described below conform with and further the goals of the 2017 Middlebury Town Plan and 2020 Middlebury Downtown Master Plan by expanding the opportunities for creating safe and affordable housing in the Town of Middlebury. This bylaw amendment is compatible with the future land uses and densities contemplated in the municipal plan, by making great strides toward encouraging additional compact, mixed-use residential development served by existing water and sewer in and around Downtown Middlebury, which has been planned as a growth area. These zoning bylaw edits enable us to make the best use

of available space remaining in our Downtown area, whether it is by encouraging walkable new neighborhoods on vacant parcels appropriate for development or by encouraging infill development and the creation of additional accessory dwellings. While these bylaw changes do not carry out any specific proposals for planned community facilities, it encourages efficient use of existing and planned roads, sidewalks, water and sewer infrastructure, community and social service uses, etc. by encouraging growth in and around the Downtown area where upgrades will be beneficial to the greatest number of users. The proposed amendment includes changes to the zoning map, which creates additional Downtown districts and revises others.

The proposed amendments also include clarifications and modifications to the following sections: **Section 320**, *Definitions*; **Section 430**, *Interpretation of District Boundaries*; **Section 431**, *Lots in More Than One Zoning District*; **Section 510**- *What Requires a Permit?*; **Section 540**- *Conditional Review Process*; **Section 550**- *Planned Unit Developments and Review Process*; **Section 579 (new)**- *Traditional Neighborhood Design PUD*; **Section 580 (new)**- *Site Plan and Other Applications*; **Section 580**- *Official Map for Public ROW* (has now been renumbered as Section 590); **Section 610**- *Uses Allowed in the Zoning Districts*; **Section 620**- *Lot Area, Width, Coverage, Height and Setback Requirements for Districts*; **Sections 622, 623, 624 and 625 (new)** have been added to provide district-specific detail on Section 620; **Section 660**- *Shorelands and Riparian Buffers and Fluvial Erosion Hazard Areas*; **Section 665**- *Wetland Buffers*; **Section 670**- *Special Flood Hazard Area Regulation*; **Section 721**- *Rear Yards*; **Section 724**- *Setback Waiver*; **Section 727**-*Height Regulations*; **Section 733**- *Conversion of Accessory Buildings*; **Section 736**- *Accessory Apartment Unit*; **Section 737 (new)**- *Manufactured Homes and Tiny Homes*; **Section 739**- *Group Homes and Child Care Homes*; **Section 747**- *Multiple Dwelling Units in the OFA, VRC and CBD*; **Section 748**- *Affordable Housing Inclusion Requirement*; **Section 760**- *Parking Requirements*; **Section 774 (new)**- *Outdoor Dining Areas*; **Section 775 (new)** - *Mobile Food Service*; **Section 776 (new)**- *Temporary Structures and Uses*; **Section 780**- *Agricultural and Forestry Use*; **Section 782**- *Fruit and Vegetable and Christmas Tree Stands*. These amendments have the potential to affect all geographical areas of the Town.

DESCRIPTION

The proposed amendment includes changes to the zoning map, which divided the High Density Residential (HDR) District into several new districts corresponding to neighborhood types. Dimensional tables were updated to reflect dimensional standards for newly created zoning districts. In general, lot sizes and setbacks were reduced, and an effort was made to reduce nonconformities by adjusting dimensional standards to the built form of the underlying neighborhood.

The HDR was split into several new zoning districts: R-2, R-4, R-8 and R-12. These residential districts closely align with the existing pattern of development in these neighborhoods. The R-20 district was applied to existing areas of dense development (ex. condominium complexes) and also vacant lots close to Downtown served by existing water and sewer where new compact, walkable neighborhoods would be most successful. The map of R-20 parcels closely matches the future development map vetted with participants during the 2020 Master Plan process. The Heritage Industrial district (HI) was created to encourage compact mixed-use development within Downtown, with pedestrian-oriented small-scale uses encouraging the arts, maker's spaces and live-work units close to transportation, goods and services and entertainment options. This district is located west of the railroad tracks and includes the area near the Amtrak rail platform, the Marble Works and Mill Street. The Mixed-Use district (MU) also encourages a mixture of residential and commercial uses but lies along busier streets in the heart of Downtown where vehicle-reliant businesses are more appropriate. It includes South Pleasant Street and the east side of Exchange Street from Elm St. to Vermont Sun, expanding commercial and residential options in those gateway corridors.

Notably, while these zoning map changes were intended for the Downtown neighborhoods, the R-2 district replaces the Medium Density Residential (MDR) district and was applied to existing areas of MDR outside of Downtown as well, specifically East Middlebury, Lindale Mobile Home Park and Mead Lane area and the South Ridge neighborhood. Dimensional characteristics such as lot size remain the same, but side and rear setbacks are slightly reduced. The Mixed-use (MU) district is not substantially different from the existing Village Residential Commercial (VRC) district and is now the district for formerly VRC parcels in the Hannaford Plaza commercial area and parts of East Middlebury.

A description of proposed amendments and revisions to the Middlebury Zoning and Subdivision Regulations is provided below.

1. Section 320, Definitions

Many new definitions were added, and some were modified to provide wording clarification, with the intent of making them easier to interpret and provide consistency with State statute and fair housing law. Some new definitions were added to address emergent uses and uses envisioned by the Downtown Master Plan (outdoor dining, pop-ups, retail cannabis, etc.) Other uses were combined into broader definitions to streamline the use tables.

2. Section 430, Interpretation of District Boundaries

To clarify how this interpretation is made, two sections were removed from Section 430 and explained in greater detail in a new section entitled Section 431- *Lots in More Than One Zoning District*.

3. Section 540, Conditional Review Process

Clarified the procedure for granting administrative exemptions to a DRB hearing and removed a requirement for new projects in Middlebury to demonstrate that they would not impact the economic vitality of Downtown. It is our opinion that the other zoning changes we have made to boost the vitality of the Downtown area are a better way of addressing this goal.

4. Section 550, Planned Unit Developments and Review Process

Clarified some of the language in this section. Because a new type of PUD has been added (Section 579), the old PUD Regulations will continue to be used to review exiting PUD applications but not to create new ones.

5. Section 579, Traditional Neighborhood Design PUD

New section added providing regulations for a specialized type of PUD intended to encourage walkable, compact neighborhoods with requirements for green space and a mixture of housing types. This section will satisfy many of the requirements allowing Middlebury to qualify for a Neighborhood Development Area (NDA) from the State of Vermont's Downtown Board, which offers a variety of incentives for mixed neighborhoods containing affordable/workforce housing.

6. Section 580, Site Plan and Other Applications

Existing Section 580 was renumbered as Section 590 to create a place for this new section. This new Section provides a procedure for Site Plan review, which is an alternative to the Conditional Use Review process enabled under State Statute but not previously featured in our regulations. Site Plan review is appropriate for use with less complicated applications. Site Plan review involves fewer review criteria than Conditional Use review, which ideally would reduce the cost of preparing an application and make the review process easier for small projects.

7. Section 610, Uses Allowed in the Zoning Districts and Section 620, Lot Area, Width, Coverage, Height and Setback Requirements for Districts

These sections have been revised to reflect new uses and new lot sizes, units per acre allowances, lot coverages, frontages, setbacks, etc. for the newly created zoning districts. New sections organized by zoning district type have been created to make these tables easier to read:

Section 622– Downtown and Mixed Use Zoning Districts

Section 623- Residential Zoning Districts

Section 624- Rural and Conservation Zoning Districts

Section 625- Other Zoning Districts

8. Section 660, Shorelands and Riparian Buffers and Fluvial Erosion Hazard Areas

Removes fluvial erosion hazard area regulations from zoning until we can work with the Conservation Commission (currently completing a Conservation Plan) and revise our Hazard Mitigation Plan (funding in-hand), to get up-to-date mapping of this zone and/or consider an alternative such as VT river corridor regulations.

The fluvial erosion hazard (FEH) area is located outside the floodplain and creates an additional no-build buffer on many parcels in East Middlebury, preventing several homeowners in this designated Village Center from renovating and replacing existing structures. FEH regulations are not required by State statute or common in all Vermont Towns. Currently we lack up-to-date mapping showing the FEH and zoning staff does not feel comfortable administering this rule. With the exception of the statutory update below, this bylaw change does not change Section 670 *Flood Hazard Area Regulations*, under which we will continue to regulate the flood hazard area (floodplains) as we did before.

9. Section 665, Wetland Buffers

Revised this section to continue regulating those wetlands (Class 1 and 2) that are regulated by the State but removed the requirement that development not occur within 50 ft of Class 3 wetlands. Class 3 wetlands are not regulated by the State and would require us to maintain accurate local wetlands maps to track them. Without State oversight or reliable local mapping, we rely on developers to delineate Class 3 wetlands and self-report them on their site plans. Relying on an honor system makes it difficult to administer this rule fairly between developers. It adds extra cost to small projects, and for all projects- causes development to be designed to avoid Class 3 wetlands, with no consideration of whether these are contributing/significant wetlands or isolated wet areas. These changes do not affect the requirement to maintain a 50ft protected buffer around Class 1 and 2 wetlands.

10. Section 670, Special Flood Hazard Area Regulations

Revised this section to add provisions for plantings in flood hazard areas. The revised language corresponds to recent changes in State law, 24 V.S.A. § 2291, 4412 and 4424.

11. Section 721, Rear Yards

Revised this section to clarify procedures for siting accessory structures.

12. Section 724, Setback Waivers

Added language to this section, clarifying the criteria for determining when to grant a setback waiver.

13. Section 727, Height Regulations

Removed the maximum height of 110ft from the regulations, which we found was arbitrary and no longer corresponded to the height of our new ladder truck. Applications will continue to be evaluated using the existing criteria in this section for determining when the maximum

height allowance in Section 620 can safely be exceeded, including consideration of fire protection (Section 760(1)A).

14. Section 733, Conversion of Accessory Buildings

Added language clarifying that an accessory apartment is not a principal use. As such, an accessory structure may be converted to accommodate an accessory apartment even if that accessory structure is within the required setback. This is intended to support the creation of accessory apartments on owner-occupied parcels within accessory structures such as barns and carriage houses, which are often close to the property line in our village areas.

15. Section 736, Accessory Apartment Unit

This Section was renamed Accessory Apartment or Accessory Dwelling Unit (ADU) and edited slightly for clarification purposes. The maximum square footage was increased to **900sf** or 30% of the total habitable area of the primary dwelling, whichever is larger, to meet the requirements of State Statute.

16. Section 737, Manufactured Homes and Tiny Houses

This new section provides procedures clarifying how tiny homes and manufactured homes are classified and reviewed. Different scenarios are contemplated, such as a tiny house on a parcel owned by someone else and multiple-unit tiny house developments.

17. Section 739, Group Homes and Child Care Homes

This section was updated to meet the requirements of State Statute 24 V.S.A. Section 4412(1)(G) and 4412(5).

18. Section 747, Multiple Dwelling Units OFA, VRC and CBD Districts

This section was updated to reflect the fact that the OFA and VRC districts have been absorbed into the MU and HI districts. This density bonus now applies to the MU, HI and CBD districts. The section was clarified to cross reference Section 620 (Dimensional Requirements) as well.

19. Section 748, Affordable Housing Inclusion Requirement

This section has been removed in favor of the affordability definition and affordability requirements of Section 579 (new)- Traditional Neighborhood Design PUD. Section 579 requires developers to provide a certain percentage of affordable units and applies to all new development of 5 or more units in the R-20 and R-12 district, where we have vacant parcels on water and sewer and anticipate new neighborhoods. Despite the requirements of new Section 579, removal of Section 748 means that new developments of 10 or more units in other districts of town will no longer be required to ensure 20% of those units are VHFA eligible or comparably affordable. However, we felt this was an acceptable tradeoff because Section 748 has strong potential to be a deterrent to developers looking to create market-rate housing units, which our community also needs at this time.

20. Section 760, Parking Requirements

This section has been revised to update the zoning district abbreviations and add a provision for electric vehicle charging stations.

21. Section 774, Outdoor Dining Areas

This section has been added to address a new use recommended in the Downtown Master Plan.

22. Section 775, Mobile Food Service

This section has been added to address a new use recommended in the Downtown Master Plan.

23. Section 776, Temporary Structures and Uses

This section has been added to address a new use recommended in the Downtown Master Plan.

24. Section 780, Agricultural and Forestry Uses – Special Regulations

The requirements for a Farmer’s Market were updated to add considerations for making this a welcome use in neighborhood and Downtown locations as well. New language was added enabling the creation of accessory on-farm businesses, in accordance with State Statute.

25. Section 782, Fruit and Vegetable and Christmas Tree Stands

This section was removed and combined into Section 780.