

Town of Bolton
Planning Commission Report:
Proposed 2018 Amendments to the
Bolton Land Use and Development Regulations

as approved by the Planning Commission for public hearing on July 10, 2018

This report has been prepared in accordance with the Vermont Planning and Development Act [(24 V.S.A. § 4441(c)] which requires that “*When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal.*” This report is intended to provide a brief explanation of proposed bylaw amendments (attached), including the stated purpose as warned, and related planning commission findings on how proposed amendments:

- Conform with or further the goals and policies contained in the [2017 Bolton Town Plan](#), including the effect of these proposals on safe and affordable housing in the community;
- Are compatible with proposed land uses and densities of development, as presented in the municipal plan; and
- Carry out, as applicable, any specific proposals for any planned community facilities.

Overview

The attached includes six sets of proposed bylaw amendments to the [Bolton Land Use and Development Regulations](#) – the town’s unified zoning, subdivision and flood hazard area regulations – as initially adopted on January 5, 2005, and last amended effective August 9, 2010. Proposed amendments have been prepared by the Planning Commission, with technical assistance from the Bolton Development Review Board and town and regional planning commission staff, for public review and comment and for further consideration by the Bolton Select Board under the bylaw adoption process. As warned for public hearing, proposed amendments would affect the following sections of the current regulations:

- 3.4 Equal Treatment of Housing
- 3.7 Nonconforming Lots
- 3.8 Nonconforming Uses & Structures
- 4.8 Day Care Facility – Family Child Care Home
- 4.12 Group Home
- 4.15 Mobile Home Park
- 4.17 Public Utility or Facility
- 9.2 Exemptions
- 9.6 Waivers and Variances
- 10.2 Definitions

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

Proposed amendments also include and reference technical corrections that will need to be made throughout the document (e.g., statutory references, numbering, etc.), if adopted, for incorporation within in the current bylaws.

Proposed are specifically intended to implement Action #66 in the 2017 Bolton Town Plan:

Review and update the Bolton Land Use and Development Regulations (BLUDRS) for clarification and ease of use, to incorporate new statutory requirements under Chapter 117, and to conform to and advance the goals and objectives of this plan...

The primary purpose of these amendments, as warned for public hearing, is to ensure that our regulations comply with more recently enacted state statutes and rules. Chittenden County Regional Planning Commission staff conducted a technical review of our current regulations to identify those sections in need of update – many of which are addressed in the attached. Proposed amendments are also intended to better accommodate replacement homes within the town’s mobile home park and, per the request of our Development Review Board, to simplify, clarify, and revise waiver provisions as applied to nonconforming lots and structures.

If adopted, the amendments will generally apply town wide, but will not change the existing zoning map (zoning district designations and boundaries), allowed uses within each of the zoning districts, or the currently allowed pattern and density of development (Zoning District Tables, Article II). In effect these amendments will not change what someone can do with their property under the current regulations – and for existing noncomplying lots and structures, they’re intended to make it easier to reasonably use and development these properties.

Following the Planning Commission’s public hearing, suggested changes to each set of proposed amendments will be considered by the commission before they are forwarded to the Select Board for further review and a second public hearing. One or more of the amendments may then be adopted by the Select Board, to go into effect 21 days after the date of adoption, or warned for a town vote either by petition or a vote of the Select Board.

Additional information regarding the intent of each set of amendments, and associated Planning Commission findings, are presented below. For more information, please contact the Bolton Town Office, Carol Devlin Assistant Town Clerk: 434-3064, assistbolton@gmavt.net.

#1 Family Child Care Home

This set of amendments is intended to update and clarify the local regulation of “home child care” (under Section 4.8) for consistency with more recent state statutes and [Child Care Licensing Rules \(2016\)](#) that regulate such homes. Under state law a family child care home is considered a permitted use of a single family dwelling, however under the rules, a municipal zoning permit is required to obtain state licensing or registration.

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

Proposed changes to this section update references to “family child care home” as regulated locally under Section 4.8 and defined under Section 10.2 (Definitions). Per previous zoning administration recommendations, proposed changes also require site plan review by the DRB (for access, parking, site circulation, etc.) only if a home serves more than 10 children. Statutes specify that site plan review may be required for a family child care home serving up to 6 full-time and 4 part-time children – as now required under our regulations – but the distinction between full-time and part-time care is difficult to administer and enforce, and ultimately not relevant to this use of a dwelling under site plan review criteria. Proposed changes also recognize that outdoor yard areas are included in this use, as regulated under state rules.

Planning Commission Findings:

1. It is a goal of the 2017 Bolton Town Plan to: “**support the provision of health care, childcare, educational and social opportunities needed by residents.**” There are no specific policies for this, but the proposed amendment conforms to this goal by clarifying local regulations applied to family child care homes, in relation to state licensing and registration requirements. And, while this amendment does not directly relate to affordable housing, it does continue to allow for the use of a dwelling to provide paid child care services – often an important source of household income.
2. The proposed change in the application of site plan review – from facilities serving more than 6 full-time and 4 part-time children to more than 10 children – clearly will have no effect on the type or density of use allowed under the current regulations or envisioned in the town plan. It simply makes current provisions easier to administer and enforce.
3. As noted, proposed amendments under this section apply to a permitted use of a single family dwelling. As such they will not change the location or density of development in relation to existing or planned facilities. They do however require documentation showing that a proposed child care home has the water supply and wastewater capacity needed to accommodate this use, prior to the issuance of a zoning permit.

#2 Equal Treatment of Housing

This set of amendments update Section 3.4 (Equal Treatment of Housing) to address statutory updates under Title 24 (§ 4412) and Title 9 (§ 4503) regarding unfair housing practices. These statutes protect forms of affordable housing under local regulations and address potential discrimination in the local permitting process. Proposed amendments under Section 3.4 clarify in our regulations the statutory basis for filing a housing discrimination complaint through the Vermont Human Rights Commission or the Vermont Attorney General’s office.

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

These amendments also clarify that an accessory dwelling, generally allowed as a permitted use in association with a single family dwelling, may be excluded within a flood hazard area. Currently our regulations allow for accessory dwellings within the flood hazard area in the Village District (along US 2) if they are constructed to meet our flood regulations, consistent with National Flood Insurance Program (NFIP) requirements. In other areas of town, we specifically prohibit new single family dwellings and associated accessory dwellings within undeveloped flood hazard areas; however an accessory dwelling may be allowed within or attached to an existing, single family dwelling, if it can be constructed to NFIP standards. No changes are proposed regarding these distinctions.

Provisions for the replacement of mobile homes within Fernwood Manor Mobile Home Park, as referenced under Section 3.4 and addressed in more detail under Section 4.15 (Mobile Home Park) also have been updated per relevant statutes [§ 4412(7)] and Zoning Administrator recommendations. Our current regulations allow for replacement homes if a distance of 10 feet is maintained from adjoining mobile home sites. In practice this standard is hard to meet – individual site boundaries are difficult to determine on the ground, and today’s mobile homes tend to be much wider than homes initially installed on these sites.

The state’s model zoning for mobile home parks instead suggests defining a minimum separation distance between homes. The average separation distance between existing homes in the park was measured and calculated from recent imagery and adjusted to down 30 feet – sufficient to accommodate wider replacement homes – as reflected in proposed amendments under Section 4.15. This distance supports fire safety, allows for the construction of porches and decks, and ensures unimpeded access for residents, emergency vehicles – and the replacement of homes on neighboring sites.

Proposed amendments under Sections 3.4 and 4.12 (Group Home) clarify that a group home, intended to serve up to 8 residents with a disability, as defined by the state, must be treated the same as any other single family dwelling. Under related court decisions, no zoning permit may be required for the conversion of an existing single family dwelling into a group home. Proposed amendments also include the elimination of the 1,000-foot separation distance between group homes under these sections, as eliminated in statute in 2018.

Finally, these amendments update definitions under Section 10.2 specific to affordable housing, group homes, mobile homes and mobile home parks, for consistency with relevant federal and state definitions.

Planning Commission Findings:

1. The 2017 Bolton Town Plan includes the goal to **“increase safety and affordability of housing for residents.”** The plan also points out that **“the continued availability of**

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

affordable housing will require new and rehabilitated units within the growth confines of this plan.” Proposed amendments are intended to allow and promote new and rehabilitated affordable housing in town – to include group homes, accessory dwellings and replacement mobile homes; and to avoid discrimination in the permitting process, consistent with this goal and state and federal housing laws.

2. Residential uses are recognized land uses in the town plan, but there are no specific recommendations regarding housing density. Proposed amendments to accommodate larger replacement mobile homes within the existing park will not increase the density of development in the park (units per acre) but will likely increase the intensity of development in relation to setback, lot coverage, etc. As such, proposed amendments also include provisions for maintaining a 30-foot minimum separation distance between homes and other principal structures, as required for safety and access.
3. Proposed amendments apply largely to existing single family dwellings. As such, they will not affect or carry out any proposals for community facilities and services identified in the town plan. Any new housing development, under current regulations or proposed amendments, must be served by individual onsite or shared community water supply and wastewater systems, as regulated by the state.

#3 Nonconformities (Nonconforming Lots, Structures)

Proposed amendments under Sections 3.7 (Nonconforming Lots) and 3.8 (Nonconforming Structures) were drafted by staff, in consultation with the Development Review Board (DRB), for Planning Commission consideration. These are intended to address longstanding issues around waiver provisions, as currently defined in the regulations, that allow the DRB to reduce required setbacks for additions or modifications to existing, nonconforming structures. This set of amendments is intended to:

- Extend waiver provisions (setback reductions) to also allow for the reasonable use and development of nonconforming lots under Section 3.7;
- Redefine “the degree of noncompliance” (or “nonconformance” as proposed) as calculated and applied to encroachments within required setback areas; and
- Update and clarify how setback reductions are determined and applied.

As currently defined, the degree of noncompliance (or “nonconformance”) is calculated based on the *volume* of an existing nonconforming structure within the required setback area. Under the current waiver provision, the DRB may increase this by no more than 50%. This is difficult to calculate and to apply to many structures, including porches and decks. It also allows structures that are significantly nonconforming to be enlarged to a greater degree than a more conforming structure, contrary to the intent to allow, but also limit such encroachments and associated impacts to neighboring properties, facilities and resources.

As proposed, the degree of noncompliance (or “nonconformance”) under Sections 3.7 and 3.8 would instead be defined under 10.2 (Definitions) in relation to the existing footprint or height

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

of a structure, rather than its volume. Illustrations that graphically depict allowed setback encroachments under this provision are included as guidance.

Proposed amendments also specify that, under the waiver provision, the DRB may reduce a setback by no more than 50% of the minimum required distance; however, a minimum setback distance of 10 feet must be maintained – otherwise a variance that meets associated hardship criteria would be needed. A Setback Reduction Table, intended as an attachment to the bylaws as a reference, shows reduced minimum setback distances by zoning district that may be allowed with DRB approval under the proposed waiver provision.

This set of amendments also references a new DRB review process for waiver requests, and related requirements, as included in the following set of amendments (#4 Waivers) proposed under Article 9.6

Related Planning Commission Findings:

1. The 2017 Town Plan does not address existing nonconformities in goal and policy statements, but the action item noted above that calls for the update of the regulations for clarity and ease of use supports the intent of these amendments.
2. By allowing for new accessory structures and additions on nonconforming lots, the proposed regulations could increase the density and intensity of use on these lots, but associated impacts to neighboring properties are anticipated to be negligible given the new, (and more equitable) restrictions on allowed waivers. These amendments simply allow for reasonable use of existing properties, consistent with other requirements under the regulation, and with proposed land uses highlighted in the Bolton Town Plan.
3. These amendments, as applied only to existing nonconforming lots and structures, will not affect or carry out proposals for any planned community facilities or services.

4 Waivers and Variances

This set of proposed amendments establishes a new process for the DRB review of waiver requests under Section 9.6 (Variances) as allowed by statute [24 V.S.A. § 4414(8)], to include additional criteria specific to waivers that are distinct from but informed by statutory variance criteria. In sum, these amendments:

- More clearly define the intent of this section – to allow for reasonable use of a nonconforming lot or structure – or other listed use (e.g., a solar facility) – while ensuring that proposed development does not adversely affect adjoining properties, resources or uses.
- Require information regarding the specific circumstances, need and justification for a requested waiver.
- Set limits on the reduction in a setback that may be granted by the DRB.
- Include specific criteria that must be addressed by the DRB in granting a waiver.

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

Currently all waiver requests are subject to conditional use review and approval. Under the proposed process and criteria, waiver requests could instead be considered by the DRB in association with site plan review or conditional use review as otherwise required, or on appeal from a Zoning Administrator's determination that a proposed permitted use does not meet required setbacks.

Planning Commission Findings:

1. There are no goals or policies specific to nonconformities, or associated waivers, in the 2017 Bolton Town Plan; however, these amendments are consistent with the action item noted above that calls for the update of regulations for clarity and ease of use – as specifically requested by the DRB.
2. As noted above, in allowed reduced setbacks under this section, the DRB could increase the density and intensity of development on existing lots, but the impacts to neighboring properties are anticipated to be negligible given associated restrictions. Again, proposed amendments are intended to simply allow for the reasonable use of existing properties, consistent with other requirements under the regulations, and with proposed land uses highlighted in the Bolton Town Plan.
3. These amendments as described will not affect or carry out proposals for any planned community facilities or services.

5 Exemptions

This set of amendments under Section 9.2 (Exemptions) essentially updates the list of uses that by law (24 V.S.A. §§ 4412, 4413) are generally exempted from municipal land use regulation. These are not necessarily blanket exemptions, which complicates how they may be considered locally. It is also the intent under the proposed amendments to help clarify the extent to which these exemptions apply.

More specifically, proposed amendments redefine, update and clarify existing exemptions pertaining to farming and forestry, as relevant to local land use regulation, in relation to new state rules under the Vermont Clean Water Act (Act 64) – including [Required Agricultural Practices \(2016\)](#) (RAPs) (formerly Accepted Agricultural Practices), [Acceptable Management Practices \(2016\)](#) (AMPs) for logging, and a new statutory exemption for “forestry operations” as defined by the state, which includes the onsite processing of wood during a timber harvest.

Associated definitions under 10.2 (Definitions) have also been updated for consistency with state statutes, rules, and programs – including definitions for farm, farming, farm structure, forestry, and forestry operation – in association with allowed uses under the regulations, largely for the benefit of applicants and the Zoning Administrator.

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

Planning Commission Findings:

1. These amendments are consistent with the goal of the 2017 Bolton Town Plan, that **“Working lands will be maintained to support both the rural economy and wildlife habitat,”** and the following related objectives:
 - The Town of Bolton strongly supports responsible forest management that follows the State of Vermont’s Acceptable Management Practices (AMPs) on both public and private property, including consultation with a professional forester and development of forest management plans that balance the economic benefits of logging with maintaining healthy forests, water quality and protecting wildlife habitat.
 - Areas previously logged shall not be considered exempt from the standards of the development review process when development is proposed.

Given that these amendments are specifically intended to update the current regulations for consistency with new state laws, they are also consistent with the above referenced action item to review and update the regulations for clarification and ease of use, and to incorporate new statutory requirements under Chapter 117.

2. In promoting farming and forestry, these amendments are clearly compatible with proposed land use and development as envisioned in the 2017 Bolton Town Plan, and our current regulations, which allow for forestry and farming in all zoning districts (as required by statute) and specifically highlight forestry as a principal use in designated Forestry and Conservation Districts.
3. Proposed amendments for these types of exemptions will not affect or carry out proposals for any planned community facilities or services. They are instead consistent with plan recommendations to conserve the town’s “working lands” for resource-based uses.

6 Technical Corrections

This set of proposed amendments includes minor amendments to Section 4.17 (Public Utility or Facility) for consistency with state law. These amendments update the name of the Public Service Board (now the Public Utility Commission) and clarify that state owned and operated facilities located within flood hazard areas are now subject to state, rather than municipal, flood hazard review under the Department of Environmental Conservation’s [Flood Hazard Area and River Corridor Rule \(2015\)](#).

Proposed amendments also include an update to Table 5.1 Development Application Review Materials, to include the statutory requirement that an applicant obtain and submit a “Letter of Intent” from the Vermont Agency of Transportation regarding state access approval, for any development along a state highway (limited to US 2 in Bolton), as reviewed by the DRB.

Bolton Planning Commission Report: Proposed 2018 Bylaw Amendments

These amendments also identify the types of technical corrections to be made throughout the regulations (updated references, renumbering, etc.) as needed to incorporate proposed bylaw amendments, if adopted, into the body of the regulations.

Planning Commission Findings:

As proposed, these corrections are intended only to provide consistency with state statutes and rules, as noted, and to ensure internal consistency throughout the regulations, as amended. As such, they are not contemplated or addressed in the 2017 Bolton Town Plan, and will have no effect on affordable housing, future land uses or densities, or planned community facilities or services.