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Non-Conforming Or Non-Complying Properties And Properties Subject To Unenforceable Violations (And MORE!)

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Municipalities Are Required To Enforce

24 V.S.A. § 4452 "If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, **the administrative officer shall institute** in the name of the municipality **any appropriate action**, injunction, or other proceeding **to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation.** A court action under this section may be initiated in the Environmental Division, or as appropriate, before the Judicial Bureau, as provided under section 1974a of this title."

24 V.S.A. § 4470(b)

(b) A municipality **shall enforce all decisions** of its appropriate municipal panels, and further, the superior court's civil or environmental division shall enforce such decisions upon petition, complaint or appeal or other means in accordance with the laws of this state by such municipality or any interested person **by means of mandamus, injunction, process of contempt, or otherwise.**

Required Procedures For Initiating Enforcement Proceedings And $200/Day Fines

24 V.S.A. § 4451 (a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than $200.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

Defenses To Enforcement Actions

V.R.C.P. 8(c) provides that "a party shall affirmatively set forth and establish... any other matter constituting an avoidance or affirmative defense."

At least three defenses:

- Permit or Notice of Permit not recorded as required under 24 V.S.A. § 4454
- "Grandfathered"-- a pre-existing legal non-conformity under 24 VSA § 4412 (7)
- "Unenforceable Violation"-- 15 year statute of limitations under 24 V.S.A. § 4454(a)

Was The Permit Or A Notice Of Permit Recorded As Required?

24 V.S.A. § 4454 (b) No action, injunction, or other enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit that received final approval from the applicable board, commissioner, or officer of the municipality after July 1, 1998**, unless the municipal land use permit or a notice of the permit generally in the form provided for in subsection 1154(c) of this title was recorded in the land records of the municipality as required by subsection 4449(c) of this title**.

Recording Must Be "At Length" Or Notice Of Permit

24 V.S.A. § 4449(c)(1) Within 30 days after a municipal land use permit has been issued or within 30 days of the issuance of any notice of violation, the appropriate municipal official shall:

(A) deliver the original or a legible copy of the municipal land use permit or notice of violation or a notice of municipal land use permit generally in the form set forth in subsection 1154(c) of this title to the town clerk for recording as provided in subsection 1154(a);

24 V.S.A. § 1154(a) A town clerk shall record in the land records, at length or by accurate, legible copy, in books to be furnished by the town:

…

(6) municipal land use permits (as defined in section 4303 of this title) or notices of municipal land use permits as provided for in subsection (c) of this section, notices of violation of ordinances or bylaws relating to municipal land use, and notices of violation of municipal land use permits; … .

24 V.S.A. § 1154(c) A notice of a municipal land use permit or a notice of violation specified in subdivision (a)(6) of this section may be recorded, and if such notice is recorded, it shall list:

(1) as grantor, the owner of record title to the property at the time the municipal land use permit or notice of violation is issued;

(2) as grantee, the municipality issuing the permit, certificate, or notice;

(3) the municipal or village office where the original, or a true, legible copy of the municipal land use permit may be examined;

(4) whether an appeal of such permit, certificate, or notice has been taken;

(5) tax map lot number or other description identifying the lot.

Does The Structure Or Use Qualify As A Pre-Existing Legally Permitted Non-Conformity?

24 VSA § 4412 (7) Nonconformities. Bylaws all define how nonconformities will be addressed, including standards for nonconforming uses, nonconforming structures, and nonconforming lots.

- (A) To achieve the purposes of this chapter set forth in section 4302 of this title, **municipalities may regulate and prohibit expansion and undue perpetuation of nonconformities**. Specifically, a municipality, in its bylaws, may:
- (i) **Specify a time period that shall constitute abandonment or discontinuance of that nonconforming use, provided the time period is not less than six months.**
- (ii) Specify the extent to which, and circumstances under which, a nonconformity may be maintained or repaired.
- (iii) Specify the extent to which, and circumstances under which, a nonconformity may change or expand.
- (iv) Regulate relocation or enlargement of a structure containing a nonconforming use.
- (v) Specify the circumstances in which a nonconformity that is destroyed may be rebuilt.
- (vi) Specify other appropriate circumstances in which a nonconformity must comply with the bylaws.

Non-Conformity Must Have Been In Conformance Prior To The Applicable Bylaws

24 VSA § 4303 (13) "Nonconforming lots or parcels" means lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.

(14) "Nonconforming structure" means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.

(15) "Nonconforming use" means use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.

(16) "Nonconformity" means a nonconforming use, structure, lot, or parcel.

The Focus Is On The Actual Prior Uses Not As Defined In Regs

[W]e observe that a single location can be the source of multiple nonconforming uses and the rationale that the public interest is advanced by the gradual elimination of nonconforming uses is best served by an approach that neither forbids a municipality from asserting that fewer than all noncomplying uses have been abandoned, nor compels a property owner to surrender all nonconforming use status where fewer than all uses have been abandoned. The law nevertheless generally views nonconforming uses as detrimental to a zoning scheme and overriding public policy

Appeal of Gregoire, 170 Vt. 556, 559-560 742 A.2d 1232 (Vt. 1999)(citations omitted)

Burden Of Proof Is On Party Asserting Non-Conformity

The party asserting grandfather status "would have to prove the elements of a lawful preexisting nonconforming use: that the use existed prior to the ordinance being established, that the use conformed to all laws existing prior to the ordinance being established, and that the use is substantial enough to warrant recognition." *In re Transtar, LLC*, ENC 46-3-11 Vtec (2011; Durkin J.) citing *Shelburne v Kaelin*, 136 Vt. at 248 251-52; (Vt 1978)

How Far Back To Prove Non-conformance?

Vermont authorized land use regulations at least as far back as the 1940s and depending on the time of adoption of the applicable Ordinance provision, the party asserting the non-conformity defense will have to find the historical zoning regulations and the history of the property use.

Given the difficulties, Burlington has limited the time of proof to the status of the property and zoning in 1973.

Non-Conformities May Continue But May Be Phased Out

The public interest in the regulation and gradual elimination of nonconforming uses is strong and zoning provisions allowing nonconforming uses should be strictly construed. By their very nature, nonconforming uses, defined as "`a use of land or a structure which does not comply with all zoning regulations' where such use was proper prior to the enactment of the regulations," are inconsistent with that purpose. **Such uses are recognized and permitted to continue, simply by virtue of their existence prior to the enactment of the ordinance.** However, their extension is carefully limited, since the ultimate goal of zoning is to gradually eliminate them.

…

New Zoning Regulations Cannot Be Imposed On Non-Conformities

Town of Chester v. Country Lodge, Inc., 135 Vt. 165, 167 (to avoid application of the zoning regulations, the pre-existing, non-conforming use of land must have been substantial before adoption of the zoning regulations). This is especially true where, as here, the pre-existing non-conforming mixed use pre-date the enactment of the Regulations.

Therefore, the Regulations cannot be applied to Appellant's non-conforming uses. *Town of Chester v. Country Lodge, Inc.,* 135 Vt. 165; *In re Old Lantern Non-Conforming Use* , No. 154-12-15 Vtec, slip op. at 19 (Vt. Super. Ct. Envtl. Div. July 3, 2017) (citation omitted) ("If a use is established as lawfully pre-existing, it may not be regulated, even if it does not conform to the current zoning regulations.").

“Bianchi” 15-Year Statute of Limitations

24 V.S.A. § 4454 (a) **An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted** under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted **within 15 years from the date the alleged violation first occurred and not thereafter**, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. **The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.**

Non-Municipal Violations Not Addressed by 24 V.S.A. § 4454

Uniform Environmental Law Enforcement provisions of 10 V.S.A. chapters 201 and 211.

- Act 250,
- Air Quality,
- Stormwater,
- Water Quality,
- Public Water Supply,
- Dams, Stream Alterations,
- Underground Storage,
- Tanks,
- Solid Waste, and
- Fire Safety Regulations

Three Municipal Zoning Exceptions To The Statute Of Limitations In 24 V.S.A. § 4454

***In re Hale Mountain Fish and Game*, No. 149-8-04 Vtec, No. 259-12-05 Vtec, slip op. at 6 (Vt. Envtl. Ct. Nov. 11, 2008) (Durkin, J.)**

1. "[A]ny zoning violations that involve "public health risks or hazards" can be enforced at any time, regardless of when these violations commenced. 24 V.S.A. § 4454(c). . . .

2. Yet another major exemption from the fifteen-year statute of limitations is for cases brought under 24 V.S.A. § 4470(b). *Richardson,* No. 188-10-03 Vtec, slip op. at 12 (June 27, 2006) ("[T]his statute of limitations ... is specifically not applicable to enforcement actions brought under 24 V.S.A. § 4470(b) to enforce decisions of the former ZBA or Planning Commission, or of the Court sitting in place of those tribunals in a de novo appeal.")."

Continuing Use Exception Now Overruled

3. In a series of cases the Environmental Court held that a violation of the "use" permitted for a parcel under the zoning bylaws, as opposed to a violation of the dimensional regulations by a building constructed on a parcel, is an ongoing violation and thus the 15 year statute of limitations did not apply.

·*City of St. Albans v Hayford,* No. 161-9-03 Vtec (Vt. Envtl. Ct. June 1, 2004) (Wright, J.), *aff'd by* 2008 VT 36

· *City of Burlington v. Richardson,* No. 188-10-03 Vtec, slip op. at 12 (Vt. Envtl. Ct. June 27, 2006) (Wright, J.)

· *Appeal of Gauthier,* No. 172-9-04 Vtec, slip op. at 7-8 (Vt. Envtl. Ct. Jan. 24, 2006) (Durkin, J.)

· *In re Wesco, Inc.*, No.106-5-07 Vtec (Vt. Envtl. Ct., Mar. 6, 2008) (Wright, J.)

· *In re Budget Inn NOV,* No.504-4-13 Vtec (Vt. Envtl. Ct., May 5, 2015) (Durkin, J.)

204 North Avenue NOV Case Challenged Continuing Use Exception

- Matter involved conversion of a duplex to a triplex in 1992. Owner did not get zoning approval but obtained building permit and a certificate of occupancy. Property was reassessed as triplex in 1993.
- 24 years later in 2017 City issues a NOV for the change of use from duplex to triplex without zoning approval.
- E. Court grants City Motion for Summary Judgment that the 15 year statute of limitations does not apply because the use is a continuing use.
- Attorney John Franco represented the property owner and appeals to the Supreme Court
- MSK obtains permission to file Amicus Brief and Attorney Franco graciously shared his argument time.

Supreme Court Rejects Continuing Use Exception

In a straight forward decision, *In re 204 North Avenue NOV*, 2019 VT 52, Chief Justice Reiber holds:

"The statute's plain language does not distinguish between 'use' and structural violations. It clearly applies to 'the failure to obtain… any required municipal land use permit' with no exception for use violations. In general, we will not read something into a statute that is not there unless necessary to make the statute effective." *204 North Avenue*, 2019 VT at ¶ 6 (internal citations omitted) (emphasis in original)

"The Legislature explained that it intended to eliminate the 'costs and problems arising from' this Court's decision in *Bianchi v. Lorenz*, in which we held that a zoning violation could encumber real estate title.. Thus, the Legislature's purpose was to streamline title searches and increase confidence in property ownership by limiting the time to enforce all zoning violations. Creating an exception for use violations would circumvent that legislative intent." *Id.* at ¶ 8 (internal citations omitted).

Status Of Properties With Unenforceable Municipal Violations

Properties which are in violation of municipal land use regulations but which violations cannot be enforced as a result of the 15 years statute of limitations still have issues.

Such Properties Do Not Have Any Protection As A "Non-Conformity"

In a subsequent *Hayford* case, *City of St. Albans v Hayford,* 2008 VT 36, the Supreme Court found:

> According to the property owners, the only violation that is actionable is their failure in 1987 to obtain a permit and site-plan approval for converting the nursery school into a residential unit. They contend that the City's adoption of a new zoning ordinance in 1998 could not trigger another violation based on their failure to obtain a permit and site-plan approval in 1987 because the sixth residential unit was a nonconforming use and they did nothing in 1998 to make the use more nonconforming. In other words, **the property owners argue that the sixth residential unit was not a violation, but a grandfathered nonconforming use following the adoption of the 1998 zoning regulations.**

2008 VT ¶ 10 (emphasis added).

A nonconforming use is a "use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws." 24 V.S.A. § 4303(15). Because the Hayfords failed to obtain a required permit and site-plan approval for their 1987 conversion of the nursery school to an additional residential unit, that use did not conform to all applicable laws at the time it commenced. Hence, it was not a grandfathered nonconforming use immune from a later notice of violation after the 1998 regulations made it nonconforming in several additional respects. In short, when the City adopted the new zoning ordinance in 1998, use of the rear building as a sixth residential unit was out of compliance with that ordinance; because its use was never permitted as required by law at the time it commenced, it was not a grandfathered nonconforming use immunized from a new notice of violation based on the 1998 ordinance. Accordingly, the Environmental Court did not err in declining to apply the statute of limitations contained in § 4454(a).

2008 VT ¶ 11 (emphasis added).

Municipality Has No Obligation To Clarify Status Of Property

Perhaps 24 V.SA § 4454(a) precludes the City from commencing an enforcement action against the continued use of these parking spaces. We leave that question to when such an enforcement action is actually noticed, brought, and preserved for our review and an appeal presented to this Court. See Torres, 154 Vt. at 235. **But we are unaware of any legal authority that requires the City to legitimize this nonconformity with a zoning permit. In fact, we understand the relevant precedent to be exactly the opposite: that when the opportunity arises, a municipality is authorized to not sanction nonconformities**. See, e.g., In re Richards, 2005 VT 23, 26, 178 Vt. 478 (mem.) ("[O]ne goal of zoning is to phase out nonconforming uses."); accord Drumheller v. Shelburne Zoning Bd. of Adj., I55 Vt. 524, 529 (1990). The I5-year statute of limitations in 24 V.S.A. § 4454(a) only applies to enforcement proceedings; we have no enforcement proceeding before us in this appeal. We therefore decline to provide any opinion on whether the City is barred from bringing an enforcement action regarding the three parking spaces. opinion on whether the City is barred from bringing an enforcement action regarding the front yard parking spaces. See *Torres*, 154 Vt. at 235. Further, even if we could address the enforcement issues here, we would not do so because they are irrelevant to the question of the legality of the parking spots.

In re Keenan Conditional Use Approval, slip op. at 7 **No. 266-12-07 Vtec (Vt. Envtl. Ct. June 4, 2009) (Durkin, J.)**

City Of Burlington Ordinance Provisions Limit Benefit Of Statute

Sec. 5.3.2 “Bianchi” controlled uses, structures, and lots. Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the Bianchi decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city’s building inspector shall be permitted, except to a conforming use, structure, or lot.

City Of Burlington View On Non-Conformities And Unenforceable Violations

The CDO addresses non-conformities and “Bianchi” controlled uses, structures and lots in Article 5, Part 3.

- A pre-existing legal non-conformity (grandfathered condition) has an identified legal status with defined opportunities to change.
- A “Bianchi” situation is an unenforceable violation, not entitled to the protections/opportunities for legal nonconformities.
- The City has no legal duty to legitimize a “Bianchi” situation with a zoning permit or certificate of compliance. At the same time, it cannot enforce against that condition, absent one of the exceptions (e.g., public health concerns)

https://www.burlingtonvt.gov/sites/default/files/agendas/Zoning-Grandfathering%20v%20Statute%20of%20Limitations%20Jan302018.pdf

Burlington Has Imposed A Shorter Period Of Abandonment For Unenforceable Violations

Burlington has reduced the one year (with possible extension) for time for "abandonment" for non-conformities to 60 days for "unenforceable violations". In *Purvis Nonconforming Use,* No. 45-5-15 Vtec, slip op. at 7-9 (Vt. Envtl. Div. Jan. 27, 2016 (Durkin, J.), the court found that this shorter abandonment language was not governed by 24 V.S.A. § 4412(7)(A) which forbids municipalities from establishing a period of abandonment for nonconforming uses that is shorter than six months.

However the decision was a denial of a Motion for Summary Judgment and did not affirmatively uphold such provision. Further, in a footnote, the Court specifically stated "*We note that this is the only preemption argument Appellant presented in both his Statement of Questions and his motion for summary judgment—Appellant did not argue that the statute of limitations itself preempts municipalities from establishing periods of abandonment for protected zoning violations*"

Tolling Of The 15 Year Statute Of Limitations

"24 V.S.A. § 4454 does not require municipalities to complete all of their enforcement actions within the fifteen-year time period; rather, the statute only requires that such enforcement be "instituted" within this time period. In other words, as soon as a municipality begins an enforcement action, it can look back 15 years from the date of beginning that action, no matter how drawn out the subsequent proceedings are." *In re Hale Mountain Fish and Game*, No. 149-8-04 Vtec, No. 259-12-05 Vtec, slip op. at 7 (Vt. Envtl. Ct. Nov. 21, 2008) (Durkin, J.).

Burlington's Clean Slate Policy

Burlington has further complicated the use of properties with unenforceable violations by adopting a "Clean Slate" Policy:

Sec. 2.7.8 – Withhold Permit

This section limits issuance of new zoning permits for properties with uncorrected zoning violations or expired zoning permits without a final certificate of occupancy.

No new zoning permits shall be issued for a property with an uncorrected zoning violation. The exception would be for a zoning permit issued to correct the zoning violation.

Other Outstanding Issue 15 Year Statute May Not Apply To Violations Of Decisions Of AMPs

4470(b) A municipality shall enforce all decisions of its appropriate municipal panels, and further, the Superior Court's Civil or Environmental Division shall enforce such decisions upon petition, complaint or appeal or other means in accordance with the laws of this State by such municipality or any interested person by means of mandamus, injunction, process of contempt, or otherwise.

When addressing which violations, if any, the statute of limitation under 24 V.S.A. 4454 could be applied to, the court stated that the statute of limitation "is specifically not applicable to enforcement actions brought under 24 V.S.A. §4470(b) to enforce decisions of the former ZBA or Planning Commission, or of the Court sitting in place of those tribunals in a de novo appeal." *City of Burlington v. Richardson*, No. 188-10-03 Vtec, slip op. at (Vt. Envtl. Ct. June 27, 2006) (Wright, J.).

Additional Litigation Required

The continuing efforts of the City of Burlington, and potentially other municipalities, to restrict the applicability of the Bianchi 15 year statute of limitations is be ripe for a challenge given the language of *204 North Avenue NOV* emphasizing the application of the statute to any municipal violations and the intent of the statute

Section 4 Of Act No. 179 Of The 2019-2020 Legislature Adopting 27 V.S.A. § 545

§ 545. COVENANTS, CONDITIONS, AND RESTRICTIONS OF SUBSTANTIAL PUBLIC INTEREST

Deed restrictions, covenants, or similar binding agreements added after January 1, 2021 that prohibit or have the effect of prohibiting land development allowed under a municipality's bylaws shall not be valid. This section shall not affect the enforceability of any property interest held in whole or in part by a qualified organization or State agency as defined in 10 V.S.A. § 6301a, including any restrictive easements, such as conservation easements and historic preservation rights and interests defined in 10 V.S.A. § 822. This section shall not affect the enforceability of any property interest that is restricted by a housing subsidy covenant as defined by section 610 of this title and held in whole or in part by an eligible applicant as defined in 10 V.S.A. § 303(4) or the Vermont Housing Finance Agency.

What Is The Scope Of “Deed Restrictions, Covenants, Or Similar Binding Agreements”

Clearly intended to prevent private party to private party agreements

But is a similar binding agreement be an application to, or approval by, a municipal panel that the applicant is only going to build 10 units while zoning allows 20?

The Scope Of “Land Development Allowed Under A Municipality’s Bylaws”

All municipal bylaws are authorized by 24 VSA Ch. 117 and the definitions in the chapter are automatically incorporated into municipal regulations.

24 V.S.A. § 4303 . Definitions. The following definitions shall apply throughout this chapter unless the context otherwise requires:

(10) "Land development" means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

As Drafted 27 V.S.A. § 545 Effectively Limits Any Agreement Limiting Use Of Property In Vermont If Such Use Is "Allowed" Under The Municipality's Bylaws In The Location Of The Property

"Allowed": Does that mean Permitted? At maximum intensity permitted?

What about Conditional Uses?

Towns without zoning: no restrictions?

Proposed Curative Legislation

According to the Senators of the Senate Committee on Economic Development, Housing and General Affairs, as expressed in the hearing on January 13, 2021 (starting at 1:54:35 of the hearing) the original intent of 27 VSA 575 was to limit covenants that imposed restrictions on Accessory Dwelling Units and Small Lots, as those terms are used in the Zoning Regulations.

§ 545. COVENANTS, CONDITIONS, AND RESTRICTIONS OF SUBSTANTIAL PUBLIC INTEREST

Deed restrictions, covenants, or similar binding agreements added after ~~January~~ March 1, 2021 that prohibit or have the effect of prohibiting land development allowed under ~~a municipality's bylaws~~ 24 V.S.A. § 4412(1)(E) and (2)(A) shall not be valid. This section shall not affect the enforceability of any property interest held in whole or in part by a qualified organization or State agency as defined in 10 V.S.A. § 6301a, including any restrictive easements, such as conservation easements and historic preservation rights and interests defined in 10 V.S.A. § 822. This section shall not affect the enforceability of any property interest that is restricted by a housing subsidy covenant as defined by section 610 of this title and held in whole or in part by an eligible applicant as defined in 10 V.S.A. § 303(4) or the Vermont Housing Finance Agency.

24 V.S.A. § 4412 (1)(E)
Accessory Dwellings

24 V.S.A. § 4412. Required provisions and prohibited effects.

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

(E) Except for flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, no bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to a single-family dwelling on an owner-occupied lot. A bylaw may require a single-family dwelling with an accessory dwelling unit to be subject to the same review, dimensional, or other controls as required for a single-family dwelling without an accessory dwelling unit. An accessory dwelling unit means a distinct unit that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

(i) The property has sufficient wastewater capacity.

(ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling or 900 square feet, whichever is greater.

(F) Nothing in subdivision (1)(E) of this section shall be construed to prohibit:

(i) a bylaw that is less restrictive of accessory dwelling units; or

(ii) a bylaw that regulates short-term rental units distinctly from residential rental units.

24 V.S.A. § 4412 (2)(A)
Existing Small Lots

(2) Existing small lots. Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any bylaw, including an interim bylaw, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new bylaw or interim bylaw.

(A) A municipality may prohibit development of a lot not served by and able to connect to municipal sewer and water service if either of the following applies:

(i) the lot is less than one-eighth acre in area; or

(ii) the lot has a width or depth dimension of less than 40 feet. (B) The bylaw may provide that if an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

(i) The lots are conveyed in their preexisting, nonconforming configuration.

(ii) On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.

(iii) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.

(iv) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. chapter 64.

(C) Nothing in this subdivision (2) shall be construed to prohibit a bylaw that is less restrictive of development of existing small lots.