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TO: Planning Commission Ordinance Committee
FROM: Scott Gustin
DATE: December 6, 2018
RE: Revisions to "Accessory"

The Comprehensive Development Ordinance makes multiple references to the term "accessory" in a variety of different scenarios such as accessory uses, accessory structures, and accessory dwelling units. The idea is predicated on the distinction between principal and accessory, whether in reference to structures or uses. Within the context of the CDO, the term "principal" refers to the main structure or use of a property. "Accessory" refers to an adjunct structure or use that is customary and incidental to the principal structure or use. A principal use or structure may stand on its own. An accessory use or structure must always be associated with a primary use or structure.

Some common examples of an accessory/principal relationship include a shed associated with a single family home or administrative office space associated with a grocery store use.

The focus here is on "accessory;" however, it bears noting that the term "principal" (or primary) is not defined in Article 13. Providing such definition is recommended.

Consistency is lacking in the application of the term "accessory" in the CDO and in the parameters defining what qualifies as accessory. Defining clear and consistent guidelines as to "accessory" is recommended.

There are at least two ways to address this matter.

1. Leave the existing provisions largely in place and revise them for improved consistency.
2. Delete most of the existing provisions while revising the definition and retaining provisions for home occupations and accessory dwelling units.

The second method is recommended. Accessory is essentially about a feature's scope and context as it relates to the primary feature. The term should be plainly and simply defined to establish clear guidelines while affording necessary flexibility for any particular set of circumstances. Over-defining the term or trying to articulate standards for particular situations only lessens flexibility.

The CDO defines the term "accessory" as follows:

Accessory Appurtenance, Building or Use: A use or detached building that:

- (a) Is located on the same lot as the principal use or building served;
- (b) Is clearly incidental to and customarily found in connection with the principal use or building; and
- (c) Is subordinate in area, extent, or purpose to the principal use or building served, and is not to exceed twenty-five percent (25%) of the gross area or sales of the principal use or building served.

Items (a) and (b) offer guidance as to what sorts of things are “accessory.” Item (c) gets at size and use limitations. The 25% limitation for accessory features is intended to ensure that they remain subordinate to the principal structure or use. Staff recommends revising the 25% limitation to a cumulative maximum of 49%.

“Principal (also primary) structure or use” should be defined. Suggested language is below:

- A structure that accommodates the principal use of the lot or use that is the main propose for which a site is developed and occupied.

Insofar as accessory dwelling units and home occupations are uniquely addressed as “Special Uses” under *Part 4: Special Use Regulations* of Article 5, no adjustments to these different “accessory” limitations are warranted.

There are a handful of incorrect or unwarranted references to “accessory” in the CDO:

- **Sec. 11.1.6, *Accessory Facilities***, allows for a building or buildings intended for use as a community center, recreation facility, child care center and/or business office within a PUD regardless of size. The same section also allows for a convenience store with a 1,000 sf size limitation. The term “accessory” in this instance should be replaced with “non-residential.” The PUD is not a use, and the uses referred to in Sec. 11.1.16 are not “accessory.” They are simply allowed as part of an overall mix of uses within a PUD.
- **Article 13, *Definitions***, the term “animal” refers to both “kennel” and “barn or coop” as within an accessory building. Of course, either use may be present within a primary structure. Deletion of the reference to “accessory is recommended.

Sections recommended for deletion in whole or in part are listed below.

- **Sec. 4.4.5 (d) 4, *Accessory Residential Structures and Uses***
 - This section is largely redundant with other sections of the CDO or the City Code of Ordinances. Only the 75% garage footprint limitation is not addressed elsewhere. If retained, this limitation should be placed in Sec. 6.2.2 (h), *Building Location and Orientation*.
- **Sec. 5.1.2 (d), *Accessory Residential Structures*, & (e), *Accessory Nonresidential Structures***
 - Redundant with other provisions within the CDO. Only the 500 sf accessory building limitation is not found elsewhere. This provision is seemingly over-restrictive and contradicts the more general accessory limitations articulated in the Article 13 definition.
- **Sec. 5.5.1 (g), *Accessory Uses***
 - This section summarizes general standards for accessory uses; however, all of its provisions are accounted for elsewhere in the CDO or the City Code of Ordinances.

Complete section language is below:

Sec. 4.4.5 (d) 4, *Accessory Residential Structures and Uses*

4. Accessory Residential Structures and Uses

An accessory structure and/or use as provided under Sec. 5.1.1 and 5.1.2 customarily incidental and subordinate to a principal residential use, including but not limited to

private garages, carriage houses, barns, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and detached fireplaces may be permitted as follows:

- A. Accessory Structures shall meet the dimensional requirement set forth in the district in which they are located pursuant to Sec. 4.4.5(b) of this Article and related requirements in Art 5, Part 2;
- B. Any accessory structure that is seventy-five percent (75%) or greater of the ground floor area of the principle structure shall be subject to the site plan and design review provisions of Art. 3, Part 4 and the applicable standards of Art 6;
- C. Private garages shall be limited to as many stalls as there are bedrooms in the dwelling to which it is accessory, provided that the ground floor area is less than seventy-five percent (75%) of the ground floor area of the principle structure;
- D. The outdoor overnight storage of commercial vehicles not otherwise associated with an approved home occupation or made available for the exclusive use of the residential occupants, or the outdoor storage of more than one unregistered vehicle, shall be prohibited. Any and all vehicles shall be stored in an approved parking space; and,
- E. Uncovered play structures, seasonal skating rinks, raised planting beds shall not require a zoning permit.

Sec. 5.1.2 (d), *Accessory Residential Structures*, & (e) *Accessory Nonresidential Structures*

(d) Accessory Residential Structures:

An accessory structure customarily incidental and subordinate to a principal residential use shall also be governed by the provisions of Sec. 4.4.5(d)4.

(e) Accessory Nonresidential Structures:

An accessory structure customarily incidental and subordinate to a principal nonresidential use may be permitted provided the gross floor area of any accessory structure does not exceed five hundred (500) square feet or contain living space.

Sec. 5.5.1 (g), *Accessory Uses* (General accessory standards)

(g) Accessory Uses:

1. Accessory Dwelling Units. Accessory dwelling units as mandated by 24 VSA 4412 (1)(E) shall be regulated as set forth in Sec. 5.4.5 hereof.
2. Accessory Residential Uses: Except as specified in 1 above and subject to the restrictions of 3 below, accessory residential uses shall also be governed by Sec. 4.4.5(d)4.
3. Other Accessory Uses. Except as specified in 1 above, any use may be an accessory use provided in Article 3, Part 5 provided each of the following standards are present:
 - A. The accessory use is subordinate and customarily incidental to the principal use;
 - B. The accessory use is reasonably necessary to the conduct of the principal use;

- C. Except for home occupations as regulated by Sec. 5.4.6, no accessory use, or combination of accessory uses, shall occupy more than twenty-five (25%) per cent of the total gross area dedicated to the principal use;
- D. The accessory use shall not include the outdoor storage of more than one unregistered vehicle;
- E. The accessory use does not result in, or increase the extent of, any pre-existing non-conformity or violation of the provisions of this ordinance; and,
- F. The combination of uses on any given property shall meet all of the other provisions of this ordinance.