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TO: Planning Commission Ordinance Committee
FROM: Scott Gustin
DATE: February 7, 2019
RE: Revisions to "Accessory" (continued discussion)

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.

The Ordinance Committee first reviewed this proposed amendment December 6, 2018. The Committee sought to retain the 25% limitation referred to in the Article 13 definition and cleaned up some of the myriad accessory provisions within the CDO. A couple of incorrect uses of the term "accessory" are to be corrected as well in Articles 11 and 13.

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 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. The Ordinance Committee suggested inserting the term “temporal” into item (c) as a qualifier to “extent” (i.e. to read “is subordinate in area, temporal extent, or purpose...”). Temporal extends the application of “accessory” beyond structure and use into time, such length of time devoted to an event or series of events.

The Ordinance Committee agreed that the term “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 purpose 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. Committee members agreed with the recommended changes.

- **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” as defined in Article 13. They are simply allowed as part of an overall mix of uses within a PUD.
 - **Sec. 11.1.6 Accessory Non-Residential Facilities**
 - (a) – (b) As written.
- **Article 13, *Definitions***, the term “animal” refers to both “kennel” and “barn or coop” as within an accessory building. Of course, either may be present as a primary feature. Modifying the reference to “accessory” is recommended.
 - **Animal**
 - **Boarding:** An establishment involving any structure, land, or combination thereof used, designed, or arranged for the keeping of five (5) or more domestic pets more than three (3) months of age for profit or exchange, inclusive of equines but exclusive of other livestock used for agricultural purposes in areas approved for agricultural uses. The keeping of four (4) or less such animals more than three (3) months of age for personal enjoyment shall not be considered “boarding” for the purposes of this ordinance.
 - **Domestic Pet:** Any canine, feline, or European ferret (*Mustela putorius furo*) and such other domestic animals as the Secretary of the Agency of Agriculture, Food and Markets shall establish by rule and that has been bred or raised to live in or about the habitation of humans, and is dependent on people for food and shelter.
 - **Livestock:** Animals used for food production (including eggs, milk, honey, and meat) or fiber.

- **Grooming:** Any establishment where domestic pets are bathed, clipped, or combed for the purpose of enhancing their aesthetic value or health.
- **Hospitals:** An establishment for the care and treatment of the diseases and injuries of animals and where animals may be boarded during their convalescence. (See Veterinarian Office)
- **Kennel:** Accessory building or enclosure for the keeping of domestic pets.
- **Barn or coop:** Accessory building or enclosure for the keeping of livestock.
- **Shelter:** A facility used to house or contain stray, homeless, abandoned, or unwanted domestic pets or livestock for the purpose of providing temporary kenneling and finding permanent adoptive homes and that is owned, operated, or maintained by a public body, an established humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.
- **Store, Pet:** A retail sales establishment primarily involved in the sale of domestic pets, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and livestock.

Sections containing standards for “accessory” are listed below. Prior recommendation was to delete them in an effort to reduce redundancy. Committee members declined to recommend deletion.¹ Some limited revision; however, is proposed as noted below.

- **Sec. 4.4.5 (d) 4, Accessory Residential Structures and Uses**
- **Sec. 5.1.1 (g), Accessory Uses**
- **Sec. 5.1.2 (d), Accessory Residential Structures, & (e), Accessory Nonresidential Structures**

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

4. Accessory Residential Structures and Uses

An accessory structure and/or use as defined in Article 13 and 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

¹ Retention of this language supports the user-readiness of the CDO. It may appear redundant to seasoned reviewers, but it is an anticipated location and articulation of what ordinance-viewers are seeking.

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.~~ [This provision to be located with all other exemptions in Sec. 3.1.2 (c).]

Sec. 5.1.1 (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.

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 subject to the provisions of Article 4 ~~provided the gross floor area of~~

~~any accessory structure does not exceed five hundred (500) square feet or contain living space.~~

Sec. 3.1.2 (c), Exemptions

The following shall be exempt from the requirements of this Ordinance and shall not be required to obtain a zoning permit:

(1) – (15) As written.

(16) Seasonal skating rinks

[Renumbering to place seasonal skating rinks as # 12, following #11 Children’s play structures, may be more intuitive than simply tagging on at the end.]