

## An Interim Bylaw Amendment for Non-conforming Uses

Preston got a call about the Baba a Louis property at 92 VT Route 11 West last week. A business called Sugar Bob's in Rutland was suddenly losing their working space and were searching for another place to prepare their sauces and maple syrup products. Baba a Louis' building might work for them. Andrea Ogden of Sugar Bob's wanted to know if a food preparation business could operate at 92 VT Route 11 W. The building is now in the R-120 district. None of the uses listed there could possibly apply to Sugar Bob's business. The bakery/restaurant use was allowed in the 1990's but that use has since been removed from the district that parcel is in, making the bakery/restaurant use a non-conforming use. The building is not particularly well adapted to any of the permitted or conditional uses currently allowed in the R-120 and this has been a barrier to selling the building. It has remained vacant for several years.

Addressing non-conforming uses is on the list of issues for the Planning Commission to address in the next round of amendments. Coincidentally, a question about the interim bylaw amendment the Planning Commission made in 2018 to allow a fueling station for snowmobiles at the Stone Hearth Inn came up last week. Preston suggested that we consider an interim bylaw amendment which would address the issue of non-conforming uses. Here is his thinking about the issue:

Andrea Ogden of Sugar Bob's says they are not yet committed to the Baba A Louis building and therefore not ready to request a bylaw change. However, John McLure and Ruth Zezza, who own the parcel at 92 VT Route 11 W have requested the Planning Commission consider this as preemptive measure as follows:

Consider an Interim Bylaw Amendment (under 24 V.S.A. § 4415) to change Article 3.19 (Non-Conformities), Section D (Nonconforming Uses), Subsection 1(b) as follows:

"The nonconforming use shall not be re-established if such use has been discontinued for a period of ~~two years~~ ten-years or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so."

An interim bylaw amendment is limited in duration to two years and may be extended for an additional one-year period. We could consider a more permanent change at some point in the next 2 years.

## Second Thoughts on Franchises and Formula Businesses in the Village Green District

On further reflection, Preston had second thoughts about franchises and formula businesses which led him to suggest a new definition for Formula Business.

**FORMULA BUSINESS:** A type of retail store, rental establishment, restaurant, hotel, or motel which, along with 10 or more other businesses located within the United States, regardless of ownership of those businesses, maintains two or more of the following features: standardized array of merchandise or standardized menu, standardized façade, standardized décor and color scheme, uniform apparel, standardized signage, or a trademark or service mark.

He noticed that Barrett and Valley Real Estate had 4 branch offices and the office on Common Street is one office we certainly wanted to keep. He pointed out that Chester could use a drug store. It's possible a Vermont chain might help make that happen. We don't want to shut down useful options for Chester.

A link to the article that inspired some of Preston's thoughts is below. The article focuses on New York State and discusses which strategies have held up in court. It also talks about including statements in the Town Plan which emphasize why the town wants to protect our local businesses. We should be thinking about that too.



Legal-Guide-to-For  
mula-Business-Ordin

2.3.1 Village Green (VG) District



**A. Purpose.** The Village Green is the area on the southwest side of Main Street between School and Cobleigh Streets. The purpose of the area is:

- To promote the long-term vitality of Chester’s village center
- To ensure new construction and renovations are compatible with and enhance the historic character, scale and settlement pattern of this part of Chester
- Provide for economic development and housing opportunities
- Encourage investment that maintains or rehabilitates historic buildings
- Provide an attractive streetscape and pedestrian-friendly environment as envisioned in the Village Master Plan.

**B. Permitted Uses:** The following land uses require a zoning permit issued by the Zoning Administrator (see Section 7.2):

- |   |                          |
|---|--------------------------|
| 1. Accessory Dwelling Unit              | 6. Family Childcare Home |
| 2. Accessory Structure                  | 7. Home Occupation       |
| 3. Accessory Use                        | 8. Mixed Use Building    |
| 4. Art Studio and/or Gallery            | 9. Professional Office   |
| 5. Dwelling – Single- and Two-Household | 10. Restaurant           |
|   | 11. Retail Store         |

# Draft

## CHESTER UNIFIED DEVELOPMENT BYLAWS

12.21.2021

**C. Conditional Uses:** The following land uses require conditional use review by the Development Review Board (see Section 4.8) and a zoning permit issued by the Zoning Administrator (see Section 7.2):

1. Arts & Entertainment Facility
2. Civic / Institutional
3. Construction of any new principal structure or any substantial replacement of an existing or damaged principal building
4. Dwelling – Multi-Household including, but not limited to, senior housing (housing and convenience services for people age 55 or older)
5. Family Child Care Facility
6. Health Care Facility
7. Home Business
8. Light Industry
9. Open Market
10. Personal Service Shop
11. Recreation
12. Residential Care Home/Group Home (serving more than 8 persons)
13. Tourist Lodging

### D. Dimensional Standards:

Minimum Lot Size	3,600 sq. ft.
Minimum Lot Frontage	30 ft.
Minimum Front Yard Setback	0 ft. minimum to 16 ft. maximum for principal buildings only
Minimum Side Yard Setback	0 ft.
Minimum Rear Yard Setback	8 ft.
Maximum Lot Coverage	90%
Maximum Building Height	35 ft.

### E. Supplemental Standards:

1. **Building Orientation.** Buildings shall front toward and relate to frontage streets, both functionally and visually, and not be oriented toward parking lots.
2. **Character of Development.** New buildings and modifications of existing buildings shall be of a similar building mass and orientation as buildings in this District, and shall not unduly detract from the existing character of the Village. Where there are conflicts with existing adjoining buildings, building modifications or expansions of uses shall not increase the degree of conflict. Formula businesses are not permitted in this District.
3. **Landscaping and Screening.** The Development Review Board shall require landscaping or other screening between incompatible uses or structures.
4. **Parking.** Uses located within the VG District shall comply with the following minimum parking requirements (and are not subject to the requirements in Section 3.20):

## Draft

# CHESTER UNIFIED DEVELOPMENT BYLAWS

12.21.2021

- a. One off-street parking space for each employee (based upon maximum number of employees onsite at any given time) is required for all applicable uses.
- b. One off-street parking space for each dwelling unit is required.
- c. All uses in the VG district must demonstrate that adequate off-street nighttime parking is provided consistent with Chester's snow parking ban.

**ARTICLE 8 – DEFINITIONS**

**8.1 Terms and Uses**

Except where specifically defined herein or in the Act, or unless otherwise clearly required by the context, all words, phrases and terms in this bylaw shall have their usual, customary meanings.

Unless the content clearly indicated to the contrary, words in the singular include the plural and those in the plural include the singular. The word "may" is permissive; the words "shall" and "will" are mandatory.

**8.2 Definitions**

**ACCESSORY BUILDING:** A detached building or structure customarily incidental and subordinate to the principal building and located on the same lot and not intended for independent living. Examples include garages and storage sheds.

**ACCESSORY DWELLING UNIT:** An accessory dwelling unit means a distinct unit that is clearly subordinate to a single-household dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- Located within or appurtenant to a single-household dwelling on an owner-occupied lot,
- The property has sufficient wastewater capacity,
- The unit does not exceed 30 percent of the total habitable floor area of the single-household dwelling or 900 square feet, whichever is greater,
- A single-household dwelling with an accessory dwelling unit is subject to the same dimensional and other standards as required for a single-household dwelling without an accessory dwelling unit.

**ACCESSORY USE:** A use of land or building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use. For the purpose of permitted uses listed in Article 2, accessory use includes group homes as defined in this section.

**ARTS & ENTERTAINMENT FACILITY:** A use that includes visual or performing arts centers, museums, movie theaters, concert or dance halls, nightclubs, taverns or other similar activities that meet the performance standards and all other requirements of these Bylaws. This definition does not include adult oriented businesses.

**ART STUDIO AND/OR GALLERY:** An establishment used to produce, display and/or sell works of art.

**CIVIC OR INSTITUTIONAL USE:** A nonprofit, religious or public use, such as a religious building, library, public or private school, hospital, or government-owned or -operated structure, or land used for public purpose.

# Draft

## CHESTER UNIFIED DEVELOPMENT BYLAWS

12.21.2021

**DWELLING, MULTIPLE-HOUSEHOLD:** Building used as living quarters by three or more households living independently of each other.

**DWELLING, SINGLE-HOUSEHOLD:** A building or part thereof used as living quarters for one household and containing independent cooking, sanitary and sleeping facilities. It shall include prefabrication and modular units, but shall not include motel, hotel, boarding house, or tourist home.

**DWELLING, TWO-HOUSEHOLD:** A building on a single lot containing two dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units.

**DWELLING UNIT:** A space consisting of one or more rooms designed, occupied or intended for occupancy as a separate living quarters, with cooking, sleeping, and sanitary facilities provided within that space for the exclusive use of one or more persons maintaining a household. See also Accessory Dwelling Unit, Single-Household Dwelling, Two-Household Dwelling and Multiple-Household Dwelling.

**FAMILY CHILD CARE FACILITY:** A facility where the owner or operator is to be licensed or registered by the state for child care and which provides care on a regular basis for more than six full-time and four part-time children.

**FAMILY CHILD CARE HOME:** A home where the owner or operator is to be licensed or registered by the state for child care, and which provides for care on a regular basis in the caregiver's own residence for not more than ten children at any one time. Of this number, up to six children may be provided care on a full-time basis and the remainder on a part-time basis. Care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver; except:

- (A) these part-time school-age children may be cared for on a full-day basis during school closing days, snow days and vacation days which occur during the school year; and
- (B) during the school summer vacation, up to 12 children may be cared for provided that at least six of these children are school age and a second staff person is present and on duty when the number of children in attendance exceeds six. These limits shall not include children who are required by law to attend school (age 7 and older) and who reside in the residence of the caregiver. 33 V.S.A. § 4902((3)).

**FORMULA BUSINESS:** A type of retail store, rental establishment, restaurant, hotel, or motel which, along with 10 or more other businesses located within the United States, regardless of ownership of those businesses, maintains two or more of the following features: standardized array of merchandise or standardized menu, standardized façade, standardized décor and color scheme, uniform apparel, standardized signage, or a trademark or service mark.

# Draft

## CHESTER UNIFIED DEVELOPMENT BYLAWS

12.21.2021

**HEALTH CARE FACILITY:** A facility, whether public or private, principally engaged in providing health care services and the treatment of mental or physical conditions, such as a medical clinic.

**HOME BUSINESS:** Any small business carried on by family members in a minor portion of the dwelling or in an accessory building, with no more than four (4) on-premise employees who are not part of the family in accordance with Section 3.12 of these Bylaws.

**HOME OCCUPATION:** Any use conducted entirely within a dwelling or accessory building and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, does not change the character thereof, and does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

**LIGHT INDUSTRY:** The processing and fabrication of certain materials and products where no process involved will produce noise, vibration, air pollution, fire hazard, or noxious emissions which will disturb or endanger neighboring properties.

**MIXED USE BUILDINGS:** The development of mixed-use buildings with a variety of complimentary and integrated uses, such as, but not limited to, residential, retail, restaurant, professional office and personal services, in a compact urban form. Mixed-use buildings generally include retail, personal service, restaurant and similar uses located on the first-floor, with residential or professional office uses on the second or third floors above.

**OPEN MARKET:** An indoor or outdoor market where groups of individual vendors sell produce, food, services, art or other merchandise.

**PERSONAL SERVICE:** Business uses providing services of a personal nature, such as barber shop, beauty parlor, shoe repair, laundry, laundromat, dry cleaner, photographic studio and other similar services.

**PROFESSIONAL OFFICE:** A room or group of rooms used for conducting the affairs of business, profession, service or industry, and generally furnished with desks, tables, files and communication equipment.

**RECREATION:** A facility or place designed and equipped for the conduct of sports and leisure-time activities, including, but not limited to, a park, playground, athletic fields/track, picnic areas, hiking trails, health club and other recreational facilities or uses. For the purposes of allowable uses listed in Article 2, recreational uses may include commercial, public or private recreation facilities, but are subject to performance standards and all other requirements of these Bylaws.

**RESTAURANT:** Licensed premises where food and drink are prepared, sold, served and consumed primarily within the principal building. A restaurant may have a small bar or limited forms of musical entertainment to accompany the dining experience; however, restaurants that



# Draft

## CHESTER UNIFIED DEVELOPMENT BYLAWS

12.21.2021

provide dancing and stage shows or that operate primarily as a drinking establishment are considered nightclubs or taverns under the Arts & Entertainment Facility use category in Article 2.

**RETAIL STORE:** Premises where goods, services, or merchandise are offered for retail sale or rent to the general public for personal, business, or household consumption and services incidental to the sale of such goods are provided. This definition specifically excludes automotive sales, fuel and service defined herein.

**SENIOR HOUSING:** One or more structures to primarily house people aged 55 or older that contain multiple dwelling units intended for habitation by one household and provides complete independent living facilities and may offer convenience services to residents as an accessory use.

**TOURIST LODGING:** Overnight accommodations provided to transients for compensation, including bed & breakfasts, boardinghouses, inns, hotels and other overnight accommodations.

## The Bylaw Amendment Process

We are likely to go through this process more than once in 2022. I thought it would help if we had a list of the steps that are required to amend the bylaws.

### **Step 1 Notify the abutting towns.**

When the Planning Commission is satisfied with its draft of proposed amendments, called the **hearing draft**, they send a summary of the changes and the hearing draft to the Planning Commissions of abutting towns and the Regional Planning Commission. This package is also posted at the town hall, at other sites around town and on the town website.

### **Step 2 Schedule and hold a public hearing.**

The Planning Commission must schedule at least one public hearing to discuss the bylaw amendment. The warning period for the hearing is 15 days. The warning process takes about 22 days from start to finish due to delays between publication dates and hearing dates.

The Planning Commission takes testimony from the public at the hearing. After the hearing, the Planning Commission may decide to make material changes to the proposed bylaw in light of the public testimony.

At the end of the hearing the Planning Commission could:

- Make changes to the hearing draft (or not) and/or
- Vote to send the hearing draft to the Select Board for approval, or
- Decide to hold a second public hearing to gather more input, (which would require another 15 days' notice)

### **Step 4 Send the transmission copy to the Select Board for their consideration.**

When the Planning Commission is satisfied with the hearing draft, it votes to send the draft to the Select Board for their consideration. The copy of the hearing draft with the changes from the Planning Commission's public hearing is called the **transmission** copy.

The Planning Commission is not obliged to send fresh copies of the bylaw to the abutting towns or the Regional Planning Commission if it makes substantial changes to them during or after the public hearings.

### **Step 5 The Select Board warns and holds at least one public hearing to discuss the amendment.**

The Select Board is required to hold at least one public hearing on the changes. The same hearing notice requirements apply. The Select Board may ask for small changes, such as correcting a typo, but it may not make any material changes.

After the public hearing the Select Board may

- vote to accept the amendments,
- reject the amendments
- ask the town to vote on them.

More specific information about roles and tasks for this process is found here:

<http://www.vpic.info/PlanningZoning.html#PLANNING>, Plan and Bylaw Adoption Tool.