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H.511

Introduced by Representatives Bongartz of Manchester, James of Manchester,
Birong of Vergennes, Black of Essex, Bluemle of Burlington,
Coffey of Guilford, Dolan of Essex, Durfee of Shaftsbury,
Houghton of Essex, Kimbell of Woodstock, McCullough of
Williston, Nicoll of Ludlow, Nigro of Bennington, Scheu of
Middlebury, Sibia of Dover, Sims of Craftsbury, Vyhovsky of
Essex, Whitman of Bennington, Wood of Waterbury, Yacovone
of Morristown, and Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Conservation and development; land use; designated centers; Act 250

Statement of purpose of bill as introduced: This bill proposes to make changes
to the requirements for designated neighborhood development areas and new
town centers. It proposes changes to the definition of “priority housing
projects.” It also proposes changes to Act 250’s floodway criteria. It would
require hiring a consultant to review the State designated centers program and
report back on proposed updates.

An act relating to promoting housing in Vermont’s centers

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. FINDINGS

3 The General Assembly finds that:

4 (1) Prosperous, sustainable, inclusive communities are critical to
5 Vermont's economic health and the well-being of its residents.

6 (2) Housing affordability and availability challenges require elected
7 officials, community leaders, and developers making community investments
8 to consider all options to increase the supply of housing.

9 (3) The State designation programs underpin Vermont's land use goals
10 and provide numerous economic, health, quality of life, and environmental
11 benefits.

12 (4) Increased housing choices in State designated centers advance
13 statewide goals to encourage housing affordability, inclusion, and equity;
14 conserve energy; decrease greenhouse gas emissions; provide a variety of
15 transportation choices; promote the efficient use of transportation and other
16 public infrastructure and services; protect the working landscape and natural
17 areas from fragmentation; and foster healthy lifestyles.

18 (5) Small-scale and infill developers are critical to rural and community
19 revitalization in locations where development is not occurring and is necessary
20 to meet the full range of Vermont's housing needs.

1 (6) Strategies, policies, programs, and investments that advance
2 Vermont’s smart growth principles, complete streets principles, and planning
3 and development goals pursuant to 24 V.S.A. § 4302 make communities more
4 equitable and sustainable and improve the long-term fiscal, economic, and
5 environmental viability of the State.

6 Sec. 2. 24 V.S.A. § 2793e is amended to read:

7 § 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF
8 NEIGHBORHOOD DEVELOPMENT AREAS

9 (a) Purpose. This section is intended to encourage a municipality to plan
10 for new and infill housing in the area including and immediately encircling its
11 designated downtown, village center, new town center, or within its designated
12 growth center in order to provide needed housing and to further support the
13 commercial establishments in the designated center. To support this goal, this
14 section sets out a two-component process.

15 * * *

16 (b) Definitions.

17 (1) “Neighborhood planning area” means an automatically delineated
18 area including and encircling a downtown, village center, or new town center
19 designated under this chapter or within a growth center designated under this
20 chapter. A neighborhood planning area is used for the purpose of identifying
21 locations suitable for new and infill housing that will support a development

1 pattern that is compact, oriented to pedestrians, and consistent with smart
2 growth principles. To ensure a compact settlement pattern, the outer boundary
3 of a neighborhood planning area shall be located entirely within the boundaries
4 of the applicant municipality, unless a joint application is submitted by more
5 than one municipality, and shall be determined:

6 * * *

7 (c) Application for designation of a neighborhood development area. The
8 State Board shall approve a neighborhood development area if the application
9 demonstrates and includes all of the following elements:

10 * * *

11 (5) The proposed neighborhood development area consists of those
12 portions of the neighborhood planning area that are appropriate for new and
13 infill housing, excluding identified flood hazard and fluvial erosion areas,
14 except those areas containing preexisting development in areas suitable for
15 infill development as defined in § 29-201 of the Vermont Flood Hazard Area
16 and River Corridor Rule. In determining what areas are most suitable for new
17 and infill housing, the municipality shall balance local goals for future land
18 use, the availability of land for housing within the neighborhood planning area,
19 and the smart growth principles. Based on those considerations, the
20 municipality shall select an area for neighborhood development area
21 designation that:

1 (A) Avoids or ~~that~~ minimizes to the extent feasible the inclusion of
2 “important natural resources” as defined in subdivision 2791(14) of this title.
3 If an “important natural resource” is included within a proposed neighborhood
4 development area, the applicant shall identify the resource, explain why the
5 resource was included, describe any anticipated disturbance to such resource,
6 and describe why the disturbance cannot be avoided or minimized. If the
7 neighborhood development area includes flood hazard areas or river corridors,
8 the local bylaws shall contain provisions consistent with the Agency of Natural
9 Resources’ rules required under 10 V.S.A. § 754(a) to ensure that new infill
10 development within a neighborhood development area occurs outside the flood
11 hazard area and will not cause or contribute to fluvial erosion hazards within
12 the river corridor. If the neighborhood development area includes flood hazard
13 areas or river corridors, local bylaws shall also contain provisions to protect
14 river corridors outside the neighborhood development area consistent with the
15 Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a).

16 * * *

17 (6) ~~The neighborhood development area is served by:~~
18 (A) ~~municipal sewer infrastructure; or~~
19 (B) ~~a community or alternative wastewater system approved by the~~
20 ~~Agency of Natural Resources. [Repealed.]~~

1 (7) The municipal bylaws allow minimum net residential densities
2 within the neighborhood development area greater than or equal to four ~~single-~~
3 ~~family detached~~ dwelling units per acre for all identified residential uses or
4 residential building types, exclusive of accessory dwelling units, or ~~not~~
5 fewer than the average existing density of the surrounding neighborhood,
6 whichever is greater. The methodology for calculating density shall be
7 established in the guidelines developed by the Department pursuant to
8 subsection 2792(d) of this title.

9 * * *

10 Sec. 3. 24 V.S.A. § 2793b is amended to read:

11 § 2793b. DESIGNATION OF NEW TOWN CENTER DEVELOPMENT

12 DISTRICTS

13 * * *

14 (b) Within 45 days of receipt of a completed application, the State Board
15 shall designate a new town center development district if the State Board finds,
16 with respect to that district, the municipality has:

17 * * *

18 (2) Provided a community investment agreement that has been executed
19 by authorized representatives of the municipal government, businesses and
20 property owners within the district, and community groups with an articulated
21 purpose of supporting downtown interests, and contains the following:

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* * *

(B) Regulations enabling ~~high~~ densities that are ~~greater~~ not less than four dwelling units, including all identified residential uses or residential building types, per acre and not less than those allowed in any other part of the municipality not within an area designated under this chapter.

* * *

Sec. 4. 24 V.S.A. § 4449 is amended to read:

§ 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND
MUNICIPAL LAND USE PERMIT

(a) Within any municipality in which any bylaws have been adopted:

* * *

(4) No municipal land use permit issued by an appropriate municipal panel or administrative officer, as applicable, for a site plan or conditional use shall be considered abandoned or expired unless more than two years has passed since the permit approval was issued.

* * *

Sec. 5. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

As used in this chapter:

* * *

1 (3)(A) “Development” means each of the following:

2 * * *

3 (iv) The construction of housing projects such as cooperatives,
4 condominiums, or dwellings, or construction or maintenance of mobile homes
5 or mobile home parks, with 10 or more units, constructed or maintained on a
6 tract or tracts of land, owned or controlled by a person, within a radius of five
7 miles of any point on any involved land and within any continuous period of
8 five years. However:

9 (I) A priority housing project shall constitute a development
10 under this subdivision (iv) only if the number of housing units in the project is:

11 (aa) [Repealed.]

12 (bb) [Repealed.]

13 (cc) 75 or more, in a municipality with a population of 6,000
14 or more but less than 10,000.

15 (dd) 50 or more, in a municipality with a population of
16 ~~3,000 or more but~~ less than 6,000.

17 (ee) ~~25 or more, in a municipality with a population of less~~
18 ~~than 3,000.~~ [Repealed.]

19 (ff) Notwithstanding subdivisions (cc) through (ee) of this
20 subdivision (3)(A)(iv)(I), 10 or more if the construction involves the
21 demolition of one or more buildings that are listed on or eligible to be listed on

1 the State or National Register of Historic Places. However, demolition shall
2 not be considered to create jurisdiction under this subdivision (ff) if the
3 Division for Historic Preservation has determined that the proposed demolition
4 will have no adverse effect, will have no adverse effect if specified conditions
5 are met, or will have an adverse effect that will be adequately mitigated. Any
6 imposed conditions shall be enforceable through a grant condition, deed
7 covenant, or other legally binding document.

8 * * *

9 (6) ~~“Floodway” means the channel of a watercourse that is expected to~~
10 ~~flood on an average of at least once every 100 years and the adjacent land areas~~
11 ~~that are required to carry and discharge the flood of the watercourse, as~~
12 ~~determined by the Secretary of Natural Resources with full consideration given~~
13 ~~to upstream impoundments and flood control projects~~ “Flood hazard area” has
14 the same meaning as under section 752 of this title.

15 (7) ~~“Floodway fringe” means an area that is outside a floodway and is~~
16 ~~flooded with an average frequency of once or more in each 100 years, as~~
17 ~~determined by the Secretary of Natural Resources with full consideration given~~
18 ~~to upstream impoundments and flood control projects~~ “River corridor” has the
19 same meaning as under section 752 of this title.

20 * * *

1 (27) “Mixed income housing” means a housing project in which the
2 following apply:

3 (A) Owner-occupied housing. ~~At the option of the applicant, owner-~~
4 ~~occupied housing may be characterized by either of the following:~~

5 (i) ~~at least 15 percent of the housing units have a purchase price~~
6 ~~that at the time of first sale does not exceed 85 percent of the new construction,~~
7 ~~targeted area purchase price limits established and published annually by the~~
8 ~~Vermont Housing Finance Agency; or~~

9 (ii) ~~at least 20 percent of the housing units have a purchase price~~
10 ~~that at the time of first sale does not exceed 90 percent of the new construction,~~
11 ~~targeted area purchase price limits established and published annually by the~~
12 ~~Vermont Housing Finance Agency~~ meet the requirements of affordable owner-
13 occupied housing under subdivision (29)(A) of this section, adjusted for the
14 number of bedrooms, as established and published annually by the Vermont
15 Housing Finance Agency.

16 (B) Rental housing. ~~At least 20 percent of the housing units that are~~
17 ~~rented constitute affordable housing and have a duration of affordability of For~~
18 ~~not less than 15 years following the date that rental housing is initially placed~~
19 ~~in service, at least 20 percent of the housing units meet the requirements of~~
20 affordable rental housing under subdivision (29)(B) of this section, adjusted for

1 the number of bedrooms, as established and published annually by the
2 Vermont Housing Finance Agency.

3 * * *

4 (35) "Priority housing project" means a discrete project located on a
5 single tract or multiple contiguous tracts of land that consists exclusively of:

6 ~~(A) mixed income housing or mixed use, or any combination thereof,~~
7 ~~and is located entirely within a designated downtown development district,~~
8 ~~designated new town center, designated growth center, or designated village~~
9 ~~center that is also a designated neighborhood development area under~~
10 ~~24 V.S.A. chapter 76A; or~~

11 ~~(B) mixed income housing and is located entirely within a designated~~
12 ~~Vermont neighborhood or designated neighborhood development area under~~
13 ~~24 V.S.A. chapter 76A.~~

14 * * *

15 Sec. 6. 10 V.S.A. § 6081(p) is amended to read:

16 ~~(p)(1) No permit or permit amendment is required for any change to a~~
17 ~~project that is located entirely within a downtown development district~~
18 ~~designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of~~
19 ~~any combination of mixed use and mixed income housing, and the cumulative~~
20 ~~changes within any continuous period of five years, commencing on or after~~

1 ~~May 28, 2002, remain below any applicable jurisdictional threshold specified~~
2 ~~in subdivision 6001(3)(A)(iv)(I) of this title.~~

3 (2) No permit or permit amendment is required for a priority housing
4 project in a designated center ~~other than a downtown development district if~~
5 ~~the project remains below any applicable jurisdictional threshold specified in~~
6 ~~subdivision 6001(3)(A)(iv)(I) of this title and will comply with all conditions~~
7 ~~of any existing permit or permit amendment issued under this chapter that~~
8 ~~applies to the tract or tracts on which the project will be located. If such a~~
9 ~~priority housing project will not comply with one or more of these conditions,~~
10 ~~an application may be filed pursuant to section 6084 of this title.~~

11 Sec. 7. 10 V.S.A. § 6086 is amended to read:

12 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

13 (a) Before granting a permit, the District Commission shall find that the
14 subdivision or development:

15 * * *

16 (D) ~~Floodways~~ Flood hazard areas; river corridors. A permit will be
17 granted whenever it is demonstrated by the applicant that, in addition to all
18 other applicable criteria,

19 (i) ~~the development or subdivision of lands within a floodway~~
20 flood hazard area or river corridor will not restrict or divert the flow of ~~flood~~
21 ~~waters~~ floodwaters, cause or contribute to fluvial erosion, and endanger the

1 health, safety, and welfare of the public or of riparian owners during flooding;

2 ~~and~~

3 ~~(ii) the development or subdivision of lands within a floodway~~
4 ~~fringe will not significantly increase the peak discharge of the river or stream~~
5 ~~within or downstream from the area of development and endanger the health,~~
6 ~~safety, or welfare of the public or riparian owners during flooding.~~

7 * * *

8 Sec. 8. DESIGNATED AREA REPORT; APPROPRIATION

9 (a) The sum of \$150,000.00 is appropriated from the General Fund to the
10 Department of Housing and Community Development in fiscal year 2023 for
11 the purpose of hiring a consultant to evaluate the State designation programs
12 established in 24 V.S.A. chapter 76A pursuant to subsection (b) of this section.

13 (b)(1) The Department of Housing and Community Development shall hire
14 an independent consultant to:

15 (A) review and assess the State designation programs and incentives
16 established in 24 V.S.A. chapter 76A that recognize and invest in the vitality of
17 Vermont's compact settlement areas; and

18 (B) conduct statewide stakeholder outreach to support the evaluation
19 of and future improvements to the programs, including participation by State,
20 regional, municipal, and advocacy and non-governmental organizations.

1 (2) The consultant shall make recommendations on how to:

2 (A) objectively define and map existing compact settlements as a
3 basis for broader recognition;

4 (B) improve the consistency between and among regional plans and
5 future land use maps;

6 (C) modernize these programs, including consideration of program
7 reform or consolidation;

8 (D) make the designation programs and associated benefits more
9 accessible to municipalities;

10 (E) apply regulatory and non-regulatory benefits;

11 (F) strengthen designation and incentives as a platform for place-
12 based economic development, climate-action, complete streets, and equity and
13 efficiency of public investment and service delivery;

14 (G) implement the smart growth principles established by 24 V.S.A.
15 § 2791; and

16 (H) achieve the goals established in 24 V.S.A. § 4302.

17 (3) On or before July 15, 2023, the consultant shall submit a written
18 report to the General Assembly with its findings and any recommendations for
19 legislative action.

20 Sec. 9. EFFECTIVE DATE

21 This act shall take effect on July 1, 2022.