

Burlington Planning Commission

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Joint Planning Commission and City Council Form-Based Code Committee

REGULAR MEETING

Wednesday, July 29, 2015 – 5:30 P.M.

City Hall Conference Room #12, 149 Church Street

AGENDA

Note: times given are
approximate unless
otherwise noted.

I. Agenda

II. Overview of tonight's meeting

III. Public Forum – (15 min)

IV. Downtown Form-Based Code Review

The committee will continue its discussion of Sec. 14.7 Administration and Procedures

V. Public Forum – (15 min)

VI. Adjourn – (7:30pm)

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Recommended modification:

Sec 14.7.2 - Non-Conformities

In addition to that as specified in Article 5, Part 3 Non-Conformities of the *Burlington Comprehensive Development Ordinance*, any non-conformity which lawfully existed at the time of adoption of the applicable provisions of this Article may be continued subject to the following provisions:

- a) Any Building, Structure, Frontage, Development, Sign, Improvement or other appurtenance thereto which legally existed on the effective date of this Article that does not conform to the requirements of this Article may continue until a Substantial Modification is requested or Abandonment occurs. At such time, the affected Building, Structure, Frontage, Development, Sign, Improvement or other appurtenance thereto shall be required to comply with all applicable provisions of this Article.
- b) The minor modification of an existing Building, Structure, Frontage, Development, Sign, Improvement or other appurtenance thereto shall be permitted By Right only if such changes result in greater conformance with the specifications of this Article.
- c) Any change or modification shall not create any new nonconformity.
- d) Buildings listed or eligible for listing on the State or National Register of Historic Places shall be considered conforming, and shall not be required to make any modifications under a) and b) above that would threaten their historic integrity.
- e) Previously permitted on-site parking requirements applicable to any Lot or Building prior to the effective date of this Article that exceed those prescribed by this Article are automatically reduced to comply with the standards for the Form District and those found in Table 14.6.8-A Parking Spaces Required without any additional action on the part of the Property Owner.

Substantial Modification: Any demolition, deconstruction, relocation, rehabilitation or redevelopment of an existing Building, Structure, Frontage, Development, Sign, Improvement or other appurtenance thereto that affects or exceeds fifty percent (50%) of the area, square footage or pre-development market value of the Structure, Building or Lot as determined by the Zoning Administrative Officer.

Recommended modification:

Sec. 14.7.3 b) Relief Granted by the Development Review Board.

The following relief from the prescribed standards may be granted by the Development Review Board:

- i. DRB Relief: Relief from any non-numerical standard, and any numerical standard by no more than 20% of such requirement, may be granted by the Development Review Board after review and recommendation from the Design Advisory Board and a Public Hearing. In granting such relief, the DRB shall make affirmative findings that:
 - A. the relief granted is the minimum necessary to achieve the desired result;
 - B. the property will otherwise be developed following the intent of the Form District and all other applicable standards;
 - C. the modification does not impede or burden existing or future development of adjacent properties; and,
 - D. granting the relief will yield a result equal to or better than strict compliance with the standard being relieved, and without causing detriment to the public good or deviating from the intent and purpose of this Ordinance and all other applicable standards of the Form District.

June 29 FBC Committee meeting – Guide to discussion

Topic: Sec. 14.7 Administration and Procedures – see pages 109-115

Application Submission (see p 109) – discussed 7/10

Project Review (see p 111) – discussed 7/10, 7/15

- Should there be any pre-application review requirements for certain projects? If so, by who?
- Besides Conditional Uses and Major Impact projects, what other types of projects should also go through the DRB and what are their standards for review?

Non-Conformities (see p 109, and p 5-14 thru 5-18 of the CDO) – to be discussed

Variation from the Form (see p 109-113)

- Administrative - what can/should be added and what is the standard for review? – to be discussed
- DRB - what is the standard for review? – to be discussed
- Variances – state statute, referenced back to CDO provisions – statutory requirement, no need to discuss

Appeals (see p 115) – state statute, referenced back to CDO provisions – statutory requirement, no need to discuss

Joint FBC Committee Meeting Notes

July 15, 2015

Committee Members: E. Lee, C. Mason, M. Tracy and J. Shannon

Staff: D. White (Planning)

Topic: Sec. 14.7 Administration and Procedures – see pages 109-115

E. Lee /M. Tracy moved and seconded J. Shannon to chair the meeting in A. Montrolls absence. Unanimous

M. Tracy/ E. Lee moved and seconded acceptance of the agenda. Unanimous

Staff gave an overview of the agenda topics.

Public Forum:

B. McGrew felt that if the FBC requirements were actually followed it could be great but has concerns they would not be followed because of expense.

E. Morrow noted that proposed design standards for discretionary height will prohibit certain architectural styles

Project Review (see p 111)

Staff gave an overview of the Committee's work at the last meeting. The Committee agreed to maintaining the two-tiered as-of-right height (65') and a discretionary height (105') as originally proposed. They asked staff to provide other examples of how additional height might be regulated.

Staff presented a set of proposed review standards that included three groups of standards.

1. The first relate to conformity and consistency to the City Plan and purpose/intent of the FBC. These are very typical of discretionary review standards found in many ordinances, and are characteristically vague in order to enable greater latitude.
2. The second are specific to design considerations for building taller buildings. These could be considered by the DAB who would make a recommendation to the DRB similar to the current process.
3. The third are specific to possible impacts that might be associated with taller buildings (shadows and wind).

The Committee discussed these standards at length and ultimately agreed to a final set (see attached.)

Public Forum #2:

E. Morrow asked if there would be a route to seek relief from standards from DAB. Staff noted yes and that would be on the agenda for the next meeting.

Next Meeting: Wednesday, July 29 - 5:30-7:30pm, City Hall Room 12

DRAFT

- iii. Materials specifications;
 - iv. Floor plans;
 - v. Shadow impact diagrams based on the spring or fall equinox; and/or
 - vi. Phasing schedule.
- e) Application Review.
- i. An application that conforms to the Downtown and Waterfront District Regulating Plan, and all standards applicable to such application pursuant to this Article 14-Burlington Form-Based Code, and without the necessity of any additional approval of a Conditional Use, Major Impact, DRB Relief or Variance, shall be entitled to administrative approval By Right by the Department.
 - ii. An application that requires review by the Development Review Board, but which otherwise conforms to the Downtown and Waterfront District Regulating Plan, and all standards applicable to such application pursuant to this Article 14-Burlington Form-Based Code shall, upon approval of by the Development Review Board, be entitled to administrative approval By Right by the Department.
 - iii. Applications subject to any of the following shall require review and approval by the Development Review Board and shall be considered in accordance with the following as applicable:
 - Conditional Use Review or Major Impact Review pursuant to Sec. 3.5.2 of the BCDO;
 - Subdivision Review of a Final Plat pursuant to Sec. 10.1.9 of the BCDO;
 - Inclusionary and Replacement Housing to Article 9 of the BCDO;
 - Request for DRB Relief pursuant to Sec. 14.7.3;
 - Request for a Variance pursuant to Article 12, Part 1 of the BCDO;
 - Review under Special Use Regulations pursuant to Section 14.6.7.
 - iv. The Development Review Board review shall be limited to making findings under the required review criteria for the required approval. All other elements of the application shall be entitled to administrative approval By Right by the Department.

14.7.2 - NON-CONFORMITIES

In addition to that as specified in Article 5, Part 3 Non-Conformities of the *Burlington Comprehensive Development Ordinance*, any non-conformity which lawfully existed at the time of adoption of the applicable provisions of this or any Article or any amendment thereto may be continued subject to the following provisions:

- a) Any Building, Structure, Development, appurtenance, or other Improvement which legally existed on the effective date of this Article that does not conform to the requirements of this Article may continue until a Substantial Modification is requested or Abandonment occurs, at which time such Building, Structure, Development, appurtenance, or other Improvement shall be required to comply to all applicable provisions of this Article.
- b) The modification of existing Buildings shall be permitted By Right if such changes result in greater conformance with the specifications of this Article.
- c) Buildings listed or eligible for listing on the State or National Register of Historic Places shall be considered conforming, and shall not be required to make any modifications under a) and b) above that would threaten their historic integrity.
- d) Parking requirements applicable to any Lot or Building legally existing prior to the effective date of this Article that exceed those prescribed by this Article are automatically reduced to comply with the standards for the Form District and those found in Section 14.6.8 Supplemental to Form Districts-Parking, Loading, Service and Driveways without any additional action on the part of the Property Owner.

14.7.3 - VARIATION FROM THE FORM: ADMINISTRATIVE RELIEF, DRB RELIEF, AND VARIANCES

The Form-Based Code is intended to result in By-Right approval where development occurs strictly in conformance with the requirements of the applicable Form District. In some instances, however, it may be practical to vary the prescribed form in order to accommodate unique site and/or

building circumstances. In such instances, an applicant may seek administrative or Development Review Board approval for relief from the requirements as set forth below. Any and all relief from the prescribed standards shall run with the land and be binding on the Property Owner and its/their successor and assigns. Applications requesting relief shall be made on the forms and in accordance with the fee schedule as determined by the Department.

- a) Administrative Relief. Table 14.7.3-A (Administrative Relief) below sets forth variations from the prescribed standards that may be granted by the Director. No other variations to the prescribed standards shall be permitted except as approved by the Development Review Board.

TABLE 14.7.3-A - ADMINISTRATIVE RELIEF

TYPE OF RELIEF	LIMITS OF RELIEF GRANTED	REQUIRED FINDINGS	STANDARDS REFERENCE
<i>Relief is necessary due to existing topography and other physical site features and constraints</i>			
LOT WIDTH: The width of a Lot may vary from the maximum or minimum Lot Width requirements.	+/- 10%, not to exceed 5 feet	The property can be developed following the intent and all other applicable standards of the Form District, and granting the relief will yield a result equal to or better than in strict compliance with the standard.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces, Table 14.3.4-D - Lot Occupation & Building Placement
BUILDING SETBACKS: A building Setback may vary from the maximum or minimum Setback requirements.	10% max	The property can be developed following the intent and all other applicable standards of the Form District, and granting the relief will yield a result equal to or better than in strict compliance with the standard.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces
BUILDING HEIGHT: Building height may increase where on a sloping Lot	1 additional floor in height.	Granting the relief will enable compliance with the Principal Entrance Level requirements without compromising the desired ground level floor-to-ceiling height.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces; Section 14.5: Specific to Frontage Types; and Section 14.6.5 Building Height
BUILDING HEIGHT SETBACK: Reduction in building height within 20' of a Form District with a lower maximum building height, may be modified.	Building height reduction requirement is transferred to the perimeter of the project with the Form District with a lower maximum building height.	Adjacent properties in both Form Districts are in common ownership and being developed jointly. A transition to the Form District with the lowest maximum height is achieved across the project. Both properties can be developed following the intent and all other applicable standards of the Form District,.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces
RETAINING WALL LOCATION: Grading of a site requires retaining walls on rear and side property lines.	A retaining wall may be placed up to a rear or side property line.	Existing topography makes the placement of retaining walls impractical elsewhere on the Lot. The property can be developed following the intent and all other applicable standards of the Form District, and granting the relief will yield a result equal to or better than in strict compliance with the standard.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces; Section 14.6.4: Supplemental to Form Districts— Topography and Hillside Requirements

TABLE A - ADMINISTRATIVE RELIEF

TYPE OF RELIEF	LIMITS OF RELIEF GRANTED	REQUIRED FINDINGS	STANDARDS REFERENCE
<i>Relief is necessary due to existing topography and other physical site features and constraints</i>			
RETAINING WALL HEIGHT: Grading of a site requires retaining walls to be taller than 4'.	6' max allowed only along a Secondary Frontage line	Existing topography and Lot constraints makes the placement and design of retaining walls impractical elsewhere on the Lot; The additional retaining wall height is provided only along a Secondary Frontage line; and, The property can be developed following the intent and all other applicable standards of the Form District, and granting the relief will yield a result equal to or better than in strict compliance with the standard.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces; Section 14.6.4: Supplemental to Form Districts— Topography and Hillside Requirements
PARKING AREA LOCATION: Parking Areas may be located in the Second Lot Layer.	The lesser of 25% or 20-feet of a Frontage may be occupied by parking.	No more than the lesser of 25% or 20-feet of a Frontage shall be occupied by parking and it shall be screened from view along the Frontage.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces
DEPTH OF RECESSED ENTRIES: Allows for a deeper entry recess.	8' max	A deeper entry is necessary for visitability.	Section 14.5: Specific to Frontage Types
PARKING SPACE DIMENSIONS: Parking space(s) size may be reduced.	Up to 30% of the total parking spaces may be deSigned and designated for compact cars.	The property can be developed following the intent and all other applicable standards of the Form District, and granting the relief will yield a result equal to or better than in strict compliance with the standard.	Section 14.6.7: Parking, Loading, Service and Drive-ways
FRONTAGE BUILDOUT: A relaxation in the amount of the Principal Frontage that is occupied by a building or a Streetscreen.	10% max	The relief is necessary to enable Access to the rear of the Lot because of constraints due to existing Lot Width and/or buildings; and, The parcel can otherwise be developed following the intent and all other applicable standards of the Form District.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces;
BUILDING HEIGHT: Building height may be increased.	Building height may be increased to the height of an existing Principal Building on the same Lot or within 12' of an Adjacent side property line along a shared primary street frontage.	The variation will allow the proposed building to blend in with the existing and/or Adjacent buildings; and, The property can otherwise be developed following the intent and all other applicable standards of the Form District;	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces; and Section 14.6.5 Building Height

TABLE A - ADMINISTRATIVE RELIEF

TYPE OF RELIEF	LIMITS OF RELIEF GRANTED	REQUIRED FINDINGS	STANDARDS REFERENCE
<i>Relief is necessary and/or desirable due to existing development patterns and Lot dimensions</i>			
BUILDING SETBACKS: Allow buildings to be placed closer to or further from a front or side property line to conform to the existing pattern of development.	<u>Front Yard:</u> average of the principal Structures on the two (2) neighboring Lots on either side having the same street frontage. <u>Side Yard:</u> average of the correlating side yard Setbacks (i.e. left or right) of principal Structures on the four (4) neighboring Lots (2 on either side) having the same street frontage.	Existing development on Adjacent parcels on the same Block Face is greater or less than the required setback; and The variation will allow the proposed building to blend in with the Adjacent development better than strict compliance with the standard.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces;
Allow an upper Story addition to a Principal Building with a pre-existing Setback Encroachment.	Up to the extent of the pre-existing Encroachment.	New addition does not increase the non-conformity; and, the new addition does not extend above the existing roofline; and, granting the relief will yield a result equal to or better than in strict compliance with the standard.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces
Allow buildings to be placed closer to a side property line shared between FD5 and FD4	0' min	Adjacent properties in both Form Districts are in common ownership and being developed jointly. Both properties can be developed following the intent and all other applicable standards of the Form District.	Section 14.3: Specific to Form Districts, Special Districts and Civic Spaces;

- b) Relief Granted by the Development Review Board. The following relief from the prescribed standards may be granted by the Development Review Board:
- i. DRB Relief: Relief from any non-numerical standard, and any numerical standard by no more than 20% of such requirement, may be granted by the Development Review Board after a Public Hearing and upon affirmative findings that:
 - A. the property will otherwise be developed following the intent and all other applicable standards; and,
 - B. granting the relief will yield a result equal to or better than strict compliance with the standard being relieved.
 - ii. Relief for Brownfield Remediation: Subject to the requirements set forth below, the DRB may waive or modify any relevant dimensional and use standards of the applicable Form District and other limitations imposed by this Chapter based on a demonstrated nexus with specific development limitations imposed by an approved corrective action plan, record of decision, or deed restriction limiting potential reuse and redevelopment or an eligible property.

The provisions of this Section shall only be available to the following types of properties:

- A. Properties eligible to participate in the Redevelopment of Contaminated Properties Program (RCPP) within the Agency of Natural Resources, Department of Environmental Conservation created pursuant to 10 VSA §6615a or are otherwise impacted by a VT DEC approved Corrective Action Plan (CAP) for such a property;

- B. Property listed on the national priorities list of superfund sites established under the federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") or otherwise impacted by a US EPA approved Record of Decision (ROD) for such a property; and,
 - C. Properties which have a hazardous waste certificate under 10 VSA §6606 and which are undergoing corrective action under the federal Resource, Conservation and Recovery Act ("RCRA") pursuant to the Vermont Hazardous Waste Management Regulations (VHWMR) §7-105(b) or are otherwise impacted by a VT DEC approved Corrective Action Plan (CAP) for such a property.
- iii. Additional Application Requirements: In addition to the submission requirements listed in this paragraph 14.7.3.b.ii, the following information as applicable specifying any and all use and development limitations of the site shall also be provided at the time of application:
- A. A VT DEC Approved Corrective Action Plan (CAP) pursuant to 10 VSA §6615a (h);
 - B. A Record of Decision (ROD) issued by the US EPA;
 - C. A VT DEC Approved Corrective Action Plan (CAP) pursuant to VHWMR) §7-105(b); and/or,
 - D. Any Warranty Deed specifying any and all use and development limitations of the site.
- iv. Review Standards: Any and all variations from the prescribed form for Project Plans involving an eligible Brownfield Remediation shall only be authorized by the DRB upon an affirmative finding that:
- A. Any waiver or modification so granted is based on a demonstrated nexus with the development limitations imposed by an approved corrective action plan, record of decision, or deed restriction limiting potential use and redevelopment;
 - B. Any waiver or modification so granted is the minimum necessary to grant relief from the specific limitations imposed by an approved corrective action plan, record of decision, or deed restriction that would prevent the site from being redeveloped in strict conformance with the underlying requirements of the ordinance; and,
 - C. The redevelopment of the effected site as proposed satisfies the goals of the municipal development plan, furthers the intent of the Form District in which it is located, and addresses the form-based standards of this article more effectively than redevelopment in strict conformance with the underlying standards of this ordinance.
- c) Variances: Any other deviation from the prescribed standards for Project Plans other than pursuant to the above shall require the Owner to request and obtain a Variance, which may be granted by the Development Review Board in accordance with Article 12, Part 1 Variances of the *Burlington Comprehensive Development Ordinance*.

14.7.4 APPEALS

Any decision or action made under this Article may be appealed as provided under the provisions of Article 12, Part 2 Appeals of the *Burlington Comprehensive Development Ordinance*.

Pursuant to the authority of 24 VSA §4471(b), the appeal of any decision of the Development Review Board pertaining to an appeal of an Administrative decision heard pursuant to Sec. 12.2.2 of the BCDO shall be heard on the record by the VT Superior Court – Environmental Division.