

Burlington Planning Commission

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Burlington Planning Commission

Ordinance Committee

Meeting Notice

Thursday, June 5, 2014 @ noon

Planning & Zoning Conference Room, Ground Floor, City Hall

AGENDA

1. **Proposed Zoning Amendment regarding Major Impact Review, PUD and Subdivision Review.** See attached memo and staff drafts (previously sent).

Next Meeting – July 3, 2014

This agenda is available in alternative media forms for people with disabilities. Individuals with disabilities who require assistance or special arrangements to participate in programs and activities of the Dept. of Planning and Zoning are encouraged to contact the Department at least 72 hours in advance so that proper accommodations can be arranged.

ARTICLE 11. PLANNED DEVELOPMENT

PART 1. – PLANNED UNIT DEVELOPMENT

Sec. 11.1.1 Intent.

The intent of this Article is to:

- (a) Promote the most appropriate use of land through flexibility of design and development of land;
- (b) Facilitate the adequate and economical provision of streets and utilities;
- (c) Preserve the natural and scenic qualities of open space;
- (d) Provide for a variety of housing types;
- (e) Provide a method of development for existing parcels which because of physical, topographical, or geological conditions could not otherwise be developed; and
- (f) Achieve a high level of design quality and amenities.

Sec. 11.1.2 Authority.

These regulations are enacted under the provisions of 24 V.S.A. Section 4417.

Sec. 11.1.3 Major and Minor Planned Unit Development

A minor Planned Unit Development shall include any development ~~not otherwise seeking or requiring the flexibility enabled under this Article and~~ consisting of:

- (a) ~~5 or more units in a single structure residential development; prompting triggering~~ the requirements of Part 1: Inclusionary Zoning of Article 9- Inclusionary and Replacement Housing.
- (b) redevelopment of ~~existing~~ carriage houses and other ~~accessory out-~~ buildings existing as of January 1, 2007 for a residential use meeting density of the underlying zoning district;
- (c) development of an accessory dwelling units in a detached structure subject to the requirements of Sec. 5.4.5.

Minor PUD's shall be exempt from the requirements and standards of this article, but shall be subject to the development standards as otherwise required by this ordinance.

All other development consisting of ~~one or more~~multiple lots, tracts or parcels of land to be developed as a single entity or seeking to place multiple structures and/or uses on a single lot of record ~~subject to the provisions of Sec. 11.1.4 below where not otherwise permitted~~ shall be considered a major PUD subject to the provisions of Sec.

11.1.4 below and shall be subject to the review processes and requirements as defined under this Article.

Sec. 11.1.4 General Requirements and Applicability.

A planned unit development may be permitted subject to the provisions of this Article in the following districts:

Districts	Minimum Lot Project Size
RH, RM, RM-W, Downtown and Neighborhood Mixed Use, Institutional ¹	No minimum lot project size.
RL, RL-W ² , RCO-R/G ¹	2 acres or more

1. Subject to Conditional Use Review pursuant to **Art 3, Part 5**.
2. ~~The two acre minimum may be waived by the DRB for the conversion of an accessory structure existing as of January 1, 2007 to a residential use.~~

~~Planned unit developments are not authorized for non-residential uses except as provided for under Sec. 11.1.7. A planned unit development must receive a certificate of appropriateness under the design review provisions of Article 3, Part 4, the development review standards of Article 6, and final subdivision plat approval in accordance with Article 10.~~

Comment [DEW1]: Confusing – Really a minimum "project" size as it refers to the minimum size of the property (or combination of properties) to be developed as a PUD

Comment [KL2]: This table was to limit PUD's in low density districts to a minimum lot size regardless of project size.

Comment [DEW3]: This is redundant to what's allowed as a minor PUD

Comment [DEW4]: Why not – they are encouraged and allowed to be mixed use.

Comment [DEW5]: Duplicative to the requirements contained in 11.1.6.

Sec.11.1.5 Modification of Regulations.

With the approval of the DRB after a public hearing, and subject to the limitations of Sec. 11.1.6, the following modifications of the requirements of the underlying zoning may be altered within a planned unit development:

- density, frontage, lot coverage, and and setback regulations~~requirements may be altered for a planned unit development may be met as calculated across the entire project rather than on an individual lot-by-lot basis;~~
- required setbacks ~~may~~shall apply only to the periphery of the project rather than on an individual lot-by-lot basis;
- More~~more~~ than one principal use and more than one principal structure may be permitted on a single lot; ~~At the discretion of the DRB the and,~~
- dwelling buildings ~~units~~ may be of varied types including single detached, attached, duplex or apartment construction.

-Any proposed modifications of regulations shall be listed in a statement accompanying the plat application submission and such modifications shall be subject to the provisions of **Sec. 11.1.6** and **Sec. 11.1.7**.

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Comment [KL6]: Need to have periphery setbacks to separate from any other individual lot that has setbacks and for consistency to other lots. May language much too vague.

Sec. 11.1.6 Approval Requirements.

The following requirements shall be met for the DRB to approve a planned unit development:

- ~~(a) Lot coverage requirements of the district shall be met;~~
- ~~(b) The minimum setbacks required for the district shall apply to the periphery of the project;~~
- ~~(c)(a) The minimum parcel-project size requirements of Sec 11.1.4 shall be met if the project is located in a RL or RL-W districts;~~
- ~~(d)(b) The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Art. 6;~~
- ~~(e)(c) The project shall meet the requirements of Article 10 for subdivision review where applicable;~~
- ~~(f)(d) The minimum setbacks required for the district shall apply to have been met at the periphery of the project;~~
- ~~(e) density, frontage, and lot coverage requirements of the underlying zoning district have been met as calculated across the entire project;~~
- ~~(f) All other dimensional, density, and use requirements of the underlying zoning district shall have been met as calculated across the entire project;~~
- ~~(g) Any proposed accessory uses and facilities shall meet the requirements of Sec. 11.1.7 below;~~
- (h) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the DRB;
- (i) The development plan shall specify reasonable periods within which development of each phase of the planned unit development may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be provided for in other sections of the planned unit development;
- (j) The intent as defined in Sec. 11.1.1 is met in a way not detrimental to the city's interests; and,
- (k) The proposed development shall be consistent with the municipal development plan.

Comment [KL7]: Same as comment re lto size limit in low density.

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Comment [DEW8]: Is a reference to Sec. 11.1.4 above - the minimum "project" size, not the size of individual parcels being created.

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Sec. 11.1.7 Accessory Facilities.

- (a) A planned unit development may contain a building or buildings intended for non-residential uses such as but not limited to as a community center, recreation facility, child care center and/or business office if the DRB determines that such use or uses are compatible with the intended principle residential use and will not contribute to parking problems on site or in the surrounding area.

- (b) A planned unit development may contain a building or buildings intended for use as a community convenience store if approved by the DRB under the following standards:
1. A determination shall be made by the DRB that the community convenience store will not contribute to parking problems on site or in the surrounding area.
 2. The maximum size of the store is 1000 square feet.
 3. Only one sign is permitted limited to the following:
 - A. The maximum size is 4 square feet.
 - B. The sign shall be a parallel sign.
 - C. The sign shall not be illuminated.
 - D. No window signs, temporary or permanent shall be allowed.
 - E. No freestanding signs on the site or within the street ROW are allowed.
 4. No outside storage or displays or vending machines, except for a telephone and a screened dumpster, is allowed.
 5. There shall be no exterior service windows or exterior ATM's allowed.
 6. There shall be no gas pumps allowed.
 7. The building(s), sign and site for any such store shall be subject to the development review criteria under **Article 6**.
 8. Parking shall be in back or at the side of the community convenience store building with the building oriented for pedestrian access.

PART 5. CONDITIONAL USE AND MAJOR IMPACT REVIEW

Sec. 3.5.1 Purpose

These conditional use regulations are enacted to provide for a more detailed consideration of development proposals which may present a greater impact on the community

Additionally, it is the intent of these regulations through the creation of a major impact review:

- (a) To ensure that projects of major significance or impact receive a comprehensive review under established criteria; and,
- (b) To ensure that the city's natural, physical and fiscal resources and city services and infrastructure are adequate to accommodate the impact of such developments, both individually and cumulatively.

Sec. 3.5.2 Applicability

(a) Conditional Use Review:

Conditional Use Review shall be required for the approval of all development subject to the following provisions of this ordinance:

1. any use identified under **Article 4** and **Appendix A – Use Table** as a “Conditional Use” or “CU;”
2. any Special Use specifically identified as being subject to conditional use review under **Article 5, Part 3;**
3. ~~any application subject to Article 9 – Inclusionary and Replacement Housing;~~
4. ~~all applications for an Institutional Parking Management Plan pursuant to the provision of **Article 8, Part 3;**~~
5. ~~all applications subject to Article 10 – Subdivision; and;~~
6. ~~all applications subject to Article 11 – Planned Development;~~

(b) Major Impact Review:

In addition, Major Impact Review shall be required for the approval of all development involving:

<u>Zoning Districts</u>				
	<u>Downtown Mixed Use, Core Campus</u>	<u>Neighborhood Mixed Use, Institutional, Enterprise, Residential –</u>	<u>Residential- Medium Density, Residential- Low Density, RCO- RG,</u>	<u>RCO-A, RCO-C</u>

Comment [DEW1]: Addressed in unit trigger below as applicable

Comment [DEW2]: Addressed in lot trigger below as applicable

Comment [DEW3]: Addressed in unit and lot trigger below as applicable

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		High Density		
Dwelling Units	Creation of fifty (50) or more dwelling units	Creation of twenty-five (25) or more dwelling units	Creation of five (105) or more dwelling units or the creation through adaptive reuse, substantial rehabilitation or conversion of ten (10) or more dwelling units;	NA
Land Subdivision	NA	NA	Creation of five (105) or more lots;	NA
Non-residential Development	A development footprint ¹ of fifty thousand (50,000) s.f. or more, or the creation of one-hundred thousand (100,000) s.f. or more of gross floor area.	A development footprint of twenty thousand (20,000) s.f. or more, or the creation of forty thousand (40,000) s.f. or more of gross floor area.	A development footprint of eight thousand (8,000) s.f. or more, or the construction or substantial rehabilitation of reation of fifteen thousand (15,000) s.f. or more of gross floor area of non-residential development.	Creation of five thousand (5,000) s.f. or more of gross floor area ²

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Comment [KL4]: Should specify how dorm rooms determined? 4 beds = 1 unit?

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Comment [SG5]: Make it 10 to be consistent with creation of new dwelling units.

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Comment [DEW6]: Thresholds must bear some relationship to the types of impact being evaluated and the context of the proposed location

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¹ Development Footprint: total area of impervious coverage – buildings and parking.

² Farm structures are exempt per 10 VSA 6001.

Land disturbance			one acre or more;	
Site improvements involving			fifty (50) or more parking spaces;	
Natural Areas	Site improvements and land development on parcels that contain designated wetlands as regulated pursuant to Article 4, or natural areas of state or local significance as identified in the municipal development plan;			

Comment [DEW7]: inherent to other development triggers and not by itself a major impact

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Comment [DEW8]: inherent to non-residential development triggers and not by itself a major impact

Comment [KL9]: Make it clear in the non-residential that footprint includes parking lots.

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Comment [DEW10]: development in these areas is not necessarily major. addressed in other development triggers if it is

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Brownfields	Site improvements and land development on parcels seeking a waiver under Article 5, Part 4, Sec. 5.4.9 — Brownfields; or		
Cumulative Impacts			Multiple projects by the same applicant or responsible party within any consecutive twelve (12) month period on the same property or on a property within 1000 feet of the subject property that in the aggregate equal or exceed the above criteria.

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Comment [DEW11]: development in these areas is not necessarily major. addressed in other development triggers if it is

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Comment [DEW12]: addressed in other development triggers

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Sec. 3.5.3 Exemptions

Conditional Use and Major Impact Review shall not apply to applications involving one or more of the following:

(a) Single family dwellings;

(b)(a) Temporary structures;

(c)(b) Substantial rehabilitation that does not expand the floor area of an existing building or the structural capacity of existing development;

(d)(c) Projects that do not result in a change of use or increased parking demand as determined by the administrative officer; and/or,

(e)(d) Subsurface site improvements including but not limited to underground utility lines and subsurface drainage ways.

Sec. 3.5.4 Submission Requirements

In addition to the applicable application and submission requirements under in Section 3.2.2, all applications for a zoning permit subject to Conditional Use and/or Major Impact Review under this Part shall provide any additional information necessary for the adequate review of the proposal under the applicable review criteria of Section 3.5.6 pursuant to Section 3.2.3.

Any development subject to Major Impact Review under this Part shall also include an affidavit or certification documenting that the Pre-Application Public Neighborhood Meeting requirement pursuant to Sec. 3.2.1(d) has been satisfied in accordance with the procedures and requirements set forth by the department of planning and zoning.

Pursuant to Sec. 3.2.8(D), the DRB may require the applicant to pay the reasonable costs and fees incident to an independent technical review of the application.

Sec. 3.5.5 Public Hearing Required

Applications involving Conditional Use and Major Impact Review shall require a public hearing pursuant to the provisions of **Article 2** to provide an opportunity for public input and comment to the DRB on the proposed use and its conformity with the review criteria listed below.

Sec. 3.5.6 Review Criteria

The application and supporting documentation submitted for proposed development involving Conditional Use and/or Major Impact Review, including the plans contained therein, shall indicate how the proposed use and associated development will comply with the review criteria specified below:

(a) Conditional Use Review Standards:

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on **each of** the following general standards:

1. Based on the scale and characteristics of the proposed use and its development, the proposal is consistent with the purpose and intent of the zoning district and specifically stated policies and standards of the municipal development plan;
2. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses allowed by right in the same zoning district;
3. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies; and,
- 1-4. The capacity of Existing or planned public community utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area.;
2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;
3. Traffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to complementing the flow of traffic and/or parking needs; if not in a commercial district, the impact of customer traffic and deliveries must be evaluated;
4. Any standards or factors set forth in existing City bylaws and city and state ordinances;
5. The utilization of renewable energy resources; and,

Comment [SG13]: We should use language consistent with other sections of the CDO.

In addition to imposing conditions of approval necessary to satisfy the General Standards specified above, the DRB may also impose additional conditions of approval relative to any of the following;

- ~~5. shall consider the cumulative impact of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible;~~
- ~~6. in considering a request relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, RL-W, RM and RM-W districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green-space standards must be observed.~~
- ~~7. may control the location and number of vehicular access points to the property, including the erection of parking barriers.~~
- ~~8. may limit the number, location and size of signs.~~
- ~~9.1. may require~~ suitable mitigation measures, including but not limited to landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.
- ~~10.2. may specify a time limits~~ for construction, ~~alteration or enlargement of a structure to house a conditional use.~~
- ~~11.3. may specify~~ hours of operation and/or construction to reduce the impact on surrounding properties.
- ~~12.4. may require~~ that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.
- ~~13. may consider performance standards, should the proposed use merit such review.~~
- ~~14.5. may attach~~ such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

(b) Major Impact Review Standards:

Before a major impact development may receive approval, the DRB must be satisfied, based on documentation provided by appropriate city agencies, experts, interested parties and/or the applicant that the proposed development, in addition to meeting the review standards for conditional use review above, shall:

1. Not result in undue water, air or noise pollution;

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Comment [DEW14]: this does not belong here. move to Sec 4.4.5 (d)5C

Comment [DEW15]: a sign issue – doesn't belong here

2. Have sufficient water available for its needs;
3. Not unreasonably burden the city's present or future water supply or distribution system;
4. Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;
6. Not cause an unreasonable burden on the city's ability to provide educational services;
7. Not place an unreasonable burden on the city's ability to provide municipal services;
8. Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city;
9. Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;
10. Be in substantial conformance with the city's municipal development plan and all incorporated plans;
11. Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location; and/or
12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.

Sec. 9.1.7 Certificate of Inclusionary Housing Compliance

As written

Sec. 9.1.8 Conditional Use Approval

~~A covered project, except subdivisions approved by the DRB pursuant to the provisions of the Article 10, must first receive approval of such board under conditional use criteria pursuant to the requirements of Article 3, Part 5. RESERVED~~

Sec. 9.1.9 Inclusionary Units, Rental and Sales

As written

DRAFT

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MEMORANDUM

TO: Planning Commission
FROM: David E. White, AICP, Director of Planning & Zoning
DATE: Thursday, May 29, 2014
RE: Proposed Zoning Amendments regarding Conditional Use and Major Impact Review, PUD and Subdivision Review

For your consideration you will please find attached a series of proposed amendments to the *Burlington Comprehensive Development Ordinance*. This collection of amendments seek to simplify and clarify the otherwise cumbersome, lengthy and complex nature of development review in Burlington. Many of the issues we are seeking to address were raised and contemplated during the planBTV planning process as measures we could take to support more infill development across the city. We feel the changes being offered will simplify the process without negatively affecting the quality of the review or the public's ability to participate.

Taken together they eliminate redundant and unnecessary steps, costs and complexity by:

- Disconnect Conditional Use Review from the types of development that bear no relationship to the actual review criteria being considered.
- Revise the Conditional Use Review criteria to focus on elements of development that may actually be effected by a proposed conditional use.
- Clarify the scope of conditions that may be imposed under Conditional Use Review.
- Revise the Major Impact Review triggers to reflect the likely scale a proposed development would have to take to effect the review criteria, and differentiate between projects of varying scales proposed across zoning districts so that "major impact" is considered relative to the context of the neighborhood where it is being proposed.
- Disconnect PUD from Subdivision review in cases where no actual subdivision of land is taking place.
- Clarify the range and type of flexibility afforded by the PUD Review process.

Historically Burlington's ordinance has used "Conditional Use Review" as a catch-all requirement for any development that may not otherwise appear straightforward – when in doubt, make it subject to conditional use. This approach dates back to before the creation of Design Review where the only opportunity to look closely at the scale and design of a project was to put it through a public hearing and attach specific conditions of approval. Today however Burlington has a number of sophisticated tools in its ordinance that enable either staff or the DAB and DRB to review and make modifications to the design of a proposed development making conditional use review unnecessary and redundant in cases that do not include a true "conditional" use. Therefore we are proposing to disconnect conditional use review from PUD's, subdivisions, inclusionary housing projects and parking management plans unless they actually involved a listed conditional use. In addition we are proposing to revise the conditional use

criteria themselves to reflect more objective standards relative to impacts on transportation, community facilities and nuisances, and remove criteria that reflect more subjective design issues that are already considered under the Design Review process.

In a similar vein, Major Impact Review also has been generously applied - in today's case where development would create more than 5 units of housing anywhere in the city. In Vermont's largest city, most urbanized place and with a complete array of public infrastructure, 5 units of housing hardly constitutes "major impact" in places like the downtown. Instead we are proposing scaling the triggers for what constitutes a Major Impact project based on the neighborhood context.

Finally, while PUD's may often be associated with the creation of new lots, it isn't always the case. Making a PUD follow the subdivision review process when it doesn't actually involved a change to property boundaries adds a significant time and cost burden on the applicant and staff, and is a significant waste of effort for everyone.

We look forward to discussing these proposals further with you at your next meeting. Thank you.