

planBTV: Downtown Code – Frequently Asked Questions

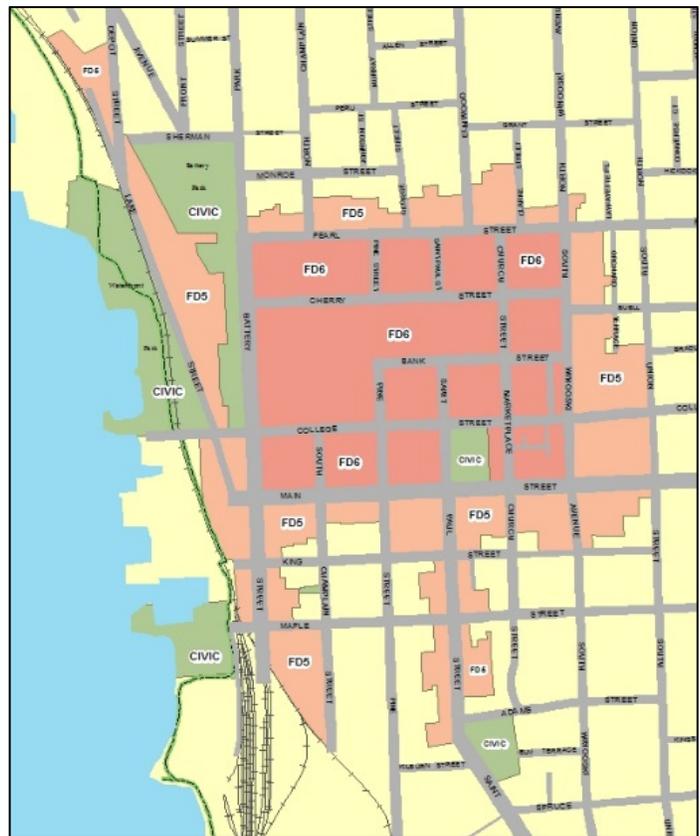
What is planBTV: Downtown Code and what is the area involved?

planBTV: Downtown Code is a new set of zoning regulations developed specifically for Burlington’s downtown and waterfront area. Fundamentally, this new code is about:

- Implementing the vision for the downtown and waterfront adopted in *planBTV: Downtown and Waterfront Master Plan adopted in 2013*;
- facilitating opportunities to realize new infill development and taking advantage of opportunities to re-develop under-developed sites to make Burlington’s downtown more sustainable and vibrant; and,
- modernizing the regulations and the development review process to clearly describe the kind of new development we want, and make the process more predictable for applicants and community-members alike.

Since Nov 2014, a Joint Form Based Code Committee comprised of Planning Commissioners and City Councilors has met more than 40 times, published 2 complete drafts, hosted a Speaker and Panel Event (Jan. 2016), and held 4 neighborhood meetings (May 2016) before releasing their final draft to the Planning Commission in June 2017. Early versions of the new code were tested by local design professionals in the winter of 2015, and many of the current requirements were used in the review of the Burlington Town Center redevelopment project in the winter of 2017.

The planBTV: Downtown Code replaces all existing zoning regulations in the Downtown, Downtown Waterfront, Downtown Transition, and Battery Street Transition zoning districts. This area is divided into 2 “Form Districts” (FD6 – Downtown Core and FD5 - Downtown Center) that replace the older zoning districts and establish the basis for the regulations found within the new Code. This area also includes areas identified as “Civic Spaces” that are City Parks. Because of their civic purpose and character are treated differently from areas anticipated for private development in order to provide for a range of open space types appropriate to a compact urban downtown area. Outside of this area including the Downtown Waterfront Public Trust district, the current zoning regulations will continue to apply.



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What is a Form-Based Code?

“Form-Based Codes” (FBC’s) are one of a number of different types of tools and techniques used in land development regulations (or zoning). Rather than emphasizing the separation of land uses as with traditional zoning, a form-based approach focuses more on the built physical form that development takes. They are particularly well-suited for creating and/or sustaining places where people – particularly pedestrians - want to be – mixed-use downtowns and compact residential neighborhoods. This is critical to sustaining and enhancing economic vitality because the most important factor in attracting people to a place is in fact...other people.

A form-based code (FBC) fosters more predictable results and a high-quality public realm (the public sidewalk and street) by emphasizing the relationship between buildings and the public realm, and the form and mass of buildings in relation to one another. A form-based code is focused on how people actually experience and interact with new development, and how new buildings fit in with desired community development patterns.

FBC’s are drafted to implement a community plan – in our case the *planBTV: Downtown and Waterfront Master Plan*. They try to achieve a community vision based on time-tested forms of urbanism. Ultimately, a form-based code is a tool; the quality of development outcomes depends on the quality and objectives of the community plan that a code implements.

How is a Form-Based Code different from a Use-Based Code?

Traditionally, zoning techniques have been use-based with land use serving as the foundation upon which all other development regulations are based. Also known as “Euclidean” zoning, the original purpose was to separate land uses from one another as a means of mitigating impacts from conflicting uses. While this was largely successful at keeping industrial uses out of residential areas, it also has been a significant factor in contributing to suburban sprawl. And because the physical form that development takes is typically of secondary interest, the design of new development can often be out of context with existing development without the use of other regulatory tools which in-turn make the process more complicated and highly subjective.

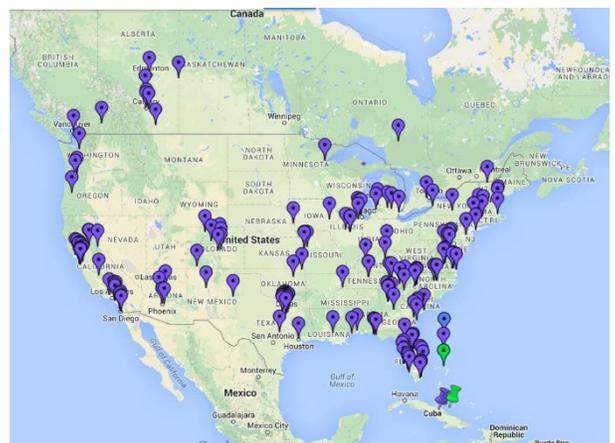
In contrast, FBC’s use the physical form of development as the foundation for the regulations. The regulations are built around a community’s aspirations for how new development should fit within and form a neighborhood or downtown area. They emphasize place-making and what we want new development to provide for the benefit of the community by giving specific consideration to the pedestrian experience. Land use is still of course a consideration, but the physical dimensions and characteristics of blocks, lots, and buildings help to define and control the types, scale, and range of uses that can be accommodated within a given area.

Where-else are Form Based Codes being used?

There are more than 380 adopted Form Based Codes in place across the country with at least another 300 under development (as of Feb. 2016). Urban and rural, small and large communities are turning to a more form based approach to ensure that new development fits better into their existing development pattern or to transform auto-dominant places into pedestrian-friendly mixed use destinations.

Examples include:

- Miami, Denver and Los Angeles (under development)



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- Cincinnati, Nashville, Buffalo, Hartford, Chattanooga, and Albany
- Flagstaff, AZ, Kauai, HI and Beaufort, NC
- Yarmouth ME, Newport and South Burlington VT, and Portsmouth and Dover NH

The concept is far from new however with examples dating back nearly 40 years. Many communities including Burlington have struggled with a number of ways to regulate the form that new development takes for decades. Burlington’s zoning regulations have been evolving towards being increasing form based since we first adopted “design review” standards in the early 1970’s, and the development review standards were revised to be more objective in 2008. Moving towards a more comprehensive and deliberate form based code is a logical next step.

Where can I go to learn more about Form Based Codes?

There are many online researches where you can go to learn more including:

- [The Form Based Codes Institute](#)
- [The Codes Study](#)
- [The Center for Applied Transect Studies](#)
- [Smart Codes Central](#)
- [Congress for the New Urbanism](#)

Why are we doing this?

Fundamentally Burlington’s development and use of a Form-Based Code is about:

- Implementing the vision for the downtown and waterfront adopted in the *planBTV: Downtown and Waterfront Master Plan* in June 2013 by unanimous vote of the City Council.
- In so doing, we are seeking to facilitate opportunities to realize new infill development and taking advantage of opportunities to develop under-developed sites.
- Finally it’s about modernizing the regulations and the review process to be more predictable for all users.

The *planBTV: Downtown and Waterfront Master Plan* articulates the City’s policy regarding future development in and around our downtown. The plan encourages us to take advantage of opportunities to facilitate new development in order to keep our economy sustainable and our downtown vibrant – development for people to live, to work, to shop and to enjoy. It recognized that while we have many wonderful buildings and civic spaces that set us apart from “just any other place,” there are lots of sites where new development can go that will add to and diversify our collection, enrich our local economy and make BTV an even better place to be. The plan also emphasizes that in order to remain a truly vital and active urban place we need to think in terms of time-tested design principles that are at the foundation of successful communities around the world, and make sure that as Burlington continues to grow, new development reinforces and builds upon the existing pattern and scale. In order to help us do all this, the plan recommends the development of use of a more predictable and context-sensitive approach to development regulation.

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For several years City Councilors have been asking for ways to improve the city's development review process to make it easier to navigate and more predictable. FBC's are also about providing clarity and predictability in the application and review process. They incorporate lots of pictures and graphics making them easy to understand and follow. They clearly prescribe the essential characteristics of everything they regulate enabling a more straight-forward and objective level of review that can be accomplished largely administratively without a lengthy subjective and discretionary review process. This is critical to ensuring a level of predictability and certainty to the regulatory process which is of great benefit to applicants who are putting their investment capital at great risk, and to the community that will have to live with the result.

Burlington has been increasingly using a more form-based approach in our zoning code since we first adopted Design Review in 1973. While this has met some success, it comes at the expense of a highly discretionary development review process that is unnecessarily costly, unpredictable and time-consuming for all participants – applicants, neighbors and City staff alike. While fairly detailed, our current standards are still quite subjective and imprecise, and in many situations our regulations do not support the existing pattern and character of existing development that we are trying to preserve and enhance.

Will the FBC allow for new development that is significantly larger or different?

No. As the *planBTV: Downtown & Waterfront Master Plan* says, we love what we have in Burlington and are trying to ensure that we maintain and expand upon an **existing pattern** of development. The standards in the FBC are based on the actual types, scale, and pattern of existing development based on synoptic surveys conducted by a consultant who specializes in this type of work.

We continue to use many of the existing regulatory limits and requirements found in the current zoning ordinance where it works to support and further the existing pattern and scale of development. However, we also understand that there are limited opportunities to do something a little more, a little different where the historic pattern has already been disrupted or never really established itself. Here are places where slightly larger buildings can be developed without negatively impacting the existing scale and pattern of the city – in fact in some places it can help to re-establish a development pattern that has been eroded over time. Ultimately the Joint Committee that oversaw the creation of the new Code was committed to ensuring that the allowed building heights in the new Code closely followed the current height limits in the current zoning.

Do height bonuses apply to the FBC?

No, height bonuses no longer apply under the FBC. Existing height bonuses have not proven to be an effective tool for encouraging new development given the amount of uncertainty involved. Instead, form-based codes by their very nature are more direct and explicit with what is allowed and what is not allowed, removing a lot of gray area and uncertainty in the development review process. The Joint Committee that oversaw the creation of the new Code felt strongly that it was more important to be clear and explicit about exactly what we want from new development. Instead of offering height bonuses, the new code establishes specific design standards for buildings built over a certain height, and requires active public space in buildings over 85-feet tall.

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At what point in the development review process does the public have input on development decisions?

As with under the current ordinance, any development project creating more than 5 units of housing or 15,000 square feet of space is required to hold a pre-application neighborhood meeting in order to inform the public about what they are proposing and have an early opportunity for public input. Further, all applications for a zoning permit are publically noticed on the City’s website and on the property by means of the red “Z-Card”.

Under the proposed form-based code, all review associated with building and site design will be made by the Planning staff using the new form-based regulations. If the proposed project meets all of the requirements and standards of the ordinance, it will be approved within the 30-day period required by state law. This can happen because the FBC provides a comprehensive set of clear and objective standards which all development much meet leaving very little room for discretion in decision-making.

The Development Review Board (DRB), with advice as appropriate from the Design Advisory Board and/or Conservation Board, will continue to review - with a required public meeting - the largest projects subject to Major Impact Review, uses subject to Conditional Use Review, requests for relief and Variances, and Appeals of administrative decisions. The DRB’s review (and the associated public input) in these cases will not include building or site design, but instead will only base their decisions on the specific Major Impact, Conditional Use, Variance or Appeal criteria and necessary findings found in the current zoning regulations.

Currently nearly 94% of all applications for a zoning permit are reviewed administratively by the Planning staff. The new Code will likely add another 2-3 projects a year that are reviewed without engaging the DRB process.

If FBC's are very prescriptive in what can be built and how, how do we allow for some of the quirks that characterizes parts of Burlington?

Form based requirements can be very restrictive and may not always work in every situation, and we don’t want to stifle creativity – in-fact we want to encourage and support it. So flexibility is built into the code. As such there are three opportunities to seek and grant relief from a specific standard are provided:

- **Administrative Relief** – Relief may be granted by Staff upon request as provided for within the Code for specific situations and within prescribed limitations and requirements;
- **DRB Relief** – Alternative Compliance may be granted by the DRB upon request, and after a Public Hearing, from any non-numerical standard, and any numerical standard by no more than 20%, with required findings under criteria spelled-out in the Code; and finally,
- **Variance** – Variances may be granted by the DRB upon request and after a Public Hearing. A last resort enabled under state law but subject to very strict findings under criteria spelled-out in statute.

Under the current zoning, the only option in most cases is to seek a variance which by their design should be very hard to get. The new Code offers opportunities for much greater flexibility in order to meet the sometimes unique challenges of an existing site or building.

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How does FBC address questions of quality of construction materials, energy efficiency, and waste reduction?

Most broadly, all new development must select from a defined list of primary and secondary materials for use on the façade comprised of durable, natural, and high-quality materials. Also all new development must meet new higher standards for stormwater management that emphasize the use of visible and vegetated treatment strategies where possible. Finally, new development over 25,000 sqft in size is required to develop and implement a commissioning plan for the mechanical systems and building envelope to ensure they actually perform as intended under the energy code, and new development over 50,000 sqft in size is required to meet a nationally recognized green building standard equivalent to LEED Gold Certification.