

Burlington Planning Commission

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Burlington Planning Commission

REGULAR MEETING

Wednesday, November 12, 2014 - 6:30 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

AGENDA

Note: times given are approximate unless otherwise noted.

I. Agenda

II. Public Forum - Time Certain: 6:35 pm

The Public Forum is an opportunity for any member of the public to address the Commission on any relevant issue.

III. Report of the Chair

IV. Report of the Director

V. Housing Action Plan (45 min)

The Commission will hear a presentation from CEDO staff on the proposed Housing Action Plan.

VI. Proposed Zoning Amendments (30 min)

The Commission will consider the following proposed amendment to the Comprehensive Development Ordinance:

- Subdivision and Conditional Use Review Changes
- Downtown Districts Setbacks Abutting a Residential Zoning District

VII. Public Service Board Wireless Telecommunications – 128 Lakeside Avenue

VIII. 2015 Regular Meetings Schedule Adoption

IX. Committee Reports (5 min)

X. Commissioner Items (5 min)

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XI. Minutes/Communications (2 min)

The Commission will review communications and approved minutes from the October 28, 2014 meetings.

XII. Adjourn (8:00 p .m.)

Building Opportunity:
Action Plan for Expanding and Improving Burlington's Housing Stock

Please note that this is a draft version of the Plan that was prepared by CEDO staff and has not yet been reviewed or approved by Mayor Weinberger or members of the City Council.

Why this Housing Plan and why focus on downtown? The City commissioned a study to evaluate the City's chronic housing shortage and to identify potential solutions. The *Downtown Housing Development Strategy* found a variety of reasons for the persistent housing affordability crisis and offered solutions. It should be noted that the scope of the study was downtown Burlington as defined by the "central business district" plus a 1/2 – mile radius. This geographic focus was informed by both the planBTV and the City's recent Neighborhood Development Area designation. However, many of the action items in this plan have city-wide implications and applicability.

Burlington faces an acute housing "affordability crisis" caused by a lack of new housing constructed over the past decade in the City's downtown. In fact, *the average Burlington household spends about 44 percent of its income on housing*, a percentage far in excess of what is considered reasonable in a healthy housing market and significantly above cities like Portland, OR, Nashville, TN, or Austin, TX. The consequences of this high cost – and the similarly unhealthy one percent vacancy rate – are felt by the entire community: seniors, employers, young professionals, environmentalists, affordable housing groups, downtown businesses, and active transportation advocates.

The lack of new housing construction in the City of Burlington is all the more remarkable because it has taken place in a period during which new households in the region grew by 10 percent during the years between 2002 and 2013. Burlington saw only three percent growth in that same timeframe, and of the roughly 220 new units built in the downtown, only 18 were market rate rentals. Making this shortage of housing more acute is the fact that about 3,650 students who attend the University of Vermont, and another 1,000 Champlain College students live off-campus and compete for the already limited housing options.

The lack of supply has profound negative consequences for Burlington. Instead of attracting young professionals eager to engage in the City's vibrant tech sector, for example, Burlington saw the percentage of such households actually fall by 10 percent between 2000 and 2012. Instead of developing a livable, walkable, and bikeable downtown – with all the known health and environmental benefits – new housing development has sprawled across the county and increased the reliance of residents on automobiles. Instead of creating the foundation for the continued growth of Burlington's non-profit organizations and businesses, the lack of housing has become a primary impediment to recruiting new employees.

It does not have to be this way. Burlington has a long history of innovative approaches to housing problems, and in particular the challenges of providing traditionally defined affordable housing. Mayor Sanders launched the first affordable housing task force in 1984, and the City and non-profits like Community on Temporary Shelter (COTS) and the

Champlain Housing Trust have garnered national and even international recognition throughout a proud history helping the most vulnerable households in the community.

Today, the same creative energy that launched successful affordable housing programs needs to be harnessed to address a lack of housing supply impacting all Burlingtonians. The solution requires a broad strategy intended to maintain and even increase support for the mission of the City's successful affordable housing non-profits while at the same time increasing the supply of housing across the entire Burlington income spectrum to benefit all residents and repair a distorted housing market.

This Plan first identifies the issues that have created these distortions – the regulatory barriers and disincentives, lack of appropriate resources, unique demographic challenges, and deteriorating quality of the housing stock that have contributed to a combination of high costs, severely limited options, neglected maintenance, and important quality of life issues. Second, it articulates a number of potential solutions for these challenges, including regulatory reform and measures to reduce the uncertainty that has stymied efforts to invest in and renew the City's housing stock. Third, the Plan highlights a number of components integral to a housing strategy intended to support the continued growth of a progressive and sustainable community but not directly connected with the problems that have distorted the housing market – including efforts to address chronic homelessness, improve active transportation options to make the City more livable, equitable, and accessible, and preserve the unique character of Burlington's neighborhoods. Finally, the Plan offers a proposed timeline for action to implement this strategy beginning with the second public forum to gather community feedback on October 7, 2014 at 7:00-9:00 in Contois Auditorium at City Hall.

As articulated in the City's inclusive public engagement planning effort planBTV – Downtown and Waterfront, the Burlington community envisions significant new housing that is consistent with the City's current character and helps make the future of Burlington more vibrant, green, pedestrian and bike friendly, healthier, and more affordable. This Plan is a step in translating that community vision into reality to benefit all residents.

I. Why is There a Housing "Affordability Crisis" in Burlington?

The simple answer is lack of housing supply – that, despite the growth of new households in the region by 10 percent during the years between 2002 and 2013, Burlington saw only three percent growth (and that of the roughly 220 new units built in the downtown, only 18 were market rate rentals). This helps explain the low vacancy rate, the relatively high costs, the steady loss of young professionals from the community, and the lack of incentives for some landlords to appropriately maintain their properties.

However, the simple answer alone does not explain why so few new units were created in Burlington during a time that saw substantial new units created both regionally and nationally. A combination of notable and potentially unique regulatory barriers and disincentives, a lack of appropriate resources, and unique demographic challenges conspired to largely stymie new investment in and renewal of Burlington's housing supply.

Regulatory Barriers and Disincentives

Though beneficial in many ways, in combination the Comprehensive Development Ordinance and the development review process include a number of regulatory hurdles and a system of conditional use approval that creates uncertainty about the outcome of the permitting process.

For example, until the City Council voted unanimously to overturn the measure in September of 2013, Burlington followed an unusual practice requiring substantial downtown development projects must include at least 50 percent commercial space. That requirement effectively prohibited housing construction in the downtown because no developer could secure financing for a project with such a proscribed residential component.

Though that particular barrier has already been reformed, a number of other regulatory hurdles to providing Burlingtonians with affordable housing options remain:

1. **Parking Minimums:** Requiring the acquisition or creation of a minimum of parking spaces for each new housing unit substantially increases the cost of the unit (thus pricing many residents out of the market) and contributes to a surplus of unnecessary (and underutilized) parking spaces on land that could be better used. The existing minimum parking ordinance in the downtown substantially increases the cost of downtown housing, is a barrier to investment in the City, and importantly – given that City has a long history of building much of the downtown parking required by the minimum parking ordinance – results in wasteful government spending on a highly inefficient parking system
2. **Uncertainty Regarding the Permitting Process:** This uncertainty comes in two forms. First, according to the 2013 *“A Comparative Study of Land Use and Building Permitting Processes in Portland and Other Cities”* completed by the Muskie School of Public Service (University of Southern Maine), the Development Review Board’s public appeals process can be the source of major project delays, deterring those that would build more housing units or invest in substantial renovations of existing properties. Second, there is confusion about how, when, and where, to obtain all the necessary permits from different City departments involved in the process. Within the last few years, substantial progress has been made to refine that process, but further reform is necessary.
3. **Inclusionary Zoning (IZ):** Intended to ensure that all new development include housing affordable to low-income households, the IZ reduces a builder’s margin for a good purpose, but similar to the 50-50 ordinance described above, it can make project financing more difficult or unworkable. Further, Burlington has a mandatory IZ policy, though the surrounding region does not – putting Burlington at a competitive disadvantage. Since its implementation in 1990, IZ has generated about 250 units or roughly 10 each year (between 2003 and 2012, 47 IZ units were constructed within half a mile of downtown).
4. **Building Code:** Burlington has a complex building code that interacts in confusing ways with the State and National building codes. This makes construction unnecessarily confusing and expensive – and more so than in surrounding towns.

5. **Zoning and Building Fees:** High City fees – particularly early in the process when the outcome of the permit, design and financing process is unclear and projects have not yet received major financing commitments – can constitute significant barriers to the creation of new housing. This also has the perverse incentive of favoring larger developers, who can afford to risk the high pre-development fees on a project despite uncertainty about how the project will fare in the DRB process.

Lack of Appropriate Resources

In recent years, a decline in federal resources to support housing construction contributed to the difficulty of increasing Burlington's housing supply. Compounding this issue locally, in 2004-2005 the City government chose to limit funding to the Housing Trust Fund, a City-managed fund used to support the development of perpetually affordable housing. However, until recently the City had not systematically identified potential infill development opportunities or potential public-private development sites. And, according to the recent *Downtown Housing Strategy Report* completed for the City by an outside consultant, the City has not used all the arrows available in the municipal quiver to support housing construction – including “public land, density bonuses, real estate tax abatements, and tax increment financing (TIF).”

Unique Demographics

Local area Colleges and the University of Vermont are an integral part of what makes Burlington such a tremendous place to live, work, and play. These academic centers are also home to about 17,000 students in total, about 53 percent of which live on campus. Many of these students are tremendous assets to their neighborhoods and communities – but all compete for spots in the tight housing market.

And, though they receive a great deal of attention, the students are not the only unique demographic group with an important impact on the housing market. In fact, nearly 10 percent of Burlington's population is over age 65. According to the 2010 Census, 821 individuals, ages 65+ in the City, identified an independent living difficulty. In addition, 1,179 senior households, or 29.5% of the population over 65 are paying over 30 percent of their income for housing and are cost burdened. According to Cathedral Square Corporation, a key housing provider serving the elderly and individuals or families with special needs, their waiting list hovers between 700 and 1,000 people, which demonstrates a substantial requirement for special needs/senior housing. Further, by 2017, one in three Vermonters will be 55 years of age or older. Services needed for older adults range from chronic care self-management, to prevention, to nursing home level of care in their homes, and efforts to expand, improve, and rehabilitate Burlington's housing stock must take the needs of this group into account.

II. What Solutions Will Address the “Affordability Crisis”?

Removing Regulatory Barriers and Disincentives

Reforming and reducing uncertainty related to the City's regulatory environment – as each of the measures proposed below would do - should stimulate much needed housing development, benefiting Burlingtonians across the income spectrum.

1. **Eliminate Parking Minimums:** Eliminating parking requirements in the downtown and perhaps other sections of the City would allow builders to determine necessary parking for each project, more accurately reflect true parking demand, and avoid unnecessary cost increases that drive up the costs of housing in Burlington. Jeffrey Tumlin of Nelson/Nygaard Consulting Associates in San Francisco has helped bigger cities including Washington, D.C., Portland, Ore., Denver, Colo., Vancouver, B.C. and Seattle, Wash., address their parking troubles. According to Tumlin, parking isn't just expensive for drivers. "It's also expensive to residents, as there's a strong link between the cost of parking and housing affordability. In San Francisco, every parking space added to a new residential unit ups the price of housing by 15 to 30 percent and decreases the number of units available by 15 to 25 percent. In short, Tumlin suggested, there's no more effective tool for addressing the housing affordability crisis than to decrease the parking spaces developers are required to build. While that idea would likely meet stiff resistance in Burlington, Tumlin pointed out that many cities around the country are now eliminating their minimum parking requirements — in fact, the UK made mandatory minimums illegal because they "only create social harm."
1. **Implement a Form-Based Code:** The overarching intent of adopting a Form-Based Code is to enable and encourage infill redevelopment of underutilized sites in the downtown and waterfront at a scale that is generally comparable to Burlington's current urban form. Importantly, transitioning to a form-based code where context-appropriate infill can be permitted "as-of-right" reduces the uncertainty associated with the permitting process and ameliorating a barrier deterring developers interested in building or substantially renovating housing in Burlington.
2. **Evaluate IZ:** Would reforms to the IZ's threshold trigger number of units, or a focus on large projects for on-site requirements in combination with a viable payment-in-lieu option for smaller projects, help remove a barrier to the creation of more housing stock in Burlington? A careful analysis is needed to determine the appropriate IZ thresholds to increase both market-rate and affordable housing production. The City should contract with an external consultant to evaluate Burlington's IZ system, and is currently under consideration for free technical assistance to do just that with a decision expected on October 3, 2014.
3. **Reform the Building Code:** The FY 2016 budget will include funding for the City to hire a consultant to undertake a thorough review of the City's construction-related code of ordinances and recommend reforms to update, revise, eliminate, and consolidate the building code, apply relevant best practices from other communities, and ensure that our code truly reflects what is needed to address housing safety, affordability, accessibility and availability..
4. **Explore the Adoption of a Rehabilitation Code:** "Rehab Codes" operate on the premise that applying modern building codes to historic buildings is not always an appropriate measuring stick – historic buildings were designed for a different era,

with different regulations in mind. These buildings often cannot be renovated within a reasonable price range in a way consistent with new code requirements. This contributes to the deteriorating quality of housing stock in Burlington, an important quality of life indicator for the City. The Rehabilitation subcode is a comprehensive set of health and safety requirements designed to ensure that safety of work done in existing buildings. It is a stand-alone subchapter and, therefore, it contains all the technical requirements that apply to a rehabilitation project.

5. **Zoning and Building Fees:** Residential fees should be reviewed to ensure the rates are tied to the City's costs of permit processing thereby minimizing fees as a barrier to new housing, not set at rates intended to generate excess revenues.
6. Historic Preservation
 - Under Burlington's zoning, historic preservation has an impact on the cost and feasibility of rehabilitating older structures. The Planning Commission has been seeking a more balanced approach since at least 2010. Based on Best Practices employed in other communities with housing stock, climate and demographic factors similar to Burlington, the City should strike a balance among the competing public policies raised by historic preservation. After years of considering various options, the Planning Commission should make this issue a top priority on their agenda.

Expanding Financial Resources/Incentives for Housing

Restore Full Support for the Housing Trust Fund in FY16: If the HTF revenue was restored to a full penny per every \$100 of property value, annual funding would increase from around \$190,000 to \$360,000.

Addressing Unique Demographics

The presence of approximately 3,650 UVM students and another 1,000 Champlain College students living off campus is a prime factor in Burlington's extremely low rental vacancy rate and chronically high rents in relation to average incomes. In addition to putting upward pressure on rents, large numbers of students living in the community in homes that were intended for families has negative impacts on the quality of life in Burlington neighborhoods.

1. **Negotiate Significant Extensions of College Housing Commitments:** Renew the agreements with UVM regarding the requirement that first and second year students must live on campus and that the number of students living off-campus will remain below an agreed upon level. The 2007 Master Plan for Champlain College contains a commitment by the College to house all of its full-time students in College-owned or affiliated housing. Champlain has recently added beds on campus and is planning to create student apartments on both the Eagles Club/Browns Ct. site and the former Ethan Allen Club. The City will continue to support Champlain in their efforts to achieve the goal of housing the entire Burlington campus student body.

2. **Support creation of off-campus purpose-built housing for 2,200 students over the next decade:** Purpose-built, appropriately managed housing for 2200 of the 4650 undergraduate students living off campus – along with agreements from the academic institutions not to increase the number of students living off campus – would simultaneously free up a tight housing market and address an enduring quality of life challenge within the City. One way for the City to incent the creation of more off-campus student apartments is to make them exempt from IZ requirements provided the units are occupied by under-graduate and graduate students enrolled in Champlain College or UVM.

3. **Neighborhood Stabilization Strategy:** The necessary corollary accompanying an effort to construct more purpose-built, managed student housing is a proactive strategy for areas of Burlington with large concentrations of students to incentivize the gradual conversion of student rentals to housing for families, retirees, empty nesters and young professionals from all across the income spectrum. There are some promising models nationally that involve focused efforts to attract a new mix of property owners in neighborhoods with similar characteristics. The City must work with other employers to develop innovative ways to re-purpose student rentals if the potential to stabilize neighborhoods can ever be fully realized. The City will pursue the development of a soft second mortgage program to assist first-time homebuyers in a specific target area with down-payments, closing costs and rehab for code compliance.

Housing an Aging Population

The AARP recently released a report titled “Housing America’s Older Adults” that contains policy recommendations for each level of government. To quote the report, “For their part, state and local governments can promote accessibility in both the home and built environments, as well as expansion of housing and transportation options. For example, they can require that all new residential construction include certain accessibility features, and offer tax incentives and low-cost loans to help owners modify their homes to accommodate household members with disabilities. Localities can also change their zoning to support construction of accessory dwelling units and mixed use developments that add housing within walking distance of services or transit. Municipalities—particularly the growing number with large 50-and-over populations—need to ensure that a range of services are available to older adults, including social and volunteer opportunities; education programs centered on health, finance, and housing maintenance; adult day care and meals programs; and health and wellness services.

Eligibility requirements often force seniors to “spend down” assets in order to access housing and care. Other challenges for the elderly in maintaining an independent living environment include reliance on fixed incomes, juggling housing costs with medical care, special transportation needs, in-home care and assistance with daily tasks and the physical aspects of aging in place.

As noted in the City's Analysis of Impediments to Fair Housing Choice, "the (housing) needs of future frail elders in the region are not currently being addressed at the level necessary to support the coming spike in demand. In the coming decades frail elders will face increased challenges to daily living, fewer housing options, a shortage in assisted living housing options, ever-increasing healthcare costs, limited transportation options and declining incomes. Promoting safe, affordable, decent and fair housing choice will be a daunting task."

The City should augment the existing program that provides grants and loans for accessibility modifications to homes occupied by people with disabilities. Consideration ought to be given to amending the building cost to require universal design elements that serve people of all abilities. Any new housing that is intended for elders should be required to have a complete menu of supportive services. When housing developers plan to target elders, they should be encouraged to offer community-based licensed Level III housing equivalent services in an unlicensed setting.

A Way Triple City Home-Sharing

There are currently about 20 Home-Sharing arrangements in Burlington through HomeShare Vermont. This model is a proven strategy that both provides affordable housing without the expense of development while also allowing seniors to age at home. The City will explore offering a nominal property tax exemption (possibly \$250/year) to incentivize more home-owners to enter into Home-Sharing arrangements.

[Does AARP have any policy prescriptions for us we should be considering?]

Incentivize New Development Opportunities

In tandem with the suggestions above, one direct way for the City to create new housing development opportunities is identifying potential public and private development sites and making them more feasible for development.

1. Privately owned sites
 - a) Located within the downtown and surrounding areas are some key private sites suitable for multi-family housing. In some cases, the infrastructure must be upgraded to accommodate new housing at an urban scale. In others, the underlying zoning does not allow enough density to justify the investment.

2. Publicly owned sites

The City has identified a number of underutilized city owned properties for redevelopment including the "Gateway Block" "formerly called the Super Block" and the parking lot on Elmwood Avenue. School District land behind Champlain School on Shelburne Street, and the District headquarters on Colchester Avenue are also potential redevelopment sites worth exploring. The City should work proactively with other parties to redevelop a number of these sites for mixed-income housing.

Public land sold or leased for housing should feature a significant share of affordable units.

3. Focus Development in certain areas

As envisioned in both PlanBTV and the Downtown Housing Development Strategy, there is significant development capacity in the downtown and the surrounding areas. Specifically, the newly designated Neighborhood Development Area includes many redevelopment sites and offers incentives for infill housing development. With some zoning amendments, the key sites would go from being economically marginal to viable.

III. Additional Components of an Inclusive, Forward Looking Strategy

While not tied directly to the causes or solutions to Burlington's housing shortage and acute affordability crisis, each of the following issues – addressing homelessness in our community, greening Burlington's housing stock, and creating a more active, walkable, and livable City – are critical issues to include in a housing strategy.

Ending Chronic Homelessness – Explore “Housing First”

Despite a robust affordable housing delivery system and a strong network of homeless housing and service providers in Burlington, homelessness continues to be a local challenge. For some segments of the homeless population, their situation is exacerbated by the extremely low rental vacancy rate.

As a longer-term policy solution, the Mayor has directed CEDO to take the lead in examining and potentially implementing a model successful in other locations known as Housing First. This approach prioritizes offering the choice to move into permanent housing to the most vulnerable and chronic people experiencing homelessness in the community. Permanent housing is combined with available supportive or wrap-around services, but this approach does not require individuals earn the right to housing via employment, sobriety or health.

For decades, the focus in Burlington, as well as other communities, consisted of delivering homeless services centered on emergency services and food programs. This Continuum of Care model includes outreach, shelter, transitional housing and then ultimately permanent supportive housing. The focus has always been to achieve housing readiness which includes sobriety and other achievements. Few chronic homeless maintain permanent housing under this approach.

To implement the Housing First, CEDO is first supporting trained volunteers to identify all homeless in Burlington. This effort will take place October 20- 24, 2014. Using a Vulnerability Index, each person will be assessed for those most at risk. Medical research published in highly regarded, peer-reviewed journals highlights several health and social conditions that make people more likely to die on the streets. The homeless would be prioritized based on this risk assessment and those most at risk would be offered the next available permanent supportive housing. The next step will be a coordinating a set of policy changes among homeless service providers to prioritize permanent supportive housing to those most at risk with a goal of housing 2.5 percent of the homeless per month.

Ending Chronic Homelessness – Explore a Low-Barrier Shelter

In concert with the Housing First approach, the City should explore establishing a low-barrier shelter. The existence of such a shelter should decrease the number of people in encampments and allow consistent access for social workers to homeless. The low-barrier shelter thus serves as an important node among social service providers, the chronic homeless, and access to programs like Housing First.

- i. With no low-barrier shelter, it is not surprising Burlington has a chronic homeless population. If the shelter requires you to be sober (as is the case here), that's a non-starter for many folks. If there's no central place for social services to engage, then the level of homelessness won't change.
- ii. How big is the homeless population in Burlington? Can we responsibly determine a policy without understanding the population we are trying to help?
- iii. We know theoretically that the most vulnerable often also generate the most strain on social systems (i.e., multiple weekly ER trips)...but how many and who are the most vulnerable in Burlington, and can preventative steps for what may turn out to be a relatively few make a meaningful impact on our social systems?

Greening Burlington's Rental Housing Stock

A leader in the sustainable development field, Burlington is home to 22 LEED-certified buildings. With Burlington Electric Department reaching the goal of 100% of its power coming from renewable energy sources, we are making steady progress on reducing our carbon footprint while attempting to maintain price stability. Our single greatest residential energy challenge is improving the energy efficiency of our existing multi-family rental buildings.

To quote a recent draft report of the Vermont Green Building Network, "the task of upgrading existing buildings to today's energy efficiency, health and safety standards is daunting. There is no simple path to accomplish this work; each building requires careful analysis coupled with project scopes that work with the property owner's willingness to commit to the work." The report titled "Burlington's Multifamily Rental: Driving Demand for Energy Efficiency Upgrades" includes recommendations for continuing the push to weatherize the majority of apartments in Burlington. New construction should include the most advanced energy efficiency measures and the use of renewables ought to be encouraged in all appropriate locations. The City's existing Time of Sale Energy Efficiency ordinance ought to be reviewed to ensure that it meets today's standards for multi-family energy efficiency.

The City will promote building energy-efficient housing - housing designed and constructed to minimize fossil fuel use and provide the most stable economic environment for its residence (low energy use means less susceptibility to changes in fuel prices means more economic stability).

Timeline:

Housing Public Forum:	October 7, 2014
CDNR Committee meeting:	October 16, 2014
Public comment deadline:	October 16, 2014
City Council	November 10, 2014

To submit written comments regarding the draft Housing Plan, either by email to Brian Pine at bpine@burlingtonvt.gov or by USPS mail to:

Brian Pine
Community & Economic Development Office
149 Church Street
Burlington, VT 05401

DRAFT

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-15-1 – Conditional Use Review

As recommended by the Planning Commission Ordinance Committee on July 10, 2014

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the *Burlington Comprehensive Development Ordinance*.

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

- disconnecting Conditional Use Review from development that does not actually involve an identified conditional use (Sec. 3.5.2 (a) and Sec. 3.5.3);
- revising the Conditional Use Review criteria to focus more specifically on the aspects of the development that may actually be effected by a proposed conditional use (Sec. 3.5.6 (a) and (b)); and,
- clarifying the scope of conditions that may be imposed under Conditional Use Review and Major Impact Review (Sec. 3.5.6 (c)).

ARTICLE 3. APPLICATIONS, PERMITS AND PROJECT REVIEWS

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**;

(b) Major Impact Review:

Unchanged

Sec. 3.5.3 Exemptions

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

- (a) Temporary structures that do not otherwise involve a conditional use;
- (b) Substantial rehabilitation that does not expand the floor area of an existing building or the structural capacity of existing development;
- (c) Projects that do not result in a change of use or increased parking demand; and,
- (d) Subsurface site improvements including but not limited to underground utility lines and subsurface drainage ways.

Commented [DEW1]: IZ housing in and of itself does not constitute a conditional use. Addressed in unit trigger below as applicable for major impact.

Deleted: any application subject to Article 9 – Inclusionary and Replacement Housing;

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all applications for an Institutional Parking Management Plan pursuant to the provision of **Article 8, Part 3, ¶**
all applications subject to Article 10 – Subdivision; and,

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all applications subject to Article 11 - Planned Development.

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Sec. 3.5.4 and Sec. 3.5.5

Unchanged

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 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,

Deleted: allowed by right

4. Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area.

5.

(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, shall:

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

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

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Deleted: <#>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.¶
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.¶
Any standards or factors set forth in existing City bylaws and city and state ordinances; ¶
The utilization of renewable energy resources; and,

Deleted: ¶

Deleted: In addition to the General Standards specified above, the DRB; ¶
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.¶
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. ¶
may control the location and number of vehicular access points to the property, including the erection of parking barriers.¶
may limit the number, location and size of signs.¶
may require suitable mitigation measures, including landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.¶
may specify a time limit for construction, alteration or enlargement of a structure to house a conditional use.¶
may specify hours of operation and/or construction to reduce the impact on surrounding properties.¶
may require that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.¶
may consider performance standards, should the proposed use merit such review.¶
may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.¶

Deleted: in addition to meeting the review standards for conditional use review above

Commented [DEW6]: not review standards so moved to their own section

1. mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.
2. time limits for construction.
3. hours of operation and/or construction to reduce the impact on surrounding properties.
4. that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,
5. such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

Sec. 4.4.5 Residential Districts

(d) District Specific Regulations:

5. Residential Density
- C. Residential Occupancy Limits.

In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in **Article 13**. Notwithstanding the following, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied.

Subject to Conditional Use approval by the DRB, a dwelling unit may be occupied by more than four (4) unrelated adults if it contains at least twenty-five hundred (2,500) square feet excluding its attic and basement pursuant to the following:

- (i) If in a RL district, the dwelling unit also contains at least an additional two hundred fifty (250) square feet and one (1) additional parking space per adult occupant in excess of four (4); or,
- (ii) If in a RM district, the dwelling unit also contains at least an additional two hundred (200) square feet and one (1) additional parking space per adult occupant in excess of four (4).
- (iii) If in a RH district, the dwelling unit also contains at least an additional 150 square feet and 1 additional parking space per adult occupant in excess of four (4).

In considering a request relating to permitting a greater number of unrelated individuals residing in a dwelling unit within a residential zoning district, 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. Each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet.

Commented [DEW7]: relocated from conditional use section.

D. Redevelopment of Historic Carriage Houses.

Carriage houses and other accessory buildings listed or eligible for listing on the state or national register may be redeveloped and converted, in whole or in part, into one additional residential unit subject to review under the standards set forth for the redevelopment of historic buildings in Sec. 5.4.8 (b). All dimensional requirements of the underlying zoning district as set forth in Table 4.4.5-3 shall be met. Such a unit shall not be counted for the purposes of density calculation, and onsite parking shall be calculated as for a Shared Use Parking District.

PROPOSED: ZA-15-01 Conditional Use Review
Part 2 Housing

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

- removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment (Sec. 9.1.5 and 9.1.12);
- removing the requirement for Conditional Use approval by DRB for any project involving Inclusionary Housing (Sec. 9.1.8 and 9.1.12); and,
- removes the requirement for Conditional Use approval by DRB for any project involving Replacement Housing (Sec. 9.2.3, 9.2.5, 9.2.9 and 9.2.10).

ARTICLE 9. INCLUSIONARY AND REPLACEMENT HOUSING
PART 1: INCLUSIONARY ZONING

Sec. 9.1.1- Sec. 9.1.4

Unchanged

Sec. 9.1.5 Applicability

This ordinance provision applies to ~~all subdivisions and planned unit development (PUD) pursuant to Articles 10 and 11 respectively. Any development of five or more residential units in a single structure shall be considered “minor” planned unit developments and~~ shall be subject to the standards of this article. Multiple developments or projects by the same applicant or responsible party within any consecutive twelve (12) month period that in the aggregate equal or exceed the above criteria shall be subject to these regulations.

Except as otherwise provided in this ordinance, these regulations shall apply in the instances specified below.

- (a) The creation of five (5) or more residential units through new construction and/or substantial rehabilitation of existing structures, including the development of housing units utilizing development provisions other than those specified in **Sec 9.1.5 (b)**.
- (b) Where units are created using the Adaptive Reuse or Residential Conversion criteria pursuant to the provisions of **Art 4, Sec 4.4.5**, this article shall be applicable when at least ten (10) or more dwelling units are created.
- (c) An applicant may elect to be subject to the provisions of this article if new units are added to existing units for a total of 5 or more units.

Sec. 9.1.6 Exemptions

Unchanged

Sec. 9.1.7 Certificate of Inclusionary Housing Compliance

Unchanged

~~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.~~

~~Sec. 9.1.9-8 – Sec. 9.1.1211~~

Unchanged – re-numbered only.

~~Sec. 9.1.13-12 Additional Density and Other Development Allowances~~

All covered projects, ~~except as outlined under (b) below,~~ shall be entitled to increases in the development allowances of the underlying zoning district in accordance with the provisions of this section.

- (a) Any covered project shall be entitled to an increase in the maximum coverage allowed for the site on which the project is located following the calculation of density, height, lot coverage, setbacks, and parking improvements for the site. Calculations for these entitlements shall be based on the following tables:

Table 9.1.13-1 Density/Intensity Allowance Table			
Zoning District	Additional Allowance	Maximum Units/Acre	FAR
RH	15%	46	n/a
RM, RM-W	20%	25	n/a
RL, RL-W	25%	8.75	n/a
D, DT, DW	n/a	n/a	0.5 FAR+10' height set back 10' along street facade
NMU, NAC, NAC-R, BST	n/a	n/a	0.5FAR+10' height set back 10' along street facade

Table 9.1.13-2 Lot Coverage Allowance Table		
Zoning District	Additional Allowance	Maximum Lot Coverage
RH, NMU, NAC, NAC-R	15%	92%
RM-W	20%	72%
RM	20%	48%
RL, RL-W	25%	44%

~~(b)~~ Major and Minor PUD shall be treated as follows:

- ~~1. "Minor" PUD shall be exempt from the standards of Article 11, but shall be subject to the requirements of this article and all development standards as otherwise required by this ordinance.~~
- ~~2. "Major" PUD as described in Sec. 11.1.3, shall be subject to the provisions of this Article and Article 11, Planned Unit Development. No additional allowances under the provisions of this article shall be permitted for the construction of the required inclusionary units. Inclusionary units in any major PUD shall be provided in accordance with Table 9 A.~~

~~(c)~~(b) Other possible allowances for the provision of Inclusionary Units may include:

1. A waiver of up to 50% waiver of parking spaces as outlined in Article 8, Sec. 8.1.14,
2. A waiver of a portion of the impact fees associated with the Inclusionary units, pursuant to the Art. 3, Part 3 Impact Fee Administrative Regulations.

~~(d)~~(c) The allowances provided for herein may be declined at the option of the applicant;

~~(e)~~(d) With the approval of the DRB, ~~applying conditional use criteria,~~ units added to a project as market rate units may be substituted by nonresidential uses wherever such nonresidential uses are otherwise permitted in the district where the project is located. Approved substitution for nonresidential uses shall occur at the following rate: 1 market-rate dwelling unit = 1,500 square feet nonresidential space

~~(f)~~(e) All provisions of Sec. 9.1.9-8 through 9.1.12-11 shall apply, without exception, to any inclusionary units that are constructed.

Sec. 9.1.1413 Off-Site Option

Unchanged – re-numbered only.

Sec. 9.1.1514 General Requirements for Inclusionary Units

All covered projects must comply with the requirements set forth below.

- (a) In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the non-inclusionary units of the project;
- (b) Inclusionary units may differ from the market units in a covered project with regard to interior amenities and gross floor area, provided that:
 - 1. These differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the project's units; and
 - 2. These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the project's units; and
- (c) The gross floor area of the inclusionary units is not less than the following minimum requirements, unless waived by the DRB using the following criteria:
 - 1. All of the units being provided with a specific bedroom count are smaller than the standards outlined below;
 - 2. More than the required number of inclusionary units are provided on site, not all shall be subject to bedroom mix and size requirement; or,
 - 3. The units have an efficient floor plan (meaning that less than 5% of the square footage is devoted to circulation) and the bedroom size(s) is a minimum of 144sf or 12'x12'.

One bedroom	750	square feet
Two bedroom.....	1,000	square feet
Three bedroom.....	1,100	square feet
Four bedroom	1,250	square feet

- (d) Upon demonstration of inability to sell units to income eligible residents earning 75% of the median income, the Manager of the HTF may extend income eligibility to allow priority in the sale of inclusionary units to households earning as much as eighty percent (80%) of median income, adjusted for household size and to households residing in Burlington at the time that these units are offered for sale or lease;
- (e) Except for household income limitations as set forth herein, occupancy of any inclusionary unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project unless required under federal law, e.g. local use of the Low Income Housing Tax Credit, or in conflict with the stricter bylaws of the designated housing agency (see [Sec 9.1.1615\(e\)](#)); and
- (f) The final calculations for the number of inclusionary units shall be determined by the ~~Manager DRB~~ prior to the issuance of the zoning permit. If there is any change in the project due to sales prices for these units that increases the number of inclusionary units required, such modifications shall be determined by the Manager and communicated to the administrative officer prior to the issuance of a certificate of occupancy for the covered project. The rental or sales price of the

inclusionary units shall also be determined by the Manager prior to the issuance of a certificate of occupancy.

Sec. 9.1.1615 - Sec. 9.1.17-16

Unchanged – re-numbered only.

Sec. 9.1.18-17 DRB Review of Proposal for Phasing

Proposals for projects to be constructed in phases shall be reviewed as a component of the initial project review and shall be included in ~~DRB~~ any conditions of approval. A schedule setting forth the phasing of the total number of units in a covered project, along with a schedule setting forth the phasing of the required inclusionary unit(s), shall be presented ~~to the DRB~~ for review and approval as part of the permitting process, for any development subject to the provisions of this article. If phasing is not included as part of the review process, no phasing of the inclusionary units shall be allowed.

If a covered project is approved to be constructed in phases, the requirements of the following section shall be applicable to each such phase.

Comment [DEW1]: DRB review may not always be required – depends on other aspects of the proposed development

Sec. 9.1.1918 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy

Inclusionary units shall be made available for occupancy on approximately the same schedule as a covered project's market units, except that certificates of occupancy for the last ten percent (10%) of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units; except that with respect to covered projects to be constructed in phases, certificates of occupancy may be issued on a phased basis consistent with the conditions of approval set forth ~~by the DRB~~ in **Sec. 9.1.1817**.

Sec. 9.1.2019 - Sec. 9.1.2120

Unchanged – re-numbered only.

PART 2: HOUSING PRESERVATION AND REPLACEMENT/DEMOLITION AND CONVERSION

Sec. 9.2.1 – Sec. 9.2.2

Unchanged

Sec. 9.2.3 ~~Conditional Use Approval~~

Notwithstanding any other provision of this ordinance, a person who proposes to remove, demolish, or to convert to a nonresidential use, any housing unit or units, in a zone where such a use is otherwise permitted, must ~~first obtain conditional use approval from the development review board~~ pursuant to ~~the all applicable~~ provisions of ~~Article 3, Part 5~~ this Ordinance.

In addition to the permit application requirements contained in Article 3, the applicant must also submit:

- (a) A statement certifying the number of housing units to be demolished or converted to a nonresidential use and the number of bedrooms existing within each of these units; and
- (b) A list containing the name of each tenant currently residing in the housing units to be demolished or converted, as well as verification by affidavit of compliance with the tenant notice requirements of this section.

Sec. 9.2.4 Relocation Requirements; Notice and Relocation Costs

Unchanged

Sec. 9.2.5 Housing Replacement Requirement

In addition to all other applicable requirements ~~for a conditional use of this Ordinance, the DRB shall require, as a condition of approval, that~~ an owner shall replace any housing units that are demolished or converted to a nonresidential use.

~~An owner shall meet the replacement requirement by creating new housing units pursuant to a plan approved by the DRB. The plan shall be in accordance with the provisions of this Article.~~ Replacement units may be provided by the owner or by the owner's designee fully in any of the following ways:

- a. New Construction. Construction of housing units within a new structure or new addition;
- b. Residential Conversion. Conversion of all or a portion of a nonresidential building to residential use; or,
- c. Subsidy. Creation of affordable housing units that have not been affordable to low-income households for the twenty-four (24) months preceding the date of application for ~~conditional use~~ approval.

An applicant may use any of the three methods to partially fulfill their replacement requirements, until the total requirement is met, ~~subject to approval by the DRB~~.

Sec. 9.2.6 – Sec. 9.2.8

Unchanged

Sec. 9.2.9 Relief

Any owner who has applied for ~~conditional use~~ approval for demolition or conversion of a housing unit or units may apply to the DRB for relief from the housing replacement requirements of **Section 9.2.5**. Such relief may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

- (a) The literal interpretation and strict application of the housing replacement requirement would be impossible for the owner;
- (b) The requested relief would be consistent with the spirit and purpose of this Article; and
- (c) The requested relief does not constitute a grant of special privilege inconsistent with the limitations upon similar properties.

The DRB must make positive findings on each of the three (3) criteria above in order for any such adjustment to be valid.

Sec. 9.2.10 Exemptions

This article, ~~except for Section 9.2.4 pertaining to conditional use approval,~~ shall not be applicable to:

- (a) – (d) *Unchanged*

PROPOSED: ZA-15-01 Conditional Use Review
Part 3 Planned Development

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

- removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment and the necessity of having Major and Minor PUD’s (Sec. 11.1.3);
- disconnecting PUD’s from Subdivision review in cases where no actual subdivision of land is being proposed (Sec. 11.1.3); and,
- clarifies the scope of flexibility for development standards afforded by the PUD Review process (Sec. 11.1.4, 11.1.5 and 11.1.6).

ARTICLE 11. PLANNED DEVELOPMENT
PART 1. – PLANNED UNIT DEVELOPMENT

Sec. 11.1.1 – Sec. 11.1.2

Unchanged

Sec. 11.1.3 General Requirements and Applicability.

Any development involving 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 where not otherwise permitted, may be permitted as a PUD subject to the provisions of this Article.

A planned unit development may be permitted subject to minimum project size as follows in the following districts:

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

1. Subject to Conditional Use Review pursuant to Art 3, Part 5 ↓

Sec.11.1.4 Modification of Regulations.

With the approval of the DRB after a public hearing, the following modifications of the requirements of the underlying zoning may be altered within a planned unit development:

Deleted: Sec. 11.1.3 Major and Minor Planned Unit Development¶

A minor Planned Unit Development shall include any development consisting of:¶
 5 or more units in a single structure, prompting the requirements of **Article 9**. Inclusionary and Replacement Housing.¶
 redevelopment of existing carriage houses and other out-buildings meeting density of the underlying zoning district; ¶
 development of accessory units in a detached structure.¶
 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 lots, tracts or parcels of land to be developed as a single entity subject to the provisions of **Sec. 11.1.4** below shall be considered a major PUD and shall be subject to the review processes and requirements as defined under this Article.¶

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Commented [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

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 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.

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 Planned unit developments are not authorized for non-residential uses except as provided for under Sec. 11.1.7.

Deleted: 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.

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Deleted: and subject to the limitations of **Sec. 11.1.6**.

- ~~density, frontage, lot coverage, and setback requirements, may be met as calculated across the entire project rather than on an individual lot-by-lot basis;~~
- ~~required setbacks may apply only to the periphery of the project rather than on an individual lot-by-lot basis;~~
- ~~more than one principal use and more than one principal structure may be permitted on a single lot, and,~~
- ~~buildings 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 application submission and such modifications shall be subject to the provisions of Sec. 11.1.5 and Sec. 11.1.6.

Sec. 11.1.5 Approval Requirements.

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

- (a) ~~The minimum project size requirements of Sec 11.1.3 shall be met;~~
- (b) The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Art. 6;
- (c) The project shall meet the requirements of Article 10 for subdivision review where applicable;
- (d) ~~The minimum setbacks required for the district 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 requirements of the underlying zoning district ~~have been~~ met as calculated across the entire project;
- (g) ~~Any proposed accessory uses and facilities shall meet the requirements of Sec. 11.1.6 below;~~
- (h) – (k) *Unchanged*

Sec. 11.1.6 Accessory Facilities.

- (a) A planned unit development may contain a building or buildings intended for non-residential uses such as but not limited to, 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) *Unchanged*

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- Deleted: dwelling
- Deleted: units
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- Commented [DEW5]: Is a reference to Sec. 11.1.4 above - the minimum "project" size, not the size of individual parcels being created.
- Moved down [1]: <#>The minimum setbacks required for the district shall apply to the periphery of the project;¶
- Deleted: <#>Lot coverage requirements of the district shall be met;¶
- Deleted: <#>¶
- Deleted: <#>parcel
- Deleted: <#> if the project is located in a RL or RL-W districts
- Moved (insertion) [1]
- Deleted: shall apply to
- Deleted: dimensional, density, and use
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- Deleted: be

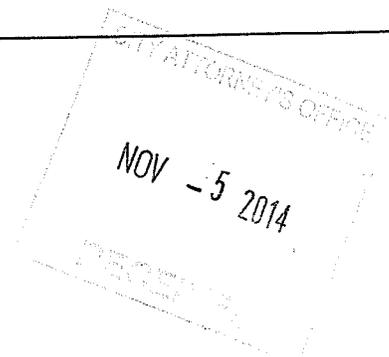
- Deleted: 7
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State of Vermont
 Department of Public Service
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 Montpelier, VT 05620-2601
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 [tdd] 800-734-8390

November 3, 2014



Susan M. Hudson, Clerk
 Vermont Public Service Board
 112 State Street
 Montpelier, VT 05620-2701

Re: AT&T § 248a Limited Size and Scope Application – Burlington, Lakeside Ave. – Site No. VT4406

Dear Mrs. Hudson:

On October 13, 2014, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) applied to the Public Service Board (Board) for a certificate of public good (CPG) for a modification of limited size and scope, pursuant to 30 V.S.A. § 248a(b)(3). AT&T proposes to install telecommunications antennas and equipment on an existing smokestack and to install an equipment shelter within a complex that includes a 200,000 square foot building and parking facilities at 128 Lakeside Avenue in Burlington, Vermont (the Project). The Department of Public Service (Department) reviewed the application and hereby submits comments to the Board on the question of whether the Project raises a significant issue with respect to the criteria in § 248a(b)(3) or (c)(1)-(3) for a project of limited size and scope.

The application, supporting testimony, and exhibits show that the Project will consist of the following modifications within an approximately twelve-acre paved commercial complex:

- 1) On the existing smokestack that is part of the heating plant of the commercial building, installation of nine new panel antennas, each measuring approximately 92" x 15". Six antennas will be mounted at a centerline height of approximately 114' aboveground level (AGL), and three will be mounted at approximately 124' AGL;
- 2) Installation on the smokestack of eighteen new remote radio head units, six new A2 modules, and three new surge arrestors, mounted between approximately 110' AGL and 128' AGL;
- 3) Northwest of the large commercial building and smokestack, between an existing Verizon shelter and a relocated shed, installation of an equipment shelter. The equipment shelter will contain the antenna operating equipment, two HVAC units, and a 50kW emergency backup generator;
- 4) Underground utilities between the smokestack and equipment shelter for approximately 1800 square feet of earth disturbance; and



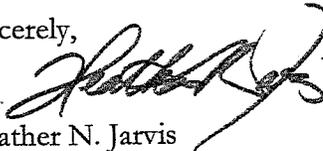
- 5) Installation of ancillary improvements and appurtenances, including a GPS antenna, cables and hardware necessary for the operation of the facility.

The Department determines that the Project qualifies as a modification of limited size and scope pursuant to 30 V.S.A. §§ 248a(b)(3) and does not raise a significant issue with respect to any of the (c)(1)-(3) criteria. The existing facility does not exceed 200 feet in height. The modifications and ancillary improvements do not increase the width of the existing support structure by more than 20 feet. Modifications to the facility will not disturb more than 10,000 square feet of earth. The Project will comply with the requirements of the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*.¹ The application includes a structural analysis report stamped by a professional engineer, which includes recommendations of reinforcements, repairs, and improvements to ensure that for the proposed loads the smokestack meets the ASCE/SEI 7 standard and the American Concrete Industry requirements and specifications for masonry structures.² The Project will produce radio frequency radiation emissions well below the Federal Communications Commission maximum permissible exposure limits.³

As a project of limited size and scope, other criteria under § 248(c)(1) are conditionally waived except those relating to the project's impact on aesthetics, historic sites, and rare and irreplaceable areas. The Project involves adding antennas and equipment to an existing smokestack and installing an equipment shelter. The photographic simulations show that the antennas and equipment will be finished to match the brick of the smokestack."⁴ There will be no undue adverse effects on aesthetic, historic, or other resources. AT&T provides testimony, an Agency of Natural Resources map, and excerpts from the NEPA Screening Report in support of its assertion that there will be no undue adverse impact on aesthetics, historic sites, or other environmental criteria under § 248a.⁵ The Department is not aware that anyone has filed comments averse to the Project. Today the Department received the City of Burlington's (Kim Sturtevant, Esq.) "Notice to Appear and Participate" but is not aware of the City's objection, if any, to the Project.

Pursuant to AT&T's CPG to provide commercial mobile radio services in Vermont, this Project is part of AT&T's undertaking provide Long Term Evolution technologies to increase the capacity and speed of its wireless network in the state. The Project will promote the general good of the state and will further state telecommunications policy and planning goals, pursuant to 30 V.S.A. § 202c(b). The Department recommends that the Board, without further investigation or hearings, issue an order granting a CPG.

Sincerely,



Heather N. Jarvis
Telecommunications Special Counsel

c: Kane H. Smart, Esq., Downs Rachlin Martin PLLC

¹ Project Narrative at 2, Tab 6B-1.

² Structural Analysis Report at 1-2 and 9, Tab 6B-7.

³ Maximum Permissible Exposure Study, Tab 6B-6.

⁴ Photographic Simulations, Tab 6B-3.

⁵ Project Narrative at 3-7; NEPA Screening Report, Tab 6B-8; and ANR Resource Atlas Map, Tab 6B-11.

PLANNING COMMISSION

January - December 2015
Regularly Scheduled Meetings

Date	Day	Time	Location
January 13, 2015	Tuesday	6.30pm	Conference Room 12
January 27, 2015	Tuesday	6.30pm	Conference Room 12
February 10, 2015	Tuesday	6.30pm	Conference Room 12
February 24, 2015	Tuesday	6.30pm	Conference Room 12
March 10, 2015	Tuesday	6.30pm	Conference Room 12
March 24, 2015	Tuesday	6.30pm	Conference Room 12
April 14, 2015	Tuesday	6.30pm	Conference Room 12
April 28, 2015	Tuesday	6.30pm	Conference Room 12
May 12, 2015	Tuesday	6.30pm	Conference Room 12
May 26, 2015	Tuesday	6.30pm	Conference Room 12
June 9, 2015	Tuesday	6.30pm	Conference Room 12
June 23, 2015	Tuesday	6.30pm	Conference Room 12
July 14, 2015	Tuesday	6.30pm	Conference Room 12
July 28, 2015	Tuesday	6.30pm	Conference Room 12
August 11, 2015	Tuesday	6.30pm	Conference Room 12
August 25, 2015	Tuesday	6.30pm	Conference Room 12
September 8, 2015	Tuesday	6.30pm	Conference Room 12
September 22, 2015	Tuesday	6.30pm	Conference Room 12
October 13, 2015	Tuesday	6.30pm	Conference Room 12
October 27, 2015	Tuesday	6.30pm	Conference Room 12
November 10, 2015	Tuesday	6.30pm	Conference Room 12
November 24, 2015	Tuesday	6.30pm	Conference Room 12
December 8, 2015	Tuesday	6.30pm	Conference Room 12

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
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Jennifer Wallace-Brodeur
Vacant, Youth Member*



Burlington Planning Commission Minutes

Tuesday, October 28, 2014 - 6:35 pm

PC Present: L. Buffinton, H. Roen, J. Wallace-Brodeur, Y. Bradley, A. Montroll, B. Baker, E. Lee

Absent: Y. Bradley

Staff: D. White, S. Thibault, E. Tillotson

I. Agenda

Added Report of the Director as item 2.5.

II. Public Forum

Brian Lowe is here from the Mayor's Office just to listen.

II.5 Report of the Director

- Welcome to Youth Member Holly Ransom.
- Zoning Clerk Nic Anderson is leaving for a position as Sustainable Transportation Coordinator for Champlain College. This is a good opportunity for him, the Planning & Zoning Office is in state of mourning.
- Last night the City Council held a special public meeting to address permit reform at which there were about ten different speakers. People are interested in streamlining the process. Staff will provide an update of changes made during the last several years.
- The urban Agriculture amendment was approved by the Commission a while back. It had been on hold for more information from the State Board of Health. The City Council meets this week Thursday at 5:30pm to discuss how zoning and humane treatment dovetail.
- Next week Thursday, a number of the City Staff are taking a field trip to Portland Maine to learn about some of their best practices.

Update from the Comprehensive Planner, Sandrine Thibault

- A small size flyer on parking in the downtown, just made available today is distributed to all Commission members present. It details the location of the new electronic meters and other changes as of November 1st. The parking studies for downtown and residential parking are under way and there is a meeting November 19 to hear public feedback.
- PlanBTV South End is moving ahead full speed. She and the Director are extremely busy having just received the market analysis to review, and anticipate another study report on transportation, stormwater, brownfields and land use in mid-November. The Consultants for the second phase of the South End Project, Goody Clancy from Boston, were in town a couple of weeks ago during which time they met with staff, some stakeholders, SEABA, the Ward 5 NPA, and other interested parties. There is a meeting this Friday morning, at The South End Kitchen, with the focus on the artist community to forge collaboration for community involvement and engagement in the planning process.
- November 21st and 22nd, there will be a south end crawl which will take place in many different locations, involving businesses and artist studios, to encourage in depth engagement of the

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public for this project and to gather input about possible avenues to narrow the modes of approach to the study. There will be much more to come.

D. White: There are some misconceptions that the City is already making a plan which is unfounded and the Commission and Department need to dispel this feeling. Planning hasn't started yet. Framing of right questions and gathering input, how to proceed, and the focus of the outcome are all on going conversations.

III. Proposed Zoning Amendment

Subdivision and Conditional use Review Changes

D. White: There are three parts to this zoning amendment. Since the beginning of the discussion in February, the constant theme has been how we simplify the process.

The Zoning Ordinance has evolved significantly over last couple of decades and as a result the process has become more robust. Taken together this is an attempt to delete redundancy and duplication of effort. At this point the permitting process for these types of permits is time consuming and sometimes the review criteria have no relevancy to the ordinance. Consequently there are three proposals:

1. Disconnect conditional use review from projects that don't require review.
2. Revise to focus more clearly on conditional use that may need more examination.
3. Clarify the scope of conditions that can be imposed.

Inclusionary housing, replacement housing, the institutional parking plan, subdivisions and PUDs are all not conditional uses.

A. Montroll: These would all still be reviewed if needed, just not as conditional use.

D. White: Yes, there would be some minor changes since the standards have been rewritten. Major impact is a separate subject which will be discussed separately at a later time. The review process is far reaching with a cumulative impact which is incredibly difficult to get your arms around.

A. Montroll: Has the DRB, in the past, used this in any meaningful way?

D. White: No not that I know of. The last item in this section pertains to functional family and relocating it here is where it belongs.

E. Lee: It seems unenforceable.

D. White: It will depend on how it is structured; the language will force the floor plan of the unit, not new language. Specifically deals with issues re: article 9, inclusionary housing. Article 9 has had all references to inclusionary housing removed. Particular to inclusionary housing, the city has had inclusionary regulations since the early 90s. Probably about 2005, the Vermont legislature changed the statute, and at that point, it was only enabled in case of subdivisions and PUDs. Planning and Zoning was forced to have major and minor PUDs as a consequence.

L. Buffinton: Under inclusionary requirements, gross floor area requirements seem too large, requirements should be lowered.

D. White: At letter A, PUD major and minor is removed. The regulations addressing accessory buildings have been around since before 01.01.2007. These regulations need to be relocated to the residential accessory section. The PUD ordinance allows application of coverage and setback requirements. PUD regulation is a powerful tool in development, setbacks and density lot coverage.

J. Wallace-Brodeur: This is the first time this has all made sense to me. It is a great improvement in restructuring and she fully supports this.

D. White: The amendment can now be scheduled for a public hearing.

A. Montroll: When will the complete version be available?

D. White: It will be available at the next meeting.

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H. Roen: On page 3, the first section, renewable energy resources are removed. Is this addressed somewhere else in ordinance?

D. White: It is still included as much as it can be and is addressed in another section of the ordinance area to encourage and support this concept.

IV. Downtown Form-Based Code Review Process Discussion

D. White: The City Council has approved a resolution a couple of weeks ago with 10 sponsors to show consensus on the intent of the FBC. There are two choices, those being to create something entirely new, or reinforce the existing pattern and take care of infill. South Burlington is doing something completely new. Burlington is reinforcing what we have and creating infill. The Planning Commission and the City Council are working together toward this common goal. The proposal to create a joint committee was endorsed by City Council with a request that three Councilors and three Commissioners work together and come back to the Commission and the City Council by the first of April. Y. Bradley has asked A. Montroll, J. Wallace-Brodeur, and E. Lee to serve on the joint committee and they have agreed.

S. Thibault: These will be public meetings so anyone can attend and the anticipation is that there will be at least two meetings a month.

D. White: We are very close to having another draft back from TPUDC. The plan is to start testing this draft immediately to see how it works.

V. Committee Reports

Ordinance Committee – meets next Thursday.

LRPC – will be scheduled soon to discuss planBTV South End.

VI. Commissioner Items

None

VII. Minutes/Communications

On a motion by A. Montroll, seconded by J. Wallace-Brodeur, the Commission unanimously approved minutes from September 23 (as amended) and October 14, 2014.

VIII. Adjourn

On a motion by L. Buffinton, seconded by E. Lee, the Commission unanimously adjourned at 7:44 pm.

B Baker, Vice Chair

Date

E Tillotson, recording secretary

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