

Burlington Planning Commission

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MEMORANDUM

TO: Jane Knodell, Council President
Burlington City Councilors
Mayor Weinberger

FROM: Burlington Planning Commission

DATE: Tuesday, August 15, 2017

RE: Proposed ZA-18-01 planBTV: Downtown Code

The Burlington Planning Commission is very pleased to transmit to the Council *ZA-18-01 planBTV: Downtown Code* - a proposed amendment to the *Burlington Comprehensive Development Ordinance*. This is a significant milestone in the implementation of the *planBTV: Downtown and Waterfront Master Plan*, and one the Commission believes will greatly improve development opportunities and outcomes by emphasizing the intended physical form, character of place, and compatibility of uses. This amendment largely replaces all existing regulations pertaining to development in the Downtown, Downtown Waterfront, Downtown Transition, and Battery Street Transition zoning districts.

As you are aware, since Nov 2014 the Joint Planning Commission-City Council Form Based Code Committee has met more than 40 times, published 4 complete drafts, hosted a Speaker and Panel Event (Jan. '16), and held 4 neighborhood meetings (May '16). Before the formation of the Joint Committee, the Planning staff organized two ad hoc committees – one of external development professionals and stakeholders, and the other of internal department representatives – who reviewed a conceptual draft and offered substantial comments and recommendations over a series of 6 meetings. Finally, with the adoption of the Downtown Mixed-Use Core Overlay (ZA-16-14) last fall, we had the opportunity to test many of the prescriptive form and urban design standards on the proposed redevelopment of the Burlington Town Center. The result of all of this hard work is a comprehensive amendment to the zoning for the heart of our downtown and waterfront that:

- Implements the vision for the downtown and waterfront adopted in the *planBTV: Downtown and Waterfront Master Plan*;
- Will greatly facilitate opportunities to realize new infill development while taking advantage of strategic opportunities to redevelop under-developed sites; and,
- Modernizes the development regulations and review process to clearly describe the kind of new development we want, and make the process more predictable for applicants and citizen alike.

This proposed amendment is presented in two parts:

1. Part 1: The new Article 14 – planBTV: Downtown Code is presented as a single document proposed to be added in its entirety to the *Burlington Comprehensive Development Ordinance*, and,
2. Part 2: Includes changes to specific sections of the *Burlington Comprehensive Development Ordinance* for the purpose of incorporating the new article and establishing proper references.

Planning Commission Comments & Recommendations

It has been the Planning Commission's intent to transmit its recommendations to the Council as quickly as possible after receiving the draft from the Joint Committee on July 11. As a result, below are a series of comments and changes for your consideration that the Commission has raised and discussed as part of their deliberations, but have not been directly incorporated in the proposed ordinance text being transmitted to Council. Staff has continued to make minor wording, capitalization, and other typographical edits to the June 20 Joint Committee draft which are included in this transmittal.

Green Buildings

In previous discussions, the Council and Commission have agreed that green and high performance buildings (HPB) must play a role in the future of our downtown, and there must be a high, measurable standard and a mechanism to ensure compliance, to meet the goals of *planBTV* and community expectations. The DMUC Overlay included a requirement that any new and substantial redevelopment must be LEED Gold or equivalent. The Joint Committee sought to extend this requirement across the entire downtown and waterfront area by maintaining the standard at LEED Gold or equivalent applied to buildings greater than 25,000 sqft gross floor area in order not to overly burden smaller infill with the additional costs associated with green building certification and construction.

During both the Joint Committee and Planning Commission deliberations, important questions and concerns have been raised namely centered on:

- Emphasis on the USGBC's LEED as the standard: There are several other green and HPB standards available depending on the overall objective ("green" vs energy performance). While LEED offers many benefits, it is not a particularly strong performer when it comes to energy performance and comes at a very high cost just to process the paperwork for certification. While a mechanism for considering equivalents is provided, the text's use of LEED as the example strongly suggests it is preferred which could lead applicants away from systems that actually offer better building performance (particularly in terms of energy and water use) at a lower cost. A better approach would be to specify a range of options for green or HPB certification directly in the ordinance along with a mechanism for considering equivalents including local and state energy efficiency program incentives.
- District-energy ready: With the increasingly likelihood that the community's long-held desire for a district energy system could be implemented in the near future, consider adding a requirement for any new Buildings to be "District-energy ready." This does not obligate the property owner to actually participate, but ensures that the building systems are designed to at least accommodate a connection at some point in the future without substantial re-design.
- Application of a "Green" building requirement to smaller developments: The current draft requires buildings (and substantial modification) greater than 25,000 sqft gross floor area (roughly equivalent to a 6-story building on a 12,000 sqft lot) to comply with this standard. 25,000 sqft is on the low-end of the range typically found in other green building ordinances. While some of the costs associated with compliance will be relative to the size of the project, others are not and may place a significant financial burden on smaller infill projects and as a result run counter to the goals of the ordinance and planBTV. Increasing the triggering threshold for a green/HPB requirement could help assure that we are not overly burdening smaller infill developments.
- City must be a leader: If we are going to impose such a requirement on private development, the City should be leading the way with a "green" or HPB standard for all City buildings. While the Commission agrees, such a requirement should be citywide in its extent and is therefore beyond the scope of this amendment. The Commission encourages the Council to consider public green building requirements similar to those already in-place in Portland, ME, Rhode Island, St Paul MN, Dade Cnty FL, and others.

Recommendation:

As a result, we offer the following proposed revision to Sec. 14.4.3.b:

*“b) **Green and High Performance Buildings:** Any new Building over 50,000 GFA, or a major renovation involving an area over 50,000 GFA of an existing Building, shall be required to be built to an approved high performance Building standard as listed in this section, and be able to connect to any future district energy system without a substantial redesign and capital investment. This requirement is applicable in all Form Districts, and for the purposes of this section “major renovation” shall mean extensive alterations and/or improvements to the exterior shell, primary structural components, and/or core and peripheral MEP and service systems.*

Any Historic Building renovation, or any expansion where an Historic Building represents greater than 40% of the gross floor area, shall be exempt from this requirement but is otherwise encouraged to implement similar performance standards to the greatest extent possible.

The following Green and High Performance Building Standard systems shall be used to satisfy this requirement:

- a) Gold Certification or higher under a LEED for Building Design and Construction system as administered by Green Business Certification, Inc (GBCI);*
- b) Petal or Net Zero Energy Certification under the Living Building Challenge as administered by International Living Future Institute (INFI);*
- c) Passive House Certification as administered by Passive House Institute (PHI or PHIUS); or,*
- d) Another equivalent quantifiable high performance building system or standard as may be approved by the Planning Commission.*

In order to demonstrate and document compliance with this section, the applicant shall be required to provide the following:

1. At the time application:

- Documentation that the project has been registered with the appropriate certifying authority;*
- Documentation that the project will be designed and constructed in such a way that it could connect to any future district energy system without a substantial redesign and capital investment; and,*
- Documentation of the intended approach, performance criteria, credits, and/or elements of the project necessary to obtain the targeted certification level. This list is only binding as to the overall certification level to be achieved and not for any individual credits sought.*

2. Prior to release of a Final Certificate of Occupancy:

- Submission of the revised and final approach, performance criteria, credits, and/or elements of the project used to obtain the target certification level. This list is only binding as to the overall certification level to be achieved and not for individual credits;*
- Proof of a contract in place for 3rd party commissioning to be completed in the year following occupancy, and any other contracts as may be required by the certifying authority for energy and water use or other monitoring after at least one year of occupancy; and,*
- A written certification from the project owner, each design professional of record directly contracted by owner, and contractor, that to the best of their knowledge the project has been designed and constructed to meet the requirements of the selected high performance building program.*

Substantial Modification definition

During the Planning Commission deliberations an important question was raised regarding the definition of "Substantial Modification" – the feeling being that it may be overly broad and could be construed to include such modest things as carpet or lighting replacement if it affected >50% of the building square footage.

Current Draft:

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

The term is used as a trigger to bring non-conformities into compliance with the new code under Sec. 14.7.2. As a result, it needs to be applicable to changes that may involve a Building, Structure, lot, or Façade, and therefore simply linking to the assessed value of a building (per the current CDO) is insufficient.

Proposed Recommendation:

Substantial Modification: Any demolition, deconstruction, relocation, rehabilitation, or redevelopment of an existing Building, Structure, Frontage, Development, Improvement, Site, Lot, or other appurtenance thereto that, as determined by the Zoning Administrative Officer: (1) exceeds fifty percent (50%) or more of the pre-development assessed value of the Structure or Building; (2) involves an improvement or modification of fifty percent (50%) or more of the Lot Area exclusive of any Building or Structure; or, (3) modifies thirty percent (30%) or more of a Building Façade located within the maximum required Front Setback.

This term does not include normal maintenance or repairs or any modifications required to correct violations of state or local health, sanitary, or building code specifications which have been identified by a code enforcement or building official, and which are the minimum necessary to correct such violations.

Extent of Required Shopfront

During the Planning Commission deliberations, a question was raised regarding the geographic extent of blocks where a Shopfront Frontage Type is required. From one perspective we want all of our streets in the downtown to be active and engaging for pedestrians so why aren't all blocks included, and from another retail is under such pressure - and in some situations in decline - that prescribing a Frontage form that the market may be unable to fulfill could lead to well-designed but empty spaces.

The key question is "while Shopfronts might be a positive element on every block, where do they really need to be a requirement?" To answer this, it is important to understand:

- 1) All of the Frontage Types are intended to create more engaging and active streetscapes and sidewalks - just in varying degrees;
- 2) Shopfronts are still permitted and an option on any block within FD 5 and FD6; and,
- 3) Shopfronts do not require a retail use –they are a physical form, and could be used to host other activities such as cafes, bars, restaurants, services, hotels, and even offices provided the physical characterizes of the Frontage Type are in-place.

Recommendation:

Should the Council consider any changes to the geographic extent of the Shopfront requirement, the highest priorities for establishing continuous Shopfront Frontage are: Church (for obvious reasons) and Main, College, Cherry, Lake, Bank, and Pearl streets (because of their direct connections to the waterfront). The next tier of priority streets includes Winooski, St. Paul and Battery.

Clarifying the review process for Historic Buildings

During the Planning Commission deliberations, a question was raised regarding the review process and requirements regarding Historic Buildings. Sec. 14.6.5 of the proposed amendment address this in so far as ensuring any potential conflict between the required form and design standards and the ability to maintain the historic integrity of the building are resolved through the process of seeking Alternative Compliance from the DRB under Sec 14.7.3b).

However, the language of Sec. 14.6.5 remains ambiguous as to the actual review process to be undertaken (i.e. does it follow the new process for administrative review under the form based code or revert to the current process involving the DAB and DRB under the CDO?). The intention is that the review standards and decision-making process involving the DAB and DRB under the current CDO would continue to apply at least for now. The regulation of historic buildings and the resulting review process remains a very important issue to be carefully considered for revision, and the recommendations emerging from the Permit Reform Initiative provide an important direction to follow in order to make this aspect of the development review process more predictable.

Recommendation:

1. Sec. 14.6.5 should be revised to include a reference to the review process for receiving a Certificate of Appropriateness outlined in Art. 3 Part 2 of the CDO; and,
2. Sec. 14.7.1e) should be revised to add to both i and ii: "Applications involving an Historic Building shall follow the process for receiving a Certificate of Appropriateness in Art. 3 Part 2 of the CDO."

Conclusion

In conclusion, the Planning Commission strongly supports the adoption of this amendment creating Art. 14 planBTV: Downtown Code as an important tool to facilitate and guide redevelopment and new development in a way that implements the central objectives of the *planBTV: Downtown and Waterfront Master Plan*. In particular, the proposed amendment will significantly advance the following Municipal Development Plan policies:

- Encourage a healthier regional balance of affordable housing in each community, proximate to jobs and affording mobility and choice to low income residents.
- Support the development of additional housing opportunities within the city, with concentrations of higher-density housing within neighborhood activity centers, the downtown and institutional core campuses.
- Encourage mixed-use development patterns, at a variety of urban densities, which limit the demand for parking and unnecessary automobile trips, and support public transportation.
- Strengthen the Downtown with higher density, mixed-use development as part of the regional core while ensuring that it serves the needs of city residents, particularly those in adjacent neighborhoods.
- Incorporating urban design standards to ensure projects adhere to *planBTV's* core principles of walkability, connectivity, scale, density, diversity and mixed-use; and,

Thank you for the opportunity to offer our perspectives and comments on this important undertaking, and please feel free to call on us should you have any questions.