

## ***Burlington Form-Based Code – Frequently Asked Questions (1/14/15)***



### **What is a Form-Based Code?**

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

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

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

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

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

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

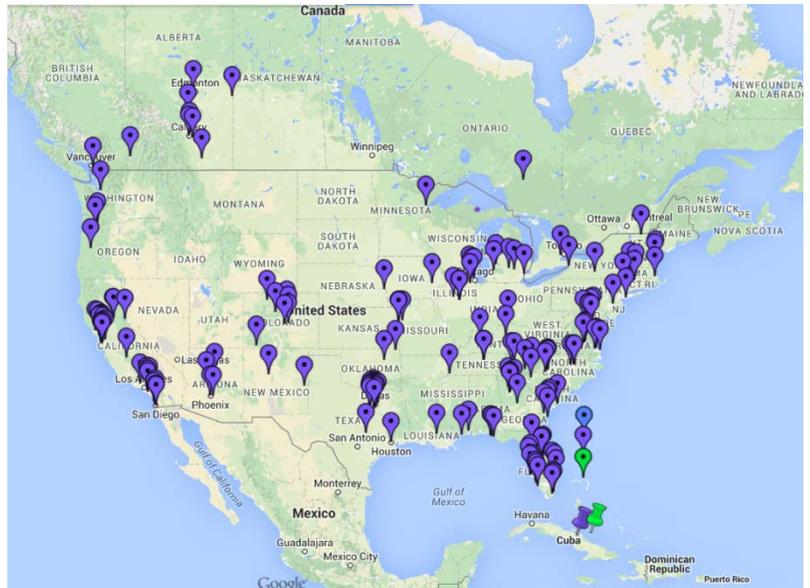
This approach contrasts with conventional zoning’s focus on the micromanagement and segregation of land uses, and the control of development intensity through abstract and uncoordinated measurements (e.g., FAR, dwellings per acre, setbacks, parking ratios, traffic LOS), rather than the creation of an integrated built form.

Fundamentally, communities are increasingly more concerned with how new buildings fit within the context of their existing development pattern rather than the actual use or density.

## Where-else are Form Based Codes being used?

Almost 280 adopted Form Based Codes are in place across the country with at least another 200 currently under development. Urban and rural, small and large communities are turning to a more form based approach to ensure that new development fits better into their existing development pattern or to transform auto-dominant places into pedestrian-friendly mixed use destinations. Examples include:

- Miami and Denver
- Cincinnati, Nashville, and Petaluma and Ventura, CA
- Flagstaff, AZ, Kauai, HI and Beaufort, NC
- Yarmouth ME, Newport, VT, and Portsmouth and Dover, NH



The concept is far from new however. Communities have struggled with a number of ways to regulate the form that new development takes for decades. Zoning that attempts to more directly consider physical form of development has been around for more than 30 years. Burlington's zoning regulations have been evolving towards being increasing form based since we first adopted "design review" standards in the early 1970's.

Many modern FBC's are derived from the *Smart Code* originally developed by Duany Plater-Zyberk & Company in the 2003 after more than two decades of research. Since that time it has been continuously updated with help from a variety of professionals from planning and development disciplines, and many other variations of form-based regulations have also been developed.

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

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

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

## Why are we doing this?

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

- Implementing the vision for the downtown and waterfront adopted in the *planBTV: Downtown and Waterfront Master Plan* in June 2013 by unanimous vote of the City Council.

- In so doing, we are seeking to facilitate opportunities to realize new infill development and taking advantage of opportunities to develop under-developed sites.
- Finally it's about modernizing the regulations and the review process to be more predictable for all users.

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

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

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

### **How does it relate to planBTV?**

The *planBTV Downtown & Waterfront Master Plan* articulates the community's vision and formal City policy for a future downtown and waterfront area in Burlington. One of the main recommendations of planBTV was to develop a new set of zoning regulations to help bring this vision to life. A form-based code is well suited for a mixed-use downtown area, and the Burlington FBC was developed with the goal of protecting what we already have as well as providing for some infill development opportunities on undeveloped sites. The *planBTV Downtown & Waterfront Master Plan* was unanimously adopted by the City Council to be part of the City's overall land use and development plan in June of 2013.

### **Who are/were the form-based code consultants?**

The [Town Planning and Urban Design Collaborative \(TPUDC\)](#) was hired to prepare the *planBTV Downtown & Waterfront Master Plan* as well as work with City staff on the creation of the new Form-Based Code. TPUDC's contract with the City has been completed and the remaining work is being undertaken by the City Planning staff. At an early stage of the work, City staff created two different focus groups – one comprised of City staff from various departments and the other of design and development professions - to help them in the development of the new FBC.

### **Who was invited in the focus groups?**

During the code development process, City staff worked with other city departments' staff as well as the "FBC Think Tank" which included local architects, landscape architects and for-profit and non-profit developers. The Think Tank's role was to be a sounding board on some of the proposed standards in the code to ensure that they were clear and ultimately worked to facilitate the type of development we have said we want. The role of staff from other City departments was to help ensure there was better coordination between other City regulatory requirements and processes.

### **At what point has or will the public have an opportunity to provide input?**

The most significant opportunity to provide public input into this process happened in the creation of the *planBTV Downtown & Waterfront Master Plan*. Over the course of more than 3 years, the development of this plan engaged and was responsive to thousands of people through dozens of meetings and events, online and in-person, through the media and the visual arts. The process was the most comprehensive, energetic, creative, inclusive and responsive planning effort Burlington has ever seen.

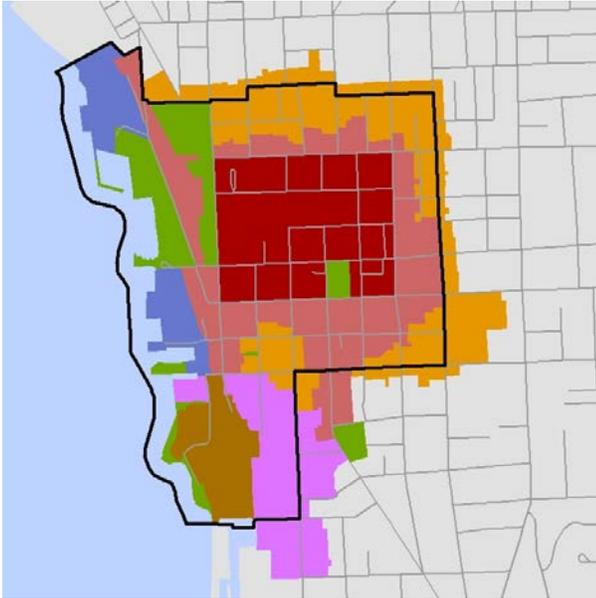
The *planBTV Downtown & Waterfront Master Plan*, adopted June 2013 by unanimous vote of the City Council, articulates the community's vision and formal City policy for a future downtown and waterfront area in Burlington. As a result, the thousands of comments from dozens of meeting are all being used to inform the development of the new code. Since the adoption of the plan, City staff has visited every Neighborhood Planning Assembly and met with several other groups, organizations and individuals to get additional input for the new regulations. The process of now developing the form based code is the tedious and very technical process of putting the vision of this plan into action.

However, several more opportunities for public input remain. A public draft was released for review and comment in November 2014 and is available for download on the Planning Dept's website (you can find a schedule [here](#)). At the same time the City Council unanimously adopted a resolution supporting the creation of the new form based code and its overall purpose and intent. They also joined the Planning Commission in forming a Joint Committee to review the proposed draft and make a recommendation regarding adoption by April 1, 2015. The meetings are all open to the public (you can find a schedule [here](#)), and opportunities for public comment are provided at each session.

Finally, once the formal adoption process for the form-based code is kicked-off, a series of public hearings – by both the Planning Commission and the City Council – will be held before any final decision is made by the City Council.

### What is the area involved?

The Form-Based Code is proposed to apply to the planBTV Downtown & Waterfront Area study area (the bold black line) with the incorporation of both sides of the streets that serve as boundaries. Outside of this area, the current zoning regulations will continue to apply.



### Why is there a part of the South End in the FBC?

The southern-most end of the *planBTV: Downtown & Waterfront Master Plan* study area (the eastern portion of the railyard and section of Pine St between ~Kilburn and Howard streets) overlaps with the northern-most portion of the planBTV South End study area. The overlap is intentional in order to ensure continuity between the planning processes for these two areas of the city. As the *planBTV: South End* planning process continues, we will be working to ensure that ideas and concerns from that process continue to inform the FBC in this area.

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

No. We aren't trying to create something new – a new community or radically expanded downtown center. As the *planBTV: Downtown & Waterfront Master Plan* says, we love what we have in Burlington and are trying to ensure that we maintain and expand upon an **existing pattern** of development. The standards in the FBC are based on the actual types, scale and pattern of existing development based on synoptic surveys conducted by TPUDC. We continue to use many of the existing regulatory standards found in the current zoning ordinance in many places where it works to support and further the existing pattern and scale of development.

However we also understand that there are limited opportunities to do something a little more, a little different where the historic pattern has already been disrupted or never really established itself. Here we are suggesting that there are places where slightly larger buildings can be developed without negatively impacting the existing scale and pattern of the city.

### **Do height bonuses apply to the FBC?**

No, height bonuses no longer apply under the FBC. Existing height bonuses have not proven to be an effective tool for encouraging new development given the amount of uncertainty involved. Instead, form-based codes by their very nature are more direct and explicit with what is allowed and what is not allowed, removing a lot of gray area and uncertainty in the development review process.

### **Are there any architects that have rendered what development would look like under the FBC?**

A group of local architects have been invited to test the code for us by choosing a site in the FBC area and designing a building following the Draft Code. Examples will be made available once completed.

### **Will views of properties up the hill be taken into consideration?**

The protection of individual private views from private property have never been protected under our zoning regulations and that doesn't change under the new FBC. However views from the public right-of-way and important civic spaces, and views of the City in general are considered when determining height limits within each Form District, and the scale and pattern of development along a public street.

### **At what point in the FBC process does the public have input on development decisions, and does this represent more or less public input than under the current ordinance?**

Currently nearly 94% of all applications for a zoning permit are reviewed administratively by the Planning staff. The remaining 6% (74 applications in FY2014) are reviewed by one or more public bodies with opportunities for comment and input from the public at a public meeting or public hearing with final decisions made by the Development Review Board (DRB).

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

The DRB, with advice as appropriate from the Design Advisory Board and Conservation Board, will continue to review the larger projects subject to Major Impact Review and uses subject to Conditional Use Review, requests for relief and Variances, and Appeals of any administrative decision. The DRB's review (and the associated public input) in these cases will not include building or site design, and instead will concentrate on the specific Major Impact, Conditional Use, Variance or Appeal criteria and necessary findings found in the current zoning regulations.

### **What moderates FBC's normative approach to building appearance to allow for the quirky multi-textured streetscapes that especially characterize the older sections of Burlington?**

We recognize that the form based requirements can be very restrictive and may not always work in every situation. We also don't want to stifle creativity – in-fact we want to encourage and support it. So flexibility is

built into the code. As such we include three opportunities to seek and grant relief from a specific standard are provided:

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