

CITY OF BURLINGTON

ORDINANCE _____

Sponsor: Planning Department;
Planning Commission
Public Hearing Dates: _____

In the Year Two Thousand Fifteen

First reading: _____
Referred to: _____

An Ordinance in Relation to

Rules suspended and placed in all
stages of passage: _____
Second reading: _____

COMPREHENSIVE DEVELOPMENT ORDINANCE--
Conditional Use; Inclusionary and Replacement Housing;
Planned Unit Development
ZA #15-02

Action: _____
Date: _____
Signed by Mayor: _____
Published: _____
Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

1 That Appendix A, Comprehensive Development Ordinance, of the Code of Ordinances of the City of
2 Burlington be and hereby is amended by amending Sections 3.5.2, 3.5.3, 3.5.6, 4.4.5, 9.1.5, 9.1.8 to 9.1.21,
3 9.2.3, 9.2.5, 9.2.9, 9.2.10, 11.1.3 to 11.1.7 thereof to read as follows:

4 Sec. 3.5.2 Applicability

5 (a) Conditional Use Review:

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

8 1. Any use identified under Article 4 and Appendix A – Use Table as a “Conditional Use” or
9 “CU;”

10 2. Any Special Use specifically identified as being subject to conditional use review under
11 Article 5, Part 3;

12 ~~3. Any application subject to Article 9 – Inclusionary and Replacement Housing;~~

13 ~~4. All applications for an Institutional Parking Management Plan pursuant to the provision of~~
14 ~~Article 8, Part 3;~~

15 ~~5. All applications subject to Article 10 – Subdivision; and,~~

16 ~~6. All applications subject to Article 11 – Planned Development.~~

17 (b) *Major Impact Review: As written.*

18 Sec. 3.5.3 Exemptions

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

21 ~~(a) Single family dwellings;~~

22 ~~(b)(a)~~ Temporary structures ~~that do not otherwise involve a conditional use;~~

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

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

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

29 Sec. 3.5.6 Review Criteria

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

33 (a) *Conditional Use Review Standards:*

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

37 1. ~~The capacity of E~~existing or planned ~~public community utilities, facilities or services are~~
38 ~~capable of supporting the proposed use in addition to the existing uses in the area;~~

39 2. The character of the area affected as defined by the purpose or purposes of the zoning
40 district(s) within which the project is located, and specifically stated policies and standards of
41 the municipal development plan;

42 3. ~~The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations~~
43 ~~greater than typically generated by other permitted uses in the same zoning district;~~

- 44 ~~3. Traffic on roads and highways in the vicinity evaluated in terms of increased demand for~~
45 ~~parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to~~
46 ~~complementing the flow of traffic and/or parking needs; if not in a commercial district, the~~
47 ~~impact of customer traffic and deliveries must be evaluated;~~
- 48 ~~4. The transportation system is capable of supporting the proposed use in addition to the existing~~
49 ~~uses in the area. Evaluation factors include street designations and capacity; level of service~~
50 ~~and other performance measures; access to arterial roadways; connectivity; transit~~
51 ~~availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety~~
52 ~~for all modes; and adequate transportation demand management strategies; and,~~
- 53 5. The utilization of renewable energy resources; and,
- 54 ~~4- 6. Any standards or factors set forth in existing City bylaws and city and state ordinances;~~

55 ~~In addition to the General Standards specified above, the DRB;~~

- 56 ~~6. Shall consider the cumulative impact of the proposed use. For purposes of residential~~
57 ~~construction, if an area is zoned for housing and a lot can accommodate the density, the~~
58 ~~cumulative impact of housing shall be considered negligible;~~
- 59 ~~7. In considering a request relating to a greater number of unrelated individuals residing in a~~
60 ~~dwelling unit within the RL, RL-W, RM and RM-W districts than is allowed as a permitted~~
61 ~~use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit~~
62 ~~may be granted unless all facilities within the dwelling unit, including bathroom and kitchen~~
63 ~~facilities are accessible to the occupants without passing through any bedroom. Additionally,~~
64 ~~each room proposed to be occupied as a bedroom must contain at least one hundred twenty~~
65 ~~(120) square feet. There must also be a parking area located on the premises at a location~~
66 ~~other than the front yard containing a minimum of one hundred eighty (180) square feet for~~
67 ~~each proposed adult of the dwelling unit in excess of the number of occupants allowed as a~~
68 ~~permitted use. All other green space standards must be observed.~~
- 69 ~~8. May control the location and number of vehicular access points to the property, including the~~
70 ~~erection of parking barriers.~~
- 71 ~~May limit the number, location and size of signs.~~

- 72 ~~10. May require suitable mitigation measures, including landscaping, where necessary to reduce~~
73 ~~noise and glare and to maintain the property in a character in keeping with the surrounding~~
74 ~~area.~~
- 75 ~~10. May specify a time limit for construction, alteration or enlargement of a structure to house a~~
76 ~~conditional use.~~
- 77 ~~10. May specify hours of operation and/or construction to reduce the impact on surrounding~~
78 ~~properties.~~
- 79 ~~10. May require that any future enlargement or alteration of the use return for review to the DRB~~
80 ~~to permit the specifying of new conditions.~~
- 81 ~~10. May consider performance standards, should the proposed use merit such review.~~
- 82 ~~10. May attach such additional reasonable conditions and safeguards, as it may deem necessary to~~
83 ~~implement the purposes of this chapter and the zoning regulations.~~

84 (b) *Major Impact Review Standards:*

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

- 89 1. – 12. As written.

90 (c) *Conditions of Approval:*

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

- 94 1. Mitigation measures, including but not limited to screening, landscaping, where necessary to
95 reduce noise and glare and to maintain the property in a character in keeping with the surrounding
96 area.
- 97 2. Time limits for construction.
- 98 3. Hours of operation and/or construction to reduce the impact on surrounding properties.

99 4. That any future enlargement or alteration of the use return for review to the DRB to permit the
100 specifying of new conditions; and,

101 5. Such additional reasonable performance standards, conditions and safeguards, as it may deem
102 necessary to implement the purposes of this chapter and the zoning regulations.

103 Sec. 4.4.5 Residential Districts

104 (a) – (c) As written.

105 (d) *District Specific Regulations:*

106 1. – 4. As written.

107 5. *Residential Density*

108 A.– B. As written.

109 C. *Residential Occupancy Limits.*

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

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

117 (i) If in a RL district, the dwelling unit also contains at least an additional two hundred fifty
118 (250) square feet and one (1) additional parking space per adult occupant in excess of
119 four (4); or,

120 (ii) If in a RM district, the dwelling unit also contains at least an additional two hundred
121 (200) square feet and one (1) additional parking space per adult occupant in excess of
122 four (4).

123 (iii) If in a RH district, the dwelling unit also contains at least an additional 150 square feet
124 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.

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) – (c) As written.

~~Sec. 9.1.8 — Conditional Use Approval~~

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

~~Sec. 9.1.9-8 – Sec. 9.1.12-11~~

As written – 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) As written.

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

~~0. “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.~~

~~0. “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.~~

~~(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.

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

~~(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.

~~(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

As written – re-numbered only.

Sec. 9.1.1514 General Requirements for Inclusionary Units

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

(a) – (d) As written.

(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.

186 Sec. 9.1.~~16~~15 - Sec. 9.1.~~17~~16

187 *As written – re-numbered only.*

188 Sec. 9.1.~~18~~17 ~~DRB~~ Review of Proposal for Phasing

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

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

197 Sec. 9.1.~~19~~18 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of
198 Occupancy

199 Inclusionary units shall be made available for occupancy on approximately the same schedule as a
200 covered project's market units, except that certificates of occupancy for the last ten percent (10%) of the
201 market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary
202 units; except that with respect to covered projects to be constructed in phases, certificates of occupancy
203 may be issued on a phased basis consistent with the conditions of approval set forth ~~by the DRB~~ in Sec.
204 9.1.~~18~~17.

205 Sec. 9.1.~~20~~19 - Sec. 9.1.~~21~~20

206 *As written – re-numbered only.*

207 Sec. 9.2.3 ~~Conditional Use~~ Approval

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

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

- 213 (a) A statement certifying the number of housing units to be demolished or converted to a nonresidential
214 use and the number of bedrooms existing within each of these units; and

215 (b) A list containing the name of each tenant currently residing in the housing units to be demolished or
216 converted, as well as verification by affidavit of compliance with the tenant notice requirements of
217 this section.

218 Sec. 9.2.5 Housing Replacement Requirement

219 ~~In addition to applicable requirements for a conditional use the DRB shall require, as a condition of~~
220 ~~approval, that~~ Notwithstanding that housing replacement in-and-of-itself does not require Development
221 Review Board review and approval, an owner shall replace any housing units that are demolished or
222 converted to a nonresidential use in accordance with and subject to all other applicable requirements of
223 the Comprehensive Development Ordinance.

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

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

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

235 Sec. 9.2.9 Relief

236 Any owner who has applied for ~~conditional use~~ approval for demolition or conversion of a housing unit
237 or units may apply to the DRB for relief from the housing replacement requirements of Section 9.2.5.

238 Such relief may be a downward adjustment of up to fifty percent (50%) of the owner's housing
239 replacement obligation if the owner establishes to the board's satisfaction that:

240 Balance of section as written.

241 Sec. 9.2.10 Exemptions

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

- 243 (a) – (d) As written.

244 ~~Sec. 11.1.3 — Major and Minor Planned Unit Development~~

245 ~~A minor Planned Unit Development shall include any development consisting of:~~

246 ~~(a) Five or more units in a single structure, prompting the requirements of Article 9. Inclusionary and~~
247 ~~Replacement Housing;~~

248 ~~(b) Redevelopment of existing carriage houses and other out-buildings meeting density of the underlying~~
249 ~~zoning district;~~

250 ~~(c) Development of accessory units in a detached structure.~~

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

253 ~~All other development consisting of one or more lots, tracts or parcels of land to be developed as a single~~
254 ~~entity subject to the provisions of Sec. 11.1.4 below shall be considered a major PUD and shall be subject~~
255 ~~to the review processes and requirements as defined under this Article.~~

256 ~~Sec. 11.1.4~~ General Requirements and Applicability.

257 ~~Any development involving multiple lots, tracts or parcels of land to be developed as a single entity, or~~
258 ~~seeking to place multiple structures and/or uses on a single lot where not otherwise permitted, may be~~
259 ~~permitted as a PUD subject to the provisions of this Article.~~

260 A planned unit development may be permitted subject to ~~the provisions of this Article~~ minimum project
261 size as follows in the following districts:

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

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

2. ~~The two-acre minimum may be waived by the DRB for the conversion of an~~
~~accessory structure existing as of January 1, 2007 to a residential use.~~

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

264 ~~11.1.7. A planned unit development must receive a certificate of appropriateness under the design review~~

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~~provisions of Article 3, Part 4, the development review standards of Article 6, and final subdivision plat approval in accordance with Article 10.~~

Sec.11.1.54 Modification of Regulations.

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

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

-Any proposed modifications of regulations shall be listed in a statement accompanying the ~~plat application~~ submission and such modifications shall be subject to the provisions of Sec. 11.1.65 and Sec. 11.1.67.

Sec. 11.1.56 Approval Requirements.

~~(a) Lot coverage requirements of the district shall be met;~~

~~(a) (e)~~ The minimum ~~parcel~~ project size requirements of Sec. 11.1.3 shall be met ~~if the project is located in a RL or RL-W districts;~~

(b) The minimum setbacks required for the district ~~shall apply to~~ have been met at the periphery of the project;

~~(d) (c)~~ The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Art. 6;

~~(e) (d)~~ The project shall meet the requirements of Article 10 for subdivision review where applicable;

(e) Density, frontage, and lot coverage requirements of the underlying zoning district have been met as calculated across the entire project;

(f) All other ~~dimensional, density, and use~~ requirements of the underlying zoning district ~~shall be~~ have been met as calculated across the entire project;

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296 (g)– (j) As written.

297 (k) Any proposed accessory uses and facilities shall meet the requirements of Sec. 11.1.6 below;

298 Sec. 11.1.76 Accessory Facilities.

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

303 (b) As written.

304

305 * Material stricken out deleted.

306 ** Material underlined added.

307

308

309

310 lb/KS/c: Ordinances 2015/Zoning Amendment ZA #15-02 re Conditional Use, Housing, PUD, Sec. 3.5.2, 3.5.3, 3.5.6, 4.4.5, 9.1.5, 9.1.8 to

311 9.1.21, 9.2.3, 9.2.5, 9.2.9 9.2.10, 11.1.3, to 11.1.7

312 3/5/15; 7/17/15

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