

Department of Planning and Zoning

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TO: Development Review Board
FROM: David White, Director; Scott Gustin and Mary O'Neil, Principal Planners
DATE: February 21, 2017
RE: ZP17-0662CA/MA; 75 Cherry Street (Burlington Town Center)

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: D **Overlay:** Downtown Mixed Use Core Overlay (DMUC) Ward: 3C

Owner/Applicant: Devonwood Investors, LLC (Donald Sinex) / PKSB Architects, PC



CORNER OF CHERRY AND PINE STREETS

Development Review Board Hearing dates: February 7, 14, and 21, 2017.

Request: 965,352 sf mixed use redevelopment of the existing Burlington Town Center mall site, bounded by Bank Street, Cherry Street, and extensions of Pine and St. Paul Streets with associated lot line adjustments.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 3 (Applications and Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking), Article 9 (Inclusionary and Replacement Housing), Article 10 (Subdivision).

Background Information:

This project underwent Sketch Plan review under the address of 49 Church Street (ZP16-1258SP) as follows:

Technical Review	January 14, 2016
Conservation Board	June 6, 2016
Design Advisory Board	June 14, 2016
Development Review Board	June 28, 2016

The formal application was received December 15, 2016, and reflects a revised plan, eliminating development on the Church Street (easterly) side of the collective parcels. The associated project folder reflects the more accurate identification as 75 Cherry Street, on which parcel the proposed redevelopment will occur. Note that project plans do not address necessary alterations to the exteriors of the adjacent remaining buildings and must.

The application will reconfigure parcels; address identification is anticipated to change with the opening of Pine Street and St. Paul Streets. Addresses are anticipated to be re- assigned in consultation with the E-911 Coordinator at construction start.

Previous zoning actions for involved properties are noted below.

75 Cherry Street

- **Zoning Permit 12-0391CA**; convert asphalt turnaround area to grass and landscaping on Cherry Street side of property. September 2011.
- **Zoning Permit 79-120**; pathways within the urban renewal area and drive into parking area on parcel 10 as marked to be paved. (Cherry Street circular drive.) April 1979.

49 Church Street (interior of assembled parcels, excluding Church St. frontage)

- **Non-applicability of Zoning Permit Requirements 10-0992NA**; interior fit up for salon. May 2010.
- **Zoning Permit 10-0495CA**; install new rooftop HVAC system for Baby Gap store. November 2009.
- **Zoning Permit 10-0191CA**; install 34 x 34 in wide and 32 high 5 ton AC system on roof of Mall and connect to existing duct work. September 2009.
- **Zoning Permit 07-126SN**; Four replacement parallel signs for Burlington Town Center (Bank St. and Church St. facades and 3 new freestanding signs (Church St.) Parallel Church St. signs to be lit with new reverse channel illumination; freestanding signs to be externally illuminated. No illumination proposed for Bank St. parallel signs. August 2006.
- **Zoning Permit 04-087**; install metal panels to match Old Navy storefront, patch and paint to match. August 2003.

- **Zoning Permit 03-268**; install non-illuminated canvas shed awning on Bank St. façade of Pottery Barn. December 31, 2002.
- **Zoning Permit 03-108**; installation of concrete landing and stairs with handrails at service entry for Burlington Town Center (Pottery Barn) on Bank Street. September 2002.
- **Zoning Permit 02-360**; installation of two black canvas awnings on Bank Street for J. Crew Store. March 2002.
- **Zoning Permit 02-361**; installation of projecting sign on Bank Street for J. Crew Store. March 2002.
- **Zoning Permit 02-328**; installation of two rooftop fan units for Empire Express restaurant. February 2002.
- **Zoning Permit 02-232**; installation of 2 parallel signs on Cherry Street at Gap elevation. Installation of 2 parallel signs on Cherry Street at Filenes elevation. November 2001.
- **Zoning Permit 01-488**; parallel sign for J. Crew store, frontage on Bank Street. June 2001.
- **Zoning Permit 01-483**; amend previously approved façade improvements for the Bank Street storefront portion of the existing Burlington Town Center retail mall. Tenant to be J. Crew. June 2001.
- **Zoning Permit 01-445**; renovations to the Bank Street façade of the mall. May 2001.
- **Zoning Permit 01-404**; amend previously approved façade changes for the Cherry Street and Church Street facades of the existing retail mall. April 2001.
- **Zoning Permit 00-494**; renovations to the Cherry, Bank and Church Street frontages of the existing mall. April 2000.
- **Non-applicability of Zoning Permit Requirements**; interior change of use of 600 sq. ft. to nail salon. September 1996.
- **Non-applicability of Zoning Permit Requirements**; interior continued use of 30,000 sq. ft. for offices. June 1995.
- **Zoning Permit 93-226**; fenestration renovations to Cherry Street façade of mall for the Gap. Includes combining two windows into one and the installation of a service door. November 1992.
- **Zoning Permit 92-160**; change of use within Burlington Square Mall from bank offices to fitness center, 16,110 sq. ft. October 1991.
- **Zoning Permit 87-119**; place 8 signs for Burlington Square on various facades of structures. December 1987.
- **Zoning Permit 84-331 / COA 84-067**; construction addition to Radisson Hotel (64 new rooms, net 57 rooms) with 467 space parking garage, new 68,000 sq. ft. department store on Bank Street (Porteous), 48,000 sq. ft. addition to Burlington Square Mall. July 1984.
- **Zoning Permit 81-821**; open access between Burlington Square Mall and Woolworths at lower level of mall. December 1981.
- **Zoning Permit 81-814**; remove staircase off atrium to plaza level. December 1981.

- **Determination of Non-Applicability**; new retail store – The Limited. September 1981.
- **Determination of Non-Applicability**; wall finishes, suspended ceilings, lighting, finish flooring & store fixtures. August 1981.
- **Zoning Permit 81-578**; erect five flagpoles and one kiosk at the entrance to the mall as per 4443 (c) approval of the Board of Aldermen on 6.15.1981. June 1981.
- **Zoning Permit 81-20**; (current use; vacant land); pave pathway currently used by (illegible) between Cherry and Pearl Street to ?; erect fence with gates along the northerly and southerly boundaries. October 1980.
- **Zoning Permit 81-190**; removal of existing stairs southeast corner of mall atrium. September 1980.
- **Zoning Permit 81-171**; construct a fountain in previously approved project (scope of services). September 1980.
- **Zoning Permit 80-900**; bring plaza beneath VFSL out flush with building for offices, west elevation.
- **Zoning Permit 80-755**; construct stairway connection between McDonalds and Proposed Burlington Square Expansion. March 1980.
- **Zoning Permit 595**; Church Street entrance of Burlington Square and add approx. 30,000 sq. ft. of retail and common area space extending from Church Street to easterly boundary parcel 3. May 1979.
- **Zoning Permit 80-710**; remove stairs northwest corner of atrium from atrium floor to balcony. January 1980.
- **Zoning Permit 79-92**; entrance to Burlington Square shopping mall and open plaza. April 1979.
- **Zoning Permit 79-17**; Church Street entrance of Burlington Square and add approx. 30,000 sq. ft. of retail and common area extending from Church Street to westerly boundary of parcel 3. May 1979.
- **Zoning Permit 79-150**; install a separate entrance to the restaurant with awning at the westerly end of Burlington Square to permit evening hours independently of hours of Burlington Square Mall. May 1979.
- **Zoning Permit 78-243**; retail fruits/vegetables/juices sold from movable cart in mall atrium. December 1978.
- **Zoning Permit 78-810**; Top of the Square Inc. to erect a 60' x 60' tent and a dressing tent on the Plaza level of the Burlington Square Mall, to be used for an assembly occupancy. May 1978.
- **Amended Certificate of Appropriateness, application #75-16**; change in design of car drive-in drop off point between Vermont Federal Savings and Loan Office building and parking garage. Specifically, double curb cut, larger turnaround to accommodate 12 cars instead of 5, landscaped island with stairwell leading to concourse level incorporated within island. March 1975.

- **Certificate of Appropriateness;** construction of a below grade retail mall with open plaza above as shown on the plans dated November 20, 1972 and revised on October 26, 1973 and prepared by the office of Mies Van der Rohe and Freeman, French, Freeman. March 1974.

The current application has been reviewed and received recommendations of approval from:

The Conservation Board January 9, 2017
 Design Advisory Board January 17 and 24, 2017

At its January 9, 2017 meeting the Conservation Board voted 7-1-1 to recommend approval of the application with a single condition strongly encouraging the applicant and the DRB to significantly increase the number of proposed bike parking spaces. No revisions to bike parking are evident in the most recent revised project plans, although, as presented the minimum bike parking requirements are met

Design Advisory Board voted 3-0-0 on January 24, 2017 to support the project. Their motion:

Based on a sketch plan review with the Applicant on June 14, 2016, and project reviews on January 17 and January 24, 2017, and as a result of design revisions that the Applicant has made to the project in response to previously expressed concerns by the DAB,

The Design Advisory Board strongly supports and recommends for approval the proposed mixed use redevelopment of the existing Burlington Town Center mall site, bounded by Cherry Street to the north, Bank Street to the south, the Pine Street extension to the west, and the St. Paul Street extension to the east,

With the following conditions and suggestions (with staff response and recommendation added):

DAB Comment	Staff Response and Recommendation
1. Provide a narrative to explain the methodology used to establish the average grade for purposes of demonstrating compliance with building height limits. The Average Grade may be calculated separately for each tower on Cherry Street and St. Paul Street.	While getting accurate numbers is important, regardless how the street grade is calculated it will make no difference in the compliance of the building height – all buildings are within the specified prescriptive limit. As a result, we cannot compel the applicant to specifically address this comment - it is purely advisory in nature.
2. In spite of Vermont State Statute 24 VSA 4413 (g)(1), the support structure for the rooftop PV array should be set back from the street-facing elevations to minimize the perceived height of	Pursuant to 24 VSA 4413 (b), there is no municipal zoning jurisdiction for solar collection devices that are

<p>the building, as it exceeds over the maximum allowed building height of 160' . We encourage the Applicant to revise the layout of the PV support structure in this manner in such a way that maintains an optimum amount of PV array.</p>	<p>also subject to review by the Public Service Board under Sec. 248.</p> <p>As a result, we cannot compel the applicant to specifically address this comment - it is purely advisory in nature.</p>
<p>3. While the inclusion of an enclosed Observation deck may not be permissible as an occupied space above the maximum building height under section 5.2.6. (b), we approve of it at this location due to its public benefit.</p>	<p>Sec. 5.2.6 (b) Exceptions to Height Limits specifically provides exceptions for a number of rooftop structures, that while required by the Building Code to be safe for human occupancy, are not intended for continuous occupancy and use as leasable space. Additionally, a vestibule enclosing the elevator entrance is a requirement of the Building Code.</p> <p>The proposed observation deck and associated enclosure clearly fits within this category of exceptions, and any continuous occupancy and use as leasable space could be specifically prohibited as a Condition of Approval with some allowance for temporary (30-days or less) special events.</p>
<p>4. The 10-foot setback required in section 4.5.8 (c)(2)(B)(iv)(a) is currently set at approximately Elevation 271.5', continuously around all four streetfront elevations. The elevation of this setback should include more "vertical changes" as required in 4.5.8 (c)(2)(B)(ii), or "vertical variation" as described in 4.5.8 (c)(2)(A)(i). The vertical variation in this setback should be of at least a full story, and should be expressed in locations to relate to the massing of the three distinct towers above, and/or introduced at the south elevation of the south tower facing Bank Street, which would also bring the requirement for a 3rd 4th or 5th story setback in 4.5.8 (c)(2)(B)(iv)(a), into closer compliance.</p>	<p>The requirement to include a 10' minimum setback within the first 60' of building height from the street is in compliance. The additional requirement for this setback to be located at either the 3rd, 4th or 5th story would appear to conflict with the minimum building height requirement of 3 stories in Table 4.5.8-1 as a setback of the 3rd story would create a building wall of only 2 stories. As a result, the 10' minimum setback within the first 60' of building height from the street should be the controlling standard in this section.</p>

	<p>While varying the location and treatment of the required setback is an option and is encouraged within the ordinance, we cannot compel the applicant to specifically address this comment - it is purely advisory in nature.</p>
<p>5. The top of the South Tower shall have an expression of the building's top involving a projection from the plane of the façade of at least 6 inches, as required in section 4.5.8 (c)(2)(B)(viii), and this expression shall occur at the top of the uppermost occupied floor, not at the top of the mechanical penthouse.</p>	<p>The standard requires an expression of the building's top involving a projection from the plane of the façade of at least 6 inches, but does not specify where on the top of this building such an expression should occur.</p> <p>As a result, we cannot compel the applicant to specifically address this comment - it is purely advisory in nature.</p>
<p>6. The interior parking layout shall be arranged to avoid dead-end driveways; to avoid parallel parking spots; and to allow for safe pedestrian passage from parking spaces to stairs and elevators, to fully comply with Article 8.</p>	<p>Requirements regarding the layout, design and circulation of parking remains subject to any associated requirements as may be specified in Article 6 or Article 8 provided they do not conflict with the new Sec. 4.5.8 (c) 4.</p> <p>As a result, the applicant is expected to take the steps necessary to address these comments.</p>

Recommendation: Major Impact and Certificate of Appropriateness approval, as per and subject to, the following findings and conditions.

I. Findings

Article 2: Administrative Mechanisms

Part 7: Enforcement

Sec. 2.7.8, Withhold Permit

A number of zoning permits have been approved for the subject property, and not all of them have final certificates of occupancy. Per this section, prior to issuance of a final certificate of occupancy for this proposed development, any zoning permits not yet closed out with final certificates of occupancy must be addressed. **(Affirmative finding as conditioned)**

Article 3: Applications and Reviews

Part 3: Impact Fees

Section 3.3.2 Applicability

Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact.

Impact Fees will be calculated for the gross new area, with credit given for existing area. The applicant shall confirm existing area (for a credit) and proposed area/uses for staff calculation of required Impact Fees. Projects containing newly constructed units that are affordable for households as described within this section are eligible for a waiver of impact fees for that portion of the project. The applicant is encouraged to consult with the Housing Trust Fund Manager to identify area and potential waiver allowance. **(Affirmative finding as conditioned)**

Section 3.3.8 Time and Place of Payment

Impact fees must be paid to the city's chief administrative officer/city treasurer according to the following schedule:

- (a) New Buildings: Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.*

(Affirmative finding as conditioned)

Part 5 Major Impact Review

(b) Major Impact Review Standards

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

See Section 6.0 of application materials. The project will manage stormwater runoff via filtering through a green roof, streetscape stormwater treatment features (pervious pavers and vegetated filtration planters) and attenuated storage in below grade holding tanks. See Sec. 6.1 of the project submission documents and CDO Section 5.5.3 for further discussion of stormwater management. See analysis of noise/dust, Section 5.5 and Figure 5-C, 5-D, and 6-A. **(Affirmative finding)**

2. Have sufficient water available for its needs;

The anticipated increase in domestic water demand for this project is roughly 100,000 gallons per day. Burlington Department of Public Works has provided communication assuring that there is sufficient reserved water supply available for this project. **(Affirmative finding)**

3. Not unreasonably burden the city's present or future water supply or distribution system;

The project site has existing waterline to the north and south with a new municipal waterline proposed in the new section of Saint Paul Street to the east. The new line will improve the downtown distribution system connectivity. **(Affirmative finding)**

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;

See Sec. 5.5.3.

5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;

The reconnection of St. Paul Street and Pine Street between Cherry and Bank will restore the original grid network in the downtown; providing an increase in circulation paths around the project site. This is within the downtown, where exists a dense network of sidewalks, paths, bicycle corridors and a street web that accommodate many opportunities for passage. Additionally, the recently completed Downtown Transit Center is immediately adjacent to the project site, completing the link to mass transit. Reference is made to the submitted Traffic Impact Study, and Section 6.5 of the submission (p. 18, narrative.) The Department of Public Works has provided a memorandum of the status of their review, dated February 14, 2017. We anticipate an updated status of that review February 21, 2017. **(No finding possible)**

6. Not cause an unreasonable burden on the city's ability to provide educational services;
See Section 6.6 in submission materials for enhanced discussion. An estimated number of school age children in this development is 18. This represents less than ½ % of the current enrollment and should not cause an unreasonable burden on the City's ability to provide educational services. Communication from Burlington School District confirms an ability to provide services to the anticipated new student count from this development. (Letter dated February 14, 2017.) If this project receives final approval, impact fees would be paid to help offset impacts on the school system. **(Affirmative finding as conditioned)**

7. Not place an unreasonable burden on the city's ability to provide municipal services;
All affected City Departments (Parks & Recreation, Fire, Police, Electric, CEDO, Planning & Zoning, School, and Public Works) have been involved in the review of this project and have participated in interdepartmental Technical Review (January 14, 2016). Ability to serve letters are required to assure departmental satisfaction of the plan. Assurance of services has been received from Burlington Electric Department, Burlington Telecom, Parks and Recreation, Burlington School Department, the fire marshal's office, Burlington Police Department and Vermont Gas. The Department of Public Works has provided a letter assuring adequate water and sewer capacity for the proposed development. Any new impacts on city services will be offset through the payment of required Impact Fees. **(Affirmative finding as conditioned)**

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;
The project site is a city block that was razed and reconfigured during Burlington's 1960's Urban Development plan. It was at that time that the segments of St. Paul and Pine Streets were eliminated in favor of a larger redevelopment site. The site is significantly disturbed and all original buildings removed earlier. Although the south side of Bank Street is within the Church Street Historic District and includes historic structures, the development parcel itself was assessed in 2003 and 2008 during preparation of the Church Street Historic District nomination and was deemed ineligible for listing on the National Register of Historic Places. The existing retail mall has no historic significance. The project area remains within an existing streetscape that includes large, multistory newer construction (100 Bank Street on the west, 150 Bank and 76 St. Paul (Keybank) on the east/southeast.) Development at 75 Cherry Street will restore sections of Pine and St. Paul Street (original circulation prior to Urban Renewal), returning the travel pattern consistent with its earlier configuration. There will be no shadow impacts on the south side of Bank Street from the proposed development. Existing historic structures along Bank Street, which have faced modern infill for 40+ years will remain undisturbed, unaltered and intact. New development will enhance the

streetscape, providing a more enjoyable pedestrian experience; restore original traffic circulation patterns and replace non-historic development that has deadened the street wall on Bank Street. The project proposes no undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, or scenic or natural beauty of the area.

(Affirmative finding)

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;

The proposed redevelopment is located within the city's downtown core; an area targeted for high intensity mixed use development. The project is consistent with many of the goals identified in *PlanBTV* and the Municipal Development Plan relative to concentrated growth in the urban core. City infrastructure improvements to support the project are linked to Tax Increment Financing (TIF), approved by the voters November 8, 2016. Impact Fees will be assessed to address additional related impacts of the redevelopment. **(Affirmative finding as conditioned)**

10. Be in substantial conformance with the city's municipal development plan;

An entire section of *PlanBTV* is dedicated to the redevelopment of the downtown mall and potential improvements. The plan calls for creation of additional downtown housing, reconnecting the street grid (cut off during urban renewal), new strategic infill, and improved street life particularly along Cherry Street and Bank Street. The proposed redevelopment addresses each of these targeted items. The application proposes 272 dwelling units in a variety of studio, 1-, and 2-, -bedroom units. Pine Street and St. Paul Street are to be reconnected. The proposed project is a comprehensive redevelopment of an entire city block; re-framed by Pine and St. Paul Streets. The redevelopment introduces a mix of uses and streetscape improvements on all four street frontages. Additionally, the proposal complements the Municipal Development Plan in other specific areas:

- *This area (Urban Renewal District) should be the site of intensive mixed-use development including housing, hotels, a small to medium sized conference center, and public space...mid-block pathways and public greenspace must be included to facilitate pedestrian and bicycle circulation north-south and east-west....the City may consider re-introducing one or more through streets within portions of the urban renewal area in order to ease the flow of traffic through downtown by improving north-south circulation. [MDP, Land Use Plan, Page I-14-15.]*
- *Strengthen the City Center District with higher density, mixed use development. [MDP, Land Use Plan, Page I-2.]*
- *Target new and higher density development into the Downtown, Downtown Waterfront, Enterprise District, Institutional Core Campuses, and Neighborhood Activity Centers [MDP, Land Use Plan, Page I-2.]*
- *Guide a higher proportion of future development into the city center and neighborhood activity centers [MDP, Natural Environment, page II-2.]*
- *Enhance the City's gateways and streetscapes {MDP, Built Environment, Page III-1.}*
- *Enhance the pedestrian experience by improving opportunities for pedestrian access and interaction throughout the city [MDP, Built Environment, Page III-2.]*
- *Ensure people with disabilities have equal access to the built environment [MDP, Built Environment, Page III -2.]*
- *Ensure building design and public amenities take into account Burlington's northern climate [MDP, Built Environment, Page III-2.]*

- *Promote and strengthen a mixed economy and work actively to retain existing businesses and jobs [MDP, Economic Development Plan, Page VI-2.]*
- *Invest in the necessary public improvements, particularly transportation, to strengthen the Downtown, both as a Regional Growth Center and as city neighborhood. [MDP, Economic Development Plan, Page VI-2.]*
- *Encourage a healthier regional balance of affordable housing in each community, proximate to jobs and affording mobility and choice to low income residents. [MDP, Housing Plan, Page IX-1.]*
- *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. [MDP, Housing Plan, Page IX-1.]*

(Affirmative finding)

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;

PlanBTV: Downtown & Waterfront calls for more housing downtown generally and specifically within the mall property. The submitted redevelopment application identifies a total of 272 housing units broken down as follows:

- 121 2 bedroom apartments
- 116 One bedroom apartments
- 35 studio apartments

Of the total, 55 units (24 2- bedroom, 24 1- bedroom, and 7 studios) will be permanently affordable. This constitutes more than 20% IZ. Satisfaction of the requirements of Article 9 will be required via a letter of Compliance from the city’s Housing Trust Fund Manager. **(Affirmative finding as conditioned)**

12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.

Residents of the new dwelling units and even employees within the new commercial spaces will likely utilize the city’s park and recreation facilities. If final approval is granted, park impact fees will be paid to help offset any related impact on park needs. An ability to serve letter has been obtained from the Department of Parks & Recreation. **(Affirmative finding)**

(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:

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.

A dust mitigation plan for construction work is included within the application. (Figure 6-A, submission materials.) Construction would involve equipment typical of mixed-use development in the area, and would not occur during the hours of 9:00 pm and 7:00 am which is prohibited by the Burlington Noise Code (Section 21-13.)

Trash, recycling and loading area are proposed within an interior bay accessed from Bank Street; a design feature that should minimize any potential noise impacts from those activities.

Mechanical equipment is proposed to be enclosed within a rooftop penthouse, significantly reducing the potential for noise impacts.

While the development is anticipated to increase traffic volumes (see Traffic Impact Study), the increase in noise is anticipated to be negligible (less than .2 dB) for traffic sources.

Noise monitoring will be on-going on site. (Figure 5-D.)

VHB's noise assessment concluded that the proposed development would not result in adverse noise impact according to Burlington's Noise Code as it relates to stationary sources. See Figure 5-c and 5-d of submission materials. **(Affirmative finding)**

2. Time limits for construction.

Construction and occupancy are anticipated to occur in multiple phases, with occupancy between March 2019 through June 2020. The applicant has submitted a revised construction phasing schedule (February 16, 2017) requesting a three-year construction/permit life. Additionally, the occupancy schedule is as listed below. Breaking the project into distinct phases will allow occupancy of buildings, or even sections within buildings, as they are completed while construction of others is ongoing. As outlined in that 2.16.2017 document:

- 1st Phase of occupancy: (9.1.2019)
 - ◆ UVMC Office Space
 - ◆ Parking Garage Levels P + 12
 - ◆ Cherry St + Bank Street improvements
 - ◆ Retail Space, Bank + Cherry Streets

- 2nd Phase of occupancy (6.30.2020)
 - ◆ Residential Tower, East Wing (103 units)
 - ◆ Residential L3, L4+L5 (61 units, includes inclusionary)
 - ◆ Bank Street office tower
 - ◆ Parking Garage Levels L3 + L4

- 3rd Phase of occupancy (8.1.2020)
 - ◆ Residential Tower; Center + West Wings (109 units)
 - ◆ Retail Space; St. Paul + Pine Streets
 - ◆ St. Paul and Pine Street improvements

Any phasing schedule is at the discretion of the DRB. **(Affirmative finding as conditioned)**

3. Hours of operation and/or construction to reduce the impacts on surrounding properties.

The applicant has requested an aggressive program with construction proposed to occur 7 days/week. Per that request:

- Proposed normal work hours
 - ◆ M-F 7:00 am – 7:00 pm
 - ◆ Saturday and Sunday 7:00 am – 4:00 pm.

- Proposed extended work hours
 - ◆ (4) 24- hour periods per month throughout the duration of the project utilized for long-duration (concrete finishing), large equipment hoisting (MEP) or other items that require longer than normal work hours.
 - ◆ Relieves daytime impacts during holidays, peak tourist and/or event periods.

Unless specifically requested and altered by the DRB, construction hours are typically limited Monday-Friday 7:00 am – 5:30 pm, and Saturday work hours for indoor work only. Construction is usually prohibited on Sundays. While it is understood that the applicant wishes to move steadily in the construction period (and limited Saturday hours may be considered) the Board has set a precedent for a prohibition on Sunday construction activities. Development for 7 days a week for three continuous years presents a heavy burden to downtown residents and businesses alike. Additionally, the house of worship north of the project may be negatively impacted by Sunday construction activity.

These requested hours of construction are at the discretion of the Board.

None of the proposed uses (retail, restaurant, office, daycare and residential) are conditional. Therefore, limitations of days and hours of operation are not warranted. **(Affirmative finding as conditioned)**

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

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time. **(Affirmative finding as conditioned)**

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.

This remains at the discretion of the DRB.

Article 4: Zoning Maps and Districts

The mall property is located within the Downtown Zoning District and within the Downtown Mixed Use Core Overlay, adopted by City Council September 29, 2016 and the voters on November 8, 2016.

Section 4.3.2 Overlay Districts Established

(h) A Downtown Mixed Use Core (DMUC) district.

Please see attached compliance checklist. (Available within revised packet of 2/16/2017.)

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(1) Downtown District (D)

The subject property is located in the Downtown (D) District. This zone is the primary urban center of Burlington. As noted previously, high intensity development with large, tall buildings and a diversity of uses is anticipated. Emphasis has been placed on creating pedestrian friendly streetscapes with human scale components. **(Affirmative finding)**

(b) Dimensional Standards & Density

See Compliance Checklist for DMUC Overlay, Section 4.5.8, below.

(c) Permitted & Conditional Uses

The proposed residential, retail (including restaurant), daycare and office uses are permitted in the Downtown zone. The size of the project triggers “major impact” review. **(Affirmative finding)**

(d) District Specific Regulations

1. Use Restrictions

A. Ground Floor Residential Uses Restricted

No residential units are proposed along the ground floors of the proposed development. **(Affirmative finding)**

2. Public Trust Restrictions

The subject property is not located within the Public Trust. **(Not applicable)**

3. Facades and Setbacks on Side and Rear Property Lines

This criterion requires that new buildings placed on a side or rear property have no doors or windows along such façade. It also requires a 10' setback for new construction where the façade of an existing adjacent principal building is within 5' of a common property line and has existing doors or windows. The new development meets the required 10' setback from 100 Bank Street. See Plan A-202. **(Affirmative finding)**

4. Building Height Setbacks

A. Principal View Corridors

The proposed development parallels Cherry Street – an identified view corridor. The overlay district specifies building setbacks. See Section 4.5.8, below.

B. Church Street Buildings

(Not applicable)

C. Side Street Building Height

See Compliance Checklist, Section 4.5.8.

5. Lake Champlain Waterfront Setbacks

The subject property is not located along the Lake Champlain waterfront. **(Not applicable)**

6. Development Bonuses/Additional Allowances

See Compliance Checklist, Section 4.5.8. Building height is allowed by right.

Section 4.5.8 Downtown Mixed Use Core Overlay (DMUC) District

(a) Purpose

The Downtown Mixed Use Core Overlay (DMUC) district is intended to facilitate the redevelopment of a portion of the former Urban Renewal Area in order to provide for a more walkable, connected, dense, compact, mixed use and diverse urban center. The area should support a diversity of residential, commercial, recreation, educational, civic, hospitality, and entertainment activities, and create opportunities to better connect the street grid for enhanced mobility for automobiles, pedestrians, and bicyclists in order to sustain and advance the economic vitality Burlington's downtown urban core.

The overlay allows larger scale development than is typically found in the underlying district, and development with larger and taller buildings. Development should be designed to support the diverse mixed-uses, activate and enrich the street and sidewalk for pedestrian activity, and encourage mobility throughout the district and adjacent districts for pedestrians and bicyclists with reduced reliance on automobiles.

(b) **Areas covered**

75 Cherry Street is within the overlay district. **(Affirmative finding)**

(c) **District Specific Regulations: Downtown Mixed Use Core Overlay (DMUC) District**

The following are the adopted standards.

Reference is made to the associated Compliance Checklist for findings.

1. Dimensional Standards:

The maximum Building height and mass shall be as prescribed in Table 4.5.8-1 below. Building height and mass in excess of 65-feet and 5.5 FAR shall be allowed by-right and without the necessity of the DRB granting of Development Bonuses/Additional Allowances pursuant to Sec 4.4.1 (d)7.

Any application requiring Major Impact Review pursuant to Sec. 3.5.2 (b) shall not also be subject to Conditional Use Review unless a use specifically identified in Appendix A – Use Table as a “Conditional Use” or identified as “CU” is also proposed.

The Dimensional Standards within the DMUC Overlay District shall be as follows:

<u>Table 4.5.8-1 Downtown Mixed Use Core Overlay (DMUC) District Dimensional Standards</u>	
Building Height⁴	3 stories min. 14 stories not to exceed 160-ft max.
FAR⁴	9.5 FAR total max. per lot
Floorplate:	
Floors 1-5	100% of lot max.
Floors 6-8	80% of lot max.
Floors 9-12	55% of lot max.
Floors 13+	15, 000 sf max. per individual floorplate, with individual towers separated by a minimum of 60-ft measured orthogonally.
The floorplate of any floor may not be larger than the floor below.	
Pervious Area¹	10% min.
Setbacks:	

- Front	0-ft min, 10-ft max. In no event shall a Building be closer than 12' from the curb.
- Side/Rear	0-ft min., 12-ft max.
Occupied Build-to Zone²	100%
Ground Floor Height (floor to floor)	14-ft min.
Arcades³	10-ft clear depth min. 14-ft clear height min.

¹ Pervious Area is the area of a lot covered by surfaces or materials that allow for the movement or passage of water into soils below. Pervious areas include, but are not limited to, areas of a lot covered by soil/ mulch, vegetative matter, permeable pavers/pavement, bio-retention areas, or other materials that allow for the infiltration of at least the first inch (1”) of rainfall. For these purposes, green roofs that capture and attenuate at least the first inch (1”) of rainfall are also considered pervious area.

² Occupied Build-to Zone is the proportion of the linear distance between the maximum and minimum front setback along a front property line that must be occupied by a Building façade. In lieu of a Building façade, a streetscreen between 3.5 and 8 feet in height or active public use or activity (such as outdoor cafes) occupying no more than the lesser of 20 feet or 20% of the Build-to Zone may be included.

³ An Arcade is where only the ground floor level of the building facade is set back from the front property line. The building facade for the upper floors is at or near the front property line within the Build-to Zone, and is supported by a colonnade with habitable space above.

⁴ Additional development allowances for inclusionary housing projects as provided in Sec. 9.1.12 shall not be applicable in the Downtown Mixed Use Core Overlay District.

2. Urban Design Standards:

The following urban design standards shall apply to all Buildings in the DMUC Overlay, and the DRB shall make a final determination regarding strict compliance with these standards except as provided for in E below. These standards and requirements shall take precedence without limitation over any duplicative or conflicting provisions of Article 6, and compliance with Article 6 shall be presumed where a building is in compliance with these design standards as determined by the DRB.

A. Overall Design: *Proposed buildings shall present an architecturally significant design as follows:*

- i. Step backs, horizontal and vertical variation, selection of materials and other architectural design techniques are used to reinforce the street wall, create*

transitions from adjacent buildings of a smaller mass and height, and reduce the perceived height and mass of the upper stories from the street level;

- ii. Proposed Buildings provide visual interest and human scale at the pedestrian level through the use of a variety of scales, materials, fenestration, massing or other architectural design techniques;*
- iii. Upper story proportions of buildings emphasize vertically-oriented proportions to assure a rich visually interesting experience as viewed within the context of the downtown skyline, reinforce opportunities for establishing points of reference for visual orientation, and retain opportunities for a view of the sky between individual building elements.*

B. Façade Articulation: *All street-facing building facades shall be articulated as follows:*

- i. Building facades shall incorporate surface relief through the use of elements such as bay windows, cladding materials, columns, corner boards, cornices, door surrounds, moldings, piers, pilasters, sills, belt courses, sign bands, windows, balconies and/or other equivalent architectural features at least three (3) of which must either recess or project from the average plane of the facade by at least four (4) inches.*
- ii. Buildings with facades between seventy-five (75) feet and one hundred and fifty (150) feet in width shall include vertical changes through the horizontal plane of the façade by dividing the facade into a series of architectural and/or structural bays between six (6) feet and sixty-five (65) feet in width involving up to a minimum of 50% of the height of the façade.*
- iii. Buildings with facades greater than one hundred and fifty (150) feet in width must include a more substantial change in the horizontal plane of the façade where for every one hundred and fifty (150) feet in facade width, one (1) or more architectural bay as required above must either recess or project by at least four (4) feet involving the full height of the façade from the average plane of the street wall portion of the facade. Such bays shall occur no closer than fifty (50) feet from the building's corner.*
- iv. Required Building Height Setbacks pursuant to Sec 4.4.1 (d) 4 shall not be applicable. Instead, upper stories of any street-facing building facade exceeding six (6) stories in height shall be setback as follows:*
 - a. An upper story setback at least ten (10) feet from the primary plane of the façade below shall occur within the first 60-ft of building height at either the 3rd, 4th, or 5th story in order to provide a change in the vertical plane of the façade. Such a change shall involve the full width of the building façade, but does not have to occur in the same story. Additional upper story setbacks may occur in order to provide additional terraces, taper and visual interest to taller buildings.*
 - b. For buildings exceeding ten (10) stories in height a second upper story setback at least ten (10) feet from the primary plane of the façade below shall occur at either the 10th, 11th, or 12th story in order to provide another change in the vertical plane of the façade. Such a change shall involve the*

full width of the building façade, but does not have to occur in the same story. Additional upper story setbacks may occur in order to provide additional terraces, taper and visual interest to taller buildings.

- c. Setbacks must be visually set off from the stories below by a balustrade, parapet, cornice and/or similar architectural feature, and are encouraged to be activated as an outdoor amenity space for building occupants.*
- d. The upper stories beyond a setback may be visually differentiated from the stories below by a change in color, materials and/or pattern of fenestration in order to reduce the actual or perceived massing of the building overall.*
- v. Where visible, the raised foundation or basement of a building shall not exceed 4-ft as measured from the exterior finished grade to the finished floor of the Story above, and must be visually differentiated from the stories above by a horizontal expression line and change in color, material, and/or pattern of fenestration;*
- vi. The lower one to five stories of a building must be visually differentiated from the stories above by a horizontal expression line, belt courses, banding, sign band, cornice and/or equivalent architectural feature, and include a change in color, material, and/or pattern of fenestration across a majority of the facade;*
- vii. The top one to five stories of a building must be visually differentiated from the stories below by a horizontal expression line, belt courses, banding, sign band, cornice and/or equivalent architectural feature, and include a change in color, material, and/or pattern of fenestration across a majority of the façade; and,*
- viii. The top of a building must have a cornice, parapet, pitched or shaped roof form and/or other equivalent architectural feature involving a projection from the average plane of the facade by at least six (6) inches to serve as an expression of the building's top.*

C. *Street Activation:* *All Buildings shall activate the street as follows:*

- i. Buildings shall have one or more principal entrances for pedestrians at street level that are clearly identified as such along the street frontage or at a corner where a corner lot.*
- ii. The linear distance along the street frontage between ground floor entries shall not exceed 60-feet, and such doors must be open and operable by residential occupants at all times and non-residential occupants and customers during business hours.*
- iii. Building entrances shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, canopies, awnings, transoms, sidelights and/or other design elements appropriate to the architectural style and details of the building as a whole. Bays including a principal entrance should be expressed vertically and continue onto the upper stories. Such bays are not required to include additional horizontal expression beyond what is required for any upper story setbacks*
- iv. Requirements regarding openings and the transparency of glazing in a street-facing Building facade shall be as follows:*

	Ground Floor	Upper Floors
Rough openings for windows and doors (per floor)	70% min., 80% of which shall be concentrated between 3-10 feet above the adjacent sidewalk	20% min.
- Horizontal and vertical distance between rough openings	20' max.	
Transparency: - applicable to 80% of the glazing on each floor.		
- VLT - Visible Light Transmittance ¹	60% min.	40% min.
- VLR - Visible Light Reflectance	15% max.	15% max.

¹May be reduced to 50 and 30% respectively to meet the requirements of a High Performance Building Energy Code or equivalent program as determined by the DRB.

- v. *Street-facing, street-level windows must allow views into a ground story non-residential use for a depth of at least 3 feet for the first 4 feet above the level of the finished sidewalk in order to provide for a window display, and for a depth of at least 8 feet for the next 4 feet above the level of the finished sidewalk in order to provide a view into the interior of the space. Windows cannot be made opaque by window treatments (except operable sunscreen devices within the conditioned space). External security shutters are not permitted.*
- vi. *In addition to the restriction regarding ground floor residential uses pursuant to Sec. 4.4.1, (d) 1 A, General Office uses shall also not be permitted on the ground floor of any building in the DMUC Overlay.*

D. Materials:

The following requirements regarding the selection and use of Building materials is intended to improve the physical quality and durability of buildings, enhance the pedestrian experience, and protect the character of the downtown area.

- i. *Primary Materials: Not less than 80 percent of each street-facing facade shall be constructed of primary materials comprised of high quality, durable, and natural materials. For facades over 100 square feet, more than one primary material shall be used. Changes between primary materials must occur only at inside corners. The following are considered acceptable primary materials:*
 - a. *Brick and tile masonry;*
 - b. *Native stone;*
 - c. *Wood – panels, clapboard or shingles;*
 - d. *Glass curtain wall; and,*

- e. *Cementitious siding;*
 - ii. *Accent Materials: The following accent materials may make up no more than 20% of the surface area on each street-facing façade. Accent materials are limited to:*
 - a. *Pre-cast masonry (for trim and cornice elements only);*
 - b. *External Insulation Finishing System - EIFS (for upper story trim and cornice elements only);*
 - c. *Gypsum Reinforced Fiber Concrete (GFRC—for trim elements only);*
 - d. *Metal (for beams, lintels, trim elements and ornamentation, and exterior architectural metal panels and cladding only);*
 - e. *Split-faced block (for piers, foundation walls and chimneys only); and.*
 - f. *Glass block.*
 - iii. *Alternate Materials: Alternate materials, including high quality synthetic materials, may be approved by the administrative officer after seeking input from the Design Advisory Board. New materials must be considered equivalent or better than the materials listed above and must demonstrate successful, high quality local installations. Regionally-available materials are preferred.*
 - iv. *Other:*
 - a. *The use of recycled and/or regionally-sourced materials is strongly encouraged.*
 - b. *With the exception of natural wood siding or shingles such as cedar or redwood intended to gradually weather with time, all exposed wood and wood-like products (e.g. fiber-cement) shall be painted or stained. Exterior trim shall be indistinguishable from wood when painted.*
 - c. *Any synthetic siding and finish products shall be smooth-faced with no artificial grain texturing.*
- E. *Alternative Compliance:*** *Relief from any non-numerical standard above, and relief from any numerical standard with the exception of building height and FAR by no more than 20% of such requirement, may be granted by the Development Review Board after review and comment by the Design Advisory Board and the administrative officer. In granting such relief, the DRB shall find that:*
- i. *the relief sought is necessary in order to accommodate unique site and/or Building circumstances or opportunities;*
 - ii. *the relief if granted is the minimum necessary to achieve the desired result;*
 - iii. *the property will otherwise be developed consistent the purpose of this ordinance, the purpose of the underlying Zoning District and this Overlay District, the purpose of the section that the relief is being sought, and all other applicable standards;*
 - iv. *the relief if granted will not impose an undue adverse burden on existing or future development of adjacent properties; and,*
 - v. *the relief if granted will yield a result equal to or better than strict compliance with the standard being relieved.*

3. Use

Mixed Use Buildings: Any new or substantially rehabilitated building over 105' in total height shall include a mix of uses including no less than 25% of the gross leasable floor area dedicated to non-residential uses and another 25% or more dedicated to residential use.

4. Parking

- i. *All onsite parking shall be provided in one or more of the following:
 - a. *an underground parking structure (strongly preferred);*
 - b. *an above ground parking structure separated from the public street by a liner building a minimum of 40-ft in depth; or,*
 - c. *a mixed-use building where with parking located underground, setback a minimum of 40-ft behind the façade of building at the ground level, and/or above the ground floor.**
- ii. *All onsite parking shall participate in any Downtown Parking and Transportation Management District in order to minimize the amount of parking provided and maximize the efficiency of its utilization.*
- iii. *Vehicular entrances to parking structures shall not exceed 24-ft clear width and 16-ft clear height at the street frontage.*
- iv. *At least one pedestrian route from all parking structures shall lead directly to a street frontage (i.e., not directly into a Building). When portions of a building containing parking front on more than one street, multiple pedestrian routes to street frontage is strongly encouraged.*
- v. *All structured parking with frontage on any portion of a public street shall be treated as follows:
 - a. *The required setback between the parking and the public street at the ground level must be occupied by an active use (such as, but not limited to, residential lobby, retail, office, recreational or services). This requirement shall not apply to parking located either entirely below-grade or above the second floor where parking may extend out to the building's perimeter.*
 - b. *All floors of a parking structure fronting a public street must be level (not inclined), and any sloped ramps between parking levels must be setback a minimum of 20-ft from the street-facing building façade and shall not be discernible along the perimeter of the parking structure.*
 - c. *Where upper stories of structured parking are located at the perimeter of a building, parked vehicles, vehicle headlights and interior lighting shall be screened from view from the street and adjacent properties.*
 - d. *In addition to the Urban Design Standards required above, facade treatments (materials, fenestration patterns, and architectural detailing) must be continued on stories containing parking in a manner consistent with the overall architectural design of the building and such that levels of parking are not clearly distinguishable from other uses in a building.**

- vi. *Each parking space provided in an underground parking structure may be counted as 1.75 of the parking spaces as required in Art 8.*

5. Signs

A master sign plan pursuant to Article 7 Part 3 is required for all sites occupied by more than three tenants where all signs must meet the requirements of the master sign plan. The master sign plan must establish standards of consistency as applicable of all signs to be provided on the subject property with regard to:

- *Colors;*
- *Letter/graphics style;*
- *Location and Sign Type;*
- *Materials;*
- *Methods of illumination; and/or*
- *Maximum dimensions and proportion.*

In addition to the flexibility from the requirements of Article 7 provided under Sec. 7.3.4, the following shall also be permitted when incorporated as part of a master sign plan in the DMUC Overlay:

- i. *The area of projecting signs, marques, canopies and awnings shall not be deducted from the maximum allowed signage area permitted for signage under Sec 7.2.3.*
- ii. *Projecting Signs: One projecting sign may be permitted for each ground floor use provided each sign:*
 - a. *does not exceed 8 square feet in area;*
 - b. *does not project more than 4 feet from the building façade on which it is attached;*
 - c. *has its lowest edge at least eight (8) feet above any pedestrian way;*
 - d. *has its highest edge no more than eighteen (18) feet above any pedestrian way; and,*
 - e. *any encroachment into the public right-of-way must also be approved by the City Council.*
- iii. *Marquee Signs: One marquee sign per street frontage may be permitted provided such sign:*
 - a. *is associated with the following uses only: Cinema, Conference Center, Convention Center, Performing Arts Center and Recreation Facility-Indoor;*
 - b. *is located above the principal building entrance;*
 - c. *projects a minimum of 6 feet from the building façade on which it is attached but in no event more than 10 feet and 3 feet from the curb;*

- d. *has its lowest edge at least 9’6” above any pedestrian way;*
 - e. *has its highest edge no more the lesser of the floor level of the third story or 35 feet above any pedestrian way;*
 - f. *is no more than 40 feet in width;*
 - g. *may contain an area for manual changeable copy that does not exceed 30 percent of the area of the sign face on which it is located or 32 square feet, whichever is less; and,*
 - h. *Any encroachment into the public right-of-way must also be approved by the City Council.*
- iv. *Canopies and Awnings: Where provided, awnings and canopies placed on a building facade shall meet the following specifications:*
- a. *Awnings and canopies shall provide 8’ minimum clear height above the finished grade, and shall project a minimum of 6’ from the building façade to a maximum of 2’ from the curb. 14’ minimum clear height above the finished grade shall be provided above any area used for parking or circulation. Any encroachment into the public right-of-way must also be approved by the City Council.*
 - b. *Awnings and canopies shall be placed, sized, shaped and proportioned to match the associated openings.*
 - c. *Except as provided below, awnings and canopies shall not be internally illuminated or backlit, however they may contain lighting fixtures intended to illuminate the ground beneath.*
 - d. *Awnings shall have a metal structure covered with non-translucent canvas, synthetic canvas or painted metal, and shall have no soffit or sides. Retractable awnings are encouraged.*
 - e. *Awnings shall be rectangular in elevation and triangular in cross-section with straight edges. The valance of the awning shall be no more than 12” in height.*
 - f. *Canopies shall be constructed of wood and/or metal, and shall be cantilevered or supported from above. The face of the canopy shall be no more than 24” in height.*
 - g. *Signage placed on an awning or canopy shall be limited to the windows and doors on the first (ground) floor, and shall not extend outside the overall length or width.*
 - h. *Signage placed on a canopy shall be limited to the face or may project above and may be backlit.*
 - i. *Signage placed on an awning or canopy shall be limited to:*
 - i. *75% of the valance or canopy face and/or 25% of the sloping plane max.*

- ii. *The height of lettering shall be limited to: 5” min. - 10” max. on the valance; 18” max. on the sloping plane; or 24” max. on or above the canopy.*

6. Green Buildings and Stormwater Management

A. **Green Buildings:** *New development and substantial redevelopment in the DMUC Overlay shall be built to the standard of LEED Gold Certification, or a nationally recognized equivalent as determined by the administrative officer.*

- i. *At the time of application, the following shall be required:*
 - a. *the submission of documentation of the planned performance criteria and elements of the project necessary to obtain the required green building certification (e.g. LEED checklist);*
 - b. *documentation that the project has been registered with the applicable green building certification program (e.g. LEED project registration); and,*
 - c. *a written commitment to apply for formal, written review of the project at the earliest milestone where the green building certifying body offers "precertification" or similar (e.g. LEED Design Review).*
- ii. *Prior to the release of any Final Certificate of Occupancy the following shall be required:*
 - a. *the submission of revised as-built performance criteria and project elements necessary to obtain the required green building certification (e.g. LEED checklist);*
 - b. *the results of 3rd party commissioning of the building envelope and mechanical systems documenting compliance of as-built performance; and,*
 - c. *a written certification from the project design professional of record that the project has been constructed to comply with the green building requirements of this section.*

B. **Stormwater Management:** *Stormwater runoff from 100% of all net new and substantially redeveloped impervious area (or an equivalent area of impervious) must be captured and managed in such a way as to mimic pre-development (meadow in good condition, Hydrologic Soil Group B) runoff (or discharge) ratio for the 1 year, 24 hour design storm subject to review and approval by the DPW Water Resources Division.*

The feasibility of implementing runoff volume reduction practices must be evaluated in consultation with the DPW Water Resources Division and shall include an evaluation of the engineering feasibility of techniques including, but not limited to runoff reduction through stormwater reuse, green stormwater infrastructure such as green roofs, bio retention, tree planting and sewer separation of roof water for sites currently discharging to the combined sewer system. Storage and detention methods may be used to meet pre-development flow targets. When and where detention systems are the primary mode of stormwater management, “smart” precipitation integrated detention

systems must be evaluated and are strongly preferred. On-site stormwater management must be maximized; however, off-site stormwater management may also be used in consultation with DPW Water Resources.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable in the D zone.

Sec. 5.2.5, Setbacks

(a) Setbacks Required

See Article 4 above.

(b) Exceptions to Yard Setback Requirements

1. Abutting Building with Doors or Windows

This criterion requires a setback of 10' for new construction abutting an existing building within 5' of the property line that has windows or doors facing the new construction.

Project plans revised as of 01/20/2017 comply with this criterion. Previously, construction abutting the existing building at 100 Bank Street had encroached into this setback.

(Affirmative finding)

Sec. 5.2.6, Building Height Limits

See Article 4 above.

(b) Exceptions to Height Limits

- 1. Additions and new construction on parcels created prior to January 1, 2008 that contain a non-conforming principal building exceeding the maximum permitted building height may exceed the maximum permitted building height of the zoning district subject to the design review provisions of Art. 3 and 6, but in no event shall exceed the height of the existing non-conforming principal building.*

(Not applicable)

- 2. In no case shall the height of any structure exceed the limit permitted by federal and state regulations regarding flight paths of airplanes.*

As the proposed construction is not located at an airport, the threshold for FAA review appears to be 200' tall per 14 CFR Part 77.9. The proposed construction is less than 200' tall. **(Affirmative finding)**

- 3. Ornamental and symbolic architectural features, including towers, spires, cupolas, belfries and domes; greenhouses, garden sheds, gazebos, rooftop gardens, terraces, and similar features; and fully enclosed stair towers, elevator towers and mechanical rooms, where such features are not used for human occupancy or commercial identification, are exempt from specific height limitations but shall be subject to the design review provisions of Art. 3 and 6. Such features and structures shall be*

designed and clad in a manner consistent and complementary with the overall architecture of the building.

The enclosed rooftop mechanical penthouse atop the south tower also includes an enclosed observation deck. This penthouse exceeds the standard 160' height limit. As noted in their recommendation to the DRB, the Design Advisory Board supported inclusion of this feature in the building design. The space is open to the public – as an observation deck – it is not occupied space in the typical sense (office, residence, etc.). In light of the benefit of this public amenity, allowing it to share space within the mechanical penthouse is reasonable. **(Affirmative finding)**

4. *Exposed mechanical equipment shall be allowed to encroach beyond the maximum building height by no more than 15-feet provided that portion exceeding the height limit does not exceed 20% of the roof area.*

Exposed mechanical equipment shall be fully screened on all sides to the full height of the equipment, and positioned on the roof to be unseen from view at the street level. Screening may consist of parapets, screens, latticework, louvered panels, and/or other similar methods. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the building

Where mechanical equipment is incorporated into and hidden within the roof structure, or a mechanical penthouse setback a minimum of 10-ft from the roof edge, no such area limit shall apply and the structure shall be considered pursuant with 4 above.

Rooftop equipment is fully enclosed within a mechanical penthouse. As required, the penthouse observes a 10' setback from the roof edge. **(Affirmative finding)**

5. *All forms of communications equipment including satellite dish antennae shall not be exempt from height limitations except as provided in Sec 5.4.7 of this Article.*

(Not applicable)

6. *The administrative officer may allow for up to a 5% variation in the maximum building height to account for grade changes across the site. In no event however, shall such additional height enable the creation of an additional story beyond the maximum permitted.*

The maximum building height of the proposed construction varies between 158' and 162' 2". The 2' 2" over 160' is within 5% and is allowable. **(Affirmative finding)**

Sec. 5.2.7, Density and Intensity of Development Calculations

See Article 4 above.

Section 5.4.8

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

75 Cherry Street / Burlington Town Center Mall was evaluated during the preparation of the Church Street Historic District nomination to the National Register of Historic Places in 2003 and

2008. It was confirmed that the property is not eligible for the National Register, and has been deemed non-contributing to the nomination. The project development therefore does not meet applicability standards of this section. **(Not applicable)**

Sec. 5.5.1, Nuisance Regulations

No part of the application indicates that nuisance impacts may result. No industrial or other commercial uses typically associated with heat, glare, emissions, or noise are included in the application. The application materials include an evaluation of potential noise impacts relative to Burlington's noise ordinance. Parking areas, trash/recycling facilities, and loading docks will be internal to the proposed building, thereby limiting outdoor noise. Mechanical equipment will be located on the rooftops within fully enclosed penthouses. Noise from mechanical units will, therefore, be substantially less than ground mounted and/or unenclosed mechanical units. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

New outdoor lighting is included in this proposal. New pole-mounted lights are proposed within the public street rights-of-way. A fixture cutsheet has been provided, and illumination levels are depicted in a photometric plan for the site. The application asserts that the new streetlights comply with Burlington Electric Department's central business district lighting standards. Final written acceptance from BED is needed. Other lighting includes building entryway lighting and under-canopy lighting. Cutsheets are provided for both fixtures. Both are acceptable cutoff LED fixtures; however, only one fixture (BEGA 66 698 for entries) is included in the photometric plan. Footcandle levels for both fixtures are needed. The most current photometric plan depicts acceptable illumination levels at all building entries. Parking garage lighting has been partially addressed with provision of a fixture cutsheet. An acceptable LED fixture is proposed. Illumination levels are lacking and must be provided to ensure compliance with Sec. 5.5.2 (f). **(Affirmative finding as conditioned)**

Sec. 5.5.3, Stormwater and Erosion Control

A comprehensive stormwater management plan is included in this proposal. Presently, there is virtually no onsite stormwater management. Runoff flows without attenuation into the city's receiving sewers. As proposed, the ~3.5-acre project site will be overhauled to capture and attenuate stormwater flows to green meadow conditions prior to discharge into the city system. Doing so will be of significant benefit to the city's receiving system. The proposal includes large underground cisterns to capture most of the flows and sand filters to treat stormwater prior to discharge at a controlled rate into the city system. Green roofs are also included. They, too, will capture and control release of stormwater with the added benefit of evapotranspiration. On the ground, areas of pervious pavement, in combination with oversized soil chambers for new street trees, will also capture and attenuate stormwater. The Conservation Board reviewed this proposed stormwater management plan and recommended approval. Final approval by the city's stormwater program is required.

A detailed construction site erosion prevention and sediment control (EPSC) plan is included in the project plans. It, too, has been reviewed and approved by the Conservation Board. It includes a variety of standard EPSC practices. The application also contains a comprehensive dust control plan to limit offsite impacts associated with construction and earth disturbance. As with

stormwater management, the EPSC plan is subject to final approval by the city’s stormwater program. **(Affirmative finding as conditioned)**

Article 8: Parking

Section 8.1.3 Parking Districts

c) Downtown Parking District

This parking district further reduces the requirements from the baseline standards recognizing that extensive sharing of parking demand between nearby land uses occurs; that a majority of travel to and between land uses is independent from an automobile; and that an array of public parking facilities and frequent transit service greatly reduces the need for independent parking for individual land uses.

Sec. 8.1.8, Minimum Off-Street Parking Requirements

See Section 2.8, p. 6 of the applicant’s narrative.

Calculated for Downtown District

Use	Area	Requirement	Total required	Proposed
Retail	107,304 sf	0	0	0
Office	230,328 sf	2 per 1000 sf	461	489
Residential	272 units	1 per unit	272	272
Preschool/Daycare	19,509	2 drop off	2	As required
Total			735	761
Required accessible parking 2%			15	16

The applicant is required to identify the 2 preschool drop-off parking spaces on a parking deck plan as appropriate. **(Affirmative finding as conditioned)**

Section 8.1.9 Maximum Parking Spaces

The total number of parking spaces provided in all parking districts shall not be more than 125% of the minimum number of spaces required for the Neighborhood Parking District for any given use as required in Table 8.1.8-1.

The number of spaces provided does not exceed 125% of the required parking as calculated for the Neighborhood Parking District. Total number provided: 761. As calculated for the Neighborhood Parking District: (and depending upon size of daycare), approximately 1337 parking spaces could be provided under the maximum. The proposal does not exceed 125% of the minimum number of parking spaces required for the Neighborhood Parking District. **(Affirmative finding)**

(c) Exemptions

- 1. Structured parking: Spaces provided within the footprint of a structure containing one or more other uses, including rooftop, at-grade, or below grade spaces shall not be counted towards the maximum, provided the floor area dedicated to parking is less than 50% of the total gross floor area of the structure.*

Although the provided parking minimally exceeds the parking requirement for the Downtown parking district, the additional spaces are not counted toward the parking maximum limitation as they are within a parking structure. **(Affirmative finding)**

Section 8.1.14 Stacked and Tandem Parking Restrictions

Except as otherwise provided below, all parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without the moving of any other motor vehicle.

(a) Stacked of valet parking may be allowed if an attendant is present to move vehicles. If stacked parking is used for required parking spaces, a written guarantee must be filed with the City ensuring that an attendant will always be present when the lot is in operation. The requirements for minimum or maximum spaces continue to apply for stacked parking.

The applicant will provide a written commitment that a parking attendant will be present when the garage is in operation. The garage will be open 24 hours a day, 7 days a week. Stacked and valet stalls will be signed and striped to distinguish from open stalls. An attendant will be available on each floor where stacked parking is being utilized. The attendant will park the tenant/visitor's car and provide the vehicle owner a valet slip for retrieving the car. Tenants using valet service will be directed to a spot on each floor to drop the car off for an attendant. Signs at each entrance will direct a customer to the valet stand. **(Affirmative finding as conditioned.)**

Section 8.2.5, Bicycle Parking Requirements

Use	Area	Long Term		Short Term	
Retail	126,813	1 per 20,000 sf	7	1 per 5,000	26
Office	230,328	1 per 5,000	46	1 per 10,000	23
Residential	272 units	1 per 4	68	1 per 10	27
Subtotal			121		50 maximum requirement*
Required total					171

**Section 8.2.5 (c) Where bicycle parking is required, the minimum number of bicycling parking spaces provided at each site shall be 2 (2) and the maximum shall be fifty (50, not including long term parking.*

Long term bicycle parking is located on floors 2-5 of the parking area, adjacent to the Pine Street parking pedestrian access. Facilities include showers and changing accommodation. Short term spaces are located on the streetscape, adjacent to major entry points. Please refer to Plan LA200. Placement within the public right-of-way will require approval of the Department of Public Works and a license agreement with the city, with ultimate approval by City Council. **(Affirmative finding as conditioned)**

Article 9: Inclusionary and Replacement Housing

Sec. 9.1.5, Applicability

As the proposed development includes more than 5 new dwelling units, it is subject to the inclusionary housing provisions of this Article. In this case, a total of 272 residential units is proposed. Typically, 15% of housing units must be inclusionary, but this number may vary depending on price points of the market-rate units. This application proposes 55 inclusionary units (20% of the total) to be integrated throughout the residential portion of the development. Final written approval of the inclusionary housing approval from the manager of the city's Housing Trust Fund is required. **(Affirmative finding as conditioned)**

Sec. 9.1.17, Review of Proposal for Phasing

The application contains a phasing schedule (figure 5-B) that articulates 3 distinct phases. Phases 2 and 3 include all of the residential units. The inclusionary units are interspersed throughout the residential components of the development. Per this criterion, they must be made available for occupancy on a schedule concurrent with the market-rate units. **(Affirmative finding as conditioned)**

Sec. 9.1.18, Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy

See Sec. 9.1.17 above.

Article 10: Subdivision

Sec. 10.1.15, Lot Line Adjustments

No subdivision is included in this proposal. Lot lines; however, will be adjusted. Six existing parcels will be reconfigured into five parcels. As required, a boundary survey by a VT licensed land surveyor has been provided. No nonconforming parcels result from the proposed lot line adjustments. All reconfigured parcels have street frontage. There is no minimum lot size requirement in the Downtown zone or within the Downtown Mixed Use Core Overlay. A mylar of the lot line adjustment, signed by the Zoning Administrator, shall be filed within the city's land records within 180 days of approval. **(Affirmative finding as conditioned)**

Sec. 10.1.10 Performance Bond and Guarantee of Completion

As new public improvements (city streets and related infrastructure) are included in this project, this criterion call for a performance guarantee. **(Affirmative finding as conditioned)**

Sec. 10.1.12 Dedication of Public Streets

As new public streets are included in this project, procedures for acceptance outlined in this section must be followed. **(Affirmative finding as conditioned)**

II. Conditions of Approval

In anticipation of Department of Public Works' acceptance and comment relative to traffic generation and related mitigation measures, the following conditions are recommended.

1. **Within 180 days of approval**, a mylar of the lot line adjustment, signed by the Zoning Administrator, shall be filed within the city's land records.
2. **Prior to release of the zoning permit**, the following items shall be provided, subject to staff review and approval:
 - a. 2 preschool drop-off parking spaces identified on a parking deck plan as appropriate;
 - b. A revised photometric plan that depicts lighting levels from all outdoor lighting fixtures;
 - c. Illumination levels within the parking garage;
 - d. Written acceptance of the proposed street lights from Burlington Electric Department; and,
 - e. Articulation of DMUC overlay compliance for elevation drawings for the affected westerly façade of the remaining mall building following demolition.

3. **Prior to release of the zoning permit**, the stormwater management plan and the erosion prevention and sediment control plan shall receive final written approval by the city's stormwater program.
4. Impact fees must be paid **at least seven (7) days prior to issuance of a certificate of occupancy** of a new building or phase. Impact Fees will be calculated for the gross new area, with credit given for existing area. The applicant shall confirm those uses/areas for staff to calculate appropriate fees. Impact fees may be paid by project phase.
5. **Prior to issuance of a certificate of occupancy**, written approval of the inclusionary housing proposal by the manager of the city's Housing Trust Fund shall be obtained.
6. **Prior to issuance of the final certificate of occupancy**, any zoning permits not yet closed out with final certificates of occupancy must be closed out or superseded as needed.
7. The permit period shall be for **three years from the date of decision**. This approval incorporates the 3-phase "Construction Phasing" schedule included in the application. Certificates of occupancy may be obtained for each separate phase as the project is under construction.
8. The applicant has requested extended construction hours. Unless specifically altered by the DRB, construction hours will be limited Monday-Friday 7:00 am – 7:00 pm, and Saturday work hours 7:00 am-4:00 pm. No construction shall occur on Sundays. At the discretion of the DRB, limited 24-hour construction periods shall be permitted per month. These are to be specifically defined by the Board.
9. Per the requirements of Sec. 10.1.10, *Performance Bond and Guarantee of Completion*, a performance guarantee for all new public improvements shall be provided, subject to review and approval by the City Attorney.
10. As new public streets are included in this project, procedures for acceptance outlined in Sec. 10.1.12, *Dedication of Public Streets*, must be followed
11. Any and all construction within the public street right-of-way is subject to encumbrance permitting with the Department of Public Works and the City Council.
12. The applicant shall provide a written guarantee of parking attendants for valet parking service per Section 8.1.14.
13. A State of Vermont wastewater permit is required.
14. It is the applicant's responsibility to comply with all applicable ADA requirements.
15. All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
16. Any outdoor signage will require a separate sign permit.
17. Standard Permit Conditions 1-15.