

## Burlington Development Review Board

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Brad Rabinowitz  
AJ LaRosa  
Austin Hart  
Springer Harris  
Geoff Hand  
Alexandra Zipparo  
Samantha Tilton  
Jim Drummond, (Alternate)  
Zoraya Hightower, (Alternate)



### BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday January 8th, 2019, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT Draft Minutes

**Board Members Present:** B. Rabinowitz, A. LaRosa, A. Hart, G. Hand, A. Zipparo, S. Tilton (alt.)

**Board Members Absent:** S. Harris, S. Tilton, J. Drummond (alt.)

**Staff Present:** Scott Gustin, Layne Darfler

#### I. Agenda

No changes to the agenda

#### II. Communications

No communications submitted

#### III. Minutes

Minutes from the December 18<sup>th</sup> 2018 meeting will be discussed at deliberation

#### IV. Consent

#### V. Public Hearing

##### 1. 19-0449DT; 526 Saint Paul St (RL, Ward 6S) Catherine Barbara Bernard

Appeal of adverse determination regarding determination of existing duplex use. (Project Manager: Scott Gustin)

S. Gustin: The appellants sought a grandfather determination to receive approval of the structure being a duplex because they cannot get a duplex permit due to nonconforming lot and insufficient parking, it comes down to abandonment of a non-conformity; seemingly the property has contained space for 2 units since the 1940's' going back to 1947 when zoning was implemented the property was non-conformity. The evidence submitted shows use of 2 units until early 1970s both assessors and Burlington directories show series of years where the property was vacant and the use was abandoned. If you have a nonconforming use and abandon it for more than a year it goes away. The 2<sup>nd</sup> unit was abandoned for much more than a year in the 1970s so the adverse determination was issues which brings us to today's appeal.

A. Hart: if use was reestablished in the 1970s then it's been more than 15 years, however because this is a use violation it keeps reoccurring

S. Gustin: they are not seeking a 15 use determination they are seeking a determination of the number of units in the structure. City's stance is that uses are not subject to 15 year statute of limitations because it use keeps reoccurring.

Z. Hightower: duplex only one side is occupied that changes the use

S. Gustin: the structure didn't change but the use stopped for over a year and then restarted; one of those units was abandoned changing it to single family

A. LaRosa: Zoning application states that this is a request to confirm the property is zoned for a two family home, how did you determine that to be grandfathering and not a determination of the 15 year statute of limitations?

S. Gustin: the applicant and I talked extensively before submitting which is why they have also submitted extensive evidence

A. Chiaravelotti: goal is to whether is to use the property a duplex and continue that use. Submitted more information

G. Hand: States two family but would the City's stance be the same if it was Accessory dwelling unit?

S. Gustin: Accessory dwelling unit would have been a different request

B. Rabinowitz: Accessory dwelling unit doesn't have the same square footage or site implications as a duplex

S. Gustin: Accessory dwelling units don't count toward the density but the site doesn't have sufficient parking.

B. Rabinowitz: in staff report it stated the building was not being used as a duplex from 1971 to 1979 that is inferred by rental documents

S. Gustin: Assessor's records express vacancy as well as directories

A. Chiaravelotti: Assessor's record are penciled out from r2 to r1; property looks like a duplex, 2 separate units with separate meters, entrances, etc. City assessors record states 2 unit dwelling and that is what they are assessed taxed as; 40 records show 2 addresses so records go from 1941 to 1986 places tenants in those 2 units for majority of the time frame with 1971-1977 discrepancies; went to owners sister and received signed affidavit has always functioned and been a 2 family home. Her story corroborates the 1940s directories. Neighbor has been in home since 1958 and has stated there has always been tenants in the second unit. Always a caretaker renting that apartment, born in 1950s and needed 24/7 care until 2002 daughter with special needs. Other affidavits from late 1980s to 2018 from prior tenants. Some of the affidavits state both units have always been used or occupied.

J. Mier: neighbor: share driveway, lived in house for 50 years, they share a driveway because of an elm tree. Since we've been there it has always been occupied as 2 apartments; owners downstairs and renters upstairs; the daughter was immobile lived to be 43 years old, a lot of the people that lived upstairs took care of the daughter. The daughter lived there until 2002. The house has been occupied since then.

S. Gustin: the occupant of the 2<sup>nd</sup> unit whether they are paying or if its family wouldn't have variable on whether or not its vacant, tonight we are hearing testimony that fills in that gap.

A. Chiaravelotti: not trying to make any changes to the property just maintain the use of the property. Lack of records due to it being timeframe where people did stuff on a handshake and their word meant a lot. Could have been ignorance as a lot of people don't understand the ins and outs of protocols here

A. Hart: How is parking handled?

A. Chiaravelotti: there is a garage that has 2 spots, spot right in front of garage, space for Juan to get out, space for on street parking; tandem at one point but more like parallel parking if needed. 2 in garage and 1 in front of garage allowing Juan to get out at very end.

G. Hand: is the garage a 2 car?  
A. Chiaravelotti: yes but there is space to one side for a tight 2 car fit  
B. Rabinowitz: Clarify terms of the sister you spoke to, is there an affidavit?  
A. Chiaravelotti: yes but it speaks more of in general, doesn't get into specifics of years and the people who lived there.  
W. Ward: Property records from Code Enforcement show two issues. Inspection report of an inspection done in 1994 by Don Robeir and the Certificate of Compliance expired in 2000; document states it's a violation of the ordinance to occupy a rental without a certificate of compliance. No record of it ever being inspected or certified again. Code enforcement sent a memo September 14<sup>th</sup>2018 reflecting no outstanding claims or no known violations. The property is not registered as rental and that must be paid and filed.  
B. Rabinowitz: No known zoning violations?  
W. Ward: No complaints or investigations underway so the files available pointed to no claims that a violation exists.  
B. Rabinowitz: Gaps between what is in different departments records, seems that when someone is righting that report to see that it is a duplex and not permitted or claimed as a duplex seems that should raise flags.  
W. Ward: We have seen it where two separate generations of the same families live in the units and therefor does not require it to be filed as rental registration.  
A. Zipparo: there was an inspection of a unit that essentially did not exist because of the 1970s abandonment but the city inspected it as a duplex later on. Strikes as odd that there would be an inspection as something that essentially doesn't exist. That makes it hard for us when we have grandfathered nonconformities.  
W. Ward: Since 2000 there have been 5 different people holding the position of Director of Code Enforcement  
A. Chiaravelotti: Moving forward it would be in the benefit for everyone having inspections or registrations; there would be more inspection and permit fees going toward the city and bringing the building into compliance.  
B. Rabinowitz: close public hearing

## **VI. Certificate of Appropriateness**

### **1. 19-0468CA; 43 Starr Farm Rd (RL, Ward 4N) KND Real Estate Escrow Holdings LLC**

Parking expansion and related maximum parking space waiver. (Project Manager: Scott Gustin)

A. LaRosa: There is an agreement currently to solve the matter?  
K. Sturtevant: They received a notice that there was an outstanding matter and noticed they needed to come in and apply to remove the issue.  
A. Dimario: Requested to exceed the maximum parking allowance/capacity for 43 Starr Farm Road. We received Notice of Violation in May 2017 due to parking in places that were not permitted. This was precipitated by the fact that the City enforced no parking along Starr Farm Road which led to parking from the neighborhood parking in our lot, this included school needs and residential needs, thus creating more of a demand than we had permits for. we were working with the City to try to come to a solution to meet the needs of the City and come into compliance with the regulations. We are a 144

skilled bed facility and provide care to the City's elderly and frail. Ability to have staff come to work and meet the needs of the patients and have the patients families be able to come to the facility are crucial. We tried a variety of things to come into compliance but the neighborhood did not perceive street or off-site parking well so we asked the City for more time to figure it out. Very difficult to find close by off-site parking to meet demand of need and be close enough. We had the mayor out to assess the site, fire chief came out to try to help save space. Parking study done by Mark Smith his rec is 94 spaces, were requesting 75 spots with increased coverage. This is the first step to come into compliance; we do plan on coming back to request changes to help these facilities in the north end.

B. Rabinowitz: parking count for similar institutions allow more than what you have, you're at 40 % lot coverage with this proposal

S. Gustin: yes 40 per is the limit.

B. Rabinowitz: so this is the maximum coverage within the existing regulations, looks like creative allocation of spaces. The staff is recommending approval on this one, did you have other neighborhood meetings?

A. Dimario: yes we met with the neighborhoods once but will be back at end of this month, they were concerned about small wooded area along property where there was initially thought of a parking structure.

Z. Hightower: parking management plan; update on how far you've gone into implementing that plan including encouraging alternative modes of trans by employees, shared cars, etc.,.

A. Dimario: a good amount of employees (38 full time) use alternate means of transportation to get to work. In order to optimize the site layout we currently have parking placards for them to park at, this is due to school overflow, also restriped parking to maximize parking spaces, installed signage to clearly identify facility only property, have been towing those not complying, on site bike parking stations, always encourage staff to carpool or take public trans. We pay for cabs for certain distances for employees. Currently stagger shifts- peak hours for parking is at shift change in afternoon; 2PM-3:15PM nursing shift changes, 24- 7 operation –biggest needed for bulk parking. Crucial hours for staffing. we have done a lot to minimize the use of our lot for school drop off and pick up; the new principle has been very good to work with us to send out notice to parents; truly the folks in the lot are our employees and folks visiting their family members.

G. Hand: Off site options

A. Dimario: it did not work- did our own study and came up with 85-87 spaces before having Mark Smith come in, originally looked at Pomerleau Realty, North Alliance Church, Saint Marks Church, Elks Club, Leddy Park etc. unsuccessful in all ventures. Shift work offsite parking means shuttling, lighting, security, plowing ,etc, we couldn't find anyone to lease that amount of parking spaces.

G. Widrick: community member; provided testimony in 2017 lives at Grey Meadow Dr; here to support parking extension and awarding of parking space waiver; proposed actions seem to be reasonable, simply wish to coexist with them harmoniously while maintaining the nature of the community. In the beginning when issues started some of the staff needed to find parking and started parking in neighborhood, which is when we got involved and contact city councilors a notice came out in May or June of 2017 but didn't go to all of us. Any given day we had about 20-25 cars that would park along our street, it effected mail deliveries garbage pickups etc. it just all of the sudden happened.

L. Silva: we think this solution is about the best you can do given the circumstances and the constraints, doesn't seem realistic to find offsite parking. We don't want parking garage built. Notice was sent to notice of parking issue- but other than that parking started entering the residential neighborhood bumper to bumper at 5 am this neighborhood had a lot of pedestrian traffic, increased noises, and lights it changed the neighborhood completely. Firetruck could barely make the turn. We're hoping this more practical solution can find support.

A. Dimario: we are happy to meet all of the stipulations and recommendations, just want the timeline of completion of project of June 1<sup>st</sup>- have been working with school to see if we can use their lot for construction overflow, hoping to extend to Aug 1<sup>st</sup> for completion but are anxious to have this project into compliance sooner rather than later, would appreciate that being considered.

G. Hand: Kim, the City is comfortable with the current use of the parking continuing unpermitted until this work can be completed?

K. Sturtevant: we are allowing time for work completion

B. Rabinowitz: close the public hearing

## VII. Adjournment

The meeting was adjourned at 6:07PM

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Bradford L. Rabinowitz, Chair of Development Review Board

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Date

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Layne Darfler, Planning Technician

\_\_\_\_\_  
Date

Plans may be viewed in the Planning and Zoning Office, (City Hall, 149 Church Street, Burlington), between the hours of 8:00 a.m. and 4:30 p.m.

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at [www.burlingtonvt.gov/pz/drb/agendas](http://www.burlingtonvt.gov/pz/drb/agendas) or the office notice board, one week before the hearing for the order in which items will be heard.