

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401
www.burlingtonvt.gov/pz/DRB
Telephone: (802) 865-7188
Fax (802) 865-7195

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



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday July 17th, 2018, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT Minutes

Board Members Present: A. Hart, S. Harris, A. LaRosa, G. Hand, A. Zipparo, J. Drummond (Alt.), Z. Hightower (Alt.)

Board Members Absent: B. Rabinowitz, S. Tilton

Staff Present: Mary O'Neil, Ryan Morrison, Layne Darfler

I. Agenda

A. Hart: Public Hearing item regarding 19-21 South Prospect St has been withdrawn and the project regarding 62 Venus Ave has requested deferral

II. Communications

None

III. Minutes

A. Hart: Minutes from the July 5th 2018 meeting will be discussed at the upcoming deliberative

IV. Consent

- 18-1039HO; 168 Woodbury Road (RL, Ward 4N) Lorena N. Neironi-Rossi**
Home occupation related to operation of a food truck. (Project Manager: Scott Gustin)

A. Hart: Has the applicant received and reviewed the staff comments? Do you have any questions?

L. Neironi-Rossi: Yes received staff report, no questions

A. Hart: Any public present wish to speak about this project?

None

A. Hart: Do any members of the Board object to this item remaining as consent?

None

A. LaRosa: Motion to approve and adopt staff findings and recommendations

G. Hand: Seconds the motion

5-0-0

V. Public Hearing

- 18-0937CU; 94 Caroline St (RL, Ward 5S) Dori Weigand**

Establish short-term rental (bed and breakfast) in existing residence. No site or exterior building changes (Project Manager: Scott Gustin)

A. Hart: As a preliminary matter, we have no staff report or findings the recommendation was that the application was incomplete therefore a recommendation that it be denied or deferred so we're really starting at a disadvantage in dealing with this. We had some email correspondence from Scott

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Gustin who is the project manager for this application; he requested information on site plans and parking, so that staff could look at that and provide a report in advance of the meeting. The report back to us is that he did not receive any information back.

D. Weigand: It's interesting that I never heard from Scott; looked through emails and couldn't find any correspondence other than from Layne. I didn't get any request from Scott for those items.

A. Hart: The communications for whatever reasons have not been good, understand that we know nothing about this, we don't have a plan, we don't have a staff report, and we don't know what the issues are.

A. LaRosa: Have you seen the staff report that recommends deferral, because we don't have the information?

Confirmed; had a discussion with Mary O'Neil. Was instructed that she couldn't defer the review. Would like a deferral still.

A. LaRosa: Staff doesn't agree that the application was complete; would you be prepared in a couple weeks or a month with the missing information?

D. Weigand: Not understanding what is being requested

A. LaRosa: We have nothing, we have an application with one email from Scott and normally we will have more than that; i.e. site plan, parking plan, etc.

D. Weigand: Thought that would be discussed tonight, did not know that the Board would require prior information to be provided.

A. Hart: You were before us for the same property not too long ago and during that process, we had information about the property. There were findings that you received in advance of the hearing with recommendations on whether there was compliance or non-compliance. For you to show up today stating you didn't know you needed to provide information in advance is totally inconsistent with the process you went through a few months ago. I hear in response to Aj's questions that you would be happy to defer to a later date.

Does the City object to deferral?

J. Francis: We issued a Notice of Violation in February 2018 for operating a Bed and Breakfast without approval from Zoning. She was going to rectify the violation by applying for a permit, that permit was denied. Now she is here to submit another application.

A. Hart: The Notice of Violation is not before us tonight

A. LaRosa: This was the short-term rental that had two units correct?

D. Weigand: I looked at what you required and I got the Site Plan for parking

A. Hart: is the City objecting to deferral?

J. Francis: The City is objecting to deferral to October as the applicant has requested, maybe something before the next meeting would be more appropriate but in the meantime, we would like an agreement as it has been quite a while and there has been no action.

S. Harris: If you are in fact seeking a deferral why is it that your Air BnB listing appears to be still operating and mostly booked through October.

D. Weigand: There is a whole process to stopping those services, which includes canceling people; compared an example of another Air BnB.

S. Harris: The nature of my question is if you request to continue or defer and we approve deferral you are going to keep operating the two Air BnB's?

D. Weigand: Trying to understand why other properties with less parking can get approved but mine cannot. Was very clear when I got my building permits that I was going to do an Air BnB and was told there was nothing that I needed to do, simply gave me a rental tax ID number.

A. Hart: I'd like to just tackle the issue of if there is a violation, code enforcement doesn't need to listen to us in terms of pursuing that one way or the other so

whatever code enforcement wants to do in terms of a current violation is up to them not us. Do any of the public/neighbors here tonight object to deferral?

None

M. O'Neil: September 4th is the first opening available to defer to.

A. Hart: Move that we defer this project review to date certain of September 4th, 2018

D. Weigand: Will not be in Town

A. Hart: Any chance we can squeeze in earlier

M. O'Neil: August 21st

D. Weigand: Parking plan is what the issue is, so I don't quite understand

G. Hand: If you read staff comments there is no complete application; if you read the ordinance it tells you what you need to do to complete the application; would recommend you set up a meeting with Scott before coming back to us to go over what it is you need to provide. All we have currently is a one-page document.

D. Weigand: I did not understand that

A. Hart: Motion to defer to the August 21st, 2018 meeting

A. LaRosa: Seconds the motion

4-1-1*

*A. Zipparo arrived late therefor did not vote

2. **18-0894LL; 14 Peru St (RM, Ward 3C) PBGC, LLC**

Appeal of administrative denial of lot line adjustment between 14 and 16 Peru Street. (Project Manager: Mary O'Neil)

AND 18-0895LL; 16 Peru St (RM, Ward 3C) BPJS Management LLC

Appeal of administrative denial of lot line adjustment between 14 and 16 Peru Street. (Project Manager: Mary O'Neil)

M. Daly: Applied for a boundary line adjustment to remedy a problem that was created by Mr. Bissonette's contractors some time ago. Mr. Bissonett is not avoiding responsibility for that problem, what we are doing today is trying to remedy that problem and trying to address it in a reasonable way. We believe it is an alternative to deconstruction, which we would ask the Board to view as unnecessary waste. We think the Board has the latitude to read and interpret the Ordinance to allow for this boundary line adjustment. Comments regarding the staff report. Contractors created a mistake that Mr. Bissonett and his company sincerely regret it was an honest error that was committed by the contractor. Application is truly a good faith effort to remedy the mistake. In the staff reports, the first section addresses Article 4 and Zoning Maps and District Sections 4.4.5 and the associated table concerning lot size and frontage. 14 Peru St currently has a 30' dimension on the street front; 16 Peru St is non-conforming. The frontage on 16 Peru is 23.74'. Regarding staff comments, the frontage is not being changed through the adjustment. The comment regarding the Westerly boundary line on the proposed Northern terminus. We would like the Board to consider the following, which is that it's not uncommon for a lot to have a side yard that is not perpendicular to the street. We've created a line that is bowed a little bit in order to allow for the compliance and conformance with some of the tables and the requirements.

A. Hart: are you going to talk about the survey or do you want the Board to ask questions.

M. Daly: we want to open it up for comments about the staff conditions because we think it's not necessarily a hard line requirement that there be perpendicular lines. The Ordinance does not call for that but it seems to be one of the comments from staff as to why the request was denied.

A. Hart: Can you explain why the line is drawn this way and is it the minimum necessary to fix the problem?

J. Milbank: We need to retain the 30' frontage requirement for the zoning district, we chose the Southwest corner of the lot as the beginning of the adjustment and held that point firm. Ran the line northerly to a point where we were able to maintain the 10% for the side yard setback for the construction mistake.

Discussed the boundary line adjustment and reasoning behind the line change; balancing the lot sizes to minimize any changes with the relief.

M. Daly: Table provided highlights no net gain or loss between the properties; 44 square feet are evenly transferred between each property. Ask the Board to find that the impact of this line is not so detrimental to the purpose of the Ordinance and to use some latitude to allow for the line adjustment and allow the applicant to remedy the problem. Second set of comments relates to Article 5, which relates to a heat pump located on the West elevation continues to encroach; the applicant has removed the heat pump therefore resolving that issue.

G. Hand: Is the comment based on the heat pump or is the change in the boundary line that increases the non-conformity and therefore it doesn't comply

M. O'Neil: The heat pump as it was installed still encroaches into the setback, so relocation of that could potentially remove that encroachment. The boundary line was designed to meet the required setback based on the 10% rule for the structure. It increases the non-conformity of the driveway on 14 Peru. 16 Peru St removal of the heat pump resolves the conflict with the setback for the heat pump.

M. Daly: The next comments do relate to accessory structures and parking areas. Comments from staff are laid out in the memo; in our application we propose as a condition of approval to provide either a deeded easement or a parking sharing agreement; Mr. Bissonett owns both 14 and 16 Peru St through different Limited Liability Company's and there can be sharing arrangements, there can be licenses, there can be deeded rights of way or easements. Mr. Bissonett also owns some other property across the street that has excess parking that could be used to supplement this project.

A. Hart: In order to fix the setback etc. there has been a new line drawn, those parking spaces are all still there, and through licenses or easements, both properties will have the required parking spaces?

Confirmed

A. Hart: Have we cured a setback or encroachment this way before?

A. LaRosa: Recalls similar occurrences

M. Daly: As an alternative condition, that parking space potentially could be removed and the parking could be addressed through additional parking in other spaces that are available on the overall properties or across the street at another property owned by Mr. Bissonett. The next comments by staff which led to adverse findings similarly dealt with problems associated with parking; our proposed fixed again would seek a condition of approval that involves a deeded easement or shared right of way. Results in no setback being required under 5.2.5b6; as a result there is no change to the non-conformity, it actually brings it into greater compliance.

A. Hart: You have stated a few times that you provided examples of conditions of approval were those submitted for review.

M. Daly: No, they were verbally proposing them today.

A. Hart: Do you have some suggested language in mind or could you prepare that for our review?

M. Daly: Absolutely, we have done it with similar properties/situations. I thought it would be more constructive to have the Board condition that the applicant (through counsel) meet with staff to come up with the most constructive way to do this.

A. Hart: Looking at the language would be helpful to convince the Board whether or not this will work. Right now it's too conceptual and hard to grasp. And if it needs to be revised and approved by staff that's fine.

A. LaRosa: It would be helpful to see drawn out what the proposed easements would look like.

M. Daly: More staff comments similarly address the parking dilemma. Specifically, staff states that single-family residences in the Neighborhood parking district require two parking spaces per unit; the proposed lot line adjustment encroaches into the required parking area at 14 Peru St. Further comments relating to the minimum parking dimension, under Table 8.1.11-1, again we proposed to remedy this through a deeded easement or some form of agreement. The seventh comment in the staff report has three adverse findings relating to the increase level of non-conformity of the setback at 14 Peru St; Are response is that the contention of the lot width becoming non-conforming is addressed under Article 4. There is no change in the frontage for either property. If conditioned the lot line adjustment does not result in any non-conformities. Overall proposal today is to ask the Board to allow for a little latitude here and consider the effects of deconstruction and the development waste it will create.

A. Hart: Mary, from staff's point of view, on the technical or setback requirements does staff have any comments regarding the proposed agreements or conditions they have brought forward today?

M. Daly: There is an irregular jig-jag in the line, which we know the Ordinance frowns upon. Have seen examples of similar Board approvals.

K. Sturtevant: Under Section 5.3.6C Changes to non-conforming lots; since 16 Peru St had the change, the increase of the building, which because of the frontage deficiency it is a non-conforming lot. That provision provide that no change shall be permitted to any nonconforming lot which would have the effect of increasing the density at which the property is being used, or increasing the structure located upon such lot, if the dimensional requirements and standards, including parking, of the underlying zoning district are not met as a result thereof. It goes on to talk about a lot considered non-conforming if there is not sufficient parking, but I think the Board needs to consider this provision as well.

A. Hart: Is the proposal of conditions of approval able to get us around that issue.

K. Sturtevant: the difficulty is that the lot would need to come up to today's dimensional standards and requirements. They are still not met.

G. Hand: So the changes to the building made without a zoning permit increased the underlying structure. If he had come in for a permit, we could not have authorized that because of this provision and they haven't addressed that problem even with what they are proposing today.

K. Sturtevant: Yes, that needs to be addressed.

M. Daly: Again asking the Board for some latitude and flexibility.

G. Hand: The challenge, even understanding that this may have been a mistake, but Mr. Bissonett is a very experienced landowner in Burlington, owns a substantial amount of property. I don't think this is the first engagement he's ever had with this level of change without an approval and come back to us and ask for forgiveness. If was simply an adjustment of lot lines to continue a non-conformity of the same level that's one thing, but as Kim has pointed out I'm not sure we could have approved what happened on the property itself in the first place not withstanding now trying to correct the boundary line problem.

M. Daly: The problem was a 12' x 1' bump out.

A. Hart: Going back to the original error, it wasn't that the contractor didn't follow the approved permitted plan, there should have been an application for the renovation work in the first place never happened.

Confirmed

W. Bissonett: Had conversations with Mary multiple times about the setback deficiencies and even she didn't catch the encroachment right away.

G. Hand: I am suggesting that a permit should have been applied for before you did this work.

W. Bissonett: We had building permits

G. Hand: The write up says all of this work, raised roof, demolish rear porch, erect new two story addition, new siding, windows, roofing, lighting, gravel in rear yard, convert two car garage to storage, all done without any building or zoning permits.

W. Bissonett: That's not true. We had a building permit.

G. Hand: So how did you end up doing that level of work without a zoning permit?

W. Bissonett: We started to renovate a bathroom and kitchen found more issues than expected. In terms of garage, I changed the type of doors.

M. O'Neil: The possibility of parking off site is always available but the provisions relative to nonconforming lots would prohibit that.

A. Zipparo: The kitchen was the only permitted work

M. O'Neil: Confirmed, permit for alterations were only for after the fact work that led to discovering the bump out.

A. Hart: When could you get us proposed conditions?

M. Daly: Friday

A. Hart: Deliberation will be Tuesday the 24th at 6PM, public hearing closed subject to receipt of draft conditions as discussed.

- 3. 18-0840AP; 62 Venus Avenue (RL, Ward 7N) Lorraine Latorre Family Trust**
Appeal of NOV # 346538 regarding change of use to duplex. (Project Manager: Scott Gustin)

A. Hart: Applicant has requested additional time to work out issues; staff conquers

G. Hand: Motion to defer to September 4th, 2018

S. Harris: Seconds the Motion

5-0-0

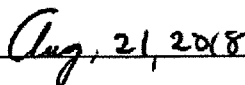
- 4. 18-0861AP; 19-21 South Willard Street (RH, Ward 8E) WHN Properties LLC**
Appeal of NOV #333035 for increasing number of residential units from 9 to 10 without zoning approval. (Project Manager: Jeanne Francis)

VI. Adjournment

The meeting was adjourned at 6:10PM



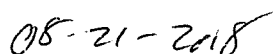
Austin D. Hart, Chair of Development Review Board



Date



L. 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 or the office notice board, one week before the hearing for the order in which items will be heard.