

## Burlington Development Review Board

149 Church Street, City Hall

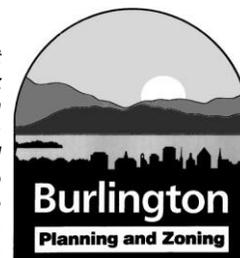
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*Austin Hart  
Brad Rabinowitz  
Israel Smith  
AJ LaRosa  
Geoff Hand  
Alexandra Zipparo  
Wayne Senville  
Jim Drummond, (Alternate)  
Robert Purvee, (Alternate)*



### **BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday October 18, 2016, 5:00 PM Contois Auditorium, City Hall, 149 Church Street, Burlington, VT Minutes**

**Board Members Present: Austin Hart, Brad Rabinowitz, Israel Smith, Geoff Hand, AJLaRosa, Alexandra Zipparo, Wayne Senville**

**Board Members Absent: Jim Drummond (Alt), Robert Purvee (Alt)**

**Staff Present: Scott Gustin, Mary O'Neil, Ryan Morrison, Anita Wade**

#### **I. Agenda**

#### **II. Communications**

#### **III. Minutes**

#### **IV. Consent**

- 1. 17-0281HO; 106 Deforest Heights (RL, Ward 6S) Anya and Jeffrey Byam**  
Establish home occupation, fabric studio. (Project Manager, Mary O'Neil)

A.Hart: approved by staff for consent agenda. Asks if applicant has seen staff recommendations.

Applicant: has received staff comments and agrees with recommendations.

A.Hart: asks if any member of public is interested in making comments.

W.Senville: motion to accept staff recommendations.

B.Rabinowitz: seconds the motion.

Board Vote: 7:0:0

Motion passes.

- 2. 17-0297CA; 92-94 Hyde St (RM, Ward 2C) JMD Real Estate LLC**

Construct new dwelling on parcel previously occupied by 2-unit, 2-story building; same footprint.  
(Project Manager, Ryan Morrison)

A.Hart: asks applicant if reviewed staff report and recommendations.

Applicant: has received staff comments and agrees with recommendations.

A.Hart: treating this project as public hearing with Board members questions. Swears in applicant and interested parties.

B.Rabinowitz: asked if there was a landscape plan

R.Morrison: no

B.Rabinowitz: asked if clapboard/siding was vinyl before or wood behind vinyl

Applicant: building was being demolished

B.Rabinowitz: nice proportions and detail to structure, but the new house shows different size windows and not the same proportions; not matching what was there previously

Applicant: same size window as the other side

I.Smith: what is review standard we are applying here.

R.Morrison: correct, building same footprint, get to keep nonconformity with new structure. Over 40 % for zoned district and 10 % for existing area previous to the fire

A.Hart: closed public hearing

## V. Public Hearing

### 1. 17-0081DT; 135 Hayward St (RL, Ward 5S) Andrew and Daniel Rowan

Appeal of a determination as to duplex or triplex status. (Project Manager, Scott Gustin)

AJ.LaRosa recused.

A.Hart: the City presents first with an appeal. The facts are incredibly complicated but need help to understanding what this says

S.Gustin: need clarification and the burden of proof is on the owner. The property was clearly used as duplex and triplex and maybe single family. The owner wanted a determination as what can be built. The DT is not based on a duplex or triplex. Additional information showed this was occupied but one of two issues about vacancy. This was a nonconforming triplex for more than a year and at some point the triplex became a duplex around 1999 with an application for a fence. The record suggests triplex abandoned for more than a year. The secondary argument is in regard to the 3 tiers. The company identifies this as a duplex. Abandonment is cause is for a conforming use which is single family home. In 1999 and 2012 shows going from a triplex to a duplex.

A.Hart: need clarification of the record

B.Rabinowitz: questions if legally a duplex

S.Gustin: only record was as a single to a triplex

A.Hart: there would have to been a zoning permit for a change from a triplex to a duplex

S.Gustin: there's no zoning permit to make it a duplex

Applicant's Atty: misstatement after 2007

A.Hart: what we have from you is a legal memorandum and numerous affidavits;

Applicant's Atty: nothing in record in 2007 on a three unit. Description in 2010 property was being rehabbed and the physical layout was three separate units. Assessor's cards not known to clients. Two owner occupants lost their homes and all belongings in addition to a tenant. Over 13 documents show a triplex. Issue of inconsistent permits was only after the appeal; second argument only after submission from the Board

A.Hart: essentially like a de novo appeal. We will use whatever information we receive

Applicant's Atty: original owner died in 2009; new owner rehabbed and sold and physically laid out 2009 to 2012 as triplex;

A.Hart: physically set up with three meters but not used as 3 separate units

Applicant's Atty: two brothers occupied each of the three units;

AHart meters

Applicant's Atty: each unit has separate entrances, but not all units had separate meters

In 2009, existed as a triplex where clients rented it out as 3 units and then occupied units themselves

G.Hand: are there lease agreements

Applicant's Atty: records were lost in the fire. Dispute the diminishment and change in use. The change doesn't fit in CDO. From 1992 to 2016, used as a duplex

A.Hart: do not agree with the density and change in use

Applicant's Atty: reducing the conforming use should be allowed. The 15 yr. statute does apply. Judge Wright's decision should be allowed to remain.

M.Rainville: contractor worked with staff going over permit. On Oct 3, 2011 got CO that it indicated it was a triplex documented by the City on the building permit. Then it was sold to applicants as a triplex Very clear it was triplex in documents. If the insurance runs out, it will start to be a hardship

Applicant's Atty: questions the integrity of City's records. The City has to pick a time when use was discontinued. The City has not told us when the use was not in place and records are inconsistent.

Relying on documents such as the zoning permit

A.Hart: all we have are documents showing inconsistent use

A.Hart: swears in interested parties

B.Kelts: a resident at 117 Hayward St. has a concern about the parking lot behind property and coverage from building to the property line, all asphalt and understand there should be a permit.  
A.Hart: we don't have an application before us and we have no idea what this building will look like  
The issue is whether it was a duplex or triplex before it burned  
B.Kelts: two years prior to fire someone who lived there said it was a duplex  
A.Hart: we need to know what you know and not what someone else says  
B.McNichols: applicant has put in diagram of what it looked like prior to fire with smaller units  
G.Hand: how long did you live next to the unit  
B.McNichols: since 2012 and it looked like 2 units. A report by the fire department said two units  
G.Hand: do we have other copies of information after the fire?  
B.McNichols: on the fire departments' website  
A.Hart: what did you see as a neighbor prior to the fire, it looked like a duplex and not a triplex?  
B.McNichols; correct. There is significant resistance for this to continue as a multiple family  
A.Hart: we have floor plans, but not the fire department report. We are looking to see if this was a pre-existing nonconforming use prior to the fire. At some point will receive an application and we can take comments.  
A.Hart: swears in interested party with connection to property  
J.Walker: resident at 132 Hayward St said a friend talked about this as a duplex and her housemates  
G.Hand: what did you observe?  
J.Walker; I did not see this person before and I have lived there since 2007 and observed a lot of people. This was often a loud property  
Applicant's Atty: Andrew lived at property and can supplement that he lost his home  
A.Hart: when did you live there?  
A.Rowan; one year after purchase had a little break and then lived there after with friends in separate units  
G.Hand: can we get the fire depart report  
A.Rowan: I believe so  
S.Gustin: this reiterates a few bright lights and need a preponderance of evidence that owner has maintained a legitimate residency  
I.Smith: questions mailboxes  
A.Rowan; 3 mailboxes in the front and sometimes mail get mixed up  
W.Senville: asks staff about the appellant time period  
S.Gustin: relying on the 1 year abandonment. The triplex disappeared in 1999 and started saying duplex consistently. Then in 2011 the housing record said triplex and then goes to duplex  
G.Hand: applicant submitted all CO's as triplex asking staff  
S.Gustin: record consistently says triplex. None of them are after a fact saying triplex. Board can decide how much weight to apply assessors' record showing what is there  
Applicant's Atty: only zoning permit in 1992 triplex and assessors card recognize 3 units in 2011, 2012  
AHart: Board will not deliberate on this tonight. Closed public hearing.

**2. 17-0267SD; 311-375 North Ave (RM-W, Ward 4N) 375 North Ave LLC**

Preliminary plat review of 11 lot subdivision. No development included.  
(Project Manager, Scott Gustin)

GHand recused.

A.Hart: two separate items: a subdivision and a plat. Swears in applicant  
E.Farrell: presentation as current lots and subdividing two parcels with minor boundary changes and right of way on street. Mostly a simple subdivision  
W.Senville: what relationship if any does subdivision have to site plan?  
E.Farrell: subdividing to accommodate the separate lots  
A.Hart: no interested parties for comment. Closed public hearing.

## VI.

### Sketch Plan

#### 1. **17-0252SP; 329, 351-375 North Ave (RM-W, Ward 4N) 375 North Avenue LLC**

Second sketch plan review of planned unit development with mixed commercial and residential uses, related buildings, and infrastructure. (Project Manager, Scott Gustin)

E.Farrell: Intends to submit an application in November.

A.Hart: appreciate you coming back to go over this project for Board

E.Farrell: spoke of the presence of the buildings facing the street; improvements with frontage, relating buildings to the green and curb cuts. Displayed view of modest addition to Burlington College and the multipurpose community space building. Changes to North St. curb cuts and large service areas. Site plan is 90 -95% complete. Designing 15 buildings at the same time for application. Each one of buildings sits on its own parcel.

A.Hart: asks for the difference between inclusionary housing and workforce housing

E.Farrell: inclusionary housing required is 15% but agree to 25%. Workforce housing concerns 180 to 120 % of median income housing.

W.Senville: asked about rezoning impact and what was being presented today

E.Farrell: City council needs to warn on this and after review by Ordinance committee

W.Senville: asks if anything be different than tonight's presentation

E.Farrell: plan to build 740 or 750 units

I.Smith: questions the location of inclusionary units

E.Farrell: Cathedral Square and CHT with workforce in rear building

AJ.LaRosa: asks if this includes orphanage

E.Farrell: yes

B.Rabinowitz: questions commercial space

E.Farrell: largely a residential development with commercial space totaling a 50,000 sq. ft. Discussed improvements and changes with each building. Discussed landscaping, terraced gardens and common areas, play areas behind orphanage building

Committed to alternate forms of transportation, especially biking, providing bike washes and pet washes. Parking spaces of 1 and ½ spaces of parking per unit. Encouraging use of CATMA and car share; City is making huge commitment to bike path.

A.Hart: asked if DPW is aware of it being a public street

E.Farrell: yes we are in communication with them

I.Smith: asked about bike lanes

E.Farrell: do not have bike lanes

B.Rabinowitz: do not like bikes in the sidewalk

A.Zipparo: encourage you to cut down to one lane to include a lane for biking

D.Marshall: traffic did not indicate bike lanes and numbers don't support it. We need off street and guest parking. Looked at a variety of designs, but not mandating designated bike lanes. North Ave has safe access with 8ft sidewalk

A.Zipparo; I do not support this and want to make sure people are safe on the sidewalk

B.Rabinowitz: would like to see the city policy of bikes on sidewalks

D.Marshall; shared use paths and uses in both directions and can expand use for wider approach. The additional width supports it

E.Farrell: will look into this

A.Zipparo: questions traffic count and sidewalk width

E.Farrell: this project has 8ft width and not a deal breaker to be in the street

Will bring to Mark Smith's attention

A.Hart: bring someone from DPW

E.Farrell: think we're all on same page

W.Senville: like to understand why so little commercial with the project  
 E.Farrell: North Ave is not a strong commercial area, like downtown. Only serving the immediate area. More commercial will generate a lot more traffic and parking  
 B.Rabinowitz: appreciate diversity and building forms, but buildings are all about the same size and sense long buildings basically 4 or 5 story walls along streets. The setbacks are on perimeter and right up to property line with no buffer. Need some kind of edge to separate from city parkland. The massing of buildings is disturbing with the orphanage building dwarfed by surrounding buildings  
 E.Farrell: this is an urban project in a suburban setting  
 B.Rabinowitz; no continuity  
 E.Farrell: the building that makes economic sense. There are 1100 parking spaces with commitment from city to minimize parking under the building. Not much will change. Property is zoned for 60 ft. buildings. Balancing the need for housing, parking, and density to make it work  
 B.Rabinowitz: may be able to come up with different street scape  
 I.Smith: questions edge of park and views  
 E.Farrell; may be some fencing. Park and Rec wants natural landscape there and large wooded area  
 I.Smith: haven't seen any views of this area and would like to understand from the southern view  
 E.Farrell: do this at next meeting with Jesse  
 A.Zipparro: questions pool users  
 E.Farrell: for rental units, not public  
 A.Zipparro: questions how many people served by pool  
 E.Farrell: hard to predict how many people, 360units/500 people  
 A.Zipparro; asked if working with VT community garden and Bright Street Coop  
 E.Farrell: yes  
 A.Zipparro: questions ADA accessibility  
 E.Farrell: yes  
 A.Hart: thank you for this presentation  
 A.Hart: adjourns public hearing

**VII. Other Business**

**VIII. Adjournment**

Deliberative Session held after meeting.

\_\_\_\_\_  
 Austin D. Hart, Chairperson Development Review Board

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 A.Wade, Zoning Clerk

\_\_\_\_\_  
 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/dr/ agendas](http://www.burlingtonvt.gov/pz/dr/ agendas) or the office notice board, one week before the hearing for the order in which items will be heard.