

Burlington Development Review Board

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Robert Purvee, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday December 6, 2016, 5:00 PM

Contois Auditorium, City Hall, 149 Church Street, Burlington, VT

Minutes

Board Members Present: Austin Hart, Brad Rabinowitz, Geoff Hand, Israel Smith, Alexandra Zipparo, Wayne Senville, Robert Purvee (Alt), Jim Drummond (Alt)

Board Members Absent:

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

I. Agenda

No changes to the Agenda. 135 Hayward Street presented under Other Business.

II. Communications

Board accepts all supplemental communications.

III. Minutes

IV. Public Hearing

1. 16-1400LL; 80 Colchester Ave (I, Ward 1E) Francis von Turkovich/ Robert and Susan Butani

Appeal of an administratively approved lot line adjustment for 80 Colchester Av, 27 Fletcher Place, and 49 Fletcher Place. (Project Manager, Mary O'Neil)

A.Hart and G.Hand recused.

M.O'Neil: applicant has asked for a postponement until January. This is up to the applicant and the appellant for postponement.

M.Brock: said it was fine to go forward at this point.

B.Rabinowitz: swears in applicant and appellant.

M.Brock: the appellants' representative for the 3 properties in lot line adjustment.

B.Rabinowitz: asks if 3 applications were filed.

M.O'Neil: yes.

M.Brock; said the application is incomplete specific to 80 Colchester, but also about 20 Fletcher PI, and 47 Fletcher PI, in addition to 80 Colchester Ave.

B.Rabinowitz: asks staff if application is incomplete.

M.O'Neil: no boundary line adjustment stands alone, and all are interrelated. An appeal should include each parcel.

W.Senville: asked staff if applicant was informed that the appeal was not accurate.

M.O'Neil: yes, the appeal was attached with one address, only, though the intent seemed to be for all properties. Notification was sent by email.

M.Brock: the email was in context of a continuance and after a conversation with the City that it was not incomplete according to Kim Sturtevant.

W.Senville: we don't have this in the record.

M.Brock: I wouldn't expect you to. The merits of the issue regarding 27 Fletcher PI is that the property that adjoins 31 Fletcher PI is two single family homes close to 27 Fletcher PI. The request for a duplex conversion and was not appealed to the Environmental Board. The parking for duplex conversion was approved offsite, but parking has since been moved.

B.Rabinowitz: this is not consistent with the application.

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M.Brock: this is not appropriate use of the application process in respect to a single parcel.
B.Rabinowitz: looking only at the lot line adjustment now.
M.Brock: duplex parking plan for 27 Fletcher was part of lot line adjustment.
B.Rabinowitz: none of the parking plan is in the packet.
M.O'Neil: lot line adjustment is done in a conservative manner for a duplex.
M.Brock: there is confusion about staff focus on 80 Colchester and not 27 Fletcher Place.
B.Rabinowitz: what are you appealing?
M.Brock: the basis for the appeal is the inconsistency with prior permit approvals and anticipated zoning changes affecting 27 Fletcher PI and complying with lot line adjustments as stated in the ordinance, 10.1.5.
B.Rabinowitz: what is your disagreement?
M.Brock: staff did not address 27 Fletcher PI with adequate information about creating a nonconforming lot and a lot line adjustment.
M.O'Neil: this demonstrates compliance according to the approved plans.
B.Rabinowitz: it would be good to have the specifics about your objections.
M.Brock: the information is insufficient to make this comment.
W.Senville: inconsistency in regard to CDO changes?
M.Brock: from districts I to RL and the lot line adjustments.
W.Senville: where does it determine in code for DRB to have this authority?
M.Brock: the specific authority within DRB.
A.Zipparo: we follow the ordinance accord to the VT League of Cities and Towns guidelines.
B.Rabinowitz: we will hear from the applicant.
F.vonTurkovich: I am one of owners of property in question. I question the timeliness of this appeal. Fees were paid and processed for all the properties, and I believe this is in full compliance. The appeal was submitted at the last hour of the last day, which is frustrating. Filing an appeal in a timely fashion, is one thing. The Board should dismiss this appeal.
W.Senville: if the Board agrees with all or some of the filing, would staff redraft the findings based on the merits of the appeal?
M.O'Neil: this is seen as an incomplete appeal for not encompassing all properties.
I.Smith: questions the original application.
W.Senville: question on the Oct 7th letter.
M.O'Neil: the appeal for the lot line was for only one. There are permits issued for 29, 47 and 80 and only one was submitted. This is not a complete appeal. Provided email correspondence between attorney/appellant and Kim Sturtevant.
B.Rabinowitz: please provide the letter at deliberative session.
A.Zipparo: inquiry regarding an example of a similar project.
M.O'Neil: UVM, 2 lot line adjustments and 2 appeals.
B.Rabinowitz: closed public hearing.

**2. 17-0363CA; 485 Colchester Ave (NMU, Ward 1E) Stephen and Sharon Litwhiler/
Gregg Blasdel, Jennifer Koch & Kathleen Brisson**

Appeal of a zoning permit for an as-built site improvements such as parking layout, retaining wall, dumpsters, and walkways. Amends zoning permit 93-313.
(Project Manager, Scott Gustin)

G.Hand recused from item.

A.Hart: asks parties and applicant to be sworn in.

S.Gustin: discussed how this zoning permit was meant to capture discrepancies since 1993. In 2014, there was a zoning permit to address discrepancies for parking, retaining walls, and layout. Discrepancies between parcel layout and tax map. This was approved under NMU standards. Three allegations were brought forth: a deeded ROW not part of the zoning permit; a green space with no change and coverage compliant; and a boundary dispute. Zoning stays out of boundary disputes and feels the appellants producing a survey is better route. A boundary survey is preferred over tax map.

B.Rabinowitz: was property in compliance in 1993?

S.Gustin: previous application was under appeal and the new application was to capture discrepancies.

R.Brisson: distributes materials to Board.

Issue of one parking space is in question. The appeal is to 1) to correct the 'as built' on the site survey; 2) to address the planning concern and parking violation in the ROW; 3) change of use for green space and runoff. Shows a sketch of the parking space as an 'as built' but area never was improved or maintained in the ROW. This is not a boundary dispute. Need to have it correctly sited by Board.

K.Brisson: there is a concern for safety at this spot. Parking was not initially contemplated.

A.Hart: we cannot enforce terms and agreements. The Board cannot resolve this.

K.Brisson: there is no way to turn around.

A.Hart: no access parking space is not needed by applicant.

K.Brisson: we would be in agreement if not including parking. Showed the parking space approved in the original permit.

R.Brisson: no parking space in 1993 for that spot, not an 'as built' for parking as before.

S.Gustin: they have submitted 1993 application but do not have the permit. Discusses where a parking space could go with zero setbacks.

A.Hart: the Board cannot discuss the easement and nor stormwater discharge.

A.Hart: questions about survey tax map and portion of the retaining wall.

R.Brisson: asking for an accurate description and how much property is there to work with?

A.Hart: retaining wall is on the wrong side.

R.Brisson: there are a lot of issues.

S.Litwhiler: said the issues of the area that was green space and parking. Said he has photos of the gravel. This isn't used all the time, but have used it from time to time. Shows photos to the Board.

A.Hart: asks how often the parking space is used.

S.Litwhiler: we have one company car, but don't use it that often. Hands out materials to Board. Currently there is green space where someone planted a green space.

BRabinowitz: asks about location of parking space.

S.Litwhiler: there is always an extra space. Shows deeded ROW in hand.

A.Hart: rights to this access is outside the Board's review.

S.Litwhiler: do not agree with site plan and boundary lines for this concrete wall. Originally wood retaining wall. We could not put up the wall without permission of other property owners.

B.Rabinowitz: asking if the wall that was built is on or off the property line.

S.Litwhiler: the old wood wall was on Scott's land and it's still there.

Sharon.Litwhiler: before the neighbor the bought property, he had the previous owner sign an affidavit saying the wall was on our property.

A.Hart: a lot rides on where property line is. The Board looks at whether there are changes to size, boundaries, or setbacks and not about who it belongs to. Does the boundary affect green space?

Sharon.Litwhiler: we don't know.

A.Hart: staff made a decision that development of the property meets and complies with the zoning ordinance.

Sharon.Litwhiler: it was there when we came. We had someone check it out.

Steve.Litwhiler: it was 16 or 17 feet high and we tiered it back 9 feet to stabilize.

I.Smith: questions staff about original plan showing no parking space and then if it showed up initially in 2016.

S.Gustin: yes, that is correct.

Sharon Litwhiler: surveyors said they wanted to use the Hayden survey. Mark Ward did not record the survey until we said it was okay to record it. Mark became ill and we never had it reworked.

G.Blasdel: I planted grass because the water off their property puts silt into storm drain. Three different surveys shows all same monuments.

A.Hart: consistent with the Ward survey?

G.Blasdel: yes

A.Hart: closed public hearing.

3. **17-0548CU; 85 Lakeview Terrace (RM, Ward 3C) Jovial C King**
Change of use from an accessory apartment to B&B use. (Project Manager, Mary O'Neil)

M.ONeil: recommends for consent agenda.

Applicant: okay as consent item.

W.Senville: asks for public hearing to ask questions.

Applicant: mother in law uses occasionally for a weekend to a month.

W.Senville: potential B&B?

Applicant: yes.

W.Senville: will accessory units be used as B&B?

M.ONeil: not to my knowledge. Daily use is exclusive to one or the other. The accessory unit has to have a primary unit.

A.Zipparo: will breakfast be served for B&B?

M.ONeil: yes.

Applicant: we use accessory unit for family and friends.

B.Rabinowitz: closed public hearing.

V. **Certificate of Appropriateness**

1. **17-0455CA; 57 South Williams St (RH, Ward 1E) Vermont Organization for Jewish Education – Lubavitch**

Two level addition, 5500 sq. ft. to west side of existing building. New worship sanctuary on upper level with supporting spaces on lower level; new off street parking.

(Project Manager, Ryan Morrison)

A.Hart: swears in applicant and interested parties. Mentions that the Board has not had a chance to look at supplemental materials.

E.Wolfstein: asks if new materials were reviewed.

A.Hart: haven't seen materials just submitted.

E.Wolfstein: added drawings to address staff issues, pertaining to lighting, bike parking and number of storage spaces inside the building. Confirms lot coverage.

A.Hart: asks applicant if he wants to add to supplement that was discussed by staff.

E.Wolfstein: open for public comments and questions.

W.Senville: asks how much space in the existing building, sq. ft. and parking.

E.Wolfstein: no changes in old building. The new addition is separate entity with separate entrance and address. Parking is combined lot with 51 spaces. Will be a lot offering 36 spaces with more green spaces.

W.Senville: asks if combines office space.

Applicant: offices are small.

A.Hart: question for staff about density of other uses on property.

R.Morrison: density is particular to residential units.

W.Senville: parking waiver requests formal agreement with UVM.

Applicant: busiest once a week on Saturday and occasionally Sunday. UAC is more than happy to share with neighbors most likely on a weekend, since members walk to synagogue for services.

W.Senville: do you have a formal agreement with UFC?

Applicant: spoke with staff about a formal agreement.

A.Hart: asks if occupants are members of the community, attendees, or unrelated tenants.

E.Wolfstein: could be both and could be students, no restrictions.

A.Hart: questions parking.

G.Hand: stormwater basin question.

Applicant: it's a dry pond.

G.Hand: questions the discharge downhill.

S.Pressario: align pipes to disperse the flow. The pond is designed for 10 yr. storm and completely drains in 1 year rate. Trying to direct away from properties.

Applicant: the NPA neighbor was entirely satisfied.

B.Rabinowitz: questions on stormwater management.

R.Morrison: State of VT wastewater requirements are what the stormwater staff will review.

G.Hand: may want to consider a fence for the pond.

A.Zipparo: questions the parking on Saturday and Sunday. What about funeral?

Applicant; defers to Rabbi.

Rabbi: there hasn't been a funeral for quite a while. If too large of crowd went somewhere else During the week, it is not the same crowd as the weekend.

Applicant: parking lot overlaps. There are adult education classes with some cars in lot but day care is gone.

A.Hart: opens hearing to interested parties.

P.Bloomhart; owns an apartment building at 54 So Willard directly downhill from project. Current lot is large and vacant absorbing stormwater, but disturbed by the solution to disburse water to other properties. DPW has not made a determination about this plan. Their pond is directly adjacent to ours and not sure how much water is absorbed. Would like to hear from staff. Over the years, there's been a problem with students and others to using the property as a cut through. Encourage fencing and signage to discourage this use.

G.Hand: experience with runoff now.

P.Bloomhart: continual problem with erosion on both sides of driveway.

A.Hart: where is erosion problem coming from?

P.Bloomhardt: we don't know.

Neighbor; plans show slope is a 2 to 1 elevation. This is a steep slope to extend parking. The southern side has concerns about runoff and wants to know if slope is acceptable. Mentioned 9' foot elevation.

A.Hart: is 9 ft. of fill coming in?

Neighbor: yes, though concern about headlights going into second floor units of bedrooms for south and north side. Asking for a guardrail around parking lot to block lights. Possible to change plantings from trees to evergreens for light blockage on boundary lines.

S.Bushor; Ward 1 Councilperson. Asks how many parking spaces exist presently on site and how many are being added? Pleased with parking management plan and alternatives to covering the green space. Wondered if the number could be less than 36 spaces, because there are people who live there, plus offers protection for preschool children. Other concerns with retention pond, slope, protection for screening for neighbors and as the last property of green space.

G.Hand: asks about existing parking spaces.

R.Morrison: not sure on the actual spaces laid out.

Applicant: looked at what was permitted. Think it had 19 spaces and we're adding 17 spaces for 36 altogether. Impervious lot coverage is 28%, which is revised to 36%. Dramatic improvement and utilization of space with children's play area which is fenced.

B.Rabinowitz: questions the circulation where children exit.

Applicant: on southwest side of the building.

B.Rabinowitz: the entry is in the way and need to walk around.

Applicant: will not have to walk into parking lot or across a road.

Fencing will keep people from walking through lot. There will be less inclination to walk up the hill. Landscaping has been updated to provide additional screening from lights.

S.Ruggiano: all drainage is directed by curbing into stormbasin.

A.Hart: there are neighbor concerns with erosion.

S.Ruggiano: there is less water with the design.

A.Hart: asked about the 9' ft elevated parking

S.Ruggiano: she is correct due to ADA parking

B.Rabinowitz: building is split level and elevator doesn't connect to anything else.

D.Stewart: can access other areas with elevator.

B.Rabinowitz: having a separate ADA entrance from the other entrances is unusual.

W.Senville: questions about the parking area, and adding 17 spaces.

D.Stewart: new parking will be along the border. Describes parking area to the west.
W.Senville: additional parking constructed is 17 spaces and not 36.
D.Stewart: that is correct and there will not be as much impervious area.
A.Zipparo: questions if a teaching garden is possible for green space to give hands on experience.
D.Stewart: the issue is the slope in many areas, otherwise might be possible.
A.Zipparo: asks about reducing parking.
S.Ruggiano: we are at 50% allowable parking.
A.Hart; closed public hearing.

2. 16-1262CA; 8 Proctor Place (RL, Ward 5S) Rebecca Grannis and Chapin Spencer
Request to amend DRB approval for replacement of existing mobile home and garage with new single family home and shed.
(Project Manager, Mary O'Neil)

A.Hart: swears in applicants and interested parties.
M.Aloisi; architect for project. Explained the sewer line was missing in original plan and placed into new site plan. Pushed the house back 4ft and moved design into second story. With footprint trying to get three bedrooms, but there are constraints with two front yards and two sideyards.
A.Escott: attorney for the applicant discussed front yard setbacks and street frontage. Handed out parcel maps reference guide to Board.
R.Grannis: spoke of the frontage of the property, private ROW and easement access.
A.Hart: asks if there is access on the public and on the private street.
M.Aloisi: frontage is only 24 feet on Proctor Place.
R.Grannis: entire boundary is obstructed to the west by city chain link fence.
A.Hart: city ordinance is requires frontage on public streets.
G.Hand: questions if the ROW is devoted to public use?
R.Grannis: we have an easement to use for access and with the neighbor.
M.Aloisa: doesn't meet requirements for public ROW.
W.Senville: confusion over the ordinance and who has access to alley.
A.Ascot: consider ROW as a private.
G.Hand: how do we relate the definition of a street or an alley with definition of lot frontage?
A.Hart: the precedent of a private ROW as front yard may be dangerous precedent to set.
G.Hand: there is an ambiguity in definitions. Trying to figure out the definition of a street.
M.ONeil: this is part of someone else's property and need for it to be conforming lot and lot coverage.
G.Hand: reads definitions for street and public right of way.
R.Grannis: can build in existing footprint with one story.
I.Smith: the exiting footprint forms an encroachment.
M.ONeil: the CDO would allow this.
Neighbor: house faces the ROW. It is an older structure from 1860 and part of the layout of this neighborhood. Proctor PI never had any homes built on it, since it was access to the pump station. The home faces the right of way. This wasn't access to the back of the house but access front of the house. What was created was not about the ROW. Suggests considering this as a corner lot and develop in a pattern that makes sense.
J.Dunn: looked at plans and is supportive of project. Doesn't see how this sends us down a slippery slope.
A.Churba: completely in favor of project. Set back further back would be fine, even with two stories.
Ken Brillo; neighbor in area about 24 years, emphasis that this home predates all homes in area and all streets. The house and garage face north, which is consistent and that's were property should develop.

A.Hart: describes two types of streets, a public street or a right of way.
K.Sturtevant; need to review case law on this topic for deliberative session.
A.Ascot; already examples of precedent, one being 117 Deforest Heights.
I.Smith: proposed site plan questions.
M.Aloisa: speaks of encroachment of setbacks.
A.Hart: closed public hearing and requested a submission of additional information.
M.Aloisa: mentioned this would be provided information tomorrow.

VI. Other Business

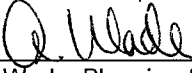
17-0455CA; 135 Hayward Street (RL, Ward 5), reconsideration.

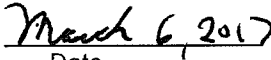
A.Hart: asking Kim's guidance. This is not noticed for a new hearing, only whether we should reconsider this for a public hearing and get into new information and evidence.
W.Senville: asks about the application's time extension.
K.Sturtevant: under state statute need to reconsider and reopen hearing. Quotes the case and reasoning behind this as new evidence. Parties are considering reopening.
A.Hart: evidence that could have been offered and perhaps not something to be encouraged.
S.Gustin: neighbors said Board has no authority over this decision.
K.Sturtevant: a decision from this Board can be presented to the court.
S.Gustin: this needs to be filed within 30 days.
A.Hart: we don't have authority to expand on an environmental decision.
G.Hand: if we did take another action, it would be separate event.
I.Smith: asks about affidavits from parties.
B.McNichols, and J.Walker, both spoke at initial hearing.
B.McNichols: questions on pieces of evidence presentation.
J.Walker: not aware of it as a renter.
B.McNichols: did receive a notice.
A.Hart: we have your letter.
J.Walker: we did pass some information to you, but did not want to file information
Attorney: opposes motion to reconsider, since the evidence predates the hearing. A continuance could have been requested. Both individuals could have submitted at that time and submitted additional information to receive different outcome. The fire report is no final report at this time.
D.Patterson: a reference was presented at the hearing and should have had the affidavit. What the Fee Press wrote after the fire should have no bearing on this outcome. We prepared the affidavit and others gave testimony. The notice was on building for the appropriate time.
G.Hand: Kim said we should consider prejudice.
Attorney: building plans are to build a triplex under the time limits with the insurance co and city.
G.Hand: asks about time period.
Attorney: Have up to a year. We got the decision we did not wait the full 30 days.
G.Hand: questioned the testimony asking about the fire report but was not provided
Attorney: there is no fire report available.
G.Hand: the report said testimony was taken from others.
Attorney: could have easily requested a continuance at the time.
A.Hart: submit the decision
K.Sturtevant: provides more information on incomplete information.
B.McNichols: there were misrepresentations by the attorney.
A.Hart: the letter says Nov 21st.
B.McNichols: the official decision was received Dec 1st. The Fire department report is published on the website. This is directly relevant evidence with interviews of owners and residences. Appellants were not forthcoming about residents:
J.Walker: questions about residents. The use over past several years was not as a triplex.
W.Senville; how did you hear about Mr Spang?
B.McNichols: it was after the event:
A.Hart: closed public hearing.

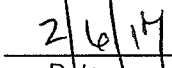
VII. **Adjournment**

Deliberative Session Monday scheduled for December 12th at 5:00pm.


Austin D. Hart, Chairperson Development Review Board


A. Wade, Planning & Zoning Clerk


Date


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.