

Burlington Development Review Board

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Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday April 3rd, 2018, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT Minutes

Board Members Present: A.Hart, A.LaRosa, G.Hand, A. Zipparo, J.Drummond alt.

Board Members Absent: B.Rabinowitz, S.Tilton

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

I. Agenda

No changes

II. Communications

No communications

III. Minutes

A.Hart: Minutes from the March 20th meeting will be discussed at the next deliberation

IV. Consent

1. 18-0703CA; Rock Point Rd (RCO, Ward 4N) Episcopal Diocese Of Vermont

Construct single family home and storage structure
(Project Manager: Scott Gustin)

A.Hart: Any board members object to consent

None

A.Hart: Are there any members of the public that wish to comment or have questions regarding the project?

None

A.Hart: Does the applicant have any questions or concerns about conditions or staff findings as presented?

None

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

G.Hand: Seconds the motion

5-0-0

2. 18-0718CA; 176 North Winooski Ave (NMU, 2C) Arthur Chukhman and Sarah Wittman

Third unit building addition to existing duplex.
(Property manager: Ryan Morrison)

A.Hart: Any board members object to consent

None

A.Hart: Are there any members of the public that wish to comment or have questions regarding the project?

None

A.Hart: Does the applicant have any questions or concerns about conditions or staff findings as presented?

None

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

G.Hand: Seconds the motion

5-0-0

3. 18-0700CA; 140 North Willard St (RL, 1E) John Magnant

Remove one story north addition and replace with two story. Requesting approval of vertical expansion within required setback.

(Project Manager: Mary O'Neil)

A.Hart: Any board members object to consent

None

A.Hart: Are there any members of the public that wish to comment or have questions regarding the project?

None

A.Hart: Does the applicant have any questions or concerns about conditions or staff findings as presented?

J.Magnant: Has some concerns regarding the pre-existing conditions and conditions set by staff for removal of items out of the setback; does not feel the conditions are appropriate for the scope of the project.

A.LaRosa: The conditions call for the removal of a shed and patio that are in the setback, did you put those in?

J.Magnant: No, they were there when property was purchased 40 years ago; the issue with the electric meter – everyone in the neighborhood has one in the same location with no screening required.

A.Hart: This side of the house is right against the fence?

J.Magnant: No there is a fence there

A.Hart: That screens from the street?

J.Magnant: partially

A.Hart: Understand that the basis for staff's findings and recommendation is that those sheds encroach into the setback and were never permitted. Is that factually accurate as far as you know?

J.Magnant: I don't know it was there when I bought the house; neighboring properties have sheds in the setback as well.

A.Hart: You're asking for an addition which allows us an opportunity to look at noncompliance and allows us to request the property be brought into compliance; you are also asking to extend vertically into the setback.

J.Magnant: Conditions of the lot are similar to neighboring properties

A.LaRosa: Mary when you conditioned did you know the sheds have been there for 37 years ago?

M.O'Neil: For Statute of limitations you have to prove they have been there continuously and the applicant did not provide evidence of their existence; failure to establish

A.LaRosa: Do you know what the setback was then?

M.O'Neil: No only permit is from later date

J.Drummond: One of the items is the concrete patio and the shed and neither have moved.

G.Hand: we don't have anything to disagree we just have no evidence of when they were installed

M.O'Neil: No evidence that they were installed permitted; no evidence by the applicant was provided

A.Hart: You testified it was there and hasn't changed it
J.Magnant: Could bring neighbors in, they were there when I bought it.
A.Hart: Dimensions of patio
J.Magnant: 12x20 slightly 'L' shaped; shown on site plan
A.Hart: shed dimensions
J.Magnant: 3x6 metal shed
M.O'Neil: 18 sqft shed; 216 sqft for patio
A.Hart: Closed the public hearing

V. Public Hearing

1. 18-0641CA/CU; 206 East Ave (RL, Ward 1E) 206 East Avenue LLC

Conditional use approval for the addition of a third residential unit to a two-unit structure, pursuant to CDO 4.4.5 (d) 5.A.
(Project Manager: Mary O'Neil)

A.LaRosa: Recused

A.Hart: Ask applicants and/or representatives to come forward

L.Murphy: asked for continuance due to staff comments they wanted to respond to; requested to bring into compliance a property that has been a 3 unit since 1983 there has been confusion about the approvals of that but it has been a duplex since 1993; staff comments stated record couldn't show it was duplex since 1962; we have supplied affidavits from residents in the neighborhood who are familiar with property being duplex since 1962; in past don't know if board needs to make policy judgment on how far back applicants have to go back.

A.Hart: 1962 and 1973 there was a duplex, no conflicting testimony

L.Murphy: 2010 / 2011 applicants came before the Board to turn to a 4 unit; withdrawn due to question of the 3rd unit being legal; applicant has been diligent about talking with staff about how to become legal 3 unit; believe application is complete and substantial enough to make it a legal 3 unit; disagree with how one calculates density- in this case because of the number of square footage if you use net density it turns out that the calculation would hit right on the 50% level- 3.5 rounding therefore to 4 units ; if there was one foot more it would have rounded down; regardless of that the City's Ordinance states in calculating density it shall be divided by the gross floor area; definition of gross floor area includes the street right of way- with that there is clearly enough space for the property to be a 3 unit. On Thursday night the planning commission is looking at changing this definition; right now it is gross and it should be net; this application is made at a time when the City Ordinance refers to gross and not net which makes their application valid.

A.Hart: Staff comments include gross square footage and it does include the right of way. Seems to apply more to a PUD and not one lot; maybe supports staffs interpretation in that this is supposed to apply to a large subdivision

L.Murphy: Disagree

A.Hart: It makes sense in a large subdivision; the question is if it fits with a single largely developed lot

M.O'Neil: base residential density 4.4.-5.2; would discount the method of basing density from the center of the road.

A.Hart: applicants in past have argued in terms of setback we should measure from center line of the street; absolutely not it would be a mess and inaccurate.

L.Murphy: setbacks measured from the street line not from the center line of the streets; issue is very specific ordinance provision is set forth in order to calculate density, incredibly complicated section; as of currently written court would say – gross floor area it does not say net it says gross and it says the right of way; if there is a question about the interpretation of an ordinance than a court says it

would make a difference it is a minimal difference. Second issue is the clean hands concept; how else are you going to solve the problems; client has been trying for the last 7 years to solve the problem; site plan shows reduced lot coverage, reduced parking space. If we don't get approval than it leaves all of that stuff in place and serves no purpose; the unit has been there since 1983; this is not an area of single family dwellings, we need to find paths to allow applicants in this limbo created by the interpretations of uses and structures. Under current provision parking lot building can never be enforced against; can't use it because of use violation claim.

G.Hand: any examples of this definition of the past in terms of how it's been applied?

L.Murphy: There are a couple of cases but not sure if density came into play

G.Hand: Any guidance of how we dealt with that definition in the past?

M.O'Neil: Sections footnote is quite specific

A.Hart: Not consistent with character of the parking area; can you explain what is being done to improve that? Parking lot has expanded 3 or 4 times.

L.Murphy: When the garage with unit was built is when the parking was built; if you look at the plan there are 2 things in the back: a 17.25 foot section of parking will be removed, 1000 square foot of parking will go to green space; on the southern boundary there would be a strip of 2 feet wide 200 square foot being removed. The parking lot in front of the house would also be removed, 1300 square feet would turn into green space.

A.Hart: is that gravel or paved?

L.Murphy: paved

A.Hart: Frontage is all paved right up to the sidewalk

L.Murphy: yes, but being removed

G.Hand: Any reason for the parking arrangement?

L.Murphy: big tree in the middle, also because of the garage you still have to get into the front of the garage, but we want to preserve the green space in the middle

G.Hand: it appears out of context; parking seems overly dominant

L.Murphy: If you look at the adjacent houses it may be bigger but in context the co-housing community, centennial court, and Red Cross across the street; this would allow us to fall into the required lot coverage.

A.Hart: it is unfortunate that all of the parking is against the street and the sidewalk; expanded back instead of forward

J.Rippa: the parking in the back is from 1983 in front of the garage; the front area that you say is too much parking; we didn't mess with it because it was existing in the 1950's; it doesn't make that much difference

A.Hart: the ordinance requires parking to be in the back away from the street and sidewalk

L.Murphy: if the conditions of approval were to be that the parking spaces in front were to be relocated we can work with that; obviously there still needs to be a driveway from the road. Challenge would be trying to make the 35% lot coverage

K.Ellerman: don't see a lot of room for removal in the front, because you have to direct cars from curb cut to rear there is not a whole lot that can be done

L.Murphy: We could move curb cut to south side of property as well.

C.Long: applaud efforts of Planning and Zoning of bringing properties into compliance; bringing back green space.

S.Busher: property has been one of the things identified early on with zoning rewrite when walked the street and saw noncompliant properties; parking space in front yard right by front door; not sure how to substantiate the existence of a 3rd unit; found it interesting that they had testimony saying that there were existing; understand debate over sqft if there is a process that allows it move forward I want to see the elimination of parking spaces with triplex not sure why so many

parking spaces were needed to begin with; have a sea of parking in a pedestrian way; we try to funnel and define a narrow strip for street to parking transition; bothers to have openness around sea of concrete; if there is going to be a change the city and neighborhood should benefit. The number of spaces on the property need work; looking at properties to point to the reason why a tri plex is consistent with the development around; centennial court was legally negotiated; co-housing is a PUD large parcel of land and donation of open space given to centennial woods; process inclusive where there were many winners; there is always rational but that is not necessarily what you hang your hat on.

G.Hand: how does this definition been applied in the past; has staff applied that footnote to not include existing streets

M.O'Neil: yes base decisions on lot area no measurement to center line

K.McKegney: resident since 1993 no objection to the existing tri plex use with the proposed parking plan

M.O'Neil: Staff respond to materials submitted by attorney Murphy; staff has consistently applied lot are; page 5 of his submittal tri plex there since 1983; contradictory to 2 permits submitted to Planning and Zoning where they applied with statements of duplex

A.Hart: any position on how long it has been there?

M.O'Neil: reverse directory and occupancy there; affidavit provided familiarity; land transfers 1963 made by guardian; not confident the fellows were in the home at 1963

K.Sturtevant: deed of property; what is the lot? There is a deed that describes the property as lot of land with shed; clearly the street is not part of the lot; th lot is bound by the street, the provision that they cited is more specific under residential uses; regard to spaces and parking even under the proposal the parking does not comply with the Ordinance. Parking in front should be limited to 18 feet; From the Keating case it is clear that they can't use parking that is illegal as part of a request for further additional units.

L.Murphy: Mr.Rippa, as you are under oath can you tell the Board when the garage and 3rd unit were built?

J.Rippa: 1983

L.Murphy: Did you get a Certificate of Occupancy from the building inspector?

J.Rippa: Yes, inspector looked at everything including parking area.

L.Murphy: That is in City records?

J.Rippa: Yes

L.Murphy: in regards to land is bounded by the street right of way; the deed also says includes all pertinences with the property- property bounding of the street owns the fee title of the right of way; don't think the Keaton case is relevant; if there is not an approval where does that leave the city; the parking area in front of the house has been there for decades; the parking lot has been there since 1983; the City could take an enforcement action to prevent the use of the area above the garage to not be a living area, but that couldn't change the parking area; our goal is to be solution oriented and the solution is if they can come into compliance we can work with city on parking issues; if not everything stays the same and we're all in limbo again; issue is does this parking garage with the unit above it- does it have adverse effect on neighborhood; don't believe so. City needs to get to a point where these limbo properties can come to a resolution; because it doesn't serve anyone well. Inconsistency for statute of limitations for use doesn't solve anyone's problems. If the Board can find that the density based upon current ordinance says that the specific provision where you calculate density says use gross density

G.Hand: in 1983 the garage was built and turned into the 3rd unit? Timeline of Zoning trade and code states zoning application was addition to duplex to be used as garage and living space; does not state unit just expansion of duplex.

J.Rippa: Got a zoning permit to add living space, left office and went to building inspector and listened to the inspectors design to make it a separate building; attaching would undermine the foundation because there is no footing; inspector directed him-there was no need to go back to zoning. Passed inspections. Lived there for good portion of adult life and property has not changed-everything original from 1983. Never applied for a 4th unit. Wanted to change garage to 2 more bedrooms and a fire escape. Working on this diligently since 2011; the affidavit from Martha Down is referring to fellows Jr who is alive and lives in Hardwick.

L.Murphy: 9 bedrooms therefor proposing 9 parking spaces

M.O'Neil: not certain when referring to the Keaton case- was Mr.Murphy involved in that case or not?

L.Murphy: I was involved

K.Ellerman: Case was about a structural nonconformance with a parking space- it was decided that the conditional use couldn't make use of a parking space that was illegal but it wasn't a situation where you had a site plan presented that could satisfy dimensional requirement as we have demonstrated here.

J.Rippa: when Sharon was talking about identifying properties not in compliance UVM had a bunch of students doing a project and trying to figure out what was and wasn't in compliance. Jeanne Francis wrote a letter stating parking lot was too big and the shed was removed.

A.Hart: what is the relevance?

J.Rippa: when Jeanne looked at the maps she was satisfied with is and agreed parking had not changed

A.Hart: Closed the public hearing

2. **18-0556DT; 21 Peru St (RH, Ward 3C) BPJS Management LLC**

Appeal of affirmative finding regarding determination request of preexisting nonconforming use of dwelling for more than 4 unrelated adult occupants.
(Project Manager: Scott Gustin)

S.Gustin: Determination request relative to unrelated adult occupancy for a single dwelling unit 21 Peru street; Residential High Density zone; board has seen one other appeal in Residential Low and Residential Medium zone; in the Residential High density zone the punch line for unrelated adult is the date of December 2012; the idea is before that date there was no expressed limit. In December 2012 the limit came into effect; applicant is looking for determination to grandfather that occupancy; in the evidence submitted the number of adults has fluctuated and increased over time; the consistent number appeared to be 6 unrelated over that time; there is a gap of a year between May 25 2013 and June 1 2014 where occupancy dropped to 5; hence the staff report granted occupancy of 5 unrelated adults; since 2005 they have had at least 5 unrelated adults; there are standards for non-conformance generally and generally they can't be expanded; article 4 stated the criteria and this property does not appear to meet this criteria

M.Daly: the city has ruled that the property is grandfathered; at the time of December 2012 the prop was being used by more than 4 unrelated adults; arguing that there should not be a limitations the Ordinance does not express specificity; Bill Bissonette bought it with the understanding that her could have unrelated adults living there; it's a 7 bedroom home with adequate parking; argument is absent express language in respect to limits of unrelated adults the property should not be limited; in the alternative we would argue that the number of unrelated adults living there at the time of the ordinance change should be applied which is 6. The staff recommendation of 5 unrelated adults is not rational

there is no basis for that- if you adopt a number it should be based on the usage in the express terms of the written lease agreement. Mr Bissonette has rented to 8 unrelated adults- no complaints or issues; prior to this proceeding Mr. Bissonette has entered into an agreement with 8 other unrelated adults starts June 1 expiring may 2019;

A.Hart: staffs position is based on non-conforming use as it's grandfathered but that could be abandoned; what is the reason behind the dates?

B.Bissonette: The structure dates with turnaround time figured in so most property owners do it at same level 4-5 day window then present space to new tenant;

M.Daly: leases each month, rent remains the same

B.Bissonette: from financial side we take total lease amount and divide it by 365 days

M.Daly: 12 month leases

A.LaRosa: are the number of unrelated adults right? How did they come to these numbers

M.Daly: those numbers are correct we provided the leases to Scott Gustin; as it exists now there are 7 rooms with 8 individuals living there

S.Gustin: the original 6 occupied June 1 – May 25 2013; 6 vacated property was not reoccupied by 6 again until June 1 2015

G.Hand: can you speak to the increase in number of occupants?

B.Bissonette: most real estate is in old north end; students have started to come into neighborhood more and more so this building is 1st acquisition in high density zone when bought; college rental business and it's a huge home and the 1st year rented it did really well but there were still open bedrooms. 5 or 6 kids on the lease, never had any noise complaints; the other couple of bedrooms were probably occupied by friends; one year there were a group of kids and a young couple that split a room and that's how we got 8 people in 7 rooms;

M.Daly: Supply and demand the house can accommodate that number of people; evolved over a 4 year period.

G.Hand: struggle with the concept of grandfathered at a date and then allowing for an expansion of the number; feels like what the ordinance is trying to protect against

M.Daly: it does accommodate the number that is there no problem with 7 bedrooms

B.Bissonette: practically speaking if you look at that building as an example, what ends up happening is the building across the street gets over occupied by students. Health safety and appearance issues is priority for us; working on updating exterior and parking; if there is not housing provided and not centralized than another house will do it.

C.Long: looked at 21 Peru Street when it was for sale in 201; listed as 2 bedroom single family house; was a very nice house; it is listed by assessors as an 8 room home—how is this 2 bedroom house now an 8 room house with 7 bedrooms; filed complain due to all of the cars in the front there used to be a single driveway to the garage; there is now a muddy parking lot with 6 or 7 cars parked. In 2011 the home was a 2 bedroom well-kept home and has since diminished and always has trash outside; tire ruts where the lawn used to be. Grandfathering –thought had to be 15 years- doesn't think this is appropriate. There are really large houses which this is not- this is a business model that some like but as a resident in Burlington we need to take care of our neighborhoods; if you go and look at the neighborhood before you make a decision; City is very generous to grandfather the use but there is not enough parking. Very negative use and effecting the neighborhood; deny appeal and concur with staff's recommendation.

S.Gustin: your email stated 4 bedrooms; but you state here 2

C.Long: the listing states 2

C.Long: the realtor that showed us said you could turn it to 4; the listing stated 2 bedroom

K.Sturtevant: Would like to echo staff's comments: interpretation of if it was grandfathered and if the number was 6 it could be any number---case law states with interpretation it can't lead to illogical result----interpretation that grandfathered in 2012 means that they can have any number is illogical

G.Hand: struggle with that position with after grandfather number that it could shrink from there; by taking that position are we telling people that they have to keep the number at 6 or can they fluctuate down then back to 5

S.Gustin: if you reduce the nonconformity we won't let it go back up unless it is within the same year; this is how we are working toward phasing out nonconformities

M.Daly: represented BPJS Management in 2011 when they purchased the property; former owners stated they raised 7 kids;

A.Hart: to clarify the ordinance specifically refers to unrelated adults not a family

M.Daly: We're not asking for absurd results; arguing that the ordinance is unclear. If the City wanted to express limits of unrelated adults the City would have clarified but they haven't.

K.Sturtevant: To be clear the Ordinance defines family and states the limitations to no more than 4 unrelated adults.

A.Hart: Closed the public hearing

3. 18-0692BA; 46 Cross Parkway (RL, Ward 4N) Ronald Koss and Carley Claghorn

Appeal of administrative denial to add a bathroom within the existing garage.
(Project Manager: Ryan Morrison)

G.Hand: Recused

R.Morrison: 46 Cross Parkway, currently has compliant parking; application is to fill in garage parking which puts them into noncompliance with parking; by adding bathroom in garage they render the parking space non-compliant; section 8.1.12 parking requirement states it shall not be in setback; city's interpretation on similar denial taken from 2015; appeal was submitted against staff's denial.

A.LaRosa: they are short here by 3 feet; minimum parking depth

R.Morrison: Depth needed is 18feet

A.LaRosa: in garage would be first space?

R.Morrison: If they shrunk the size of the bathroom and had the 18feet of space in the garage it would be compliant

J.Drummond: Usually in garage 20 feet is tight, we're going for the minimum parking space, rarely are garage spaces under 20 feet. You need space to get around the car.

A.LaRosa: Any lot coverage issues?

R.Morrison: Didn't review lot coverage as there was no change in the proposal.

C.Claghorn: started with parking that was complaint and want to become non-compliant; June 2017 the garage had been improved as a 3 season space; the sellers disclosure sheet had included the space had been permitted; plan was to improve upon conversion. The ordinance referenced made no sense to them; January we proposed to replace affixed wall with insulated overhead garage door so we could use space as desired and return the use of parking space. Felt inflexibility and proposed side by side parking. Believe we were being treated unfairly.

R.Koss: 2016 denial by DRB doesn't apply to our situation based on the denial said there is only one off street parking we have 2 we can park in tandem one behind the other and side by side; apparently it didn't accommodate 2 spaces that

is not our situation' 8.1.12 the front yard restriction states you cannot park in your front yard- with one exception you can park in a single access curb or driveway 18 feet or less in width; as long as we don't park in yard we are allowed to park in driveway- 1st space has to be behind the setback; we ask Ryan to show us the ordinance where this is stated. It is not in the ordinance that we are being asked to adhere to it is an interpretation of the ordinance; the plan meaning of the ordinance should prevail- there is no contrary definition in the ordinance; we have 2 cars that fit on the property- we are being unfairly asked to comply with an interpretation; if they want to change 8.1.12 c to require the 1st spot has to be 18ft behind the setback than do it so we don't have to abide by unfair interpretations. Permitted by the city renovations/conversions that do not comply with the interpretations that are being imposed on us- we looked at 43 conversions and found 13 conversions that conflict with the interpretations that are being imposed on us.

A.Hart: don't want to spend time on other properties that are under other circumstances

C.Claghorn: Examples of how this is an unfair situation

A.Zipparo: Are these in your neighborhood?

C.Claghorn: most of them yes; this is the list of 43-13 permitted; when we first talked to Ryan we had found 12 that were in our neighborhood off the bat; 3 permitted the other were unpermitted. People have gone on to get permits; people were able to improve on their home but we are not

A.Hart: what if you put bathroom outside of garage and added on; trying to explore all the angles

C.Claghorn: that would be much more expensive; want to contain everything within the existing footprint; Ryan suggested to move garage door forward-builder quoted \$10k extra and would push current parking closer to the road; passed around information

A.Hart: are you going to walk through these, are you going to submit these?

C.Claghorn: not all of them, but I want to make comments on some; 85 Foster St was permitted in 2012 for conversion to living space, has no side yard to allow for side yard parking and has 2 side by side spaces

R.Morrison: just going back to initial conversation, found evidence of 3 permits that looked like it had an error but after revisiting them one was proper; 94 update changed a few things but no difference in code

C.Claghorn: 2016 34 Scarff Ave-demo garage for rear side addition; over required setback no side yard single access driveway; example of inconsistent permitting; 33 Farrington Parkway convert 2018 garage to living space- after the fact permitting. We bought a house that had a conversion underway; wanted to do everything the right way- no one ever mentioned this; it is not clear. Not changing the footprint not changing how we are parking currently.

R.Koss: city gives new permits despite the noncompliance

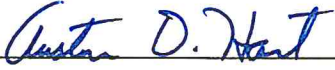
R.Morrison: there is no zoning permit evidence for garage conversion; appears to be a violation in submitted images; shows finished space no evidence of permitted change. Talked with appellants several times, not everything is black and white in the ordinance our job to interpret- recommended two alternatives –adding back and front under 6ft overhand

C.Claghorn: space unpermitted was not work that we did

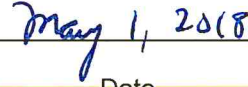
A.Hart: Closed Public Hearing

VI. Adjournment 7:13

A.Hart: Deliberation will be Monday at 5pm in Planning and Zoning Meeting adjourned at 7:13 PM



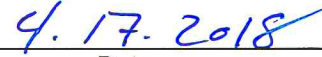
Austin D. Hart, Chair of Development Review Board



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.