

Burlington Development Review Board

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Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday May 15th, 2018, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT MINUTES

Board Members Present: B.Rabinowitz, A.LaRosa, S.Tilton, A.Hart, G. Hand, I.Smith, A.Zipparo

Board Members Absent: J.Drummond(Alt.)

Staff Present: S. Gustin, M. O'Neil, R. Morrison, L. Darfler

I. Agenda

A.Hart: Changes to the agenda include requests for deferral for Public Hearing items 1 and 3; City holds no opposition to these requests and they will be discussed later on in the meeting

II. Communications

M.O'Neil: Dr. Lang submitted a letter regarding 275 Main St shortly before the meeting

III. Minutes

A.Hart: Minutes from the May 3rd 2018 Development Review Board will be discussed at the next deliberative

IV. Consent

- 1. 18-0809CA; 1106 North Ave (RM, Ward 7N) CDI Development Fund Inc**
Install 3 new HUD homes 14' X 60'. Add 3 parking pads, one per lot, 9' x 20'.
(Project Manager: Mary O'Neil)

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

None

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

B.Rabinowitz: Motion to approve and adopt staff findings and recommendations

G.Hand: Seconds the motion

7-0-0

- 2. 15-0923CA/CU; 465 Appletree Point Rd (RL-W, Ward 4N) Alfred R. Senecal Jr Trust**

Request for Time Extension: Construct single family home with accessory apartment and associated site improvements. Includes lot line adjustment.

(Project Manager: Scott Gustin)

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Project review for 15-0923CA/CU 465 Appletree Pt Rd and 15-0922CA/CU 451 Appletree Pt Rd were reviewed and voted on together

A.Hart and B.Rabinowitz recused

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

None

I.Smith: Any board members object to consent or have any questions?

None

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

S.Tilton: Seconds the motion

5-0-0

3. 15-0922CA/CU; 451 Appletree Point Rd (RL-W, Ward 4N) Alfred R. Senecal Jr Trust

Request for Time Extension: Demo existing structures, construct new single-family home with accessory apartment and associated site improvements. Lot line adjustment included. (Project Manager: Scott Gustin)

See above

4. 18-0898CA; 275 Main St (I, Ward 6S) City of Burlington School Dept

Site improvements including lower level link enclosure between buildings A and C, relocated loading dock, screening, fencing, new student courtyard and removal of pavement. Add a maintenance garage for equipment storage.

(Project Manager: Mary O'Neil)

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

None

A.Hart: Any board members object to consent or have any questions?

None

A.Hart: Are there any members of the public that wish to comment or have questions regarding the project? Seeing a few hands, we will open this project up to a public hearing

M.Spaulding: This project is a renovation of Edmunds Campus; renovating building C changing basement storage space into dedicated cafeteria space; new loading dock; new outdoor seating and classroom space.

C.Lindberg: provided handout

R.Burnett: provided an overview of the project; project is a connector between the Middle School and Building C which is currently used as a gym for elementary kids and the campus cafeteria. Most of the work is interior; exterior work includes the loading dock and dining deck; dining deck provides egress for assembly space as well as extra dining and outdoor classroom space. Showcased before and after renderings and the locations of impervious surfaces, landscape proposals, waste containers, loading docks with screening, and walk-in cooler behind screening.

G.Hand: Regarding the loading dock and the waste containers: is the waste containers in front of the loading dock?

R.Burnett: Loading dock will be elevated behind the waste collection feature

A.Hart: Where is the shed?

R.Burnett: The stair that services faculty and staff parking lot needs replacement so we proposed consolidating functions with that feature; covered stair to protect from the elements, storage unit for on-site snow equipment. Also includes additional bicycle storage/parking.

G.Hand: Where is the handicap access? What is the parking in the rear? This is a challenging site for handicap accessibility prospective

R.Burnett: Buildings A, B, and C are currently accessible with the existing handicap parking; existing accessibility is improved in this project with the addition of a new elevator as well. Egress is going to be maintained and increased through the new linked enclosure.

B.Rabinowitz: Surprised by the use of wood for the fence, seems out of character for the building

R.Burnett: Trying to match the harmony of the color tones and utilize the fencing as trellis space for plants to grow from the planter boxes to work as screening.

G.Hand: The fencing would be screening the mechanical equipment?

R.Burnett: Correct

A.Hart: As a school educational facility our review as the Development Review Board is limited

M.Lang: Supporter of strong schools; there is no issue that is being discussed here today that has to do with ADA, this Board does not have to review ADA items that is a non-applicability; there is nothing regarding life safety issues; the law states

A.Hart: Where are you pulling this law from?

M.Lang: the ordinance; Stated what the Board is allowed to review per the Comprehensive Development Ordinance (CDO); The project was not properly warned as the assessor's property database has no 275 Main St; tried to look up the permit history, size of the property, etc and couldn't find anything at all.

A.Hart: That may be due to the fact that it is a school and not taxed

M.Lang: it is under 175 South Union St; 150 Colchester Ave that's given public notice. It's always listed 148- 150 Colchester Ave; I didn't have a fighting chance, it took days to figure it out. Went for a permit to get a house built; aware of how strict it is of where the z cards are posted, the z card is at the top of a flight of crumbling stairs at a door that is locked 24, 7; this project was not properly warned. Question regarding courtyard in the back- why put it next to dumpsters and loading docks; very concerned about handicap parking that they will be eliminating- about 4 are being eliminated, is there a parking plan map? What's going to happen to the handicap parking; fire escape next to handicap parking is dangerous; would like more info on parking; listened to NPA meeting and they mentioned at that presentation that there are drainage issues- why put cafeteria in basement where it has been storage for decades and has drainage issues; very concerned about bicycle racks- look at bike racks on site visit- 3 bike racks in elementary school broken or in deep grass; would you ask about bike racks. Gave phone number and email.

R.Hillyard: Ward one NPA steering committee has not been informed about this project; assertion from the superintendent in the Front Porch Forum is that all NPA's have been informed; ward one and eight have not been given any of these details

A.LaRosa: Do you have any actual concerns about the project; it is a ward 6 project

R.Hillyard: We don't know enough about it

A.LaRosa: They just gave a presentation about it

R.Hillyard: NPA's should have been notified about this ward one and eight were not

K.Sturtevant: Procedural questions raised about notice: the standard in the regulations and State law is whether the material is misleading. When looking at the agenda and at the address, when you google 27 Main St Edmunds School pops up immediately. The agenda itself states that it is the City of Burlington School so there is no misleading information here. The Z card notice needs to be posted/seen from the right of way, which it was.

C.Lindberg: the true and key item we are concerned about is safety Edmunds has 18 or more entrances and exits the concept is to make C building the center –the

main access and control point for the entire school system; we are not providing the key issues we are taking C building a secure central entrance and making it totally ADA compliant by changing the grading-the feeling is that it's important to make it known that is the entrance. Developing landscape direction changing the grade significantly and illuminating all of the steps and providing ADA access to that entrance. Significance of this project is wonderful ADA improvements. We want to discuss the access with the NPA therefore did not include it in this presentation.

R.Burnett: gearing up for future phase to make C building main entrance; will bring them here this time next year; green space is serving as 2 purposes: losing the room for snow due to linkage between the building so the new green space will be used for snow and storm water improvements

A.Hart: What is the handicap parking?

R.Burnett: Parking spots are about 6 total but only 2 are handicap, those are staying, the additional spots are assigned to the principal and are the ones being removed. The elementary gym and cafeteria serve all of the students as a cafeteria but also the elementary school's gym space.

A.Hart: Closed the public hearing

V. Public Hearing

1. 18-0840AP; 62 Venus Ave (RL, Ward 7N) Lorrain Latorre Family Trust

Appeal of NOV # 346538 regarding change of use to duplex. (Project Manager: Jeanne Francis)

A.Hart: Appellants have requested Deferral; Motion to defer to date certain of July 17th, 2018

G.Hand: Seconds the motion

7-0-0

2. 18-0771AP; 12 Weston St (RL, Ward 1E) Charles Chauncey Burns

Appeal of NOV 336638 pertaining to duplex use. (Project Manager: Scott Gustin)

A.Hart: Are there factual issues here in dispute or is it strictly legal issue? No permit and issues are statute of limitations and estoppel?

K.Sturtevant: Not aware that there are facts of dispute regarding this, the zoning commission of officers set forth the facts as we know them. Questions regarding statute of limitations and estoppel

A.Hart: Are there factual issues that you want to present?

B.Heir: the facts since they were first hashed out in 2014 are abundant and agreed on- recent info from old city directories were lists of physical addresses and names of residents we would contest accuracy; may 2014 should be reviewed in context of whether or not estoppel should apply in new notice; recent similar case happened in Swanton- strictly a legal discussion

A.Hart: Would like to let the representatives make the arguments on the legal issues

B.Rabinowitz: Can we get clarification on estoppel?

A.Hart: I believe we are about to hear all about it; The City provided materials so we will let the appellants make the arguments on these two issues and then give the City the opportunity to respond

K.Sturtevant: The two legal issues in question are questionable if they are proper to be heard by this Board

A.Hart: Compelling facts here, the City's position is if the Board has the ability to make a decision; what authority do we have to do that?

B.Heir: Recommendation and suggestion to the Board is that they dismiss the NOV; there was a May 15th 2015 determination by zoning staff in response to a complaint by a Judy Rosentstrip which was issued and not appealed. The city deemed the property was a legal duplex and did not violate the code- context is important too because the Burns were under contract to purchase property and one of the conditions was to get confirmation by the City that is a legal duplex and sold as a legal duplex; burns have a considerable amount of investment in the property having bought it as a duplex; A case in Swanton's outcome told citizen a permit was not needed for pergola- estoppel applied because the landowner rightly relied and spent money based on the determination of the zoning administrator; hoping board dismiss the case as the law is fairly clear and strong on this one since the May 2015 permit was not appealed. Finality in statute prevents any kind of lateral attack on zoning determination that was not appealed- what would substantiate reopening this issue?

G.Hand: facts related to estoppel argument; your appeal is based off of a letter by Jeanne Francis who is a zoning enforcement officer not zoning administrator

B.Heir: The letter was prepared and signed by Jeanne Francis; in connection to the sale of the property; the document was issued in response to Ms. Rosenstrip's complaint. The buyers knew this was happening as there were issues raised about the status of the duplex use.

G.Hand: was the letter or determination that you're referring to publicly noticed?

B.Heir: Not sure how Ms. Rosenstrip obtained the notice, but she had the opportunity to appeal and we did not

K.Sturtevant: Estoppel is not within the Board's jurisdiction; this Board's jurisdiction is if there is a violation.

G.Hand: what happens to title of property if violation is found; someone goes to purchase the property seems there would still be an open and active violation?

K.Sturtevant: yes it would be noted in record- City has a year to file enforcement action on that without having to issue a new notice; attorney Heir talked about determination made by Jeanne Francis in 2014- what wasn't brought forth there is that there has been litigation regarding that letter to the Superior Court; decision in 2016 that states there is no finality attached to that letter- it wasn't signed by zoning administrator; there was complaint filed-regarding conversion single-family to duplex; determination letter issued; no appeal taken; letter went to complaintive not adjacent; eventually appellants bought and sought non-applicability for interior renovations to duplex- granted by zoning; appealed to VSCED by neighbors; went to Environmental Division Court held finality attached to letter stating it was a duplex- appealed to the Supreme Court; that case 2016 the Court held that was not a binding decision and no finality to that letter; ultimately the application for interior renovation was withdrawn and case was done.

B.Heir: State statute prohibits the enforcement of the alleged zoning violation after 15 years; there are such things as City inspections of rentals from 1991

A.Hart: The legal issue is the violation which is a use violation and the statute of limitations does not apply to use violations

B.Heir: Disagree with that stance; the Supreme Court has not yet decided, section 24 does not delineate between violations

K.Sturtevant: the use violation is not subject to 15 year statute of limitations as it is an ongoing violation; there have been several examples as well as the City does provide process for someone to request a determination under the 15 years but that has not happened here.

B.Heir: City can see this has been up to a four unit apartment since 1950 with no permit, reverted to a single family use. The non-conformity is less now.

A.LaRosa: 1969 what did the ordinance say?

K.Sturtevant: 1962 would have required a permit to change from single family to duplex

S.Gustin: Before 1962 zoning code just stated residential uses; after 1962 it became more detailed

A.Hart: Are there any members of the public who wish to speak on this project?

N.Will: agree with the prior proceedings but encourage board to read the environmental court's decision; process of code enforcement decision was not in compliance with the law; bases for the DRB upholding this cert of compliance or at least part of it; environmental court agreed that the neighbors could not raise the issue because of the code enforcement office decisions but the code enforcement office decision was not given to anyone but the complainant; Vermont Supreme Court says it is invalid; on the estoppel is the Vermont Supreme Court was a valid complaint and sent it back to the Environmental Court and the app withdrew – forcing neighbors to file another complaint- now rents to about 8 people- statute of limitations; the 4 plus goes back to 1969 then it was a duplex- situation where one family lived there and rented a room and so that may well have been a legal use as an accessory apartment- although maybe not permitted still; the leading case it a Burlington case called my sisters place it is very difficult to estoppel on a municipality and it is not the role of the DRB.

K.Lerner: involved in case in 2014 asked to come forward to give background and facts; the notice of violation made reference that there was no zoning permits; 1973 April 26th all permits were purged and thrown out except those related to Zoning Board of Appeals; in 1962 ordinance duplex and single family homes were legal uses. No way to prove whether there was a zoning permit or not. But there are several records that show the multi –family or duplex use. The notice of violation cites directories and errors; bought in 1969 as multi-family unit- Gaduet (previous owners) family occupied 3 of the units and rented 4th out; in 1977 they should have got a permit to convert 3 into one so violation is the conversion from 4 to 2; 2014 we supported 2 unit configuration; Norman spoke about Superior Court appeal, but there was a determination made that was made and signed by me as zoning administrator for expansion of one unit and shrinking other unit- in that record you'll note it was recognized as duplex and the complaint was that there were 2 units but one was an accessory unit; the fact that there was no such thing as accessory apt back then it came into play in late 80s and 90s; there really the rec shows clearly 2 units- the board in the appeal of the determination of non-applicable recognized the 2 units- staff could easily get you those minutes.

G.Hand: That issue was withdrawn?

K.Lerner: Confirmed; but the Board made a decision, at the hearing the judge said to withdraw as the ordinance was due to change and would have helped but it never did. Can still have a violation but it is not an enforceable violation because the City can't find any permits because they were purged in 1973

A.Hart: Permits needed to create anything other than a single family home; are you saying no permit was required in 1969?

K.Lerner: No violation because if a zoning permit in 1969 would have been required and all of those permits were tossed

A.Hart: Any evidence that a permit was applied for or required?

K.Lerner: No either way

A.Frank: Provided petition; asking Board to uphold the violation

R.Hillyard: Ward one NPA-read resolution. Encouraging return of single family housing as well as preventing and removing illegal units.

C.Long: Sent in written testimony; discussed how the layout of the building did not justify 4 separate units. Discussed the house has become a college party location

S.Tilton: Have you been inside the home?

C.Long: yes when we were with the environmental court did a site visit; but when ms Gaduet lived there I was in there; reason why it could never be legal duplex is that there is not enough parking and it is a very small lot size; we want the CDO to be honored. 1969 there were never 4 units that were formally separated it has always been a colonial home.

A.Zipparo:How would turning it back to a single family home reduce the College student problem?

C.Long: help with parking and help keep balance in the neighborhood.

S.Gustin: sworn affidavits in record- from Elizabeth Gaduet in packet notes first change of use to multiple apartments was 1969. In 1969 multifamily requires special permission from Zoning Board of Approvals; I've heard permits back then were burned or thrown out- but we do have written record back to 1964 and found nothing regarding 12 Weston St

B.Rabinowitz: Confused about how this project went to the Superior Court but was never ruled on

K.Sturtevant: provided brief overview on the process in which the Superior Court and the Environmental Division reviewed the project. Regarding the 1973 permits being thrown out, Mr. Lerner provided testimony, we would object to that as it is hearsay and there is no clear understanging; we do have a permit binder showing no proof of permits.

A.Hart: Motion to continue the public hearing at the July 17th 2018 meeting with requests that the parties provide the additional information the Board has requested. Deliberation is scheduled for Monday May 21st at Planning and Zoning at which time the Board could close the hearing and deliberate on this project.

G.Hand: Seconds the motion

7-0-0

3. 18-0861AP; 19-21 South Willard St (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)

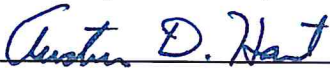
A.Hart: Appellants have requested Deferral; Motion to defer to date certain on July 17th 2018

G.Hand: Seconds the motion

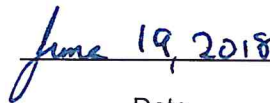
7-0-0

VI. Adjournment

Deliberation will be held Monday May 21st at 5pm in Planning and Zoning
Adjournment 7pm



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.
