

Burlington Development Review Board

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Burlington, VT 05401

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Geoff Hand
Alexandra Zipparo
Samantha Tilton
Jim Drummond, (Alternate)
Robert Purvee, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday August 15th, 2017, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT Minutes

Board Members Present: Austin Hart, Brad Rabinowitz, A. J. LaRosa, Alexandra Zipparo, Samantha Tilton

Board Members Absent: Israel Smith, Geoff Hand, Jim Drummond (Alt), Robert Purvee (Alt)

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

I. Agenda

No Changes

II. Communications

None

III. Minutes

Minutes from August 1st, 2017. Will consider at deliberative

IV. Consent

- 1. 18-0005CA/CU; 62 Sunset Cliff Road (RL-W, Ward 4N) 62 Sunset Cliff Road Realty, LLC**
Residential addition to a single-family residence within Riparian and Littoral Conservation Zone. (Project Manager: Ryan Morrison)

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

None

A.Hart- Do any Board member object to this project remaining consent or have any further questions?

None

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

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

A.Zipparo- Seconds the Motion

5-0-0

- 2. 18-0051CU; 29 Allen Street (RM, Ward 3C) Roman Catholic Diocese of Burlington/ St. Joseph's Parish**
18-0154CA; 31 Elmwood Ave (RH, Ward 3C) Spectrum Youth & Family Services
Use of parish basement hall for warming shelter for 10 youth individuals from November 2017 to March 2018 and related parking waiver amendment. (Project Manager: Scott Gustin)

A.Hart-recused

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B. Rabinowitz- Does the applicant have any questions or concerns about conditions or staff findings as presented?

W.Towne- Has not had the opportunity to review staff findings and recommendations

M.O'Neil- Provided and reviewed staff findings and recommendations

W.Towne- No Questions or concerns

B.Rabinowitz- Are there any members of the public that wish to comment or have questions regarding the project?

B.Rabinowitz- One off-site parking space is in conditions of approval, is that correct.

Confirmed by applicant

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

S.Tilton- Seconds the motion

4-0-0

-- 5 minute recess for technical difficulties--

V. Public Hearing

1. 18-0028AP; 351-375 North Avenue (NAC, Ward 4N) 375 North Ave LLC

Appeal of administrative decision relative to impact fees for orphanage renovation (16-0007CA/MA). (Project Manager: Scott Gustin)

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

None

E.Farrell- Concern that there is a lot of confliction and confusion within the zoning ordinance. Application of impact fees on an existing residential building is incorrect, questions what constitutes new development. The building was an existing building used as an orphanage, then occupied by the diocese. Comes down to question of intensity. Staff's position is the portions of residential are considered like they don't exist because portions of the building were not occupied or used therefor it is considered new development and subject to impact fees. It should either be occupied or not occupied, entire building should be exempt from the application of impact fees secondly because it is referenced as a conversion, however it continued to be used as residential. No change of use under the ordinance, it is simply a conversion. College did occupy the building but did not have authority to occupy any portion of the orphanage for institutional use. They converted the diocese and offices to academic use but did not extend into the orphanage building. The building remained residential use since the day it was built therefor it should be exempt from the impact fees. Mentioned issues with how impact fees were broken down, line item by line item, believes they should be exempt from those fees.

A.Hart- Was there, at some point, a conversion to office space for the diocese?

E.Farrell- No, not believed to have been occupied by the diocese other than 3 apartments used and the orphanage. Primary offices were in the class room spaces.

D.White- The question at hand is about the methodology for calculating the impact fees. The purpose of these fees is to provide the funding necessary to support the future city services to help offset the funds for the additional demand new development creates. Fees are broken down by services; parks, police, schools, etc. As Mr. Farrell mentioned this section of the ordinance is 25 years old and requires some aspect of interpretation. We have an existing building where large portions have been unused for a length of time. When did those uses stop being active? Administrative Interpretation, included in Board's packet, help define how we treat these situations, if a use ceased to be an active use after October 1952 a new development could seek a credit. The demand for city service are what goes into these impact fees, if the uses stopped before the 1952 creation it would be considered new development as it was not part of the original impact fee calculations. The applicant is trying to argue that the orphanage has been used because of a 1977 permit, the diocese converted office space and 3 apartments. The applicant is arguing that this extends the residential use up to 2010 when the college converted a portion to institutional use. The applicant is there for arguing that they should be credited for the space. The City disagrees with the applicant's perspective; the credibility of what kind of foot print was needed or occupied in the 50,000 square foot building

when the diocese took over. Staff credited 25,000 square feet but the orphanage and the size of the residential use is an anomaly.

A.Hart- Where did the 25,000 square feet number come from?

D.White- The applicant informed as space that was ongoing residential

A.Hart- Total square footage is 53,500 that is what the city claims was vacant and is now being put in as residential use?

D.White- The vacant portion was added

E.Farrell- Understands the concept of a building that is underutilized and the desire to collect impact fees, but the ordinance does not specify that. It is either there or not. The interpretation is wrong because the diocese occupied the building up to 2010.

A.Hart- The City is relying on the interpretation but the ordinance doesn't justify that?

E.Farrell- Correct. There is nothing that legalizes the interpretation. There is nothing that talks about fractional occupancy. Buildings were vacant for decades and received full credit; example 23 Church St.

O.Makuku- 23 Church St; upper was 4 apartments given full credit for existing after the 2001 property owner state the property was vacant for 50 years, yet in 2010 they received a full credit permit. We are asking for consistency. Multiple examples mentioned.

E.Farrell- Inconsistency on the Staff's behalf

O.Makuku- When the smoke clears how many other buildings in Burlington have similar circumstances, the impact will not be widespread.

A.Hart- Zoning Administrative Interpretation, is this something the staff came up with but has not been adopted by City Council or Planning Commission?

D.White- Yes, dozens have been issued with the purpose to clarify as well as assist that consistency. This one was done because of ongoing inconsistencies on how to treat a smaller subset of examples where you have a change of use in an existing building.

A.Hart- The amount of the fee was based on the existing number of development?

D.White- Fees based on Development impact on services needed, work was done and fees established 25 years ago.

B.Rabinowitz- No position that the orphanage was used for anything other than residential occupancy?

D.White- No it was an orphanage that turned to something else, became residential units for bishop and 2 priests.

B.Rabinowitz- Square footage did not include the entire building so City is not including the entire building?

D.White- Correct

B.Rabinowitz- Position is no office?

D.White- No at the time of that particular approval in 1977 it didn't break down by square feet it was just a permit for the former orphanage, so it doesn't make sense that the entire building was totally occupied. Changed in 2010 when Burlington College took over and changed the use.

E.Farrell- Mr. White keeps using the term "actively occupied" that is not in the ordinance, no fractional occupation can be found in the ordinance.

A.Hart- We are talking about the impacts as the City's obligation to provide service

E.Farrell- Ordinance talks about existing uses and building not how much the building impacts the city, it is an existing building and under the impact fee ordinance it is exempt. Nothing in the ordinance talks about active use or intensity.

S.Tilton- Page 2 of 5 Section 3.3.2 of staff report; if this development is resulting in new dwelling units does it now make it applicable because the development would create more apartments? Proposal is to create new dwelling units, the creation of these units would be a trigger to give the impact fees?

D.White- Correct. The creation of the new units is a new trigger but to calculate the fees you have to be able to calculate the new square footage or not.

A.Hart- Question lies if that original 3 units is in the same square feet as the new 65 units.

E.Farrell- When it was an orphanage part of that existing residential use was used for apartments, if I take a residential use and add units inside of it, it doesn't add any square footage and all within an existing building it should be exempt.

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

None

K.Sturtevant- There is case law that supports the interpretation which can be provided to the Board; regarding Administrative Interpretation

A.Hart- Does the Board have any final questions?

None

E.Farrell- Believes that the 2016 Interpretation should not be binding nor relevant to this situation

A.Hart- Closed the public hearing

VI. Certificate of Appropriateness

1. 17-1076CA; 57 North Winooski Ave (RH, Ward 2C) 2014 Elango Dev Family Trust

Convert 3 unit to 4 unit with one or two parking space waiver.

(Project Manager: Ryan Morrison)

A.Hart- No members of public present for discussion

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

M.Aloisi- No additional comments, staff comments seem adequate. Property was a 4 unit before 2011. Past 3 years there have been no more than 2 vehicles in the driveway.

A.Hart- Second floor has two 2-3 bedroom apartments?

M.Aloisi- Second floor is owner occupied, essentially one 2 bedroom and one 1 bedroom units.

A.Hart- Adequacy of parking space for 4 units is a concern. Downstairs there is a 2 bedroom unit and a 3 bedroom unit?

Applicant is not sure of first floor configuration

R.Morrison- Total of 5 bedrooms on second floor stated in staff findings is incorrect.

M.Aloisi- Only 3 bedrooms on second floor, 5 total bedrooms in building.

A.Hart- No additional increases in bedrooms, correct?

Confirmed

A.Hart- The cost of construction is listed as \$600 is this correct?

M.Aloisi- Correct, simple addition of a door and a stove is all that is needed.

A.Hart- Access? Ingress/Egress?

M.Aloisi- Both have their own access

A.Hart- Discussed parking plan and options. Asked if garage would be available for parking space?

Confirmed garage is used as parking space

A.Hart- Is reducing the waiver by one space be acceptable to the applicant and owner?

M.Aloisi- Yes

A.Hart- Closed the public hearing

2. 18-0035CA; 505 Lake St (DW-PT, Ward 3C) Community Sailing Center / City of Burlington

Provision of 9 onsite parking spaces and request for parking waiver. (Project Manager: Scott Gustin)

A. Hart- Disclosed that he has worked with group working on the Moran plant, no conflict but wants it known in case.

A. J. LaRosa- Also clarifies that his firm has worked on relative projects

M.Naud- Sees no conflict of interest with either Board member

M.Naud- has worked for decade or more considering how Center may have permanent facility on the Waterfront, facility is almost done but has changes relating to parking. He is here requesting maintenance of the status quo but in his terms "better". Center has grown and adapted with no issues regarding parking. Reflective in the proposal is to make a modern amendment to the site plan that eliminates a fence and converts a storage area into 9 parking spaces, which they believe is sufficient for their needs and users as most are pick up and drop

off or pedestrian access. Believes the public parking in the surrounding area is more than sufficient to accommodate users. Staff comments, findings and recommendations are more than satisfactory.

A.Hart- Regarding public spaces available, can the applicant explain where pick up and drop off can occur and what public spaces might be available.

M.Naud- 96 new spaces now exist along Lake St so there are significant spaces there, addition with fishing pier lot and the completion of the marina. Drop off has been at fishing pier but now will be located at the site. Space in front of the garage doors is sufficient for large vehicle and bus turn around location.

K.Merriman Shapiro- (Senior Projects and Policy Specialist, CEDO) CEDO feels this is an appropriate waiver

A.Hart- What is the 3 year monitoring of parking waivers, is this a new thing for us? Can we do anything about the permit if something goes wrong or the spaces aren't sufficient? Are there options to add more spaces?

K.Merriman Shapiro- Monitoring is to see what happens but it is hard to say what the "what-ifs" are, but for previous years they have had next to nothing so there should be no issues with this minimal parking, the monitoring is to ensure success and partnership between the City and the applicant.

R.-Center emphasizes that they did not want to oversubscribe to parking as the City has reserved some ability to provide exclusive parking in the East Development for the Burlington Marina project discussion as well as additional parking at approximate City lots close to the facility. There has been recent discussion about potential options but what you have is a partnership between the City and tenants and desire to have successful outcomes ensured by the 3 year monitoring program.

B.Rabinowitz- See no problem with the waiver, but does see issue with the City's process. This should have been dealt with as part of the Marina project.

M.Naud- Under the ordinance the parking requirements would far exceed the needs, the Center focuses and strives on getting people to abandon the car and use alternative methods to arrive at the facility. Reserve the ability to add parking as needed.

A.Zipparo- No issues with the number of spaces but does have concern over pedestrian safety especially regarding the turn-around set up.

M.Naud-Clarified parking and turn around set up.

A.Zipparo- Any blocking from Skate Park to road? Concerned about safety from parking area.

M.Naud- No blocking but elevation changes and drainage swale create barrier. Buses usually don't come up Lake St as well as they expect to see fewer buses come into the area due to bussing costs.

M.O'Neil- Intent of 3 year monitoring for parking waivers is to inform the Board of the impacts they have and maintain the number of waivers given out. This information showcases where, how much, and the effectiveness of parking waivers.

A.Hart- Closed the public hearing

VII. Other Business

1. 16-1507CA/MA; 316-322 Flynn Avenue (NMU, Ward 5S) G & C PROPERTIES LLC

Request for Saturday construction hours for mixed-use building and associated site improvements. (Project Manager: Scott Gustin)

A.LaRosa- recused

N.Ferland- Current hours are 7am to 5pm 5 days a week, this makes it hard to keep schedule and Saturday work is important considering the inclement weather that we have been having. Chapter 21 states hours of operation 7 am to 9 pm 7 days a week; we are looking for 7am to 7pm 5 days a week and 7am to 5pm on Saturdays. Interior and exterior work.

A.Hart- Approved applicant's project is on the periphery of what is a residential neighborhood, therefor noise issues are of concern.

N.Ferland- Construction next door starts at 6 am and goes until 7pm, City Market construction goes even longer, Ireland on Pine St goes from sun-up to sun-down – all include noisier work.

A.Hart- Distinguish exterior work, is that with trucks and heavy equipment and beepers; and interior work?

N.Ferland- Reviewed the work left to accomplish

A.Hart- What about big equipment

n.Ferland- Another week and the nig equipment will be gone

B.Rabinowitz- If we differentiate between interior work and exterior work regarding the extension of hours would that be ok?

N.Ferland- Yes

S.Tilton- Saturday 8am to 5pm is being requested?

Confirmed

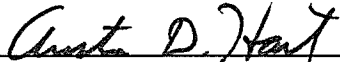
B.Rabinowitz- Extension during the week to go 7am Monday through Friday and 8am to 5 pm on Saturday

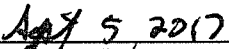
D. Goltzman- Request is due to the closeness to the Department of Public Works. They have had DPW individuals come at 5pm and force the work to stop which effects the work schedule as well as safety concerns due to open pits being left. Requested the extension two weeks ago and weren't able to obtain it due to the process of the DRB so time is of the essence.

A.Hart- Closed the public hearing

VIII. Adjournment

The meeting adjourned at 6:35


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.