

Burlington Development Review Board

149 Church Street, City Hall
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BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, April 17, 2018 at 5:00 p.m.

SUPPLEMENTAL COMMUNICATIONS

1. **18-0768CA; 75 Cherry St (FD6, Ward 3C) BTC Mall Associates LLC**
7th and 12th floor amenity space; change to project phasing.
(Project Manager: Mary O'Neil)

2. **18-0619CA; 149 Church St (FD6/CIVIC, Ward 3C) City of Burlington**
(Project Manager: Scott Gustin)
 - a) Letter regarding City Hall Park Proposed Changes

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April 16, 2018

Via Email

Mary O'Neil
City of Burlington
Development Review Board
City Hall
Burlington, VT 05401
MCOneil@burlingtonvt.gov

Re: Application to Amend Zoning Permit No. 17-0662CA

Dear Board Members:

I write on behalf of the Applicant, BTC Mall Associates, LLC ("BTC"), in response to Attorney John Franco's April 9, 2018 letter requesting to enter the appearance of Barbara McGrew, Michael Long, Lynn Martin, and Steven Goodkind (the "Opponents") as "interested persons" in this proceeding on BTC's application to amend zoning permit no. 17-0662CA. The Opponents, however, have not offered any valid reason why they should be afforded "interested person" status in this proceeding.

In his letter, Attorney Franco argues that his clients should receive "interested person" status because they participated in a series of court cases challenging the Project that have been resolved by a settlement agreement. According to the Opponents, the amendments at issue here violate that settlement agreement.

That is simply not true. The amendments requested by BTC – a timeline adjustment and some changes to the 7th and 12th floors of the Project – do not implicate the settlement agreement, which relates to parking issues. Indeed, if anyone is violating the settlement agreement, it is the Opponents, who agreed that they would "not oppose any other permits or regulatory or legislative approval that may be required to implement the Project consistent with the terms of" the agreement.¹ But in any event, the settlement agreement is irrelevant. The DRB's jurisdiction is limited to the zoning ordinance; it has no jurisdiction to address alleged violations of a settlement agreement.

Moreover, nothing in the settlement agreement – or anywhere else in the law – gives Opponents "interested person" status simply because they were part of a previous settlement. Rather, under 24 V.S.A. § 4461(b), these three individual opponents must establish that they are

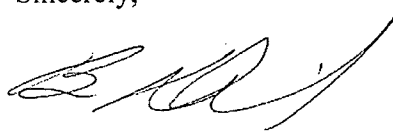
¹ Specifically, the agreement contemplated that BTC would increase parking capacity by providing space for "approximately" 200 vehicles subject to "engineering and other constraints." It said nothing about the project timeline or the design issues implicated by the present request for an amendment.

“interested persons” under 24 V.S.A. § 4465(b). That is, each of them must show that he or she lives in the “immediate neighborhood” of the Project and that the modifications sought in the amendment would have a “physical or environmental impact on the person’s interest under the criteria reviewed” by the DRB. 24 V.S.A. § 4465(b)(3). *In re UVM Certificat of Appropriateness*, No. 90712, 2013 WL 1182790 (Vt. Super. Ct. Env’tl. Div. Feb. 26, 2013) (to show standing “interested person” must “describe how the development under review will impact . . . her specifically (i.e., describe a concrete and particularized injury) and must [show] that such impact is not hypothetical.”). Attorney Franco’s letter does not even attempt to assert that these individuals live in the “immediate neighborhood,” or how any of the three individuals mentioned will experience impacts caused by the proposed amendments before the DRB as required by this standard. And they cannot, given the limited nature of the actual changes implicated by the amendment request. *See, e.g., In re Hartland Group Real Estate*, No. 94-7-11 Vtec, 2011 WL 5910136 (Vt. Super. Ct. Env’tl. Div. Sept. 9, 2011) (standing denied where neighbors failed show any physical or environmental impact resulting from time extension request).

Finally, Vermont law is clear that Opponents’ “interested person” status can be based solely upon the impacts of this amendment, and not the DRB’s previous approvals. They are barred from using this proceeding to contest what was resolved by the Judgment Order of July 17, 2017 or any prior amendments to the project approved by the July 2017 Judgment Order. “All interested persons affected shall be bound by that decision . . . and shall not thereafter contest, either directly or indirectly, the decision or act, provision, or decision of the panel in any proceeding.” 24 VSA § 4472(d).

The DRB should preclude the Opponents from using this proceeding to litigate the terms of a settlement agreement and should deny them “interested person” status because they cannot establish any physical or environmental impact on their interests arising out of the proposed amendment presently under review.

Sincerely,



Brian S. Dunkiel
Dunkiel Saunders Elliott Raubvogel
& Hand, PLLC
On Behalf of BTC Mall Associates, LLC

Layne Darfler

From: Kay Frances Schepp
Sent: Saturday, April 14, 2018 5:27 PM
To: Layne Darfler
Subject: Letter regarding City Hall Park

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Please include my letter in the Monday April 16, 2018 meeting, and include it in the Proceedings. Thank you.
KFS

April 14, 2018

TO: Mayor Weinberger, the City Council

the Development Review Board

and other interested parties

FROM: Kay Frances Schepp, Ed.D.

The Dolan House

156 College Street

Burlington, Vermont 05401

ABOUT: City Hall Park proposed changes

As a person who has worked across from City Hall Park at 156 College Street for almost ten years, I strongly object to the proposed plan to remove trees and actually add more hardscape. At all times of day and in every season I see people avoiding the bricks, cement and glare, meeting friends, listening to impromptu music, eating lunch, or enjoying the winding paths through the trees.

As a serious gardener myself, with dozens of trees at our home in South Burlington, I know that mature trees do bear scars and show the impact of weather, so they should not look like new “lollipop” saplings. Having worked at UVM for 34 years, I recall the distress when Dutch Elm disease took so many stately specimens. Quickly the Green was restored to full, so that it offers a welcome entrance to downtown at the top of both Main and Pearl Streets.

Suggestions: Consult others with knowledge of the tradition of New England towns and small city greenspace. Most important: finally begin to take care of most of the existing trees. This is likely to include aerating the root space and adding fertilizer, compost and mulch around the trees. Really this is not a large expense.

Watch the Park as I do from across the street. See the snow on the branches, the preschool groups playing there, the teens listening to music, the wheelchairs, strollers, and people with no lawns of their own, the lunch break traffic, and the shortcut or meet-up spot for so many people enjoying our vibrant downtown.

As a psychologist I believe that association with growing plants is healthy for both people and the environment. Please maintain this wellness atmosphere for downtown citizens and visitors alike.

Sincerely,

Kay Frances Schepp