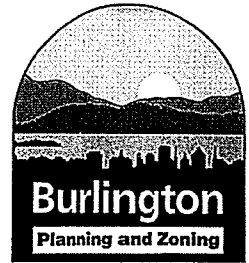


## Burlington Development Review Board

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Austin Hart  
Brad Rabinowitz  
Israel Smith  
AJ LaRosa  
Alexandra Zipparo  
Geoffrey Hand  
Wayne Senville  
Jim Drummond (Alt.)  
Robert Purvee (Alt.)



## Burlington Development Review Board

Findings of Fact

Deliberative Hearing Monday, June 12, 2017

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**In RE:** 17-1119CU; 135 Hayward St (Ward 5S, RL) (Tax Lot No. 053-3-167-000)

**Owner/Applicant:** Andrew & Daniel Rowan / Michael Rainville

**Request:** Extend retention of nonconforming use (residential triplex) after destruction by fire.

### Members Present:

Austin Hart  
Brad Rabinowitz  
Geoff Hand  
Jim Drummond  
Alexandra Zipparo  
Rob Purvee  
Wayne Senville

### Evidence Presented:

The Board examined the materials submitted in support of this request.

## I. FINDINGS

### Overview:

The applicant is seeking to extend retention of the nonconforming triplex use following loss of the structure to fire in April 2016. The Development Review Board determined in October 2016, by way of appeal, that the structure was used as a triplex at the time it burned. The triplex is a nonconforming use in this Residential Low Density zone. Retention of nonconformity is limited to one year unless an extension is sought and granted.

### Article 5: Citywide General Regulations

#### Sec. 5.2.4, Nonconforming Uses

##### (b) Discontinuance

*A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer. Provided, however, a period not in excess of two (2) years shall be the applicable standard for the re-establishment of discontinued uses in the Enterprise-Light Manufacturing (E-LM) district.*

*An extension to this time limit may be granted by the DRB after a public hearing and on the basis of documented evidence of a continuous good faith effort to re-establish the nonconforming*

*use. Such evidence shall include but not be limited to application(s) to the DRB, bid documents, records of expenditures, newspaper advertisements, and/or real estate listings. Any request for such an extension shall be submitted in writing prior to the expiration of the one (1) or two (2) year time limit as specified above.*

*Any extension approved by the DRB shall be made in writing and shall specify the date after which no nonconforming use will be permitted upon the subject property.*

The subject nonconformity burned April 21, 2016. In July 2016, the applicants sought a determination as to the recognized use of the structure. In October 2016, the applicants prevailed in an appeal of an adverse administrative determination regarding the use of the structure at the time it burned. The Development Review Board determined that the structure was used as a triplex at the time of the fire. As noted previously, the triplex use in the RL zone is a nonconformity.

The applicants submitted their request to extend retention of the nonconformity April 20, 2017 – within one year of the fire as required.

The applicants have submitted documents relative to construction bids, building design, and insurance matters, primarily between June and December 2016. The single insurance document is dated May 25, 2017. The narrative provided by the applicants summarizes the request for extension and cites issues with their insurance settlement as the primary matter causing delay. The Board heard testimony at the public hearing regarding the condition of the property since the fire.

Insofar as the applicants have documented efforts to rebuild on the property in the year since the fire, and given that the request to extend was submitted within one year of the fire, an extension may be granted. The extension should be limited to six (6) months from the expiration of the one-year re-establishment period. **(Affirmative finding as conditioned)**

## **II. MINUTES**

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

## **III. MOTION**

### **Motion: Austin Hart**

I move that the Board grant approval to extend retention of the nonconforming use (residential triplex) following destruction of the building by fire in accordance with Article 5. Approval is based on the findings in Section I above and is subject to the following conditions:

1. The nonconforming triplex status is extended contingent on the submission of a complete zoning permit application for reconstruction of a triplex within six (6) months of April 20, 2017, the expiration of the one-year re-establishment period, or October 20, 2017. No additional extensions will be granted.

2. In order to mitigate impacts on the neighborhood related to this extension, the extension is conditioned on the applicant maintaining the site outside of the snow fence in good and neat condition, including keeping grass and weeds trimmed and picking up trash and debris.

**Seconded: Brad Rabinowitz**

**Vote: 7-0-0, motion carried.**

Dated at Burlington, Vermont, this 20<sup>th</sup> day of June, 2017

Respectfully Submitted,

  
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Austin D. Hart, Development Review Board Chair

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**Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.**

