

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. Envtl. 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. Envtl. 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
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& Hand, PLLC
On Behalf of BTC Mall Associates, LLC