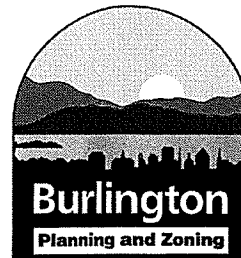


Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, CFM, Associate Planner
Anita Wade, Zoning Clerk
vacant, Department Secretary



TO: Development Review Board
FROM: Scott Gustin *SG*
DATE: December 6, 2016
RE: 17-0363CA; 485 Colchester Ave

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: NMU Ward: 1E

Owners/Appellants: Steven & Sharon Litwhiler / Greg Blasdel, Jennifer Koch, Randall & Kathleen Brisson

Request: Appeal of administrative zoning permit 17-0363CA issued for as-built site improvements such as parking layout, retaining wall, dumpsters, and walkways (amends zoning permit 93-313).

Overview:

The appellants are appealing issuance of zoning permit 17-0363CA. That permit approved a number of as-built site changes with work originally associated with zoning permit 93-313 issued in January 1993 for demolition of a single family home and construction of revised parking and related site features.

The appeal cites three alleged problems with zoning permit 17-0363CA:

- Incorrect site plan with misrepresentation of referenced and cited survey
- Misuse of space cited in deeded right-of-way
- Change of use from green space to parking

Recommendation: **Uphold zoning permit approval** based on the following findings and conditions:

I. Findings:

Zoning permit 93-313 was approved January 14, 1993 for demolition of an existing single family home with associated site/parking revisions to the originally approved restoration of mixed use (8 units) building on the corner of Colchester Avenue and Barrett Street. This permit was enacted, but no certificate of occupancy was sought until February 2014. Upon inspection by the Code Enforcement Office, a number of site discrepancies from the zoning permit approval were noted. These discrepancies pertained to parking layout, landscaping, dumpster enclosure, and replacement retaining walls. The discrepancies exceeded what could be approved "as-built" under the original zoning permit 93-313. A certificate of occupancy inspection failure letter was issued to the

property owners March 14, 2014. The property owners were given the options to bring the site into compliance with zoning permit 93-313 or seek a new zoning permit to approve the site changes.

The property owners elected to pursue a new zoning permit. They met with Planning & Zoning and Code Enforcement staff a number of times to discuss what needed to be incorporated in the new zoning permit application. They were advised to use the approved site plan associated with zoning permit 93-313 as the basis for a revised plan, as the new zoning permit application was to address changes thereto. The property owners expressed reservations about the accuracy of the northerly property boundaries. They were advised that use of a boundary survey or the tax parcel boundaries could also be acceptable. The zoning permit application was ultimately submitted September 20, 2016.

Zoning permit application 17-0363CA contained a site plan based largely on the site plan approved with zoning permit 93-313 and depicted the differences. The northerly property boundaries differed from those shown in zoning permit 93-313 but approximated the tax parcel boundaries. It is important to note that the site plan associated with zoning permit 93-313 is not a boundary survey. The appellants, however, have submitted a boundary survey from May 8, 1990 that appears to be consistent with the boundaries depicted in the zoning permit 93-313 site plan.

Planning & Zoning staff reviewed the permit application and made corrections to the property size and related lot coverage percentages based on Assessor's data. The property is located in the NMU zone. As such, there are no minimum setback requirements that pertain to the application. Lot coverage is compliant (73.8% of 80% maximum permissible) with the Assessor's parcel data or the 1990 boundary survey (74.3%). Sufficient parking is provided for the onsite uses. Zoning permit 17-0363CA was approved October 3, 2016 with the following conditions (in addition to standard conditions 1-15):

1. Parking calculations in this zoning permit are based on the following: 7 dwelling units, 1 office unit (625 sf), and 1 take-out/delivery restaurant (1,203 sf).
2. The boundary lines depicted in the approved site plan are approximate only.

An appeal of the zoning permit was filed October 17, 2016 within 15 days as required. As noted above, the appeal makes three allegations:

- Incorrect site plan with misrepresentation of referenced and cited survey
- Misuse of space cited in deeded right-of-way
- Change of use from green space to parking

The first allegation appears to have merit. The other two do not insofar as the city's zoning standards are concerned.

Utilization of tax parcel boundaries in zoning permit applications is commonplace. Use of boundary surveys is preferred but not required. Tax parcel maps are reasonably accurate but approximate. Boundary surveys are more definitive. In this case, the tax map was used as the basis for the northerly property boundaries (whether it's an exact replication is not clear). Tax map data puts the parcel area at 17,539 sf. As noted previously, the applicants disagreed with the northerly boundaries depicted in the approved 1993 site plan. Instead of providing a boundary survey, the applicants chose the approximate representation of the tax map. In their appeal, the appellants have provided a May 8, 1990 boundary survey that appears to be the basis for the

approved 1993 site plan. The boundary survey puts the parcel area at 17,424 sf. While most site features remain unaffected by use of this survey, including the lone parking space noted below, a section of retaining wall may be problematic. The retaining wall (timber, at that time) is noted in the 1990 survey, the 1993 site plan, and the most recent 2016 site plan. According to the 1990 and 1993 plans, a section of the retaining wall crosses onto 495 Colchester Avenue and 5 Mill Street. Its replacement with concrete block requires a zoning permit – and was approved in zoning permit 17-0363CA and represented as entirely on 485 Colchester Avenue. In light of the 1990 survey provided by the appellants, it appears that separate zoning permits are needed for 495 Colchester Avenue and 5 Mill Street for the concrete block retaining wall. Alternatively, the wall may be altered and moved entirely onto 485 Colchester Avenue. In either event, a revised site plan based on the 1990 survey is needed.

The deeded right-of-way is a private arrangement between property owners and has no bearing on the city's zoning standards.

The change of green space to parking was effectively approved in the zoning permit. The area in question is depicted as a single parking space adjacent to the "ROW" notation just south of 495 Colchester Avenue and 5 Mill Street. While not represented in the site plan as a change from green to parking, the site plan denotes the subject area as a parking space and is accounted for in lot coverage. Given the NMU zone, there are no minimum setbacks. This lone parking space is not necessary for meeting minimum onsite parking requirements. While this single parking space is something of an oddity, it is not precluded by lot coverage, setbacks, or other site requirements of the Comprehensive Development Ordinance. Access to this parking space would require utilization of the private ROW. However, as stated above, use of this ROW is between the affected property owners.

In summary, the as-built site changes reflected in zoning permit 17-0363CA are compliant with the standards of the Comprehensive Development Ordinance. High lot coverage allowance and zero minimum setback requirements result in compliance based on either the tax parcel map or the boundary survey. Importantly, however, the site plan must be revised to reflect the parcel boundaries as depicted in the 1990 boundary survey. If portions of the retaining wall do indeed extend onto 495 Colchester Avenue and/or 5 Mill Street, additional zoning permits or revisions to the retaining wall are required.

II. Recommended Motion:

Uphold issuance of zoning permit 17-0363CA with the additional pre-release condition:

1. Prior to release of the zoning permit, a revised site plan shall be provided that incorporates the property boundaries depicted in the May 8, 1990 boundary survey by Vermont Land Surveyors. In the event that site features extend beyond the boundaries of the subject property, a separate zoning permit for the adjoining property shall be required. Alternatively, the site features shall be adjusted to be entirely on 485 Colchester Avenue.