

Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: October 17, 2017
RE: 181 Battery Street, ZP 18-0325CA

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.



Zoning Permit Number: ZP18- 0325CA

Location: 181 Battery Street (Shanty on the Shore)

Zone: DW/DW-PT (This property is within the newly designated Form District 5 of the Form Based Code; but the application preceded the warning for the City Council Public Hearing and therefore is vested in the Comprehensive Development Ordinance prior to action to adopt Article 14.)

Ward: 5S

Date application accepted: September 25, 2017

Applicant/ Owner: SAS Architects, Bren Alvarez / Kim and Al Gobeille

Request: 500 sf addition to provide handicap accessible bathrooms and kitchen expansion; 1500 sf. deck addition.

Background:

- **Non-Applicability of Zoning Permit Requirements;** replace shingles. August 2004.
- **Zoning Permit 97-312;** installation of an awning fabric railing system for the existing rear ground level deck of the restaurant. Proposal includes flower boxes placed above the top railing. February 1997.
- **Non-Applicability of Zoning Permit Requirements:** Clarification of previously approved seasonal seating on existing open deck in rear of building, Fish Market, to include 5 picnic benches with seating capacity of 26. This is not an increase of seating that was previously approved per COA 85-124 and DRB report to PC dated 8/22/1985. May 1992.
- **Zoning Permit 85-124 / COA 85-390;** plan revisions for Shanty restaurant including decks on SE corner and west side underneath porch; a vestibule, deck and ramps on the NE corner at main entrance. August 1985.
- **Zoning Permit 81-106;** rehab Welcome Inn restaurant. Interior and exterior renovations, building bar, new plumbing and wiring, general work. August 1980.
- **Zoning Permit 80-1027;** construct 19 car parking lot (below) and six car lot above. Both to be paved with asphalt. June 1980.
- **Zoning Permit 79-502;** re-open restaurant with 140 seats, work will include gravel parking lot with 33 spaces, repainting, landscaping, new windows, new walk ramp, rebuilt stairways. September 1979.
- **Zoning Permit 76-1038;** Sign permit for Lake Champlain Transportation Company. June 1976.

Overview: The owners of Shanty on the Shore wish to add a small addition to facilitate handicap accessible bathrooms, as well as a westerly deck for seasonal dining. The parcel falls within two zoning district: Downtown Waterfront (DW) and Downtown Waterfront Public Trust (DW-PT.) The entirety of the work falls within the DW district. The plan includes replacement of the existing front ramp and other features which are within the public Right-Of-Way. The owners have applied for an encumbrance permit for improvements in those areas.

Recommendation: **Consent approval**, per the following findings and conditions:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 3: Impact Fees

Section 3.3.2 Applicability

Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact.

Based on a 500 sf. addition and 1500 sf deck, the following impact fees shall be due:

Impact Fee Calculations

181 Battery Street ZP18-0325CA

SF of Project 2,000

Department	Retail	
	Rate	Fee
Traffic	0.718	1,436.00
Fire	0.194	388.00
Police	0.342	684.00
Parks	0.408	816.00
Library	0.000	0.00
Schools	0.000	0.00
Total	1.662	\$ 3,324.00

Section 3.3.8: Time and Place of Payment

(b) Existing Buildings: Impact fees must be paid prior to issuance of a zoning permit, or if a building permit is required, within thirty (30) days of issuance of the building permit.

Affirmative finding as conditioned.

Article 4: Zoning Maps and Districts

Table 4.4.1-1 Dimensional Standards and Intensity

Downtown Waterfront F south of College St.	Max Intensity 2 FAR	Max Lot Coverage 100%	Min. Building Setbacks Front Greater of 0' or 12' from the curb 2, 4	Min. Side Setback 0 ^{2, 4}	Min Rear Setback 0	Height Min 30 Max 35
181 Battery proposed	.35	< 100%	Approx. 17' from King Street; no curb on Battery but addition set back > 12' from approx. line of extended municipal sidewalk south of property.	Compliant	No rear lot line as there are two street frontages.	No increase in building height proposed.

2. Structures shall be setback along any zoning district boundary line that abuts a residential zoning district pursuant to the requirements of (6) 6 below.
4. All structures shall be setback a minimum of 50 feet from the shoreline of Lake Champlain unless an encroachment is authorized under (d) 5 below.

Downtown Waterfront Public Trust B: 200' from lake	Max 2.0 FAR (3.0 with bonus)	100%	Min. 12' from curb	Min 0'' ⁴	Min. 0'' ⁴	35'
181 Battery Street proposed	No change proposed within parcel boundaries.	No change proposed within parcel boundaries.	No change proposed within parcel boundaries.	No change proposed within parcel boundaries.	No change proposed within parcel boundaries.	No change proposed

4. All structures shall be setback a minimum of 50 feet from the shoreline of Lake Champlain unless an encroachment is authorized under (d) 5 below.

Affirmative finding.

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots

Not applicable.

Section 5.2.2 Required Frontage or Access

The application does not propose any change to existing access. The property fronts on both Battery Street and King Streets. The Department of Public Works has made recommendations about the Battery Street access to an existing parking area, which the applicant will resolve with that department as it falls within the ROW. **Affirmative finding as conditioned.**

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.1-1, above.

Section 5.2.4 Buildable Area Calculation

See Table 4.4.1-1, above.

Section 5.2.5 Setbacks

See Table 4.4.1-1, above.

Section 5.2.6 Building Height Limits

See Table 4.4.1-1, above.

Section 5.2.7 Density and Intensity of Development Calculations

See Table 4.4.1-1, above.

Part 3: Non Conformities

There is a good deal of existing site improvement within the public Right-Of-Way which was learned after a site survey. The applicant is working with DPW in review of proposed new

improvements and securement of an encroachment permit for that work. See Standard Permit Condition #14, below relative to **City Rights-of-Way and Ownership**.

Affirmative finding as conditioned.

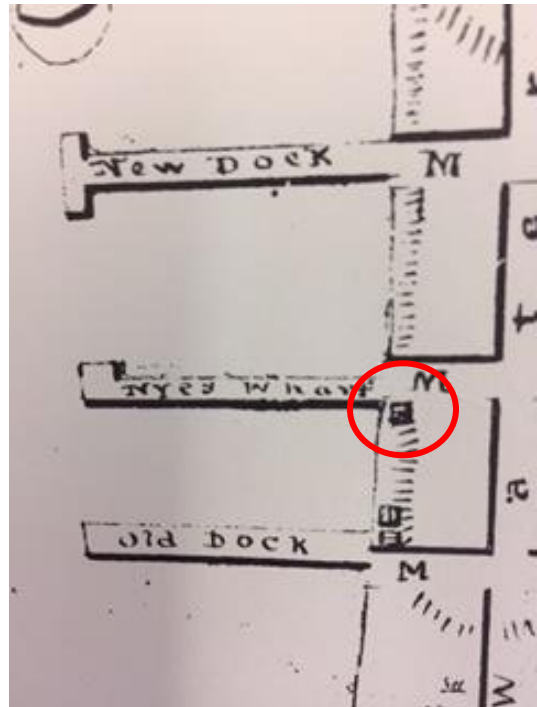
Sec. 5.4.8 Historic Buildings and Sites

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

181 Battery Street is listed within the **King Street / Battery Street Historic District**, as amended, on the National Register of Historic Places. The Water lots were purchased by Isaac Nye in 1826, where he built a wooden store c. 1830 and constructed a wharf. In 1879 the land was purchased after Nye's death by the Champlain Transportation Company as a location for their steamboat operations; the store was leased to James Wakefield, a sailmaker. It has been a restaurant since at least 1979.

Detail, Map of Burlington Village
d. 1827-1850.
Note completion of Nye's Wharf and Store.





James Wakefield's Sail Loft. Before 1911.

(b) Standards and Guidelines:

The following development standards, following the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used in the review of all applications involving historic buildings and sites subject to the provisions of this section and the requirements for Design Review in Art 3, Part 4. The Secretary of the Interior's Standards are basic principles created to help preserve the distinctive character of a historic building and its site. They are a series of concepts about maintaining, repairing and replacing historic features, as well as designing new additions or making alterations. These Standards are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility.

- 1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.*

The structure was built as a store, but has been used for offices, a sail loft, a paint store, and now a restaurant for over 30 years. The exterior has been altered in previous development, yet retains its location and setting, materials, and much of its design, association, workmanship and feeling.

- 2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.*

Some alteration has already occurred. The proposed additions are clearly discernable from the original structural mass.

3. *Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.*

No conjectural features are proposed. The addition of outdoor decks and places to enjoy the westerly view is a common development practice, particularly near the waterfront.

4. *Changes to a property that have acquired historic significance in their own right will be retained and preserved.*

None identified.

5. *Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.*

The historic structure will remain central and identifiable among the proposed additions and decks. No other distinctive features, finishes or construction techniques are identified.

6. *Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.*

The proposed building alterations are not relative to building deterioration or material failure, but to provide improved and expanded access. All will be of new construction and compatible in materials and design with the existing building.

7. *Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*

Not applicable.

8. *Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.*

If any archaeological resources are identified during construction, appropriate authorities will be contacted for advice and direction on appropriate handling and management.

9. *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.*

Both additions are proposed on building facades that have been altered. The new additions remain deferential to the original building, and clearly discernable as new.

10. *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

It would be possible to remove the additions leaving the original building mass intact, therefore the alterations may be considered reversible.

Affirmative finding as conditioned.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

No division of land is proposed. Not applicable.

Part 2: Site Plan Design Standards

Sec. 6.2.2 Review Standards

(a) Protection of Important Natural Features:

Much of the proposed site work is within the public right-of-way. ROW encumbrances should be enhancements to the landscape from the public perspective. The applicant is required to secure approval and an encroachment permit via consultation with the Department of Public Works and by City Council agreement. **Affirmative finding as conditioned.**

(b) Topographical Alterations:

No topographic alteration is proposed, other than a gravel lined infiltration trench to trap roof water. No work is proposed within the Downtown Waterfront Public Trust portion of the parcel.

Affirmative finding.

(c) Protection of Important Public Views:

The proposed westerly deck will enhance and make available the spectacular views to the west.

Affirmative finding.

(d) Protection of Important Cultural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Archeological sites likely to yield information important to the city's or the region's pre-history or history shall be evaluated, documented, and avoided whenever feasible. Where the proposed development involves sites listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8(b).

See Section 5.4.8, above.

(e) Supporting the Use of Renewable Energy Resources:

No part of this application will preclude the use of wind, water, solar, geothermal or other renewable energy resource. **Affirmative finding.**

(f) Brownfield Sites:

The site is not listed on the DEC list of Brownfields. Not applicable.

(g) Provide for nature's events:

Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.

Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.

The plan includes creating a roof water infiltration trench on the west to address stormwater runoff, which must be treated on-site. The new entries will both offer secure, covered space for customer comfort and protection. **Affirmative finding.**

(h) Building Location and Orientation:

NO change is proposed to the building's location or orientation. It will continue to front both Battery and King Streets, with access from either. Work within the ROW including walkways, steps and ramps will require an encroachment permit and approval from City Council as noted.

Affirmative finding as conditioned.

(i) Vehicular Access:

No change to existing access, although the Department of Public Works has recommended alterations to the parking access on Battery Street to meet City standards. As this is within the ROW, it is outside DRB review.

Affirmative finding.

(j) Pedestrian Access:

The applicant team has been working for some time with the Department of Public Works to identify appropriate methods to address the newly realized encroachments. Improved sidewalks, ramps, and steps are proposed; much of it within the ROW. An existing stair encroachment on the north elevation will be removed. Collectively, the proposed alterations will greatly improve pedestrian access and comfort. **Affirmative finding as conditioned.**

(k) Accessibility for the Handicapped:

A key goal is to provide handicap accessibility to the building and to bathrooms.

Affirmative finding as conditioned.

(l) Parking and Circulation:

No change is proposed to the existing parking or circulation patterns. Not applicable.

(m) Landscaping and Fences:

Significant landscaping improvements are included in the submission plans. Reference is made to Plan L-1.2. While the majority of the plan falls within the public ROW, some landscaping (south corner, entrance walkway) is within the parcel. The reoccurring waterfront theme including wood piers, ropes and rock beds enhances the overall lakeside location and use of the site. **Affirmative finding.**

(n) Public Plazas and Open Space:

While there is no dedicated public plaza, the proposed deck will provide a marvelous open amenity for public enjoyment. **Affirmative finding.**



(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

LED flush mount, full cut off or arbor wall sconce fixtures are proposed. Any of these fixtures are acceptable to meet the light/lumens standards of this section. A photometric should be provided if lighting is proposed for the overall site and is not limited to just building entrances.

Affirmative finding as conditioned.

(p) Integrate infrastructure into the design:

Exterior storage areas, machinery and equipment installations, service and loading areas, utility meters and structures, mailboxes, and similar accessory structures shall utilize setbacks, plantings, enclosures and other mitigation or screening methods to minimize their auditory and visual impact on the public street and neighboring properties to the extent practicable.

Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be placed underground whenever practicable. Trash and recycling bins and dumpsters shall be located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.

Any development involving the installation of machinery or equipment which emits heat, vapor, fumes, vibration, or noise shall minimize, insofar as practicable, any adverse impact on neighboring properties and the environment pursuant to the requirements of Article 5, Part 4 Performance Standards.

The dumpster location and mechanical equipment have been previously approved. Any new mechanical equipment, if proposed, shall be identified and assessed for location and appropriateness of screening. **Affirmative finding as conditioned.**

Part 3: Architectural Design Standards

Sec. 6.3.2 Review Standards

(a) Relate development to its environment:

1. Massing, Height and Scale:

The new additions remain subordinate to the existing historic building, and consistent with typical building additions in location and arrangement. **Affirmative finding.**

2. Roofs and Rooflines.

The new addition features a shed roof; consistent with an accessory appendage to an existing gable roof structure.

Affirmative finding.

3. Building Openings

Proposed building openings are consistent and compatible with the existing building.

Affirmative finding.

(b) Protection of Important Architectural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.

See Section 5.4.8.

(c) Protection of Important Public Views:

See Section 6.2.2. (c) above.

(d) Provide an active and inviting street edge:

The improvements proposed will not only provide a more convenient and accessible entry to the building, but enhance the overall attractiveness and patron comfort of the restaurant. The proposed waterfront deck will be extremely inviting to those approaching the City from the bike path and waterfront as well. **Affirmative finding.**

(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

Owners of historic structures are encouraged to consult with an architectural historian in order to determine the most appropriate repair, restoration or replacement of historic building materials as outlined by the requirements of Art 5, Sec. 5.4.8.

Cedar siding, posts, and metal roofing are proposed for the addition. Cor-Ten over a concrete foundation is detailed for the basement level. All are considered of accepted durability for new construction, and compatible with the historic building. **Affirmative finding.**

(f) Reduce energy utilization:

All development is required to meet the Guidelines for Energy Efficient Construction per the requirements of Article VI. Energy Conservation, Section 8 of Burlington’s Code of Ordinances. **Affirmative finding as conditioned.**

(g) Make advertising features complementary to the site:

Any changes to signage will require a separate sign permit. **Affirmative finding as conditioned.**

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p), above.

(i) Make spaces secure and safe:

Development shall meet all required building and life safety code as defined by the building inspector and fire marshal. **Affirmative finding as conditioned.**

Article 7: Signs

Modeling images reflect window awnings on the east (Battery Street) façade. Awnings shall not be placed in such a way that they prevent clear and unobstructed view of highway or official signs or of approaching or merging traffic. Awnings that project into the public ROW shall be subject to an encumbrance agreement with DPW and City Council. Awnings with signs shall have its lowest edge at least eight (8) feet above any pedestrian way, and shall require a separate sign permit. **Affirmative finding as conditioned.**

Article 8: Parking

There are no parking requirements for restaurants in the Downtown Parking District. The 1980 permit recognized 19 parking spaces in the lower lot and 6 on Battery Street. No additional parking is required. **Affirmative finding.**

II. Conditions of Approval

1. Impact fees. Based on the applicant’s submission of 2,000 sf of new non-residential gross area (500 sf addition, 1500 sf deck), the following Impact Fees shall be due within 30 days of issuance of any building permit:

Impact Fee Calculations

181 Battery Street ZP18-0325CA

SF of Project 2,000

Department	Retail	
	Rate	Fee
Traffic	0.718	1,436.00
Fire	0.194	388.00
Police	0.342	684.00
Parks	0.408	816.00
Library	0.000	0.00
Schools	0.000	0.00
Total	1.662	\$ 3,324.00

2. **Per Section 2.7.8**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 **prior to issuance of a Certificate of Occupancy** for this permit. See attached list for guidance on open permits/violations.
3. It is wholly the responsibility of the applicant to secure any required encumbrance approvals for work within the Right-Of-Way; through the Department of Public Works, the City Attorney's Office, and the City Council as appropriate.
4. The unearthing of any archaeological resources shall require consultation and guidance from appropriate representatives for the treatment and disposition of any such discovery.
5. A photometric should be provided to assure appropriate light levels if lighting is proposed for the overall site and is not limited to just building entrances.
6. Any signage (parallel, projecting, or on awnings) shall require a separate sign permit.
7. All development is required to meet the Guidelines for Energy Efficient Construction per the requirements of Article VI. Energy Conservation, Section 8 of Burlington's Code of Ordinances.
8. Any changes to signage will require a separate sign permit.
9. Standard Permit Conditions 1-15.

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