

## Department of Planning and Zoning

149 Church Street

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### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: April 17, 2018  
RE: ZP18-0768CA; 75 Cherry Street

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**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.**

**File:** ZP18-0768CA

**Location:** 75 Cherry Street

**Zone:** FD 6 **Ward:** 3C

**Date application accepted:** March 12, 2018

**Applicant/ Owner:** Freeman French Freeman / Devonwood Investors LLC (Don Sinex)

**Request:** 7<sup>th</sup> and 12<sup>th</sup> floor amenity spaces; change to project phasing as approved under ZP17-0662CA.

#### **Background:**

- **ZP18-0648CA;** Amendment to ZP17-0662CA/MA adding 16 new residential units, façade alterations and parking arrangement. February 2018.
- **ZP17-0662CA/MA;** Mixed use redevelopment of the existing Burlington Town Center mall site and associated lot line adjustments. July 2017.

**Overview:** The applicant seeks to modify project plans for the approved multi-use building to include a **seventh floor pool pavilion and deck**, a **12<sup>th</sup> floor fitness/health space**, and a request to modify the overall **project phasing** schedule.

As the project is within Form District 6 (FD6), physical changes are reviewed under Article 14 of Burlington's Comprehensive Development Ordinance.

Review of façade changes are reviewed administratively as allowed by the Form Code. The requested change to include the addition of new building mass/volume requires DAB and DRB review per the standard, below.

Changes to project phasing is under the jurisdiction of the DRB.

The **Design Advisory Board** reviewed the application on the March 27, 2018 agenda. The DAB voted unanimously to recommend approval of the 7<sup>th</sup> and 12<sup>th</sup> floor additions, with comments that the project "had negligible impact to the street" and "this is a terrific inclusion of amenities to support residential uses in the downtown."

**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

#### **Section 3.2.9 Zoning Permits**

##### **(f) Exceptions to Permit Time Limits**

*Except for projects subject to additional state or federal permitting jurisdiction, or which have been appealed to Vermont Environmental Court pursuant to the requirements of Article 12, there shall be no exceptions to the time limits specified in Section 3.2.9 (d) and (c) unless **longer or shorter time limits are specifically imposed as permit conditions of approval by the DRB at the time of approval.***

The original permit approval (ZP17-0662CA/MA) was approved with the following phasing schedule:

- 1<sup>st</sup> Phase of occupancy: (9.1.2019)
  - ◆ UVMMC Office Space
  - ◆ Parking Garage Levels P + 12
  - ◆ Cherry St + Bank Street improvements
  - ◆ Retail Space, Bank + Cherry Streets
  
- 2<sup>nd</sup> Phase of occupancy (6.30.2020)
  - ◆ Residential Tower, East Wing (103 units)
  - ◆ Residential L3, L4+L5 (61 units, includes inclusionary)
  - ◆ Bank Street office tower
  - ◆ Parking Garage Levels L3 + L4
  
- 3<sup>rd</sup> Phase of occupancy (8.1.2020)
  - ◆ Residential Tower; Center + West Wings (109 units)
  - ◆ Retail Space; St. Paul + Pine Streets
  - ◆ St. Paul and Pine Street improvements

Zoning Permit 18-0648CA (*Amendment to 17-0662CA/MA; Addition of 16 residential units on the east and west elevations at level 2,3, and 4 reflected in exterior revisions and floorplans. Elimination of awnings at retail. Parking layout revision.*) amended that timeline, pushing the phasing schedule out from the February 23, 2018 approval.

This application requests to amend the three phase project, proposing one additional phase:

- Phase 1 / TCO 1                      November 20, 2019
  - ◆ Cherry & Bank Retail – LG & 1
  - ◆ Cherry & Bank Street Sidewalks
  - ◆ UVMMC – Levels 5 & 6 North Tower

- ◆ Parking Levels – L1, L2, L3, L4
- Phase 2 / TCO 2                      February 2020
  - ◆ Wrapper Housing – L2, L3, L4
  - ◆ Pine & St. Paul Retail
  - ◆ Pine & St. Paul Streets
- Phase 3 / TCO 3                      April 2020
  - ◆ Basement Parking
  - ◆ North Tower Residential L7-L10
  - ◆ South Tower Office L5-L12
- Phase 4 / TCO 4                      June 2020
  - ◆ North Tower Residential L11-L14

Final Certificate of Occupancy   October 2020.

The proposed phasing schedule differs in the number of segments (3 vs 4), and extends the permitting timeline by two months. The request appears to be consistent with the original approval, but modified to allow for securing an additional temporary certificate of occupancy in the interim period to allow for earlier occupancy. **Affirmative finding as conditioned.**

**Part 3: Impact Fees**

**Section 3.3.5 Calculation of Impact Fee**

*Impact fees are calculated on the total gross square footage of the principal use of the building, including accessory uses. In the event there is more than one principal use within a building, impact fees will be calculated separately for each principal use and associated accessory uses, with common space computed on a pro-rata basis.*

Impact fees shall be assessed based on the final gross area calculation submitted to staff. The applicant has indicated that the area amount provided for residential use in the previous application (ZP18-0648CA) was inclusive of this new amenity space.

**Affirmative finding as conditioned.**

**Section 3.3.8 Time and Place of Payment**

*(a) New Buildings: Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.*

**Affirmative finding as conditioned.**

**Article 4: Zoning Maps and Districts**

**Part 4: Base Zoning District Regulations**

**Section 4.4.1 Downtown Mixed Use Districts**

1. FD6. See Article 14.

**Article 5: Citywide General Regulations**

**Section 5.2.1 Existing Small Lots.**

Not applicable.

**Section 5.2.2 Required Frontage or Access**

**No change.** Not applicable.

**Section 5.2.3 Lot Coverage Requirements**

No change. Not applicable.

**Section 5.2.4 Buildable Area Calculation**

Not applicable.

**Section 5.2.5 Setbacks**

Setbacks are addressed under *planBTV Downtown Code Application Compliance Checklist – Sec. 14.4.13 Urban Design Standards*, administrative review.

**Section 5.2.6 Building Height Limits**

There is no proposed change to the overall building height. Review of height is within *planBTV Downtown Code Application Compliance Checklist – Sec. 14.4 Building Types*, under administrative authority.

The change to massing above 65' is subject to review by the DRB; the purpose of this application.

**Section 5.2.7 Density and Intensity of Development Calculations**

There is no change to the density/intensity of Development. Not applicable.

**Part 3: Non Conformities**

Not applicable.

**Section 5.4.7 Wireless Telecommunications Facilities**

Not applicable.

**Sec. 5.4.8 Historic Buildings and Sites**

Not applicable.

**Section 5.4.9 Brownfields**

Not applicable.

**Part 5: Performance Standards**

**Section 5.5.1 Nuisance Regulations**

Not applicable.

**Section 5.5.2 Outdoor Lighting**

The proposal has not included any lighting information. If additional lighting is proposed, fixture information and light levels shall be submitted for staff review. **Affirmative finding as conditioned.**

### **Section 5.5.3 Stormwater and Erosion Control**

Not applicable.

### **Section 5.5.4 Tree Removal**

Not applicable.

### **Article 8: Parking**

The proposed new amenity spaces are intended as accessory to the approved residential uses, and therefore spur no additional parking requirement. Parking spaces approved under ZP17-0662CA/MA as amended within ZP18-0648CA remain in effect. **Affirmative finding as conditioned.**

### **Section 14.6.4 Building Height**

#### **(f) Design and Public Standards Required for Additional Building Height**

*After consultation with the Design Advisory Board and a Public Hearing, the Development Review Board shall evaluate any proposal seeking addition building height under each of the following additional design standards, and affirmatively find that:*

- a. The proposed building presents a design that emphasizes slender, vertically-oriented proportions to assure a rich visually interesting experience as viewed with the context of the downtown skyline; reinforces opportunities for establishing points of reference for visual orientation; and provides visual interest and human scale at the pedestrian level through the use of a variety of scales, materials, fenestration, massing or other architectural design standards.*

The overall building height will not exceed beyond what was approved under ZP17-0662CA/MA. DAB and DRB review is required due to the new building mass (7<sup>th</sup> and 12<sup>th</sup> floor amenity spaces) and the requested alteration to the phasing schedule.

The pool/deck feature on the 7<sup>th</sup> floor will not be visible from any of the streetfront elevations (see Plans A200-A201.) The fitness center at the 12<sup>th</sup> floor will be apparent only from the north (Cherry Street) façade as a small building volume that is largely unapparent from street view (see lower illustration at A-202, sight lines noted.)

Plan A-202 illustrates views from the interior of the block complex, and the proposed amenities as may be apparent of the north courtyard. With the noted exception along Cherry Street, neither amenity space will be visible to the pedestrian at street level. Pavilion finishes are consistent with the overall building design and specific activities within. Overall skyline views will remain as previously approved.

Although no new overall building height is requested, the additional volume is inconspicuous between the larger towers (fitness center) or recessed behind existing building volumes (pool pavilion.) The proposal will continue to assure a rich visually interesting experience.

**Affirmative finding.**

- b. Step backs, horizontal and vertical variation, selection of materials, and/or other architectural design techniques are used to reinforce the street wall, create transitions*

*from buildings of a smaller mass and height, and reduce the perceived height and mass of upper stories from the street level,*

The proposed building amenity additions do not influence the previously approved street wall(s). The new mass/volume is set within the existing building volume, and in the case of the fitness amenity, provides a transition between two (previously approved) building volumes at a building elevation and stepback that is minimally apparent from the street. As both amenity spaces are proposed to be located within or among approved building volumes, and as proposed have no visual connection to the streetfront pedestrian, neither will negatively influence the perceived height and mass of the upperstories from the street. **Affirmative finding.**

*and,*

- c. Upper story propositions of the building are oriented and tapered and/or separated into separate masses in order to retain sky view between individual buildings elements from the public thoroughfare.*

The 7<sup>th</sup> floor pool pavilion, located on an interior court within the entire complex, is proposed as an individual volume on a lower floor that has no impact to sky views between buildings. The 12<sup>th</sup> floor fitness pavilion adds a minor volume between two higher building extrusions, and is only visible (with difficulty) from Cherry Street. The limited volume, at a height and stepback negating visibility from the pedestrian level assures no obstruction to skyview between building elements from the public thoroughfare. **Affirmative finding.**

## **II. Conditions of Approval**

1. Per **Section 2.7.8, Withhold Permit**, 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.
2. Impact fees shall be calculated based on the gross area as submitted to staff. Per Section 3.3.8, Impact fees must be paid at least seven (7) days **prior to occupancy of the building** or any portion thereof.
3. If additional lighting is proposed, fixture information and light levels shall be consistent with Section 5.5.2 and submitted for staff review.
4. No change in parking is required of this application, as amenity spaces are accessory to the approved residential use. Parking spaces approved under ZP17-0662CA/MA as amended under ZP18-0648CA remain in effect.
5. This permit modifies the original phasing schedule approved under ZP17-0662CA/ MA to the following four-part schedule:
  - Phase 1 / TCO 1                      November 20, 2019
    - ◆ Cherry & Bank Retail – LG & 1
    - ◆ Cherry & Bank Street Sidewalks
    - ◆ UVMC – Levels 5 & 6 North Tower
    - ◆ Parking Levels – L1, L2, L3, L4
  - Phase 2 / TCO 2                      February 2020
    - ◆ Wrapper Housing – L2, L3, L4

- ◆ Pine & St. Paul Retail
- ◆ Pine & St. Paul Streets
  
- Phase 3 / TCO 3 April 2020
  - ◆ Basement Parking
  - ◆ North Tower Residential L7-L10
  - ◆ South Tower Office L5-L12
  
- Phase 4 / TCO 4 June 2020
  - ◆ North Tower Residential L11-L14

Final Certificate of Occupancy October 2020.

6. Any conditions of ZP17-0662CA/MA or ZP18-0648CA not explicitly altered herein shall remain in effect.
7. Standard Permit Conditions 1-15.

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