



PRIMMER PIPER  
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December 19, 2017

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DEPARTMENT OF  
PLANNING & ZONING

VIA HAND DELIVERY

Mr. Scott Gustin  
Department of Planning and Zoning  
City Hall  
149 Church Street  
Burlington, VT 05401

Re: 451 Ethan Allen Parkway

Dear Scott:

Please find enclosed a Request for Reconsideration of the Development Review Board's November 21, 2017 Decision.

Very truly yours,

  
Jon Anderson

JTA/alb

Enclosure

CITY OF BURLINGTON  
DEVELOPMENT REVIEW BOARD

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TIM ALLES AND BILL ELLIS

DEPARTMENT OF  
PLANNING & ZONING

**REQUEST TO RECONSIDER**

Bill Ellis and Tim Alles, by and through their attorneys, Primmer Piper Eggleston & Cramer PC, hereby request the City of Burlington Development Review Board (the "DRB") to reconsider a decision to dismiss Appellant's filing, which Decision is dated November 21, 2017, a copy of which is Attachment 1 hereto. This request is based on the following:

1. Applicants have worked hard over the years to develop a strong proposal that offers eight units of good middle class housing as well as one permanently affordable unit.
2. In this phase of the development, Applicants have obtained sketch plan and preliminary approval and they have filed for final approval.
3. The final review process identified three issues for resolution as follows:
  - a. The State wetlands permit expired.
  - b. The Fire Chief asked that the circulation area be expanded so that the State of Vermont was unlikely to approve this change.
  - c. The City's Stormwater Officer asked Applicants to expand the stormwater system so as to further impact wetlands.
4. Applicants diligently set about addressing all of these issues, and they appear to be close to resolution as follows:
  - a. The State Wetlands Office appears willing to extend the permit it issued previously.
  - b. The Fire Chief has withdrawn his request.

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c. Analysis by a well respected stormwater systems designer-specialist shows that an adequate stormwater system can be built without increasing the wetlands impact.

5. Regrettably, it has taken Applicants more than six months to reach these resolutions. A large part of the delay resulted when City staff were unable to meet with Applicants due to summer vacations to develop a plan to move the project forward.

6. Applicants filed for an extension as allowed by the DRB's Rules of Procedure. Staff recommended that the requested extension be granted. Apparently, Counsel should have attended the meeting to consider this request. The meeting was held on the Tuesday before Thanksgiving when Counsel left for an extended vacation. Counsel regrets not attending the meeting, but the sanction of dismissal is unwarranted. The zoning ordinance does not contain any provisions allowing the dismissal. It is unclear that the DRB's rules of procedure can sanction dismissal without specific authorization in the zoning ordinance.

7. If the dismissal decision is upheld, Applicants can refile their application by paying new filing fees. There is no reason for the DRB to impose this burden on the development review process. After all, the City Staff person familiar with the above facts recommended that the DRB grant the extension requested by the Applicant.

8. Applicants have appealed the DRB's dismissal action. The cost and trouble of proceeding further with this appeal may be easily saved simply by granting Applicants' request. If the request is granted, Applicants will withdraw the appeal.

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**CONCLUSION**

DEPARTMENT OF  
PLANNING & ZONING


For all of the reasons outlined herein, the DRB shall reconsider its Decision dated

November 21, 2017 and grant the requested extension.

Dated: December 19, 2017  
Burlington, Vermont

PRIMMER PIPER EGGLESTON & CRAMER PC

By:

  
\_\_\_\_\_  
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Attorneys for Bill Ellis and Tim Alles

# ATTACHMENT 1

## Burlington Development Review Board

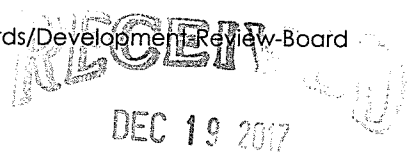
149 Church Street, City Hall  
Burlington, VT 05401

www.burlingtonvt.gov/PZ/Boards/Development-Review-Board

Phone: (802) 865-7188

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Austin Hart  
Brad Rabinowitz  
Israel Smith  
AJ LaRosa  
Alexandra Zipparo  
Geoffrey Hand  
Samantha Tilton  
Jim Drummond (Alt.)



## Burlington Development Review Board

### Findings of Fact

### Deliberative Hearing Tuesday, November 21, 2017

**In RE:** 17-1081PD; 451 Ethan Allen Parkway (Ward 7N, RL) (Tax Lot No. 025-4-001-000)

**Owner/Applicant:** Tim Alles & Bill Ellis / Jon Anderson, Esq.

**Request:** Time extension for application review period only: Final plat review for 9-unit planned unit development and associated site improvements

#### Members Present:

Brad Rabinowitz  
AJ LaRosa  
Alexandra Zipparo  
Israel Smith  
Geoff Hand  
Samantha Tilton  
Jim Drummond

#### Evidence Presented:

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

## I. FINDINGS

### Background Information:

The applicants are requesting an extension for the allowable time for their final plat application to move through the Development Review Board process. The applicants applied for final plat review in May 2017 and met with the Design Advisory board later that month. Following that, the applicants requested deferral of further review while they worked to resolve outstanding matters such as their expired state wetlands permit. Projects are generally limited to a 6-month timeframe for Board review unless an extension is requested.

### Article 10: Subdivision

#### Sec. 10.1.9 Final Plat Approval Process

##### *(b) Completeness of Submission, Administrator's Action*

Within 30 days of receipt of a complete final plat application, the application shall be scheduled for review by the Development Review Board (and related advisory boards – Design Advisory Board and Conservation Board). The final plat application was filed on May 9, 2017 and was deemed complete on May 12, 2017. It was scheduled in a timely manner for the Design

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Advisory Board meeting on May 23, 2017 and for the Conservation Board on July 10, 2017. Prior to the Conservation Board meeting, the applicants learned that their state wetlands permit had expired. As a result, they requested postponement of the Conservation Board meeting and have not sought review ever since. Applications may be postponed for a time but not indefinitely. The Development Review Board bylaws (Sec. VIII: Proceedings and Order of Business) limit pending applications to 6 months. Up to two 3-month extensions may be granted. The applicants are seeking an initial 3-month extension. This project has been pending in one form or another for years. No applicant or representative attended this November 21, 2017 meeting in support of the request; however, neighborhood testimony opposing the requested extension was provided. The Board sees no compelling reason to grant the requested extension. (**Adverse finding**)

## **II. MINUTES**

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

## **III. MOTION**

### **Motion: Geoff Hand**

I move that the Board deny the requested time extension per the findings above.

**Seconded: Ali Zipparo**

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

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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.**