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TO: Development Review Board
FROM: Scott Gustin
DATE: August 15, 2017
RE: 18-0028AP; 351-375 North Avenue

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: NAC-CR Ward: 4N

Owner/Appellant: 351-375 North Avenue Owner's Association, LLC

Request: Appeal of administrative decision relative to impact fees for orphanage renovation

Overview:

The appellant is appealing an administrative decision relative to the impact fees due for the St. Joseph's Orphanage renovations into residential apartments. The original zoning permit (16-0007CA/MA) was approved September 1, 2015 and included conversion of the building to 63 residential units with reconfigured college space. The permit was subsequently amended February 2, 2016 to increase the residential unit count to 65 with some minor exterior alterations. Ultimately, the building was approved for conversion to purely residential space as part of Cambrian Rise (zoning permit 17-0623CA/MA).

The subject zoning permits included a condition requiring payment of impact fees based on the converted and net new finished square footage of the development. That impact fee was calculated and billed by staff in an amount totaling \$39,320.21. The appellant asserts that this calculation is incorrect and is appealing it seeking relief.

The administrative impact fee calculation was based on:

- 12,500 sf of previous Burlington College space being converted to residential use
- 15,727 sf of previous vacant space being converted to residential use

At the time of calculating the impact fees, the appellants had represented that the remaining 25,500 sf of the building was formerly Roman Catholic Diocese residential space in use since 1992¹ (enactment of impact fees), and therefore, not subject to impact fees (i.e. residential use remained residential). This is a seemingly generous assertion given that the 1977 zoning permit for the change in use from orphanage was for 3 apartments in addition to the administrative office space.

¹ The Diocese continued to occupy the space until ~ 2010.

The appellant's argument now is predicated on all but 12,500 sf of the 54,000 sf building as continuous residential use since its construction in 1884 to at least 1992. This assertion translates into 41,500 sf of ongoing residential use in a building that ceased operations as an orphanage in the 1970's.

The appellant's argument hinges on an assertion that residential use of most of the building has been continuous, whereas the record indicates that much of the building has simply been vacant for decades.

Recommendation: Uphold administrative decision based on the following findings and conditions:

I. Findings:

The subject building was constructed as an orphanage in 1884 and continued as such into the 1970's. Upon cessation of the orphanage use, the building became administrative (office) space for the Roman Catholic Diocese with related residential space. The zoning permit issued in 1977 specified 3 apartments – for the Bishop and 2 priests, plus administrative space.

On November 3, 2010, the Development Review Board granted approval to convert the existing institutional office use to post-secondary school (Burlington College). The conversion to post-secondary use expressly did not include substantial renovation of the building (i.e. such as adaptation of former orphanage space into academic or student dorm space). Condition 4 of that approval stated: "Substantial rehabilitation and/or the construction of new primary structures onsite shall require separate permit application. Such application shall be accompanied by a master plan for the property." In effect, the approved permit allowed conversion of the office space to college space, but did not extend into the unoccupied spaces of the former orphanage.

As noted above, between 2015 and 2017, zoning permits were approved to allow the conversion of the entire building to residential apartments. Impact fees were required by way of zoning permit condition.

Sec. 3.3.2, *Applicability*, of the Comprehensive Development Ordinance states:

Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential building square footage are subject to impact fees as is any change of use which results in an added impact according to Sec. 3.3.4.

Sec. 3.3.3, *Exemptions and Waivers*, (a), *Exemptions*, states:

The following types of development are exempt from this Part:

1. additions to existing dwelling units, provided such additions are for residential purposes;
2. alterations to an existing use provided that such alteration occurs entirely within an existing building and within the same square footage;
3. land development which does not result in new building square footage (e.g. parking lots, facade renovations, signs, etc.);

4. additions to existing buildings for which the sole purpose is to provide additional means of egress (e.g. stair towers, elevators, etc).

The renovation of the building into residential apartments is not exempt under this criterion. The work creates new dwelling units with additional square footage for new living space. It is not merely an addition to an existing dwelling or simply site and façade work.

Sec. 3.3.4, *Calculation of Impact Fee*, states:

The amount of impacts fees shall be as set forth in the *Impact Fee Administrative Regulations* as established by resolution of the city council. There shall be an automatic annual increase to the impact fee schedule reflected in the *Impact Fee Administrative Regulations* every July 1 equivalent to 100% of the annual change in the Consumer Price Index (CPI).

Impact fees are calculated on the total gross square footage of the principal use(s) of a 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.

The *Impact Fee Administrative Regulations* referred to are largely incorporated into *Part 3: Impact Fees* of the CDO. They do; however, also establish the 4 distinct impact fee categories (residential, industrial, office and other, and retail) and specify the fee per square foot.

Zoning Administrative Interpretation 17-01, *Impact Fees – Replacement Structures*, was issued in order to provide guidance as to the application of impact fees in instances of long vacant properties being renovated and reactivated (such as the subject building). Properties that have become vacant since the October 15, 1992 enactment of impact fees are not assessed an impact fee if the new development is of the same use and size of the prior development. For properties vacant since before October 15, 1992, impact fees would apply based on the new use and square footage. In the case of the subject property, the orphanage ceased operation around 1974. A 1977 zoning permit allowed administrative office space with 3 apartments. Much of the building was left vacant. That long vacant space is subject to impact fees based on the size and area of the new use.

The creation of 65 residential apartments within the subject building entailed the conversion of prior post-secondary school space into residential space. It also included the introduction of residential space into previously unused space (such as the attic) and reactivation/renovation of long-vacant space into residential space. Arguably, there was no change in use of space used as living quarters associated with the Diocese’s administrative functions.

Impact fees were calculated accordingly. They were calculated in two ways:

- 1) Converted space.
 - Prior post-secondary school space converted to residential space.
 - Impact fees assessed on the net difference between “office & other” and “residential” categories.

- Where the net difference becomes a negative number within an individual category (i.e. fire, police, parks, etc.), it is zeroed out. To do otherwise would adversely affect other individual categories.
- 2) Net new finished space and activation of previously finished but vacant space.
- Transformation of attic into residential apartments.
 - Renovation of formerly finished orphanage space vacant since before adoption of impact fees on October 15, 1992 (see zoning administrative interpretation ZAI 17-01).
 - Impact fees assessed as “residential” category on the gross floor area (GFA) of these spaces.

No impact fees were assessed on space represented by the applicant as living space in use after October 15, 1992.

The Cambrian Rise development has a \$300,000 “Parks” impact fee credit. This credit was applied to the impact fees due and resulted in \$0 “Parks” impact fee being assessed on this project.

Based on the forgoing, the impact fee numbers are as follows:

- 1) Converted post-secondary school to residential space (12,500 sf)
 - Residential @ \$2.531 per sf = \$31,637.50
 - Office & Other @ \$1.585 per sf = \$19,812.50
 - Zero out “Parks” impact fee
 - Net difference = \$17,412.50
- 2) Net new finished space and activation of vacant space (15,727 sf)
 - Residential @ \$2.531 per sf = \$39,805.04
 - Zero out “Parks” impact fee
 - Total = \$21,907.71
- 3) The appellant has asserted that 25,500 sf space was used as Diocesan residential and related space. While this figure is quite substantial for the residential purposes served, no impact fee was assessed on this space based on representations made by the appellant.

Impact fees totaled \$39,320.21.

The appellants assert that impact fees should instead have totaled \$11,825 based solely on 12,500 sf of “office & other” space used for Burlington College being converted to “residential” space as part of the current redevelopment. The appellant’s assertion hinges on recognizing everything within the building, except for 12,500 sf former college space, as existing residential. This argument is without merit. The building has not been used as an orphanage since the 1970’s. Following that, the Diocese used part of the building as administrative space with related residential space for the Bishop and two priests. Much of the building was simply vacant since before the enactment of the Impact Fee Ordinance in 1992.

The appellant asserts further that the calculation of the impact fees for this project is inconsistent with how they have been calculated for other buildings. This assertion, too, is largely without merit. The list of impact fees based on net differences among uses is long. Here are a few examples:

- 207 Flynn Avenue (City Market)

- 60,000 sf existing “industrial” space demolished
- 38,847 sf new “retail” space constructed
- “Industrial” space credit applied towards new “retail” = \$17,830.77 impact fee
- 316-322 Flynn Avenue (Redstone)
 - 2,774 sf existing “retail” and 2,400 sf existing “residential” space demolished
 - 24,458 sf new “residential” and 3,000 sf new “retail” space constructed
 - Existing “residential” and “retail” credit applied = \$56,199.79 impact fee (not yet billed, pending credit for inclusionary housing)
- 400 Pine Street (Unsworth)
 - 10,393 sf existing “industrial” space demolished
 - 26,227 sf new “office & other” space constructed
 - No net change for 2 residential units
 - “Industrial” space credit applied towards new “office & other” space = \$29,496.57 impact fee
- 82 University Place (UVM STEM)
 - 126,631 sf existing “office & other” space demolished
 - 193,650 sf new “office & other” space constructed
 - Net new 67,019 sf = \$106,560.22 impact fee

In sum, impact fees are due for the converted college to residential space and for the new and reactivated residential space. The impact fees subject to this appeal were calculated correctly, in line with procedures consistent with other similar conversions. The impact fees should remain as billed.

II. Recommended Motion:

Uphold the administrative decision in calculating impact fees totaling \$39,320.21.