

Submitted at DRB  
2/14/17



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February 14, 2017

*By Hand Delivery*

Austin Hart, Chair  
City of Burlington Development Review Board  
City Hall  
Burlington, VT 05401

**Re: DRB Proceedings, Permit Application #17-0662CA/MA**

Dear Mr. Hart,

I write on behalf of BTC Mall Associates, LLC (“BTC”) in reply to the letters filed on behalf of Barbara McGrew and the petition to participate concerning permit application #17-0062CA/MA sent through counsel and dated February 7, 2017 and February 8, 2017.

BTC reserves the right to challenge Ms. McGrew and petitioners’ status as interested persons in this matter. The arguments regarding the completeness of the permit application are out of time, and are not properly raised. An appeal from a decision of the Zoning Administrator must be taken within fifteen days after the date of decision by filing a notice of appeal. CDO § 12.2.2; 24 V.S.A. § 4465(a). The letters were submitted more than fifteen days after the Zoning Administrator deemed the zoning permit application complete. No notice of appeal has been filed. Thus, none of her arguments concerning the completeness of the zoning permit application can be considered.

In any case, BTC disputes all of the allegations raised, many of which are deficient on their face or have no basis in the CDO. To the extent they are related to the DRB’s review of this project, the allegations and BTC’s responses are as follows.

- 1) *The Predevelopment Agreement provides that the property owner BTC Mall Associates, LLC will be the developer, but it not the zoning permit applicant. The permit applicant is Devonwood Investors, LLC. Devonwood is neither an owner of the subject properties nor a signatory to the Predevelopment Agreement, and is not legally bound by the requirements of the Predevelopment Agreement.*

Mr. Don Sinex, who owns and controls both BTC and Devonwood Investors, LLC (“Devonwood”), signed the application. Devonwood is in the upstream ownership of BTC. Moreover, the applicant intends to add BTC to the application materials.

2) *The permit application is incomplete because:*

The allegations concerning the completeness of the zoning permit application fail at the outset. Under BZO 3.2.5, the administrative officer has authority to determine if an application is complete. The administrative officer deemed it complete and referred the application to the DRB.

2.1 *It does not address what is to happen with the facade of the remaining portion of the existing BTC Mall to be exposed by the proposed demolition of a portion of the existing mall and the re-establishment of St. Paul Street.*

BTC is preparing an elevation of the façade on the east side of St. Paul Street, which will be submitted when it is available.

2.2 *It similarly does not address what is to happen with the exposed facade of the remaining portion of the Macy's building by the re-establishment of Pine Street.*

The façade of this property is not the applicant's property. A zoning application for an adjacent property would not be timely until a decision on this application is final.

2.3 *It does not include all of the Public Improvements identified in the property owner's Predevelopment Agreement with the City and the 2016 TIF referendum language. This contradicts the Predevelopment Agreement § 4d, which provides that "the Owner shall construct all the Public Improvements at its own cost and expense, and the City shall reimburse the Owner for the agreed upon cost of constructing the Public Improvements . . . upon Owner's receipt of a Unified Certificate of Occupancy for Phase I of the Project: . . . ." Moreover, the Public Improvements which are included the permit application are not scheduled to be completed until mid-2020. This contradicts the Predevelopment Agreement which provides they are to be completed and the Unified Certificate of Occupancy is to be received no later than December 31, 2019.*

The Predevelopment Agreement is not germane to the application to the DRB, and it is inappropriate to ask the DRB to adjudicate it. In any event, the application complies with BTC's commitments under the Predevelopment Agreement for this project.

2.4 *The permit application has consequently shorted the amount it owes to the City in the permit application fee. Because the Owner is to be constructing the improvements at his own cost and expense with later reimbursement by the City only if a Unified Certificate is obtained, they all must be included in the permit application and the cost of the permit application fee if they are to be built, but are not.*

The application is deemed complete by the administrative officer, and all required fees have been paid by applicant.

2.5 *The permit application is incomplete because it does not address how or where the parking demand to be created by Phase II of the redevelopment project is to be satisfied.*

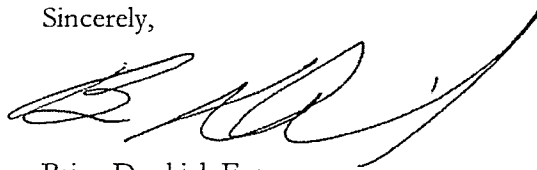
Phase II of the Mall redevelopment is not currently before the DRB. Future development on property owned by the applicant not subject to this application is speculative and beyond the scope of the matter before the DRB through this application.

2.6 *The permit application is incomplete because it does not address how the existing demand for public parking being satisfied by the public parking spaces in the parking facility which is to be demolished will be accommodated during the period of demolition and construction.*

There is no zoning requirement to provide public parking.

Thank you for your consideration of this matter. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Dunkiel', written in a cursive style.

Brian Dunkiel, Esq.

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND, PLLC

Cc: Noelle MacKay, Director, Burlington Community & Economic Development Office  
Richard W. Haesler, Esq., Assistant City Attorney, City of Burlington

