

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax (802) 863-0466

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, February 16, 2021, 5:00 PM REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/81701436630?pwd=N2x1ai93M2pKcnRHcnhmcXh1RGdadz09>

Webinar ID: 817 0143 6630

Password: 842557

Telephone: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or
+1 346 248 7799 or +1 669 900 6833

Video recording link: <https://www.cctv.org/watch-tv/programs/burlington-development-review-board-352>

Draft Minutes

Board Members Present: Brad Rabinowitz, Geoff Hand, Brooks McArthur, Caitlin Halpert, Springer Harris, Kienan Christianson, Sean McKenzie (Alt)

Board Members Not Present: AJ LaRosa, Ravi

Staff Present: Scott Gustin, Mary O'Neil, Ryan Morrison, Theodore Miles, Kim Sturtevant, Alison Davis

I. Agenda

B. Rabinowitz: There are changes to the agenda,

II. Communications

B. Rabinowitz: All item communications are posted [online](#).

III. Minutes

B. Rabinowitz: Minutes from previous meeting are posted [online](#).

IV. Consent

1. 21-0589CU; 19-21 Monroe Street (RH, Ward 3C) Henry Stark

Establish short-term rental (bed and breakfast) in apartment. (Project Manager: Ryan Morrison)

Henry Stark appeared on behalf of item
Provided public comment

B. Rabinowitz: Item deferred to March 16th

C. Halpert: Motion to defer item to the March 16th DRB meeting.

K. Christianson: Seconds motion

7-0-0

V. Public Hearing

1. 21-0601CU; 327 South Winooski Avenue (RM, Ward 6S) John and Maria O'Brien

Establish one bedroom short-term rental (bed and breakfast). (Project Manager: Ryan Morrison)

John and Maria O'Brien appeared on behalf of item
Provided public comment

B. Rabinowitz: Item deferred to March 16th

B. McArthur: Motion to defer item to the March 16th DRB meeting.

C. Halpert: Seconds motion

7-0-0

2. **20-0522CU; 75 Cherry Street (FD6, Ward 3C) BTC Mall Associates, LLC**
Amend ZP 17-0662CA/MA phasing schedule. *Application withdrawn.*

B. Rabinowitz: Item withdrawn

3. **21-0354AP; 75 Cherry Street (FD6, Ward 3C) BTC Mall Associates, LLC**
Appeal of Zoning Administrator Determination regarding relinquishing 17-0662CA/MA.
Applicant requests deferral.

Geoff Hand recused

B. Rabinowitz: Requesting deferral. Asks if it is because of negotiations and more time needed

S. Gustin: Believes that the negotiations are done, looking to simply defer this one past the date where the Board reviews the actual application.

B. Rabinowitz: Asks if there would be any reason not to defer this item regarding deadlines and dates.

S. Gustin: Recommended April 20th which will be the date before they will need time extensions.

B. Rabinowitz: Asks for a motion to defer this item to April 20th, 2021.

K. Christianson: Motion to defer action on this item until April 20th.

B. McArthur: Seconds motion

6-0-0

4. **21-0593AP; 110 Riverside (NMU-R, Ward 1E) Sister & Brothers Investment Group and G4 Design Studios**

Appeal of Notice of Violation 380795 "Numerous inoperable vehicles being stored about the property without Zoning Approval." (Project Manager: Ted Miles)

Joe Handy and Brian Hehir appeared on behalf of item

T. Miles: Introduces self. Explains that violation is operation of vehicle/automobile salvage yard without a zoning permit, and occupying without a Certificate of Occupancy. Explains that there are a number of open zoning permits for the property. Explains that the occupancy issue without a Certificate of Occupancy, most of that could be resolved with a new permit that was issued in December 2020, once that is enacted. That will supersede most of those permits that need to be taken care of. That issue will take care of itself once the permit is acted on for demolition/partial demolition of the buildings. The other issue is the operation of an automobile salvage yard without a zoning permit. Reads City Zoning Ordinance definition of an automobile/vehicle salvage yard. From the photo of the last permitted use of the property in 2004 was M&H Autos for sale of automobiles and a smaller

use of repair of automobiles on site. One of the conditions of that permit was that there was not supposed to be any towing/impound of vehicles on the lot. From the photos submitted to the Board in the item's packet, they clearly show that in 2006, that permit was active for the sale and small repair use for cars for M&H Auto. Not sure when business vacated site, but it is shown in GIS photos from 2004, that the automobile sales and repair did happen. GIS photos from 2013, you can see that the small repair and sales is no longer there. Moving forward to the 2019 GIS photos, you can see that there are many more vehicles on the lot in scattered conditions. From the photos that I have provided from 2020, shows many vehicles in inoperable condition. From photos you can see that there are many cars in a variety of conditions. Many of the cars do not have registration plates on them. Some have been in automobile accidents. Estimated count in the 2020 photos, there are about 50 vehicles on the lot at that time. Walks through photos and shows conditions of cars that are on property. Moving on to more recent photos, you can see that there are still a lot of cars on site and many do not have registration plates on them. Many of the cars have clearly been in accidents and are inoperable/totaled. Can see that the number of cars for vehicles allowed on lot, exceeds the three-inoperable/unregistered vehicles, so this would fall into the City's definition of a vehicle salvage yard. In regards to the claim that this has been in existence for more than 15-years, in the photos that were provided, you can clearly see from 2006 that this lot was used for automobile sales and repairs run by M&H Auto. Staff is asking for the DRB to uphold the violation and would like to see this lot cleaned up. Would need to comply with site plan from 2004 that was the last approval for any site work. The building is no longer usable, that is why there is a request for demo/partial demo of building on the site.

B. Rabinowitz: Asks to clarify what permit was submitted and asks about previous permit.

T. Miles: This new permit was only for demo/partial demolition of the building on site. There was no site plan submitted with that permit, so from the 2004 site plan that would be active for the property, still applies.

B. Rabinowitz: Asks to clarify, if they demo the building, they could still have all the cars there.

T. Miles: No, because that is not in the permitted use for the property.

B. Rabinowitz: Asks if Board has any questions for Zoning Enforcement Officer, Ted Miles.

None

B. Rabinowitz: Asks applicants to address item.

B. Hehir: Explains that this property is on appeal from the Vermont Environmental Court for the 57-unit apartment building. Initial request would be that the enforcement be stayed, as long as property owner can maintain status quo on the site until the Environmental Court makes a decision.

B. Rabinowitz: The status quo would be a non-permitted use. Easier solution would be to clean up the site while the other one is under review.

B. Hehir: That was the plan until we were denied by the Board for the apartment building. Things are on hold and need to be sorted out before moving forward.

J. Handy: Gives overview for history of property. On property today, there are not 50 cars on lot. There are about 25. We tow the cars from accidents, and then keep them there until the insurance company comes in and assesses the vehicle/picks them up. Some without insurance end up sitting on the lot. Recently there are more cars that are stored there that have been sitting there for some time. Within the last couple weeks, cars are gone and have been brought to a salvage yard. There are a few cars there today, including the old truck, but truck is registered. We do not disassemble cars, we take no parts from cars there, no auto repair, these cars are only from accidents or breakdowns. We take them there until someone claims them or if they have to wait for a title from the State, and we bring to junkyard.

B. Rabinowitz: Explains that the issue the Board has is that the last permitted use was for auto repair. The current use is not the same as what was being done on the property previously.

J. Handy: Explains that M&H Auto were towing some cars in, they would buy used cars, repair them, would take them apart, would fix and sell. We are not doing anything different, we are towing the cars in and parking them there.

B. Rabinowitz: Explains that it is not auto repair, but is being used to store cars that are either going to be going to the junkyard or taken somewhere else for repair.

B. Hehir: Explains that the enforcement complaint was for operating a salvage yard without a permit. They are not dismantling or taking parts out of cars. In the Ordinance it states that three or more unregistered vehicles are considered a salvage yard. I think our argument is that some of these vehicles are temporarily unregistered, but that is because they are between being abandoned by the owner and getting a new title from the State. Is not a salvage yard operating without a permit.

G. Hand: It sounds like Handy explained that he is storing cars there which is within the definition of auto vehicle salvage yard. Asks if Hehir agrees with that statement.

B. Hehir: No, because the definition states that it is land or building used for collection, wrecking, dismantling, storage, salvaging, and sale of machinery, parts of vehicles not in running condition. That is a conjunctive sentence meaning that all of those activities must be occurring under the definition. There are cars on the site, but they are not part of a salvage operation. The intent of the definition has to do with wrecking and salvaging, which is not happening on this property.

B. Rabinowitz: Walks through definition and explains view for this property. This place is obviously serving a function that you need to have happen somewhere.

B. Hehir: And what is happening on site is not a salvage yard from the definition in the Ordinance.

G. Hand: Asks if there are more recent photos. The evidence that Ted Miles presented is compelling that there are many cars that are not in running condition on site, and at least three that are unregistered.

J. Handy: I think the misunderstanding that most of those cars are registered. There are three cars that are unregistered on the site.

C. Halpert: What Ted Miles is suggesting is that 60-days from the decision that there not be those cars stored on the property, and it sounds like there are alternative plans for the property anyway. Trying to understand what appellee is trying to gain through this appeal if you are planning on changing the use anyway.

J. Handy: Explains the plan for the 57-unit apartment building and how that fell through. Explains historic with Board and frustration with applications.

G. Hand: Asks if applicant is planning on moving forward with the demolition work or if it will be waited on until there is approval.

J. Handy: Does want to demolish part of the building.

G. Hand: The site does look like a health and safety hazard, it is open to the public.

J. Handy: It is, and that is what I want to do. I want to demolish the building because of the condition.

B. Rabinowitz: Asks if there are any other questions from the Board for Ted Miles, Joe Handy, or Brain Hehir.

T. Miles: Regarding the comment that Joe Handy felt like he was being retaliated against because the permit was denied, but this started Feb 2020 when the warning letter was sent out but was never acted on. City actually did not pursue heavily with this violation because

they were in the process of working through the permitting for the demolition and construction of 57-units that were planned. That was the reason we did not rush to do the Notice of Violation because a new permit would have cleared up the violation. Once that permit was denied, we moved forward with the Notice of Violation to get the site cleaned up. The denied apartment building permit that was denied and now appealed to the Environmental Court, which could take up to two years. The use that is on the property now, with the vehicles coming and going in salvage condition, is an unpermitted use. Cars that are in this condition is an environmental concern for this area. It is in close proximity to the Winooski River. It is something to take into consideration.

K. Sturtevant: Explains application and process with the Environmental Court. Concern is that that application was for a proposal that was initially approved in 2013. Would be concerned tying the current violation's time frame with the appealed application's time frame. For the Violation, the approved use was the sales and repair, which is not happening anymore. The property owner explained to us that that use is not happening anymore, and this use is storing vehicles on site without a permit. This appeal is about a property use without a permit.

VI. Adjournment

Meeting adjourned at 5:48 PM



Bradford L. Rabinowitz, *Chair of Development Review Board*

February 22, 2021

Date



Alison Davis, *Zoning Clerk*

02/21/2021

Date

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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