

Burlington Development Review Board

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Austin Hart
Michael Long
Jonathan Stevens
Brad Rabinowitz
Bob Schwartz
Jim Drummond
Missa Aloisi
Alexandra Zipparo (Alt.)
Israel Smith (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, July 2, 2013 - 5:00 p.m., Contois Auditorium, City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Austin Hart (Chair), Jonathan Stevens (Vice Chair), Michael Long, Brad Rabinowitz, Missa Aloisi, Bob Schwartz

Staff: Ken Lerner, Mary O'Neil

Absent: Jim Drummond, Alexandra Zipparo (Alt.), Israel Smith (alt.), Nic Anderson, Scott Gustin

I. **Agenda**

No changes.

II. **Communications**

None.

III. **Minutes**

Three sets. Will be discussed at deliberation.

IV. **Consent**

1. **13-0188CA: 234 SOUTH CHAMPLAIN STREET (RM, Ward 5) Burlington Housing Authority**

Amendment to ZP#13-0188CA for site work and tree removal related to VTDEC approved Soil Management Plan. (Project Manager: Scott Gustin)

Applicant Matt Ham-Ellis present. Has received staff comments and has no concerns. No objections by board to treat as consent item.

No public present to participate or speak. Will leave as consent agenda item.

B. Rabinowitz – just soil issues?

M. Ham-Ellis – Yes. Have to report to the state, deal with the soil issue.

Motion by J. Stevens to approve and adopt staff recommended conditions of approval.

Seconded by M. Long.

Vote: 6-0-0

Motion Carried.

V. **Public Hearing**

1. **13-1098CA: 97 Dunder Rd (WRL, Ward 5) Owner: Donald & Carroll Albertson, Appellants: Marie St. Amand et al**

Appeal of zoning permit to continue renovation of single family home based on previously expired zoning permit 10-0576CA. (Project Manager: Scott Gustin)

A. Hart– Are owners, the Albertsons, here?

No.

A. Hart - invites the appellant (s) to the table.

Appellants sworn in.

A. Hart – procedural quandary. I expect the neighbors just want this done. Unfortunately we don't have the owners here. My first question is to staff: I think staff issued a permit on the theory that there was no way we could deny it. My initial impression that the board may be sympathetic, but (to board) don't know what solutions may be available.

K. Lerner – the option is to uphold the appeal. This has been going on for some time; however the permit that they applied for is 2010 – and that permit is the one that we have on record. That is the one (the time extension) that is under appeal.

Appellant – 40 years!

J. Yarnell– (110 Dunder Road) I hope you can. This is my 60th birthday – I should be at the airport picking up my daughter – but I am here because this is so important to me. We moved to Burlington – it was a beautiful town, we pay a lot of taxes. We never thought this would be an ongoing issue. Been going on for 40 years. We are informed. The City of Burlington has let us down, helping us, the taxpayers. This is depressing. It has pulled down our property values. The next step is to get a lawyer. My Albertson has issues. But I have issues too. Burlington needs to address this. I have been studying Chapter 8 – building codes. A lot of issues have not been addressed. We have met with the building inspector. It is beyond me how this is being approved. There is one worker who comes – he leaves cigarettes, food, oil cans. We have documentation. It goes on and on. There are children in the neighborhood. It is very easy to break into.

Austin Hart – I am frustrated that the owner is not here.

J. Yarnell – It was a horrible mess when I first moved in.

A. Hart - The owner doesn't live here?

J. Yarnell – No! They live in a nicer neighborhood. It is unsafe, unsightly. Needs to be dealt with. Just because the Albertsons are not here, doesn't mean it should be dealt with.

B. Rabinowitz – it looks like nothing has been done, but some things have been done?

J. Yarnell – Windows have not changed. Same stickers – I moved in in 2005. No body lives there.

J. Stevens – Has it ever been occupied?

Group – NO! Vagrants.

J. Yarnell – A child fell through boards, got injured. It was reported to the police.

B. Rabinowitz – Do we have plans?

K.Lerner - A site plan, a rendering near the back of the packet.

Group – we have lots of pictures.

A. Hart – I see Bill Ward here from code enforcement. Can you enlighten us?

B. Ward – I have visited numerous times. Reports in our file from 2009 – Corporal Chapman – transients living there. I took over February 2010 – they were applying for a zoning permit. Trying to meet requirements of the vacant building ordinance. What you are hearing is 100% accurate. The current path it is on is the correct one – a zoning permit and a building permit gives a 12 month period effectively don't need to pay vacant building fees. Other than that, the fees have been paid – approximately \$2000 a year (\$500 each quarter.) Now that the property owner is working on it, he can get a waiver from fees.

A. Hart – What evidence that he is working on it?

B. Ward – I submitted photos to Scott Gustin – most recent is 2013 photo. I completely agree with residents of the neighborhood. But I don't see anything explicit in the zoning ordinance that prevents him from continuing. My recommendation is, if the board upholds it because they have no other method, they leave in no uncertain terms where there is no longer a valid permit, and a violation will be issued. At its current rate, there is no way it will be complete by the time Scott Gustin issued the extension.

Austin Hart – Our options are – issue the extension....

K. Lerner – correction – this is not an extension – it is an entirely new zoning permit. The previous zoning permit expired. May 10th, they came in for a new permit – it was granted May 17th.

A. Hart – our options are...

B. Rabinowitz – it is a 2 year permit?

B. Ward – As a violation, it has to be completed within a year.

J. Stevens – How long owned by these owners?

B. Ward – decades. The building is only worth about 45,000. It is the land that is valuable. They have used up their full waiver. You can have a year off with a zoning permit and a building permit. This is completely accurate. One person, at a snail's pace...I have no confidence that it will be done in that time frame.

J. Stevens – If we uphold the appeal, it will give the option to act sooner rather than later?

A. Hart – You can't make somebody do anything...

K. Lerner – They would have to secure it.

M. Long – Condemn the building as a public nuisance?

B. Ward – With the improvements made, I don't think it is condemnable.

M. Long – As a nuisance? Transients?

B. Ward – At its current pace, the work won't happen within the one year period.

J. Stevens – I'm not clear anything will happen to them.

B. Ward – As long as they are working under a legitimate permit, there is nothing we can do.

J. Stevens – If we decide not to grant the permit, it will still be an unfinished building in Burlington. Can Burlington take any action?

B. Ward – We issued a Notice of Violation – used the City Attorney's office. Potentially go ahead to Environmental Court.

J. Stevens – What is the worst thing that could happen to the property owners?

B. Ward – It would be a judge's decision. That is why we document the conditions, as they improve or deteriorate.

A. Hart – If we uphold the permit, he can stop work. He doesn't do the 95 sf. addition. He doesn't have to do anything.

B. Ward – Needs to be water tight. Substantial improvements in the last 2 years.

Audience – Not water tight!

B. Rabinowitz – Having the owner here is essential. I would like to have the owner here to tell us to expect nothing to happen.

M. Long – Has there ever been a good faith effort to move this project forward?

B. Ward – His son-in-law was working on the project. The current person is making minimal changes.

A. Hart – invites neighbors to speak.

Michael Hennessey – 115 Dunder. Next to 97 Dunder. Bought the house 6 years ago. Mr. Ward has kept on top of it. Nobody did much before he took over. Can I have the definition for a renovation? How can you renovate something that has never had a certificate of occupancy? You can't. The house has never been completed in the first place. What is the longest building history in Burlington? This is 45 years. The home has never been occupied.

A. Hart – People are usually motivated to get their work done. I don't have a specific answer for your questions. People are typically motivated.

M. Hennessey – the project is not going forward. Lipstick on the pig – they were told to paint the building – so they did. They were told to cut down trees – they did that. I would ask to find out the name of the contractor? I assume it is a student of architecture. There has been nobody there for 6 or 7 weeks. If nothing else, I hope this board will find an ending – a completion date, a certificate of occupancy. 12 months is enough. Let's get a CO within 12 months. I have never seen Mr. Albertson in my 6 years. We have him on video, in front of a board years ago. He gave excuses, injuries, so on. At this stage of the game, we can we do so a CO is given, or they have no other options to go forward.

A. Hart – I don't know what arrows we have in our quiver. This has never happened before.

M. Hennessey – This has been a discussion topic in our neighborhood association for four years. To grant our appeal, you acknowledge that we are involved in this. This is like a tree fort that has gone on for years and years and year. For some of us, it is a financial issue.

B. Rabinowitz. To grant your appeal, the owner would be back in here.

A. Hart – Can you communicate with the owner?

M. Hennessey – I have never met the owner. His daughter or daughter's boyfriend were there when the roof went on.

M. Hennessey – provides further documents, photos for board review.

Marie and Albert St. Amand - 96 Dunder Road. We moved in the neighborhood in 1975. In 1966 Mr. Albertson bought his lot from the (appellant can't remember exactly). In 1969 Mr. Albertson applied for his building permit. Burlington did not have a zoning department. From 1969 to 1999, there was no significant construction at the property. Mr. Albertson would work on the property. Then there was a tragedy in the family. Children broke into the house. Electrical box rusted. Graffiti on the building. In 1999 the city began its vacant building ordinance. At that time, the city became aware of it. Over the years, we called police because we saw vans parked in front of the house, mattresses on the lawn, the police would drive by. Didn't know it existed. In 1999 the city recognized the building as a vacant building. If the Albertsons wanted to board up the building, they needed to get a zoning permit. They applied for an extension of the vacant building status – in January of 2000 they planned to submit plans and apply for a zoning permit. In June of 2000, evidence Mr. Albertson submitted said "substantial rehabilitation, and will be seeking permits." 2000-2005 no new construction. Annual appeals of \$500 fee for vacant building. City board of appeals in Dec. 2005. City indicated that they Albertsons were responsible for the vacant building fees. In a letter of January 2005, Albertsons submitted plans for construction. Site improvements and maintenance would be done. In the summer of 2005, new shingle roof, walls, and shell would be built. In the fall of 2005, spring 2006, interior finishes. In your application, no mention of this work to be done. Between 2006 and 2010, this continued to be a vacant building. Code Enforcement continued to inspect, and require a vacant building fee. If you are doing minimum maintenance, all but \$75 is returned to you. I would see Mr. Albertson with a bucket of tar on a ladder. The 2010 permit has expired. With all this history, you can see where this is coming from. Promises not kept.

A. Hart – Has anyone spoken to the Albertsons? What are they telling you?

M. St. Amand – the same thing the Code Enforcement says. Promises, promises.

A. Hart – when did you most recently speak?

M. St. Amand – in the fall, when they were doing work on their roof. They had dumpsters, a port-o-let on the city ROW.

A. St. Amand – they had a pile of debris – we had to call the city to dispose of it. Debris, rats could live in that. The wife took it away in a small wagon. No running water. It is not a construction site. It is a place someone toys around. I haven't seen anybody working there for at least 6 weeks.

M. St. Amand – Mr. Albertson is ill. He is a man with a dream. With the tragedy, many people turned a blind eye to the situation.

Steve and Susan Plisinski, 267 South Cove. Live downhill. We have lived in the property just behind the Albertsons for 10 years. We have called the police. Clear-cutting – not the kind of care a property should have – drainage – not mentioned until now. I confirm reports made the police about vagrants. We have seen an individual working there about once every 2 weeks.

Susan Plisinski – the fellow working is on his cell phone. I garden immediately adjacent to him.

B. Ward – The downside to the last 6 weeks – he doesn't have a permit – no zoning permit, no building permit. Expired in May. I agree, no work going on. He would be in violation if he were working. We want progress, we want it fast. I wasn't here in 2009 doing this job. A progress update up to July of 2009 says "The drawings for our project are developing quite successfully, and expect to submit for design review. Working on drawings and elevations." I looked through multiple submissions. Essentially, architectural drawings submitted as "new drawings". Look like valiant efforts – but no work within the last years. In the deliberation phase, if there is a cut-off point, the city would say, if not occupied by X date, then we can come back on the enforcement side.

Then we have a clear deadline, some form of statement from this board that says “We mean it. You have to finish by this expiration date. The City will use whatever enforcement means at our disposal.”

B. Rabinowitz – Tempered power?

B. Ward – They put in a line on the side – put in by the power company.

B. Rabinowitz – Not on the tree?

B. Ward – Yes, electrical on the side of the house.

M. St. Amand – There was a permit in 2010 to move that box.

A. Hart – Have you spoken to the owners?

B. Ward – Last contact, April. They were present. They are correct that the worker was on his cell phone.

J. Stevens – We should not be granting any permit. I know we are not voting yet, but that this my opinion.

Appellants – (cheers)

B. Schwartz – we need to have the owner here.

M. Long – on the other hand, will likely not have any effect.

A. Hart – closes public hearing 6:11 p.m.

VI. Other Business

1. Annual Organizational Meeting

Clerk

Motion by A. Hart to nominate Nic Anderson for Clerk.

J. Stevens seconded.

Vote: 6-0-0.

Motion Carried.

Chair

Motion by A. Hart to nominate J. Stevens for Chair. No second.

J. Stevens withdraws his name.

Motion by B. Rabinowitz to nomination A. Hart for Chair of the DRB.

M. Long seconded.

Vote: 5-0-1 (A. Hart).

Motion Carried.

Vice Chair

Motion by B. Rabinowitz to nomination J. Stevens for Vice Chair.

M. Long seconded.

Vote: 5-0-1 (JS.)

Motion Carried.

J. Stevens offers his opinion that Vice Chair assigns complex projects to specific board members.

M. Long – We all need to prepare. Not just qualified board members.

A. Hart – We all need to come prepared, ready to ask questions. Having someone take the lead is important. We could assign at our prior deliberation, and have one person take the lead on each agenda item.

J. Stevens - Chair would continue to take the lead, swear testimony. After a few “bum” assignments, people would start volunteering. (laughter)

Ordinance Committee

Motion by A. Hart to nomination J. Stevens for ordinance committee.

M. Long seconded.

Vote: 6-0-0.

Motion Carried.

Long Range Committee

Left open. M. Long ineligible, cannot make meetings. B. Schwartz cannot serve at this point.

B. Rabinowitz asked is DRB can be sent agendas?

VII. Adjournment

Adjourned at 6:30 pm.

A. Hart - Chair, Development Review Board

Date

Mary O'Neil, Senior Planner