

Burlington Development Review Board

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Jim Drummond
Missa Aloisi
Alexandra Zipparo (Alt.)
Israel Smith (Alt.)*



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, February 4, 2014 - 5:00 p.m., Contois Auditorium, City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Austin Hart (Chair), Jonathan Stevens (Vice Chair), Brad Rabinowitz, Jim Drummond, Michael Long, Bob Schwartz, Michael Long, Israel Smith (alt), Alexandra Zipparo (Alt.)

Staff: Scott Gustin, Nic Anderson, Ken Lerner

Absent: Missa Aloisi, Mary O'Neil

I. Agenda

No changes.

II. Communications

Three communications. Two for 85 Crescent Rd and one for 140 Grove Street. One communication for 87-95 included within packet.

III. Minutes

One set of minutes from January 21, 2014 for review.

IV. Public Hearing

1. 14-0666AP; 85 CRESCENT ROAD (RL, Ward 6) Frederick Tiballi

Appeal that Code Enforcement failed to act on complaint in timely manner. (Project Manager: Jeanne Francis)

A. Hart - Recused

Appellant Frederick Tiballi present. Burden of Proof is on the City's Administrative Officer.

J. Stevens no problem with City presenting first.

B. Rabinowitz would like to hear overview from either City or Appellant.

K. Sturtevant – Summarized complaint and appeal. Response from Code Enforcement is that there is not a requirement to respond within 30 days. Nothing inappropriate with the timeframe. Code Enforcement will act and any decision made will be appealable.

B. Rabinowitz asked for confirmation of appeal.

J. Stevens asked about receiving and responding in writing.

B. Ward – Code Enforcement. Noted nature and size of complaint. Judgment was made to take time and ensure that a response is careful. Have met internally. Met with Zoning Administrator. Need to be confident that they have all the relevant facts before giving actionable findings. Position is that the timeframe they have had so far is not enough. Could give a written update of the status of the complaint this week if required. High likelihood that the decision could be appealed so want to be sure that all the facts are straight.

J. Stevens asked if this matter has previously dealt with by the Board.

K. Sturtevant. No.

M. Long clarified the City's position.

F. Tiballi. City has mischaracterized where we are. Detailed history of complaint. At this point the Ordinance only requires that a written complaint be submitted.

J. Stevens asked if document was referenced in the complaint.

F. Tiballi – Yes. Detailed complaint regarding boarding house use. Never been a zoning permit authorizing boarding house use or finalized. Detailed Notice of Violation and history. S. Musty did get a zoning approval for a zoning permit.

B. Rabinowitz doesn't want to deal with the substance. The appeal was for time limits.

J. Stevens asked for comments on the time limits appeal.

F. Tiballi – City summary was incorrect. Summarized points in Article 12. True that an application has not been filed and that there is no provision that says that a decision needs to be made within 30 days. It does not say in the ordinance that they do not have to act on a complaint. No provision that says that an appellant has to wait. Detailed decisions that could be made with regard to a complaint in Article 12.

B. Rabinowitz asked for clarification on the timeframe element.

F. Tiballi – Then the City have to determine what action to take. Have not been contacted and notes from staff comments that the complaint is under investigation. Article 12 does not require appellant to have to wait.

J. Stevens doesn't think that speculation on what could have happened on the appeal. Asked for comment on complaint.

M. Long asked what timeframe would have been required.

F. Tiballi – There is no time in which they can be forced to reply. The question is whether it can be justified that they have not replied.

M. Long – City has characterized that they are investigating and asked for comment.

F. Tiballi – Doesn't accept that an indefinite time is appropriate and once a decision is made that he may not know about, he would not be able to appeal is.

M. Long so a decision could be made in secret and you would lose your appeal rights.

F. Tiballi – Absolutely. A 30 day timeframe should be adhered to.

B. Rabinowitz – Want to ask City on how the DRB would act on an appeal. Understands that it seems vague and unnecessary from the appellants point of view.

F. Tiballi – Request of the Board to take action. Could direct Code Enforcement to respond to complaint, make determination on the allegations, prepare list of all permits issued, could direct to give fines for violation.

J. Stevens asked City Attorney K. Sturtevant about anyone ordering enforcement action. Would like to know if the Board could require enforcement.

B. Ward – Code could act on any decision the board requires based on an appeal being accepted or not. Will make recommendation. Extraordinary amount of information. Complex document. Working way through it. Will have findings and appellant will have something to appeal.

B. Rabinowitz asked if a timeline.

J. Francis sworn in.

J. Francis – Code Enforcement. Could do response to complaint tomorrow. Detailed typical complaint.

M. Long asked for timeframe.

J. Francis can issue statement tomorrow. To answer each and every point, would need to weigh each piece of state law and portion of ordinance.

B. Ward – Can do summary this week but will take more than 2-3 weeks to respond officially. Have discussed with City Attorney regarding how to respond.

K. Sturtevant – History to property needs to be laid out in any decision. Difficult to respond line by line. Can respond to the 9 allegations.

J. Francis – Can use online permit history back to 2003. Should do file research in Planning and Zoning.

M. Long asked how appellant gets response.

K. Sturtevant – required to respond in writing.

J. Stevens understands they have authority to rule in favor of the appellant and understand appellant is asking the DRB to require action.

K. Sturtevant – This is not a court and they are not requesting action.

Isabelle Trevorrow - Neighbor. When purchased in 2003, understood there was a boarding house. Frustrated that there is no decision being made on the boarding house. Seems related to the house being built. Getting feedback that the board doesn't care about these issues.

F. Tiballi – Clarified. Not asking the DRB to find a Notice of Violation. Asking Code to determine what actions or steps are warranted based on allegations. Submitting a redacted notice of appeal based solely on the matter of being timely. Will provide to board. Would like Code within 30 days to file a report to the DRB. Decision of Administrative Officer should be made now. Directed DRB to make City take action whatever that may be. Several cases in Vermont where a decision was made but not communicated.

J. Stevens closed Public Hearing 5.56pm.

2. 14-0466PD: 140 GROVE STREET (RL, Ward 1) S. D. Ireland Brothers Corporation
Continued preliminary plat review for Planned Unit Development to demolish existing concrete plant and buildings, construct 12 new buildings for 247 residential units with associated road, parking, and site improvements. (Project Manager: Scott Gustin)

A. Hart opened hearing and would like to focus on changes and additional information submitted. Prefer not to go back through traffic if possible tonight as it was addressed extensively last hearing.

Applicants Patrick O'Brien and Paul O'Leary present and with public, sworn in.

P. O'Brien – Applicant. Detailed changes. Buildings, site layout, pedestrian crossings, parking, community gardens, wetlands not being impacted. Submitted phasing/constructing sequencing plan.

J. Stevens would like to see that plan as part of this hearing. Asked about front setback for duplexes.

P. O'Brien – Detailed front yard setback. Shown on perspective. Have stairs going down to sidewalk.

J. Drummond asked about unit count changes.

P. O'Brien – Larger buildings are unchanged. Removed 9 unit building and reallocated for three less units total. Can go through height analysis and cross sections.

A. Hart asked about retention of existing structure to maintain height.

P. O'Brien – Initially wanted to retain and use as rest area off Grove St. Parks did not want to accept dedicated structure. Plan B is to remove. Doesn't say in ordinance that it shall stay or go. Open to DRB decision on retention.

A. Hart commented about existing buildings in the City that have allowed height bonus that has been retained. Uncomfortable with demolition but doesn't want to encourage to keeping an eyesore. Would struggle to allow a height bonus without the structure being retained.

P. O'Brien – Asked if they would need definitive answer on building or condition before hearing being closed. Would be OK with a condition if required.

A. Hart – Height is a big one. Density and number of units depends on height.

J. Stevens thought the site could have an observation tower and commented that this could be a benefit.

P. O'Brien – Have had structural engineers look at it. Could have a lookout. OK with going into final plat with that part open. If a CCTA bus would serve the site, they would likely stop out front. Meeting with CATMA. Likely providers of other services could circulate through the site easily. Isolation of project to other neighborhoods. Commented on distances to curb cuts to other developments. Over 1000ft to Apple Grove and over 900ft to Park. Continuing to work with DPW on traffic and pedestrian lights along Colchester Avenue.

J. Stevens noted measures will mitigate speed but concerned about trip counts. Asked if they have considered a convenience store to reduce trips?

P. O'Brien – Has been discussed. Doesn't know if demand would allow.

P. O'Leary – Would need a lot of traffic to the store. May attract more people onto the site. Wouldn't have a gas station so may not have the demand.

J. Stevens asked about phasing plan.

P. O'Brien – Commented on Ordinance requirements. Have 18 phases. Detailed phases. Phases will not be built in a consecutive order. May change the order of how they are constructed.

B. Rabinowitz the duplexes could be the last buildings built but they are the face of the development. Could have a construction access road.

P. O'Brien – Any structures near the main entrance would typically be built nearer the end. Could explore construction access road.

A. Hart – Doesn't like to see benefits to city being pushed to the end of the project.

P. O'Brien - Have been working with Champlain Housing Trust about circumstances for inclusionary housing. They are 2-4 years away from being able to do anything.

A. Hart – So this project could have different developers?

P. O'Brien – Yes. Willing to have condition of approval stating that they may not obtain CO for the last 10% of the project unless the CO has been issued for the inclusionary units.

J. Stevens – Read portion of Ordinance regarding inclusionary housing being available at the time of market rate.

P. O'Brien – Follow up portion of ordinance that relates to phasing addresses this. Brian Pine could answer for us.

Brian Pine – Community and Economic Development Office – Discussed historical developments of Hinds Lofts and Thayer School where both cases there was time difference between completion of market rate versus affordable units. Months perhaps years. Westlake project was the problem that they want to avoid.

A. Demetrowitz – Delay would be from Champlain Housing Trust, not the applicant, based on funding.

J. Stevens concern is that inclusionary housing is not the same as affordable. Inclusionary is economically inclusive. What is proposed is economically segregated.

A. Demetrowitz – Historically it has been looked at by the City as both ways. The neighborhood might be integrated. Having two landlords owning units within the same building would be difficult. May be at odds about development goals.

J. Stevens noted community gardens, community center and pool could be good for integration but all the poor people living in one building is not appropriate.

B. Pine – Complicated. Rent standard could allow section 8 units to be portable. CHT building would be different. Inclusionary rents are not that discounted. These are typically for middle income who need the help, not just poor people.

J. Stevens – Ordinance is to ensure that affordable is built at same time as market rate. Still need inclusionary on site.

B. Pine – Assertion that it has to be scattered around site is not correct. Could be off site. Could have performance bond to ensure compliance.

B. Rabinowitz asked if this would be one of the 33 unit buildings.

A. Demetrowitz – Yes.

M. Long asked about wetlands and who determines there is no impact.

P. O'Brien – Wetlands consultant flagged them and ANR confirmed delineation. Some intrusion into the 100ft buffer, not the 50ft buffer.

M. Long – Commented on density and building size. Has difficulty seeing this as RL. 30 and 40 unit buildings are not like RL.

P. O'Brien – There are a lot of buildings in the RL that have large multi unit buildings. Gave details of some projects that have large stand along multi unit buildings with no single families and duplexes. Claire Point, Heineburg Senior Housing. RL doesn't just have SF and duplexes. Economics. Staff comments leave room for improvement. Need to have a handful of large buildings to make it work.

J. Stevens – Duplexes make up only 5% of the project. This does not meet the intent of 'primarily'.

P. O'Brien – Primarily is for the zone, not each site. Meeting that intent based on the sentence.

B. Rabinowitz – Discrepancy between the rendered views and the elevations as the buildings. Hard to know right now. Need accurate elevations. Streetscapes don't show any parking under buildings. Would like to know exactly what is being proposed before being approved.

P. O'Brien – Perspectives are illustrations only and are not intended to be architectural guidelines what so ever. Intent is to come close, but not meant to be an exact design. Have showed from a massing illustration for the streetscape. Can come back at final with the exact elevations in perspective view.

I. Smith – Elevations shown are very different to renderings showing different massing. Unrealistic to just have elevations with no renderings.

P. O'Brien – Renderings are not required. Very expensive to make renderings. Illustrative only.

B. Rabinowitz – Would need better renderings that are accurate.

J. Drummond – 3D is much easier for lay persons to understand. Asked about streets. Public or private and why only one access point.

P. O'Brien – Had two entrances to the site. At request of Conservation Board and ANR the Centennial Brook 'entrance' was to be reestablished so no entrance there. Function of topography.

J. Drummond – Huge private domain with only one curb cut.

P. O'Brien – Proposing apartment complex, not neighborhood street. Proposing a campus. Hoping this is the best apartment complex in Burlington. Pros and cons. Cannot put in another access unless we want to affect the stream and culvert.

A. Zipparo – Edmunds would be school?

P. O'Brien – Edmunds for elementary and BHS for high school. Don't know about middle school.

A. Zipparo – Community gardens seem really small and shaded. Would suggest discussing with association or gardening body.

Gary Dolan. 20 Colarco Ct. Concerns about other services. The water main coming down Colchester Ave and past their house is a concern. Water main has failed several times. Huge concern about additional load. Could go to magnet schools possibly. Boundaries would need to shift for school bubble. Ramifications extend beyond traffic. Residential use of properties will effectively be subsidized by tax base, based on Maryland study. Will be expensive project for the future.

Erhard Mahnke – 60 Grove Street abutter. Improvements made are significant for new duplexes on grove street. Concerned renderings are not possibly what the elevations are truly as proposed. Like that Champlain Housing Trust is on board and see point on having inclusionary in one building for management purposes. Still has problem with number of units and this still being a Low Density Residential site. Shouldn't incentivize a project out of character of the neighborhood with something that might be more out of character with regards to density bonuses. Southern section isolated. Northern section not isolated. Looms over neighborhood. Northernmost building will tower over the neighborhood. Concerned about spillover of lighting from the northern buildings. Exceeding height limit concerns based on the existing building being a benchmark. Elevator is an eyesore but still a stretch to allow height based on this building on the northern section of the site. Environmental concern about this being an old dump. Northern section is filled. Traffic still a huge concern. Neighbor Mike Weisner still has concern on traffic. Other neighbors too. Left some F-35 information for board. Is not good to build housing units in the 65dBa zone while other houses are being removed for the same noise zone in South Burlington. Concerned about construction hours over a possible 7 year timeframe. 6 days per week is a concern. Northern section having

construction at 7am on a Saturday will be intolerable. Asked that DRB require all utilities be buried including Burlington Telecom at same time. Corrected record regarding minutes from last time. Was not out of compliance but was subject to Code Enforcement in the 1990's. Some items of that enforcement action were not done, but the site is not in violation. Kids will have to cross Grove Street and concerned about safety to get to and from bus.

Sharon Bushor. Ward 1 City Councilor. Supports housing but concerned about integrating and segregating at the same time. Integrated with smaller buildings at front but segregate with larger buildings. Height is inappropriate. Higher topography should have lower buildings while lower portion could have higher. Troubled by fact that there are no three bedroom units. Essentially says no families. Only 5 buildings that are duplexes. Concerned that the development is split and compliance on street does not relate to rear of site. Supports DAB recommendation about size and density. Didn't see any details on recycling and composting facilities. Did not see parking management plan relating to waiver. As citizen, feel that the relationship of houses on Grove St being that close should not be replicated. Need front yards. Fletcher Allen had sound studies how buildings will reflect or move sound. Should have those done here. Construction noise on Saturday could be an issue. Thanked developer for reaching out to CATMA. Want them to continue this. Unsure of wetland buffer issue. Asked if humans in structures could also impact the wetlands, not just location of buildings. Troubled by segregation of inclusionary zoning. Supposed to be integrated not segregated.

Sam Beal. Resident of 60 Grove Street. Architect and pro development. Concerned about the historic treatment of the Winooski River and so changing to residential would be an improvement. Support the changes but concerned about traffic, crosswalks. Would like to see the north side of the project done first in phasing schedule. Asked about approaching VT Carshare and purchasing cars for the development. Pedestrian infrastructure should have flashing beacons. Still need to break down some of the massing and bring into compliance with the intention of the RL district.

Roger Brassard. Defined aircraft noise contour line map showing areas incompatible for residential use. South Burlington has spent millions to remove 180-200 houses and now it is being proposed to put that housing back in this same zone at this property. If F-35 comes, it will be in the 70-75 decibel zone. Will address issue at Act 250.

Brian Pine – Community and Economic Development Office – At policy level, broadly support project. Detailed CEDO charge/charter. Challenging site that is economically difficult and has conservation elements as part of a dual goal to provide housing. Situation is dire for housing affordability in Burlington. Scale will always raise a number of issues. Increasing supply of housing is a key priority for City Administration. Stimulating private investment will help the tax rate. Changing non-conformity and heavy truck traffic being taken off streets is a positive change. Do have a lot of other uses within the RL district. Demographics have made the 3 bedroom units very undesirable unless for students. Trends are not changing and reality is that 3 bedrooms are not needed.

M. Long asked if City has concern about Airport noise?

B. Pine – Not involved in so doesn't have comment.

Barbara Winroth. Formerly lived on Mansfield Avenue where F16 noise was excessively loud. At what price do we need housing regardless of desperately needing housing. Approving housing in this zone could impact noise and be in the crash zone. Persons needing housing will have to endure this just to have housing.

Richard Hilyard. Ward 1 NPA. Applicant has been to NPA three times. Sentiment of responses has been similar to comments tonight. Scale, isolation, need for more

infrastructure improvements. Doesn't know how mitigation for traffic improvements can be quantified if they haven't been designed yet. In every presentation there is a comment that Ireland could just keep churning concrete which is not helpful.

Brendan Fisher – The comments about RL density has to look at a larger development. Not about 50% but more the spirit of the ordinance. Comments about not being cost effective is not a good argument. This relates to profit also.

P. O'Brien – Construction hours mimic allowable hours today. Commented on property tax that would be increased and impact fees. Waterline improvements would help Grove Street houses and other streets. The more smaller buildings, the more restrictions have on site coverage maximums. Recycling and composting is on plans and will be in more detail if get to final plat. CATMA and Carshare are in the discussions. Demolition of houses in South Burlington is not about noise, but more about airport expansion. Will increase quality of life for neighbors on Grove Street by removing concrete plant. Cost of construction equates to higher rents so the larger buildings help keep the cost lower.

A. Hart asked board members if OK with closing public hearing.

No comments

A. Hart closed Public Hearing 8.02pm

V. Sketch Plan

1. 14-0686SP: 87-95 NORTH AVE (NMU, Ward 7) Committee On Temporary Shelter

Demolish existing residential building at 7 Haswell Street, construct new addition to existing building at 87-95 North Street for mixed commercial and residential units.

(Project Manager: Ken Lerner)

A. Hart - Recused

J. Stevens - received communication from neighbor directly. Concerned about it being an ex parte communication. Board discussed. Happy to accept as communication.

Kathy Beyer – Housing VT, Rita Markley - COTS and Bob Duncan - Duncan Wisniewski Architecture present as applicants.

B. Duncan - summarized site, history and application. Utilizing lot coverage bonus and FAR bonus for inclusionary housing. Detailed unit count and parking. Detailed possible Zoning Ordinance amendments to parking and how it would affect site. Continued presentation of plans.

B. Rabinowitz asked about site and how the use of the parking lot would work. Would still like to see landscaping or some integration.

B. Duncan – City has easement agreement in land records for parking. Would improve the existing parking lot without changing the parking lot. Cant build a structure on the parking property.

J. Stevens asked K. Lerner about uses.

K. Lerner – Uses are all permitted uses.

J. Drummond – Thinks there will be significant comments from the public about the uses.

R. Markley – New use would be day station and residential.

J. Stevens asked about parking demand for day station.

R. Markley – 25 years of experience.

J. Stevens asked if apartments would be COTS only?

R. Markley – No. Would be a lease.

A. Zipparo asked how many persons currently use office space services

R. Markley – 40 per day. Last year 480 people used services on the site.

B. Schwartz asked how many bedrooms.

R. Markley detailed.

B. Rabinowitz commented on primary building entrance.

B. Duncan – Would have entrance on south for all uses.

J. Stevens asked about day station and impact of persons on street.

R. Markley – Detailed how the day station is used.
 J. Stevens asked about on street parking impacts.
 R. Markley – Seems like the parking impact on Lakeview is more of a northern end problem. Real concern but the existing use on other shelters have little traffic.
 J. Stevens asked for re-iteration of parking calculation.
 B. Duncan - reiterated parking requirements from the ordinance. 45.1 required spaces under the current ordinance.
 M. Long so were short?
 B. Duncan – Yes. Would like to count the 7 spaces that are technically within the Depot Street ROW.
 B. Rabinowitz sounds like we would need to have a parking management plan if a waiver is needed. Documentation on other facilities would help support that parking waiver and would be helpful with an application.
 M. Long asked how many spaces are actually used for the offices.
 R. Markley – Have Carshare car on site. Not very well managed parking lot at the moment based on a number of other uses.

A. Bjerke – Lives on Lakeview. Quoted from PlanBTV. Comments on the parking situation. Lives at North End of Lakeview Terrace where a large project has had a severe parking issues. See cars towed frequently and see parking situations that are dangerous. Concerned that this will be replicated at the south end. If there is maximum use of the commercial portions there could be up to 50 spaces needed. Parking waiver is strongly discouraged.

Gloria Sidler (speaking on behalf of M Tierney) - Had meeting with Rita Markley about staff members and all the possible parking for the uses. Parking is a major problem. The scale of the building will be out of scale of the neighborhood. Destruction of the red Sears and Roebuck house will set a precedent which will affect the fabric of the neighborhood.

Barbara Zucker – Lives on Lakeview Terrace. Packard Lofts is too big and did not realize the scope which is not a scale with the neighborhood. This proposed building will further affect the scale. This will now be a new behemoth. Apartments don't need to be there. Development could be within another part of the city. Was lied to that it would never be used as residential. Concerned that the needs and opinions on Lakeview Terrace are not taken into consideration and the affect on their quality of life.

Jane Palm Sutor - Grew up and lived at 7 Haswell St. The building does have historic value. Is one of few prefab Sears ranch houses in the area. Agrees with M. Lionni written comments. Should use same building without construction. Demolishing house should not be approved. Using Haswell Street for truck traffic should not be approved. Should be building to allow for family housing like neighborhood. Parking huge issue. Lack of green space should not be allowed. Should be the same as the neighborhood. Day station seems appropriate. Apartments seem more appropriate to downtown. Ask that the tearing down of the house should not be allowed.

Peggy Derby – Lives on Lakeview Terrace. Brought letter from Brad Nostrander. Neighbor also. Big and wonderful thing that is happening on the street. Many children at the south end of the neighborhood. Concerned about increase in density. The additional apartments will impact the neighborhood. The neighborhood has already reached maximum capacity.

Mannie Lionni. - A lot of residents have been living there for a long time. Submitted summary of objections previously. Read additional statement. Removal of Palm house is just demolition to become a loading dock. Planning regulations do not reflect

neighborhood. History is more than that. Planning doesn't consider the house historic. Development trumps conservation.

Julia Perlmutter - 23 Lakeview Terrace. Remembers previous discussions with COTS, which a lot of people don't think is a great idea. Asked why COTS cant just purchase the existing Burlington College buildings and use those for the housing. This would help integrate.

Maggie Sherman – Has three written statements. Read comments from Linda Tierney based on scale. Historic neighborhood. Should not allow demolition of historic home. Promised that the building would be office only. This is now not the case.

June Louis - Lives on Lakeview Terrace. Parking is an issue. Support the project but doesn't see how parking can be resolved with the current plan. Comments not taken into consideration for Packard Lofts, so should be #1 concern.

VI. Other Business

VII. Adjournment

Adjourned at 9.07pm.

Deliberative Monday 10th at 5pm.

A. Hart - Chair, Development Review Board

Date

Nic Anderson, Zoning Clerk