

Department of Planning and Zoning

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TO: Development Review Board
FROM: Ken Lerner
DATE: June 21, 2011
RE: 05-401CA/MA; 237 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.

File: 05-401CA/MA **Location:** 237 North Avenue
Zone: RM **Ward:** 7
Applicant/ Owner: Hartland Group Real Estate

Request: Extension of time limits for completion of construction date for **05-401CA/MA** originally approved by the DRB on June 7, 2005 for the adaptive reuse of existing industrial warehouse and new construction to build 25 units of condominium housing, enclosed parking and a cafe. The background below indicates the events relative to that approval.

Background:

1. On May 6, 2011, Applicant filed the subject request for a second time extension of the completion date for 05-401MA/CA, a certificate of appropriateness and a conditional use approved for an adaptive reuse of an existing industrial warehouse and new construction consisting of 25 residential units, enclosed parking for 39 automobiles (9 parking spaces are tandem), and a café.
2. On May 19, 2010, Applicant filed the first request to extend 05-401MA/CA. The Board granted the time extension on June 23, 2010 extending permit expiration date to July 1, 2011. That approval also included a determination that the Applicant did commence work and action on the Project within one year of July 1, 2008, the date of the Vermont Supreme Court decision.
3. On February 4, 2005 a complete application for the project was filed with the Burlington Department of Planning and Zoning.
4. June 7, 2005 the Development Review Board decision approval of the project is granted. The decision was then appealed to the Vermont Environmental Court.
5. On December 14, 2006, the Environmental Court granted summary judgment in favor of the Applicant on numerous issues, including that the project is an adaptive reuse and residential conversion, the project adheres to the setback and other dimensional requirements, the project complies with the non-conforming uses provisions of the zoning ordinance, and that the project conforms with the municipal development plan.
6. After a trial, on August 31, 2007, the Environmental Court ruled in the Applicant's favor on all remaining issues including compliance with soil erosion, traffic, sufficient parking for the residential units and cafe, microclimate, and noise. The Environmental Court set seven additional permit conditions on the approval, in addition to those imposed by the

Development Review Board. The Environmental Court's decision was appealed by certain parties to the Vermont Supreme Court.

7. On July 1, 2008, the Vermont Supreme Court affirmed the Environmental Court's decision in its entirety. Note that the time limits were tolled as a result of the appeals and the need to obtain an Act 250 permit; the current time limits for commencement is one year from adjudication, i.e. one year from July 1, 2008 = July 1, 2009. The completion of construction date was July 1, 2010.
8. The project is also subject to Act 250 jurisdiction. An Act 250 permit application was filed with the District #4 Commission on November 25, 2005 and a permit was issued on April 28, 2006 (Amended). In April 2009, the Hartland Group sought an extension to complete construction of the project on or before April 30, 2013. The District #4 Commission granted the request and amended the Land Use Permit on April 20, 2009.
9. A review of city permit files revealed that no building permit has been issued for work relative to this project at the property.
10. The City of Burlington amended its zoning bylaws in 2008. Both the 1994 zoning bylaws (1994 BZO) and 2008 BZO allow the Development Review Board to extend project completion, for projects involving a conditional use, by one year. (1994 BZO §§4.1.8 & 4.1.9; 2008 BZO §3.2.9(d) & (f). The 1994 and 2008 BZO provisions allowing permit extensions are substantively and virtually the same. One difference is that the 1994 BZO requires the DRB action to occur before the construction completion deadline expires.

Project Permit Conditions as originally approved by the DRB:

- 1) Prior to release of the zoning permit, revised plans shall be submitted to reflect the reconfigured parking plan of 30 spaces (and 9 tandem) on all plan sheets. In addition, a full scale roof plan shall be submitted subject to staff review and approval. Rooftop elements exceeding 35' in height shall not take up more than 10% of the total roof area.
- 2) Prior to the issuance of a certificate of occupancy, the applicant shall obtain a Certificate of Inclusionary Housing Compliance from Burlington's Community and Economic Development Office as evidence of meeting the inclusionary zoning criteria for ownership units as laid out in Article 14 of the Zoning Ordinance.
- 3) Prior to the issuance of a certificate of occupancy, applicable impact fees shall be paid. The applicant shall provide the total new square footage to staff for calculation of the impact fees due. **At least 7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Treasurer's Office the impact fee as calculated by staff based on the net new residential square footage of the proposed development. This impact fee may be reduced based on the provision of affordable housing as determined by CEDO.
- 4) The proposed traffic calming measures are subject to review and approval by the Department of Public Works and, if approved by DPW, shall be completed prior to the issuance of a certificate of occupancy. Any revisions to the traffic calming measures as proposed on the "North Avenue Traffic Calming Plan," sheet L4 requested by Public Works shall be submitted to the Planning & Zoning office for review and approval prior to installation.
- 5) All new streetlights shall be subject to Burlington Electric Department review and approval prior to installation.
- 6) The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes as required.

- 7) This approval includes a 30-space parking waiver.
- 8) The homeowners association shall be responsible for maintenance of all open space and common areas on the property.
- 9) Provided that applicant can obtain the approval of DPW, trucks making deliveries to the café will use the loading zone along North Avenue rather than on-street parking on either Berry Street or Lakeview Terrace.
- 10) Standard permit conditions 1-15:
 1. **15-Day Posting Period.** Zoning permit is not effective until expiration of 15-day appeal period as required by state statute.
 2. **Time Limits.** Zoning permit shall become invalid unless work or action authorized by permit is commenced by Jun 7 2006. The Permittee shall complete the approved construction by Jun 7 2007. *(Note that the time limits were tolled as a result of appeals – to E-Court and the Supreme Court, and the need to obtain an Act 250 permit. Thus the time limits for commencement of construction for the original approval is one year from adjudication, i.e. one year from July 1, 2008 = July 1, 2009. The original completion date was July 1, 2010. This date was extended to July 1, 2011 as a result of the previous time extension request granted on June 23, 2010.)*
 3. **Required Revisions.** Any revisions or additions to plans required as a result of approval must be submitted in triplicate and stamped “approved” prior to issuance of zoning permit.
 4. **Changes.** The project shall be completed as shown on the plans, which have been stamped “approved” and dated Jun 7 2005 by the Department of Planning and Zoning. The project shall not deviate from the approved plans without prior written approval from the Department of Planning and Zoning.
 5. **Property Inspection.** By acceptance of this permit, Permittee authorizes City Officials and/or their authorized representatives, access to the subject property for purpose of observing work in progress, inspecting and/or measuring the property or improvements as long as the use authorized by this permit remains in effect.
 6. **Certificate of Occupancy.** A certificate of occupancy must be issued by the Department of Public Works PRIOR to use and/or occupancy of the subject premises. Prior to issuance, the Department of Planning and Zoning must certify that work has been completed in accordance with approved plans and that applicable conditions have been met. The Permittee may be required to provide a Letter of Credit to obtain a Certificate of Occupancy prior to completion of all required improvements.
 7. **Completion and Maintenance of Improvements and Landscaping.** Permittee or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Permittee agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.

8. **Building Permit; Other Permits.** Permittee is solely responsible for obtaining BUILDING PERMIT and all other applicable local, state and federal permits.
9. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties.
10. **Appeals.** Appeals of a decision of the Zoning Administrator can occur up to fifteen (15) days following such decision. Appeals of Development Review Board decisions can occur up to thirty (30) days following final decision. Any work done in connection with this permit prior to the expiration of all applicable appeal periods is done SOLELY at the risk of the Permittee.
11. **Errors.** Permittee is solely responsible for the accuracy of all information contained in the Zoning Permit form and in accompanying documentation. Any errors contained therein may invalidate the Zoning Permit and may result in issuance of a zoning violation citation and prosecution.
12. **Transfer of Ownership.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.
13. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the Burlington Zoning Ordinance may result in a penalty of up to one hundred dollars (\$100) per day.
14. **Incorporation and Reference of All Plans Presented to Development Review Board.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant at Development Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
15. **For Properties Involved in Boundary Disputes.** When there is a boundary dispute regarding the subject property, and, as no certified survey has been produced to the Planning and Zoning office to help resolve the dispute, this permit is granted upon the information, including site plan, provided by applicant. If another party submits sufficient evidence (i.e. a certified survey) to demonstrate that the boundary is not as indicated by applicant, this permit shall be null and void. Further, applicant shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the zoning ordinance and receive an amended permit in light of the actual boundary line.

Additional Conditions imposed by the E-court dated August 31, 2007

1. Window-mounted air conditioning units are prohibited; such prohibition shall also be incorporated in any lease agreement or deed governing any portion of this project.
2. The operation of the café shall be restricted to a size at which it requires no more than ten parking spaces, through a binding legal document such as a lease agreement, deed, or

condominium agreement, unless and until the Permittee obtains as amendment to this permit with regard to parking.

3. Five spaces within the garage shall be assigned to the café use during café hours, unless and until the Permittee obtains as amendment to this permit with regard to parking.
4. As evidence of the availability of on-street parking for café patrons did not extend past 8:00 p.m., the hours of operation of the café shall not extend past 8 p.m. unless and until the Permittee obtains as amendment to this permit with regard to parking.
5. Café food waste shall be stored in a refrigerated unit inside the building until it is removed by a commercial waste handling company.
6. Deliveries to the café shall be scheduled so as not to coincide with the peak hours for traffic along North Avenue.
7. If either of the two most easterly cottonwood trees on the boundary of the Winant property that are expected to survive do not in fact survive within two growing seasons after construction, the Permittee shall work with a professional arborist to offer the landowner the replacement of those trees with trees of an appropriate size and species to become established as grow successfully in or near the location of those two trees.

Recommendation: Based on the findings below and as per Sec. 3.2.7 (d) **approval of the time extension request** for the date of completion from July 1, 2011 to July 1, 2012.

Note that in order to avoid any confusion regarding date of the time extension the Board needs to act prior to July 1.

Findings

1. Commencement of Construction. The time limits as noted were tolled as a result of the appeals and the need to obtain an Act 250 permit. Thus, the time limits for commencement of construction of one year from adjudication, i.e. one year from July 1, 2008, = July 1, 2009. In the June 23, 2010 time extension decision it was determined that: “The Board concludes that the Applicant did commence work and action on the Project within one year of July 1, 2008, the date of the Vermont Supreme Court decision”.

Completion. In the June 23, 2010 time extension approval the original permit’s completion date of July 1, 2010 was extended to July 1, 2011.

2. The 1994 zoning regulations, under which this project was approved, includes the following:

Sec. 4.1.8 *1-Year Time Limit: Conditional Uses and Variances. A zoning permit which is issued in connection with a conditional use or variance approved by the development review board shall become invalid **unless the work or action authorized** under it shall commence within one year after the date of issuance. Completion of all work or action authorized thereunder shall occur within two (2) years of the date of issuance unless an extension of time not to exceed one (1) year is approved in advance after public hearing by the development review board. Emphasis added.*

Sec. 4.1.10 *Commencement of Work. Commencement of work as required under Sections 4.1.7 and 4.1.8 shall be defined as the construction or reconstruction or clearing, excavating, grading, filling, draining or conducting of physical operations of any kind in preparation for or in pursuance of construction or reconstruction, or the moving of a structure upon a lot.*

3. Current regulations include the following with regard to time limits:

Section 3.2.9 (d) Time Limit on Zoning Permits:

Notwithstanding (e) and (f) below, a zoning permit shall become invalid unless the work or action authorized commences within one (1) year after the date of final decision. All work or action authorized there under shall be completed, and a Final Zoning Certificate of Occupancy received, within two (2) years of the date of decision unless a written extension of time not to exceed one (1) year is granted in advance by the administrative officer. Extensions of time for a zoning permit issued in connection with a conditional use or variance shall require approval by the DRB after a public hearing.

(e) and (f) relate to permits issued in connection with a violation and tolling of time due to appeals, state, or federal permitting, respectively. The determination that commencement of work and action occurred was made in June 2010.

Section 3.2.9 (d) offers no standards for determining the merits of a time extension other than it be granted "in advance". The current request has been filed in a timely manner, sufficient for the DRB to hold the required public hearing and to render a decision prior to the July 1, 2011 completion date.

The applicant has provided a statement and documentation regarding their active pursuance of funding during the past year. In addition, the Development Review fee of \$17,928.00 has been paid and the project zoning permit has been released to the applicant. This clearly illustrates a commitment to proceed with the project.

Further, it must be recognized that completion of the project would be of a great benefit for the city as it provides for needed housing in a residential neighborhood while removing a non-conforming use. It certainly is preferable to have 25 residential units and a neighborhood café rather than a partially occupied non-conforming industrial warehouse in a residential district.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.

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JUN 09 2011

June 9, 2011

DEPARTMENT OF
PLANNING & ZONING

Mr. Ken Lerner, Zoning Administrator
City of Burlington, Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

Re: Request for Extension of 05-401MA/CA; 237 North Avenue (Packard Lofts)

Dear Ken,

We are writing in support of our application for an extension to complete work or action on 237 North Ave., now also known as the Packard Lofts.

As you know the DRB unanimously granted a one year extension to July 1, 2011 on June 25th, 2010 following a public hearing. The board found that the applicant "did commence work and action on the Project" within the requisite time period and that the applicant had been proceeding in good faith on the Project. Since the June 25th DRB approval the applicant has continued to conduct work and action on the Project and proceed in good faith.

As the board is aware, obtaining financing for new residential construction has been exceedingly difficult since the fall of 2008. The applicant has actively worked on a financing model which could work in the current economic climate for what will be one of the largest private investments ever made in the Old North End of Burlington. Beginning in early 2010 the applicant and Vermont Rural Ventures (VRV), an affiliate of Housing Vermont, worked to assess the suitability of Packard Lofts as a development that could be funded by the federal New Markets Tax Credit program, established to spur economic development in certain qualifying census tracts. As the attached letter from VRV President Nancy Owens states, after months of diligent work and effort and several positive indications, specialized tax counsel determined that the structure contemplated would not work and that it would therefore not be a development in which VRV could invest.

Subsequently the applicant determined that a bond financing vehicle from the Vermont Housing Finance Agency (VHFA) was an appropriate financial resource. Attached is a letter from VHFA affirming that the application is complete, in process and will be presented to the VHFA board of directors for action in July, 2011. Simultaneous with the VHFA application the applicant has completed negotiations with a local, private investor who is ready and able to invest \$1.1 million in the development which, with the investment already made by the applicant, will support the VHFA loan.

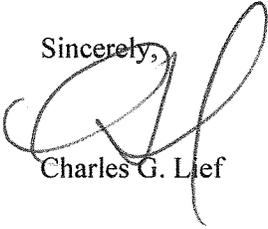
Finally, applicant and Snyder Custom Homes LLC have agreed to the business terms of a construction management contract now being drafted which will include an intention to complete the construction prior to the expiration of this requested extension.

None of us can really compare the economic struggle of the real estate industry experienced during the past 2 ½ years to anything we have gone through previously. The applicant has consistently maintained its strong commitment to creating much needed housing in the Old North End, and has invested very significant sums of money and countless hours to acquire and maintain the property, to design, permit and now finance the development and to commence construction. This asset represents a

very sizable investment for a small, Burlington-based company and we believe it would be very fair and reasonable to extend construction completion as requested.

Please let us know if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'CL', written over the word 'Sincerely,'.

Charles G. Lief

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DEPARTMENT OF
PLANNING & ZONING

Vermont Rural Ventures

123 St. Paul Street
Burlington, VT 05401

802.863.8424
vrv@hvt.org
www.hvt.org

May 11, 2011

Miro Weinberger
The Hartland Group
299 College Street
Burlington, VT 05401

Re: Packard Lofts, 237 North Ave.

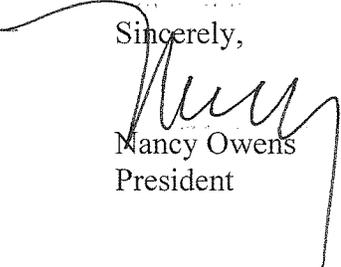
Dear Miro,

The Hartland Group approached Vermont Rural Ventures, a New Markets Tax Credit investment affiliate of Housing Vermont in early 2010 to assess interest in an investment in your planned residential/commercial development in the Old North End of Burlington. 237 North Avenue is within a qualifying census tract making its location eligible for a New Markets Tax Credit Investment. Vermont Rural Ventures has an allocation of these federal credits and has set aside approximately \$9 million for investment in Burlington. As a result we were very interested in assisting with capital financing.

There are particular issues which must be addressed in order to use credits for a primarily residential development but it is a feasible model in some cases. I can confirm that both Vermont Rural Ventures and the Hartland Group developed a detailed financing proposal and invested considerable time and money working with expert tax counsel in Boston and Washington DC in an effort to structure the project so that the New Markets Tax Credits could be used as a significant source of capital. After several months of review, the conclusion from our experts was that there was not a way for the proposed project to comply with the very specific New Markets Tax Credits rules and therefore would not be an appropriate investment for Vermont Rural Ventures.

Our inability to invest in no way reflects a change in our view that this development, which will create much needed new housing in the Old North End, is an important project for Burlington and directly responsive to the continuing housing shortage in our city.

Sincerely,



Nancy Owens
President

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DEPARTMENT OF
PLANNING & ZONING



Vermont Housing Finance Agency

June 9, 2011

Mr. Miro Weinberger
Hartland Group Real Estate Developers LLC
299 College Street
Burlington, VT 05401

RE: Support of Permit Extension for Packard Lofts, 237 North Street

Dear Miro:

I am writing regarding the Packard Lofts, a proposed 26-unit development in Burlington which the Hartland Group currently owns. We are in receipt of your application for financing.

VHFA is willing to consider financing to Packard Lofts, with Hartland Group as General Partner, to acquire and rehabilitate the property contingent upon staff underwriting and due diligence, receipt of all other funding commitments, the extension of all necessary state and local permits, and approval by our Board of Commissioners. Our Board of Commissioners reviews development loans for financing approval on a monthly basis. Financing would be subject to our standard underwriting guidelines. I anticipate presenting Packard Lofts to the VHFA Board of Commissioners in July.

Feel free to call me if you need anything further, at 652-3414. We look forward to working with you on this development.

Sincerely,

Joshua M. Slade
Development Underwriter

Sent via email

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JUN 09 2011

DEPARTMENT OF
PLANNING & CONSTRUCTION



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