

Burlington Development Review Board

149 Church Street, City Hall

Burlington, VT 05401

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Austin Hart
Michael Long
Jonathan Stevens
Brad Rabinowitz
Bob Schwartz
Kevin Stapleton
Jim Drummond
Paul Henninge (Alt.)
Andy Strauss (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, June 7, 2011 - 5:00 p.m., Contois Auditorium, City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Austin Hart (Chair), Michael Long (Vice Chair), Jonathan Stevens, Brad Rabinowitz, Bob Schwartz, Andy Strauss (Alt.) Jim Drummond

Staff: Scott Gustin, Nic Anderson, Ken Lerner, Mary O'Neil,

Absent: Kevin Stapleton, Paul Henninge (Alt.)

I. **Agenda**

No changes.

II. **Communications**

Six items within packet for: 103 Ferguson Ave, 21 Ledge Rd, 142-144 North Champlain St and Other Business. 142-144 North Champlain St hand delivered.

III. **Minutes**

Two sets. May 3rd and May 17th. Will review and approve at Deliberative Session.

IV. **Consent**

1. **11-0799HO: 328-348 COLLEGE STREET (RH, Ward 2) JANNEF INC/DEREK MARION**
Home occupation of home bakery. (Project Manager: Scott Gustin)

Applicant D. Marion present. Has received staff comments and does not have any concerns.

M. Long moved to approve and adopt staff findings

J. Stevens Seconded

Vote: For 7-0 Against

V. **Public Hearing**

1. **11-0808CA/MA: 142-144 NORTH CHAMPLAIN STREET (NMU, Ward 3) SWB, LLC**
Construct new six unit residential apartment building. (Project Manager: Mary O'Neil)

Applicant S. McGowan present. Public Sworn in.

S. McGowan gave history. Discussed packet provided to the board tonight.

A. Hart asked about metal siding. Commented on parking waiver.

S. McGowan, pushes having carless tenants. Has bike storage in basement. Confident it will work with one less. Detailed parking at other building. Has choice of people for one bedrooms and is very selective. Bus stop on corner.

A. Strauss asked about size of buildings around. Anything 3 stories.

S. McGowan Nunyuns has copula. Will fit right in with mass of area.

A. Hart asked M. O'Neil about non-conformities. Parking and setback from street.

M. O'Neil noted timeline was restrictive. Cleanup took first year. Board comfortable with the extension previously.

A. Hart asked about stormwater. Couldn't find permeable pavement on site plan.

S. McGowan pavement at back of car parks. Small band is good. Conservation Board met confirmed. Maintenance required. Detailed roof runoff.

A. Hart asked about EPSC. Is maintenance in Stormwater Plan or permit.

S. Gustin yes the maintenance would be through stormwater plan.

B. Rabinowitz asked about materials. Bothered about street entrance. Should be for building not just one unit.
S. McGowan this was recommended by DRB. Not there previously. Larger stair space would cut down a lot of area.
B. Rabinowitz asked about retail space.
S. McGowan. Wants more commercial. Couldn't support commercial as lot is so small. Bank wouldn't support it.
B. Rabinowitz asked about Rinnai heat.
J. Stevens asked about metal siding.
S. McGowan wants horizontal alignment. Wants slight difference to clapboards.
M. Long asked about painting of metal.
S. McGowan may paint off site.
J. Drummond asked about vandalization.
S. McGowan doesn't happen as much. Not too worried. Can prepare for that.
M. O'Neil direct response to DAB for siding.
S. McGowan very happy about DAB process.
A. Strauss worried about parking safety. Concerns about access for neighbor. Backing out onto intersection.
S. McGowan would impact business next door to not allow existing access. Backing out needs to be careful. Haven't had accidents in other buildings. Just need to use care.

Paul Bonelli. Own Nunyuns. Been sharing parking with other buildings of S. McGowan's. Issue with parking. Concerned about non-resident parking on street. Not enforced by Police. Concerned about the impact of parking on street to his business. 15 minute spots not regulated. No body promoting business in Old North End.
A. Strauss asked about availability of parking for business.
P. Bonelli...tight fit. Concerned about visitors.
J. Drummond asked how many customers arrive by car.
P. Bonelli not sure but knows that people wont park down street.

Ryan Crehan. Lives in Old North End. Design fits. Concerned with NMU zone becoming residential more than mixed use. Other properties have been converted to residential. Issue is with zoning being NMU and not NAC. Wants board to explore how businesses can be attracted to that location. No vacant commercial space in area. Need space for small businesses. Need to maintain commercial aspect in area with future applications.

S. McGowan. Parking is a huge issue. Enforcement is what is needed. Bigger than this. Commercial is wanted but the rent you would get is 40-50% less than apartment.
A. Strauss asked what business was there before.
S. McGowan was SF and then converted to commercial 28 years ago.

Owner S. Bissonette noted commercial space in there didn't work before fire and was in motion of making residential.
A. Hart closed public hearing 5.55pm

2. 11-0816CU: 103 FERGUSON AVENUE (RL, Ward 5) SANDRA BOYD/SARA DOWNES
Increase daycare capacity from 6 children to 12 children. (Project Manager: Mary O'Neil)

Applicant S. Downes and owner S Boyd and public sworn in. Gave history and business plan. Adding staff member will need to add children for income.
A. Hart noted concerns would be parking and drop off.
S. Downes would encourage staff member to not have car. Can lease parking space from neighbor. Lease in file. Special events could use Saint Anthony's Church for family parking. Letter today that allows them to use and would encourage cross walk at Flynn and Pine.

A. Hart asked what cross street is. Where is church.
 S. Downes. Can see from kitchen window.
 A. Hart asked about drop off and pickup.
 S. Downes ensure no idling. Market to families in neighborhood and those who can commute by walking or biking. Take enrollment into consideration for people who fit in.
 A. Hart asked where children are picked up and dropped off.
 S. Downes sporadic drop off from 7.30 to 10am. Normally about 5-15min at a time. No more than 2 families at a time. Long driveway so can have them park in drive.
 A. Hart asked about numbers.
 K. Lerner can limit by condition but issue of enforcement.
 S. Downes no way that she could be licensed for more than 12 by the state.
 A. Hart had previous trouble for long term leases. Asked for assurance that spaces wouldn't disappear.
 S. Downes neighbor is invested in business and process also. Wouldn't think this would be revoked.
 A. Hart asked about church commitment.
 S. Downes attend church and parking lot is rarely used. Encourage families with multiple children.
 A. Strauss asked how many cars that can be put in driveway.
 S. Downes zoning says 2 but can fit three depending on size of car. Will have one employee and herself at any one time. Sub may cover if out.
 B. Rabinowitz asked about terminology with the state.
 S. Downes no licensed daycares in neighborhood, just home. Registered home can have up to 10 under the state. Only once had an after school child. Detailed what the breakdown could be. Usually use back entrance but can use side entrance.
 M. Long asked about drop off and pickup if four came simultaneously.
 S. Downes already have bookings for siblings. Doesn't see more than 2 at a time max. Will consider transport for enrollments.
 A. Hart asked about parking requirements for state.
 S. Downes. None from the state.
 A. Strauss asked if they could impose time restrictions for drop off.
 S. Downes yes. Enrollment could be monitored to ensure people use allotted time.

J. Adams-Kollitz. Worked with applicant as part of CEDO. Also resident nearby. As neighbor there is demand for licensed daycare. Knows other neighbors are supportive. As CEDO, notes 14 Hope Street conditional use application. Detailed parking and staff comments in report. Comparable as this case. That permit also detailed pickup and drop off in driveway. 331 Flynn Ave DRB findings of 2006 addressed parking issue for on street parking. Waived parking requirements. Stepping stones at 75 Hayward Street has permit for 12 children and spoke with owners and employees who don't believe there is an issue with parking. They have alternate means for commuting.
 K. Lerner detailed 75 Hayward Street parking issues. 331 Flynn was under old ordinance. 14 Hope Street the driveway was considered safe but that this driveway is smaller.
 A. Strauss asked about on street parking. Asked if local neighbor clientele.
 S. Downes mostly within neighborhood.

S. Boyd. Hasn't seen any problems with parking. No-body around during those hours. No problem with parking truck. Bought house for daughter to be independent. Could stop parking of more than 12. Concerned about taxes.

A. Hart closed public hearing 6.25pm.

3. **11-0819AP: 85 CRESCENT ROAD (RL, Ward 6) FREDERICK TIBALLI**
 Appeal of administrative determination of no violation. (Project Manager: Scott Gustin)

Appellant F. Tiballi, owner S. Musty, Jeanne Francis and public sworn in.

A. Hart noted preliminary issues. Asked how many issues have been resolved by finality rule and environmental court. Would like to focus on them. May be decision that these have been decided.

F. Tiballi not dealing with vacant lot or construction permit for single family dwelling. Defer that to Environmental Court. Solely issue with improved lot and violations. Finality has nothing to do with violation but is specific to remedies available to Zoning Administrator. Other remedies than NOV such as tickets. Will not go away until there is a determination. Immaterial that didn't appeal subdivision. All violations that are alleged are based on decision being enforced.

A. Hart asked for focus on setback issue. Subdivision created 15 foot setback?

F. Tiballi incorrect. Subdivision approved around 8927sq ft lot on crescent rd.

A. Hart apologized for having to leave at 6.40pm.

F. Tiballi handed out handout. Was previous subdivision plan. Sometime in 2008 for hearing submitted similar second plan.

A. Strauss asked what was very similar.

F. Tiballi 27ft rear setback and 18ft front setback. Gave details of lot coverage approved. January 2009 permit was considered final. Condition required final plat be filed in Land Records. May 2009 was meeting with S. Gustin and applicant. No plat filed in Land Records of 8927sq ft. Null and void. Ordinance is same wording as condition. A. Hart recused at meeting. A. Hart signed the plat. June 1st 2009 there is a document in land records that looks like the approved plat. What is recorded is 7727sqft with 15ft rear setback. Serious violation.

M. Long asked if point is that plat filed was not the one approved by the DRB

F. Tiballi plat filed was not that approved. Noted approval for building on vacant lot now has 15ft section. Now non-conforming. Ordinance requires that modifications are required to come back to the DRB or shall be null and void. It states plat shall be stricken from record. Rules also say can be guilty of misdemeanor and subject to fines. Detailed case further. Plat not signed by owner/subdivider.

A. Strauss asked he had reviewed the staff comments. Noted comments but noted court ruled against them. Asked if anything alleged that is different than previously. Asked if plat being incorrectly filed has been taken in front of this board or Environmental Court.

F. Tiballi detailed building permits and when they can be issued. Case in E Court is under reconsideration. When it becomes final will stick with vacant lot. E Court has ruled they do not have jurisdiction over the built lot. Also said they will not address jurisdiction of plat recording.

A. Strauss asked for clarification.

S. Gustin tentative decision of the Court can be released to board which deals with subdivision and rules on it.

M. Long understands discrepancy of plat filing.

F. Tiballi the violation has no bearing on other factors. Plat modified without consent...this is a violation. Doesn't have to prove this. Zoning Administrator has burden of proof. Has raised a lot of these issues with the Court. The court has not determined on the plat.

M. Long asked if the court indicated who has jurisdiction.

F. Tiballi no. Jurisdiction has nothing to do with violation.

A. Strauss sounds like each of these points have been raised at previous times.

F. Tiballi no. The things that have not been heard before is the size of the improved lot. Did not realize this previously.

A. Strauss so the only issue not heard previously is the square footage.

F. Tiballi and location of western boundary. This leads to site coverage differences. Didn't appeal subdivision.

B. Rabinowitz got the issue.

M. Long would like to hear from City.

K. Sturtevant. Has been part of all court issues. Want board to be clear on deferral and decision. Request for staff comments be put under oath be dealt with. Topics of plat have been discussed in Court. Condition of approval 2 anticipates change to plat. States a new and revised plat be filed. Certificate of Occupancy was obtained and un-appealed. M. Long no mysterious change.

K. Sturtevant it was an anticipated change. The deck is allowed to be within 15 foot setback up to 5ft.

B. Rabinowitz asked about the compliant front yard setback on the vacant lot.

K. Sturtevant defer to staff.

S. Gustin in original staff report had eyeballed front setback and required verification. Plat was revised to show front yard setback verified by surveyor.

K. Sturtevant complaint is over plat and process was followed. Improved lot complies with setback.

A. Strauss asked about 'incorrect' plat has been raised before.

K. Sturtevant yes, the decision talks about plat and revision. Decision is still open pertaining to application.

A. Strauss maybe the best way to deal with it is to wait for final decision. Why not deal with it after.

K. Sturtevant had to deal with as complaint. Question about deferral.

B. Rabinowitz noted Environmental Court wont rule on this plat issue so must deal with here.

A. Strauss matter is all part of court.

K. Sturtevant court did say plat was filed and now that the plat is final due to Certificate of Occupancy.

A. Strauss not challengeable any more.

M. Long asked if the setback is still an issue.

K. Sturtevant this was for vacant lot. No setback violation on improved lot.

M. Long would like to hear from owner.

S. Musty. Doesn't have anything to add. Following everything advised to do. Anticipated change.

S. Gustin sworn in. Can submit staff comments under oath. DRB approved 2 lot subdivision not specific size. Heard about a lot of subdivision. Improved lot is in compliance. Decks fit within bonus of 10%.

F. Tiballi process from city is flawed. Accessory structures are not allowed to be attached. Above 15ft. Approval for subdivision had conditions. Findings of fact has standard permit conditions including Condition 14. Condition gave administrative power to approve setbacks. Detailed how to assess setback.

B. Rabinowitz mathematically impossible to change setbacks without changing lot size.

F. Tiballi no building envelope definition in ordinance. Subdivisions require setbacks to be delineated. Detailed setbacks again for lots. Detailed ordinance again. Didn't appeal subdivision.

B. Rabinowitz asked for original subdivision staff comments.

S. Gustin will provide findings for deliberative.

F. Tiballi detailed timelines for approval of subdivision.

S. Gustin asked if they wanted court decision?

B. Rabinowitz asked F. Tiballi if that is ok.

F. Tiballi it is not final and doesn't mean anything.

M. Long asked K. Sturtevant if it is appropriate to submit to board.

K. Sturtevant it is not final. Cautionary.

M. Long would like to accept under those conditions that it is not final.

F. Tiballi objects to accepting under those conditions.

Board decided to not get court decision.

M. Long closed public hearing 7.43pm

VI. Certificate of Appropriateness

1. 09-181CA: 21 LEDGE ROAD (RL, Ward 6) THERESA L FORTNER

Addition to single family house, including 2 car garage, additional drive/parking area and an accessory apartment. (Project Manager: Ken Lerner)

Applicants M. Gilbert and T. Fortner present and sworn in. M. Gilbert gave history on boundaries and fence issue. Gave history on construction and changes. Reduced coverage. Good representation of improvements and restoration to historic buildings. K. Lerner noted because of the changes, felt needed review by board. Detailed DAB review of peninsula and parking area. Has quickly dealt with Public Works. Stormwater should only deal with this property and leave other properties up to dealing with Public Works.

M. Gilbert there were a large number of changes.

M. Long asked about peninsula. Smaller or eliminated?

M. Gilbert detailed peninsula. Hard for parking and access. Made more sense to round pavement instead of peninsula. Preference is to leave rounding and extend 6ft not 8ft to reduce requirement for extending back further. Will move rock to end of radius to stop any encroachment. Peninsula increases need for more pavement. Working with M. Moir. Working privately with other neighbors.

M. Long asked about plans.

K. Lerner showed plans.

B. Rabinowitz is it our choice?

M. Gilbert. Yes preference is no peninsula.

T. Fortner. It is tight. Issue is getting into garage.

B. Rabinowitz asked if surprised.

K. Lerner yes the City was too.

M. Gilbert working with Public Works. Boulder encroaches. Landscape wall.

M. Long Closed public hearing 8.01pm.

VII. Adjournment

Adjourned at 8.02pm.

Deliberative scheduled for Monday June 13 at 5pm.

A. Hart, Chair, Development Review Board

Date

Nic Anderson, Planning and Zoning Clerk