

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

www.ci.burlington.vt.us/planning/boards/dr/b/

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

(802) 865-7142 (TTY)

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



BUR. LaClairINGTON DEVELOPMENT REVIEW BOARD Tuesday, June 21, 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, Jim Drummond Kevin Stapleton, Paul Henninge (Alt.)

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

Absent: Andy Strauss (Alt.) Bob Schwartz,

I. **Agenda**

No changes.

II. **Communications**

Two items for 103 Ferguson Ave and 89 Beaumont Ave. 210 Shelburne St accepted into record. 89 Beaumont Ave not accepted as not for this item. Update to standard permit conditions in Other Business

III. **Minutes**

None

IV. **Consent**

1. **11-0648SN: 1372 NORTH AVENUE (R. LaClair, Ward 7) JON STOKES/SIGNARAMA**

Replace existing non-conforming freestanding sign for Green Mountain Animal Hospital with new design. (Project Manager: Nic Anderson)

Applicant B Daico from Signarama present on behalf of owner. Has read staff findings and conditions of approval. Acceptable. No public present to speak.

Motion by M. Long to approve and adopt staff recommendations and conditions.

Second by P. Henninge

Vote: In favor 5-0 against.

Decided to leave 89 Beaumont Ave where it is on the agenda, although recommended as consent item, and will be taken up in turn on agenda.

V. **Public Hearing**

1. **11-0842SN: 37-43 CHURCH STREET (D, Ward 3) ANTONIO B POMER. LaClairEAU LLC/OUTDOOR GEAR EXCHANGE**

Appeal of administrative permit denial to install two parallel Outdoor Gear Exchange signs: One above the canopy on Church Street facade, and one on the corner tower on Church Street. External illumination included. (Project Manager: Scott Gustin)

Applicant not present. Will come back to it. Reopened 6.14pm. Applicant sworn in. Mark Sherman owner of Outdoor Gear Exchange (OGE). Gave detail of appeal. Original signs were handmade and moved around various locations as relocated. Building looks like it was designed to have signs. Other concern of zoning ordinance is limitation of size and glass awning restricting view of sign. Had previous exception to 14foot rule at current Cherry Street site.

A. Hart seems like its placement of sign and compatibility. Marketplace has more pedestrian traffic so visibility is not true.

M. Sherman would not be able to be seen from other side of Church St or Cherry St. All other signs above 14ft are national chains. Semantic difference about replacement of sign. Read section from Google book. Detailed Google architecture. Wooden sign would meet premise of this architecture. Discussed local vs. national chains.

A. Hart asked about tower sign materials. Asked for detail.

M. Sherman is happy to have this to be restricted. Proposed as wood, with O.G.E would be smooth surface and rest would be etched. Would have low output LED lighting.

B. Rabinowitz asked S. Gustin about sign on tower.

S. Gustin noted that the sign regulations specifically limited sign replacement on this property.

B. Rabinowitz asked if others were approved erroneously.

S. Gustin yes.

B. Rabinowitz Large letters of 'OGE' seems to fit more than the Church St over canopy sign. More information will be required if a sign redesign is required.

M. Sherman if they can get above the 14ft height limit they could submit multiple sign designs for approval. Have environmental mission and would like signage that is organic.

J. Stevens asked about other signs on Church St that are above 14ft

K. Stapleton asked if any other signs denied above 14ft.

S. Gustin gave examples.

M. Sherman would serve their purpose to be able to remove existing awning and put up their own with branding. Lot more details that could be looked at with Church Street Marketplace.

S. Gustin Panera was denied above 14ft and chose not to appeal it.

Closed Public Hearing 6.35pm.

2. 11-0020CA: 210 SHELBURNE STREET (R. LaClair, Ward 6) TWO CEDARS, LLC

Appeal of administrative permit denial to amend ZP#11-0020CA to include fins on wind turbine and to remove condition one. *Continued Hearing* (Project Manager: Mary O'Neil)

Applicant not present. Will come back to it. Opened public hearing 6.35pm. Applicant R. Scully sworn in. Gave detail of meeting with M. O'Neil and D. White to deal with fins. Painting of fins was decided to help minimize impact.

M. O'Neil the copies provided do not do justice to the colors. Asked applicant to provide copy in true color.

A. Hart asked if it had been back to DAB

M. O'Neil no. Solution was sought without having to go to DAB. DAB were definitive and doesn't need to see it more than the 4 times.

A. Hart asked if fins are necessary.

R. Scully. The fins are a performance enhancement to make the turbine more efficient.

A. Hart notes it is very visible.

R. Scully first one to be installed in the country, and this fin difference was noticed on installation.

A. Hart asked about structure that the unit was to be mounted on.

R. Scully. Original submission from contractor. Was confusion at the time. Wasn't proposing to do the truss work through but was showing on photos. Discussed with D. White and M. O'Neil about vibration affecting integrity of roof. This was to have truss supporting all turbine.

A. Hart read condition. Asked if it could be opened up.

R. Scully was never open.

A. Hart asked if the permit that was received required it to be opened up.

B. Rabinowitz asked when it was open.

M. O'Neil clear in DAB that submission was to have open truss.

B. Rabinowitz asked if it was open or closed when constructed.

M. O'Neil no evidence. Photograph showed open but cannot confirm is the exact site.

B. Rabinowitz asked about height limit detail on plan.

M. O'Neil noted to make sure of height limit.

M. Long asked if design aesthetics or not.
M. O'Neil that is what was submitted for both aesthetics and vibration.
A. Hart asked what DAB intent was for condition.
M. O'Neil intent given was to replicate signage and DAB thought this creative way would replicate historic signage.
B. Rabinowitz asked about inside of structure and what issues could be for opening up.
R. Scully not continuous right now.
B. Rabinowitz don't know if altering will impact the awning.
R. Scully was represented to show how turbine would go on top. Did not think it was to be literal on the opening. Clearly missed that condition. Understands concern was on vibration on signature part of building from turbine. Submitted material on vibration. Spirit of photo was to show the original building style not the actual building.
M. O'Neil not certain how much of canopy is original. Understands that there was a lot of work on it at the time.
R. Scully. Awning was fine. Surface mounted lights.
B. Rabinowitz asked about Vermont state on renewable energy devices.
M. O'Neil can not prohibit but have limited review on location etc.
K. Lerner asked if more of the turbine can be painted. Notice the turbine first. Detracts from the business itself.
M. O'Neil noted communications submitted at deferral from neighbors.
R. Scully having technical problems at the moment. Will require net metering in the future. Will apply for CPG in near future. Major technical problem with power capture.
A. Hart that will not change the appearance?
R. Scully no.
M. O'Neil a Certificate of Public Good is exempt from zoning review.
R. Scully not doing this for that reason. Hasn't worked.
Closed Public Hearing 7.02pm

VI. Certificate of Appropriateness

1. 11-0874CA: 83-85 HUNGERFORD TERRACE (RH, Ward 2) ROBERT LACLAIR

Convert duplex to triplex with associated construction. 3 space parking waiver. (Project Manager: Scott Gustin)

Applicant not present. Will come back to it. Came back to at 5.16. Applicant R. LaClair now present. Neighbors present. Applicant did NOT receive staff comments.

A. Hart introduced and asked for comment on issues shown up in staff comments.

R. LaClair gave history and summary of property use. Three car garage. Doesn't want automobiles. Has leases that limit the number of cars. Neighborhood good for walking and shuttles.

A. Hart asked how many bedrooms in each unit.

R. LaClair four.

A. Hart asked if currently restricting car use.

R. LaClair yes.

A. Hart concerned about number of bedrooms. Asked about parking. Enforced currently.

R. LaClair has resident only parking on street. Limits new tenants in leases.

A. Hart asked about resident only parking.

M. Long asked if police department knows of limitations

R. LaClair no.

M. Long asked about addition. New unit in basement of old or new?

R. LaClair both.

A. Hart asked about parking numbers. Asked about forth space.

R. LaClair yes but didn't want to hack up the yard.

A. Hart referred to visitors and having extra parking.

S. Gustin fourth space would be at end of driveway still allowing for back up space.

B. Rabinowitz asked about renovation and egress.

R. LaClair spoken with DPW.

B. Rabinowitz no comments on landscaping.
R. LaClair where stone wall is, it is now grassed. Photos old.

Bill Church 34 Bradley. Concerned about ten bedrooms in the existing duplex. Currently seems like college students. Doesn't need to be 3 units for daughter.. Will be filled with college students. Concerned about neighborhood and loss of neighborhood feeling. Wants to make place feel like home. Shouldn't be about economic development. Filling with college students discriminates against elderly and families. Concerned about high density zoning. Need to protect existing uses.

A. Hart noted 8 bedrooms. Asked if speaking of experience.

B. Church understands has been police issues on the site for noise. Students don't understand neighbor relations. Working people cant afford to live in neighborhood.

Linda Rizvi lived at Hungerford terrace for 20 years. Against granting waiver. Concerned that if granted under premise of current situation and no comeback if sold. 2 parking spaces per unit should be enforced. All justification for waiver were in place at the time the zoning ordinance was enacted. Was anticipated originally. Understands parking is main constraint on residential development. Urged board to not grant parking waiver.

A. Hart asked if about current parking situation. Are there current issues.

L. Rizvi observation is that there are often three cars parked on site. Doesn't seem like someone is living on first floor currently. Can achieve preserving neighborhood with vision. Neighborhood gateway to City. A lot of activities draw people to town and they all go down College St. Currently a deteriorating neighborhood.

B. Rabinowitz asked about current parking on street.

L. Rizvi unaware of current situation.

Emily Lee. Lives at 39 Bradley St. Lives over back boundary. Response to neighbor concerns was demoralizing. Have neighborhood group which works well and bands together. Concerned about density. Previous situation was quiet. Personally called police for noise. Also has been over to the site in the middle of the night to tell people and dogs to be quite. Has had three police visits. Haven't seen people use the garage. Doesn't think people would use the garage. Currently three cars on site. No parking on Hungerford. Students have resident parking. Neighbors have to compete for parks. Current owner is good but new owners may not manage properly. Doesn't think owner has resources to manage effectively. Working really hard to keep neighborhood. Domino effect of small incremental changes to neighborhood. Concerned about middle class having to leave.

M. Long asked about feeling of being demoralized.

E. Lee is not happy with staff comments.

M. Long asked if contacted owner when disturbed at night.

E. Lee did not contact. Concerned about next owner.

Mattie Posig. Lives next door. Does not understand how cars can fit on the property.

A. Hart confirmed how parking is allowed.

M. Posig doesn't understand how they can do the turnaround with a car parked there.

Urged to deny and not have a triplex. Confused about comments by applicant on parking. Parking limited on street. Confused about parking plan and enforcement.

A. Hart can impose conditions on a waiver or approval.

M. Posig parking is already an issue. Addition of bedrooms has added noise. Agrees with points of neighbor.

M. Long asked about density increase.

M. Posig in last several months. Since April. Three calls about noise in last month. Area is currently owner occupied mainly and doesn't want to have to fight to maintain integrity of neighborhood.

Tim Elliot. Live at 39 Bradley. Asked to deny waiver request as it would impact quality of life.

R. LaClair back.

A. Hart asked about addition.

R. LaClair gave history of purchase and tenants. Construction completed end of April. Had tenants in first floor apartment for a month. Son lives upstairs. None of them have cars.

A. Hart concerns are parking and noise. Can deny or approve with conditions. Conditions will need to be enforced. Asked about parking enforcement.

R. LaClair can enforce leases. Cant enforce friends.

B. Rabinowitz asked about current tenants.

R. LaClair lease for ground floor. On summer vacation.

J. Stevens asked about numbers.

R. LaClair lease says no more than 8 persons in the unit at a time. Has property management experience. All neighbors have his contact details but has not heard from them. Was unaware of previous issues.

M. Long asked why more bedrooms.

R. LaClair economics. One room can be considered dining room. Would like to have med students. Basement currently is just storage room.

B. Rabinowitz asked S. Gustin to have the addition zoning permit present for deliberation. Asked what intent was for basement before.

R. LaClair has large windows already. Proposing putting new windows in. Didn't think about basement use until doing work.

K. Lerner suggested condition on parking pass restriction.

A. Hart doesn't know if police would enforce that. Will discuss at deliberative.

A. Hart closed public hearing 6.14pm

2. 11-0553CA: 89 BEAUMONT AVENUE (I, Ward 1) UVM

Addition of 20,004sf of habitable interior space within the previously covered Given courtyard. (Project Manager: Scott Gustin)

Applicants present. L. Seavey, L. Ravin. M. Long asked board if ok to be treated as consent. Board ok with consent. A. Hart and K. Stapleton recused.

Motion by J. Stevens to approve and adopt staff findings and conditions.

Second by B. Rabinowitz

Vote: In favor 7-0 Against.

3. 05-401CA: 237 NORTH AVENUE (RM, Ward 7) CHRIS CORNELL/HARTLAND GROUP

Time extension request for adaptive reuse of existing industrial warehouse and new construction to build 25 units of condominium housing, enclosed parking and a cafe. (Project Manager: Scott Gustin)

Applicant not present. Will come back to it. M. Weinberger present. Asked if history needed.

A. Hart not needed.

M. Weinberger gave history of project and detailed letter. Major hurdle has been financing. Detailed financing history. Paid Development Review Fee and picked up permit.

A. Hart asked staff and applicants what ordinance is applied for time extension at this time. Are old and new ordinance different in any way. Asked if they have authority to extend for another year.

B. Dunkiel substantially the same. Understands that it can grant a one year extension as many times as needed. This issue was discussed last year and addressed last year.

A. Hart asked if any changes anywhere else that would impact that.

B. Dunkiel understands this part of the ordinance is to ensure developers come in and check in to make sure they are moving forward. Balancing for vested rights. Thinks point if changes elsewhere would only be needed if the developer is not moving forward in good faith. Would request decision be made before July 1st to ensure does not lapse.
B. Rabinowitz asked about commencement of work issue.
B. Dunkiel commencement of work was decided on last year. This is on continuation of work.

A. Bjerke understands they have one year to action and one year to construct. Does not allow for more than one extension. Financing is not a basis for waiving time limits in ordinance. Not legislative decision to change ordinance at this time. Housing market issues is not a good argument. Not even started construction. Sign out front advertising rentals for the future. Last year they testified that they could not complete the project in 11 months. Just stated they cant get the money until September. Noted comments from deliberative were that they may not approve this again in the future. Noted changes since 2005 approval to neighborhood. Diocese will not have high intensity residential as assumed. Changes to community as asked by A. Hart are substantial. Adaptive reuse provision which afforded waivers has substantially changed under current ordinance. Should send them back to the drawing board.

M. Long asked about specific changes to adaptive reuse.

A. Bjerke the current has limitation under scope of expansion. Other differences also. Have not completed construction. Time to go back to drawing board. Last time extension he requested that there should be bonding imposed to ensure completion. Housing landscape has changed and there are housing projects that are not being completed. Would like to ensure bonding for half completed projects if funding is problem.

Edward Winant 18 Sunset Court. Agrees with A. Bjerke. Precedent for financial situations would be bad. Hasn't seen any work done. Would like to see a site visit undertaken by the board to see work.

K. Lerner noted there are no requirements in the ordinance.

B. Dunkiel replied to neighbor comments. Referred to letter submitted with the last time extension which deals with vested rights. Commencement of construction issue was dealt with last year. Is final and was not appealed. A. Bjerke also asked for bonding and this was dealt with in letter. Provision for bonding was not in 1994 ordinance. Changes to neighborhood comments by A. Bjerke not correct. Keystone decision deals with this. Read details of case and precedent. Acting in good faith. Was found last year. New evidence is more than adequate.

A. Hart would like to see the case details. Came up with question on change of circumstances to help serve purpose of ordinance. Case law evident that requests to deal with wording in ordinance not make up detail. Keystone Decision was April 21 2009.

M. Weinberger commented on history and delays made through litigation. Spent well over a million dollars pursuing this which shows they are moving towards the project, not just sitting on the fence. Made major commitments and proceeded in good faith.

A. Bjerke. No litigation for three years.
Closed 7.30pm

VII. Other Business

VIII. Adjournment

Adjourned at 8.02pm.

Deliberative scheduled for Wed June 22 at 12.30pm.

A. Hart, Chair, Development Review Board

Date

Nic Anderson, Planning and Zoning Clerk