

## Burlington Development Review Board

645 Pine Street, Burlington Public Works

Burlington, VT 05401

[www.burlingtonvt.gov/pz/DRB](http://www.burlingtonvt.gov/pz/DRB)

Telephone: (802) 865-7188

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Brad Rabinowitz  
AJ LaRosa  
Springer Harris  
Geoff Hand  
Zoraya Hightower  
Brooks McArthur  
Kienan Christianson  
Sean McKenzie, (Alternate)  
Ravi Venkataraman, (Alternate)



### BURLINGTON DEVELOPMENT REVIEW BOARD Wednesday January 22<sup>nd</sup> 2020, 5:00 PM Department of Public Works, Conference Room, 645 Pine St, Burlington, VT Minutes

**Board Members Present:** Brad Rabinowitz, AJ LaRosa, Geoff Hand, Brooks McArthur, Springer Harris, Zoraya Hightower

**Board Members Absent:** Sean McKenzie (Alt), Ravi Venkataraman (Alt), Kienan Christianson

**Staff Present:** Scott Gustin, Mary O'Neil, Ryan Morrison, Alison Davis

#### I. Agenda

B. Rabinowitz: Asks if there have been any changes to the agenda

S. Gustin: City of South Burlington withdrew their appeals for Queen City Park Road

#### II. Communications

S. Gustin: New tablets for Board members

#### III. Minutes

B. Rabinowitz: Will review minutes from December 17 during deliberation

#### IV. Consent

##### 1. 20-0575CA/CU; 116 Sunset Cliff Rd (RL/W, Ward 4N) Roderick and Margaretta Egger

Remove existing failing concrete sea wall and replace with riprap stone retaining wall, matching neighbor's retaining wall (Project Manager: Ryan Morrison)

Bill Hayes appeared on behalf of the project

B. Rabinowitz: Asks if applicant finds staff report acceptable

B. Hayes: Yes

B. Rabinowitz: Asks about hand drawing sketch over photograph

B. Hayes: Explains sketch

B. Rabinowitz: Confirms what Civil Engineering & Associates produced is what is proposed

B. Hayes: Yes

AJ LaRosa: Motion to approve application

G. Hand: Seconds motion

6-0-0

##### 2. 20-0482CA/CU; 28 Faith Street (RL, Ward 7N) Mary and Stephen Cunningham

Change of use from single family to duplex; renovation of lower level (Project Manager: Mary O'Neil)

Nic Cunningham appeared on behalf of project

*The programs and services of the City of Burlington are accessible to people with disabilities. Individuals who require special arrangements to participate are encouraged to contact the Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).*

B. Rabinowitz: Asks if applicant finds staff report acceptable  
N. Cunningham: Yes  
B. McArthur: Motion to approve application and adopt staff findings and recommendations  
G. Hand: Seconds motion

6-0-0

**3. 20-0536HO; 2 Brierwood Lane (RL, Ward 4N) Kenneth and Nancy Babineau**  
Home occupation for pet grooming studio (Project Manager: Ryan Morrison)

Nancy Ross Babineau and Ken Babineau appeared on behalf of project

R. Morrison: Additional public comments being distributed to members of Board  
B. Rabinowitz: Treating this as public hearing

B. Rabinowitz: Characterizing these letters, one is addressing something that happened in the past, and the other is concerned about the future  
AJ LaRosa: Confirms that there is no exterior lighting planned for the home occupation  
K. Babineau: Correct, no exterior lighting planned. The previous complaint was about the neighbor's light, not ours. Disagrees to dog barking comment.  
N. Babineau: Can't stand when dogs are out barking and owners do not pay attention to their pets

AJ LaRosa: Confirms that this does not include dog boarding/kennel. Confirms they are not in yard running around

N. Babineau: Yes, they come in only to get groomed

B. McArthur: Asks if it is by appointment only

N. Babineau: Confirms, by appointment only. Was thinking hours would be 9-4. Weekends would only include Saturdays. Can only groom 3-4 dogs per day

B. Rabinowitz: Asks if there are other dogs at property

N. Babineau: Two dogs

B. Rabinowitz: Closes public hearing

**V. Public Hearing**

**1. 20-0362DT; 86 North Union (RM, Ward 2C) Diemer Apartments, LLC**  
Appeal of 15-year determination of occupancy of dwelling by six unrelated adults  
(Project Manager: Scott Gustin)

Dan O'Rourke, Mike Diemer, and Jill Diemer appeared on behalf of determination

S. Gustin: Explains application for determination and appeal of determination. Explains discontinuances (60 days) of occupancy

AJ LaRosa: Asks to clarify gaps in leases

S. Gustin: Clarifies gap timelines through leases. Explains that this determination assesses the last 15 years, looking for no discontinuances

AJ LaRosa: Asks about intent to discontinue

D. O'Rourke: Gives context to Diemer Apartments and appeal. Explains remedy option for Notice of Violation for more than four unrelated adults in the residential medium density zone from Sept 12, 2019 was to apply for a determination for more than six unrelated adults

AJ LaRosa: Asks about notice of violation letter

G. Hand: City had evidence of more than four unrelated adults

J. Diemer: Explains Diemer Apartment history and involvement with City and the University of Vermont. Explains Diemers purchased property knowing there were more than four occupants, at least six, in 86 North Union. Explains they believed the building was grandfathered due to previous owner having at least six occupants living there. Explains minimum housing inspections occurred and was never alerted that having more than four bedrooms was an issue. Explains six bedrooms was always advertised and stated on leases

S. Harris: Asks intent to continue renting to six

J. Diemer: Yes, we would like to

D. O'Rourke: Intent was never to stop leasing to six occupants, intent was not to abandon building

B. Rabinowitz: Invites City Attorney, Kim Sturtevant, to explain

K. Sturtevant: The number of bedrooms is not the question, it is about the number of occupants

G. Hand: Clarifies Board has to apply the Ordinance. Asks K. Sturtevant about discontinuance definition and language

Z. Hightower: Asks to clarify rental registration and if it is seen as more of a snapshot of a year or the time of registration

J. Diemer: You sign for how many people occupy the unit at that moment in time

## **2. 20-0493CA/20-0514CA; 180/266 Queen City Park Road (ELM, Ward 5S)**

Property owner: Burton Corporation

Appellant: CRZ Group

Appeal of stormwater enhancements and parking layout revisions (Project Manager: Scott Gustin)

Brian Dunkiel, John Caulo, Justin Worthley, Paul Boisvert, Amy Houghton Laurie Smith, Frank Kochman, Richard White, Sharon O'Neil, Almy Landauer, Susan Herd, and Laura Waters provided public testimony

G. Hand: Recused

B. Rabinowitz: About parking lot and stormwater changes. Conversation tonight is for parking lot and stormwater changes. No application has been submitted for a performance venue.

AJ LaRosa: The performance venue is outside the scope of tonight. Asks to clarify the changes the applicants wanted to make to the parking lot

S. Gustin: Explains curb-cut changes. Entirely within the City of Burlington limits, gated entrance with truck access

S. Gustin: Briefs Board about stormwater site change applications and the appeal of those. Explains decision on reviewing application as level II. No increase in lot coverage or parking spaces. Lot coverage decreases. Explains administrative approval decision

F. Kochman: Explains fragmentation tactic

L. Smith: Explains magnitude of changes proposed. Paving, excavation, and stormwater ponds, sidewalks, curbing, parking islands. Points out entryway and back additions on building. Discusses lighting changes

AJ LaRosa: Asks presenter about concerns about design or stormwater design

AJ LaRosa: Confirms that scope of appeal is based on the argument that this project exceeded the scope of a level II COA approval within the Zoning Administrator's authority

F. Kochman: Confirms that the Zoning Administrator did not have jurisdiction to approve this permit. Explains this should have been level III review, since it is a Planned Unit Development and is on two separate lots. Explains disagreement about level II review. Does not think the 500 sq ft authorization was justified. Explains relocation of parking is impactful. Asks about excavations being additions

B. Rabinowitz: Explains that looking at "earth work" as additions is troubling. Additions are structures

F. Kochman: Do not have to see them as additions, but see them as development

B. Rabinowitz: Asks about parking lot reconfiguration and if that should be major project review

S. Gustin: Discusses Planned Unit Development argument and how that is not applicable. Explains stormwater pond is considered green space. Explains approved plans have net difference of less than 200 sq feet. Explains 500 sq feet net is consistent practice

AJ LaRosa: Clarifies how level II applications are determined to go to the DRB

F. Kochman: Explains show site plan was issued before the City Engineer approved excavations

B. Rabinowitz: Explains issues brought up are in the conditions of approval, to get taken care of, before the permit is issued

B. Rabinowitz: Invites applicants to introduce project

B. Dunkiel: Explains resolution of appeal with City of South Burlington. Made some adjustments to site plan

J. Caulo: Explains the primary difference with the approved plan and the revised plan is that the curb cut is fully in the City of Burlington. Explains existing curb cuts, and relocated curb cuts

B. Rabinowitz: Confirms this is addressing the City of South Burlington resolution of appeal

B. Dunkiel: Refers to section 3.1.2(d) in the current Zoning Ordinance and how the application was correctly reviewed as a level II

J. Worthley: Discusses existing and proposed coverage. Making small modification to the front of the building, decreases coverage. Explains confusion in back of building, concrete pads with roof

Z. Hightower: Clarifies about building bumpouts and coverage calculations

J. Caulo: Explains conditional approval of permits was correct decision

J. Worthley: Explains Act 64 three-acre rule could be effective in 2022. Need to be in compliance for State stormwater requirements. Explains current parking conditions on 266 Queen City Park Road are in poor condition. Nothing in this plan has anything to do with future uses of this building

B. Dunkiel: Discusses how S. Gustin's approval of permit is supported by the Ordinance and has been a standard practice

B. Rabinowitz: Invites public for comment

R. White: Appearing on behalf of Doug Goodman, an abutter of the property. Wants Board to provide leadership about project intentions.

S. O'Neil: Direct abutter of property. Clarifies questions about project plans and approval when there are revisions. Discusses frustrations about large project being split into smaller projects to fit under administrative review, and how that prevents public participation. Wants larger project to be considered in decisions of approval. Wants impact of future to be mitigated for the community of abutting properties

A. Landauer: Expresses frustrations with disregard of public voices, information request redaction. Reads letter from property owner on Austin Drive

S. Gustin: Clarifies about public information request

L. Waters: Discusses concerns about curb cuts

S. Herd: Concerns about one-lane bridge and gated entrance

J. Worthley: Explains conversations with Dept of Public Works and curb cuts

B. Dunkiel: Expresses that this application is for stormwater improvements, being in compliance with the State. Responds to public comments about possibility of future use application, public will be able to voice their opinions when that is applied for. Current application is independent of future property use ideas.

F. Kochman: Closing statement about arguments made

**3. 20-0579AP/20-0580AP; 180/266 Queen City Park Road (ELM, Ward 5S)**

Property owner: Burton Corporation


Appellant: City of South Burlington

Appeal of zoning permits 20-0493CA & 20-0514CA relative to site changes (Project Manager: Scott Gustin)

City of South Burlington dismissed their appeal of zoning permits 20-0493CA and 20-0514CA due to conditions regarding curb cuts.

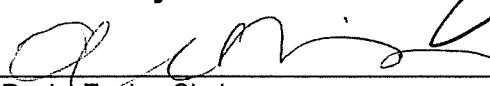
**VI. Adjournment**

The meeting was adjourned at 8:00pm.

  
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Bradford L. Rabinowitz, Chair of Development Review Board

Date

2/3/2020

  
\_\_\_\_\_  
Alison Davis, Zoning Clerk

Date

2/4/2020

Plans may be viewed at the Department of Permitting & Inspections, (Burlington Public Works, 645 Pine Street, Burlington), between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at [www.burlingtonvt.gov/pz/dr/ agendas](http://www.burlingtonvt.gov/pz/dr/ agendas) or the office notice board, one week before the hearing for the order in which items will be heard.

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