

Burlington Development Review Board

Department of Permitting & Inspections
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Brad Rabinowitz
AJ LaRosa
Geoff Hand
Brooks McArthur
Caitlin Halpert
Chase Taylor
Leo Sprinzen
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, June 21, 2022, 5:00 PM

Minutes

Remote Meeting

Board Members Present: All members were remote. Brad Rabinowitz, AJ LaRosa, Geoff Hand, Brooks McArthur, Caitlin Halpert, Sean McKenzie, Leo Sprinzen

Board Members Absent: Chase Taylor

Staff Members Present: All members were remote. Scott Gustin, Mary O'Neil, Ryan Morrison, and Joseph Cava

- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Consent**

1. ZPW-22-62; 187 Pearl Street FD6, Ward 3C) 187 Pearl Street LLC / Chris Mason

Request for alternate compliance under form code to restore historic masonry openings and install three windows abutting alleyway. (Project Manager, Mary O'Neil)
Chris Mason: Sworn in.

Brad Rabinowitz: This is recommended for consent, are you okay with this?

Chris Mason: Yes, I am okay with this being a consent item.

Geoff Hand: Motioned to approve and adopt staff recommendations, Caitlin Halpert 2nd. Vote 6-0.
Motion carries.

V. Public Hearing

1. ZAP-22-1; 77 Pine Street (FD6, Ward 3C) Nedde Bank LLC / Liam Murphy

Appeal of adverse determination regarding compliance with inclusionary zoning requirements of condition 4, ZP #20-0453CA, for payment in lieu for inclusionary housing units. (Project Manager, Scott Gustin)
Liam Murphy: Sworn in.

Brad Rabinowitz: Do you swear to tell the truth and the whole truth?

Liam Murphy: I do.

A.J. LaRosa: I am recused on this.

Scott Gustin: Because this project contains more than five residential units it requires inclusionary units – in this case 7 inclusionary units. The payment in lieu fees are split into three tiers with a low, medium, and high fee based upon project size. A marginal fee approach is used.

Brad Rabinowitz: Why was there an option for the first inclusionary unit to be paid for at a discounted rate of \$35,000 compared to the \$70,000?

Scott Gustin: I don't have an answer beyond the marginal fee approach making the fees lower for smaller projects and fees progressively higher based upon project size.

Brad Rabinowitz: Numerically it works, but let's let the applicant present.

Liam Murphy: The City's argument is that if thought about differently it would be written differently, and the ordinance should be amended to make the language clearer. The payments were so high under inclusionary zoning that it was never used. If the fee was lower, it would be utilized more. Zoning amendments were put forth in April 2019 adopting the marginal fee approach presented by Scott Gustin.

Brad Rabinowitz: To be clear, you're talking about the first units in the development and not the last units?

Liam Murphy: Yes

Geoff Hand: Can a payment in lieu be used in whole or in part?

Liam Murphy: The ordinance does not specify.

Geoff Hand: The use of the ordinance is relying in part on administrative interpretation which would allow the partial payment in lieu. The ordinance could be read to allow payment in lieu only for the entire inclusionary requirement.

Liam Murphy: This would not be consistent with the language of the ordinance as it exists and therefore does not make sense.

Caitlin Halpert: Use of payment in lieu was not specified during the initial approval of this permit.

Liam Murphy: No.

Leo Sprinzen: What is the marginal fee approach as it relates to this project?

Liam Murphy: There's a Vermont Supreme Court case that relates where a project was taxed at 15%, with every additional unit being 30%.

Brad Rabinowitz: Close this public hearing.

2. ZP-21-800; 501 Pine Street (E-LM, Ward 5S) KS Pine LLC / Kurt Schueler

Establish a food truck/container kitchen café. (Project Manager, Ryan Morrison)

Kurt Schueler, Catherine Bock, Ruby Perry, Gordon Clark, Scott Michael Mapes, representing Mark Davis, owner of 501 Pine St., Diane Gayer, and Andy Simon: Sworn in.

Brad Rabinowitz: Is the applicant here?

Geoff Hand: I recuse myself.

Kurt Schueler: We revised the plans utilizing staff recommendations.

Brad Rabinowitz: Are the graphics proposed in the tower design a sign?

Ryan Morrison: It was originally proposed as a sign but could not be approved as a sign. It has been revised to artwork.

Brad Rabinowitz: Questions from the board?

Leo Sprinzen: In the design it shows cars in the drive, what is this for?

Kurt Schueler: This is for food delivery and pedestrian drop off.

Brad Rabinowitz: Does this need to be reviewed by the department of public works with a traffic study?

Scott Gustin: This project isn't large enough to require a traffic study.

Leo Sprinzen: Would drop off for food and traffic have a time constraint?

Kurt Schueler: The hours of operation would be from 11:00 AM to 11:00 PM.

Sean McKenzie: Would the project have conditions?

Ryan Morrison: Yes, before the zoning permit is approved it would be accompanied with pre-release conditions.

Brad Rabinowitz: Are people parking and eating on site?

Kurt Schueler: No

A.J. LaRosa: It would be better not to have the curb cut to prevent extended vehicular traffic on site.

Catherine Bock: Thank you for discussing the parking because there is a concern of traffic backing up along Pine St. There are also concerns of trees being cut that would lead to soil erosion releasing toxins into Lake Champlain.

Ruby Perry: I live one block east of the site and I have concerns about traffic flow on Pine St. This is a major consideration given the upcoming development of the Champlain Parkway. Our input from the Five Sisters neighborhood is important because we live across the street from the proposed project and there are plans for more residential housing expansion in the South End. When the land is disturbed by development which City body will be held accountable if not the DRB?

Gordon Clark: Traffic is a concern, and I am shocked to know that beyond the rendering provided in the presentation, there is no traffic plan in place to handle the projected traffic increase. Lighting is also a concern because the project will cause immense amounts of light pollution. In regard to environmental concerns how is putting a food court on a Brownfield site a smart idea?

Scott Michael Mapes: What are acceptable heights of fill and excavation for the environmental sensitivity of this site? There were recent studies done to understand the limitations set by the Environmental Protection Agency (EPA) and what the State of Vermont can approve. I have confidence in the corrective action plans between the EPA and the State of Vermont before a zoning permit can be approved and released.

Diane Gayer: I had a workspace near a vendor space similarly aligned with this proposed project. This is a dynamic proposal, but the city hasn't considered the health of the neighborhood and the downfalls this project will cause including noise, traffic, and neighborhood makeup. I feel we aren't getting the full picture of this project including pedestrian traffic and vehicular traffic and the impact it will have to neighboring properties in terms of storm water runoff. All of these impacts are a liability to neighboring locations.

A.J. LaRosa: The Superfund restrictions and liability are out of the DRB's hands, but it does not mean that other city offices and regulatory organizations aren't addressing this even if the permitting process isn't.

Andy Simon: The Friends of the Barge Canal are concerned on the limitations centered around the site itself and is not putting enough emphasis on the conservation zone around the properties of 453 and 501 Pine. This project is not compatible with the long-term conservation goals of this district. The proximity of the project to the bike path creates a safety issue with consideration to the underdeveloped area that will become the Champlain Parkway. This site has 40-year-old trees linking the site's incompatible use as a parking lot with a concrete pad. This is also before addressing the toxins present in the soil and the southern extension of the Champlain Parkway as previously defined as impractical due to the environmental impacts.

Brad Rabinowitz: Why isn't this project a part of the conservation board's agenda?

Scott Gustin: This parcel is not affected by any natural resource overlay. The larger parcel behind it is affected by several such overlays.

Brad Rabinowitz: Kurt, is there anything else you would like to add?

Kurt Schueler: There is a corrective action plan in place in conjunction with the EPA to address environmental issues.

Scott Gustin: The City's Stormwater program will be addressing runoff concerns.

Ryan Morrison: This will be a condition of the permit's release.

Brad Rabinowitz: Close the public hearing.

3. ZP-22-171; 23 North Champlain Street (RH, Ward 3C) Henry Stark

Establish a bed and breakfast (short-term rental) within existing duplex; one bedroom in each unit totaling 2 bedrooms (one unit owner occupied). *Deferred hearing rescheduled from May 17, 2022.*

(Project Manager, Mary O'Neil)

Henry Abbott Stark: Sworn in.

Brad Rabinowitz: Do you swear to tell the who truth and nothing but the truth?

Henry Stark: Yes

Brad Rabinowitz: This agenda item is being recommended for approval because the project site plan is straightforward. Can you expand on the scope of this project?

Henry Stark: This is an up/down duplex property with two bedrooms upstairs and one bedroom downstairs. I will be living in the upstairs unit but will be renting out all bedrooms when I am traveling.

Brad Rabinowitz: Close the public hearing.

4. ZP-22-199; 51 Elmwood Avenue (RH, Ward 3C) City DPW / Samantha Dunn

Establish temporary emergency shelter including 30 shelter pods, community resource center, and bathhouse. *Continued hearing rescheduled from July 5, 2022.* (Project Manager, Scott Gustin) Samantha Dunn, CEDO, Brian Dunkiel, Malachi Brennan, Kelly Devine, Christopher-Aaron Felker, Rebecca Hotaling, David Call, Ashley Thurgate, Trudy Richmond, Maria Vidale, Steph Holdridge, Kerri Duquette-Hoffman, Cooper Seigel, Ryan Allen, and Mark Bouchet Sworn in.

Brad Rabinowitz: Is the applicant here?

Geoff Hand: I am recused from this matter.

Brad Rabinowitz: Resuming public comment from the previous meeting.

Kelly Devine: Being put forward as a conditional use, how does the community resource center address the concerns of the neighborhood beyond the shelter pod community? This concern stems from a similar community center that was on South Winooski Ave. and I don't feel this is in keeping with the neighborhood. The sample management plan does not address the neighborhood beyond the pod village.

A.J. LaRosa: An argument was heard at the last meeting about V.S.A. 4413 and its implications on this City project.

Christopher-Aaron Felker: I am a neighbor living near the proposed pod village development and most of the plan for this project is woefully lacking the muscle including a management plan. The impact of 100 people coming to this neighborhood is an inappropriate use for the site and CEDO has not addressed the enforcement concerns of the neighbors.

Rebecca Hotaling: Beyond the pod residents, there are concerns of increased visitor traffic to the area that will cause overwhelming amounts of noise disruption to the peaceful enjoyment of neighboring properties. The foot traffic will also impact McKenzie House's residents' safety. At this stage, there is an unknown amount of screening to ensure the privacy and wellbeing of residents.

Brad Rabinowitz: The concern we are hearing now are the same as the concerns we heard at the last meeting.

David Call: I am not afraid of this project because the benefits of housing, employment securement, and social workers far outweighs the hypothetical issues raised by neighbors.

Ashley Thurgate: I am representing members of McKenzie House.

Trudy Richmond: My main concerns are the lack of safety and security proposed by this low barrier shelter. This will place an increased demand on an already dwindled police force. There are other examples of other homeless shelters that have caused more harm than good to neighboring residents.

Maria Vidale: Have you heard from people who have been homeless? I was for two years. You are not doing these people any favors by giving them a leg up, this is a handout. You are allowing and perpetuating the bad behavior that is already existing.

Steph Holdridge: This should be denied, and the homeless should be housed in motels for a year while more permanent housing is established. Are there plans to utilize the old Y as a temporary housing project?

Kerri Duquette-Hoffman: The agency I am part of is proud of this important step to improving the Burlington Housing market.

Brad Rabinowitz: Do you have anything to say in response to the other public comments?

Kerri Duquette-Hoffman: I don't have the authority to address this but reiterate the importance of this project.

Cooper Seigel: There is little protection from noise and light pollution, and I consider strongly that you fully evaluate the ramifications of this project. The neighbors and residents of this neighborhood were not informed about this project until recently and didn't have a voice in the planning process.

Ryan Allen: My life is centered around activism in the City of Burlington including homelessness and raising awareness to drugs and other negativities that follow the homeless population. Homelessness does not discriminate citing an example of a white woman with multiple degrees and housing that became homeless. The underlying issue isn't about the homelessness, but NIMBYISM.

Mark Bouchet: This location is contradictory to those that are most vulnerable and impacted by this project.

Brad Rabinowitz: Without a management team it is difficult to discern how this project, property, and everyday life will be managed. Do DRB members have questions for the applicant?

Malachi Brennan: Thank you for your time to review this project. We feel we have satisfactorily addressed concerns from the board in regards to waste, security, and management. The management plan does not relate to the authority of V.S.A. 4413 raised during public comment.

Brad Rabinowitz: We ask these questions to address public concerns about screening and setback requirements to appease everyone, not just one side of the argument or the other. Any other questions from the board for CEDO?

Sean McKenzie: There's a proposal to raise the curb, will this be in place after three years?

Samantha Dunn: It will be removed after three years.

Brian Dunkiel: We sent a letter in regards to a decision for this project.

Brad Rabinowitz: We have made the letter available for everyone involved.

Samantha Dunn: Starting July 1, 2022, 230 families are expected to be displaced from motel shelter projects.

Brad Rabinowitz: Close the public hearing.

VI. Other Business

None

VII. Adjournment

Hearing closed at 7:17 PM.



8-4-22

Bradford L. Rabinowitz, Chair of Development Review Board

Date



8-4-22

Joseph H. Cava, Permitting & Inspections Permit Technician

Date

Plans may be viewed upon request by contacting the Department of Permitting & Inspections 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/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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