

Burlington Development Review Board

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



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, July 6, 2021, 5:00 PM

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401

and

Zoom: <https://us02web.zoom.us/j/84713629087?pwd=Z29nZDd3ekc2U3pNdmVpVW4yVnJrUT09>

Password: 350327

Webinar ID: 847 1362 9087

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Minutes

Board Members Present: Brad Rabinowitz, AJ LaRosa, Brooks McArthur, Kienan Christianson, Caitlin Halpert, Chase Taylor

Board Members Not Present: Geoff Hand, Sean McKenzie (Alt)

Staff Members: Mary O'Neil, Ryan Morrison, Alison Davis, Kimberlee Sturtevant—City Attorney

I. Agenda

II. Communications

III. Minutes

IV. Consent

1. ZP-20-72; 15 Rockland Street (RL, Ward 7N) James Daigle

Request extension of ZP# 20-0687CA to construct new duplex. Two-car garage under each unit. Each unit having own driveway, front porch and rear porch. (Project Manager: Ryan Morrison)

James Daigle and appeared on behalf of item

No public appeared to provide testimony

B. Rabinowitz: Explains that staff is recommending approval. Asks if they have seen the staff recommendations.

J. Daigle: Looking for one-year extension due to labor shortages. No objections to treating this as a consent agenda item.

B. Rabinowitz: Asks if anyone from the Board or applicant has objection to treating this as a consent item.

None

K. Christianson: Motion to approve the application and adopt staff findings.

C. Halpert: Seconds motion.

6-0-0

2. ZP-21-421; 12-22 North Street (NMU, Ward 3C) Draker Solar Properties LLC

Converting basement space to small brewery and tasting counter. (Project Manager: Mary O'Neil)

Casey Thomas appeared on behalf of item
No public appeared to provide testimony

B. Rabinowitz: Explains that staff is recommending approval. Asks if they have seen the staff recommendations.

J. Daigle: Yes, No comments.

B. Rabinowitz: Asks if anyone from the Board or applicant has objection to treating this as a consent item.

None

C. Halpert: Motion to approve the application and adopt staff findings.

B. McArthur: Seconds motion.

6-0-0

V. **Public Hearing**

1. **ZP-20-671; 41 Pine Place (RM, Ward 5S) Sam Catalano**

Continued hearing for request of three-bedroom short-term rental (bed and breakfast) and two-bedroom boarding house within duplex. No construction proposed. (Project Manager: Scott Gustin)

Sam Catalano and Alec Slater appeared on behalf of application
No public appeared to provide testimony

B. Rabinowitz: Continuance from a previous hearing. Focusing on parking.

S. Catalano: From where we left off last time, the plan that we looked at before was cut-off and zoomed in, but I have the full size. Was able to find a pin for the property line. Explains the confirmed dimensions of the property lines.

B. Rabinowitz: Asks to clarify that the goal is to be approved for five parking spaces.

S. Catalano: Correct

B. Rabinowitz: Question about the previously determined grandfathered parking spot.

M. O'Neil: Clarifies that there was a determination that there is a undersized parking space there, and since it is an unenforceable violation it cannot be used towards any parking requirement.

B. Rabinowitz: Asks even though it is a parking space.

S. Catalano: Thought it was an undersized space because it was we didn't have proof that the space was deep enough.

M. O'Neil: Explains that it is an unenforceable violation and the City recognizes that it has been there long enough that it cannot take enforcement action against it. However, that space cannot be used as part of a parking requirement. You cannot use that space to your advantage.

C. Halpert: Clarifies that he would be required for what is in the staff report to essentially have seven spaces then that one can count because of the previously determined space.

A. Slater: We were under the impression that we only needed five spaces.

B. Rabinowitz: The staff report expresses that some were double counted.

M. O'Neil: A single family home still requires two parking spaces.

A. Slater: The fact that it is being classified as a boarding house is not accurate. It is a single person renting out that unit.

S. Catalano: Explains history with property. There are two three-bedroom units. Explains that he lives with roommates in one unit, and then the other unit is a three-bedroom short-term rental.

B. Rabinowitz: We have it in the staff report to be a two-bedroom boarding house with a duplex and then a three-bedroom short-term rental.

S. Catalano: This is where the project manager, Scott, and I have been disagreeing. I have brought forth the zoning application solely for the short-term rental in the other unit. He insisted that the use of my primary residence unit would be a boarding house, but it should not be.

B. Rabinowitz: Clarifies that it is not short-term.

S. Catalano: Correct. Long-term, full time renting. Have been living there for 4-5 years.

B. Rabinowitz: Understands what applicant is saying. Between the two three-bedroom units, you are living in one unit with long-term roommates. The other unit is being set up as a three-bedroom short-term rental.

C. Halpert: Asks if the three rooms would be rented together.

S. Catalano: Correct. Rooms will never be rented separately. The whole unit is rented as one.

B. Rabinowitz: Asks staff if a three-bedroom unit will count as a single-family dwelling.

M. O'Neil: Explains that she is not the project manager and is representing the project manager, Scott, who is not in attendance. Understood that Scott identified three uses on the property. A single family home, a boarding house, and a bed and breakfast (short-term rental). The boarding house and bed and breakfast require owner occupancy, which is evident on site.

B. Rabinowitz: Asks if the owner occupancy is in that interpretation, that any apartment in the City could become a boarding house if it had more than one bedroom.

M. O'Neil: Not necessarily, in this circumstance, as a duplex, the owner could live in one unit and renting out the bedrooms in the other unit.

B. Rabinowitz: Asks if someone is not renting out the bedrooms one at a time on short-term, wouldn't it just be a house and not a boarding house?

C. Halpert: Asks to bring up the definition for boarding house.

K. Christianson: Mentions the case that was cited by staff in the staff report and how it might be a problem for the applicant. Asks if the applicant has any thoughts or comments on the case that they want to bring to the Boards attention. Whether it is a boarding house or not, the case states that we can't count that sixth parking space.

A. Slater: Explains that there is room for five spaces, but not the six.

A. LaRosa: There was a comment in the staff report that the applicants have not requested a parking waiver. If they submitted a parking management plan with waivers for parking requirements, we would not have this issue.

B. Rabinowitz: Potentially, because we could waive up to half of the parking requirement.

M. O'Neil: Explains that the project manager indicated that there was no submission of a transportation demand management plan or request of a parking waiver.

S. Catalano: I had talked to Scott before he submitted these reports. He had brought up the parking waiver, but it was brought up and put in front of me like I needed to do this. I did not understand what the implications of that were. I did not realize what

problems that could solve since there is still disagreement on the use. If you are insinuating that I can do a parking waiver to take care of the parking issue, would like to do that. Was confused when it was first presented to me.

B. Rabinowitz: Asks to go back to the question of definitions of the terms for boarding house, apartment, and single-family home.

M. O'Neil: Reads definitions in the CDO.

B. Rabinowitz: Two separate issues. One is the parking and the other is determining a use. The suggestion of a parking management plan is smart because we could grant up to 50% of the required parking spaces. There is no question that there are four spaces. For the tandem, there does need to be some management regarding those spaces. Still having trouble with why it is single-family, boarding house and bed and breakfast. Asks if that fifth space actually meets all the setback requirements for a parking space.

S. Catalano: I believe so. The dimensions are more than the minimum required.

B. Rabinowitz: Questions and has applicant walk through site and show where fifth parking space is designated.

S. Catalano: Explains that early on Scott suggested that he got a parking easement, and so they got allowance and received the parking easement.

B. Rabinowitz: Asks if front yard parking is still relevant off a private street.

R. Morrison: Correct, there is no differentiation between the two. I am not the project manager, but from reading the staff report, it seemed like that fifth parking space, so you got the bianchi allowance for being there for more than 15-years, so it cannot be enforced against, but to take that space and put it towards the required spaces, is not allowed. It is an unpermitted space, but it cannot be enforced against.

A. LaRosa: If the waiver is down to four spaces, which would be within the 50% waiver, then the fifth space becomes irrelevant to our consideration.

B. Rabinowitz: Correct. I think AJ is coming up with the simplest way to resolve this. Rather than to resolve the issue with the use of the property, if there was a request for a two-space parking waiver, this could be a solution. Applicant would need to provide some management of the parking, the location, why there is a need for the waiver. If we have that request in front of us, we can act on that as a waiver for the full parking requirement. Might be the simplest way.

S. Catalano: Yes, agrees.

B. Rabinowitz: Asks if Board members have anything else to add or comment.

None

B. Rabinowitz: Invites for motion to continue public hearing to later date.

A. LaRosa: Motion to continue the public hearing to allow the applicant to submit a parking management plan and parking waiver. I move that we continue the item to August 3.

K. Christianson: Seconds motion

6-0-0

- ~~2. ZP-21-213; 38 Latham Court (RL, Ward 1E) Mark McGee~~ *Deferred to future meeting*
Two-story addition; first floor shop and second floor office space. Roof replacement. Patio door and window replacements. (Project Manager: Mary O'Neil)
3. **ZP-21-446; 501 Pine Street (ELM, Ward 5S) Vermont Gas Systems Inc**
Construct parking and service area for food truck stop (cafe). (Project Manager: Ryan Morrison)

Kurt Schueler appeared on behalf of item
No public appeared for testimony

B. Rabinowitz: Invites applicant to speak on project. Comments that it is a neat looking project and that it is recommended for approval.

K. Scheuler: Not much to add from what I presented in the application.

B. Rabinowitz: Asks about lighting plan, erosion control, trash receptacles. There is more that will need to be added to the plan.

K. Scheuler: Yes, can provide those.

K. Christianson: Asks about a traffic plan or any study for the Pine Street corridor.

R. Morrison: This property is in a parking district that does not have a parking requirement and is not a big enough development to trigger a transportation demand management plan.

A. LaRosa: Mentions amplified music and whether that is in the proposal or if there is any plan of loud or live music, concerts. Asks what the hours of operation are.

K. Scheuler: Proposed operational time is 11am to 10pm. As far as music, not planning to be a place to play music other than background music. That is not in the proposal. No plans of having concerts or live music.

B. Rabinowitz: Curious about the size. Asks about multiple food trucks and if there will be more than one at a time.

K. Scheuler: Correct, there could be more than one food truck, food cart or container kitchen.

B. Rabinowitz: Asks about the ground material proposed.

K. Scheuler: My proposal would be to use crushed stone or gravel for the driveway and the pads. For underneath the pergola, there is a sitting area and the rest would be grass. Shows engineered proposal plan.

B. Rabinowitz: Mentions that gravel gets pretty messy over time.

K. Scheuler: Was hoping to help the coverage and drainage.

B. Rabinowitz: Asks about signage, and that would have to be a separate permit.

K. Scheuler: Proposing very limited signage. Will be a different application.

B. Rabinowitz: Mentions to consider concrete instead of the gravel because of the easier maintenance. Asks about any lighting plans.

K. Scheuler: Thinking of proposing lights hanging from pergola, and then some walkway lighting.

B. Rabinowitz: Asks what pergola would be made of.

K. Scheuler: Thinking natural wood. Non-pressure treated wood, maybe redwood.

B. Rabinowitz: Nice looking project. Asks if there are any other questions or comments.

None

B. Rabinowitz: Closes public hearing.

VI. Executive Session

Anticipated discussion of pending litigation regarding 75 Cherry Street.

The Development Review Board took a request from City Attorney, Kimberlee Sturtevant, to go into executive session to discuss pending litigation and attorney-client

communications regarding a current lawsuit by 100 Bank Street against the City, including members of this Board and City employees.

K. Christianson: I move to find that premature general public knowledge of a discussion of pending litigation and attorney client communications regarding a lawsuit filed by 100 Bank Street against the City in relation to 75 Cherry Street, including members of this board and City employees, would clearly place the City at a substantial disadvantage because it risks disclosing its legal strategy if discussed in public.

C. Halpert: Seconds motion.

5-0-0 (AJ LaRosa, recused)

B. Rabinowitz: Based upon finding of substantial disadvantage, I move that we enter into executive session to discuss pending litigation and receive attorney-client communications regarding 100 Bank Street's lawsuit against the City in relation to 75 Cherry Street, including members of this board and City employees. I request the presence of Assistant City Attorney Kim Sturtevant, and outside Council for the City, Attorney Jennifer MacDonald, DRB staff Mary O'Neil, as well as other named Defendants if present including: Brad Biggie, Kim Ianelli and Springer Harris during the Executive Session.

K. Christianson: Seconds motion.

5-0-0 (AJ LaRosa, recused)

VII. Adjournment

Meeting adjourned 6:20 PM



Bradford L. Rabinowitz, Chair of Development Review Board

September 7, 2021

Date



Alison Davis, Zoning Clerk

07/08/2021

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.

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