

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax (802) 863-0466

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, August 3, 2021, 5:00 PM

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

and

Zoom: <https://us02web.zoom.us/j/89692878418?pwd=TnRaTHowMndSUjJIL3dCbXVYOTVBdz09>

Password: 302244

Webinar ID: 841 0653 0127

Telephone: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799

Minutes

Board Members Present: Brad Rabinowitz, Geoff Hand, Brooks McArthur, Chase Taylor, Kienan Christianson, Sean McKenzie (Alt)

Board Members Not Present: AJ LaRosa, Springer Harris, and Caitlin Halpert

Staff Members: Scott Gustin, Mary O'Neil, Ryan Morrison, Ted Miles, and Alison Davis

I. Agenda

B. Rabinowitz: No changes to the agenda.

II. Communications

B. Rabinowitz: All communications posted on website under meeting packet.

III. Minutes

B. Rabinowitz: Previous meeting minutes (7/20) posted under last meeting's packet [online](#).

IV. Public Hearing

1. ZAP-21-12; 37 Hungerford Terrace (RH, Ward 8E) Kenneth Baldwin

Appeal of zoning violation #392880 for an unpermitted short-term rental. (Project Manager: Ted Miles)

Kenneth Baldwin appeared on behalf of violation

No public provided testimony

T. Miles: Introduces self. Explains that the violation is for operating a short-term rental without obtaining a zoning permit for that use. Explains situation with mailing address. Warning letter was sent to Los Angeles because that was the mailing address the City had and the letter was not returned. With no action, the warning turned into a violation. The certified letters of violation were returned as undeliverable, but the first class warning letter was never returned. Property owner has appealed the violation. The City has allowed him to appeal due to the notifications, but the owner is not denying that the property has been being used as a short-term rental without proper permits. City is looking to uphold the violation and discontinue the use of the short-term rental within 30 days because the owners do not live in the area.

B. Rabinowitz: Asks that the owners living in proximity is a condition for short-term rentals.

T. Miles: Correct.

B. Rabinowitz: Introduces property owner to speak.

K. Baldwin: Explains that they had not been living at that address when the letters were sent. Once we were notified about the violation through our lawyer, we immediately took action to make sure we took the correct steps. Did not know that AirBnBs are not allowed in Burlington because there are so many of them. Explains that they have attended all of the short-term rental proposal meetings with the Planning Department. Since nothing had been passed, did not think that anything was wrong or that there were regulations around them. Since nothing has been passed by the City yet, is asking for conditional approval to keep the Airbnb. Because what they had proposed from the Planning Dept, it would allow us to continue to use our property as a vacation property.

B. Rabinowitz: Asks if he has ever looked in the Code for the definition of bed and breakfast.

K. Baldwin: Asks to explain.

B. Rabinowitz: Explains that there are zoning regulations, and in there, there is a definition for a bed and breakfast, which the short-term rental is considered.

K. Baldwin: Yes, looked at that. We are not living on the property. It is a single-family house. We rent to many UVM parents who are visiting excited to be close to the campus and downtown.

B. Rabinowitz: The criteria for a bed and breakfast is that it is owner occupied.

K. Baldwin: We are about three hours away from Vermont and we come and visit sometimes.

B. Rabinowitz: Asks about request. Clarifies that the applicant is asking that you will be granted a use that is pending on the hope that what you are doing with your property eventually becomes a conditional use for zoning or something. Correct?

K. Baldwin: Yes, it has become a grey area with the City. There are many other single-family homes being rented out with owners not living on the premises.

B. Rabinowitz: Asks that is not their intention to live at the property, you would like to continue using it as an Airbnb and then sometimes it is available to you as a vacation place.

K. Baldwin: When we first bought the property, we were living in the house. I had been wanting to go back and forth and keep the house. When I bought the property, the goal was that I could keep the property and be able to come back and forth. Or eventually use the property and live there.

B. Rabinowitz: Asks if the whole house is rented or if it is just part of the house.

K. Baldwin: It is a three-bedroom house, so the entire house is available.

B. Rabinowitz: Explains that we do not know what decisions the Planning Commission or the City Council is going to make. Being owner occupied, is one of the main conditions.

K. Baldwin: Explains that in the letter he submitted, there were proposals that it would be a conditional use in residential districts when a host lives off site for a while unit short-term rental. Asking for more time until the Planning Department can figure out the regulations for short-term rentals.

B. Rabinowitz: Explains that when something is going through that process and might get approved, it is usually not a quick process.

K. Baldwin: The governor stands on the side of supporting BnBs. We are not running a bed and breakfast, but a short-term rental.

G. Hand: Asks if he has considered long-term rentals.

K. Baldwin: Yes, we have considered that as well. The place is furnished and we would have to figure out how to navigate that. It does not work for us to be able to use the property half of the year and being able to enjoy owning the house. If we get someone in there to rent, they would be taking over the place permanently.

K. Christianson: Asks about the letters and why they were not received and why the address was not updated.

K. Baldwin: We were not living at that address. That is why it was returned.

K. Christianson: Asks if the City has an updated address now.

K. Baldwin: Yes.

B. Rabinowitz: Explains that deliberation will happen after the meeting. Closes public hearing.

2. ZP-21-508; 31 North Ave (RM-W, Ward 3C) Steve Trombley

Variance for front yard setback along Depot Street. (Project Manager: Scott Gustin)

Steve Trombley appeared on behalf of variance request

Bill Pearson, Sally Edith, Susan Eisenstadt, and Karl Miller provided public testimony

B. Rabinowitz: Explains that this application is for a variance for the front yard setback along Depot Street. Explains that it is odd that this is a North Ave address, but the front yard setback variance request is for the side that faces Depot Street.

S. Trombley: Yes, this variance has been approved prior to this but it had expired, so we are trying to renew it. We just received notification that they are readdressing it to 120 Depot Street.

G. Hand: Mentions that he has been down Depot Street recently, and Depot Street is closed and cannot drive on it. Is trying to understand what the future of this parcel holds.

S. Trombley: My understanding is that having this only access on Depot Street, there would be an exception made to allow for access to this lot, since it is the only access to the lot.

G. Hand: Asks if there is any other way to access it.

S. Trombley: No access unless someone is willing to provide an easement. The property does not reach North Ave.

B. Rabinowitz: Asks if there are any other properties that are similar to this. Asks about topography from Depot Street into front yard.

S. Trombley: Yes, it would work. The only logical access is from off of Depot Street.

G. Hand: The lot is an extreme slope, and Depot Street is also.

S. Trombley: It is straightforward if you are standing on Depot Street. It is a reasonable slope.

S. McKenzie: Asks about the City services like water and sewer from Depot Street.

S. Trombley: Yes, there is access to those services. We have checked those.

K. Christianson: Asks to clarify that this is just a variance request and there is no proposal for construction in this application.

S. Gustin: Exactly, this is just a variance request regarding the front yard setback. If the variance is granted, we may see an application for construction in the future, but that is not what we are reviewing.

B. Rabinowitz: Invites public to comment.

S. Eisenstadt: Introduces self. Explains that in relation to the variance, she was in a meeting two years ago when the previous buyer asked for the variance. We were told at that time that there would be no further variances. That was one of the questions that I had because it was clear at that time that there were going to be no more variances. We are concerned being bike riders and use Depot Street almost daily. Depot Street is filled with cyclists, runners, walkers, dogs, and children. We are also concerned with erosion. Have had a previous natural disaster on property from a storm. Concerned about construction and how it would affect our adjacent property and the bank.

G. Hand: Asks about the stone wall on the plans that is marked to be relocated. It looks like some of the stone wall is on your property. Is that related to the retention for your property?

S. Eisenstadt: Not sure of the answer.

B. Pearson: Explains that he had sent a description of his concern to the Board. Question is if the front yard setback from the edge of the lot, or is it from the asphalt from Depot Street.

B. Rabinowitz: Answers that it is the front of the lot

B. Pearson: I had originally wrote about concerns with stormwater, but I was thinking it could be 10 ft from the asphalt, but if it is 10 ft from the edge of the lot, my concern is relieved.

S. Edith: Concerns about stormwater. No longer has the concern, but wanted to comment to be involved in process.

B. Rabinowitz: Property is essentially on a City Street that is not available. Do not enter from both ends.

S. Gustin: I have checked in with Public Works staff, and to paraphrase, they would allow vehicular access to this property because it is existing. Not opening up the street for normal usage.

G. Hand: Asks about the prior variance being the last variance granted. Asks if he knows what she was talking about.

S. Gustin: Thinks that the "last" was the extensions of the variance. The variance was granted, and then it was extended two or three times. The previous extension was the last one, which is why we have a new application.

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

None

B. Rabinowitz: Closes public hearing.

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

Request for 3-bedroom short-term rental (bed and breakfast) and 2-bedroom boarding house within duplex. No construction proposed. (Project Manager: Scott Gustin)

Sam Catalano appeared on behalf of application

B. Rabinowitz: Confirms that he is asking for a two-space parking waiver.

S. Catalano: Yes, was able to request up to 50% for a parking waiver, so I went ahead and did that.

G. Hand: Clarifies that there are two tandem parking spaces. Four spaces in total, and two of those tandem. One of them is used for the residents, but the parking for the short-term rental will be in tandem.

S. Catalano: Yes, correct.

G. Hand: I think we are only allowed to approve that if a parking attendant is provided and available at all times. S: The way that the house is split vertically, the side that will be short-term rental, they have full access to garage and the parking spot behind the garage in tandem. I can control the parking on my side, and then the short-term renters can control the parking on their side.

B. Rabinowitz: Asks if he has noted that it is rented out to one renter group at one time.

S. Catalano: Correct. Only one rental group/person at a time.

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

None

B. Rabinowitz: Closes public hearing.

V. **Certificate of Appropriateness**

1. **ZP-21-412; 141 Starr Farm Road (RL, Ward 4N) Kyle Haggerty** Demo and construct single family home. (Project Manager: Mary O'Neil)

Kyle Haggerty appeared on behalf of the application

B. Rabinowitz: Invites applicant to speak.

K. Haggerty: Was asked to do a remodel and found that the foundation was crumbling. Windows were all rotten. So decided to go ahead and demo and start from scratch.

B. Rabinowitz: Application was recommended for consent. Explains that we may need a more specific landscaping plan. Garage plans are vague too. Confirms that the garage will have the same materials and design as the house.

K. Haggerty: Correct.

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

None

B. Rabinowitz: Closes public hearing

VI. **Sketch Plan**

1. **ZSP-21-2; 237-241 Riverside Ave (RCO-C, Ward 1E) Stephen Kredell** Multi-family apartment building. (Project Manager: Scott Gustin)

Stephen Kredell appeared on behalf of project
Sharon Bushor provided public testimony

B. Rabinowitz: Invites applicant to speak.

S. Kredell: Explains that this is a multi-family building that we are considering on Riverside Ave. Next to car wash and water treatment plant. Touches on project goals. New modern housing, energy efficiency, affordable, minimizing car use. Proximity to bike path and bus stop. Sixty-five rental units. Using less energy makes the units more affordable. Shows location in plans. Two different zoning districts on the lot. NAC-R and the RCO zones. Trying to take focus away from the water treatment

plant. Parking on site. About 48 parking spaces. Encouraging less vehicular use. Bike storage and bike maintenance. Each of the units are going to be pretty small. We will have 24 units on each level. About 350 sq ft or so. Different amenities in building. Proposing natural materials.

B. Rabinowitz: Asks about the unit sizes.

S. Kredell: The first and second floors, they are about 365 sq ft each. Loft units have living on lower floor and sleeping on upper floor.

B. Rabinowitz: Asks who is the target audience.

S. Kredell: Could be for a single person or couples. During the NPA meetings that we have had, we see it as people who are trying to downsize but also for people who are trying to get into Burlington and need a foothold, and want to live on their own.

K. Christianson: One of the issues with Riverside Ave is slope stabilization and erosion. Asks what type of work has been done and is planned to be done to make sure there is a stable slope to support the building.

S. Kredell: We have had geotechnical tests done initially and we are going to do a second round of those. We are going to do soil borings at key locations. This slope is steep at the bike path, but then levels out. So far with all of our studies, we have no concerns.

B. Rabinowitz: Explains that they do have a 15-20 ft change in elevation in the NAC zone. Slope stability and erosion is something that is going to have a lot of attention and questions. They will want to see a lot of information on that.

G. Hand: Mentions that the Board just recently required a developer to do a full geotechnical analysis and engineer's opinion that it was safe to build. I would expect we ask something similar to that for this application.

S. McKenzie: If there are any retaining walls, they would have the same intense scrutiny especially on that side of the road. There are quite a few things I like about the project.

B. Rabinowitz: Asks to clarify what the front yard and side yard setbacks that go with this.

S. Gustin: There is only a setback from the curb, but there are no side yard setbacks.

B. Rabinowitz: Asks if the curb set back is the typical 12-feet that we see.

S. Gustin: Correct.

B. Rabinowitz: Good looking building. Exciting project. Traffic might be something concerning since Riverside Ave is busy. Will probably want to see some sort of traffic analysis.

S. Kredell: That is already in the works.

G. Hand: Asks if the driveway is a little west of the traffic light that is there.

S. Kredell: Correct, that light goes right into the car wash. One big question for us is that we think it would be great to have people on the site, and to continue this plan to angle the housing so that the water treatment plant is out of view.

B. Rabinowitz: Asks about the comment in staff report about the visitor parking in the front of the building.

S. Gustin: There are two points of clarification that I had for the Board. Your point was one of them, whether the visitor parking is acceptable. The other issue is that under the CDO, not possible to build units in the RCO zone.

G. Hand: Asks if it would have to be a change in the Ordinance to facilitate this approval.

S. Gustin: Yes is the short answer. I looked at the 1994 Zoning Code and it articulates in some detail, but the CDO is silent about it.

B. Rabinowitz: Asks what other permitted uses are in the RCO zone.

S. Gustin: Not much. Housing is not one of them. Explains that the building would not technically be able to cross the zoning boundary line because of the housing use it would be. That use is not allowed in the RCO zone.

S. Kredell: We were hoping, since it is exceptional that we are next to a wastewater treatment plant, keeping with the spirit of the neighborhood activity center, we think it makes it more usable if we can angle the building. It is going to make it that much of a better place to live compared to if you were looking over a wastewater treatment plant. Asks what the steps would be to change the zone.

S. Gustin: Explains how it would need to be reviewed and approved. Would have to go through Planning Commission first and then City Council.

B. Rabinowitz: Agrees design-wise that it complements the project. Invites public to speak.

S. Bushor: Expresses concerns about the RCO zone, and feels strong for protecting that as a zoning area. UVM tried to put in their emergency response and go into the RCO a little bit, and rightly so, I think we need to be guarded about what we allowed in the RCO. If you re-zone that area, it could be considered spot zoning. The project looks great and the micro-units are a great plan. It is a great approach. Concerned about the site. Glad to have some analysis for the land stability. Concerns about the river. It is a protected area, Salmon Hole Park, with a walkway that is handicap accessible. There was a lot of work and thought put into this area for preservation but also allowing development. Not sure if the applicant can not have that interesting angle, but recommends exploring other options to see if the building has to stretch into that zone. Brings up the concern that there is a terrible odor from the wastewater treatment plant and would feel bad for the people that would live there all the time. Not sure how that can be addressed.

S. Kredell: We have talked to DPW about that. There is definitely an odor at times. I understand about not wanting to reach into the RCO zone, but this is an exceptional site because of where it is located. We have talked to people who maintain the trails along the Winooski River and we have talked about adding access down to that trail and making it even more accessible.

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

None

B. Rabinowitz: Closes item.

VII. Other Business

2. ZP-21-302; 81 Dunder Road (RL-W, Ward 5S) Jonathan Heller

Request to consider condition #2 of zoning permit #21-0909CU. (Project Manager: Ryan Morrison)

Jonathan Heller appeared on behalf of request
Thomas Walsh provided public testimony

J. Heller: Is concerned with the supply chain constraints and how booked out contractors are, it is going to be difficult to get it done in the three-month time frame. Explains difficulty of finding a contractor and price of project. Concerned that there is not enough time. Asking for an additional 180-days. If we run into winter and it is not finished, it would not be an issue.

G. Hand: Asks how many contractors he has talked to about doing the project.

J. Heller: Explains that two people contacted him out of the 35 people he reached out to.

G. Hand: Asks if the contractors gave him a time frame for the project.

J. Heller: No.

G. Hand: Asks if he asked for a time frame.

J. Heller: Yes, asked if he could get it done right away and said yes. He did not give me a finish date. Explains that the area is difficult to dig in because it is ledge and blasted rubble.

B. Rabinowitz: Yes, 450 per ft for a fence seems outrageous.

S. McKenzie: Asks if the applicant has explored other fence options that would not penetrate the ground as deep.

J. Heller: There are a few tree stumps that could be possibly used as a brace.

B. Rabinowitz: Clarifies that he is asking for 6-months from the date of the decision.

S. Gustin: Yes, decision date was June 17th.

G. Hand: Asks if the applicant is asking for an additional 180-days, so 270-days in total.

J. Heller: Yes, 180-days brings us into February, so it would not give us time to work with. In normal times, 90 days would probably be fine, but the supply chains are so backed up.

G. Hand: Mentions the comment that was submitted that asked whether the Board should suspend the use of the Bnb until the fence is installed. Asks what period of time would be needed if that was the case.

J. Heller: Explains that the process would not speed up if he is losing income.

G. Hand: The process might speed up if you want to get that income back.

J. Heller: Explains that he is trying to do this as fast as possible.

B. Rabinowitz: Invites neighbor, Tom Walsh, to speak.

T. Walsh: Explains that he is frustrated and not having patience is because the rental activity started almost 2.5 years ago. If the application was accurate and if this rental was reviewed, the DRB would have reviewed the impacts and likely required a fence. If the fence was required then as it is now, the rental activity would not have been allowed to start until the fence was up. Has been subject to this activity for 2.5 years. To wait another nine months for a fence is unreasonable. I called the Middlebury Fence Company. I asked if they construct privacy fences in Burlington. Yes, they do. I asked when could they build it, and they said by the beginning of November. When I talked with Mr. Heller a week or two ago, he had only talked to one or two contractors. He is not putting a reasonable effort in. Has had 90-days to construct this, and he still has no contractor or application. Whatever extension you give, we will probably be back with another extension. If the time extension is granted, I request to stop the rental activity until the fence is installed.

B. Rabinowitz: Asks if there are any other questions or comments. Explains that this will be discussed during the deliberative session. Closes item.

VIII. Adjournment

Meeting adjourned at 6:45pm



Bradford L. Rabinowitz, Chair of Development Review Board

September 7, 2021

Date



Alison Davis, Zoning Clerk

8/12/2021

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. 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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