

## Burlington Development Review Board

Department of Permitting & Inspections  
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Brad Rabinowitz  
AJ LaRosa  
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Brad Rabinowitz  
Caitlin HaLee Perry  
Chase Taylor  
Vacant  
Sean McKenzie, (Alternate)



### BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 5, 2021, 5:00 PM

#### Minutes

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

**Zoom: <https://us02web.zoom.us/j/81232279645?pwd=Z0FxBm99ZjZlZDRRdmowY0ttcm4rV3p2QT09>**

**Password: 360747**

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**Board Members Present:** Brad Rabinowitz, AJ LaRosa, Caitlin Halpert, Chase Taylor, Kieran Christiansen, Sean McKenzie (Alt)

**Board Members Absent:** Brooks McArthur, Geoff Hand. AJ LaRosa leaves early.

**Staff Members:** Scott Gustin, Mary O'Neil, and Ryan Morrison

#### I. **Agenda**

An Executive Session has been added. No other changes.

#### II. **Communications**

#### III. **Minutes are posted.**

#### IV. **Public Hearing**

##### 1. **ZP-21-648; 702 Lake Street (UR, Ward 3C) City of Burlington**

Conditional use application for continued snow storage in the Urban Reserve. (Project Manager, Scott Gustin)

Lee Perry, Division for Maintenance Division, Department of Public Works. Mr. Perry defines the application.

Brad Rabinowitz: Same area used in the past?

Lee Perry – I have been here 14 years; same area.

Brad Rabinowitz - any damage from salt, etc./

Lee Perry – Fine. Sediment control area, sediment pond. It is an elevated area.

Vegetation is really good.

Kieran Christiansen: Is the whole area clean?

Lee Perry – Try not to push into the swales, into the bank. There is path down to the dump area by the skate park. People do get down in there. We frequent it through the summer, homeless camps. Trash that is scooped up in the snow piles; we go down and pick up the junk. The snow is piled at the north end, higher. Trash is contained in the snow piles. Does not blow around, wet in the snow.

Scott Gustin – Conservation Board reviewed last night recommended approval.

Brad Rabinowitz – closes public hearing. 5:08pm.

**2. ZAP-21-14; 716 Pine Street (E-LM, Ward 5S) 716 Pine Street, LLC**

Appeal denial of zoning application for new main entrance to the building and change of use to food & beverage processing with tasting room). (Project Manager, Scott Gustin)

Donna Church, representing the applicant.-

Matt Wilson – with Rob Downey.

Sworn in.

Scott Gustin – explains application and appeal. A number of breweries in the E-LM zone. Definition of Food and Beverage Processing says Cafes and restaurants are only allowed as an accessory use. IN the Enterprise zone, Cafes are allowed; restaurants are not. A tasting room is not your typical café. It serves beer, but also food service. We have made a point of sticking with the 2000 sf size limit for cafes. Citizen Cider is permitted with 1500 sf food and drink service area. Queen City was permitted for 2000 sf. Burlington Brad Brewery was permitted with 2000 sf expressly approved. Switchback predates CDO; approved May 2006. They have a floor plan that shows 830 sf of tasting room. Applicable standards are not crystal clear. There is interpretation that needs to take place. But our responsibility is being consistent in our interpretation. The 2000 sf fits into the accessory box, is allowed in the enterprise zone. Zero Gravity came in above the 2000 sf, so it was denied.

AJ LaRosa – where in the regulations, defining accessory.

Scott Gustin – Size, sale, temporal extent.

Brad Rabinowitz – percentage of food versus liquor?

Scott Gustin – We have three different categories; not perfectly matched. Café is 2000 sf refers to food and beverage; restaurant and bar, bar is linked to sales. They relate but not a clear delineation between the three.

Brad Rabinowitz – the intent was not to have restaurants in this zone.

Scott Gustin – Small scale uses – general retail is permitted; large is conditional use. Oddly, large scale can only be accessory use. Intention to be small and accessory; manufacturing uses.

Kienan Christiansen – practical impact? It looks like a tasting room and a bar. The public is used to using it. What is the practical impact?

Scott Gustin – not readily discernable to the public.

Brad Rabinowitz – parking requirements in this district?

Scott Gustin – no, not now.

Applicant team: Donna Church, speaking on behalf of Zero Gravity. Permit should have been permitted as an accessory use. 24,807 sf total. Great Northern operates next door, wants to get out of the Cafe business entirely. Zero gravity wants to expand its tasting room, 20% of the brewery. By allowing the tasting room to expand into the adjoining space, no impact. No adverse effect to the area. Food and Beverage Processing is only allowed in the ELM zone. Zero Gravity is appropriately located. Tasting room meets accessory use. Restaurant is listed as an exception as an accessory use within Food and Beverage Use. Tasting rooms are not a defined use in the ordinance. A tasting room cannot exist without a brewery. Any food and beverage use should be allowed the accessory uses defined. The interpretation of the ordinance has limited the opportunities in the E-LM. Beauty and Barbershops (Salon Cruz, and XXX) were approved as accessory uses. We could suggest that restaurants could be identified as a Conditional Use, when associated with Food and Beverage Use. (Explains intended use of Enterprise District).

Brad Rabinowitz – basically you are expanding your existing tasting room to take over the Great Northern space?

DC – Yes.

Brad Rabinowitz – any expansion of the existing production?

DC – correct. Primary reason for a tasting room is to allow the public to taste the product. Requirement of the Department of Liquor Control to offer food.

Brad Rabinowitz – is it pretty much the same as a restaurant?

DC – A restaurant that highlights one product.

Kienan Christiansen – the 25% cent rule – not exceed 25% of the gross sales. My understanding is that the tasting must have less than 25% of the sales. Is the bulk of your revenues coming from your tasting room?

Rob – far less than 25%. Revenues probably 8-10% relative to the production.

Brad Rabinowitz – double the size, double the income?

Matt Wilson – still less than 25%.

Rob – Business plan, internally shows the 3 million dollar range. Our production revenue is 15 million.

Brad Rabinowitz – I believe the intent is to have the enterprise zone remain as production, manufacturing, not other uses. Housing isn't allowed.

Rob – we talked internally about that; higher wage, good mix for the neighborhood, not lower wage service jobs. If somebody wanted to come in an open stand-alone restaurant at 4,000 sf, it would not be allowable. It would have to come in as an accessory use. Take 16,000 sf building to have a 4000 sf restaurant. It isn't going to happen. The 25% is quite clever, it will prevent a stand-alone restaurant.

Matt Wilson – Kienan asked an important question; what is the practical impact. The changes we are looking to make are very minimal from how it is being used. Front-of-house space exists. Opening up that space will be critical to our success. In practical matters, nothing is really changing besides opening up a wall.

SCOTT GUSTIN – Food and beverage processing is allowed in all the neighborhood activity zones (4 of them) and it is a permitted use. Donna pointed out salons permitted as accessory in ELM – done administratively by my predecessor; and those two decisions converted primary and accessory use to shoehorn not permitted uses into the district.

Brad Rabinowitz – does the measurement include interior and exterior spaces? Great Northern used the porch area for dining.

DC – yes, with Covid, highly used areas.

Brad Rabinowitz – you would use those too?

DC – Yes. Seasonally.

Brad Rabinowitz – but your have not added those areas in your calculations...

DC – Tasting rooms have only been counted as accessory spaces inside. Only used seasonally.

Matt Wilson – during the nice parts of the year, everybody sits outside. During the crummy parts, everyone sits inside.

Sean McKenzie – Your tasting room is almost 5,000 sf. Is this an accessory bar, given the definition of a restaurant versus the definition of the bar?

DC – Tasting room is specific to a brewery. About exposing your product to everybody. People come to taste the beer all day long.

Rob – The connection with craft brewery – there are now 8700 in the country. The vast number have adopted, rely on tasting rooms – tourists come in; take that experience back to Boston or wherever they came from. That how Zero Gravity has defined itself. To reach those customers, affect the brewery throughout the region.

Matt Wilson – some grey area – interpretation needed. Change we are requesting is a minor change; allow both businesses survive.

Brad Rabinowitz – close public hearing 5:44 PM.

**3. ZP-21-481; 166 East Avenue (RL, Ward 1E) Cynthia Cook**

Short-term rental of downstairs unit of owner-occupied duplex. *Continued hearing.* (Project Manager, Ryan Morrison).

Cynthia Cook present.

Sworn in.

Applicant presents revised site plan.

Brad Rabinowitz – closes hearing 5:49 PM.

**V. Certificate of Appropriateness**

**1. ZP-21-640; 483 Manhattan Drive (RM, Ward 2C) Matt Brouillard / MBVT, Inc**

Demolish existing single family dwelling and construct duplex. (Project Manager: Ryan Morrison)

Matt Brouillard present.

Neighbor present. Both sworn in.

Matt Brouillard – DAB recommended revisions. We planned to make the walkway 4' wide, Brought the landing closer to the street to make it more inviting. Vertical board and batten siding.

Brad Rabinowitz – No eave detail. Metal overlapping

Matt Brouillard – a slight eave. Garden area in the front.

Caitlin Halpert – you have not detailed what you plan to plant.

Matt Brouillard – No.

Brad Rabinowitz – Is tree in backyard staying?

Matt Brouillard – that is being removed.

Brad Rabinowitz – curb cut stays the same?

Matt Brouillard – widened a little bit. We are talking with Caleb (Manna.)

Brad Rabinowitz – is the green belt wide enough for trees? This is a part of the city that has a dearth of street trees.

Brad Rabinowitz – a fairly bleak set of plan drawings. Bedrooms?

Matt Brouillard – 5 and four bedrooms.

Neighbor – 489 Manhattan Drive – (signed Scott Gustin.) Building is fairly tall. Snow will come down. Where will they park? How many stack there?

Brad Rabinowitz – asks to show site plan.

Neighbor – I do not see that happening. Snow removal has always been an issue with that residence. If it is going to be pushed to the left, that will be where my furnace vent is.

Brad Rabinowitz – You are right. Snow will come off, pile up. He will be obligated to keep it off your property.

Neighbor – parking looks good. No company. Parking is very challenging. Keep that in mind.

Matt Brouillard – there will be a walkway on the left so residents can walk to take out the trash.

Brad Rabinowitz – crushed stone? You are setting yourself up for some challenges in snow removal. Something you need to maintain.

Ryan Morrison – front door, went against what the DAB recommended. DRB decisions in the past have required that the door face the street. What the applicant proposes, door does not face the street.

Brad Rabinowitz – it looks like an entrance, as it was designed. We will discuss at deliberative.

Brad Rabinowitz – closes public hearing 6:04 pm.

**2. ZP-21-645; 130 Mansfield Avenue (I, Ward 1E) David Valyou / CSC McAuley, LLC**

Remove 13 trees from northwest corner of property. (Project Manager: Ryan Morrison)

Applicant David Valyou present via Zoom.

Sworn in.

Brad Rabinowitz – arborist has looked at this. You are cutting 13 trees out of how many?

David Valyou – 40-50, mostly black locust. Near the walkways, buildings. Showing signs of deterioration.

Brad Rabinowitz – what do you do with the wood?

David Valyou – tree service will take it.

Brad Rabinowitz – too bad. Nice wood.

Caitlin Halpert – Just taking them down, not replacing them.

David Valyou – there are some small trees in the area, we will let nature take its course.

Brad Rabinowitz – stump grinding?

David Valyou – no, do not want to disturb the area.

Brad Rabinowitz - how high above the stump?

David Valyou – within 6-8 inches of the ground. There is young growth in there already.

Brad Rabinowitz - this is an area that does not lack trees.

Closes PH 6:08PM.

Two people in attendance for a Wells Street review. Ryan informs that the application for a short-term rental was withdrawn.

## **VI. Executive Session**

Motion to go into executive session: Caitlin Halpert.

I move to find that premature general public knowledge of a discussion of pending litigation of DRB decisions and attorney client communications made for the purpose of providing professional legal services to the DRB would clearly place the DRB/City at a substantial disadvantage because it risks disclosing its legal strategy if discussed in public.

2<sup>nd</sup> – Chase Taylor

Vote 5-0

Kim Sturtevant present.

Sharon Bushor and Zero Gravity folks put in a waiting room.

Zoom recording stopped.

Caitlin Halpert makes second motion:

Based upon finding of substantial disadvantage, I move that we enter into executive session to discuss pending litigation and receive attorney-client communications regarding pending litigation pursuant to 1 V.S.A. Section 313 (a) (1) (E) and (F). I request the presence of Assistant City Attorney Kim Sturtevant and Assistant Administrator Officers Scott Gustin, Mary O'Neil and Ryan Morrison during the Executive Session.

Kienan Christiansen – 2<sup>nd</sup>.

Vote 5-0

Motion to leave executive session: Kienan Christiansen.

2<sup>nd</sup> – Chase Taylor  
Vote 5-0.

**VII. Adjournment 6:30 pm.**

**VIII. Deliberative Session**

Motions recorded separately in project findings.

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Bradford L. Rabinowitz, Chair of Development Review Board

Date

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Mary O'Neil, Principal Planner

Date

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