

Burlington Development Review Board

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



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 18, 2022, 5:00 PM

MINUTES

Remote Meeting

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

Board Members Absent: Sean McKenzie

Staff Members Present: Scott Gustin, Ryan Morrison, and Joseph Cava

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

1. **ZP-22-251; 11 Flynn Avenue (RCO-RG, Ward 5S) City DPW Parks & Recreation Department / Jon Adams-Kollitz**
Addition of accessible parking area and pedestrian connections to Universally Accessible Playground. (Project Manager, Scott Gustin)
Jon Adams-Kollitz: Sworn in.

AJ LaRosa: This project was previously approved by the Burlington Development Review Board, and therefore, won't be an item on this agenda.

V. Public Hearing

1. **ZP-22-520; 175-177 South Prospect Street (RL, Ward 6S) Eleanor Lanahan / Bob Duncan**
Convert existing living space into new apartment. (Project Manager, Ryan Morrison)
Eleanor Lanahan, Bob Duncan: Sworn in.

Brad Rabinowitz: For the record, I do know the applicant and the architect. No one voiced objection to Brad's participation.

AJ LaRosa: Can you tell us about this project?

Bob Duncan: We are proposing to use the addition that was built in 2008 as a new apartment. The existing addition has its own water and utility services. No exterior changes are proposed at this time.

AJ LaRosa: Looking over the conditions, are you closing out the old permits and obtaining a certified letter from the Department of Public Work for water and sewer capacity?

Bob Duncan: Yes

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AJ LaRosa: Any questions from the public? Hearing none, are there any questions or comments from the Board? Hearing none, I move we close the hearing on this item.

Caitlin: Motioned to approve, Brad Rabinowitz 2nd. Vote 7-0. Motion carries.

VI. Certificate of Appropriateness

1. ZP-22-416; 323-325 College Street (RH, Ward 8E) Advanta Ira Services, LLC / FBO Peter C. Potts / Benjamin Frye

Construction of 4-unit building addition with associated utility work and minor grading. (Project Manager, Ryan Morrison)

Ryan Morrison: The applicant has requested deferral of this application to November 15, 2022.

AJ LaRosa: Motioned to defer to the November 15th DRB meeting, Brad Rabinowitz 2nd. Vote 7-0. 6-0. Motion carries.

2. ZP-22-489; 251-253 South Union Street (RM, Ward 6S) Daisy Properties, LLC / Stephen Kredell

Construction of 5-unit building addition utilizing adaptive reuse of a historic structure. (Project Manager, Scott Gustin)

James Dufour, Sharon Bushor: Sworn in.

AJ LaRosa: James, can you give us some detail on the background of this project?

James Dufour: This is an amendment to a previously approved permit. The board previously approved eight residential units, and the new plan is utilizing adaptive reuse bonus for a total of thirteen units.

AJ LaRosa: Are there any questions or comments from the public?

Leo Sprinzen: The recommendation is for initial review and continuance?

AJ LaRosa: Yes, the idea, speaking with the applicant is to have a full picture of the project including inclusionary housing units and traffic impacts based upon higher residential density.

James Dufour: We agree with the conditions of approval, but there were some last minute changes that weren't able to be brought here tonight.

AJ LaRosa: Scott, what have we done in regards to inclusionary housing projects?

Scott Gustin: Confirmation of size and amenities in comparison with other market rate units.

James Dufour: The repetition of window units is a grey area for this project. We've been working with the National Parks Service to keep this new back building compatible with the existing historic building while differentiating between what is old and what is new.

Brad Rabinowitz: I have a question about the proposed parking that was previously approved as green space.

James Dufour: This was an oversight after working with the neighbor to implement parking on that side of the property linking it with the addition.

Brad Rabinowitz: It seems unusual that full floor plans weren't submitted with this project. How many bedrooms are in each unit?

James Dufour: These are studio units with bedroom lofts.

Brad Rabinowitz: What are the colors of the building addition?

James Dufour: The colors are subordinate to be complimentary with the existing structure but not mimicking the existing building.

Leo Sprinzen: Are there any ADA units?

James Dufour: I'll have to check with Steve about that.

Leo Sprinzen: What is the proposed window pattern?

James Dufour: We are keeping our existing vertical double window to provide adequate light without conflicting with the windows on the existing building.

Leo Sprinzen: Is there access to the basement for residents?

James Dufour: There will be access with storage, but it will mostly be mechanical implements.

Geoff Hand: We will need additional information shown on previous plans.

AJ LaRosa: Are there any questions or comments from the public?

Sharon Bushor: It is my understanding that the historic nature of this property allows the additional units, but I question what taking away this green space for parking spaces will do to lot coverage. I applaud the applicant for the subtle changes that don't take away from the historic structure, but like the continuation of the existing windows. Scott clarified the difference between owner occupancy, and rental units and wondered how this factors in.

AJ LaRosa: A deed covenant addresses this idea of owner occupancy, but the rental units do not factor into it.

Brad Rabinowitz: Lot coverage is impacted by the two zoning districts in which this property is located.

Scott Gustin: Yes, in this case, it's a 50% lot coverage proposal.

AJ LaRosa: Are there any questions or comments from the Board? Hearing none, I move we continue this to wrap up details about the inclusionary units and design choices.

Scott Gustin: There are three items scheduled on the next meeting agenda.

AJ LaRosa: Motioned to defer to the November 1st DRB meeting, Geoff Hand 2nd. Vote 7-0. Motion carries.

VII. Public Hearing (Continued)

2. ZAP-22-3; 164 North Willard Street (RL, Ward 1E) Luke Purvis

Appeal of adverse determination ZP-22-389 as to preexisting nonconformity. (Project Manager, Scott Gustin)

Luke Purvis, Joseph Cleary, Kim Sturtevant: Sworn in.

AJ LaRosa: I am recused on this item, and will pass it onto Caitlin.

Caitlin Halpert: Can those who wish to speak raise their hand?

Scott Gustin: Fundamentally, this is a simple matter that involves gravel laid down on the property by the prior owner without zoning approval. This cannot be permitted because it contributes to excess lot coverage and is within the setbacks. The current owner has been trying to legitimize it as pre-existing nonconformity or unenforceable zoning violation. The fence permit was issued May 26, 2022, and the attempted appeal on that permit is highly untimely. The appeal period is 15 days, and an appeal wasn't filed until September.

Caitlin Halpert: What elements of the appeal weren't completed?

Scott Gustin: The reasoning for the appeal – the grounds for appeal, the applicable section of the code affected, and the relief requested and why.

Geoff Hand: What about the appeal in untimely?

Scott Gustin: The appeal was not completed until after the completion of the appeal period, which was split due to the reconsideration.

Geoff Hand: So the appeal is late because it was completed six days late?

Scott Gustin: When reconsideration is entertained, the appeal clock isn't reset, but is stopped and then resumes with the decision on reconsideration. It was six days late, or even if the clock was reset, it was still a day or two late.

Geoff Hand: So the appeal is a day or two late?

Scott Gustin: Yes.

Brad Rabinowitz: The determination was requested by the applicant?

Scott Gustin: The appellant is trying to wrap in the fence permit, which is past the appeal period. The determination was made September 2, 2022, and the appeal was filed late in September.

Caitlin Halpert: Would it be helpful if Scott brought up supporting evidence?

Geoff Hand: I think we should hear from the appellant and neighbors.

Scott Gustin: The first is whether this structure was determined as duplex or triplex use. A duplex was recognized. Administrative determination for the gravel determined that the gravel is not a pre-existing nonconformity. The fence permit also included the patio and called for the removal of the gravel per the most recent settlement agreement. The gravel has not been removed. More recently, the appellant filed a determination request under a neighboring property owner's address at 158 North Willard Street. The owner's did not give approval for this and elected to withdraw the application.

Caitlin Halpert: Can you clarify the area in question, is this a part of the easement?

Scott Gustin: Everything within the easement is on 158 South Willard, not 164 South Willard. Prior determinations have addressed the nonconformity question for 164 North Willard Street.

Caitlin Halpert: Are there any questions or comments from the Board?

Brad Rabinowitz: Should we determine the timeliness of this before addressing the non-conformity?

Scott Gustin: The Board does not need to complete its review to go into deliberative session.

Caitlin Halpert: I suggest we discuss the timeliness with the appellant. Mr. Purvis, can you discuss the timeliness that Scott just discussed?

Luke Purvis: The settlement that was signed was contingent on a complete site plan. I pursued this within the permit comments, but the approval was submitted under the wrong site plan. I thought this appeal was based upon the settlement site plan and not the permit decision. I disagree with the timeliness of this appeal because communication occurred within the 15-day appeal period.

Chase Taylor: The issue here, is that this isn't your property, so there is nothing to appeal.

Luke Purvis: The neighbor doesn't want a decision because it prevents me from my legal use of the property.

Caitlin Halpert: There is a clear decision that the property in question is the only thing we can consider.

Brad Rabinowitz: I understand that the resubmitted site plan is based upon the settlement agreement.

Luke Purvis: The conditions aren't based upon the decisions of Scott Gustin. I am validating my historic use of the property.

Caitlin Halpert: Are there any additional questions?

Luke Purvis: I am a frequent appellant because of the nuances of constraint that have impacted my experiences with the DRB. The permit system shows the wrong date of the decision, and it creates a difficulty with communication.

Caitlin Halpert: Can you expand on this Scott?

Scott Gustin: Each application is separate. Each decision is appealable separately based upon each individual permit application, not the sum of all the applications together. Like was done for the Burton site plan approval that involved two properties for the entire Burton facility. I am not sure what Mr. Purvis means by the dates not showing. The timing of the appeal period and decision date are clearly listed.

Caitlin Halpert: Are there any questions or comments from the public? Please constrain your comments and questions to this topic of timeliness.

Joseph Cleary: This goes back to 2014 in terms of timeliness of trying to park vehicles on our property. Mr. Purvis is trying to pull the same stunt that was done last year, using the DRB as a renegotiating tool. This is an inappropriate use of the DRB's time and Mr. Purvis is wasting the City Attorney's time on this matter. It would be inappropriate to continue this matter.

Luke Purvis: I was not informed that I needed to submit multiple appeals related to both the fence permit and the appeal of the non-conforming use.

Brooks McArthur: The continuous use of the chat function on this Zoom meeting is distracting.

Scott Gustin: Procedurally, the chat function should not be used as part of the public hearing.

Luke Purvis: What is being discussed?

Caitlin Halpert: The discussion is around the timeliness of this appeal.

Brad Rabinowitz: I would like to know more from Kim Sturtevant because I am not sure why this keeps recurring.

Kim Sturtevant: There were provisions of the settlement for appeals to be addressed, but Scott has adequately addressed the timeliness concerns. The other concerns fall well beyond the 15-day appeal period.

Geoff Hand: Motioned to enter deliberative session, Chase Taylor 2nd. Vote 6-0. Motion carries.

Geoff Hand: Motioned to adjourn deliberative session and reenter the public hearing, Chase Taylor 2nd. Vote 6-0. Motion carries.

Geoff Hand: Motion that the Board deny the appeal as untimely and uphold the administrative determination. Brad Rabinowitz 2nd. Vote 6-0. Motion carries.

Caitlin Halpert: This will conclude our public hearing.

VIII. Adjournment

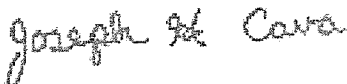
Hearing closed at 6:20 PM.



Alexander J. LaRosa, Chair of Development Review Board

10/25

Date



Joseph H. Cava, Permitting & Inspections Permit Technician

10-25-22

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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