

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, December 7, 2021, 5:00 PM

Minutes

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

Board Members Present: Brad Rabinowitz, Brooks McArthur (remote), Caitlin Halpert (remote), Chase Taylor (remote), Leo Sprinzen, and Geoff Hand (remote)

Board Members Absent: Sean McKenzie (Alt), A.J. LaRosa.

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

I. Agenda

43 Starr Farm Road has requested a continuance to a future meeting. A January meeting is likely. A vote is needed to defer.

II. Communications

A communication relate to the 48-50 Greene St. appeal was submitted yesterday and posted online today. An email from the building inspector was provided as a companion to the above.

Another document relative to a TDM plan for 278 Main Street has been provided as well.

III. Minutes

The draft minutes for the November 16, 2021 DRB hearing are posted on the website.

IV. Public Hearing

1. ZAP-21-17; 48-50 Green Street Appeal (RM, Ward 2c) On Point Properties, Inc / Olivia Chandler (Liam Murphy on behalf of Lee Bissonette)

Appeal of zoning application denial for fire escape. (Project Manager, Mary O'Neil)

Liam Murphy, MSK attorneys present. Lee Bissonette, participates via phone.
BR – swears them in.

Mary O'Neil – presents case for appeal.

Geoff Hand - to staff - can you describe the changes made to the fire escape?

Mary O'Neil – some repair evident on the lower risers. A great deal of wood putty. The second set of risers and the entire third floor landing are largely replaced. Support posts replaced, a new iron vertical support post descends through the first floor porch,

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descending to first floor porch to an angle iron. The weight of the carrying iron post is evident in the deflection of the first floor porch skirting.

Brad Rabinowitz – negative impacts to the historic structure?

Mary O’Neil - elaborates on the standards of review; first brought to our attention by zoning inspector. Ultimately we received a zoning permit application for the work. Brought to DAB for recommendation, as they have purview over changes to historic structures. Articles 6 relative to Development Review; Article 5, Section 5.4.8 for the treatment of Historic Buildings and Structures. Design Advisory Board voted unanimously to deny the application on the standards of safety and security, and Section 5.4.8 relative to negative impact to historic building introduced by the “repair” of fire escape.

Liam Murphy – presents client’s case. Applicant on his own volition went to building officials to repair fire escape. Repair in same footprint. We do not believe that any changes in place require a zoning permit. If it does, we will go and remove this post and then we will be in compliance. Staff report goes far outside the scope of this application.

Geoff Hand – can you share with us any plans submitted?

Liam Murphy – There are no plans. This fire escape was permitted by the city to enhance the safety and stability of the property. We are concerned that all the other issues raised here, if the board starts upholding or getting into violations the message will go out to the landlord community DON’T. They will get punished. The issue is, does this require a zoning? And if they do, does it change the historic character of the building? The remedy is to repair them, not to require the structure to come down.

Brad Rabinowitz – we get people coming in all the time who want to change a post with 4 x 4 pressure treated post, and then they want to change the railings. Step by step, they are changing the character of the building.

Liam – the staff report suggests that the entire fire escape should be removed...assertion we have an illegal property, and if we remove the unit on the third floor, then we need to remove the fire escape. We understand that we are bound by permits. My client wants to make this a safer fire escape. The changes were not material.

Brad Rabinowitz – Changes could have been made without those posts.

Caitlin Halpert – Is there an engineer report about structural integrity of the previous stair, and the need for the post in question?

Liam – yes. I’m sorry, I can’t find the letter.

Brad Rabinowitz – can you summarize the letter?

Liam – our client did engage a structural engineer to go look at the property. *“At the request of Mr. Bissonette, CIS gave instruction that the removal of the wood post would compromise the structural integrity. Upon my on-site inspection the removal of the*

post on the upper edge would compromise the existing support system.” If you were walking down the street, you would not notice this.

Caitlin Halpert – Mary, are you asserting that the stairs that were repaired and replaced were not legally installed? The unit was not legal, but it is your stance that the stairs were not legally installed?

Mary O’Neil – There is no zoning permit for the third unit. There is no zoning permit for the erection of the staircase. There is a building permit from 1984. It was not uncommon for the building inspector to issue a permit without confirmation of a zoning permit. Similarly, the electrical inspector did not check with zoning before issuing a permit in 1977 to install a meter for the third unit. The building permit in 1984 for the stairs was not to provide a fire escape to a third unit; it was to provide fire egress for the third floor.

Liam Murphy – I do not think a zoning permit would have been required in 1984.

Mary O’Neil – The zoning ordinance was amended several times between the 1973 and 1994 zoning ordinances. I do not have those documents in front of me.

Geoff Hand – asks for a copy of the engineering study.

Lee Bissonette – This was a repair. The contractor said the fire escape would be safer with the additional post. Mary mentioned a roof penetration.

Geoff Hand – Did you ask your contractor about the additional work? I feel like you are putting us in the position of reviewing something after you have done the work.

Lee Bissonette – No, I did not ask him. It was something when they took the decking off, tying it to the top deck. He said it would be safer than having those 45s going in. That fire escape has been there 35-40 years. Looking back on it, I have a professional telling me something to make it safer.

Brad Rabinowitz – I would suggest there were other options at that moment to address concerns rather than changing it. That kind of conversation and result happens frequently.

Lee Bissonette – This was more expensive. I asked if this is the only way, he was convinced....it was better for what I got out of it. Much better to go straight up and down rather than on an angle. If there is any other way, that particular contractor did not have it. I have a picture of about 25 fire escapes in Burlington. There is no doubt that my fire escape is the safest one in Burlington. I bet firemen would give it thumbs up.

Brad Rabinowitz – closes public hearing.

2. ZP-21-732; 278 Main Street (RH, Ward 8E) COTS / Bob Duncan

Major impact review of 16-unit addition to existing building. (Project Manager, Ryan Morrison)

Bob Duncan and Jonathan Farrell are sworn in.

Dave Marshall with applicant team. Sworn in.

Bob Duncan presents a synopsis of the plan, goes through permit plan set. Explains each of the plans and renderings. Went to Conservation Board last night, received unanimous approval. Dave Marshall is here to offer further information.

Brad Rabinowitz – Can you give us a brief description of the detention?

Dave Marshall – Civil Engineering Associates. Envision yourself looking from Main Street into the site. Everything under today's conditions drains northwesterly. We propose a similar path, as you move around the building, a formalization of the existing gravel parking area...if the rainfall is heavy enough; it drains onto the Consolidated Communications property to a catch basin. We want to return the favor with stormwater facility, and use the Stormwater Manual as adopted by the City. 6-7 ' of silty sand on the site, tilled material, water table 6-7 feet down. If we can utilize that sand, infiltrate. If appropriate soils, that is the expectation. Takes stormwater runoff from the pavement surfaces as well as the roof, on the right hand side to the left of the building, there is an isolated row. Most of the solids settle out. Provide treatment but also protection, infiltrating into the ground. We can contain, on site. The 10-year event, the state standards, what is leaving the site is less than peak flow of today's conditions. Good, not great, but good. Better neighbors to everyone downstream.

Brad Rabinowitz – asks about 10-year storm event. Just overflows and leaves the site?

Dave Marshall – the frequency of what is draining onto the neighboring property will be better.

Bob Duncan – Cut sheets on materials have been provided. The Transportation Demand Management Plan has been provided today. Assuming that is an acceptable solution to the TDM, we think it is complete.

Scott Gustin – The structure of the TDM appears to be here. The only thing that needs to be tied up is the Car Share requirement. One space would be required. If Car Share is willing to do it, fine. If they do not want to do it that is fine.

Jonathan Farrell – We have spoken to Car Share. There are currently 7 Car Share vehicles within a couple of blocks. We are still talking. We are 100% inclusionary, so they are lesser inclined to use Car Share. You still have to pay per mile, per day. Ridership goes down. There is a piece about TDM, yet a standard about parking not being required for inclusionary units. There is a rub there.

Scott Gustin – It would be worthwhile for you to submit something to me for the ordinance committee. It is in Committee. There is an upcoming meeting. It would help provide clarity.

Brad Rabinowitz asks if any board members have questions. (None.) It looks impressive.

Brad Rabinowitz – closes public hearing 6:13 pm.

3. ZP-21-723; 321 Manhattan Drive (RM, Ward 2C) 321 Manhattan LLC / Sam Gardner

Establish a short-term rental (bed & breakfast). (Project Manager, Ryan Morrison) Sam Gardner is present (remotely)

Applicant is sworn in.
No questions from board members.
Brad Rabinowitz closes public hearing 6:16 pm.

v. Certificate of Appropriateness

1. ZP-21-700; 43 Starr Farm Road (RL, Ward 4N) Birchwood Properties LLC / Michael Koch

Seeking additional surface parking and maximum parking waiver. (Project Manager, Scott Gustin)

There is a request to defer. Scott has penciled in for a January date.

Alicia Dimario is present from the Nursing Home.

Scott Gustin – the applicant (engineer, Michael Koch) requested the deferral.

Brookes McArthur – motion to defer to a future date.

Chase – 2nd.

Vote 6-0 to defer to a future date.

Motion carries.

2. ZP-21-677; 27 Lakeview Terrace (RM, Ward 3C) James Fayette

Construct retaining wall along rear boundary. (Project Manager, Scott Gustin)

James Fayette, Sean (geotechnical expert) is sworn in.

Explains 3' high retaining wall on the westerly boundary of Lakeview Terrace. Steep embankment, intersects with City property. (Scott Gustin puts plans on the screen.)

We want to put a patio and gas fire pit. Requested to get a geotechnical report, submitted for DRB. We did receive staff comments last week. We have been here a little over a year. The slope continues to slough off. This would allow us to retain our property line. There is a mutual benefit.

Brad Rabinowitz – I looked on Google Earth today. It seems that this is a common situation.

James Fayette – yes, similar things

Brad Rabinowitz – are you doing any tree clearing?

James Fayette – no trees. Just grass. Terminates to the city slope, which is heavily vegetated with trees and thick brush. We are not looking to disturb that. We will use a small backhoe to pull material back, installing the base and rock wall with geotech retainment, backfilling it. Not very complicated.

Brad Rabinowitz asks if any board members have any questions or comments. None.

Brad Rabinowitz asks about setbacks for patio and property line.

James Fayette – will get that submitted.

Leo Sprinzen – gas fire pit. Buried line?

James Fayette – probably place a tank northwest corner of the house.

Brad Rabinowitz – don't you have natural gas to your street?

James Fayette – yes there is.

Brookes McArthur – looks like a good project.

Brad Rabinowitz – closes public hearing 6:25 p.m.

VI. Other Business

1. 81 Dunder Road (RL-W, Ward 5S) Jonathan Heller

Follow up for zoning permit for short-term rental. (Project Manager, Ryan Morrison)

Brad Rabinowitz says we have a beautiful photo of the fence.

Applicant is present, as is neighbor Tom Walsh.

Applicant Jonathan Heller – very proud of that fence. Glad you guys like it.

Tom Walsh – participated out of respect for the process. The fence adds privacy to my property.

Brad Rabinowitz – Fences make good neighbors?

Tom Walsh – That is debatable.

VII. Adjournment 6:27 pm.

Bradford L. Rabinowitz, Chair of Development Review Board

Date

Mary O'Neil, Principal Planner

Date

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