

## Burlington Planning Commission

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*Yves Bradley, Chair  
Bruce Baker, Vice-Chair  
Lee Buffinton  
Emily Lee  
Andy Montroll  
Harris Roen  
Jennifer Wallace-Brodeur  
vacant, Youth Member*



## Burlington Planning Commission

**Tuesday, March 08, 2016 - 6:30 P.M.**

Conference Room #12, Ground Floor, City Hall, 149 Church Street

### MINUTES

**Present:** Y Bradley, B Baker, L Buffinton, E Lee, A Montroll, H Roen, J Wallace-Brodeur

**Absent:** None

**Staff:** D White, M Tuttle, E Tillotson, K Sturtevant

#### **I. Public Forum**

Michael Long: Provided comments regarding the 15 year statute of limitations amendment. Attorney Norm Williams has provided a letter analyzing the Bianchi ruling as applied to structures, which M Long recommends the Commission read. M Long has sent communications regarding this issue to the Commission in the past several years regarding his position that this should apply to structures, but not to uses or parking. M Long endorses breaking down the zoning ordinance, which is not predictable in particular zones, and is against this amendment because the standard of proof has been very low.

#### **II. Report of the Chair**

Y Bradley: Attended a very interesting meeting of real estate professionals during which Kevin Dorn, City of South Burlington, discussed plans for City Center and redevelopment of the Burlington Square Mall. Real estate professionals are seeing a growing pattern of malls turning themselves into downtowns, which is something to be aware of, especially in light of the Burlington Town Center redevelopment.

#### **III. Report of the Director**

D White: On March 7 Devonwood Associates presented a variety of views of the Burlington Town Center redevelopment. At March 22 Commission meeting, will begin discussing outline of the zoning ordinance amendment. D White's job is to develop a zoning amendment addressing the height and bulk of buildings by right in a downtown overly, as well as other considerations, such as form-based elements.

L Buffinton: Will we get a presentation on the designs as part of this discussion?

D White: It is on the City's website. Also currently working on a zoning amendment proposal for the Burlington College, St Joseph's Orphanage site where the City just purchased 12 acres. Also editing a report regarding on-site parking requirements in downtown.

M Tuttle: Interviewing consultants for the Great Streets project for downtown to create street design standards as well as construction documents for key streetscape projects. There will be public meetings scheduled in the future.

#### **IV. Agenda**

No Changes

## **V. City of Burlington Permit Reform Project**

D White: City's permit reform project is being led by Beth Anderson, considering all aspects of permitting from application to certificate of occupancy. Introduced the consultant team from Matrix Consulting and Graydon Land Use.

Alan Pennington and Jocelyn Mathieson, Matrix Consulting: Have extensive national experience with permit/process reform. Will be meeting with stakeholders one-on-one next week to understand the Burlington process. Over the next 18 weeks, there will be an extensive public outreach process, consultation with all City departments involved in process, and best practices research. This will inform the development a profile of the current processes, as well as observations and analysis about where code/regulations differ from any requirements. They strongly wish to keep the Commission in the loop

L Buffinton: Will members of the public be able to submit written comments?

A Pennington: An on line survey process will be part of the process so input is available to everyone.

Sean Suder & Brandon McCuin, Graydon Land Use: On team to evaluate historic preservation processes, to facilitate reviews, with the final product being a recommendation for best practices. Burlington has a wonderful heritage, unique, historic, varieties of architecture. Will be looking at how our codes address these characteristics.

H Roen: Is really glad this reform is going forward, it's an area where there have been some big problems. It's really important to get feedback from public.

L Buffinton: Is the feedback confidential?

Y Bradley: This is important because there is a fear that if you are open with your opinion about the City's processes, you will pay later.

A Pennington: Input will be summarized by key themes, and there will be anonymity. Typically find that stories aren't always 100% accurate when team does fact checking, but they will reflect the general perceptions. The more public participation the better to make sure hearing about all of the issues that exist today.

B Baker: You will speak with each of the different permitting entities? Just last week I experienced problems with permitting.

Y Bradley: Was asked to write a developers guide to the permitting process in Burlington in 1984 for a college class! This is a long standing issue, tremendous amount of possibility for streamlining. The victims of the inefficiency are the general public.

D White: Our goal is to make the process predictable so that applicants understand how to get from A to Z; we need to maintain the possibility of change and improvement.

E Lee: There is a lot of mistrust in the community about consultants and where it appears to go wrong is acknowledgement of public input. It is important for Burlington citizens to feel they have been heard and that the end result is not predetermined.

## **VI. Proposed CDO Amendment: NAC – Riverside Boundary**

D White: Originated as a request from affected property owners along Riverside Avenue.

M Tuttle: Outlined existing zoning of the area, and discussed the purpose of the NAC-R, RCO-C and other overlays. Presented a staff recommendation to move the NAC-R boundary another 25 feet north of Riverside

Avenue, to achieve the purpose of the district, but not impact the river bank. However, 189 Riverside is the farthest east, is not presently zoned NAC-R, and is not recommended to be changed.

A Montroll: There are two different maps, are they the same?

M Tuttle: Yes, one shows the extent of the NAC-R on the north side of Riverside Avenue, the other zooms in to the properties requesting the changes.

A Montroll: This has what effect on the corridor?

M Tuttle: This incorporates currently developed area of these properties into the NAC-R without significantly increasing development potential on the north side of street. However, change will have more impact on the steep slopes west of the water treatment plant.

L Buffinton: Not sure this is a good solution given the impact on the slopes to the west.

Laurie Smith: Has development background and previously served on the DRB in Shelburne. As an environmental engineer, he understands the issue of the stability of the bank, but the topography west of the plant is very different from the east end. The Town of Shelburne uses a gradient factor to address these situations. This has the potential to be a beautiful recreation area, and still serve as a buffer and recreation access area. Proposed a combination of gradient factor and an easement from the river might be a way to work forward and still retain development potential.

J Wallace-Brodeur: The plateau behind sewage treatment area to east has potential for redevelopment if the plant ever moves.

L Smith: It is actually a beautiful piece of land. It also sits high enough so that it does not disturb the river and the wildlife corridor.

H Roen: Likes the creative thinking from staff about the solution, but has concerns about the western area along Riverside Avenue being included.

A Montroll: Where is the floodplain?

D White: At this point in the corridor, very close to the edge of the river.

L Buffinton: Would like staff to reconsider ideas shared tonight, and a site visit would be great.

A Montroll: We could be open to looking at other options.

D White: Should this come to the full Commission or to the Ordinance Committee?

Y Bradley: Full Commission.

## **VII. Proposed CDO Amendment: 15 Year Statute of Limitations**

A Montroll: Assuming this is adopted there will be a number of properties which will be affected. Should there be a period of time before this goes into effect?

D White: This is about setting administrative procedures to implement state law. There is not a concern from staff about the administration.

E Lee: Shared comments she received from neighbors on this issue, including: this incentivizes property owners to continue to take advantage of the ordinance, there is ongoing litigation right now with the City regarding some of the properties that have been discussed that shows the impact on neighborhoods, takes away a lot of hope for and stability in neighborhoods, properties and uses that would be permitted aren't

positive for the neighborhood or the students that live in them, undermines accessory units as owner occupied, and notice to interested parties is essential. Does not like this and will not support it; this is huge loophole.

D White: This is existing state law that we have to follow; it does not make these violations ok, but articulates that City's enforcement is limited. Aside from the question of use, it is fair to say this is just administrative procedure. The only real policy issue is around whether use should be included in the statute, which the Planning Commission directed staff on previously.

E Lee: If it is state law, then why don't people appeal to the state? Hearing two different things: this is just state law and we are making a process for it, and there is ambiguity in state law around uses and we are clarifying whether this applies to use.

D White: Those are both true.

E Lee: If it is just about structures, then fine. Have a problem with use.

B Baker: Bianchi decision says nothing about use. Other concern is over loss of legitimate units due to the City's historical record keeping. We can't really solve the problem until we know what the problem is.

L Buffinton: What if we move forward with what we all agree on, which is structures and take use out.

B Baker: I think you would lose thousands of units.

A Montroll: This issue seems to have come up more often over last few years. How often are these units discovered?

D White: The question comes up six to twelve times a year, probably. It's not that often than these issues get pursued all the way.

K Sturtevant: Don't have hard numbers, but it is becoming more of an issue. Part of that is because of the approach to enforcement and we are doing more to keep records.

J Wallace-Brodeur: We've set the threshold that an owner has to prove that the City knew about it. They have to go through this process to prove it. They've hit the 15 years, the City knew about, we've outlined how they will prove it. If they can prove it, it is stabilized, but if it doesn't continue in perpetuity, it can be discontinued.

K Sturtevant: State law doesn't say anything about having a determination of "stabilized." We've added that for records for the owner, and to trigger the notification provision.

J Wallace-Brodeur: E Lee, did you explain the process we've outlined? It is really complicated. We are trying to establish a process to move forward that's fair. We run this risk of having situations that we aren't happy with, but it's about a balance, just like any policy. I think this is rational and clear and my inclination is to support this. We need to hold our City accountable to act on violations they know about—if they haven't done it in 15 years we have to have a process to move forward.

D White: Similarly, if the City doesn't act on a zoning permit within a defined period of time, then it is automatically approved. The benefit goes to the owner if the City doesn't follow through.

E Lee: Student group quarters are a big concern, there are too many for the City to handle, and to enforce. Time of sale is a great time for this to change, so biggest concern is the group quarters being covered by this ordinance. It's a shame that people have been notifying the City that violations have been happening, it hasn't been enforced, then a law gets passed to permit it to continue.

A Montroll: If that will be a major point, we could consider pulling out the four unrelated persons as a use that is covered.

K Sturtevant: Suggesting that we have a nuance to a use, that there would be an exception to this for one particular use. If the Commission wants to move that out, we could.

Y Bradley: I think we all agree on that, no one likes the four unrelated. This is a concern, Kim, please look at how it could be excepted.

On a motion by A Montroll seconded by L Buffinton, the Commission unanimously voted to retain the existing language about use with an exception related to four unrelated people in a unit.

H Roen: There should be further discussion about when properties change hand?

D White: No, because everything runs with the land.

L Buffinton: A delay period before starting is a good idea.

K Sturtevant: A DRB decision regarding when to enforce a four unrelated has been appealed to state Environmental court. To clarify, looking at connecting four unrelated to the health and safety aspect or finding a way to make it an exemption.

### **VIII. Committee Reports**

Ordinance Committee: B Baker reports the Ordinance Committee discussed the George Street zoning boundary adjustment. L Buffinton requests a build out to assess impacts of the change. He has also spoken with a citizen who came in to discuss daycare in the residential low density zone and believes the issue has been resolved.

Long Range Planning Committee: H Roen reports that the Committee has met and are still working on a next draft.

Joint Form Based Code Committee: A Montroll reports that the committee met and is anxious to wrap up the draft. There are four or five issues to work through, a final review, and he is quite optimistic that they can wrap up soon. Public process is going to be a big part of this process.

### **IX. Commissioner Items**

None.

### **X. Minutes/Communications**

On a motion by E Lee, seconded by L Buffinton, the minutes of February 23, 2016 with punctuation corrections, were unanimously approved.

### **XI. Adjourn**

On a motion by L Buffinton, seconded by E Lee, the Commission unanimously adjourned at 8:11 pm.



Y. Bradley, Chair

Signed: March 24, 2016



E. Tillotson, Recording Secretary