

# Burlington Development Review Board

149 Church Street, City Hall  
Burlington, VT 05401

[www.burlingtonvt.gov/pz/drbb](http://www.burlingtonvt.gov/pz/drbb)

Phone: (802) 865-7188

Fax: (802) 865-7195

Austin Hart  
Michael Long  
Jonathan Stevens  
Brad Rabinowitz  
Missa Aloisi  
Israel Smith  
A. J. LaRosa  
Alexandra Zipparo (Alt.)  
Jim Drummond (Alt.)



## BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, April 7, 2015, 5:00 p.m. Contois Auditorium, City Hall, 149 Church Street, Burlington, VT Minutes

**Board member present:** Austin Hart (Chair), Jonathan Stevens, Brad Rabinowitz, Missa Aloisi, Michael Long, Israel Smith. **Board members absent:** Jim Drummond, A.J. LaRosa and Ali Zipparo  
**Staff members present:** Ken Lerner, Scott Gustin, Mary O'Neil, and Anita Wade.

### I. Agenda

No change to agenda.

### II. Communications

Supplemental communication accepted by Board regarding Weston St.

III. **Minutes:** In packet. Chair advises board member to bring comments or corrections to deliberative.

### IV. Public Hearing

#### 1. 15-0865VR; 2-4 North Winooski Ave (DT, Ward 3) Miller North Properties/Tom & Deb Miller

Variance request to change use from café to bar/tavern (Project Manager, Scott Gustin)  
Applicants were sworn in by A. Hart.

D. Miller one owners of Bar presented an expansion of existing bar including more tables, expanded kitchen. Not near residential buildings.

A.Hart, said use is not permitted under current zoning code and the question is whether Board can approve a nonconforming use or perhaps present to Planning Commission for a change in zoning.

Jonathan Stevens, previous owners expanded into the two stores.

K.Lerner said it was a coffee shop selling food.

B.Rabinowitz said it could be accessible space as separate business.

Jonathan Stevens questioned the debate

K.Lerner to maintain bar business, it must be separate from other business.

D Miller said there are no guarantees and need to consider Code enforcement. The former Radio Bean served more food than alcohol.

M.O'Neil noted the benchmark to look at.

Jonathan Stevens cannot grant variance.

A.Hart Board will deliberate on matter and speak to P& Z about options.

Public Hearing Closed.

#### 2. 15-0656CA/MA; 289 College St (RH, Ward 8) 289 Live/Work, LLC

Addition of 12 residential units to existing mixed use building (office and 1 residential unit) for a total of 13 residential units and office use (Project Manager, Mary O'Neil)

Bruce Baker, Architect Bob Duncan and Greg Doremus were sworn in by A.Hart.

B.Baker, Pre-existing use; rental office sharing cafeteria; live work concept as two choices; The fallback to 3 or 4 bedroom ended up as a decision to go to 1 unit for residents to live and work same in building and with easier management of building.

Greg Doremus described the work done with staff at Planning and Zoning last year getting input for project. A full application was put through in November with input from DRB about design, color, entry and parking. A new design was worked up and presented

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to DAB and Planning and Zoning on the bike rack, entryway, color; with the final application tonight. Positive meeting with Conservation Board about rain garden; parking counts, offices, a one unit apartment and one parking lot for daytime and evening use. Greg made reference to studies of parking through ITE Parking Analysis report. ITE recommended 2 spaces per 1,000sq ft or every 1.2 spaces/unit. Actual Parking Analysis performed were from 120 observations, 7 days a week. At 5,800sq ft, 12 spaces are needed at peak for office use and 15 spaces at peak for residential. Picked highest observations over 8 weeks and peaked out with parking at noon time. 16 metered spaces available.

Jonathan Stevens had questions on metered spaces;

M. Aloisi had questions on parking.

M Long asked if space was staying same.

M. Aloisi asked if residents were allowed to leave car in lot.

Greg affirmed that residential parking was allowed during day.

Bob Duncan presented design drawing to Board showing gravel parking lot addition, and existing site plan. Proposal to create additional building similar as original bldg. Greg mentioned advantage in making entrance ADA with lift for 1 unit accessible and other 3 fully adaptable and a rain garden heavily vegetated for stormwater collection in center; new bike racks, new stairs to serve to all locations of building, significant perimeter vegetation, and a dumpster location which reduces park spaces by only one space. Height of original building is same as new with fiber cement wood product, 8" to weather, natural brick color, bay window galvanized finish, handicap entrance in rear and main entrance off College St.

M. Aloisi questioned the connector between buildings.

Jonathan Stevens questioned the dumpster and how far a tenant needs to walk to dumpster or B Duncan guess-estimate is 65 ft from entrance to dumpster;

B Duncan, presented solid fencing and biking pictures; under lot coverage requirements;

M. Aloisi had questions about rain garden and roof

B Rabinowitz trouble with the presence of the building and its character;

B Duncan said he was comfortable with the design. He mentioned that differential was a term used in regard to a historic structure calling for similar pattern, mirror image of buildings, which the site plan promotes with the prominent entrance from College St link courtyard

B Rabinowitz said the color looks more brown than red brick

A Hart question about landscaping, shading from existing properties,

B Duncan said significant vegetation will be incorporated

A Hart concerns about screening particularly in rear of parking lot

B Duncan said plantings are done to avoid mowing;

Other general questions by Board members;

Public Hearing Closed.

### **3. 15-0840CU; 27 Arlington Ct (RL, Ward 7) Nathan Caswell**

Establish 1 bedroom bed & breakfast within existing single family home (Project Manager, Ken Lerner)

A Hart swears in Nathan Caswell

N.Caswell said Air B&B is no change to property only its use where he will rent one of two bedrooms for temporary stay, but not every day of week. On average 2 to 3 nights per week. N Caswell worked w/ Zoning Administrator on expectations of parking. He shared paper document information on parking with Board.

A Hart asked him to walk thru parking;

N Caswell, showed how two parking in tandem worked in photos.

A Hart, question on whether previous use will exist

N.Caswell said it will not.

A Hart said Board will remove previous use;

A Hart asked if he would follow staff clarification/conditions;  
N Caswell can abide by the conditions  
Public Hearing Closed at 6:20pm.

**4. 15-0797AP; 164 North Willard St (RL, Ward 1) Luke Purvis**

Appeal of Notice of zoning violation regarding expanded parking (Project Managers, Ken Lerner & Jeanne Francis)

A.Hart swore in all willing to comment on project.

Code Enforcement said a decision on a violation was remedied; encroachment of parking on 158 North Willard violations was remedied.

A Hart are the easement and parking strip different;

Code Enforcement: easement is owned by 158 No Willard, parking strip is 164 No W.;

Code Enforcement determined no violation, documented no parking; reviewed affidavit, A Hart said that Board has two affidavits.

A Hart has not established 15 year statute of limitations.

Code Enforcement said 158 No W claims no parking has occurred within area;

A Hart, explained materials;

Code Enforcement commented that a violation that more than 60 days is a discontinuance..

Attorney mentioned a discussion on ordinance 5.3.2 distinct time line in ordinance.

Code found complaint was unfounded and found no violation on 1/29/15.

B Rabinowitz questioned parking lot;

Code Enforcement: parking lot in question is on the south side;

A Hart said it was unusual that an owner appeals a finding of no violation;

Code finding was no violation;

Jonathan Stevens questioned the 60 year versus 1 year use explanation;

Attorney explanation was that a 60 day nonuse cancelled the 15 year use.

Appellant has understanding of non-violation,

Mr Purvis lost his ability to park vehicles; factual basis for not being able to park;

B Rabinowitz, questions on south side parking;

Mr Purvis didn't know what he had to remove in regard to parking;

A Hart asks Board to conclude with a binding decision on what is the distinction between the easement and the parking strip where no parking is allowed;

Mr P shows Board on photo the boundary lines; parking on strip and easement.

Procedural Jan 29<sup>th</sup> letter is unsubstantiated.

Mr Purvis is questioned by attorney on the following:

As many as 3 parking vehicles in parking area is neighbors' complaint.

Mr LeClaire use of area over 47 years, rented property and supported 4 cars.

Mr Purvis researched property and spoke to owner about buying property in 2013.

Issue with neighbor on use of property where neighbor asks 164 No W to reduce easement size.

Mr Purvis said the Lease provides 8 parking spaces with City and does not intend to use that many spaces. Has reduced use of parking area.

B Rabinowitz, said there is not adequate information to make a decision.

A Hart said that Mr Purvis is establishing the 15yr use.

Mr Purvis claims dispute is over the easement and having access to the easement.

Questions regarding the procedural matter.

A Hart asking Board to resolve it now.

B Rabinowitz, questions on 3 car garage.

K Lerner said this is a pre-existing use.

Continuing with questions by Mr Purvis' attorney asking about consistent use of area within 30days. The question is if photos taken in the evening would show parked cars.

Additional evidence shown by 4 photos there was parking during time when Code came and indicated there was no parking.

Mr Purvis offered video made within two weeks of closing that parking was available. Jonathan Stevens and A Hart asked Mr Purvis if only two cars were associated with residence made by his statement.

Jonathan Stevens question about if parking was happening on gravel area and if plowing maintained both areas.

K Lerner stated that Mr Cleary's affidavit was not included in packet.

Mr and Mrs. Cleary, dispute this.

A Hart questioned if easement and strip had been used within past 19 months. The concern is about runoff into yard and into basement for 158 North Winooski, setback of parking, no delineation of parking, and no zoning permits.

A Hart questioned the site plan for parking;

K Lerner said there was no site plan;

Mr Cleary mentioned on March 7, 2008 the dumping of gravel as shown in picture; Photo 5751, April 26, 2014 shown to Board. On July, 2012 to April 26, 2014 there were no cars. Mr LeClaire used northern parking area. Mr Cleary mentioned ample parking for 4 cars in northern area and 3 parking spaces in garage. Photos dated 2013 were presented to Board by Mr Cleary. There were no photos showing parking south of driveway during time where Mr Purvis claims cars are parked.

M Long asked if parking area was ever abandoned.

Mrs. Cleary said Mr LeClaire, former owner, parked in driveway and had no tenants for years. At that time parking changed from northern area to southern area and over time two vehicles angled in spaces; Questioned about legitimate parking area and that City condones

M Long asked about any permits;

K Lerner responded there were no permits

Code response, Jean Francis, decision is on a two foot strip;

Mr Cleary owns easement according to City records and that he could park there;

Code found no parking upon inspection.

Public Hearing Closed at 7:13pm.

**5. 15-0830AP; 18-20 Weston St (RL, Ward 1) Charles Burns**

Appeal of Notice of zoning violation regarding expanded parking, trash, and outside storage (Project Managers, Ken Lerner & Jeanne Francis)

M..Long recused.

Request for continuance by Attorney for Charles Burns. He mentioned some issues are resolved, and wants to work with staff on others.

A Hart said he understands the merits although are people wanting to comment.

Attorney wants to vacate.

Bill Ward and Jean Francis present evidence before the Board. JF said 2005 complaint came in on parking for south side of property. JF found the Owner could not prove parking 15 years on property. Jeanne Francis previously worked with owner, Burns, on plantings. Jeanne Francis moved forward with plan. In 2014, there was a complaint on property. Code met with him about complaint and discussion on progress with the 2005 plan. November, 2014 met with Burns asked about storage in units;

A Hart asked for clarification on units as garage bays

Code affirms 6 garage bays; confirmed that nonresidents were parking at bays which is a violation;

A Hart asked for clarification of parking and use of garage bays;

Jeanne Francis said parking has increased. Presently parking is being used and on grass; garage bays are not being used by residents; Black and White undated photos submitted were complaints by citizens on parking, trash receptacles changed locations, use of green space, use of garage bays not being used as storage for tenants and there is no approved site plan from DRB or P & Z;

Code said there would be less confusion with enforcement if there was a site plan; cannot give lot coverage without approved site plan.

B Rabinowitz questioned if there was an attempt to enforce a plan;

K Lerner mentioned black and white photographs given to Board taken today at 3:00pm to give a reference point to 2005 plan.

A Hart indicated need for opportunity to reply from residents

Swearing in of residents.

Attorney mentioned the established duplex had been compliant since 2005 with no parking problem;

A Hart asked if parameters were set as to what should exist in the 2005 plan;

Attorney said 2005 was only a discussion tool. Owner was willing to testify that for 20 years no change in parking.

A Hart said the 2005 plan was not binding to current situation if parking expanded

C Burns gave history of property since 2002 from the owner he sold it too; garage a former horse barn was used for storage.

Attorney said part time property manager uses garage bays

M. Aloisi asked how many parking spaces allowed

Attorney replied, four spaces.

A Hart noted that equipment spills out into area questioning maintenance of area.

C Burns affirmed this observation.

Attorney said the garage is not viable parking structure

A Hart said the storage for this property is not storage for other properties

Attorney affirms this may be case mentioning Burns daughter uses space.

A Hart asked to hear from neighbors

Jonathan Stevens question filing with Planning and Zoning

Caryn Long spoke about the duplex with tenants and how for 15 years cars always parked in garage; no cars parked in 1988; no permits on file, and that the zoning for the RL district requires 65% green space; since the purchase of adjacent property by C Burns, parking in back and front of Weston St is shown in 4 photos to Board and a total nine people living in duplex with possible evidence of commercial use;

Judy Rosenstreich, adjacent neighbor, marked change in use and seven residents parking on green area. As a purchaser of own home in 1998 has since observed more cars; A Hart asked when did she notice a difference; Judy R. observed since sale of property between Riley and Burns with change in use at garage bays.

A Hart asked if this has that been happening for 15 years.

JR tenants began to park in area in 2014;

Candace Page spoke how she lived in area since 1984 and was aware notice of violation about nonresidents parking at 1820 and an increase in parking after property was sold to Mr Burns;

A Hart questioned about the parking increased at 18-20;

CP seen multiple cars parking.

A Hart questioned Board about a continuance.

Sharon Bushor, council person from ward 1; once lived at 12 Weston asked to request to deny appeal based on use of property and due to violations. She indicated the statute of limitations doesn't apply to use and it was factual basis that a business happening at site was not allowed.

A Hart said this may have been happening for 15 years and therefore this allows a continuance.

Sharon, Bushor said there was a history of former residents where there was more grass before than now as referenced by Code Enforcement,

Attorney mentioned that witnesses could not be at the meeting to respond;

A Hart requested a continuance for the hearing on May 5<sup>th</sup>,

A Hart made the motion to move hearing to May 5<sup>th</sup>. Jonathan Stevens seconded this motion

A Hart said he wants to know what are the measures are in place now for parking.

Resident questioned about participation at this meeting.

Resident mentioned the Coop's request for a stay.  
A Hart said Board was not in position to make that decision on a stay.  
Meeting Adjourned.

**V. Other Business**

**VI. Adjourned.**

Deliberation scheduled for Monday, April 13, 2015 at 5:00 pm at P & Z .

\_\_\_\_\_  
A. Hart - Chair, Development Review Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Anita Wade, Zoning Clerk

\_\_\_\_\_  
Date