

Burlington Planning Commission

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



Burlington Planning Commission Minutes

Regular Meeting

Tuesday, January 26, 2016 - 6:30-8:00 P.M.

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

Present: J Wallace-Brodeur, L Buffinton, H Roen, A Montroll, B Baker, Y Bradley, E Lee
Staff: D White, M Tuttle, E Tillotson, S Gustin, K Sturtevant

I. **Agenda**

No changes

II. **Report of the Chair**

Y Bradley shared that he was in touch with a member of the public that was interested in discussing an item regarding small daycares and an item that may have been overlooked in the zoning ordinance.

Y Bradley hopes that Commissioners have been able to attend the Burlington Town Center presentations that have been making the rounds. L Buffinton noted that she spoke only as a Burlington resident.

M Tuttle: With a smaller group at the January 21 event, they were able to have more focused discussions and a lot more time for on one-on-one discussion. The public was supportive of the proposals.

III. **Public Forum**

Y. Bradley opened the public forum at 6:35 pm.

Barbara Collins, Ferguson Avenue resident: B Collins shared that in April 2015 she received notification of a small day care permit application in her neighborhood, and understood it to be the same as a home day care care with a maximum of six children. However, she has since discovered that five employees, and up to 26 children are allowed under zoning ordinance section 5.4.1. B Collins advises the PC to consider an amendment that permits child cares of that size only in the enterprise and mixed-use zones, and limits a small day care in residential zones to 6 or 8 children.

L Buffinton: All day care sizes are allowed in all residential zones?

K Sturtevant: Yes, and up to 6 children are allowed by state law.

B Baker: A key factor to consider is whether day care is now available.

E Lee: There is a day care crisis, most day cares have a year-long waiting list.

On a motion by A Montroll, seconded by B Baker, the Commission unanimously agreed to refer this issue to the Planning & Zoning Ordinance Committee for consideration.

S Gustin: On Thursday, February 5, the Ordinance Committee will take up the small day care issue regarding another request and invited B Collins to attend the discussion.

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Eric Morrow, Ward 2 resident and architect: Concerned about the height of the proposed mall. He has sent an email to Commission members and would be happy to help with massing models and height considerations.

A Montroll: E. Morrow has the best attendance of anyone including committee members at the FBC meetings. Thank you for coming and introducing yourself to the full Commission.

Y Bradley: Thank you very much, impressive effort.

Joel Rippa, resident: Has anything happened with Item 8 on the agenda by the Commission?

Y Bradley: It is getting close. It is still being polished with a few items to be resolved and is on tonight's agenda for discussion. Planning sometimes takes a long time.

J Rippa: His situation goes back to early 80s when he bought an apartment house for his parents and unbeknownst to him it contained a non-conforming third unit. He needs resolution to this status.

Jill Diemer, landlord in Burlington: Wishes to address the 15 year statute of limitations on a property that she and her husband own on Hickock Place. The property is an 1894 structure that has historically operated as an apartment house. In order to sell the property, they wished to have a report to grandfather the occupancy of the building. Since they've owned the property beginning in 2003, the Code Enforcement has done housing inspections, and she has signatures from departments that there were no zoning violations at the time of purchase. She was referred by Bill Ward, Director of Code Enforcement to Scott Gustin, in Planning & Zoning to get a determination for occupancy; she has provided leases and other pertinent records but the City continues to ask for additional records dating further back to 1970 and 1946. The previous owner passed away, but she does have a detailed affidavit as evidence. Despite communications with Code Enforcement and Planning & Zoning, the city attorney reviewed this and she was asked to provide information dating back to 1946. J Diemer expressed her disbelief at the situation and shared that this will represent a sales loss of \$100,000 if she is not able to obtain grandfathered status. City departments need to communicate better, records need to be better, the 15 year statute of limitations will help a lot. She hopes this matter is on the forefront of the Commission discussions. She shared paperwork regarding her property with the Commission members.

Y Bradley: Thank you for coming. We hear you loud and clear, and you are welcome to stay for discussion.

B Baker: Do we have zoning ordinances back to 1946?

D White: Yes.

Y Bradley: Suggested a change to the agenda since the time certain for the public hearings was missed. Skip to hearing on ZA-16-05 regarding UVM and then to the hearing on ZA-16-04 regarding the Zoning Administrative Officer.

IV. Proposed ZA-16-05 UVM Medical Center Public Hearing

Y Bradley opened the hearing at 7:07 pm.

D White: Provided a brief summary of the amendments to the Institutional Core Campus Overlay. This amendment was previously discussed and warned. Agenda includes a memo from G Henderson-King, of White & Burke, delineating a few corrections to the original map provided to the Commission.

There were no members of the public present to speak on the proposed amendment.

On a motion by J Wallace-Brodeur, seconded by L Buffinton, the Commission unanimously approved the closing of the public hearing, and forwarding the amendment as drafted with corrections, and the required report, to City Council for public hearing.

V. Proposed ZA-16-04 Zoning Administrative Officer Public Hearing

Y Bradley opened the hearing at 7:15 pm.

D White: Reiterated that the amendment was intended to reflect recent changes in the department. We now have two principal planners and an assistant planner for development and permit review, and there are others in Code Enforcement who cover some of these duties.

On a motion by A Montroll, seconded by H Roen, the Commission unanimously approved the closing of the public hearing, and forwarding the amendment and required report to City Council for public hearing.

VI. Report of the Director

D White: A few weeks ago, we hosted Lee Einsweiller to discuss the Form Based Code. In addition to meetings with the FBC Committee and Planning Commission, his visit included meetings with area planners and with the Burlington design professional community. It was a very valuable opportunity to discuss the Code.

Department has filled its last vacancy with the addition of Ryan Morrison, formerly employed by the Town of Waterbury as the Zoning Administrator; he has additional experience in Washington State.

The permit review/reform process is beginning, and is being led by Chief Innovation Officer Beth Anderson. There have been three responses to an RFP, and narrowing of the applicants quickly in order to hire a firm to begin the process. He expects a contract to be signed within the next three weeks.

Last week there was an encore meeting regarding plans for the Burlington Town Center. There was a more engaged conversation with the public. Department continues conversations about what the zoning amendment could look like to accommodate the redevelopment. The developer has started the process by attending a technical review meeting, and representatives will begin meeting with the Neighborhood Planning Assemblies.

Another upcoming zoning amendment involves Burlington College. The Department is currently working on this with hopes to have something in place this spring. Both the Burlington College and Burlington Town Center amendments will be important and time sensitive.

A Montroll: For the Town Center amendment, what aspects of zoning other than height will be addressed?

D White: FAR (floor area ratio) and setbacks. Additionally, working to incorporate urban design standards similar to what will be required with FBC.

A Montroll: The FBC process continues, the committee is still working and need to have a few more meetings. At this point they are talking about the public process with the awareness that people will get involved when it goes to City Council. It makes sense to bring it to the NPAs. He believes it will be ready for the Commission in a month or two, possibly March or April as they are getting close to conclusion. After that it will then move to the City Council.

H Roen: This is the time to get people involved.

VII. Proposed CDO Amendment: Animal Boarding/Kennel/Shelters

S Gustin: This is pretty straight forward based on a request by Megan (Masha) Sterns to permit a downtown doggie daycare. The Ordinance Committee has discussed this proposal for the daycares as conditional use, with the assumption that it be fully enclosed.

L Buffinton: Will this be subject to licensure, perhaps from a different department, and will there be any limit on the number of dogs?

A Montroll: Is there an animal limit under the kennel description? The City Council would need to create a licensure process.

Y Bradley: Council should include an agreed upon maximum capacity.

H Roen: There should be a maximum number, there should be a definition.

D White: To be considered a a kennel, definition states that there are more than four dogs. There is likely to be a reference to AKC standards. If there is no licensure system in place, then an amendment that refers to one means nothing until that is established. It still needs to be warned for public hearing so it will come back to the Commission again.

Y Bradley: We should send a memo to City Council to consider a limit on capacity as well as a process for licensing and inspection.

L Buffinton: Have other cities done this?

On a motion by A Montroll, seconded by J Wallace-Brodeur, the Commission, with recommendation to provide Council a memo with additional details, unanimously approved a motion to warn this amendment for a public hearing.

J Rippa: Will traffic to accompany this activity be a concern?

S Gustin: That should be addressed as part of the conditional use process.

VIII. Proposed CDO Amendment: 15 Year Statute of Limitations

L Buffinton: Has two concerns, and thinks the Commission needs to work on this. Need to continue to discuss what constitutes the City having knowledge based on 15 years of records and the provision about discontinuance or reconstruction or after 50% or more is burned. Is it not possible to rebuild in the same footprint if it is non-conforming?

D White: The difference is between a legally non-conforming use which becomes grandfathered, and a use that was not legal at the time it was created. The key is how does that change over time? With 15 year limitations we're saying that either it wasn't legal at the time, or we can't determine if it was legal, and we are precluded against taking action against them—it's an unenforceable violation.

L Buffinton: We need better explanations.

K Sturtevant: There is a lot more to this whole section.

B Baker: I don't think it is clear enough. When you drill down, you come out with more questions; it forces staff to make decisions which require extreme depth of information. The Town of Colchester issues a certificate to say that they will not enforce a violation. Burlington's situation is fundamentally unfair; people have made good faith efforts so there needs to be a standard of proof and the ability for the department to make a determination based on clear standards.

D White: We are not talking about situations in which something is okay. These are still violations but won't be enforced against. A separate issue is that perhaps we need to anything that occurred previous to a certain time we put a CO in place without a fee. It's important to understand whether something is grandfathered, meaning it had approval, or if it is a violation.

A Montroll: What is the practical difference?

D White: I don't know that there is for Burlington, a determination documents that research has been done.

A Montroll: Is one of the practical differences that a grandfathered property can be changed but an unenforceable violation cannot be?

D White: Yes, the violation can't be altered in any way except to bring it into full compliance.

B Baker: All of these situations should be spelled out precisely. There's no definition of unenforceable violation.

D White: That's what we're trying to do with this ordinance amendment.

Y Bradley: I understood that there was a common consensus for the Commission that distinguishing between departments is not fair to the average person. People see the City as the City and then get blindsided based on an understanding of the City representing something different from a previous opinion. Perhaps these should just be grandfathered. Seems to be resistance on the part of the department to do what the Commission is asking you to do. Our Commission's job is to get a solution for the public.

D White: We all want a solution. But non-conforming uses are defined by statute and case law.

A Montroll: Can we have another category of non-conformity?

J Wallace-Brodeur: We don't want to create a situation where we can't address an egregious violation. We want to be sure; (d) might be the critical section, but we need to be careful about unintended consequences for things that were illegal in the first place.

H Roen: J Wallace-Brodeur has a good point.

E Lee: One thing that keeps coming back is that there should be public notice and process. There is no public input.

K Sturtevant: The difference is between RH and the other residential zones.

B Baker: J. Diemer's issue is a different issue.

E Lee: I agree we need a different avenue. But, community pushback created the maximum of four unrelated persons amendment. But if doing this overturns this ordinance, and all you have to do is get a letter from staff that you can keep doing it, there will be a lot of people upset.

B Baker: Staff didn't raise the issue that we would have to go back to 1947 when we considered the unrelated persons ordinance.

K Sturtevant: The reason 1946 definition was raised was because of a question by a Development Review Board member. The family definition came in 1970, in the form of a court order, and stayed that way until 2000.

J Diemer: This situation creates a huge black mark and she wouldn't have bought her property if she had realized the situation.

E Lee: We want to help, but need to understand the consequences and think about if there is a middle ground.

A Montroll: Fine with the concepts described in (d). What is our experience with these types of violation/compliance? What kinds of situations have occurred beyond correcting windows, where we have discovered a 20 to 30 year old violation and imposed a violation for an owner to bring into compliance?

K Sturtevant: There have been situations with additional units, and the occupancy questions is becoming more predominant.

A Montroll: Which ones have caused major concerns? Yes, they're violations, but where have the caused major issues in the neighborhood or health and safety issues.

K Sturtevant: There have been situations about safety of units in basements or attics.

A Montroll: What we are discussing doesn't excuse this kind of situation, right?

D White: It should not.

K Sturtevant: The other is occupancy which has become more of an issue. There was a period of time where people were trying to come into compliance after the 2000 ordinance change. But now, City departments have received more and more complaints about this.

B Baker: But it's impossible to come into compliance on these things without writing a \$100,000 check.

A Montroll: It is important to understand what kind of violations we need to bring into compliance. It seems that there are two levels of complexity in this question. Some are easy and less controversial—things that are not technically correct but don't have an impact on neighborhoods. And then there are ones that have a major impact on neighborhoods and safety.

Y Bradley: Do we refer this to ordinance committee?

Commission disagreed.

H Roen: Based on concerns voiced by E Lee and J Wallace-Brodeur about grandfathering everything, should we thread that needle by basing decisions on whether the City knew and tried to do anything?

E Lee: A solution could be where someone could go to the DRB, resulting with conditions put on property. Any process needs to be transparent so that the neighbors know what is going on. Mitigation is a reasonable approach.

Y Bradley: Why should someone have to go to the DRB have to give permission when you purchased a property that the City said was ok. When the four unrelated occupant regulation was passed, it was meant to send a message and stop speculation that people could increase density in buildings. It was meant to be a different thing than it has turned out to be.

E Lee: Disagree. The people who worked on it meant it to do just what it does.

Y Bradley: There was a general understanding that properties that already existed that way would be grandfathered as long as they were legal under the previous ordinance.

L Buffinton: If there is a written determination then things should be ok. There must be a way to make it cleaner, more secure.

D White: The Colchester letter is not saying that the property is in compliance; it's recognizing an unenforceable violation. This is not a hard thing to do—our records for 15 years are pretty good.

A Montroll: How would a letter like this impact neighbors' rights to issue a complaint?

Y Bradley: This discussion needs to continue at the next meeting.

K Sturtevant: Suggests that she work on revising the ordinance based on some items the Commission seems to be in consensus on.

IX. Proposed CDO Amendment: Low Impact Design

This item was postponed to a future meeting.

X. Committee Reports

Long Range Committee: H Roen reports a very good meeting at SEABA concerning planBTV South End. People were talking about four sub zones within the South End area and he anticipates most of the discussion at the meeting this Thursday afternoon will involve this subject.

Ordinance Committee: B Baker reports that the Ordinance Committee talked about dog kennels.

XI. Commissioner Items

E Lee: The Residential Parking Plan was accepted by the DPW Commission last week. Process went really well and a lot of changes have been made to original proposal.

M Tuttle: Addresses the traffic studies conducted by the Department of Public Works. The DPW Commission has accepted the study despite the consideration that parking permit numbers are too high. The Commission will implement the recommendations with the understanding that they can be changed in the future.

E Lee: It seems that the number of parking permits is higher than they should be, but overall the study produced quite good results.

XII. Minutes/Communications

On a motion by L Buffinton, seconded by H Roen, the Commission unanimously approved the minutes of December 8, 2015.

On a motion by A Montroll, seconded by B Baker, the Commission unanimously approved the minutes of January 12, 2016.

XIII. Adjourn

On a motion by L Buffinton, seconded by E Lee, the Commission unanimously voted to adjourn at 8:31 pm.



Y Bradley, Chair

Signed: February 11, 2016



E Tillotson, Recording Secretary