

Burlington Planning Commission

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Burlington Planning Commission Minutes

Regular Meeting

Tuesday, February 23, 2016 - 6:30-8:00 P.M.

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

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

I. Agenda

There were no changes to the agenda.

II. Report of the Chair

The Chair had nothing to report.

III. Report of the Director

David White, Planning & Zoning Director: Council Ordinance Committee took up the proposed CDO Amendment for Major Impact. Ordinance Committee Chair postponed for continued conversation. There was a lot of misunderstanding about what the amendment says, namely the misperception that large projects won't get reviewed and that public won't have an opportunity to participate. Will have to keep working with the Committee on this. planBTV South End, Form-Based Code and changes to the Downtown parking requirements continue to be on the plate.

Y Bradley: It is the Planning Commission's responsibility to help educate the Council and community on zoning amendments; let the Commission know if there is anything that can be done to help.

IV. Public Forum

The Chair opened the public hearing at 6:35p.m.

Pam Mackenzie, Interim CEO of Greater Burlington YMCA, and Corey Mack, Traffic/Transportation Engineer of RSG: 298 College St. was purchased to be the new YMCA. Have been working on a plan and working with the neighbors. Running into some difficulties based on YMCA's actual functions versus the confines of the current CDO. Requesting an amendment to define "Recreational Community Center" as a use, and add parking and trip generation rates for this use. Based on ITE, the YMCA's services fits into this land use category. Data from a recent survey of members was consistent with national guidance.

D White: Have been in current location for 80 years with no member parking; have a precedent so now we need to see how it can fit into the CDO.

Y Bradley: Seems like this should be put on an agenda to discuss options.

A Montroll: To be clear, request is for a lower parking requirement?

C Mack: Asking for a new land use category, with its own parking requirements, as well as the ability to waive those requirements.

E Lee: Will recuse from discussion because could be a perceived conflict of interest as a neighboring property owner who has been working with the YMCA. As a community member, thrilled about the YMCA's move and couldn't support it more.

Y Bradley: Represented the YMCA on the sale of the old property, but completely disconnected from the planning and fundraising for the new location. Does the Commission feel that there's a conflict?

Commissioners did not raise a conflict.

Y Bradley: Will get to it as quickly as possible.

A Montroll: When this comes to an agenda, it would be helpful to have recommendations from staff.

D White: Staff has been in contact with Pam and Corey and generally support the direction of the request.

With no other items to discuss, the Chair closed the public form at 6:49p.m.

V. Low Impact Design

D White: This amendment was recommended by the Ordinance Committee. Commission has seen versions in past. Current allows 10% additional lot cover for pervious paving only in the RL and RM zones.

Joel Rippa, property owner: Does the whole lot need to be pervious to get the 10%, or does just the 10% additional have to be pervious?

A Montroll: The way this is written, it only says the additional 10% must be pervious. Would have liked to see requirements about replacement of some existing paving with pervious in order to qualify for the bonus. Committee left it at this for now.

The Commission unanimously approved a motion by L Buffinton, seconded by A Montroll, to warn the proposed amendment for a public hearing.

VI. NR Overlay District

D White: In 2015, the City was delegated regulatory authority of the Shoreland Protect by Vermont Agency of Natural Resources (ANR), as a result of the statewide 2014 legislation. ANR worked with the City to determine what CDO amendments would be necessary to make local delegation possible. Important to the City, because otherwise, owners doing work on properties covered by this legislation would need both city and state permits. Biggest change from current is 95.5 feet above sea level versus 100 feet. Working with the RPC to develop a contour to add to GIS. Added language regarding purpose of NR Overlay to conform to ANR standards.

Y Bradley: Does vegetative cover include trees?

D White: Yes.

HR: Is the area north of Moran to Roundhouse Point exempt from this ordinance?

D White: Yes, exempt because it is previously developed area on filled land and the stormwater infrastructure is different than what would exist in a vegetated area.

The Commission unanimously approved a motion by J Wallace-Brodeur, seconded by Lee Buffinton, to warn the proposed amendment for a public hearing.

VII. Duplexes on existing lots

D White: Current ordinance does not allow for duplexes on a new lot, only existing lots, despite the purpose of the RL and RL-W zones being for single family and duplexes. Not enough institutional history to know why it is this way, so cleaning it up to remove the footnote.

L Buffinton: Sentence in the memo "however, duplexes will be allowed as a conditional use..." seems to be incorrect.

D White: Duplexes are already treated as a conditional use on existing lots, so this change means that duplexes would be allowed as a conditional use on any new or existing lots.

A Montroll: What does the conditional use mean?

K Sturtevant: It means that duplexes as a conditional use only applies to existing lots today. The change means that it becomes a conditional use on any lot.

A Montroll: There's a footnote that says minimum lot size is 10,000 sq.ft. If we remove the footnote, is that somewhere else?

D White: Yes, Section 4.4.5-1 establishes minimum lot sizes.

The Commission unanimously approved a motion by E Lee, seconded by L Buffinton, to warn the proposed amendment for a public hearing.

VIII. 15 year statute of limitations

J Wallace-Brodeur: Bring the Commissioners up to speed so we don't recover ground from last week?

Y Bradley: B Baker, S Gustin, K Sturtevant, D White and myself met to hone in on the proposed language from the attorney's office to make sure that it's not confusing. Think it encapsulates what the Commission wanted to see.

K Sturtevant: Will walk through changes. First paragraph clarifies what is meant by a "known violation" when the City doesn't take action. Added a definition of "stabilized."

Y Bradley: Also added that this refers only to violations that are not a matter of health and safety.

L Buffinton: Can we add a definition of "stabilized" and put it in the definitions section?

Minutes approved by the Planning Commission on March 08, 2016

Y Bradley: That is what first paragraph is. Not sure it is necessary in definitions.

L Buffinton: Think the language could be clearer, maybe by saying "as defined above."

K Sturtevant: Cleaned up section regarding burden of proof and tweaked language regarding what constitutes known.

Y Bradley: Spent some time on this to strengthen the language regarding preponderance of evidence.

K Sturtevant: Added language regarding a health and safety concerns. Burden is on the property owner to demonstrate that it's not a health safety violation in order to be stabilized.

E Lee: Many units don't meet current building code. Would those be considered health/safety risks? There's ambiguity now, but if it is not being changed substantially, then don't have to bring it to code. Want to see things brought up to code.

K Sturtevant: We have a case where something was built, but there are no records, so they have to meet current ordinance and treat it like its new.

Y Bradley: Seems like a reach to make all units come up to code.

D White: These units would have met code at time built, because there was a permit issued.

E Lee: Sympathetic to lost records, but what about people that just do things without any permits?

D White: If there were no permits at all, then there was no city knowledge, so the statute wouldn't apply and it would be treated as a new unit required to meet current code.

L Buffinton: We need to define what city health and safety standards are.

K Sturtevant: We would apply fire, building, minimum housing codes, etc. that we already enforce.

Y Bradley: What about cases where a known violation has occurred for 15 years or more, it is not considered a significant health/safety hazard, but it was built 45 years ago with no building permit? That would be treated as a new unit?

D White: If it was built that long ago, it would have been when P&Z issuing its own building permits. Lots of the units in violation that we're talking about where built in the 1970s and 1980s. The situation being described by E Lee is different and wouldn't be covered by the 15 year statute.

K Sturtevant: Next section covers determination and effect. Stabilized determination goes through the same process as administrative approval process.

D White: Addresses the Commission's point about needing something that the property owner can rely on.

H Roen: If property changes hands but use doesn't change, is that considered to be a discontinuation?

D White: No.

K Sturtevant: This is similar to the language for non-conforming, but discontinuation is determined administratively rather than through the DRB.

L Buffinton: In the section regarding rebuilding after catastrophe for non-conforming uses, there's a distinction made between residential and non-residential and properties eligible for historic listing. Does this apply to the statute of limitations?

K Sturtevant: No, those provisions are for non-conforming, which means they were legal at some time and have rights to rebuild.

L Buffinton: There's a discrepancy between the chart and the language in the following section. The way this is written makes it seem like nothing can happen on a non-conforming property after a catastrophe.

A Montroll: For example, the violation might be that a property has too many units. Following catastrophe, the statute requires them to build the right number of units.

L Buffinton: This says that they have to become conforming.

D White: I think this is primarily related to uses.

A Montroll: Cross reference the non-conforming section and add, "except as might be permitted under the non-conforming language." This would allow a property that might be non-conforming and have a violation, to rebuild back to the non-conformity, while requiring the elimination of the violation.

Y Bradley: Section regarding sufficient documented evidence of continued use is too harsh. Not unusual for something to be vacant for more than 60 days. 120 or 180 days feels more appropriate.

E Lee: I disagree. Maybe 60 days is too long.

K Sturtevant: Applies to something that is already illegal. Burden is on owner to establish & maintain. We do not want to burden to be on the City to prove continuation.

D White: The public policy is for non-conformities to eventually be discontinued, but we allow for lease to let it happen over time. But for violations, the policy is to get rid of them and that's what this language has to address. The property owner has to demonstrate that the use hasn't been discontinued.

A Montroll: Need to define what discontinue means.

J Wallace-Brodeur: Just because a unit is not being rented doesn't mean it's no longer there; seems more like an issue if they're changing the configuration. Not clear what would cause a discontinuation.

D White: In that case, we define discontinue as not occupied.

A Montroll: Regarding housing replacement, if a unit is eliminated because it is discontinued, is there now an obligation to pay to replace the unit?

E Lee: What about a scenario when a single family home has 6 rooms for rent, but are only renting 4 because they can't find tenants. If a long time passes, they shouldn't be able to preserve the ability to rent to 6 college students. The 4 unrelated limit should be considered a use that applies under this statute.

D White: Proof of who was living there is a very difficult test, especially whether or not they were related.

K Sturtevant: It is easier to prove now, based on rental registration forms as long as the forms are filled out honestly.

E Lee: I have a lot of challenges with this ordinance. It feels like it's a catch-all that could be really harmful.

A Montroll: Regarding annual rental registration forms, we should make sure unenforceable violation doesn't cover a scenario where they've been falsifying information to cover up over-occupancy and want to restore the number of tenants by providing leases to prove occupancy.

K Sturtevant: That scenario would be a misrepresentation of information and would not be covered under the statute of limitations.

J Ripa: Why not make the time period for discontinuation 6 months? These violations have been happening for decades, and no one has a good grasp on what discontinuation means. If it's 60 days, a lot of people will get upset, but less likely if it's 6 months.

Y Bradley: What time frame feels right?

K Sturtevant: To clarify, our ordinance today says 60 days versus legal non-conformities, which is one year. State statute says 6 months or more. One of the distinctions for discontinuation of violations at 60 days was because they were never legal.

A Montroll: Maybe 90 days.

Y Bradley: Disagree that if it's illegal, given the housing market in Burlington, it should just go away. We need housing. If the market was someday stronger and we didn't need these units, I could understand a more strict policy.

D White: If the units meet all applicable codes, the alternative is they could just permit it and don't have to worry about the violation anymore. That happens with some regularity.

H Roen: The statute of limitations situation seems like it is helpful if someone is selling and find out something unexpected.

D White: If zoning permits it, they can do it. Statute is talking about cases where something isn't allowed to happen. Between 1946 when zoning was first adopted and the 1970s, there was not a proliferation of illegal units being created. It was post 1970 when these situations started cropping up.

Y Bradley: Andy suggested 90 days, any agreement?

The Commissioners expressed agreement.

D White: Other modifications to the draft include clearer language that we're focused on use for provisions to rebuild after catastrophe, and clarify that good faith means you're either listing it or working on it.

E Lee: In the section about conflicting records, statement that the administrative officer "should have known" should be removed because it's vague. The process for stabilized determination should happen in public sphere, not in administrative offices.

K Sturtevant: Notice will be required like it is today, through a Z-card and on the website.

E Lee: There will be push back from people who have complained about issues and P&Z hasn't done anything.

D White: The process will have grounds for appeal based on whether or not the appellant believes there is evidence that it is stabilized. Then it will go to the DRB and staff will present the research.

Y Bradley: Reminder that this is not about penalizing property owners just because P&Z didn't know about something.

D White: Ultimately, it is a requirement of state law that violations older than 15 years have a statute of limitations. We just have to decide how we work within that.

E Lee: So people could appeal to environmental court?

K Sturtevant: They could argue that our ordinance doesn't fit within the state requirements.

J Ripa: Provided example of his property's violation and how it was discovered.

L Buffinton: It seems that there are a lot of nonconforming lots in the City that can't be expanded.

D White: Ultimately we want to be able to reduce non-conformities.

Y Bradley: L Buffinton raises a good point, but seems like a separate issue.

L Buffinton: Should be a future discussion item.

J Ripa: This discussion has been going on for a long time, and I don't know if there will ever be 100% agreement. Can't we just call it good and move on?

Y Bradley: Agree about the length of time, but in fairness we need to live with the decision so it needs to be right. We're getting closer.

A Montroll: I think we're asking for a next draft.

IX. BTC Update

J Wallace-Brodeur: Developer made a presentation to Council, which was a big milestone.

D White: Council received the presentation and held an executive session to go over the elements of the development agreement.

J Wallace-Brodeur: The next step is to talk about the elements of the MOU with developer to move toward a development agreement. There are pieces that will require action by the Commission to enable the project. Process has been set up so that we could move it quickly to help keep things on track.

D White: Ordinance piece will be to create an overlay to allow for taller buildings, but the height continues to remain a question. It also needs to allow height without bonuses, remove existing view corridor setbacks on Cherry Street, and establish form-based elements to activate street. It also needs to establish discussion about how parking gets managed within the downtown parking management plan, and some clause about public improvements as a condition of approval.

A Montroll: When this comes to us, will we need to meet in executive session? This need to happen in the public or it won't go over.

D White: No, it will be public. It's been clear from beginning that zoning needs to change in the following ways. We've been working on a draft of the update and are getting feedback from within the office.

J Wallace-Brodeur: MOU doesn't commit the City to an outcome, but commits to considering the issues through our process.

X. Committee Reports

Long Range Planning Committee:

J Wallace-Brodeur: Committee met last week, still working on the economic development and arts sections. Struggle with the framework of how the sub-areas are articulated. Don't think there's opposition to sub-districts, but think we should look at form and then use rather than specifics. Spinning our wheels and don't feel like its gelling. We also need to talk about transportation elements rather than seeing the sections in a silo.

A Montroll: Commissioners have been getting a lot of emails about a rotary at Pine and Maple. At the last meeting, we discussed that although the Champlain Parkway says it will install a traffic signal at this corner, we need to make this a recommendation that addressing traffic here is a high priority. PlanBTV South End should say that there should be a traffic light there regardless of whether the Parkway gets built.

J Wallace-Brodeur: I would want to see something that says a traffic light would improve traffic; we're not qualified to say what the mitigation should be.

A Montroll: Agree, I don't want to put something in the plan that is not going to work.

J Wallace-Brodeur: I think we've gotten into the weeds and are being too prescriptive in many sections of the plan. We need to take it a level up and talk about a vision. We should say that we need a strategy that relieves traffic on Pine Street.

A Montroll: The point is about timing, and that we shouldn't wait for the Parkway to be built before we alleviate traffic.

Y Bradley: Perhaps the recommendation we make is that DPW should find an appropriate measure and install in advance of the Parkway, if possible. What we don't want to do is put the opportunity out there that we're changing the design of the Parkway, and we need to be realistic about the permitting of the project.

D White: The new signalized intersection at Lakeside and Pine is an example of City stepping in to say we need to do something and we footed the bill. We can discuss this as a priority, but be mindful that it may not necessarily have the same outcome.

A Montroll: We would be remiss to not say traffic should flow better as part of our planning exercise.

L Buffinton: This also ties into the Railyard Enterprise Project options. Will the Commission get to review the alternatives? Certainly has a land use context.

D White: The Council sent on three alternatives for further study. Likely will review when that is complete.

XI. Commissioner Items

L Buffinton: Two issues anxious to bring to the Commission: increase lot coverage in RM zones should go to the ordinance committee with the next few months, and based on tonight's discussion, greater flexibility for expansion on non-conforming lots.

XII. Minutes/Communications

The Commission unanimously approved a motion by A Montroll, seconded by H Roen, to approve the minutes of the February 9, 2016 meeting and accept minutes.

XIII. Adjourn

The Commission unanimously approved a motion by L Buffinton, seconded by J Wallace-Brodeur, to adjourn the meeting at 8:26p.m.



Y Bradley, Chair

Signed: March 16, 2016



E Tillotson, Recording Secretary