

Burlington Planning Commission

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vacant, Youth Member*



Burlington Planning Commission

Regular Meeting

Tuesday, March 22, 2016 - 6:30 P.M.

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

AGENDA

Attendees: Yves Bradley, Bruce Baker, Lee Buffinton, Emily Lee, Andy Montroll, Jennifer Wallace-Brodeur, David White, Meagan Tuttle, Scott Gustin, Kim Sturtevant, other interested parties

I. Agenda

Change order of items X and XI. Item X only if time permits.

II. Report of the Chair

Nothing to report.

III. Report of the Director

Just back from a trip to Sarasota; some examples of new roundabouts and bike lanes, but interesting to see the impact on traffic in the gulf coast due to poor land use and development patterns.

IV. Public Forum

Tony Redington, Resident, Ward 2: In Europe, roundabouts are preferred intersection treatments; some cities have prerequisites for new development that land must be dedicated for roundabouts. Burlington should look at this, for sites such as Burlington College property intersection with North Avenue. A roundabout could help get public acceptance for the plans. New group, Pine Street Coalition, recommending design guidelines for the Champlain Parkway. Preparing a white paper about design defects and remedies. USDOT has adopted new safety regulations requiring states to adopt targets for reducing vehicular and pedestrian/bike fatalities in transportation projects.

Sharon Bushor: Councilor, Ward 1: Concerned about motivation to look at 15 year statute of limitations, since as proposed it would include driveway, parking spaces/lot violations. No one has ever tired of raising concerns over parking issues. Have seen a lot of violations that impact quality of life in neighborhoods; some never got addressed when the zoning rewrite process got halted several years ago. Opposed to saying that a violation is ok just because it has existed more than 15 years. DPW Commission is looking into whether they can deal with some of the parking violations by partnering with Code Enforcement. There are other ways that we can address these issues.

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Maura Fitzgerald & Holly Farrington, Majestic Car Rental, Willard St: Purchased the Rotary Mobil, received a conditional use permit from the DRB for 11 cars on site. Owners never interpreted the number of on-site parking spaces to limit the number of cars in the company's fleet. Have an informal arrangement with the Greek Orthodox Church to use the lot as overflow. Due to issues with vandalism, had to cut down trees on the Church's property, which led to complaints by neighbors and code enforcement got involved. DRB's new ruling says that there are no harmful impacts on the neighborhood from our business, but still denied more than 11 cars in the fleet. Will appeal it, but don't have time and money to spend on a lawsuit with the City. How is only option for appeal to go to court? Looking to the Planning Commission for recourse.

L Buffinton: Did you have a parking management plan with the church?

M Fitzgerald: No.

E Lee: What if the informal relationship with church ended?

M Fitzgerald: Would have to be creative.

S Gustin: Offered to meet with H Farrington when DRB rendered the decision to discuss options. Bottom line, this is a non-conforming use, which cannot be expanded.

A Montroll: Did the zoning for this site change?

S Gustin: Last application was under the 1995 regulations, which permitted the swapping of one non-conforming for another. That is no longer provided for in the current CDO.

M Fitzgerald: Interpretation of the DRB's original decision seems to be the issue.

A Montroll: Planning Commission is not the right place, unless you're asking for a zoning change. The Commission doesn't oversee what the DRB does or give them guidance.

D White: Best route is to talk to Scott. Ordinance Committee has been talking about a shared parking ordinance, which might address the issues you're having, but not in time to address your current concerns.

B Baker: Our role is not to rule in your case; it's to set policy. If you chose not to pursue DRB option, you could pursue a course to change the ordinance. Scott is in a box that says he must enforce zoning the way it is written; there can be interpretations by the DRB, but he can't change it.

V. Proposed ZA-16-06 Animal Boarding - Public Hearing

Y Bradley, Chair, opened the hearing at 7:04 pm.

S Gustin: Proposed amendment originates from a request by Megan Sterns to permit animal boarding as a conditional use in downtown zones. Changes from not permitted to a conditional use through the addition of a footnote requiring full enclosure and licensure by City Council.

L Buffinton: This should reiterate the impacts that should be covered under the license.

S Gustin: Our understanding is that those suggestions will be covered in the narrative that is sent when the amendment goes to Council.

The Commission unanimously approved a motion by B Baker, seconded by A Montroll, to send the proposed amendment and required report to City Council.

VI. Proposed ZA-16-07 Low Impact Development- Public Hearing

Y Bradley, Chair, opened the hearing at 7:06 pm.

S Gustin: This amendment has been in the works for nearly 3 years. Proposed amendment permits additional 10% in lot coverage for pervious paving; puts paving into the same box as patios, decks, porches. Must meet standards for one-year storm event, but avoids pitfalls of more expansive provisions.

A Montroll: The attached report could be clearer on intention. Clarify that there are two separate concepts. One is the 10% for pervious paving, and the other is the driveway issue. Clarify what the 10% is for, that it is adding pervious paving into the same box with decks and these features collectively can qualify for an additional 10% coverage. Also need to clarify that additional pavement is pervious, not the whole site.

Bob Dunkin, property owner: Is there a particular square footage that has to be added to qualify for the extra 10%?

S Gustin: It's not about the size of the pervious paving. Permits a property to exceed maximum lot coverage by up to 10% when installing these elements on site.

B Dunkin: Increase coverage up to but not exceed an additional 10%. It could be clearer that it's not just for the pervious pavement, but that it's inclusive with the other elements.

Scott Mapes, Environmental Consultant: Intent of the amendment should be clear that it's about all pervious and porous options, not just pervious pavement, which implies asphalt. Language should say "one-year, 24-hour storm event" because that is the parameter in statute.

A Montroll: The definition for pervious pavement addresses concern about range of materials.

L Buffinton: Propose the term "pervious surface system" rather than "pervious pavement." It's a more ubiquitous term and wouldn't require a change in the ordinances as pervious options evolve.

S Gustin: Could add "and the like" to the definition of pervious pavers.

E Lee: If a site already has pervious paving, is it still eligible for a 10% increase?

S Gustin: The site would already be in compliance, but all of these uses go in the same box so theoretically, yes.

Y Bradley: What about a green roof?

S Gustin: This was included at one time, but was removed.

D White: Reason not to define as "pervious surface system" is that it would imply green roof, which is not the intent of the amendment.

The Commission unanimously approved a motion by A Montroll, seconded by B Baker, to amend the proposed amendment to include "one year, 24-hour storm event," to make the requested clarifications to the report regarding intent of the ordinance, and forward the proposed amendment and required report to City Council.

VII. Proposed ZA-16-08 Shoreland Protection- Public Hearing

Y Bradley, Chair, opened the hearing at 7:22 pm.

S Gustin: Amendment is minor change regarding state's Shoreland Protection Act. Burlington took advantage of a provision for municipal delegation, which required that the NR Overlay be amended to shift the elevation from 100 feet to 95.5 feet. Effect is that there is a little less land in the overlay on Appletree Point due to how shallow the Lake is. State also asked for some additional language regarding vegetative cover.

L Buffinton: Why is downtown exempt?

S Gustin: State buffer exempts downtowns and industrial areas because of the urbanized nature. Has been this way previously because vegetation doesn't exist, there is filled land and a different stormwater infrastructure.

The Commission unanimously approved a motion by J Wallace-Brodeur, seconded by L Buffinton, to forward the proposed amendment and required report to City Council.

VIII. Proposed ZA-16-09 Duplexes on Existing Lots- Public Hearing

Y Bradley, Chair, opened the hearing at 7:28 pm.

S Gustin: Amendment originated from a request by Bob Dunkin. Footnote regarding duplexes in these districts talks about existing lots, but not new lots. Purpose statement of the districts specifically mentions single family and duplexes. Has no impact on minimum lot sizes for duplexes, simply gets rid of the preexisting lot requirement.

A Montroll: Think it's clear that minimum lot size is 10,000 sf, but given confusion, is there any harm in leaving the footnote without the "existing as of 2007" phrase?

S Gustin: Leaving the footnote doesn't do any harm now, but if something gets changed, the footnote may not get changed. Duplication in the ordinance leads to conflicts.

A Montroll: Include a cross reference like, "Duplexes may be constructed or single unit may be converted to a duplex, as long as the lot size meets the minimum size articulated in" with a citation of the table number.

The Commission unanimously approved a motion by L Buffinton, seconded by J Wallace-Brodeur, to amend the proposed amendment to include a footnote with the language proposed by A Montroll, and to send the proposed amendment and required report to City Council.

IX. Proposed CDO Amendment: Recreational Community Center

Commissioners Y Bradley and E Lee recused themselves from the discussion due to conflicts of interest.

S Gustin: YMCA shared a proposal for a new land use with different parking standards, ability to pursue up to 100% parking waiver. From land use and policy perspective, a better idea is to change Article 8 standards to open door for non-residential uses in all districts to have the ability to pursue a greater than 50% parking waiver and parking management plan. In some recent DRB cases this could have made sense, such as the King Street Center, which had to find parking and now leases them because they don't need them. The YMCA, whose new location is located in the high-density residential zone, would likely need more than 50% waiver of parking. Makes more sense to have something broad-based where parking waivers and standards for parking management plans stay the same.

L Buffinton: Agree with this approach. By adopting this amendment, we are empowering DRB to grant a more than 50% waiver for non-residential uses; recommend the DRB embrace this.

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D White: Similar to a recommendation from the Downtown Plan consultants, who suggested the 100% waiver should apply to all uses, as long as they meet parking management plan standards.

S Bushor: Support this proposal; however, concerned about the clause granting approval by administrative officer. Don't want the public to be caught off-guard about what can be done administratively versus through the DRB.

S Gustin: Conditions 7 & 8 are the only ones that allow for administrative approval, which is not a change from the ordinance today.

A Montroll: No problem with YMCA using this waiver, but concerned about how broad it is. Could permit up to a 100% waiver city-wide; however, when the elimination of downtown parking standards was proposed it was not passed. Concern is that the YMCA could get tangled up in a much more difficult community discussion that will impact their timeline.

S Gustin: The amendment does not apply the increased waiver to residential uses, and parking minimums still apply with a reduction through a waiver instead of wholesale.

A Montroll: This isn't going to be an easy amendment to get done given what the YMCA needs.

J Wallace-Brodeur: What's the alternative?

S Gustin: Original proposal from YMCA was to create its own use category. Struggled with the question of how the YMCA is truly different from sports and fitness education facilities.

S Bushor: It's different from the first approach, but don't disagree with A Montroll's concern. Always surprised how few people come and speak to the Commission, but then get bombarded at Council. Concern is not about the YMCA itself, but potentially a big commercial building downtown. Potential for some opposition to giving that total power to the DRB and could become a prolonged process.

L Buffinton: Need to be mindful of spot zoning and doing something exclusively for the YMCA.

S Gustin: It's more complicated because the Community Recreation Center use would need to be applied in a residential zone.

A Montroll: Is it possible to take this to council to get a weather report?

S Bushor: Is it likely that the YMCA will request a 100% waiver?

S Mapes: Site design still in the works. Giving a developer the opportunity to waive 100% doesn't waive the responsibility to provide parking. Parking management plan standards are pretty rigorous even to request a 50% waiver. Some uses could make the case for a 100% waiver with a parking management plan, but not all projects can demonstrate ability. Opportunity for the DRB to use discretion based on information available; not sure that this change would open up very many projects to be eligible for the 100% waiver.

A Montroll: Not concerned about the policy, but the process and whether or not that will happen in a timely manner. Not sure enough people will agree quickly enough to meet the YMCA's needs. Is there a simpler solution? Is the YMCA ok with this?

B Baker: Could recommend and report that indicates the Commission's support for YMCA's initial request, but didn't feel that the initial request had the right legal structure.

L Buffinton: Could propose up to an 85% waiver, that way there is always something that is required regardless of the parking management plan.

A Montroll: If we considered that option, we need to preserve the current 100% waiver for ground-floor non-residential uses in any mixed-use districts.

D White: Would need to incorporate tiers, because there is also a waiver for adaptive reuse.

S Gustin: The proposal is to send an amendment to the existing Article 8, with the addition of a third tier for non-residential uses to waive parking up to 85%?

S Mapes: Site is very tight; YMCA request might be more than 85% depending on the final arrangement.

L Buffinton: So we consider 90% waiver.

B Dunkin: Can you clarify when this ordinance would take effect?

D White: Not in effect until ordinance committee has finished with it and warned for a public hearing by City Council.

A Montroll moved to warn a proposed amendment to Article 8, with up to 90% waiver for non-residential uses city-wide, and preserving the 100% waiver for adaptive reuse and ground floor commercial in mixed use districts, for a public hearing. J Wallace-Brodeur seconded.

B Baker, L Buffinton, A Montroll and J Wallace-Brodeur approved the motion. Y Bradley and E Lee abstained.

X. Proposed CDO Amendment: Downtown Mixed-Use Core Overlay

This item was deferred to the next meeting.

XI. Proposed CDO Amendment: 15 Year Statute of Limitations

K Sturtevant: Added an exception in the draft regarding violations of the four unrelated rule.

E Lee: Improvement, but still don't support it. There are egregious violations, especially around parking. It is worth inviting Bill Ward in to give his opinion. Bianchi doesn't apply to use violations. If a use is something that can be discontinued, should work towards that. Should set a time limit on how long to discuss this issue.

L Buffinton: I understand people that are suddenly faced with hardships. However, we need to do better on the enforcement side, and try to incentivize property owners to address problems rather than exempting them. Seems like we're trying to do it all in one ordinance, when there might be a need to treat cases differently.

B Baker: If we start from Bianchi, we have to have 15 years as a threshold, and violations beyond that have to be exempted. Bianchi doesn't talk about use, but we have case law that started considering use. Case law is where real decisions are made and it is determined how important things are. Talking about clandestine uses is different than talking about ones the City knew about. Is a parking violation considered a use or a structure?

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K Sturtevant: If violation is accessory to the primary use, like a strip parking lot for a business or residential parking for a property, it's considered to be structural. If it's parking that is not accessory to the primary use, then it is considered use.

A Montroll: Maybe it makes sense to take out parking violations. Parking is a difficult thing to enforce because whenever a car leaves the site, the violation is considered "cured" even if it comes back.

B Baker: Parking is so ethereal that it's a continuing violation.

E Lee: What about accessory units that have to be owner-occupied, but aren't. That is a use violation. If we can't enforce it, now it becomes ok for those properties to become duplexes.

B Baker: Back to the clandestine issue—if the City didn't know, then it's not ok and can be enforced.

D White: Stabilization wouldn't change the type of unit; there is a difference between an accessory unit and a duplex.

E Lee: Taking something really big and whittling it away. Should be thinking about the specific things we do want to give relief for, rather than including everything and then pulling out the few things we don't like.

B Baker: Major concern to begin with is lost units that have existed for 20 years, and would be impacted as a result of bad records.

E Le: If that's what we're talking about, then the ordinance should be about that.

J Wallace-Brodeur: We've been trying to do exactly that for a long time. We've already established that legitimate situations are worthy of a remedy, but it's hard to determine what's worthy on a piece of paper. What we have to decide is if there is enough of a reason to provide a remedy for people that have been trying to do the right thing, and take our chances that someone who's not worthy might occasionally slip through. We can't be the judge and jury when writing a zoning ordinance, and have to start with something.

Joel Rippa: What I was proposed was simple, and it has turned into a much more complicated thing. My intent was never about blatant violations, and it can be relatively easy to detect when false information is shared in the paperwork. However, it's different when an owner has divulged information and the city did anything to enforce. You're struggling because now you're addressing everything like number of bedrooms and parking.

B Baker: The Commission has settled on carving out the more than 4 unrelated use. Removing use completely would result in lots of lost units. Would catch people who thought the previous owner had done the right thing with the units.

L Buffinton moved to add an exemption to the current draft regarding parking violations. B Baker seconded.

Y Bradley: Talked to Bill Ward, impression is that he supports that what we're trying to do is fair. See if he can come to the next meeting. We mess with things for too long that they become too complicated and then we don't care. Need to do something legitimate with this proposed ordinance.

L Buffinton: Need to make sure that we're not legitimizing a real problem that the City is trying to enforce.

D White: These situations put the department in an untenable box where we legitimately can't enforce.

B Baker, Y Bradley, L Buffinton, A Montroll and J Wallace-Brodeur approved the motion. E Lee opposed.

XII. Committee Reports

J Wallace-Brodeur: LRPC meets tomorrow night at 5:30, trying to mix it up on time of day to accommodate schedules.

Y Bradley: Please be mindful of staff time in the evenings. Executive Committee meets tomorrow at 1:30 pm.

XIII. Commissioner Items

No items to report.

XIV. Minutes/Communications

On a motion by A Montroll, seconded by B Baker, the Commission unanimously approved the minutes of the March 8, 2016 meeting as submitted and accepted communications into the record.

XV. Adjourn

The Commission unanimously approved a motion by J Wallace-Brodeur and seconded by B Baker to adjourn at 8:27 pm.



Y. Bradley, Chair

Signed: April 15, 2016



E. Tillotson, Recording Secretary