

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)

www.burlingtonvt.gov/pz

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



Burlington Planning Commission Minutes Tuesday, September 27, 2016 - 6:00 P.M. Contois Auditorium, City Hall

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

Absent:

Staff: D White, M Tuttle, S Gustin, K Sturtevant

I. Agenda

Called to order at 6:05pm. No change to agenda.

II. Public Forum

I Avilix: Public ask questions often without answer. Request to transcribe notes during public forum so public can review and respond. Will ask of City Council, too. Especially relevant to some questions that been asked of Council regarding the Planning Commission.

R Herendeen: Sent diagram to Commission regarding D White documents that are misleading. If look at stepbacks from the angle shown in diagram, must modify diagram to show that massing is wide as can be from other side.

C Long: Showed CLC video of fly through massing model of BTC redevelopment. The U represented in the model is completely different from the wedding cake diagram used in PC meetings; staff diagram disingenuous. This is out of scale with Burlington. Amendment back in Commission's court, should say it's out of scale.

III. Report of the Chair

Deferred in interest of time.

IV. Report of the Director

September 29, 2016 at 7pm is City Council Public Hearing on Proposed ZA-16-14 DMUC Overlay.

V. Proposed CDO Amendment ZA-17-04: Neighborhood Activity Center – Cambrian Rise

Y Bradley recused as board chair of former Burlington College.

A Montroll: Continuing discussion following public hearing at last meeting.

D White: Changed building height in response to Commission comments. Lowered height to 65 feet, no change to how it is measured. Inclusionary zoning allows 10' additional height by right. Similarly, inclusionary allows additional lot coverage by right. Modified height and lot coverage in proposed NAC-CR to consider this. Commission was supportive of changes to inclusionary zoning, to reference the newly created district and correct several existing references that were inaccurate, and changes to Appendix A to add additional permitted uses and conditional uses. With these changes incorporated, staff recommends Commission recommendation to Council along with Municipal Bylaw report.

Tuesday, September 27, 2016

J Wallace-Brodeur: What is a public transit terminal?

D White: More than a bus stop; located on private property, may have information, seating or other amenities associated with transit.

H Roen: Changed height from 80' to 65'. How is it measured?

D White: No change. In case of a building set back more than 20' from ROW and property line, take average elevation around the entire building. Worked with E Farrell to ensure this measurement, plus the 10' additional height for inclusionary would work, and it seems to.

A Montroll: Only outstanding issue for the Commission was height; seems to be resolved.

A Friend: Recommend property owner try to make best use of transit, car share, electric vehicle charging, etc.

H Roen: Appreciate the partnership, which is rare and exceptional. Opposing this because the goal of moving development towards N. Avenue is achieved in the development agreement, but not through the amendment.

The Commission approved a motion by E Lee, seconded by A Friend, to forward the amendment and report, with recommendation, to Council. JWB, AM, BB, EL, AF in favor; HR opposed; YB recused.

VI. Municipal Bylaw Amendment Report: ZA-16-14

D White: Commission may make changes to the Municipal Bylaw report because Council modified the proposed amendment. Staff feels that the changes by Council do not rise to the level of effecting how the report was written, and recommends no changes to the report.

A Montroll: Is there a role for Commission on the amendment or just the memo?

D White: Statutory role is specific and limited to changes to make to the memo. Included a copy of the amendment, list of City Council's changes for Commission to judge whether necessary to change report.

E Lee: What does the color-coding represent in the amendment?

D White: Sent Council the amendment as warned for Commission's public hearing. Commission then sent recommendations to Council for updates to the text. Council Ordinance Committee also made a few recommendations. Green highlights show changes to Planning Commission public hearing version of the document; Council referred to them as technical and non-controversial, and incorporating them was the first action. The attached report discusses other changes that Council voted on and approved.

A Friend: Establishment of Pine Street on official map seems limited due to current location of Free Press Building. Seems aspirational; any thinking of how that can happen?

D White: Has been something the City and property owner have been exploring. BTC owner has land rights under the building. Have been working on a design that is feasible and can accommodate emergency vehicles. Illustrations and information are on website.

M Tuttle: Official Map as a tool is intentionally aspirational to identify future opportunities for rights of way and other connections.

I Avilix: When was the report initially transmitted to the Commission?

M Tuttle: Transmitted to Commission for July Public Hearing and subsequently sent to Council. No changes have been made to the report since that time.

I Avilix: Report seems to say that there is no significant change to scale, character, to downtown of the overlay. Commission did not conclude its debate before sending to Council; this is unethical. This is the Commission's last chance to say that it is not character and scale.

Tuesday, September 27, 2016

C Long: Despite assertion that density is energy efficient and reduces sprawl, evidence to the contrary. High-rises are energy hogs, even with LEED certification tall building worse than 3-4 stories. EPA study concluded no relationship between density and sprawl. More people will find Burlington less desirable, increasing sprawl.

A Montroll: Commission could approve the report, change the report, or take no action?

K Sturtevant: Recommend the Commission take an action.

J Wallace-Brodeur: Report is a summary of the goals for the amendment. Despite Council's changes, think it's still consistent with the goals stated in this report.

E Lee: Not in a position to make changes to the amendment, but troubled by the LEED Certification section referring to an alternative to LEED being determined by administrative officer. Recommend Ordinance Committee take on definition of "equivalent".

Y Bradley: LEED and other standards change rapidly. Rather than define what the standard is based on today, definition should point to highest standard as recognized among architectural professionals at the time. Ask staff to provide language for the Commission to review and consider incorporating in future amendments.

E Lee: If we work on this, then comfortable sending the report back to Council.

Commission agrees with this approach.

The Commission unanimously approved a motion by J Wallace-Brodeur, seconded by Y Bradley, to approve the report as is and return City Council.

VII. Public Hearing ZA-16-11: Enforcement Period of Limitations

Chair opened the public hearing at 6:43pm.

D White: Amendment makes clear limitations on municipal enforcement of zoning violations to be consistent with state statute, and how to resolve conflicting information in public records.

C Long: If wish is to stabilize neighborhoods, why simply wipe away violations? People blatantly ignore rulings from DRB, parking and over-occupancy violations. City doesn't have tools for enforcement, why just say "it's ok"? Up-zoning related to the mall is allowing property owners to convert houses into multiple units and make big bucks. Need teeth in current laws.

E Lee: This does not include parking violations, and properties not in conformity with the family definition. This would not apply to the two scenarios mentioned.

K Sturtevant: Doesn't apply to parking to the extent that it does not preempt state law.

C Long: A striped parking lot and a parking lot in a backyard are different. Does this distinguish between parking as a use and parking as a structure?

K Sturtevant: Case law establishes parking as a use when it is not accessory to the use of property; i.e. renting out spaces for an off-site use. A court case deemed that scenario a use violation, not a structural violation. If expand a parking lot, that is structural.

A Friend: Recuse from discussion; party to a suit in neighborhood regarding these issues.

S Bushor: Not sure about motivation for this amendment. Why wipe slate for violations that have gone on for 15 years? City's goal is to bring things into compliance, this expands non-conformities and violations. Not supportive; own opinion separates quality of life from income earned from investment property.

Chair closed the hearing at 6:54pm.

B Baker: City's past way of doing business misled property owners and misinterpreted statute. State statute says 15 years, but doesn't distinguish between use and construction violations. Purpose of amendment is to establish

Tuesday, September 27, 2016

bright line of 15 years, which was state intent. City did not always know about use violations, but generally has records of construction violations. This establishes guidance for process for when City knew about violations. Need to make it clear for people who tried to comply with the law, and for the people at the City who interpret the law.

J Rippa: Not about hiding something that the City didn't know about. It is about things that are obvious that the City does know about, with no way to resolve. Not a pass for people who have intentionally broken the law.

H Roen: Key is that the City knew about it, but did not take corrective action. Does City sending a notice of violation constitute taking corrective action?

Y Bradley: City holds tremendous power if they say something has to be done a certain way; average homeowner doesn't know what to do. A lot of times these issues are revealed long after the fact when properties transfer, City can't find a record, and it becomes the burden of seller. Not about people sneaking things in, about protecting people from damages by City's past negligence and poor records. Not a regression, but an act of fairness for people who tried to do the right thing.

E Lee: A complaint does not constitute "knowing" unless it is verified by the City. This is concerning because some feel that there is not enough resources in the department to follow up on complaints.

B Baker: A notice of zoning violation is only place in statute where staff has authority to levy fines without a judge's order. It is not onerous to issue a violation; this is balanced. Violations have to be responded to in 8 days; typically they comply because financial risk is high.

K Sturtevant: When a notice of violation is issued, there are 7 days to cure and 15 days to appeal.

D White: Need to separate city having resources to administer ordinance from whether or not the ordinance is the right one. State statute limits how long a zoning violation can exist; this amendment clarifies for property owners, and provides guidance to staff on how to administer and deal with conflicting records.

J Wallace-Brodeur: Have heard a lot of concerns, Commission has done best to provide a path forward that is reasonable. City needs to coordinate property records better, afford protection for people trying to do the right thing without taking too far.

The Commission approved a motion by J Wallace-Brodeur, seconded by Y Bradley, to forward the amendment and report, with recommendation, to Council. Approved by JWB, YB, AM, BB, HR; EL opposed; AF recused.

VIII. Public Hearing ZA-16-12: Rezone Fletcher Place to R-M

Chair opened the public hearing at 7:17pm.

D White: Map change reflects rezone of Fletcher Place to Residential Medium following property lines.

R Butani: Residential designation conforms to use of properties. Petition signed by current and past homeowners, as well as at least one previous attempt to rezone street in past. Street has many historic properties and is residential, except UVM's parking and transportation office. UVM property at 50 Fletcher Place has been residential. Why the street is zoned Institutional is a mystery. N Reid was an original signer who has reversed her opinion, portrayed intent previous owner of her home that would maintain as residential. Original petition came from a neighborhood meeting, predates purchase of our home. Please apply appropriate zoning designation to be consistent with blossoming neighborhood.

L Ravin: UVM objects to university owned property being rezoned R-M. All of the property surrounding 50 Fletcher Place is owned and used for institutional use. UVM will only support a change to the zoning for 50 Fletcher Place, if the City considers the university's request to consider the Trinity Campus overlay regarding density and front setbacks. This approach would allow the Commission, university and neighbors to review plans for Trinity Campus and consider its relationship to the neighborhood.

Tuesday, September 27, 2016

S Bushor: Fletcher Place rezoning started with the comprehensive zoning rewrite. Wanted it to be changed to R-L, but totally in support of change to R-M as delineated on the map. R-M allows same housing density as IZ, uses change. UVMCM signed MOU with the neighborhood saying they would not buy up property in the neighborhood. In Ward 1, neighbors form alliances to protect properties for families when they go up for sale. UVM did not own Trinity Campus in the past; UVM could use 50 Fletcher Place for same residential density, but use it as a buffer with a neighborhood. Trying to preserve a street surrounded by IZ, this was a huge zoning error.

B Hickock: Support R-M zoning, except the decommissioned school. Use property boundaries; anything else would be arbitrary, spot zoning.

N Reid: Neighbors' comments about my property purchase are bogus. Will the Commission consider other options for boundary lines?

A Montroll: Have considered other options, think we are at the point of moving on.

N Reid: Lot line adjustment approved to establish portion of property, intend to sell. Live in an urban part of the City with institutions; not opposed to buildings to bring more of a residential feel.

B Owre: Street has been a small, cohesive residential neighborhood. Strongly in favor of change to R-M that has been proposed. Read list of names and anecdotes regarding properties on street. Neighborhood exists the way it does as a mixture of large and small lots; would be a mistake to rezone following alternative boundaries that have been proposed, would be bad precedent for the City.

L Ravin: UVM not asking not to ever rezone 50 Fletcher Place; asking to table request until evaluate the entire Trinity Campus.

A Friend: Does university already have a plan for Trinity Campus?

L Ravin: Have a plan; came to Commission with rezone request that was tabled.

S Gustin: The lot line adjustment is within an appeal period, so need to consider property boundaries as they are on the map. Council can consider boundaries as part of their review.

Chair closed the hearing 7:46pm.

Commission approved motion by B Baker, seconded by E Lee, to forward the amendment and report, with recommendation, to Council. Approved by JWB, AM, BB, HR, EL, AF; YB opposed.

IX. Public Hearing ZA-17-01: Off-Site Parking

Chair opened the hearing at 7:47pm.

D White: Define acceptable off-site parking facilities, to what degree off-site parking can satisfy parking requirements.

Chair closed the hearing at 7:48pm.

Commission unanimously approved motion by Y Bradley, seconded by J Wallace-Brodeur, to forward the amendment and report, with recommendation, to Council.

X. Public Hearing ZA-17-02: Family Daycare Exemptions and Preschools

Chair opened the hearing at 7:50pm.

D White: Provide clarity for various types of daycares, particularly exempting daycare homes consistent with state statute, and add preschools, which was previously absent from Appendix A Use Table.

Chair closed the hearing at 7:51pm.

Tuesday, September 27, 2016

D White: To be consistent with state statute, staff recommends replacing "up to six (6) pre-school plus four (4) school-aged" with "up to twelve (12)" and striking "a Family daycare center".

A Friend: What if a family already has 10 children in the home?

D White: Homes in which families have children of their own are separate category and exempt.

The Commission unanimously approved motion by E Lee, seconded by A Friend, to forward the amendment with staff modifications and report, with recommendation, to Council.

XI. Public Hearing ZA-17-03: Withhold Permit

Chair opened the hearing at 7:57pm.

S Gustin: Create incentive to correct outstanding zoning violations and close out expired permits.

Chair closed the hearing at 7:58pm.

Commission approved motion by Y Bradley, seconded by J Wallace-Brodeur to forward the amendment and report, with recommendation, to Council.

XII. Committee Reports

Executive Committee: A Montroll reports the committee will meet September 28 at 12:30pm.

Ordinance Committee: B Baker reports the committee will meet October 10 to reorganize and set priorities for the year.

Long-Range Committee: H Roen reports the committee has been on hold for summer; increasingly concerned losing momentum on planBTV South End. M Tuttle: No update. E Lee: too much going on in community, not much bandwidth to finish planBTV South End right now.

XIII. Commissioner Items

E Lee: Update on the permit reform study which is looking at historic properties?

D White: No update.

XIV. Minutes & Communications

The Commission unanimously approved a motion by Y Bradley, seconded by A Friend, to approve the minutes and communications.

XV. Adjourn

The Commission unanimously approved a motion by Y Bradley, seconded by B Baker, to adjourn at 8:01pm.



A Montroll, Chair

DATE: October 13, 2016



Submitted by: Meagan Tuttle, Comprehensive Planner