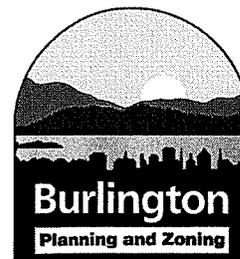


Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin *SG*
DATE: February 16, 2016
RE: 16-0748CU; 400 Pine Street

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: ELM Ward: 5S

Owner/Applicant: Howard Space Partnership / PJ McHenry & Arts Riot

Request: Establish performing arts center within existing mixed use facility. No site or exterior building changes included.

Applicable Regulations:

Article 3 (Applications and Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Background Information:

The applicant is seeking conditional use approval as a performing arts center. The use is in place and was originally permitted March 28, 2013 as an art gallery and performing arts studio with associated café space. Over time; however, it became apparent that the use more closely resembled a performing arts center. At that time, performing arts centers were not allowed in the ELM zone. With support from the Planning Commission and the City Council, the zoning was amended August 10, 2015 to allow performing arts centers in the ELM zone, subject to conditional use review. The applicant is seeking approval for the use and related parking management plan. No site or exterior building changes are proposed.

The subject property contains a mix of uses within a variety of buildings. The zoning permit history is lengthy and pertains largely to changes among the uses and related signs and building modifications.

Recommendation: Conditional use approval as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards (as adopted by City Council 8.10.2015.)

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The use is presently served by municipal water and sewer. No additional demands are anticipated with this application. **(Affirmative finding)**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The subject property is located along Pine Street within the ELM zone. This zone is the primary commercial/industrial center of Burlington, and is intended primarily to accommodate enterprises engaged in the manufacturing, processing, distribution, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment without potential conflicts from interspersed residential uses. Other accessory commercial uses are allowed to support a wide range of services and employment opportunities. The South End is Burlington's de facto arts district, a status not yet clearly articulated in the CDO but addressed in the draft PlanBTV South End. This arts district status was a key consideration in amending the zoning to allow for performing arts centers. This application is consistent with provision for accessory commercial uses and is directly in line with the area's arts district status. **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

Performance space is wholly contained within the building. Noise, odor, dust, heat, and vibrations are not greater than that generated by other uses within the ELM zone. **(Affirmative finding)**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

Information has been provided relative to the number of employees and patrons visiting the performing arts center. There are 6 full time employees and 14 part-time employees. On average, 77 patrons visit the establishment per day. AM (7:30 – 8:30 AM) versus PM (4:30 – 5:30 PM) peak hour traffic generation is not noted; however, the application points out that 95% of patrons come after 5:00 PM (resulting in essentially no AM peak hour trips). The application also asserts that 75% of surveyed patrons come because they do not have to drive there. Proximity to clientele base and accessibility by alternative means of transportation support the assertion of relatively little traffic generation during peak hours. Pine Street is classified as a major street with capacity to serve multiple uses and related connector streets. **(Affirmative finding)**

and,

5. *The utilization of renewable energy resources;*

The application makes no reference to utilization of renewable energy resources. The performing arts center will have no impact on the future potential use of renewable energy resources.

(Affirmative finding)

and,

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances;*

No conflicts are evident in the proposal. It is the applicants' responsibility to comply with all applicable city and state bylaws and ordinances. **(Affirmative finding as conditioned)**

(b) Major Impact Review Standards
(Not applicable)

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

The performing arts center will likely not generate offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

2. *Time limits for construction.*

No construction is proposed. **(Not applicable)**

3. *Hours of operation and/or construction to reduce the impacts on surrounding properties.*

Hours of operation are Tuesday – Saturday from 4:30 PM – 10:00 PM. Occasional events will be held outside of these hours. The usual days and hours of operation are reasonable for a performing arts center and also enable shared use of parking spaces with daytime users. **(Affirmative finding)**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,*

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

5. *Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

See recommended conditions of approval.

Article 4: Maps & Districts

Sec. 4.4.3, Enterprise Districts:

(a) Purpose

(1) Light Manufacturing (E-LM)

As noted previously, the ELM zone is primarily intended for industrial uses such as manufacturing, processing, and distribution. Other uses are allowed such as arts studios, art galleries, performing arts centers, and related arts uses. The performing arts center is consistent with this intent. **(Affirmative finding)**

(b) Dimensional Standards & Density

No construction is included in this proposal. **(Not applicable)**

(c) Permitted & Conditional Uses

Per zoning amendment ZA-15-06 adopted August 10, 2015, performing arts centers are a conditional use in the ELM zone with the following limitations: Performing arts centers in the ELM zone shall be limited to a total of 5,000 square feet in size and to properties with frontage on Pine Street. Performing arts centers may contain accessory space for preparation and serving food and beverages, including alcohol, provided this accessory space comprises less than 50% of the entire establishment. Based on the floor plans, the performing arts center space totals 4,875 sf and has frontage along Pine Street. Related space for preparation and consumption of food and drink is just about half of that space. Confirmation of exact area is needed.

Note that square footage information relative to the performing arts space cited in the applicants' parking table do not mirror those evident in the floor plans. This inconsistency needs to be rectified. **(Affirmative finding as conditioned)**

(d) District Specific Regulations

(Not applicable)

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.3 (b).

Sec. 5.2.4, Buildable Area Calculation

See Sec. 4.4.3 (b).

Sec. 5.2.5, Setbacks

See Sec. 4.4.3 (b).

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.3 (b).

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.3 (b).

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. **(Affirmative finding)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the shared use parking district. The minimum parking requirement for performing arts centers is based on seating capacity. In this case, that capacity is

up to 195 seats. That maximum capacity translates into a 49 space parking requirement (1 space per 4 seats).

The applicants have provided an analysis of existing uses onsite and associated parking requirements. Including the performing arts center, total parking required for all of the uses is 169 spaces. There are 92 parking spaces onsite. A parking waiver is sought. See Sec. 8.1.15 below for details. **(Affirmative finding)**

Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans

The subject property contains multiple uses of various sizes and a variety of associated parking requirements. It is ripe for delineation of a parking management plan. Effectively, shared use of the parking resource occurs now. The applicant is seeking to formalize that arrangement with a parking management plan.

Most of the uses onsite operate during the morning and afternoon hours. Morning start times vary between 6:30 AM and 10:00 AM. The uses generally operate though 4:00 PM to 6:00 PM. Some uses, such as storage and independent studios have very limited and/or flexible hours of operation. The performing arts center largely operates during the evening hours (4:30 PM – 10:00 PM with most activity occurring after 5:00 PM).

The five retail spaces may receive a 100% parking waiver (47 spaces). The remainder of the uses onsite may receive up to a 50% parking waver (61 spaces). The maximum possible waiver is not needed. Viewed collectively, a 46% waiver is needed (77 spaces).

The parking management plan focuses on shared use of the available parking as well as efforts to utilize alternative means of transportation. The shared use concept is simple and works so long as different users utilize the parking spaces at different times. Such is the case here. As for reducing single vehicle occupancy trips to the property, the management plan points to accessibility via CCTA bus route and close walking proximity to adjacent neighborhoods and businesses. In addition, the performing arts center provides Uber and Carshare VT accounts for employees to use. Significantly, the applicants can point to a history of shared parking use and reduced parking demand onsite.

In an effort to better understand and track the efficacy of parking management plans, it is recommended that the applicants provide an annual report for 3 years to the Department of Planning & Zoning that specifies actual onsite parking demand. **(Affirmative finding as conditioned)**

Sec. 8.2.5, Bicycle Parking Requirements

There is no bike parking requirement specified for performing arts centers. Where none is specified, the DRB is to make the determination. The application notes that four bike racks are provided onsite in association with the business. Capacity is not noted and should be. In addition, space should be provided within the building for secure, sheltered long term bike parking. **(Affirmative finding as conditioned)**

II. Conditions of Approval

1. **Prior to release of the zoning permit**, the following items shall be addressed, subject to staff review and approval:
 - a. Exact square footage of the entire performing arts center and, within that, the exact square footage of food & drink preparation and consumption area.
 - b. Capacity of the 4 outdoor bike racks and delineation of secure indoor long term bike parking.
2. Each year for 3 years following this approval, the applicant shall submit to staff a report on the status of the parking management plan incorporated into this approval, subject to staff review and approval. The report shall describe any changes to the traffic management plan, provide a quantitative assessment of the effectiveness of the parking management plan in reducing onsite parking demand and in sharing the existing parking resource, and confirm that the property remains compliant with the parking management plan.
3. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required
4. Standard Conditions 1-14.