

Burlington Development Review Board

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Jim Drummond (Alt.)
Wayne Senville (Alt.)*



Burlington Development Review Board

Minutes/Findings of Fact March 16, 2016

In RE: 16-0859CU; 616 South Willard St (Ward 6S, RL) (Tax Lot No. 054-2-017-000)

Owner/Representative: RJL South Willard LLC / Majestic Car Rental Group

Request: Amend conditions of zoning permit 07-524CA/CU to allow for shared offsite parking with church.

Members Present:

Brad Rabinowitz
Jonathan Stevens
Israel Smith
AJ LaRosa
Alexandra Zipparo
Jim Drummond
Wayne Senville

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is seeking approval to amend the conditions of zoning permit 07-524CA/CU issued in May, 2007 to establish the current vehicle rental business. Specifically, the applicant is looking to lessen the restrictions relative to vehicle numbers and associated parking. The applicant wishes to have additional vehicles and to park them offsite. The business has grown since its approval and can no longer contain all of its vehicles onsite. Additional vehicles are routinely parked at the nearby Greek Orthodox Church at 600 South Willard Street.

Zoning permit 07-524CA/CU was issued under the 1994 zoning ordinance (as amended). That ordinance contained provision that allowed one nonconforming use to change to another nonconforming use subject to conditional use review. The vehicle rental facility was approved under this provision and is a nonconforming use. The present comprehensive development ordinance contains no such provision.

This application has been spurred by a neighbor's complaint to the Code Enforcement Office relative to using the church's parking lot for rental vehicles.

Previous zoning actions for this property are noted below.

- 9/18/07, Approval to replace windows
- 5/29/07, Approval to convert gas/service station to vehicle rental facility
- 3/30/07, Approval for new signs
- 5/3/86, Approval to install new and replacement exterior lighting fixtures
- 12/4/85, Approval and subsequent denial of variance to construct canopy over pumps
- 8/25/84, Approval to replace existing Octane sign with Mobil sign (freestanding)
- 10/5/65, Approval to demolish nonconforming service station and replace with a new one with variance for side and front setback requirements

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;*

This application has no bearing on existing or planned public utilities. **(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 contained within the Residential Low (RL) Density zone. The RL zone is intended primarily for low density residential development in the form of detached single family homes and duplexes. The existing vehicle rental business is inconsistent with the intent of this district. Insofar as it was approved, it may continue indefinitely – as it was approved. Any expansion thereof is incompatible with the intent of the RL zone. **(Adverse 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;*

The existing vehicle rental business does not generate exceptional noise, odor, dust, heat, or vibrations. Additional vehicles parked at 600 South Willard Street are unlikely to generate such impacts. **(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;*

No traffic information has been provided. It bears noting that the original permit application included traffic information based on 10 rental cars per day, plus 6 employees. Those impacts were found to be acceptable. Presently, the amendment seeks approval of approximately 50 vehicles. This increase is substantial and has not been subject to any traffic impact analysis. **(Adverse finding)**

and,

5. *The utilization of renewable energy resources;*

The proposed amendment will have no impact on the utilization of renewable resources onsite. **(Affirmative finding)**

and,

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

Compliance with any standards or factors set forth in city or state bylaws and ordinances is unknown. No relevant information is included in the application. **(No finding possible)**

**(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.*

No physical changes are included in this amendment application. Mitigation measures relative to screening and landscaping are not warranted. **(Affirmative finding)**

2. *Time limits for construction.*
(Not applicable)

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

The business's present hours of operation are within those specified in the original approval (7:00 AM – 7:00 PM, 7 days/week). The amendment notes present hours of 7:00 AM – 6:00 PM M-F; 7:00 AM – 3:00 PM Saturday, and 8:00 AM – noon on Sunday. **(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,*

No enlargement of this nonconforming use can be permitted. Other alterations would 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.
(Not applicable)

Article 5: Citywide General Regulations

Part 3: Non-Conformities

Sec. 5.3.4, Nonconforming Uses

(a) Changes and Modifications:

(1) Nonconforming Non-Residential Use:

This criterion states: "A nonconforming non-residential use shall not be expanded or altered in any way, other than to full conformity under this Ordinance, except as follows." The existing vehicle rental business is a nonconforming non-residential use. It is expressly limited to 11 rental vehicles as conditioned in zoning permit 07-524CA/CU. The requested use of offsite parking to help it manage its present fleet of some 50 rental vehicles cannot be approved under this criterion. (Adverse finding)

A. Exception for residential conversion.

The application is not for a residential conversion of the existing commercial use. (Not applicable)

B. Existing neighborhood commercial uses.

The vehicle rental business is not a neighborhood commercial use as defined in Article 13 of the CDO. (Not applicable)

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Alexandra Zipparo

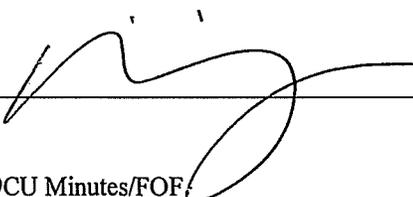
I move that the board deny conditional use approval for the property at 616 South Willard Street to amend conditions of zoning permit 07-524CA/CU to allow for shared offsite parking with the church. Denial is based on the Adverse Findings in Section I above.

Seconded: Jim Drummond

Vote: 5-2-0, motion carried

Dated at Burlington, Vermont, this 16 day of March 2016

Respectfully Submitted,



Brad Rabinowitz, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

Department of Planning and Zoning

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Burlington Development Review Board

Minutes/Findings of Fact
June 5, 2007

In RE: 07-524CA/CU; 616 South Willard St. (Ward 6, RL) (Tax Lot No. 054-2-017-000)

Owner/Applicant: Jolley Associates / Majestic Car Rental Group

Request: Conditional use and certificate of appropriateness review of conversion of a gasoline / service station to a vehicle rental facility with office space.

Members Present:

Austin Hart
Glenn Jarrett
Eleanor Briggs Kenworthy
Eric Miller
Kevin Worden
Michael Long

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is requesting approval to convert a gasoline / service station into a vehicle rental business. Site changes are limited to removing the gasoline pumps and associated underground tanks. No exterior building changes are proposed. The property is located in the RL zone and is a pre-existing nonconforming use. The improvements on the site are nonconforming as well in terms of setbacks and lot coverage. Any change in one nonconforming use to another nonconforming use requires conditional use review and approval.

The Conservation Board reviewed this project on April 3, 2007 and recommended approval with the following conditions:

- 1) Develop an erosion prevention and sediment control (EPSC) plan with a focus on the excavation of the underground tanks and associated remediation.
- 2) Determine, in consultation with Public Works, where the car wash wastewater goes.

The Conservation Board reviewed the project again on May 7 and focused on the two above conditions. The Board found the applicant's EPSC plan to be satisfactory, and, in conjunction with Public Works, it was determined that the floor drain links to the city's sanitary sewer system. This connection is acceptable.

The Development Review Board reviewed this application on April 10, 2007 and deliberated on April 16. The Board decided to re-open the public hearing in order to allow the applicant to address three outstanding items: 1) circulation, particularly access onto South Willard Street; 2) screening of the parking lot; and 3) resolution of where the car wash floor drain goes. The applicant has submitted revised materials to address each of the foregoing items as noted in these findings.

Previous zoning actions for this property are listed below.

- 5/3/86, Approval to install new and replacement exterior lighting fixtures
- 12/4/85, Approval and subsequent denial of variance to construct canopy over pumps
- 8/25/84, Approval to replace existing Octane sign with Mobil sign (freestanding)
- 10/5/65, Approval to demolish nonconforming service station and replace with a new one with variance for side and front setback requirements

Article 5: Use, Density and Dimensional Requirements

Section 5.1.8 Change to a Preexisting Use:

The subject property is located in the RL zone. The previous gasoline / service station was nonconforming. Note that while the property has been vacant for more than 1 year (the limit for continuing a vacant nonconforming use per Sec. 20.1.6, *Nonconforming Use: Alteration or Enlargement {d} Re-establishment*), the property owner has made a consistent good faith effort to sell or lease the property to another commercial use since becoming vacant. As a result, the continuation of the nonconforming status can be considered legitimate.

A nonconforming use may change to another nonconforming use only if the new use is found to be less harmful to the neighborhood than the existing use as per Sec. 5.1.8, Change to a Preexisting Use, any modifications to a preexisting and/or nonconforming use or extent of use, including increased hours of operation, a change of use, expansions or alterations of structures or dimensions to a preexisting use, which do not otherwise conform to all provisions of this ordinance shall require a zoning permit and/or conditional use approval by the development review board. Any change to another use shall require, along with conditional use approval, a finding by the development review board that the new use is less harmful or detrimental to the neighborhood than the existing use.

The previous use was open for business Monday – Saturday from 6:00 AM – 7:00 PM and had 3 employees. Traffic generation was approximately 40 trip ends per day, about equally split between trips for gasoline and trips for vehicle service. The application states that this trip generation does not take into account periodic trips generated by vendors making deliveries.

The proposed vehicle rental business would be open for business 7 days per week from 7:00 AM – 7:00 PM. It will have a total of 6 employees with only 3 on shift at a time. Traffic estimates for the proposed use are 32 trip ends per day (10 rental cars per day = 20 trip ends, plus 6 employees = 12 trip ends). These anticipated traffic figures do not account for customer trips to and from the business. While some pedestrian and bicycle clients may be likely, some drop offs are also likely (i.e. get a ride in a car to the rental business). In sum, anticipated traffic impacts may be slightly less than previous traffic impacts.

The proposed rental business will consist of an office area, car wash (for the rental vehicles), and parking area. There will be no onsite vehicle service, except for the car wash. Public Works has

confirmed that the floor drain connects to the city's sanitary sewer. The proposed site will serve as the base for a larger rental plan that is similar to the Zip Car or Flex Car models used in other cities. Rental cars will be available for hourly, daily, or weekly increments. Eventually, cars will be available at various satellite locations throughout the city. This project approval is only for the 616 South Willard Street facility.

In sum, the days of operation will expand from the previous use, trip generation may slightly decline, and the noise associated with vehicle repairs will disappear. Overall impacts on the neighborhood should decline. **(Affirmative finding)**

Section 5.3 Dimensional Regulations:

Setbacks, height, and lot coverage remain unchanged. The building exterior will not be changed, and the pump islands will be replaced with blacktop. **(Not applicable)**

Article 6: Design Review

The subject property, although located in the non-design control RL zone, is subject to design review as the use is other than a single family home. However, as no exterior building changes are proposed, and site changes are limited to removal of the gasoline pump islands and rearranging of the parking layout, the only Design Review criterion discussed is (d) *Provide efficient and effective circulation*. Aesthetic/circulation concerns are also addressed under Article 7: Site Plan below.

Sec. 6.1.10 (d) *Provide efficient and effective circulation. With respect to vehicular and pedestrian circulation, special attention shall be given to the location and number of access points to public streets and sidewalks, to the separation of vehicles and pedestrians, to the arrangement of parking areas and to service and loading areas, and to the location of accessible routes and ramps for the disabled;*

Access onto South Willard Street was a concern of both the Development Review Board and Public Works, particularly the left turn movement. The Board recommended that onsite circulation be made one-way with access from Ledge Road and exit onto South Willard Street with right turns only. A revised site plan has been submitted that depicts entrance and exit arrows, and an accompanying narrative states that signage will be posted to indicate the one-way entrance and exit as well as the prohibition of left turns onto South Willard Street. The revised circulation pattern adequately addresses the Board's initial concerns.

The proximity of the parking area to the sidewalk remains a concern, as it immediately abuts the public sidewalk. The applicant has revised plans to include curbing as a barrier between the edge of the parking and the sidewalk. Doing so is a very marginal improvement; however, a more substantial barrier that also serves the purpose of screening must be installed as noted in further detail under Article 7 below. **(Affirmative finding as conditioned)**

Article 7: Site Plan

(a) *Adequacy of Traffic Access. Curb cuts should be so arranged and limited in number as to reduce congestion and improve traffic safety. Proper sight triangles and sufficient turnarounds for vehicles should be provided to reduce the potential for accidents at points of egress;*

The two existing curb cuts, one on South Willard Street and another on Ledge Road, will remain. Sight triangles are wide open and will remain unchanged. Onsite circulation will be one way as noted above. **(Affirmative finding)**

- (b) *Adequacy of Traffic Circulation and Parking.* There should be sufficient parking as required in Article 10 laid out in a manner to provide ease in maneuvering of vehicles and so as not to be detrimental to the surrounding properties or to create an undesirable visual effect from the street. Sufficient area for loading and unloading may be required if the need for such loading zone is found to be necessary;

Fourteen surface parking spots are proposed. The parking area is (and will remain) paved and will be striped. Twelve of the parking spaces are angled on either side of a central circulation isle. The isle is sufficiently wide enough to provide one-way movement. However, screening must be provided as noted below. **(Affirmative finding as conditioned)**

- (c) *Adequacy of Landscaping and Screening.* There shall be a sufficient amount of landscaping and screening, as may be reasonably determined by the development review board, to insure protection of and to enhance the quality of the project in question and the adjacent properties;

Currently, onsite landscaping consists of some green space immediately around the building and a planter and fence along the parking lot's eastern boundary. The fence is in need of repair and/or replacement. During their initial review of the project, the Board found that screening of the parking area is needed along South Willard Street, as is a separation of the pedestrian sidewalk and the abutting parking area. Given the constraints of the site, the possibility of plantings in the public greenbelt was mentioned. The applicant has met with Public Works and has submitted a revised site plan that depicts two crabapple trees within the greenbelt. Public Works will not allow additional landscaping such as shrubbery or fencing in the greenbelt. While the proposed trees are an improvement, they do little in the way of screening the parking lot and do nothing to separate pedestrians along the sidewalk from the parking lot.

This parking lot is prominent, located along a major roadway into the city. Screening and pedestrian/vehicle separation are needed. A permanent and durable barrier must be installed between the parking lot and the South Willard Street sidewalk. The barrier must serve primarily to separate the sidewalk from the parking area, but shall also provide some screening of vehicles in the parking lot. The use of bollards such as those recently installed along Riverside Avenue as part of that reconstruction project would be appropriate. Plantings interspersed among the bollards are encouraged. **(Affirmative finding as conditioned)**

- (d) *Adequacy of Protecting the Use of Renewable Energy Resources:* Where appropriate and feasible, the site plan shall be so designed as to not unreasonably deter the actual or potential use by the subject property or adjacent properties of energy available for collection or conversion from direct sunlight, wind, running water, or organically derived fuels.

No information has been provided with respect to the use of alternative energies. However, as proposed, this particular business model is aimed at making vehicles available for those who need them only on occasion. As a result, the business may help to decrease the need for vehicle ownership by city residents, thereby potentially reducing consumption of gasoline and associated production of greenhouse gases and other pollutants. **(Affirmative finding)**

Article 10: Parking

The previous use required 3 parking spaces (1 per 400 sf of the approximately 1,270 sf building). Table 10-A, *Minimum Off-Street Parking Requirements*, does not specify a parking requirement

for vehicle rental businesses. In this event, the sufficiency of parking is determined by the Board. In this case, the number of spots required should relate to the number of employees and rental cars. Three spaces are needed for the three employees and the remaining eleven spaces would be allocated to the rental vehicles. The application does not state the total number of rental vehicles proposed, but it must be limited to the number of parking spaces available, as proposed it would be eleven. **(Affirmative finding)**

Article 17: Appeals, Conditional Uses, Variances

(1) The capacity of existing or planned community facilities;

The proposed vehicle rental business may result in a modest increase in municipal water and sewer demand, due to the expanded days of operation and additional employees. Confirmation of uncommitted reserve capacity from Public Works is needed prior to establishment of the business. **(Affirmative finding as conditioned)**

(2) The character of the area affected;

The neighborhood, while zoned RL (low Density Residential), is split into two distinct components: the commercial properties along South Willard Street (U.S. Route 7) and Shelburne Street and the residential properties away from these two major roads. The subject property has been used as a gasoline / service station for decades. The proposed change in use will result in very little change to the site and will result in the elimination of noisy activities and equipment associated with vehicle repair. Overall, the proposed use should have a less detrimental impact on the neighborhood than the previous use. **(Affirmative finding)**

(3) Traffic on roads and highways in the vicinity;

A brief traffic synopsis has been provided. As noted earlier, the proposed vehicle rental business would be open for business 7 days per week from 7:00 AM – 7:00 PM. Traffic estimates for the proposed use are 32 trip ends per day (10 rental cars per day = 20 trip ends, plus 6 employees = 12 trip ends). These anticipated traffic figures do not account for customer trips to and from the business. While some pedestrian and bicycle clients may be likely, some drop offs are also likely (i.e. get a ride in a car to the rental business). In sum, anticipated traffic impacts may be slightly less than previous traffic impacts. **(Affirmative finding)**

(4) Bylaws then in effect;

Based on the findings and conditions herein, this proposed can be found to comply with bylaws in effect pertaining to use. Specifically, the change in use will result in less detrimental impacts on the neighborhood than the previous use. Additional screening is required per Article 7 as noted above. It is the applicant's responsibility to comply with other applicable bylaws such as building and fire codes. **(Affirmative finding as conditioned)**

(5) Utilization of renewable energy resources.

As noted before, no information has been provided with respect to the use of alternative energies. However, as proposed, this particular business model is aimed at making vehicles available for those who need them only on occasion. As a result, the business may help to decrease the need for vehicle ownership by city residents, thereby potentially reducing consumption of gasoline and associated production of greenhouse gases and other pollutants. **(Affirmative finding)**

Article 20: Nonconformity

See Section 5.1.8 above.

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Kevin Worden

I move that the Board grant conditional use and certificate of appropriateness approval for conversion of a gasoline / service station to a vehicle rental facility with office space, located at 616 South Willard Street in the RL zone in accordance with Articles 5, 6, 7, 10, 17, and 20. Approval is subject to the following conditions:

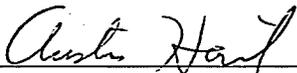
1. **Prior to release of the zoning permit**, revised plans, (detailed, scaled, dimensioned and of professional quality) shall be submitted subject to staff review and approval. The revised plans shall depict a permanent and durable barrier installed between the parking lot and the South Willard Street sidewalk. The barrier must serve primarily to separate the sidewalk from the parking area, but shall also provide some screening of vehicles in the parking lot. The use of bollards such as those recently installed along Riverside Avenue as part of that reconstruction project would be appropriate. Plantings interspersed among the bollards are encouraged. This screening/buffering area shall be installed prior to issuance of a final certificate of occupancy, and shall be maintained by the applicant.
2. **Prior to release of the zoning permit**, written confirmation of available uncommitted reserve sewer and water capacity from Public Works is needed.
3. The Applicant/Property Owner shall work with the neighbor to the east to repair or replace the existing fence and shall clean up the site in general. Specifically, the northern end of the site and building shall be cleaned up, and graffiti shall be removed.
4. No more than 11 rental vehicles are included in this approval.
5. The erosion control plan reviewed and approved by the Conservation Board on May 8, 2007 is incorporated into this approval. The plan shall be implemented from the beginning of construction through final site stabilization.
6. 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 as required.
7. Standard permit conditions 1 – 15.

Seconded: Michael Long

Vote: 6-0-0, motion carried

Dated at Burlington, VT, this 29th day of May, 2007.

Respectfully Submitted,



Austin Hart, Development Review Board Chair

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