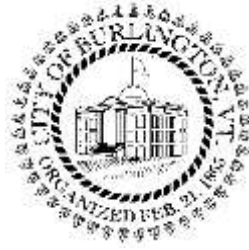


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CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

MEMORANDUM

TO: Burlington Development Review Board
FR: Kimberlee Sturtevant, Assistant City Attorney
DT: March 3, 2021
RE: Permit Amendment Application No. 21-0414CA/MA, 75 Cherry Street

I am writing with respect to legal issues raised by a letter dated February 17, 2021 from John L. Franco, Jr. regarding concerns with your review of the above-referenced pending application.

As indicated, the application before the board is an application to amend the project originally approved under ZP 17-0662CA/MA. ZP 17-0662CA/MA was issued after an appeal to the Vermont Superior Court, Environmental Division (*Devonwood Investors, LLC 75 Cherry Street*, Docket No. 39-4-17 Vtec). During that appeal, the Appellants and the Applicant entered into a settlement agreement. Certain terms were incorporated into the Court's Order, however, the pending application is substantially different and the law has changed. As a result, it is proper for you to review the application before you, not the prior Court Order.

With respect to arguments that the City is applying the wrong parking standards to the current application, new applications that involve substantial change to a previously permitted project are reviewed under current regulations. *See, e.g., In re Taft Corners Assocs., Inc.*, 160 Vt. 583, 593-94 (1993). To the extent that the arguments extend to the City's Municipal Development Plan (PlanBTV), the argument is misplaced. PlanBTV is a guiding document which is implemented through the Comprehensive Development Ordinance (CDO). *See Kalakowski v. John A. Russell Corp.*, 137 Vt. 219, 225 (1979).

Attorney Franco also raises a concern regarding a 2018 amendment to the permit, however, that will be moot upon the issuance of a new permit.

I will be present during the hearing if there are additional questions regarding these issues. Thank you.