

## Department of Permitting and Inspections

Zoning Division

645 Pine Street

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### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: June 6, 2023  
RE: ZP-23-164; 75 Cherry 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.**

**File:** ZP-23-164

**Location:** 75 Cherry Street

**Zone:** FD6 **Ward:** 3C

**Parking District:** Multi-Modal

**Date application accepted:** April 12, 2023

**Applicant/ Owner:** Jesse Robbins, Freeman French Freeman Architects

**Request:** Amendment to existing permit for changes within discretionary height area, including additional dwelling units and exterior building changes.



BANK AND SAINT PAUL

## **Background:**

- **Zoning Permit 21-0414CA**; Amendment to ZP17-0662CA/MA; redevelopment of the former Burlington Town Center Mall site into 700,000 sf mixed use. 426 residential units, restaurant, retail, community space, co-working and meeting space. Includes 422 parking spaces in structured garage. March 2021.
- **Zoning Permit 21-0354AP**; Appeal of Zoning Administrator Determination regarding relinquishing 17-0662CA/MA. Appeal public hearing scheduled for February 16, 2021.
- **Zoning Permit 20-0522CA**; Amend ZP 17-0662CA/MA phasing schedule. Application withdrawn January 2021.
- **Zoning Permit 18-0996CA**; fenestration changes above the podium. Minor changes to accent materials changing metal panel between the windows, on selected corners, and partial facades to limestone finish precast panel. Elevations include approved cable railings. Original Permit ZP17-0662CA/MA. May 2018.
- **Zoning Permit 18-0768CA**; 7th and 12th floor amenity space; change to project phasing. April 2018.
- **Zoning Permit 18-0648CA**; amendment to 17-0662CA/MA; addition of 16 residential units on the east and west elevations at level 2,3, and 4 reflected in exterior revisions and floorplans. Elimination of awnings at retail. Parking layout revision. February 2018.
- **Zoning Permit 18-0538CA**; Exterior Boiler Flue. December 2017.
- **Zoning Permit 18-0225CA**; install roof top unit to support existing retail. August 2017.
- **Zoning Permit 17-0662CA/MA**; mixed use redevelopment of the existing Burlington Town Center mall site and associated lot line adjustments. March 2017; adjudicated, Stipulation Agreement issued July 17, 2017.
- **Zoning Permit 12-0391CA**; convert asphalt turnaround area to grass and landscaping on Cherry Street side of property. September 2011.
- **Zoning Permit 79-120**; pathways within the urban renewal area and drive into parking area on parcel 10 as marked to be paved. (Cherry Street circular drive.) April 1979.

**Overview:** The applicants propose generalized revisions to the March 2021 plan; most of which are subject to administrative (Checklist) review. The primary changes are that levels 9 and 10 are larger and have different uses, the east wing of the north building will extend an additional 8' from Level 1 and above, and balconies will be added to the south building.

For an overall accounting of those changes, they include:

- Change Level 9N mechanical penthouses (small footprint) to nearly full footprint expanded residential use (Level 9N will now be the same footprint as 8N except for a 10'-0" street frontage step-back on 3 sides).
- Change level 9S from a restaurant & roof terrace to a residential level the same size as Level 8S below

- Change Level 10S from a mechanical penthouse (small footprint) to a nearly full footprint of additional residential space with a 10'-0" step back at street frontages which will be used as roof terrace
- Add projecting balconies at levels 2S-9S
- Reduce size of in-set balcony at Level 1S
- Expand the east side of the north building 8' to the south.

Only those changes that occur above the area subject to Administrative Review (65') and therefore subject to DRB review per Section 14.6.4 (f) are within the scope of this review.

The **Design Advisory Board** reviewed the application at their May 23, 2023 meeting and voted unanimously to recommend approval.

**Recommended motion: Certificate of Appropriateness Approval**, per the following Findings and Conditions:

**I. Findings**

**Article 3: Applications, Permits and Project Reviews**

**Part 3: Impact Fees**

Impact fees will be recalculated for those areas with new use (restaurant – to – residential) and the new vertical addition to the east wing of the north building. The applicant shall provide the area breakdown for staff calculation prior to a request for a Certificate of Occupancy.



**Affirmative finding as conditioned.**

**Section 3.3.3 Exemptions and Waivers**

*(c) Inclusionary housing units per Article 9: Part 1 shall be exempt from the Part.*

The applicant shall provide the area of Inclusionary Housing units to exclude them from the overall Impact Fee requirements. **Affirmative finding as conditioned.**

**Section 3.3.8 Time and Place of Payment**

*Impact fees must be paid to the city's chief administrative officer / city treasurer according to the following schedule:*

- (a) New Buildings: Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.*

**Affirmative finding as conditioned.**

**Part 5: Conditional Use and Major Impact Review**

### **Section 3.5.2 Applicability**

#### *(b) Major Impact Review*

Major Impact Review is required for the creation of fifty (50) or more dwelling units within the form districts. The application proposes between 400 and 450 dwelling units within this application. Zoning Permit 21-0414CA/MA (20-0717 in Open Gov) approved 426 dwelling units.

Major Impact does not apply as long as the unit count does not exceed 475 units; an increase of 50 or more units within 12 months will trigger Major Impact review.

**Affirmative finding as conditioned.**

## **Article 5: Citywide General Regulations**

### **Section 5.2.1 Existing Small Lots.**

Not applicable.

### **Section 5.2.2 Required Frontage or Access**

Not applicable.

### **Section 5.2.3 Lot Coverage Requirements**

This is covered within the Checklists.

### **Section 5.2.4 Buildable Area Calculation**

Not applicable in the FD zoning district.

### **Section 5.2.5 Setbacks**

This is covered within the Checklists.

### **Section 5.2.6 Building Height Limits**

#### *(a) Height Measurement*

The parcel is within the Special Height Area FD6A, with a by-right height of 6 stories or 65', or DRB review of height up to 14 stories or 160'. The applicants making revisions within the discretionary additional height area, but not increasing the prior-approved height. See Section 14.6.4 (f), below for specific analysis.

#### *(b) Exceptions to Height Limits*

*Ornamental and symbolic architectural features, including towers, spires, cupolas, belfries and domes; greenhouses, garden sheds, gazebos, rooftop gardens, terraces, and similar features; and fully enclosed stair towers, elevator towers and mechanical rooms, where such features are not used for human occupancy or commercial identification, are exempt from specific height limitations but shall be subject to the design review provisions of Art. 3 and 6. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the building.*

The mechanical penthouses are being eliminated due to the all-electric conversion of the development. While these penthouses had been an exception to height limits, the conversion to

residential units now requires a measurement of these occupied floors toward the overall building height. Reference is made to Section 14.6.4 (f), below for a complete discussion.

### **Section 5.2.7 Density and Intensity of Development Calculations**

The Form Based Code (Downtown Code) does not have specific FAR requirements but the project complies with the building bulk requirements of 14.3.4-D and is covered in the Checklists.

### **Sec. 5.4.8 Historic Buildings and Sites**

Not applicable.

### **Section 5.5.1 Nuisance Regulations**

No part of the application indicates that nuisance impacts may result. No industrial or other commercial uses typically associated with heat, glare, emissions, or noise are included in the application. The prior review included an evaluation of potential noise impacts relative to Burlington's noise ordinance. Parking areas, trash/recycling facilities, and loading docks will be internal to the proposed building, thereby limiting outdoor noise. The mechanical penthouses will be eliminated in favor of additional residential units. HVAC will be an air-to-air heat pump system. **Affirmative finding.**

### **Section 5.5.2 Outdoor Lighting**

No changes have been proposed to prior-approved lighting. Not applicable.

### **Section 5.5.3 Stormwater and Erosion Control**

A comprehensive stormwater management plan was included and approved within the prior permit. Not applicable.

## **Article 8: Parking**

### **Part 1 General Requirements**

#### **Section 8.1.3 Parking Districts**

##### **c) Multi-Modal Mixed Use**

Zoning Amendment 20-04 created the *Multi Modal Mixed Use Parking District*, which eliminated minimum parking standards in FD6. A Judgment Order issued by Vermont Superior Court, Environmental Division July 17, 2017 mandated that 200 additional parking spaces at the cellar level would be provided for this redevelopment; this requirement remains with the permit as amended.

Zoning Amendment 22-07 eliminated minimum parking standards City-wide.

No change is proposed to the parking location or count.

The project has a current Transportation Demand Management Plan that remains in effect.

**Affirmative finding as conditioned.**

#### **Section 8.1.9 Maximum On-site Parking Spaces**

*The total number of off-street parking spaces provided in any parking district shall be not more than as allowed in Table 8.1.9-1.*

Use	Parking Maximum	Area / Units	Total
Residential	1/unit	450-475	450-475
Restaurant (eliminated)	<del>3/1,000</del>	<del>4250 sf</del>	<del>13</del>
Retail	2/1,000	41,300 sf	87
Community Center	3/1,000	3,150 sf	9
Office/co-working	2/1,000	9,084	18
Total max parking			589
Total Parking proposed			422

The 422 parking spaces are below the maximum allowable per this standard, even before (a) *Exemptions* are considered:

Public Parking	Required by VSCED ZP-17-0662CA/MA	-200
ADA Accessible Parking		- 4(P1), -4 (P2)

**Affirmative finding.**

**Part 2: Bike Parking**

The increase in residential units will result in an adjustment of required bike parking. The requirement for household living (multi-unit) is as follows:

Long Term Spaces: 1 per 2 bedrooms

Short Term Spaces 1/10 units.

Previous approval dedicated 263 Long Term bike spaces (residential bedrooms = 523)

And 43 Short Term spaces (426 units)

The Short Term bike parking requirement will increase based on the net unit count.

For 450 units: **45 short term bike spaces required.**

If 475 units, **48 short term bike spaces are required.**

The drawings currently identify (2) bike storage rooms for long term storage. The basement bike storage room that serves the North Building can be expanded into the storage area shown just to the east of it to accommodate additional bike storage needed to meet requirements; the showers in the ground floor bike storage area just north of 100 Bank St will meet the bike storage shower requirement (residential units don't contribute to that calculation; uses that do contribute have been reduced.)

Prior to occupancy, the applicant shall provide the net new number of residential bedrooms to appropriately adjust the Long Term bike parking requirement.

**Affirmative finding as conditioned.**

**Article 9: Inclusionary Housing**

The originally approved 85 Inclusionary Units are retained in this proposal; however the addition of new residential units spurs a recalculation of required IZ. The applicant is committed to providing 20% affordable units and anticipates the IZ unit count to grow.

Zoning Amendment #23-02 introduces Section 9.1.14 (b) which bases the calculation on a ratio of square footage of IZ to that of overall dwelling units. The final calculations for the number of inclusionary units shall be determined by the Housing Trust Fund Manager prior to issuance of a Certificate of Occupancy for the permit. **Affirmative finding as conditioned.**

The remainder of Article 9 standards, as approved in March 2021 remain in effect:

**Section 9.1.17 Review of Proposal for Phasing**

The application contains a phasing schedule that articulates 4 distinct phases. Residential construction and fit-up span phases 1, 2 and 4. The inclusionary units are interspersed throughout the residential components of the development. Per this criterion, the inclusionary units must be made available for occupancy on a schedule concurrent with the market-rate units. **Affirmative finding as conditioned.**

**Section 9.1.18 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy**

See Sec. 9.1.17 above.

**Article 14 Downtown Code**

**Section 14.3.4.D Building Form (Form District 6)**

The by-right height (administrative review) is 6 stories or 65 feet. The subject parcel is within the area identified as “A” on Map 2 – *Specific Height Areas* and is therefore eligible to request building height **up to 160’** with DRB review.

<b>14.3.4-D- BUILDING FORM</b>	
<b>BUILDING HEIGHT</b>	
Principal Buildings	<p><u>Subject to Administrative Review:</u></p> <ul style="list-style-type: none"> <li>• 3 Stories min.</li> <li>• 4 Stories max., not to exceed 45-feet within 20-feet of the Frontage Line on the Church Street Marketplace<sup>1</sup>; otherwise,</li> <li>• 6 Stories max., not to exceed 65-feet</li> </ul> <p><u>Subject to DRB Review per Sec. 14.6.4 f:</u></p> <ul style="list-style-type: none"> <li>• 10 Stories max., not to exceed 105-feet; or,</li> <li>• 14 Stories max., not to exceed 160-feet<sup>2</sup></li> </ul>

Under ZP 21-0414, the North residential building was approved for a building height of ±107’2” to the top of the roof deck of the highest occupied level from Cherry Street average grade; ±122’2” to roof deck of mechanical penthouse.

The South residential building was approved at a height of ±127’10” from Bank Street average grade to the restaurant/observation deck roof, and ±142’10” to the mechanical penthouse roof.

All heights are below the 160’ maximum allowable.

This application modifies levels 9 & 10; largely with the **elimination of the mechanical penthouse** (which, by ordinance is exempt from height calculations). With the building switching to an “all electric” design, the penthouses for mechanical uses are no longer needed, and the applicants wish to add residential square footage.

New height measurements: **North residential building: 121’2”** to the top of the roof deck of highest occupied level. (Compare to 122’ 2” to roof deck of mechanical penthouse previously approved.)

**South residential building: 139' 3"** from Bank Street average grade to roof deck of highest occupied level (compare to 142' 10" to mechanical penthouse roof in previous submission.)

As those upper structural levels will now be occupied, the “measure-to” building height changes as the top floors are proposed to be occupied; but the overall building height will be approximately 4' less than the original 2021 approval and far below than the 160' maximum allowable. **Affirmative finding.**

#### **Section 14.6.4 Building Height**

##### **(f) Design and Public Space Standards Required for Additional Building Height**

*i. Design Standards: The maximum building height and mass is permitted By Right by the underlying Form District, as may be modified by the chosen Building Type and Frontage Type. However, there are a number of ways that building shape, articulations, and choice of materials can be used to reduce the perceived height and mass of taller buildings, and ensure a high quality of design that complements the character of the Downtown and Waterfront area. After consultation with the Design Advisory Board and a Public Hearing, the Development Review Board shall evaluate any proposal seeking additional Building height under each of the following additional design standards, and find affirmatively that:*

- a. The proposed building presents a design that emphasizes slender, vertically-oriented proportions to assure a rich visually interesting experience as viewed within the context of the downtown skyline; reinforces opportunities for establishing points of reference for visual orientation; and provides visual interest and human scale at the pedestrian level through the use of a variety of scales, materials, fenestration, massing, or other architectural design techniques;*

This application factually decreases the building height as previously approved under ZP17-0662CA/MA and ZP 21-0414 CA/MA.

The building volume of the north residential building steps back at the 5<sup>th</sup> floor and is vertically accentuated with changes in the building plane, arrangement of windows, and introduction of varying primary materials. The roofline is accentuated with corbelling at the fourth floor level, and a bold cornice projection atop the 9<sup>th</sup> floor, north; breaking the massing up into readable building volumes. The 10<sup>th</sup> floor is further recessed from the structural massing below it. The cornice both caps the massing, and leads the eye down the street supporting and strengthening the street plane.

The pedestrian level is enhanced with broad glazing to welcome and warm the streetfront, energizing the pedestrian experience (both Pine and St. Paul Street are now have Shopfront Façade requirements. Strong material interplay delineates both building volume and division of segregate spaces. Vertical masonry piers draw the eye upward linking the lower pedestal to the upper, recessed stories.

The southern residential building has a defined and welcoming street presence, with a first and second story height that both strengthen the street wall as they mime the building heights of the existing buildings across Bank Street. The changing grade allows for the minimum 33' height to enforce that street wall. The massing steps back above this floor, with a more uniform material



palette that continues the vertical pier element seen in the northern building. The feeling is light and buoyant; a silvery silhouette on a largely glass pedestal. Both building volumes establish points of reference for visual orientation; and provide optical interest and human scale at the pedestrian level through the use of step backs, horizontal and vertical variation, selection of materials, and other architectural design techniques to reinforce the street wall and reduce the perceived height and mass of upper stories from the street level.

*and,*

- b. Upper story proportions of the building are oriented and tapered and/or separated into separate masses in order to retain sky view between individual building elements from the public thoroughfare.*

The north and south buildings are clearly divided into separate volumes, allowing sky views between building elements. The upper stories are stepped back on both the north and south buildings.

The South Building will see a replacement of the Level 9 restaurant and Level 10 mechanical penthouse with two levels of housing. The project will now include a total of approximately 400-450 residential units; 85 in the west wing of the North Building (to be managed by Champlain Housing Trust); 116 in the South Building (market rate residences); and the balance in the North and East wings of the north building.

*The DRB may condition approval of additional building height by reducing the By-Right building mass by no more than 10% of the total floor area of the new floors enabled by granting the additional building height. In no case shall the maximum By-Right building height be reduced.*

The plan, as submitted, diminishes the pre-approved building height; nothing that would suggest a necessary concomitant reduction in building mass. This amendment reduces the 2017 approved building height by 50' (2017) and the last approval by 4' (2021).

**Affirmative finding upon concurrence by the DRB.**

*ii. Active Public Space and Restrooms*

*A minimum of 20 sf/1,000 sf of the gross floor area above 85 feet shall be dedicated to active and publicly accessible upper story rooftops and terraces, and/or street-level public restrooms as follows:*

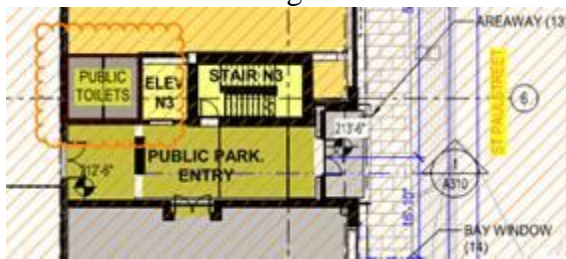
- a. Upper story rooftops and terraces must incorporate active public use such as outdoor dining with seating or other uses and activities that invite use by the public, and be located above the 7<sup>th</sup> floor. At least 25% of the space must be accessible to the general public during all regular business hours without expectation of payment or purchase.*

There is 129,855 sq. ft. on floor levels more than 85' above grade, requiring 2,597 sq. ft. of accessible roof terrace, 260 square feet of public restroom space, or some combination of the two. With the rooftop restaurant no longer in the program, insurance challenges and no way to

supervise rooftop access, the compliance path will be publicly accessible ground level restrooms to be accessed via Pine, Bank, or St. Paul Street.

- b. *Public restroom may count towards the public space requirement above at a ratio of 10:1. Public restrooms must be located on the ground floor, have a minimum size of 50 sq. ft., be signed from the public street, be actively monitored and maintained, and be open to the public during all regular business hours. Placement of a public restroom in partnership with the City within an adjacent public space or the public ROW may be acceptable with the concurrence of the respective responsible City department and provided actual development costs and projected 20 year maintenance costs are paid by the applicant.*

The locations have been identified and are in future phases of construction, all are at the ground level and total slightly more than the 260 sq. ft. required based on 129,000sf of floor area on levels >85 feet above grade:



### Affirmative finding.

#### II. Conditions of Approval

1. Impact fees will be recalculated for those areas with new use (restaurant – to – residential) and the new vertical addition to the east wing of the north building. The applicant shall confirm the area breakdown for staff calculation. Additionally, the applicant shall provide the area of Inclusionary Housing units to exclude that area from overall Impact Fee requirements.
2. Impact Fees shall be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.
3. The final calculations for the number of inclusionary units shall be determined by the Housing Trust Fund Manager **prior to the issuance of a Certificate of Occupancy.**

4. The cumulative increase of 50 or more dwelling units within a 12 month period shall trigger Major Impact Review. Under this permit, the unit count may not exceed **475 dwelling units** (Zoning Permit 21-0414CA/MA; 20-0717 in Open Gov) approved 426 dwelling units + 49 units = 475.
5. All utility service connections shall be undergrounded.
6. **Prior to issuance of the Certificate of Occupancy**, the applicant shall provide the increase in the number of residential bedrooms to appropriately adjust the Long Term bike parking requirement. Staff shall confirm compliance.
7. In lieu of upper story rooftops or terraces accessible to the public, the applicant shall provide a minimum of 260 sq. ft. of public restroom(s). Public restrooms must be located on the ground floor, have a minimum size of 50 sq. ft., be signed from the public street, be actively monitored and maintained, and be open to the public during all regular business hours.
8. Street-facing, street-level window area must remain unobstructed up to a minimum interior depth of 8 feet, with the exception of obstructions such as street-facing window signs or product displays that do not take up more than 25% of the total window area. Windows cannot be made opaque by window treatments except for operable sunscreen devices within the conditioned space. External security shutters are not permitted.
9. Any conditions of ZP-21-0414CA/MA (20-0717 Open Gov) not herein altered shall remain in effect.
10. Standard Permit Conditions 1-15.

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