

Memorandum

To: Burlington Development Review Board

From: James P. Langan, Esq.

Date: December 16, 2022

Subject: Response to Memorandum to the Development Review Board regarding ZP-22-576

The applicant and I have reviewed the Memorandum to the Development Review Board from Scott Gustin submitted on December 14, 2022 and dated December 20, 2022 regarding ZP-22-576 (the “Memorandum”).¹ We agree with the Memorandum’s conclusions that the scope of the City’s review of the Parish’s demolition permit application (the “Application”) is limited by 24 V.S.A. Section 4413 (“Section 4413”) and that the Application accordingly should be approved. I write to clarify for the City and the Development Review Board our view on how the review process should proceed in light of Section 4413. While we acknowledge and appreciate that the approach laid out in the Memorandum ultimately reaches the same end, we submit that a more direct path is warranted.

Alternative Compliance:

The Memorandum suggests that the proposed “[r]emoval of the building and site improvements does not comply with the application review standards of Article 14” of the City’s Comprehensive Development Ordinance (“CDO”) and thus “[a]lternative compliance is applicable for this application and requires review by the Development Review Board in consultation with the Design Advisory Board.” *See* Memorandum at 2. We respectfully disagree that the application falls under the alternative compliance process—and, indeed, the Parish has not requested or otherwise sought DRB relief pursuant to CDO § 14.7.3(b) (Alternative Compliance Granted by the Development Review Board).

Section 14.7.1(e)(i) of the CDO provides that an application that satisfies “all standards *applicable* to such application . . . without the necessity of any additional approval by the Development Review Board . . . shall be entitled to administrative review and approval By Right by the Department.” (Emphasis added.) The standards “applicable” to the Parish’s application are necessarily limited by Section 4413, as the Memorandum acknowledges.² *See* Memorandum at 2 (observing that “[t]he application review standards of Article 14: PlanBTV Downtown Code apply” and “[t]he statutory limitations noted in 24 V.S.A. § 4413 substantially limit those review standards”). However, the

¹ We also have reviewed a prior, December 13, 2022 memorandum from Mr. Gustin and Mary O’Neil to the Design Advisory Board, which reflects substantially the same analysis.

² The Memorandum includes discussion relevant to CDO § 5.4.8 (Historic Buildings & Sites). While we agree that Section 4413 makes that section inapplicable to the Application, we note that, even absent Section 4413, the plain language of § 5.4.8 does not apply to a building that is less than 50 years old. The 2013 determination of eligibility for historic registry listing referenced in the Memorandum was made for a limited purpose and does not alter the criteria established in § 5.4.8 as to when a building may be subject to § 5.4.8.

approach reflected in the Memorandum effectively ignores Section 4413 in determining whether administrative review and approval is justified under CDO § 14.7.1(e)(1), and goes on to apply Section 4413 in the context of the alternative compliance analysis.

Applying Section 4413 to the Application up front, the Application is entitled to administrative review per CDO § 14.7.1(e)(i) because the Application conforms to all applicable review standards, as those standards are limited by Section 4413. The Administrative Officer is empowered by CDO § 14.7.1(d) to modify any submission requirement of Article 14, and, in compliance with Section 4413, the Administrative Officer must modify any requirement that is beyond the scope of review a municipality may apply to a church, place of worship, parish house, or convent.

Review of the Application by the Design Advisory Board (“DAB”):

Consistent with the Memorandum’s conclusion that “[a]lternative compliance is applicable for this application and requires review by the Development Review Board in consultation with the Design Advisory Board,” the Administrative Officer referred the Application to the DAB for review. The DAB’s hearing on the Application took place on December 13, 2022. Notwithstanding staff’s recommendation that the DAB simply forward the Application to the DRB in light of the application of Section 4413, the DAB recommended denial. Respectfully, the DRB should disregard the DAB’s recommendation, as the matter did not and does not require the DAB’s input.

Review of the Application by the DAB was not required by the terms of the CDO, as the Parish has not requested or otherwise sought relief under CDO § 14.7.3(b). The Administrative Officer has discretion in some circumstances to request input from the DAB on the review standards within the DAB’s purview that are contained in Article 6 and other sections of the CDO. However, in this instance, any review standards that might fall within the DAB’s purview are beyond the scope of review afforded by Section 4413. As such, there is no role for the DAB in the review of the Application and the DAB’s recommendation to the DRB is beyond the scope of the DAB’s authority. As recommended by staff, the proper action of the DAB would have been to forward the Application to the DRB as submitted.