

SMITH BUCKLEY ARCHITECTS

Brad Rabinowitz, Chair
Development Review Board, Department of Permitting and Inspections
City of Burlington
645 Pine Street
Burlington VT 05401

December 1, 2020

Re: ZP21-0413CA; 400 Pine Street

Dear Mr. Rabinowitz,

First, my apologies for writing such a long letter. We expected to appear before you today on the consent agenda with a positive staff report recommending approval of our project. Instead, we write today on the following three points with regard to the above referenced application: 1) Summary of the review process to date, 2) Application of the ordinance, 3) Preference of Design Schemes under consideration

Summary of the review process to date:

We presented our project to the Design Advisory Board (DAB), on November 10. The staff report contained somewhat negative assessments of the project with regard to a few of the more subjective criteria under Sec. 6.3.2, and it made no recommended motion. Nevertheless, after a thorough design review, the DAB voted unanimously to approve the project with conditions. The most important condition called for was to increase the open zones of the fence with line-of-sight to the building facade to be a minimum of 25% of the linear footage of the fence. We agreed this would improve the design and submitted our revisions in a new drawing set labeled "R1" on November 20.

On November 23, on the same day that our project was posted to the DRB website on the consent agenda, we received communications from Zoning Staff asserting that the raised platform must be pulled back to meet the 5 foot front building setback, or face certain denial.

We responded that Staff was not applying 5.2.5(b)2 correctly. However, faced with the prospect of a DRB Staff Report recommending denial, we submitted a further revised plan set "R2," making explicit the role of the integrated elevated walkway, or "deck," plays: serving as both outdoor dining area and providing a complete and connected accessible route, extending ADA compliant access to two tenant spaces not currently served. Our hope was that Staff would agree that – taken as an integrated whole - we met the criteria for the exceptions to the setback.

In fact, in both Schemes the entire elevated deck level is either sloped ramp (100 - 120 lineal feet) or level connecting walkway between ramps (20 – 40 lineal feet) seamlessly joining three different interior floor heights for universal access.

While we preferred our original scheme, as amended per DAB conditions, we felt it was worth attempting to fit within Staff's narrow reading of 5.2.5(b)2, if it meant a smoother path to approval. Therefore, the "R2" scheme defined the accessible route as the perimeter zone within the setback, and added a ramp at the South end.

To be clear: We did not think it was necessary to define the accessible route this way or to add the ramp at the southern end, but Staff seemed to imply it was the only way we could be approved. And yet, the Staff Report dated December 1 reviewing Scheme "R2" recommends denial despite the clarifications and changes.

Application of the ordinance

We designed this project with priority given to application of the Development Principles and Design Standards of Article 6 as required by the CDO. Top of mind in our design process were the following from 6.0.1:

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(e) Promote personal safety and accessibility for those with disabilities in the design of publicly accessible outdoor and indoor spaces.

(h) Ensure that public buildings, structures, and spaces, be designed and constructed to the highest standards in order to reflect community values, inspire future development, foster civic pride, and serve as a model to others.

As you know, Development Principles serve as the highest order of importance in cases where individual standards appear to conflict and greater discretion on the part of the DRB is required.

We also considered the design standards of Article 6. The Standards are intended to provide specific guidance on how to achieve the Development Principles. Of particular relevance for this project is 6.2.2 (k), which calls for special attention to the "integration of accessible routes... ..and ramps for the disabled" in the same breath, which is precisely what the design achieves, in an inclusive, universal manner.

(k) Accessibility for the Handicapped: Special attention shall be given to the location and integration of accessible routes, parking spaces, and ramps for the disabled. Special attention shall also be given to identifying accessible access points between buildings and parking areas, public streets and sidewalks. The federal Americans with Disabilities Act Accessibility Guidelines(ADAAG) shall be used as a guide in determining the adequacy of the proposed development in addressing the needs of the disabled.

And of course, we reviewed the setback requirements and the exceptions to the setbacks under Section 5.2.5. Under "Exceptions to Yard Setbacks" at 5.2.5(b), we reviewed Item 2 below. We determined that these exceptions strongly suggested a design approach that improved accessibility across the entire building while integrating seamlessly with outdoor dining and activity spaces, thus meeting the criteria of the Principles and Standards of Article 6.

2. Building and Site Features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, walls, and similar building and site features may project into a required yard setback.

We think that either Scheme R1 or R2 meets the criteria for an exception to the setback.

When Staff issued their report prior to the DAB meeting, there was no mention of setback requirements or exceptions. At the DAB review, neither Staff nor Board Members raised any concerns in regard to this section of the ordinance. We had no reason to believe there was any daylight between our understanding of 5.2.5(b)2 and Zoning Staff's understanding. I'm sure you can see how surprised and frustrated we were when Zoning Staff informed us at the eleventh hour that they would recommend denial of the application simply because the words "deck," or "accessible route" do not appear in 5.2.5(b)2.

The Zoning Staff's narrow interpretation of the exceptions is extreme, parsing language to the point of absurdity when the clause "...and similar building and site features..." exists precisely to overcome such problems of categorization. Walkways connect ramps and stairs with the interior and exterior levels they serve. When ramps are located some distance away from the building entry points they serve, they must be connected by an "accessible route," which could include other ramps, or level walkways. It's worth pointing out that "walkways," on their own, are also listed as allowable exceptions to the setback. It does not say the walkways must be at grade level.

Zoning Staff's incorrect application of the setback exceptions, when applied to this project, is in direct contradiction to the universal design concepts given priority by the Development Principles and Design Standards of Article 6 of the CDO. The access equity concept is critical here. We are trying to create an inviting and functional outdoor dining and activity space where everyone can move freely between inside and outside – with their group – without having to separate and

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take an accessible detour. At the same time, we want to engage the street, while providing relief from traffic noise along this busy corridor. We think the intent of Section 5.2.5(b)2 is to help us accomplish that and make it seamlessly accessible and inclusive to everyone, rather than to reinforce the status quo.

Upholding the Zoning Staff's interpretation here will create a situation where the elevated deck level would be reduced to 7' +/- in width. After subtracting the required minimum egress width, this leaves 42 inches +/- for seating, thus limiting the seating to "two-tops" - effectively capping outdoor seating at about 20 seats on the elevated level – not enough to make the elevated walkway and seating make financial sense. It also complicates and reduces any service that may be contemplated between the deck and the property line at grade. Therefore, the alternative is effectively a new skin on the status quo: No improvements to existing accessibility, existing stairs and ramps remain as-is, all outdoor dining at grade, perhaps with a new paved surface, and a new, as-of-right fence at the property line. This is not something the applicant wishes to do, but there will be little choice.

Preference of Design Schemes under consideration

We request that the board consider not only Scheme R2, for which the DRB Staff report was written, but also Scheme R1, which reflects the status of the design proposal as it was unanimously approved by the DAB, including changes to address their conditions of approval. Our preference is for Scheme R1 because:

- It's what the DAB approved.
- It provides for more usable space for activities on the elevated level at the South end.
- It does not arbitrarily define fixed routes along the elevated platform – leaving flexibility for future tenancies.
- It creates better, more efficient, conditions for the possibility of connectivity to any future expansion of the elevated deck at Speeder and Earl's Coffee Shop, where any South end ramp is best located.

Thank you for your thoughtful consideration of this matter. I look forward to our hearing this evening.

Sincerely,



Israel D. Smith, AIA