

## Department of Permitting & Inspections

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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** July 7, 2020  
**RE:** 20-0854CA/CU; 266 Queen City Park Road

=====  
**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.**

Zone: ELM Ward: 5S

Owner/Applicant: Burton Corporation / LandPlan Development Associates

**Request:** Conditional use and certificate of appropriateness review of performing arts center within an existing mixed use commercial building. Associated building façade and rooftop mechanical alterations included.

### **Applicable Regulations:**

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking)

### **Background Information:**

The applicant is seeking approval to convert 11,560 sf of vacant interior commercial space to a performing arts center. An additional 2,380 sf outdoor plaza is also associated with the proposed performing arts center. Maximum capacity for attendees is 1,500. Burton's primary industrial use of the building will remain. Additional non-industrial uses are contemplated but not included in this application.

Façade renovations are included in this proposal as are additional rooftop mechanical units. The site remains largely unchanged. The application indicates only minor building footprint changes associated with entryway renovations.

Previous zoning actions for this property are as follows:

- 11/19/20, Approval for stormwater enhancements and parking layout revisions (appealed)
- 5/10/19, Approval for interior skate park
- 6/21/16, Approval for 3 exterior signs
- 11/3/15, Approval to relocate sculpture
- 5/16/14, Approval to install HVAC unit on rooftop
- 9/26/12, Approval to enclose footbridge
- 5/7/12, Approval of parking lot reconfiguration and landscaping improvements
- 8/25/11, Approval to establish showroom and construct façade improvements
- 3/18/11, Approval to install exhaust stack

- 10/29/10, Approval of façade and entryway alterations
- 6/7/10, Approval of new entry, windows, doors, and rooftop mechanical unit
- 11/2/01, Approval of new doors and demolish garage
- 8/13/98, Approval to heighten exhaust stack
- 6/11/98, Approval to install temporary office trailer

**Recommendation:** **Initial review and continuation** to address the outstanding items noted in the findings below.

## **I. Findings**

### **Article 3: Applications and Reviews**

#### ***Part 5, Conditional Use & Major Impact Review:***

#### **Section 3.5.6 (a) Conditional Use Review Standards**

*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;*

The applicant has secured ability to serve letters from Burlington’s Electric, Fire, and Police Departments. The Police Department endorsement is predicated on implementation of the proposed operational management plan for the performing arts center. This operational management plan will be incorporated into permit conditions.

Sufficient water and sewer service are available. A State of Vermont wastewater permit will be required for the new use. A capacity letter has been issued to the applicant by the Dept. of Public Works.

Impact fees will be due for the converted space included in this application and will be used to help offset impacts on city facilities. **(Affirmative finding if conditioned)**

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 located within the Enterprise – Light Manufacturing zone. This zone is intended primarily for manufacturing, distribution, processing and the like. The existing Burton facility is consistent with this intent.

In June 2019, the City Council adopted a zoning amendment (ZA-19-07) to allow additional non-traditional commercial uses in the E-LM zone. The intent of the amendment was three-fold: 1) to prioritize industrial and art production uses in the southern portion of the E-LM zone; 2) to leverage market-rate commercial uses to support more traditional industrial uses; and 3) to expand the allowable area of performing arts centers within the district. The proposed performing arts center is consistent with this intent. It is a newly allowable use of an acceptable size and serves to make Burton’s primary industrial use more viable. **(Affirmative 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 proposed performing arts center is not expected to generate nuisance impacts from odor, dust, heat and vibrations that may be more typically associated with industrial uses. Noise impacts are a concern. Therefore, the applicant has provided a professional noise assessment to address anticipated noise impacts associated with the proposed use.

The noise assessment, performed by RSG, is comprehensive and evaluates anticipated noise associated with interior public concert events and exterior events, including new mechanical equipment, folks in the outdoor plaza, and the post-concert exit of attendees. Evaluation is performed in light of local noise ordinances in both Burlington and South Burlington. Although daytime use of the venue by private parties is anticipated, the noise study does not address it. Reasoning should be provided.

Projected noise impacts are compared to existing conditions. As public concert events at the venue will be exclusively during the evening hours, projected noise impacts are compared to existing background noise levels during the evening hours. Background noise levels during the overnight hours (10:00 PM – 7:00 AM) typically ranges from 40 -45 dBA. The noise assessment projects that noise levels will remain within this range at the nearest residences both during concert events (42 dBA) and during crowd departure (44 dBA) once the show is over.

The noise assessment notes generally the distinction between constant noises and intermittent noises – constant noises are less perceptible than intermittent ones. There's no apparent discussion of how this distinction may, or may not, be significant in the perception of noise associated with events at the performing arts center.

The operational management plan addresses pre-concert queuing of folks outside the venue to limit crowd size and duration outside. No tailgating will be permitted. Provisions are made for quick and orderly departure following events with specific parameters for events of various sizes. As noted previously, Burlington Police Department support of the project is contingent on implementation of this operational management plan to limit off-site impacts related to the proposed use.

It is important to note that the projected noise impacts assume implementation of proposed mitigation measures. These measures include sheet-rocking the ceiling and insulating a bare metal exterior wall within the venue. Additional insulation could improve these sound-deadening efforts to further offset impacts in the nearby neighborhoods. **(Affirmative finding if conditioned)**

- 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;*

A traffic analysis and related addendum have been provided. The analysis includes the standard items as to anticipated trip generation, high crash location identification, and intersection level of

service (LOS) in build and no-build scenarios. Baseline traffic conditions are compared with and without the performing arts center, with and without the Champlain Parkway, now and in 2028.

While not central to the traffic study, note that the study cites onsite parking numbers that are inconsistent with the zoning permit records for the property and with the site plan included in the application. Additional parking detail is included under Article 8.

Anticipated trip generation is significant in the PM peak hour (net increase of 222) but much less so during the AM peak hour (net increase of 6). Impacts on nearby intersections vary. Some experience virtually no change while others, in particular the Shelburne Street/I-189 Ramp C, experience a drop in level of service from E to F. The unsignalized intersection at Pine Street and Home Avenue is also markedly impacted under a no-build Champlain Parkway scenario. Hosting events in the evening hours serves to lessen potential traffic impacts on the PM peak hour, though impacts remain significant. To address concerns of nearby residents, specific provision is included in the operational management plan to preclude accidental use of nearby Central Avenue in South Burlington by departing attendees.

Written comments from the Department of Public Works have been provided and will be incorporated into permit conditions. Public Works concurs with the findings in the traffic study and makes a number of recommendations. In an effort to reduce PM peak hour traffic impacts, events at the proposed venue are not to draw traffic until after 6:00 PM Monday through Friday. Such could be accomplished by limiting event times to 6:30 PM or later. Public Works also recommends follow-up traffic analyses post-construction of the performing arts center and of the Champlain Parkway. Depending on results, additional traffic mitigation measures may be required by Public Works. **(Affirmative finding if conditioned)**

*and,*

5. *The utilization of renewable energy resources;*

There is an existing solar array next door at Burton's 180 Queen City Park Road property, and the applicants will install an empty conduit line at 266 Queen City Park Road to support a possible future installation at this property. The application notes that at least 10 onsite parking spaces will be dedicated for electrical vehicles with charging station capabilities. Parking spaces will also be provided for carpool vehicles. **(Affirmative finding)**

*and,*

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

As conditioned.

(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.*

Noise mitigation measures are proposed in order to decrease off-site noise impacts related to the proposed venue. See criterion (a) 3 above. **(Affirmative finding)**

*2. Time limits for construction.*

No construction timeline or phasing are included in the project plans. The standard 3-year timeframe for zoning permits will apply. **(Affirmative finding)**

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

The application notes a maximum range of evening operating hours for public events to be 7:00 PM – 2:00 AM. It also notes the performing arts center will open one hour prior to the published start time of the event. Will the venue be open at 6:00 PM for a 7:00 PM show start, or is 7:00 PM the earliest the venue would open? The traffic assessment implies the former, but clarification is needed. Days of the week are not specified. Will the venue potentially be operational on any given evening?

The application notes that the proposed venue will be available to host private and community events in addition to concerts. Daytime operation is noted as a possibility, but details are lacking. Any daytime activity seems to conflict with Burlington Public Works' recommendation to limit traffic generation to after 6:00 PM on weekdays. Improved clarity and detail is needed as to proposed days and hours of operation. The traffic and noise assessments focus on the anticipated evening concert events. Significant daytime operation could warrant additional analysis of those, and other, items to more fully understand potential impacts related to the proposed use. **(No finding possible)**

*4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,*

Any future enlargement or alteration will 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.*

See the recommended conditions.

#### **Article 4: Maps & Districts**

##### ***Sec. 4.4.3, Enterprise Districts:***

###### ***(a) Purpose***

###### ***(1) Light Manufacturing (E-LM)***

The subject property is located in the E-LM zone which is intended as the primary commercial/industrial center of Burlington. Burton's primary industrial use is consistent with this intent. As noted previously, the applicable use standards in the E-LM zone have been opened up to allow non-traditional commercial uses to basically support the traditional industrial uses in the district. Performing arts centers are one such use. **(Affirmative finding)**

###### ***(b) Dimensional Standards & Density***

Building FAR remains essentially unchanged.

Lot coverage will increase from 60.2% to 63.6%. Site changes are not noted in the application narrative; however, comparison between the site plan in this application and that approved as part of prior zoning permit 20-0514CA shows some differences in parking and stormwater facility layout. Clarification is needed as to what site changes are actually proposed. The proposed lot coverage is under the maximum allowable 80% coverage. Note that the site plan depicts changes and a resultant change in lot coverage for neighboring 180 Queen City Park Road. No changes to that property are included in this application.

Side setbacks remain unchanged. As a corner lot, there is no rear setback. The front yard setback is 5' minimum from the front property line. Apparent new parking spaces comply with this minimum front yard setback.

Building height remains unchanged. **(No finding possible)**

***(c) Permitted & Conditional Uses***

Subsection 2 of this criterion enables uses unrelated to industrial or art production on E-LM zone properties south of Home Avenue only when one or more industrial or art production uses exist on the lot and that the combined gross floor area of the unrelated uses does not exceed 49% of the GFA on the lot. Uses limited by this provision are identified in Footnote 27 of Appendix A – Use Table. A performing arts center is one such use included in Footnote 27. The performing arts center will be 11,560 sf (13.6% of the total 85,036 sf GFA). Note that floor plans depict the already-permitted 8,298 sf skateboard park (9.8% GFA) and a not-yet-permitted “food court” (~6,400). Combined, the non-industrial areas would total ~ 30% of total GFA within the building. The “food court” is not included in this application; however, it bears mentioning that the application asserts it will serve employees and will be open to the public. Cafes are allowable within this zone; however, they are limited in size to 1,500 sf.

Performing arts centers in the ELM zone are further limited by Footnote 32 that limits size to 15,000 square feet along Queen City Park Road (formerly Industrial Parkway). The proposed 11,560 sf performing arts center fits within this limitation, even if including the 2,380 sf outdoor plaza. **(Affirmative finding)**

***(d) District Specific Regulations***

Not applicable.

**Article 5: Citywide General Regulations**

***Sec. 5.2.3, Lot Coverage Requirements***

See Sec. 4.4.6 (b) above.

***Sec. 5.2.4, Buildable Area Calculation***

Not applicable.

***Sec. 5.2.5, Setbacks***

See Sec. 4.4.6 (b) above.

***Sec. 5.2.6, Building Height Limits***

See Sec. 4.4.6 (b) above.

***Sec. 5.2.7, Density and Intensity of Development Calculations***

See Sec. 4.4.6 (b) above.

***Sec. 5.5.1, Nuisance Regulations***

See Sec. 3.5.6 (a) 3.

***Sec. 5.5.2, Outdoor Lighting***

New lighting will illuminate the walkway beneath the proposed steel tube canopy structure along the building's west elevation. No details are provided. Fixture cut sheets and illumination levels are needed. If any other outdoor lighting is proposed, the same details are needed for those fixtures as well. **(No finding possible)**

**Article 6: Development Review Standards**

***Part 1, Land Division Design Standards***

Not applicable.

***Part 2, Site Plan Design Standards***

***Sec. 6.2.2, Review Standards***

As noted previously, clarification is needed as to whether site changes are, in fact, included in this application or not. The application site plan depicts minor parking and stormwater facility reconfiguration that results in a slight increase in lot coverage but no net increase in onsite parking spaces. **(No finding possible)**

***Part 3, Architectural Design Standards***

***Sec. 6.3.2, Review Standards***

***(a) Relate development to its environment***

***1. Massing, Height, and Scale***

The massing, height, and scale of the building remain unchanged. **(Affirmative finding)**

***2. Roofs and Rooflines***

Except for some minor revisions associated with revamped building entries, building roof and rooflines remain unchanged. **(Affirmative finding)**

***3. Building Openings***

Much of the façade renovations consist of new windows and doorways. New glazing is focused on the west building elevation; however, the north elevation receives additional glazing as well. The main entry into the building (on the west elevation) is significantly reworked to include a row of glass doors and a fixed canopy with storefront glazing above. New north-facing windows under the roofline of the venue space will introduce natural light into the space. Other alterations to the north elevation include additional windows along the northwest end and an embellished north building entry. Alterations to the south elevation are limited to reworking some of the private entries. **(Affirmative finding)**

***(b) Protection of important architectural resources***

The existing building is not historic, nor is it eligible for listing on an historic register. The proposed façade renovations will have no adverse impact on Burlington’s architectural resources. **(Affirmative finding)**

*(c) Protection of important public views*

No identified public view corridors are adversely affected by the proposed renovations. **(Affirmative finding)**

*(d) Provide an active and inviting street edge*

The building as it exists today is largely industrial and appears that way from the street. The proposed façade renovations provide well-identified building entries that provide a more welcoming presence along the street. Existing walkways connect the parking areas to these revamped public building entries. The changes transform the building from one that appears largely closed to the public to one that is open and more inviting. **(Affirmative finding)**

*(e) Quality of materials*

Much of the building exterior will remain unchanged as metal siding. The west building elevation will be redone with glass fiber reinforced cement siding in horizontal and vertical arrangements. A small section of new metal siding will be installed over brick on the north elevation. The outdoor plaza will be enclosed with solid wood and metal fencing. Fiberglass windows will be installed throughout, except for aluminum-frame windows atop the performance space. A new steel canopy will be constructed alongside the west building elevation, presumably to provide shelter for patrons waiting to enter the building. The proposed materials are consistent with the commercial nature of the building and are of acceptable quality. **(Affirmative finding)**

*(f) Reduce energy utilization*

Applicable commercial energy codes pertain to the building renovations. The introduction of new windows will allow natural sunlight to illuminate the interior of the building during daylight hours. **(Affirmative finding)**

*(g) Make advertising features complimentary to the site*

Elevation drawings depict several new sign locations. No signage is included in this application and will be handled by way of separate zoning permit. **(Affirmative finding if conditioned)**

*(h) Integrate infrastructure into the building design*

Several new rooftop mechanical units are proposed. Some are depicted on elevation drawings; however a roof plan is needed and has not yet been provided. Screening will be required to hide the units from street view. **(No finding possible)**

*(i) Make spaces safe and secure*

Emergency vehicle access to the building appears to remain essentially unchanged. Adherence to applicable building codes will be required. **(Affirmative finding if conditioned)**

## **Article 8: Parking**

### ***Sec. 8.1.8, Minimum Off-Street Parking Requirements***

Under present conditions, the building has a total onsite parking requirement of 99 spaces (based on the manufacturing and skate park uses). Prior zoning permit 20-0514CA (which remains under appeal in court) revised the parking count from 180 existing spaces to 172 spaces. The proposed



performing arts center will require 375 spaces (1 space per 4 seats – 1,500 proposed maximum capacity). Accounting for the existing manufacturing parking requirement for the 11,560 sf space, the net increase in required onsite parking is 360 spaces.

Parking information within the traffic analysis is inconsistent with parking information above and within the application site plan. The parking number noted above (172 onsite spaces) is consistent with the permit records and with the application site plan. The parking analysis refers to 181 spaces at the property in combination with 276 at 180 Queen City Park Road (the zoning permit records show 244 spaces at 180 Queen City Park Road). Assuming the site plan is correct and that no additional parking is proposed, there is a combined availability of 416 parking spaces between both properties. Just 266 Queen City Park Road will require 459 parking spaces. A parking waiver is needed and is predicated on a parking management plan. The discrepancies among the parking numbers need to be corrected and clarified. **(No finding possible)**

#### ***Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans***

Notwithstanding the discrepancies among the parking numbers noted in Sec. 8.1.8, the application proposes a parking management plan centered on shared use. Concert events open to the public will occur only in the evenings, after the daytime uses at the property have largely closed for the day. This shared-use parking arrangement is common and makes efficient use of a shared parking resource. Given that the parking plan is predicated on use of parking at both 180 Queen City Park Road and 266 Queen City Park Road, the shared parking at 180 Queen City Park Road will need to be secured by way of deed or easement for the duration of the performing arts center use at 266 Queen City Park Road. Such deed or easement will be subject to review and approval by the City Attorney's Office.

Even with shared use, the total available parking (416 spaces) is less than required (459 spaces). The application asserts that alternative modes of transportation will be encouraged and that dedicated carpool spaces will be provided. It is unclear the degree to which these measures will actually reduce onsite parking demand. No mention is made as to how daytime parking demand associated with daytime use of the performing arts center will be handled. Daytime use is contemplated in the application and must be accounted for in the parking management plan. **(No finding possible)**

#### ***Sec. 8.2.5, Bicycle Parking Requirements***

There is no specific bicycle parking requirement for performing arts centers. The closest approximation appears to be community centers which require 1 long term space per 20,000 sf and 1 short term space per 1,500 sf. The application materials include reference to bike parking; however, details are lacking. As proposed, the performing arts center will require 1 long term bike parking space and 8 short term spaces. The long term space must be enclosed and secure. The short term spaces make take the form of bike racks and must be close to the public building entry. **(No finding yet possible)**

## **II. Conditions of Approval**

Conditions of approval are proposed in the event that the outstanding items noted above are sufficiently addressed.

1. **Prior to release of the zoning permit**, revised project plans addressing the following shall be submitted, subject to staff review and approval:

- a. Outdoor lighting information consistent with the standards of Sec. 5.5.2 (if any is proposed);
  - b. Erosion prevention and sediment control plan and stormwater screening form approved by the Stormwater Program; and,
  - c. Proposed extent of tree clearing.
2. Prior to issuance of a building permit for the project-related construction, impact fees based on the square footage of the converted space shall be paid to the Zoning Division at the Department of Permitting & Inspections.
3. This zoning permit requires installation of the Planned Mitigation measures noted in the Burton Snowboards & Higher Ground HUB Project Noise Assessment dated April 20, 2020.
4. This zoning permit requires consistent implementation of the Burton Hub – Performing Arts Center (PAC) Operational Management Plan dated April 23, 2020.
5. This zoning permit requires execution of Department of Public Works’ recommendations in their June 26, 2020 letter from Susan Molzon, P.E.
6. No exterior signs are included in this zoning permit. All exterior signs are subject to separate zoning permit(s).
7. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Permitting & Inspections as well as city and state energy code compliance and other permit(s) as may be required.
8. Standard permit conditions 1-15.