

## Department of Permitting & Inspections

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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** August 18, 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 plan has been updated to call out a variety of minor site alterations relative to stormwater ponds, access, and 10 new parking spaces.

This application was initially reviewed by the DRB on July 7, 2020. The public hearing was continued to August 4, 2020 and then again to August 18, 2020. The findings have been revised to address information provided during and since the August 4 review.

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: Continued review and deferral of action pending resolution of traffic impact considerations.**

## **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 as 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. Daytime uses will be limited to just 300 attendees, and ambient noise levels are greater than during the overnight hours. Adverse noise impacts associated with daytime use of the venue are not expected.

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 range 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 applicant has provided supplemental noise analysis performed by RSG to address concerns related to intermittent noises. The analysis finds that even short maximum sound levels remain consistent or lower than those presently occurring in the area. The additional analysis also breaks down individual noise sources associated with concert music, rooftop mechanical equipment, the outdoor lounge, and vehicles accessing the parking lot. The analysis finds that individual sound sources vary (rooftop mechanical equipment appears to be the most significant sound generator) and that they are expected to be minimally perceptible from the closest residences.

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.

As is sometimes done with traffic analyses, follow up noise analyses should be performed by the applicant once the venue is operational in order to determine actual impacts. Additional noise mitigation measures may be warranted or not, depending on the results of the analyses.

**(Affirmative finding as 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, Public Works requests that events at the proposed venue not 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 has provided supplemental comments specifically as to daytime use of the venue, and the applicant has responded with additional traffic analysis. Concerns remain; however, as to anticipated impacts on nearby intersections and traffic volume implications. Public Works has requested additional information to more thoroughly understand impacts on traffic operations. Resolution is needed. **(No finding possible)**

*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 has been revised to note a maximum range of weekday evening operating hours for the venue to be 6:30 PM – 2:00 AM (6:00 PM start on holidays and weekends). It also notes the performing arts center will open one hour prior to the published start time of the event. The applicant has clarified that this means doors will open at 6:30 PM or later for weekday events (or 6:00 PM on holidays or weekends).

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, and the applicant has provided some clarification. Weekday daytime use of the venue will be limited to 300 attendees. Doors would not open before 9:00 AM, and exiting times would not occur between 4:00 PM and 6:00 PM. Weekend daytime use remains unclear. The applicant has noted the possibility of matinees. Clarification is needed. **(Affirmative finding as conditioned)**

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.

Revised site plans clarify proposed site changes. Resultant lot coverage changes only slightly, going from 63.5% to 63.6%. The proposed lot coverage is under the maximum allowable 80% coverage.

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. The 10 new parking spaces comply with this minimum front yard setback.

Building height remains unchanged. **(Affirmative finding)**

###### **(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 as well as entryways on the south elevation. Fixture cut sheets have been provided and depict acceptable cutoff lighting fixtures. Locations are noted on project plans as well. Illumination levels are included in the fixture cut sheets, but a photometric plan has not yet been provided. One is needed to depict acceptable illumination levels for the covered walkway. Acceptable illumination levels are depicted for the entryway lights. **(Affirmative finding as conditioned)**

**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, the site plan has been updated to clearly indicate changes included in this application. They are limited to stormwater pond revision, 10 new parking spaces, and driveway access alterations. **(Affirmative finding)**

***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. A roof plan has been provided to clearly depict existing and proposed mechanical unit locations.



Elevation drawings have been updated to depict screening of the mechanical units. **(Affirmative finding)**

*(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 as 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 current site plan for this application depicts 182 parking 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, although with the 10 new spaces, the discrepancy is less. The parking analysis refers to 181 spaces at the property (rather than 182) in combination with 276 at 180 Queen City Park Road (the zoning permit records show 244 spaces at 180 Queen City Park Road). As depicted in the current site plan, there is a combined availability of 426 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. **(Affirmative finding as conditioned – Sec. 8.1.15)**

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

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. The evening parking requirement of 375 spaces can be accommodated by the total available 426 parking spaces with no daytime use parking demand. 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. The parking management plan acknowledges this requirement.

The parking management plan addresses daytime use of the proposed venue. Events are expected to be infrequent and will be limited to 300 attendees in any case. Such a limitation is important and limits parking to 75 spaces. The total daytime parking requirement is 159 spaces and can be accommodated by the 182 onsite parking spaces.

The parking management plan notes that alternative modes of transportation will be encouraged and that dedicated carpool spaces will be provided. More than the minimum required bike parking will also be provided. **(Affirmative finding)**

### ***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. 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. The application materials have been updated to include a tally of proposed short term and long term bike parking spaces. A total of 16 short term spaces will be provided along with a total of 4 long term spaces. Short term and long term bike parking locations need to be shown on the project plans. (**Affirmative finding as conditioned**)

## **II. Conditions of Approval**

Conditions of approval are recommended in the event that traffic concerns expressed by the Department of Public Works are resolved prior to close of the public hearing.

1. **Prior to release of the zoning permit**, revised project plans addressing the following shall be submitted, subject to staff review and approval:
  - a. Photometric plan of the covered walkway consistent with the standards of Sec. 5.5.2;
  - b. Depiction of long term and short term bike parking spaces;
  - c. Clarification as to weekend and holiday daytime use of the performing arts center space; and,
  - d. Erosion prevention and sediment control plan and stormwater screening form approved by the Stormwater Program.
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. **Within the first 6 months of operation** and at the applicant's expense, the applicant shall perform a noise assessment:
  - a. Within this timeframe, the applicant shall coordinate a schedule with their noise consultant to conduct monitoring for three (3) events that are expected to be at full capacity;
  - b. Sound monitoring shall be conducted within the same geographic area covered by the Project Noise Assessment prepared by RSG dated 4/20/20; and,
  - c. If monitored sound levels from the performing arts center exceed 45dBA Leq (1-hour) at night (10:00 PM – 7:00 AM) at residential areas, additional sound mitigation measures will be required to bring noise levels into compliance (at or below 45dBA Leq).
4. Notwithstanding condition 3 above, 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.
5. Daytime use of the performing arts center shall be limited to 300 attendees. Doors shall not open for daytime uses of the performing arts center before 9:00 AM, and exiting times shall not occur between 4:00 PM and 6:00 PM. Evening use of the performing arts center shall be limited to 1,500 attendees. Doors shall not open for weekday evening uses of the performing arts center before 6:30 PM (6:00 PM for weekends and holidays). In no case shall any use of the performing arts center have an exiting time past 2:00 AM.
6. This zoning permit requires consistent implementation of the Burton Hub – Performing Arts Center (PAC) Operational Management Plan dated April 23, 2020. The Operational

Management Plan may be altered only upon review and approval by the Development Review Board following a public hearing.

7. This zoning permit requires execution of Department of Public Works' recommendations in their June 26, 2020 letter from Susan Molzon, P.E.
8. This zoning permit includes a 33-space parking waiver and is based on shared parking between 180 and 266 Queen City Park Road. The parking waiver is granted contingent on implementation of the Burton – Parking Management Plan dated July 7, 2020. Parking for use by the performing arts center located at 180 Queen City Park Road shall be secured by deed or easement for the duration of the performing arts center use. Such easement or deed is subject to review and approval by the city attorney prior to execution.
9. No exterior signs are included in this zoning permit. All exterior signs are subject to separate zoning permit(s).
10. A state wastewater permit is required.
11. 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.
12. Standard permit conditions 1-15.