

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: January 22, 2020
RE: 20-0493CA; 180 Queen City Park Road
20-0514CA; 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/Appellant: Burton Corporation / CRZ Group (Lawrence Smith, representative and Frank Kochman, Esq.)

Request: Appeals of administrative zoning permits for stormwater enhancements and parking layout revisions at two properties (180 & 266 Queen City Park Road).

Overview:

Two zoning permits were administratively approved for site work at the two adjacent Burton properties on Queen City Park Road. Site work pertained to stormwater improvements and parking layout revisions and associated landscaping and lighting. The appellants are seeking to vacate the administrative approvals and to subject the applications to review by the Development Review Board.

Recommendation: Uphold administrative zoning permits based on the following findings and conditions:

I. Findings:

The two properties, 180 and 266 Queen City Park Road, are located side-by-side and, together, comprise the Burton Corporation campus. The proposed stormwater improvements are intended to address new state stormwater requirements under Act 64. Parking lot revisions were necessary to accommodate the new stormwater improvements. Related changes to landscaping and lighting were also proposed. As the proposed work affected both properties, two zoning applications were filed and reviewed concurrently. Although a zoning application for a performing arts center at this location is widely anticipated, no part of these zoning applications pertains to a change in use.

The zoning application for 180 Queen City Park Road was filed November 7, 2019. Staff contacted the applicants as to the need for an additional permit application for the adjacent property and also pointed out that the proposal for 10 additional parking spaces could not be approved without a maximum parking waiver from the Development Review Board. The second

zoning application for 266 Queen City Park Road was filed November 18, 2019. Revised plans showing no net change in parking count accompanied that application.

Due to the estimated cost of construction (> \$25K), the two zoning applications were reviewed as Certificate of Appropriateness, Level 2. There is provision for administrative review of such applications under Sec. 3.2.7 (a), *Administrative Authority*, 7-12 of the CDO. The applications contain no change in total parking count and result in an overall reduction in lot coverage. Existing landscaping is to be altered with new landscaping, and existing outdoor lighting is to be revised with new outdoor lighting. Upgraded stormwater management features are proposed and are subject to review by stormwater program staff. No net change in curb cuts is proposed; however, some alterations as to location are proposed, subject to review by the city's right-of-way and excavation inspector. In sum, a number of existing features are to be altered, but very little is actually new. The zoning permits were approved November 19, 2019 subject to the following conditions:

180 Queen City Park Road (20-0493CA)

1. **Prior to release of the zoning permit**, a completed "standard erosion prevention and sediment control plan" shall be submitted, subject to review and approval by city stormwater program staff.
2. The proposed curb cut work is subject to separate review and permitting by the Department of Public Works' Excavation Inspector.
3. The proposed stormwater improvements are subject to separate review and approval by the Department of Public Works' stormwater program staff.
4. Standard permit conditions 1-15.

266 Queen City Park Road (20-0514CA)

1. **Prior to release of the zoning permit**, a completed "standard erosion prevention and sediment control plan" shall be submitted, subject to review and approval by city stormwater program staff.
2. The proposed curb cut work is subject to separate review and permitting by the Department of Public Works' Excavation Inspector.
3. The proposed stormwater improvements are subject to separate review and approval by the Department of Public Works' stormwater program staff.
4. The newly proposed southerly curb cut appears to access the street within the City of South Burlington. The applicant is advised to consult South Burlington Public Works Department as to any applicable permitting requirements under that city's jurisdiction.
5. Standard permit conditions 1-15.

The zoning permit conditions appropriately refer to separate authorities for several items: The erosion control plan, the stormwater management plan, and the curb cut alterations. 266 Queen City Park Road borders the City of South Burlington. Condition 4 for that zoning permit directs the applicants to consult with South Burlington as to any applicable requirements under that jurisdiction.

Appeals of these two zoning permits were filed December 3, 2019, within the 15-day appeal period. The appeals request that the zoning permit approvals be vacated and that the applications be reviewed by the Development Review Board by way of public hearing. The appeals reference a number of sections of the CDO as their basis.

- Sec. 3.1.2 (a) lists a number of things that require a zoning permit. In this case, the proposed work requires zoning approval. Zoning permits were sought and obtained as required.
- Sec. 3.2.2 (d) describes what a Level 2 Certificate of Appropriateness is and the submission requirements. The applications were appropriately handled as level 2 COA's.
- Sec. 3.2.7 (10) notes circumstances wherein a level 2 COA may be handled administratively. As noted above, no expansion of parking or lot coverage is proposed. Existing outdoor lighting will be updated as will related landscaping. Erosion control, stormwater management, and curb cuts are not under the jurisdiction of the CDO, and appropriate reference to applicable authorities is made in the permit conditions.
- Sec. 3.2.8 simply refers to DRB procedures and is not applicable to these applications.
- Sec. 3.4.2 (a) & (b) refer to site plan and design review. The two zoning applications were subject to both site plan and design review standards.
- Sec. 3.5.2 (b) outlines "major impact" thresholds. The applications are not subject to "major impact" review as none of the enterprise zone thresholds are tripped. Even if they were, the project would be exempt under Sec. 3.5.3, as no change in use is proposed, nor is there any increase in required parking.
- Sec. 4.5.1 pertains to the city's design review overlay. The properties are within the overlay, and the applications were reviewed under the applicable standards of Article 6.
- Sec. 5.5.2 pertains to outdoor lighting standards. These standards were applied in review and approval of the zoning permits.
- Sec. 5.5.3 pertains to stormwater and erosion control and makes reference to Chapter 26 of the city code of ordinances. The section does not actually contain any standards. Appropriate reference to the city's stormwater program was made in the zoning permit conditions.
- Sec. 6.2.2 contains the site plan design standards for properties subject to design review. These standards were applied in review and approval of the zoning permits.
- Table 8.1.8-1 outlines minimum off-street parking requirements. This table does not apply to the zoning permit applications as no change in use is proposed, nor is any change in total parking numbers proposed.
- Sec. 8.1.9 contains limitations as to the maximum amount of surface parking that may be allowed. As permitted, this section did not apply, as no change in total parking numbers was proposed. The section would have come into play had the applicants chosen to pursue an additional 10 spaces as originally proposed.
- Table 8.1.11-1 refers to parking dimensions. Reworked parking areas contain circulation aisles and back-up lengths of 24.' Parking stalls appear to be 18' deep with acceptable overhang in front. Parking stall width is consistently 9.'
- Sec. 8.1.13 contains standards as to parking spaces for disabled persons. The reworked surface parking areas relocate several parking spaces for disabled persons but keeps them in close proximity to the building. Although total parking numbers remain unchanged, there appear to be 2 more marked as parking for disabled persons on the proposed plans.
- Sec. 12.2.2 (d) speaks to procedural burden of proof. The administrative officer is to provide grounds as to the decision made before then allowing for argument to the contrary by the appellant. Such is the case here.

Nothing in the zoning applications for these two properties triggers a public hearing (conditional use, major impact, variance, or subdivision). Of course, appeal of the zoning permits results in a

public hearing. Although both are level 2 COA's, the lack of any expansion of existing features resulted in administrative review and approval. The applications were reviewed under all applicable zoning standards and were found to be compliant. As a result, two zoning permits were approved. Nothing in the appeal correctly provides grounds to reverse these two zoning permit approvals.

II. Recommended Motion:

Uphold the approval of zoning permits 20-0493CA and 20-0514CA.