Burlington Development Review Board
Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax (802) 863-0466

AJ LaRosa
Caitlin Halpert
Geoff Hand
Sean McKenzie
Brad Rabinowitz
Leo Sprinzen
Miles Waite
Marina Campbell, (Alternate)
Evan Gould, (Alternate)

BURLINGTON DEVELOPMENT REVIEW BOARD
Tuesday, January 7, 2025, 5:00 PM
MINUTES

Hybrid & In Person (at 645 Pine Street) Meeting

Board Members Present: AJ LaRosa, Caitlin Halpert, Sean McKenzie, Brad Rabinowitz, Leo Sprinzen, and Miles Waite

Board Members Absent: Geoff Hand, Marina Campbell, and Evan Gould

Staff Members Present: Scott Gustin, Garret King, Steve Cormier, and Joseph Cava

Staff Members Absent: Mary O'Neil

I. **Agenda**
II. **Communications**
III. **Minutes**
IV. **Certificate of Appropriateness**

1. **ZP-24-526; 72 Temple Street (RL, Ward 7) Green Mountain Habitat for Humanity**
Amend ZP-22-625 for additional after-the-fact tree removal and new plantings. (Project Manager, Scott Gustin)
Robin Pierce, Ali Lanzetta, Barry Deliduka, Sharon Bushor, Evan Litwin, and Sandra Nigolian: Sworn in.

AJ LaRosa: We have reviewed this project previously, can you tell us about the updates that have been made?

Robin Pierce: This is a challenging site. We are following code requirements to prevent runoff. A lot of the vegetation removed was invasive species like buckthorn.

AJ LaRosa: Why was extra tree clearing and vegetation removal conducted?

Robin Pierce: Additional vegetation was removed because of the ledge to install stormwater retention measures to prevent runoff.

Brad Rabinowitz: Were any trees removed from behind the new duplex shown on the site plan?

Robin Pierce: The tree canopy behind the duplex was not touched.

Brad Rabinowitz: What is going on to the easterly side of the property?

Robin Pierce: Vegetation is being replanted on the east boundary. The plan does not identify the caliper of proposed plantings. Screening from neighbors is good, but too much shading is bad for the growth of existing and proposed plantings.

Leo Sprinzen: Did you ever think to put together a grading plan?

Robin Pierce: I cannot speak to that as I came on in the middle of this project.

Scott Gustin: I have pulled up the approved grading plan for the duplex project permitted under ZP-23-331.

Miles Waite: Can you expand on the dry well?

Robin Pierce: This was moved because of the grade created by the ledge.

Brad Rabinowitz: It seems like trees were removed from the eastern and western property lines without intent to replace.

Robin Pierce: The site is steep and some grading changes were made accommodate driveway access.

AJ LaRosa: Do we have a notice of violation or notice of appeal filed against this project?

Scott Gustin: Steve Cormier, our Compliance Inspector, is here to discuss.

Steve Cormier: We received a complaint of excessive tree clearing on 7/10/24. A neighbor called to report that additional tree clearing was being conducted. I visited the site on 7/15/24 and found it to be unfounded. On 8/14/24, we received an additional complaint. After completing another inspection to the property on 8/20/24, I initially reached out to Habitat for Humanity via email on 8/26/24 and a Notice of Violation (NOV) was issued 10/31/24 concerning the excessive tree clearing.

Miles Waite: Was tree clearing done on the western side of the property?

Steve Cormier: Yes.

AJ LaRosa: Hearing no additional questions or comments from the board are there any questions or comments from the public?

Ali Lanzetta: I know this is not a bad incident, but it presents extreme danger to neighboring properties.

Brad Rabinowitz: Is your property the first one on the right shown in the projected plans?

Ali Lanzetta: Yes, it is two properties, me and my neighbor, John Summa. The buffer created by the mature trees have now been removed and I would like to read a statement. It is unacceptable for the board to approve and enforce policy that endangers neighboring residents, and we are suffering from this choice. The applicant has woefully violated their permit conditions. Under Section 5.5.4 of the Comprehensive Development Ordinance (CDO), the applicant has violated and destroyed the barrier that is protected under this section of the ordinance. The submitted materials are vague and does not properly mitigate the damages done.

AJ LaRosa: The trouble with after-the-fact tree removal is the mature trees are gone and we cannot force the replanting of mature trees. What would you like us to do?

Ali Lanzetta: Cedars would be a good alternate. The existing plan is very vague and does not provide specific mitigation. I am not an engineer, but the removal of the mature trees presents an erosion concern. Other development like the placement of boulders they brought in for stabilization led to the fall of a tree on our home. We already had runoff coming from the hill, but all the construction has made it worse.

Miles Waite: Is there room on the subject property to plant arborvitaes?

Ali Lanzetta: Planting trees on a steep hill would be difficult.

Miles Waite: Would you be opposed to trees being planted on your property?

Ali Lanzetta: I would not, but I do not think they would survive due to erosion. An erosion expert should be consulted to address the destabilization of this slope.

Miles Waite: Is the roof issue being resolved?

Ali Lanzetta: We met with Habitat for Humanity the day after it happened, and they assured us they would remove the fallen tree and take responsibility for the monetary damages. They have since shirked this responsibility and we had to go through the excavator's insurance for financial compensation for the damage. They have been difficult and unresponsive throughout this process.

AJ LaRosa: This is outside our jurisdiction. Is there anyone else that wishes to speak on this application?

Barry Deliduka: Excessive tree removal occurred at this property this year. Someone decided to remove more trees between our property lines past the original tree clearing line. The trees were not removed according to the approved plans and now all the tress are gone. My complaint is against zoning for their irresponsibility to prevent the tree loss throughout this process. I have not received a response from Habitat for Humanity. I grew up in a generation where you live up to the consequences for your actions and I see no accountability.

AJ LaRosa: Tree clearing occurred outside the bounds of the permit and we have limitations on what we can enforce.

Barry Deliduka: I have photos.

AJ LaRosa: Sure, can you give those to us? To clarify, is this the response you sent to Habitat for Humanity?

Barry Deliduka: Yes.

AJ LaRosa: Is there anyone online that wishes to speak on this application? Seeing hands raised, we will now hear additional feedback.

Sharon Bushor: I learned more from this presentation than I did from the submitted permitting materials. I am concerned with the deviations from the approved plans to what currently exists. Who validates the slope stabilization plan? I am still worried about the excessive tree removal, but my major concern is accountability when a developer changes the site and creates negative consequences. I am not sure if the city can take action against a developer and stop them from conducting business in the municipality. Can there be a reference in your action that the developer has failed so the city can take action?

Evan Litwin: I am the City Counselor for Ward 7 where this property is located. I am not sure what to say beyond what neighbors have already expressed. I feel that there are legitimate concerns and I would encourage members of the board to visit the site in person to share in these concerns. I do worry that further physical danger is imminent and engineering should be brought in to address this.

AJ LaRosa: We are familiar with this site.

Sandra Nigolian: You speak on the canopy and what is existing is an extremely thinned canopy from what is was there previously. Previously we could not see through the trees and now we can see a

neighboring properties roof. I was there when they were taking down the huge cottonwood trees. I feel that the neighbors are not being given reassurances to resolve this.

AJ LaRosa: Thank you. Robin, would you like to respond?

Robin Pierce: People are welcome to get in touch with me. Part of our planting plan includes arborvitae as a proposed planting.

Brad Rabinowitz: I do not think any new plantings should occur until the issue of stability and erosion is resolved.

Scott Gustin: John Summa submitted videos that could not be uploaded because of the file format type. Would you like to see them?

AJ LaRosa: I think we have enough sufficient evidence. Hearing no additional questions or comments, we will close the hearing on this item and deliberate later on.

2. **ZP-24-533; 276 Ethan Allen Parkway (RL, Ward 7) Ann Lander / Joseph Lander**
After-the-fact tree removal. (Project Manager, Garret King)
Ann and Joseph Lander, owners, present, Trisha Shrum and Ryan Meer: Sworn in.

AJ LaRosa: This application was in response to a violation. Can you tell us about this project?

Ann Lander: First of all, we would like to apologize. We were not aware permitting was required for tree removal. Many of these trees were dying or dead evidenced by tree branches and limbs coming down. Neighbors have also been dumping trash on the upper portion of our property where invasive vines were killing the trees.

Caitlin Halpert: The item we are really looking at is the number of trees that were removed that had a caliper of 10" or greater.

Joseph Lander: I submitted a list with the diameters.

AJ LaRosa: Diameter is not the circumference. The site has an interesting layout.

Joseph Lander: We are landlocked in this neighborhood, which is why neighbors have been dumping their debris on our property.

Trisha Shrum: The trees that were taking down were beautiful, however they were being strangled by the existing fence and invasive vines. I reached out to the property owners multiple times about repair of the fence and removal of the vines. My own removal of the vines on trees on our property was not an excuse to take down the trees. The mentioned debris is actually minor. Once I was able to establish communication with the property owners, I was called a "tree hugger" and told to leave them alone. The property owners did not express any interest in retaining any trees. Another neighboring property owner was not aware of the excessive tree removal either until it had already occurred. The circumstance is stark and looking out our windows at the bare landscape is disheartening.

Brad Rabinowitz: You live on Ethan Allen Parkway?

Trisha Shrum: Yes, we have smaller trees on our property line.

Brad Rabinowitz: Thank you.

Ryan Meer: We have an interesting relationship with the property in question. We share the property fifty/fifty, but we pay separate property taxes. I was surprised by the extensive clearing, and

thankfully there was no damage as presented in the previous application. What power does the Development Review Bboard (DRB) have on replanting? I wanted to show up to voice my opinion.

AJ LaRosa: So this is an undivided property?

Ryan Meer: Yes, this is what I moved into a year ago. It is a weird situation, so I am not sure if subdividing the parcel would make sense, but I am not sure what to do.

AJ LaRosa: Hearing no additional questions or comments, we will close the hearing on this item and deliberate later on.

3. **ZP-24-545; 57 South Williams Street (RH, Ward 8) Vermont Organization for Jewish Education Lubavitch / Eliyahu Junik**
After-the-fact retaining wall installation. (Project Manager, Scott Gustin)
Eliyahu Junik, Beth Demas, Joyce Oetjen, Sharon Bushor, and Barbara Mines: Sworn in.

AJ LaRosa: Can you tell us about this project and the retaining wall that was installed without a permit?

Eliyahu Junik: The chabad did not agree to the installation of the retaining wall that was installed. We felt that there was no need. The status quo was work was done without authorization.

AJ LaRosa: Was the retaining wall constructed on the edge of the property?

Leo Sprinzen: An after-the-fact submission was made for the retaining wall.

Eliyahu Junik: My understanding is the wall was not to effect the existing fence or parking lot. The wall was a technical thing as not to affect existing site features.

Brad Rabinowitz: Do you know if the design changed?

Eliyahu Junik: No, my understanding is that the wall was not to be constructed level with the existing parking lot. The property line is evident between previous applications and now as not being changed. The property line is eight feet away from the fence line. I have reached out to the neighbors several time, but the neighbors are being combative and unreasonable.

AJ LaRosa: Scott, is this being regulated under Vermont State Statute 4413 as a religious institution?

Scott Gustin: Yes.

Eliyahu Junik: We have no issue with screening the wall in response to neighboring concerns and requests.

AJ LaRosa: Thank you.

Beth Demas: The wall was constructed without the approval of city engineers and I have concerns of structural instability. There is no screening to prevent the glare of headlights in the parking lot.

Joyce Oetjen: I have colored photos that evidence the existing relationship. I was not aware that a contentious relationship was created.

AJ LaRosa: I am hearing multiple concerns regarding this wall, and we cannot get into a property line dispute. Would you be amenable to screening on your side of the wall?

Joyce Oetjen: Yes, there is a cyclone fence that snow plowing abuts to in the winter.

Brad Rabinowitz: What is the purpose of the cyclone fence?

Joyce Oetjen: I am not sure. It has been there for years, so we are not sure who authorized the installation.

AJ LaRosa: I appreciate the targeted nature of the comments.

Brad Rabinowitz: What makes you question the stability of the existing wall?

Joyce Oetjen: The plan you are looking at is an after-the-fact plan for what was as-built. I do not think it is unfair to have a structural engineer re-evaluate the existing wall.

Caitlin Halpert: Was this permit application the result of a violation?

Scott Gustin: Yes.

Joyce Oetjen: If the structure is found to be sound, we are not pushing for the retaining walls removal. We are not trying to undermine this and we are happy to work with the applicant and the situation at hand.

AJ LaRosa: Are there any additional questions or comments from the board? Hearing none, are there any questions or comments from the public?

Sharon Bushor: I was on the City Council when the condo development was constructed. There was a desire to minimize the impact of light pollution caused by headlights. Vines would mask the wall, but would not provide year round protection. The neighbors are supportive of one another and screening against the headlights should be addressed.

Eliyahu Junik: We started building a fence on top of the wall, but stopped following these proceedings. I am happy to hear the tones of my neighbors, but I am unsure about hiring another engineer to confirm the previous engineer's findings.

Brad Rabinowitz: The submitted plan does not speak to the structural integrity of the existing retaining wall.

Eliyahu Junik: The engineer sloped the wall. The fence will run along the side of the wall and there could be additional proposals for tree planting to address screening.

Beth Demas: How wide is the space between the wall and the parking lot?

Eliyahu Junik: Roughly eight feet. Additional planning would be required for the planting of additional vegetation. Unfortunately, the planting of trees would disrupt parking.

AJ LaRosa: We need to separate the difference between the riprap and the after-the-fact retaining wall.

Leo Sprinzen: We need to discuss this during deliberative session.

Miles Waite: Did the engineer provide an opinion that the existing wall is unsafe?

Eliyahu Junik: The engineer will sign off on it once the riprap is completed.

Brad Rabinowitz: Is there a barrier for snow removal?

Joyce Oetjen: Adding rocks would decrease the available space for snow removal and storage.

Eliyahu Junik: For headlights, there will be a fence with slats for shielding against headlights.

Barbara Mines: The photo you are seeing of the cars project unwanted light into my unit both day and night.

Eliyahu Junik: More poles will be added to the fence.

AJ LaRosa: We understand the concerns. Unless there is anything new to add, we will close the hearing on this item and deliberate on the items discussed this evening.

V. Adjournment

Hearing closed at 7:00 PM.

2/4/25

Alexander J. LaRosa, Chair of Development Review Board — Date

Joseph H. Cava

2-4-25

Joseph H. Cava, Permitting & Inspections Permit Technician — Date

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.