

Burlington Development Review Board

Department of Permitting & Inspections

645 Pine Street

Burlington, VT 05401

www.burlingtonvt.gov/DPI/DRB

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Development Review Board

Tuesday, April 1, 2025, 5:00 PM

645 Pine Street, Front Conference Room or Remote on Zoom:

Please click the link below to join the webinar:

Zoom: <https://us02web.zoom.us/j/83225696227?pwd=SGQ0bTdnS000Wkc3c2J4WWw1dzMxUT09>

Webinar ID: 832 2569 6227

Passcode: 969186

Telephone: US +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799

1. Agenda

2. Communications

3. Minutes

4. Public Hearing

4.1.

ZP-25-43; 29-35 Church Street (FD6, Ward 3) Nick & Morrissey Development, LLC / Ryan Nick

Proposed variance request for after-the-fact installation of loading dock gate. (Project Manager, Scott Gustin)

5. Adjournment

6. Informational and Non-Discrimination Statements

6.1.

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.

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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.

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
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William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Garret King, Associate Planner
Joseph Cava, Planning Technician
Steve Cormier, Code Compliance Officer
vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: April 1, 2025
RE: ZP-25-43; 29-35 Church Street

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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: FD6 Ward: 3

Owner/Applicant: Nick & Morrissey Development, LLC / Ryan Nick

Request: Variance request for height and materials of an after-the-fact fence/gate installation.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking variance approval for a gate and section of fence that was installed without the required zoning permit. The date of installation is not noted in the application materials; however, zoning enforcement action commenced with a warning letter to the owners issued December 5, 2024 and a notice of zoning violation issued December 27, 2024. The owners applied for an after-the-fact zoning permit on January 3, 2025 but were notified by zoning staff that the fence and gate could not be approved due to height and materials. The application was placed on hold while a variance from the applicable standards was requested from the Development Review Board.

The fence and gate are located at the top of the loading bay alley, in line with the front of the building. It is within the first lot layer. The exact height of the fence and gate is not specified; however, it clearly exceeds the 4 ft. maximum height permissible within the first lot layer in this downtown FD6 district per Sec. 14.6.8 (b) of the Comprehensive Development Ordinance. Similarly, the chain link material is prohibited along any frontage line. Barbed or razor wire is prohibited in any application.

Recommendation: **Variance denial** as per, and subject to, the following findings:

I. Findings

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such

conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

There are no unique physical characteristics of the lot dimensions or topography. It is an approximately rectangular downtown lot that is mostly covered by the building footprint. The alley with the subject fence and gate runs along the west side of the building, immediately adjacent to the state office building. The applicant requests the variance primarily to keep trespassers out of the alley. **(Adverse finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

There are no physical circumstances or conditions that prevent development of the property in conformity with the zoning code. In the second and third lot layers, permissible height increases to 8,' and chain link is permissible (but barbed wire is not). **(Adverse finding)**

(c) The unnecessary hardship has not been created by the applicant.

The request for a variance is driven by the applicant's desire to exclude trespassers from the alley. **(Adverse finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance, if authorized, would enable chain link and barbed wire along the downtown street front. It would adversely impact the character of the district. There are better, more appropriate, options for securing spaces in the downtown. **(Adverse finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested variance is significant. Authorizing the excess height would be inconsistent with several downtown fence applications that have been limited to the prescribed height or, with DRB's alternative compliance approval, slightly more. Chain link is inconsistent with downtown design standards, and barbed wire is prohibited citywide. **(Adverse finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

If granted, the variance would result in a plainly nonconforming situation in full view of the public right-of-way. **(Adverse finding)**

II. Reasons for Denial

1. Per the adverse findings above.

Dec 4 2024 at 2:23:09 PM



29 Church Street – Loading Dock Gate Variance Application

29-35 Church Street is a 3-story commercial building located in the FD6 zone with retail and office space on the ground floor, offices on the second and third floor, and an educational institution on the lower level. There is a loading dock in the rear of the building with a curb cut on Cherry Street. We are trying to secure this loading dock with a gate to prevent people from injecting drugs, urinating, and defecating on our property which is unsafe and unsanitary for our tenants and service people. We are requesting that the installed gate be allowed to remain until the issue of public drug use, urination, and defecation has been solved by the city. We have owned this property for many years and have not had issues maintaining the cleanliness of the alleyway until the past few years where we have seen a marked rise in people trespassing on our property. We believe we should be granted this variance, because there is no other reasonable way to secure the alleyway against this unauthorized use.