

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
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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, April 1, 2025, 5:00 PM MINUTES

Hybrid & In Person (at 645 Pine Street) Meeting

Board Members Present: AJ LaRosa, Caitlin Halpert, Geoff Hand, Sean McKenzie, Leo Sprinzen, Miles Waite, Marina Campbell, and Evan Gould

Board Members Absent: Brad Rabinowitz

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

Staff Members Absent: Mary O'Neil

- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Public Hearing**

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)
Ryan Nick, owner, present

AJ LaRosa: This project request is for a height and materials variance for the after-the-fact fence and gate installation. This is not an appeal, so the City typically does not speak first, but there is a question regarding height and material limitation standards. Scott, can you give us the background on fence issues in the Downtown Core? This is a little different from what we normally encounter. Can you give us the background of why this fence does not meet material and height standards and the differences between the first through third lot layers?

Scott Gustin: The first lot layer is the front of the building to the curb. The second lot layer is immediately behind the front of the building, back 20 feet. The third lot layer is beyond the 20-foot mark. The existing gate/fence is right up to the property's frontage along the first lot layer. This board has seen maybe two or three applications similar to this over the past year or so where applicants are looking for taller fences out along that first lot layer. There is a provision for alternative compliance, which is 15 or 20% higher. Under alternative compliance, the proposed fence would not quite reach five-feet in height. Once back into the second or third lot layer, the height increases to eight-feet. As for materials, chain link fencing is prohibited along the first lot layer but allowed in the second and third lot layers. Barbed wire is also prohibited everywhere. To summarize its nonconformity with the existing regulations, the gate/fence is taller than four-feet, it is chain link in the first lot layer, and contains barbed wire. An informal violation enforcement letter was sent out noting the problem and it was not addressed. This was followed by a formal Notice of Violation (NOV) letter that was not appealed. The applicant opted to apply for a permit, but were

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informed that it could not be approved, so the applicant pursued a variance, which is what we are looking at tonight.

AJ LaRosa: So this is the first lot layer on the street side of this existing building?

Scott Gustin: Correct, the fence height is also measured from the ground, not from the bottom of the fence. Again, it is measured from the ground, from grade.

Miles Waite: So fences are allowed, just not this style and height?

Scott Gustin: Correct and definitely not barbed wire.

AJ LaRosa: What are some other types of fences that would work in the first layer?

Scott Gustin: Some other examples include wooden stockade and metal picket fencing.

AJ LaRosa: The Ronald McDonald House had a similar issue, and they were approved for the black metal fence that is there now. They raised the grade. What if the fencing was covered in wooden siding or had a metal grate behind it?

Scott Gustin: If it was adapted into a four-foot-tall wooden stockade fence, then yeah.

Sean McKenzie: I was looking at the front of the building, and is your decision based on the primary façade or the rear of the building? How far back does the fence have to be from the first layer to get the 20%?

Geoff Hand: The second layer starts immediately behind the front of the building and extends 20-feet back. If the fence were pushed back six inches, it could be eight-feet-tall, but still cannot have the barbed wire.

Scott Gustin: Yes, for the lot layers. The calculation would still start from the front of the building.

Caitlin Halpert: This kind of gate style would be prevented because the regulations do not allow a sliding gate.

Scott Gustin: Correct, a slider would not work.

Caitlin Halpert: Would a hinged gate work?

Scott Gustin: Yes.

Geoff Hand: So the options moving forward are to lower and change the type of fence here or push it back and remove the barbed wire, right, Scott?

Scott Gustin: Right, one the fence is into the second or third lot layers, the existing chain link is okay.

AJ LaRosa: Sorry, we were interrogating the City about this. We do not often encounter this type of fence regulations in the Form-Based Code. Can you walk us through this project and tell us about the variance you are seeking for this project?

Ryan Nick: We have owned the building since 1998 and have maintained the alleyway since then. Within the past four years, the incidences of drug use, sexual assault, and defecation has drastically increased. Our trash hauler threatened to cancel our contract if we did not clean up the alleyway. We

hastily installed the gate to remedy the problem without getting a permit. We applied for a permit after-the-fact, and were informed that it was not going to fly, which brings us here today. Maintaining the alleyway has become too overwhelming and the day people stopped defecating was when the fence was installed. There are also examples of other taller than regulated fences at other surrounding properties including the State office building and the L.L. Bean building. We may not meet the letter of the standard, I do not contest that. We are trying though to prevent people from using our alleyway for unintended purposes, and this is the solution we came up with.

Miles Waite: I am guessing you have already tried using motion activated lights and cameras?

Ryan Nick: Yeah, I have plenty of videos to show that these solutions do not work.

AJ LaRosa: Have you had conversations with the City, public safety cops, or anybody else regarding this type of issue? We are unfortunately living in uncertain times, so I am curious what communications you have had.

Ryan Nick: We have called it in repeatedly, but it has proven to be fruitless.

AJ LaRosa: I do not know if there is a provision in Article 14 that could help.

Geoff Hand: What section was that?

AJ LaRosa: Section 14.6.8 B 5. Can you make changes to the existing fence like removing the barbed wire or putting some covering over that fence?

Ryan Nick: Yes, we could certainly consider that.

Evan Gould: Do you know how tall it is from the bottom of the metal fence to the top?

Ryan Nick: It is roughly six-feet-tall.

Evan Gould: Scott, do you know the circumstances with those other fences are examples of?

Scott Gustin: The State office building and the Cathedral of the Immaculate Conception are exempt from material standards under V.S.A. 4413. The former L.L. Bean building property is in the enforcement process. Other circumstances include Memorial Auditorium involve dangerous buildings as determined by the Building Inspector. Basically, Memorial has been found to be structurally unsound and has bricks falling off, causing a public safety risk. It is a provision to cordon off a dangerous building.

Geoff Hand: Ronald McDonald House came back with 20%, which is limited to a height of four-point-height-feet. We are sympathetic to the situation. I will say what I say to every applicant who comes in here without getting a permit, which is, you have put us in a bad position by asking for something without getting a permit right away. We hate telling people to take something down, eliminating that investment, but we cannot be constrained by the fact that you should have come in and gotten a permit for it. I am struggling with how we help you deal with this, because it is obviously a situation we want you to be able to with, we are just constrained by the ordinance.

Evan Gould: As an alternative, I am not here to propose solutions, but they also have gates that hinge upwards like a folding door. This solution, instead of a swinging hinge gate that could hit the trash receptacles if this is a concern.

Geoff Hand: We can move forward and rule on the variance request, or we could work with the applicant if willing to submit further application materials with a more compliant design. Is this hearing just for the variance, and not the notice of violation?

Scott Gustin: Correct, the violation was not appealed. The board is just looking at the variance request.

AJ LaRosa: Variances are tough. The standards for them are very high. I am struggling with the standard that says the property cannot be developed in compliance without the issuance of a variance. I think the board would entertain a different fence design with a height variance if we understood the relationship with the layer it is located. We are sympathetic to the concerns. In theory, we can decide on the variance, which, if denied, would cement the violation. You can ask for more time to propose an alternate fence that we could consider to cure the violation.

Ryan Nick: Would there be more leeway if the notice of violation was appealed?

AJ LaRosa: We would not have had leeway to enforce. I am going to make a motion that we continue the application, giving the applicant additional time to provide an alternative design for the fence and amend their variance request to the first meeting in May.

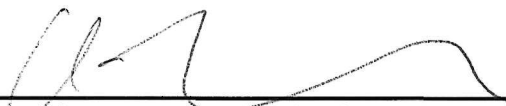
Scott Gustin: If the applicant came back with something that is six inches back from the front of the building and is eight-feet-tall or less, then this could be approved administratively. The applicant has a pending fence application that could be amended.

AJ LaRosa: Friendly amendment to the motion to buy their application some time if necessary to return to the board. Is there any further discussion?

AJ LaRosa: Motioned to continue this item to the 5/6/25 DRB meeting, Miles Waite 2nd. Vote 8-0. Motion carried.

V. Adjournment

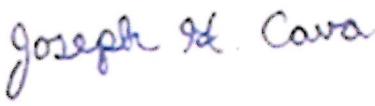
Hearing closed at 5:30 PM.



Alexander J. LaRosa, Chair of Development Review Board

4/15/25

Date



Joseph H. Cava, Permitting & Inspections Permit Technician

4-15-25

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.

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