

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
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AJ LaRosa
Caitlin Halpert
Evan Gould
Geoff Hand
Sean McKenzie
Leo Sprinzen
Miles Waite
Marina Campbell, (Alternate)
Chase Taylor, (Alternate)



Development Review Board

Tuesday, January 20, 2026, 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.

ZAP-25-10; 457 Saint Paul Street (RC, Ward 5) Group Five Investments, LLC / Jill Badolato

Appeal of administrative approval of ZP-25-566 for exterior alterations. (Project Manager, Scott Gustin)

4.2.

ZAP-25-11; 20 Pine Street (FD6, Ward 3) Diocesan Charitable Trust / Cathedral Immaculate Conception Parish Charitable Trust / John Franco

Appeal of issuance of notice of zoning violation, ZCPT-25-12, related to unpermitted tree cutting. (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.

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.

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Kirk Dressing, Associate Planner
Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer



TO: Development Review Board
FROM: Scott Gustin
DATE: January 20, 2026
RE: ZAP-25-10; 457 St Paul 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: RC Ward: 5

Owner/Appellant: Group Five Investments LLC / Jill Badolato

Request: Appeal of administrative approval of ZP-25-566 for exterior alterations.

Overview:

The appellant is contesting the administrative approval of ZP-25-566 for storefront renovations to an existing commercial space on the street level of 457 St Paul Street. The subject property has long been mixed commercial and residential use with permitted “neighborhood commercial” use on the ground floor. No change in use was approved with ZP-25-566, just renovation of the street level storefront along St Paul Street. The appellant requests that the DRB revoke the zoning permit and require application referral to the Design Advisory Board and Development Review Board.

Recommendation: **Uphold administrative decision** based on the following findings:

I. Findings:

Application for ZP-25-566 was filed November 3, 2025 and was completed November 12, 2025. The application qualified as a Level I Certificate of Appropriateness (COA) – an application subject to design review with an estimated construction cost of less than \$28,000. Following administrative review, the application was approved November 20, 2025 subject to the following project permit conditions (in addition to standard conditions 1-15):

1. Vermont Commercial Building Energy Standards apply to this project. Compliance with the standards is the Owner’s responsibility. For more information, see http://publicservice.vermont.gov/energy_efficiency.
2. Per Section 2.7.8, *Withhold Permit*, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. In this case, there are four open and expired zoning permits: ZP-08-133 (residing the building); ZP-08-181 (establish a cafe within a portion of the convenience store); ZP-10-807 (sign for One Love Market); and ZP-12-894 (replace roof). Certificates of

Occupancy for these expired zoning permits can be requested online: Zoning Certificate of Occupancy Request - City of Burlington, VT. Some of these expired permits may be superseded by more recent ones as determined by zoning staff.

A complaint was received about related construction activity on December 17, 2025. The complaint alleged, in part, that the red Z-Card required for public notice was never posted. Zoning staff inquired with the applicant about posting the Z-Card and learned that it was, in fact, not posted. As a result, the 15-day appeal period was reactivated on December 22, 2025, and posting of the Z-Card was confirmed later that same day.

An appeal of ZP-25-566 was filed December 22, 2025 and completed the following day on December 23. This appeal was filed within the reactivated 15-day appeal period.

The appeal asserts that design review per Article 6 of the Comprehensive Development Ordinance (CDO) is required and that it requires DAB and DRB review. The application does, in fact, require design review per the standards of Article 6. It does not; however, require Board review. As a Level I COA, it qualifies for administrative permit review per Sec. 3.2.7, *Administrative Review and Approval*, (a) *Administrative Authority*, of the CDO.

The appeal states that the red Z-Card was not posted. As noted above, in fact, the red Z-Card was not posted at the property as required during the initial permit review and 15- day appeal period. That lapse was corrected with a reinitiated appeal period. This appeal was filed within that reactivated appeal period.

The appeal asserts that the project fails Article 6 standards. In part, the appeal notes that the project will destroy window rhythm and historic proportions, blurs the entry, and degrades the architectural quality and visual continuity of the block. The approved project plans include replacement of the largely solid wall along the St. Paul Street street level with one that is largely storefront glass. The building is not historically significant and has been heavily altered over time. The proposed storefront glazing is typical and includes a well-defined central front entry. Sec. 6.3.2, *Review Standards*, (d) *Provide an active and inviting street edge*, specifically states that non-residential buildings should provide visual access into the interior of the building at street level through the use of large transparent windows and/or window displays in order to create a dynamic and engaging streetscape. The proposed storefront glazing is consistent with this objective.

The appeal alleges that the project will generate light pollution due to illumination of the interior space. The application contains no new outdoor lighting. Sec. 5.5.2, *Outdoor Lighting*, of the CDO contains a variety of standards for outdoor lighting. It does not regulate interior lighting.

The appeal notes an implausibly low construction cost (\$9,500) for the project. This construction cost estimate provided by the applicant is consistent with that provided with the related building permit application. It is nowhere near high enough to have implications for the zoning application fee. It would need to cost ~ 3X as much before moving into Level 2 COA application review. Importantly, even if construction cost were high enough to require Level 2 COA review, it would still qualify for administrative permit review per Sec. 3.2.7, *Administrative Review and Approval*, (a) *Administrative Authority*, of the CDO.

The appeal makes a general assertion about building code and habitability concerns of the structure. There are no pending enforcement actions as to building and trades permits. The apartments are in the midst of rental inspections. There is nothing pending as to building, trades, or housing inspections that would preclude issuance of the zoning permit for the storefront renovation.

Zoning permit ZP-25-566 includes storefront renovations that qualify for administrative review. The proposed work is consistent with applicable standards in Article 6, particularly those related to commercial spaces. The problem with lack of initial notice was remedied with a reinitiated 15-day appeal period and confirmation of posting the red Z-Card. The zoning permit was properly issued.

II. Recommended Motion:

Uphold the administrative decision.

APPEAL OF ZONING PERMIT ZP-25-566

457 St. Paul Street

To: Burlington Department of Permitting & Inspections Zoning & Permitting Division

From: Jill Badolato and 128 neighbors (see attachment for signatures)

Re: Appeal of Administrative Permit ZP-25-566

Date: December 22, 2026

Dear Zoning & Permitting Staff,

I am submitting this appeal of **Zoning Permit ZP-25-566**, issued administratively on November 20, 2025, for major exterior alterations at **457 St. Paul Street**. As an immediate neighbor and Interested Person, myself along with 128 neighbors will be directly and adversely affected by the substantial impacts the proposed façade will have on the Residential Corridor.

Beyond the absence of required posting, the project itself clearly triggers mandatory **Article 6 Design Review**, which requires evaluation by both the **Design Advisory Board (DAB)** and **Development Review Board (DRB)**. For these reasons, and those detailed below, I respectfully request that ZP-25-566 be revoked and forwarded for the required review.

1. Article 6 Design Review Is Mandatory Under Sec. 4.4.5(d)(3)(viii)

The property is located in the **RM District** within a **Residential Corridor**, and the proposed retail use meets the definition of a **Neighborhood Commercial Use** under Article 13.

Under **Sec. 4.4.5(d)(3)(viii)**:

“Any exterior changes to the building(s) or changes to the site plan shall be subject to the design review requirements of Article 6.”

The project includes:

- Removal of the entire existing façade

- Construction of a new full-height glass storefront
- Alteration of door and window openings
- A complete redesign of the building's street-facing elevation

These are significant exterior changes and therefore **must** undergo Article 6 design review. Administrative approval is inconsistent with the ordinance and constitutes a procedural error.

2. No Zoning Permit Posting—And Still No Posting as of Today

A zoning permit sign was never posted before demolition began, and **no sign is posted even today**, well after demolition and construction activity have occurred.

This failure of notice:

- Deprived neighbors of the required two-week posting period
- Prevented the public from understanding or responding to the proposal
- Allowed demolition to begin without any public awareness
- Resulted in late-night construction (past 11 p.m.) that required police intervention for noise violations

The continued absence of a zoning placard underscores that the project has **never** been properly noticed to the public and should therefore be voided.

3. Proposed Façade Fails Article 6 Design Standards

Article 6 requires exterior alterations to:

- Maintain window patterns and proportions harmonious with neighboring buildings
- Clearly define and articulate the principal entrance
- Enhance neighborhood character and architectural cohesion
- Avoid adverse visual and functional impacts on adjacent residences

The proposed wall-to-wall, floor-to-ceiling glass storefront violates these standards:

- It destroys existing window rhythm and historic proportions
- Introduces an incompatible commercial aesthetic more typical of highway retail than a Residential Corridor
- Blurs rather than clarifies the entry point
- Creates a visually intrusive façade that will prominently display brightly lit merchandise (chips, soda, cigarettes)
- Degrades the architectural quality and visual continuity of the block

These issues are precisely what Article 6 is designed to evaluate—and why DAB/DRB review is required.

4. Significant Nighttime Light Pollution and Visual Impacts

Article 5.5.2—although written for outdoor lighting—states that the City must:

“...minimize light pollution and trespass... and curtail degradation of the nighttime visual environment.”

A full-glass storefront illuminated from within will function as a **major unshielded light source**, causing:

- Intense glare visible from multiple nearby homes

- Light trespass into bedrooms and living areas
- Loss of residential privacy
- Visual clutter and nighttime disruption
- Conditions that encourage late-night loitering and activity

These impacts are substantial, foreseeable, and incompatible with a Residential Corridor.

5. Implausibly Low Construction-Cost Estimate (\$9,500)

The permit application lists construction costs of **\$9,500**, which the applicant appears to state as the cost of the glass storefront alone. Based on my experience purchasing residential and commercial windows and glass, even that number seems low. More importantly, the **total cost of the renovation—including demolition, framing, glazing, structural adjustments, installation, and finishing—will far exceed \$9,500.**

Listing only the price of the glass, without the full scope of construction costs, leads to an **understated total project value**. Whether intentional or accidental, this understatement may have influenced the permit's routing and kept it from being sent to **DRB**, where projects of this scale typically receive scrutiny.

I am prepared to obtain quotes to demonstrate that the true comprehensive cost is significantly higher.

6. Existing Building-Code and Habitability Concerns Require Review

The residential units and portions of the building above the commercial space have longstanding compliance issues, including safety, maintenance, and habitability concerns.

It is inappropriate for major commercial exterior alterations to proceed when:

- Known violations remain unresolved
- Future commercial activity may worsen impacts on tenants
- The building's overall safety and compliance have not been verified

A building with active compliance issues warrants greater—not lesser—review.

7. Cumulative Negative Impacts on Neighborhood Character and Livability

Taken together, the project will:

- Introduce an incompatible, visually harsh façade
- Create significant nighttime illumination
- Display consumer merchandise prominently through the glass
- Increase visual noise and evening activity
- Diminish the overall look, feel, and livability of a sensitive residential block

The intent of Burlington's Residential Corridor standards is to **protect and stabilize neighborhoods**—not to allow disruptive design changes without public oversight.

Request

For the reasons detailed above—including procedural errors, lack of required posting (past and present), mandatory but omitted Article 6 review, light-pollution impacts, understated construction cost, unresolved building-code issues, and substantial harm to neighborhood character—I respectfully request that:

Zoning & Permitting revoke Zoning Permit ZP-25-566 and refer the application to the Design Advisory Board and Development Review Board for full Article 6 design review.

My goal is not to control the eventual tenant, but to ensure that any exterior modification complies with Burlington's ordinances and protects the neighborhood's character, safety, and livability.

Thank you for your time and attention. I am available to provide documents, photographs, or additional information upon request.

Respectfully submitted,
Jill Badolato

Steve Levy

Mathew Viens

Scott Michael Mapes

Andrea Gray

Blaine Paxton

Roberta goldstein

Karen Guth

Lisa DeNatale

Megan Eaton

Patricia Ferreira

Eric Hart

Anne Knott

Charlotte Barrett

Margaret Skinner

Amy Mellencamp

Steve Madden

ginini stern

Zoe

Maryann Paterniti
Robert Paterniti
Carin Lilly
Robert Shapiro
Bob George
Miller Pearsall
Kathryn Markert
Katherine Plante
Janine Pillitteri
Andrew Simon
Laura Hollowell
Ada Puches
James Mosenthal
Tasha Lansbury
Grace Ahmed
Joshua Brown
Kate Vetter
W. Dwight Aseltine
katharine montstream
Janet Stambolian
Elizabeth Clayton
Johanne Logue Larson
Pam Laser
Eleonor Wolf
Valerie Wood-Lewis
Dale Wadhams

Meghan Fitzpatrick
Gregory Epler Wood
Martha Mutz
Sarah Page
Dana Poverman
Bob Wolf
Anna Paritsky
Jeff Schneider
Michelle Keegan
Maeve Eberhardt
Samuel Osborne
Eleanor Osborne
Holly Hatch
Jonathan Boright
Caroline Crawford
Erin Avelle
Andy Hatch
Rachel Morton
Roy Feldman
Carolyn Hanson
Megan Epler Wood
Pamela Polston
Jurij Homziak
Nancy Rabinowitz
Robyn Schenck
Avery Rifkin

Suzanne Gross
Zoe Keating
Stephanie Mueller
Erica Houskeeper
Kait Sherman
Emily Schroder
Devin colman
Jason Van Driesche
Steven Boutcher
Jennifer Sumner
Christine Koogle
William Grass
Paula Alvarez
Andrew Vota
Charlotte McCorkel
Jacquie Dragon
Tana Paddock
John Van Dijk
Mary Doran
Caitrin Garrett
Ben Throop
Mike Lane
Clare Wool
Alison Goss
Todd Rengel
Zpora Perry

Benita Schachter
Cara Chinchar
Mary Brust
Patricia Rivers
Sarah Deschenes
Carolyn Bates
John J Ryan
Jeff Henebury
Larry Lewack
Diana Eberhardt
Lennon Mapes
Lori Myers
Stephanie Larkin
Gabriella B
Leighton Johnson
Molly O
Brittany Reedman
David Barron
Karen Downey
Colleen Perron
Terrance McGrath
Bob Cieri
Bram Kleppner
Rich Kowalski
Betsey Francklyn
Linsey Foster-Mason

Sharon McConnell

Patricia Spaulding

Alden Cadwell

William Reilly

Cailey Gibson

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/19/2025 15:19:42	Steve Levy	106 Locust Street	stevelev53@gmail.com	I am a property owner or renter	The person/entity who hired workers who violated the 10pm quiet hours should be fined appropriately.
12/19/2025 16:06:26	Mathew Viens	516 Saint Paul Street	mlviens@comcast.net	I am a property owner or renter	
12/19/2025 16:28:12	Scott Michael Mapes	426 South Winooski Ave	smmapes@aol.com	I am a property owner or renter	
12/19/2025 16:42:37	Andrea Gray	153 Howard St. , Burling	Agray4448@gmail.com	I am a property owner or renter	
12/19/2025 16:46:21	Blaine Paxton	26 Clymer St	Bkpaxton@gmail.com	I am a property owner or renter	
12/19/2025 16:46:34	Roberta goldstein	29 spruce st.	Birdy1111@yahoo.com	I am a property owner or renter	
12/19/2025 16:48:40	Karen Guth	46 Howard St	Karendguth@gmail.com	I am a property owner or renter	
12/19/2025 16:54:10	Lisa DeNatale	319 South Union Street	lisadenatale2@gmail.co	I am concerned that this busine	
12/19/2025 16:54:33	Megan Eaton	4 Catherine Street	Msamanthae@gmail.co	I live in the immediate neighbor	
12/19/2025 16:57:02	Patricia Ferreira	3 Berry Street, BTV	vthoneybee@gmail.com	I am a property owner or renter	This is a no-brainer. The city should issue a cease and desist order.
12/19/2025 16:58:34	Eric Hart	6 Ledgemere Street	ehart@hartlaser.net	I am a property owner or renter	
12/19/2025 16:58:51	Anne Knott	92A Howard Street	amknott66@gmail.com	I am a property owner or renter	
12/19/2025 16:59:22	Charlotte Barrett	47 Bayview St. Burlingto	char.k.barrett@gmail.co	I am concerned that the design	
12/19/2025 17:00:28	Margaret Skinner	93 Howard Street	mskinner@uvm.edu	I am a property owner or renter	Given the challenges of doing any renovation in the 5 Sisters neighborhood, I am shocked that there may not have been the proper oversight in this case. The design as planned is not in keeping with the neighborhood.
12/19/2025 17:01:35	Amy Mellencamp	110 Summit Street, Burli	amy.mellencamp@gmai	I live in the immediate neighbor	
12/19/2025 17:02:59	Steve Madden	29 Perrotta Place, Burlin	stevemadden802@gma	I am concerned that this busine	
12/19/2025 17:08:46	ginini stern	262 so prospect street 0	ginnistern@hotmail.com	I am a property owner or renter	
12/19/2025 17:11:06	Zoe	Richards	zrichards772@gmail.co	I am a property owner or renter	
12/19/2025 17:11:38	Maryann Paterniti	110 Caroline Street , Bur	maryann.paterniti@gma	I am a property owner or renter	
12/19/2025 17:12:49	Robert Paterniti	110 Caroline Street, Burl	robertpaterniti@gmail.co	I am a property owner or renter	

Timestamp	Name	Address	Email Address	My interest in this project (checkbox)	Additional comments that I would like to share with DPW and the DRB:
12/19/2025 17:13:17	Carin Lilly	7 Catherine st	Carinlilly@hotmail.com	I am a property owner or renter	I'm so disheartened by that space sitting empty. I even emailed the property manager a couple times a few years ago, inquiring into the rental of it to make it a general store and I never heard back. It has so much potential beyond a "convenience store" vibe.
12/19/2025 17:14:30	Robert Shapiro	16 Summit Ridge, Burlington	rsburlington@gmail.com	I am a property owner or renter	It is unacceptable that the owner/developer did not post the required notice. If it is indeed the Handy family, I think they are quite familiar with Burlington's regulations. Work should be stopped and reversed if necessary to comply with the law.
12/19/2025 17:17:40	Bob George	85 South St Burlington	Robertanthonygeorge@	I am concerned that this busine	
12/19/2025 17:18:24	Miller Pearsall	55 Spruce Street	Millerpearsall@yahoo. C	I am a property owner or renter	
12/19/2025 17:19:13	Kathryn Markert	451 St Paul	ktmarkert@gmail.com	I am a property owner or renter	
12/19/2025 17:25:18	Katherine Plante	95 Hayward st	Kate@ridgelinerealestat	I am a property owner or renter	The community should certainly have a say and has Wright to review plans
12/19/2025 17:27:08	Janine Pillitteri	120 Crescent Road, Burl	jpillitt@gmail.com	I am a property owner or renter	I am primarily concerned that the permitting process was not followed and construction began without notice because ALL residents of Burlington MUST follow the permitting rules. NO ONE is excluded, and given that the responsible person(s) did NOT follow these rules indicates they are trying to do major renovations and establish this business "under the radar". It needs to stop immediately. In addition, this is NOT the type of business that belongs in this neighborhood. It is definitely not in the character of the neighborhood and is in very close proximity to the Mater Christie Catholic school that is attended by children in grades K-8.
12/19/2025 17:29:31	Andrew Simon	54 Locust St	sanschagrins@gmail.co	I live in the immediate neighbor	Please enforce all city regulations and think about what the neighborhood needs.
12/19/2025 17:32:10	Laura Hollowell	102 Charlotte Street, Bur	Lhollowelle@gmail.com	I am a property owner or renter	I strongly oppose this redevelopment project. I am very concerned that neighbors have not been involved in decision-making so far.
12/19/2025 17:48:11	Ada Puches	87 Howard Street	adapuches@gmail.com	I am a property owner or renter	
12/19/2025 17:52:12	James Mosenthal	467 South Union Stree	james.mosenthal@uvm.	I am a property owner or renter	
12/19/2025 17:58:05	Tasha Lansbury	35 Bayview st	Tashalansbury@gmail.c	I am a property owner or renter	
12/19/2025 18:11:48	Grace Ahmed	101 Howard Street	grace.ahmed@gmail.co	I am a property owner or renter	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/19/2025 19:21:52	Joshua Brown	15 Catherine Street	Joshua.brown.vermont@gmail.com	I am a property owner or renter	
12/19/2025 19:38:37	Kate Vetter	6 Golden Pl	Kate@katevetter.com	I am a property owner or renter	
12/19/2025 19:40:35	W. Dwight Aseltine	68 Marble Ave.	dwrightaseltine@yahoo.com	I am a property owner or renter	When on-premise parking is examined and limited or denied as must be, it will be incumbent on the business to find other parking for deliveries and customer use, necessitating use of on-street metered parking or development of an adjacent property for pedestrian- and traffic-safe parking, which will exacerbate snow storage, drainage, and heat island issues at a busy intersection requiring good sight lines and in a neighborhood with insufficient stormwater capacity and growing climate- and thermal vehicle heat pollution. (There is just one stormwater catch basin on the west side of St. Paul St. from the corner of Howard St. down to the corner of Kilburn St.—insufficient for CURRENT rain and meltwater, let alone INCREASES from impervious surfaces and INCREASES in storm-delivered precipitation events.
12/19/2025 20:15:01	katharine montstream	57 clymer st	kmmstudio@gmail.com	I am concerned that the permit	let's not rush and make sure whatever goes in there is a good fit for a residential area in terms of visibility and "coordinating" with the neighborhood.
12/19/2025 20:24:08	Janet Stambolian	11 Beech Street, Burlington	lagirlvt48@gmail.com	I am a property owner or renter	I add my voice to this effort because we simply cannot live in a City—or a country—that continuously devalues the processes by which construction occurs in residential OR commercial neighborhoods. Following the rules is what has governed these types of projects for many many long years. Since our neighborhood is already dealing with a spike in criminal activity, a new store in that location—with a brand identity as a convenience store primarily selling cigarettes and assorted other nonessential items—will be a magnet for exactly the activity that is not in keeping with the residential nature of our neighborhood. Not only do I object to the fact that the owner did not follow the process; I do not want that type of store there under any circumstances. I would say to the owner: do your due diligence; find out what this neighborhood needs and wants and build THAT.
12/19/2025 20:25:14	Elizabeth Clayton	90 Caroline St.	802eac@gmail.com	I am a property owner or renter	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/19/2025 20:38:06	Johanne Logue Larson	50 Charlotte Street	Jloguelarson@gmail.co	I am a property owner or renter	
12/19/2025 22:11:59	Pam Laser	6 Ledgemere st. Burlingt	plaser@hartlaser.net	I am a property owner or renter	
12/20/2025 0:47:18	Eleonor Wolf	435 Saint Paul St	Eleonor.c.wolf@gmail.cc	I am a property owner or renter	
12/20/2025 5:54:00	Valerie Wood-Lewis	66 Caroline Street	valerie.woodlewis@gma	I am a property owner or renter	
12/20/2025 6:15:34	Dale Wadhams	401 South Union St	dalewadhams@gmail.cc	I am a property owner or renter	
12/20/2025 8:13:24	Meghan Fitzpatrick	64 Charlotte St	Fitzbehrens@gmail.com	I am a property owner or renter	
12/20/2025 8:28:41	Gregory Epler Wood	369 South Union Street	Grew2@hey.com	I am concerned that the permit	
12/20/2025 8:37:05	Martha Mutz	137 Charlotte St, Burling	mutzm54@gmail.com	I am a property owner or renter	
12/20/2025 10:18:36	Sarah Page	54 Catherine Street	Spage64@gmail.com	I am a property owner or renter	
12/20/2025 11:40:44	Dana Poverman	416 So. Winooski Ave, B	danapoverman@gmail.c	I am a property owner or renter	
12/20/2025 12:01:20	Bob Wolf	41 Caroline St	BcWolf41c@gmail.com	I am a property owner or renter	
12/20/2025 12:35:01	Anna Paritsky	44 Marble Ave #2, Burlin	annaparitsky@gmail.cor	I am a property owner or renter	
12/20/2025 13:11:24	Jeff Schneider	121 Howard Street	Jeffreyschneider@hotm	I am a property owner or renter	
12/20/2025 13:15:06	Michelle Keegan	121 Howard Street, Burli	Keeganmichelle@hotmail	I am a property owner or renter	
12/20/2025 17:16:28	Maeve Eberhardt	437 South Union Street	maeve.eberhardt@gmai	I am a property owner or renter	
12/20/2025 18:02:10	Samuel Osborne	442 S. Winooski Ave, Bu	Samuel.osborne@gmail	I am a property owner or renter	
12/20/2025 18:03:40	Eleanor Osborne	442 S. Winooski Ave	Eleanorosborne4@gmai	I am a property owner or renter	
12/20/2025 19:46:24	Holly Hatch	396 S. Winooski Ave Bur	Hhatch63@gmail.com	I am a property owner or renter	
12/20/2025 19:49:11	Jonathan Boright	420 South Winooski AVE	jboright@gmail.com	I am a property owner or renter	We have concerns about the new proprietors ability to be conscientious of their new neighbors. The initial construction day included loud demolition well after 11:00 PM.
12/20/2025 21:43:49	Caroline Crawford	47 Hillcrest Road	Caroline.crawford1027@	I am a property owner or renter	
12/20/2025 22:05:55	Erin Avelle	420 S Winooski Ave	eavelle @gmail.com	I am a property owner or renter	A market has always been highly valued in this location but this proposed market does not sound like it will serve our neighborhood needs. The permit process seemed rushed and secret and the nighttime demolition definitely doesn't give me confidence in the owner's/management's interest in taking our community's wellbeing into consideration.

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/20/2025 22:19:15	Andy Hatch	396 S. Winooski Ave.	ahatch63@gmail.com	I am a property owner or renter	
12/21/2025 6:09:18	Rachel Morton	467 South Union St.	rachel@rachelmorton.ar	I am a property owner or renter	
12/21/2025 10:06:53	Roy Feldman	68 Ledge Road	Rfeldmanvt@gmail.com	I am a property owner or renter	
12/21/2025 10:07:56	Carolyn Hanson	118 spruce st	Carolyn@burlingtontelec	I am concerned that the permit	
12/21/2025 10:43:29	Megan Epler Wood	369 South Union St.	Meganew@eplerwood.c	I live in the immediate neighbor	
12/21/2025 11:06:55	Pamela Polston	356 S. Winooski Ave., Bu	ppolston@sevendaysvt.	I am a property owner or renter	
12/21/2025 11:59:44	Jurij Homziak	29 Crescent Terrace, Bur	juruj.homziak@gmail.co	I am a property owner or renter	
12/21/2025 12:19:06	Nancy Rabinowitz	35 Shelburne Street, Bur	Nancy@wildharedesign.	I am a property owner or renter	
12/21/2025 13:50:52	Robyn Schenck	118 Howard St.	rgschenck@aol.com	I am a property owner or renter	I live 2 houses away from the business. I'm deeply concerned, and wish to have input on the proposed use of the building.
12/21/2025 15:00:49	Avery Rifkin	434 South Winooski Ave	802-999-6474	I live in the immediate neighbor	
12/21/2025 15:01:58	Suzanne Gross	436 South Winoski Ave	Suzanne_gross@hotmail	I live in the immediate neighbor	
12/21/2025 15:07:05	Zoe Keating	126 Hayward	Zoekeating@duck.com	I am a property owner or renter	This building is at the gateway to the 5 sisters neighborhood and one of our only commercial buildings. Whatever ends up in that spot has a real impact on residents and our feedback should be considered. But also, I wonder how these major changes to such a central feature of our neighborhood, one of the only commercial buildings, were able to go ahead without seemingly any approval process?
12/21/2025 15:29:06	Stephanie Mueller	354 South Union Street	Stephaniemueller100@cs	I am a property owner or renter	
12/21/2025 16:18:31	Erica Houskeeper	23 Catherine Street, Burl	Ehousk@gmail.com	I am a property owner or renter	
12/21/2025 16:19:39	Kait Sherman	101 Charlotte street	Kaitesherman@gmail.cc	I am a property owner or renter	
12/21/2025 16:19:51	Emily Schroder	25 Hayward St	emily.schroder1@gmail.	I am a property owner or renter	
12/21/2025 16:21:38	Devin colman	191 Prospect Parkway	Devincolman@mac.com	I live in the immediate neighbor	
12/21/2025 16:21:48	Jason Van Driesche	129 Caroline Street	Jason.vandriesche@hey	I am a property owner or renter	
12/21/2025 16:22:00	Steven Boutcher	319 South Union Street,	steveboutcher@gmail.co	I am a property owner or renter	
12/21/2025 16:22:03	Jennifer Sumner	49 Ledgemere St.	jlcolbert@yahoo.com	I am a property owner or renter	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/21/2025 16:24:48	Christine Koogle	451 Saint Paul St	Christine.koogle@gmail	I am a property owner or renter	
12/21/2025 16:34:25	William Grass	108 Hayward St Burlingt	wgrass@yahoo.com	I am a property owner or renter	
12/21/2025 16:34:38	Paula Alvarez	443 S Willard St	Paula.alvlop@gmail.com	I am a property owner or renter	
12/21/2025 16:40:36	Andrew Vota	65 Howard St	andy@andylvota.com	I am a property owner or renter	
12/21/2025 16:42:06	Charlotte McCorkel	14 Beech Street Burlingt	Charlottemccorkel@gm	I live in the immediate neighbor	
12/21/2025 16:42:56	Jacque Dragon	14 Beech Street	dragon.jacque415@gm	I am a property owner or renter	
12/21/2025 16:55:13	Tana Paddock	222 S. Winooski Ave, Bu	tanapaddock@gmail.co	I am a property owner or renter	
12/21/2025 17:00:45	John Van Dijk	327 South Prospect Stre	javandijk@me.com	I am a property owner or renter	
12/21/2025 17:02:48	Mary Doran	111 Hayward St	marykdoran@gmail.com	I am a property owner or renter	
12/21/2025 17:04:45	Caitrin Garrett	492 S. Union St	cbg5579@yahoo.com	I am a property owner or renter	
12/21/2025 17:06:02	Ben Throop	9 Catherine St	benthroop@gmail.com	I am a property owner or renter	This building is an unkept eyesore and this owner is not a good neighbor. The city should be representing the neighborhood's interests here.
12/21/2025 17:12:41	Mike Lane	381 s Union st	Mikelanevt@gmail.com	I am a property owner or renter	
12/21/2025 17:13:38	Clare Wool	153 Summit St Burlingt	clarewool@me.com	I am concerned that the design	
12/21/2025 17:16:56	Alison Goss	15 Perrotta Place	Alisongoss55@gmail.co	I am a property owner or renter	
12/21/2025 17:21:33	Todd Rengel	46 Charlotte St	tregel@animusrex.com	I am a property owner or renter	Progress and renewal are important but a convenience store primarily focused on cigarettes seems out of keeping with a neighborhood with families. Light pollution is a real problem.
12/21/2025 17:26:58	Zpora Perry	52 Locust St	Zporaperry@gmail.com	I am a property owner or renter	
12/21/2025 17:36:12	Benita Schachter	69 Charlotte Street	Bbma890@gmail.com	I am a property owner or renter	There should be opportunity for community input on a design and use that impacts the neighborhood.
12/21/2025 17:50:19	Cara Chinchar	65 Howard St	Cara.chinchar@gmail.co	I am a property owner or renter	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/21/2025 18:01:12	Mary Brust	445 Saint Paul Street	mdbrust@yahoo.com	I am a property owner or renter	It is unbelievable to me that I had to take down a run down shed and make sure I was following all the rules and yet the Handy family can do whatever they want to this building and not be required to follow the same rules. This is a terrible design, terrible place for it and if DPW and DRB are going to make sure that I have to keep my windows and roof historically accurate, so should the Handys be required to follow the same rules.
12/21/2025 18:46:12	Patricia Rivers	159 Locust Terrace	pmlhoffmann@gmail.co	I am a property owner or renter	
12/21/2025 18:54:13	Sarah Deschenes	50 Ledge Rd Burlington	Deschesa@gmail.com	I am a property owner or renter	
12/21/2025 19:05:58	Carolyn Bates	20. Caroline st	Cbatesbt@gmail.com	I am a property owner or renter	
12/21/2025 19:07:54	John J Ryan	410 S. Winooski Avenue	devcycles@gmail.com	I am a property owner or renter	
12/21/2025 19:26:36	Jeff Henebury	50 Clymer St	jeff.henebury@gmail.co	I am a property owner or renter	
12/21/2025 19:54:08	Larry Lewack	61 Caroline St., Burlingt	macwacks@outlook.cor	I am a property owner or renter	
12/21/2025 19:55:53	Diana Eberhardt	204 S Union St Apt 6	deeberhardt@yahoo.cor	I am a property owner or renter	
12/21/2025 20:08:35	Lennon Mapes	426 South Winooski Ave	Lennonmapes01@gmai	I live in the immediate neighbor	
12/21/2025 20:13:00	Lori Myers	79 Caroline st	Lorimyrs12@gmail.com	I am a property owner or renter	
12/21/2025 20:15:37	Stephanie Larkin	96 Howard st	Larkinalive@gmail.com	I am a property owner or renter	Nearly 20 years ago the historic arm of DPW required us to make costly changes to our design (tie in our roofline, move doors and change dimensions of windows) on a pretty basic house that was not listed as historic. They were costly requirements. How could 457 St Paul undergo a facelift with NONE of the oversight that I had to endure?
12/21/2025 20:28:12	Gabriella B	10 Catherine street	Gabriellabroga@gmail.c	I am a property owner or renter	
12/21/2025 21:08:28	Leighton Johnson	52 Locust Street	Ljohnsoniv@gmail.com	I am a property owner or renter	Residential project require a great deal of permitting. Commercial projects should be held to the same standard.
12/21/2025 21:35:15	Molly O	11 Hayward St	Mcobrien698@gmail.co	I am a property owner or renter	
12/21/2025 21:51:32	Brittany Reedman	77 Charlate St, Burlingto	brittanyreedman@gmail	I am a property owner or renter	
12/21/2025 22:19:18	David Barron	23 Catherine St	Dave@pluckvermont.co	I am a property owner or renter	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/21/2025 22:22:46	Karen Downey	37 Catherine Street	kedot2018@gmail.com	I am a property owner or renter	The neighborhood will benefit from a small food market or coffee shop that people can walk to since there is limited parking on St. Paul or Howard St. We do not need another marijuana shop since there is already one at the corner of Kilburn and St. Paul.
12/21/2025 22:57:40	Colleen Perron	120 Charlotte St Burlington	Colleenperron@gmail.cc	I am a property owner or renter	
12/22/2025 0:53:29	Terrance McGrath	4 Shelburne Rd.	twiny@aol.com	I am concerned that the permit	
12/22/2025 1:33:54	Bob Cieri	283 S Union #4	Bcieri@hotmail.com	I am a property owner or renter	
12/22/2025 5:35:11	Bram Kleppner	469 S Willard St, Burlington	bram.kleppner@gmail.co	I am a property owner or renter	
12/22/2025 5:55:14	Rich Kowalski	391 south union	Richard.kowalski@raym	I am a property owner or renter	
12/22/2025 6:00:07	Betsey Francklyn	845 South Prospect St	Betsey.francklyn@gmail	I am a property owner or renter	There are plenty of places to purchase cigarettes nearby.
12/22/2025 6:13:32	Linsey Foster-Mason	173 Howard St, Burlington	linseyfm@gmail.com	I am a property owner or renter	
12/22/2025 6:46:30	Sharon McConnell	22 Ledgemere Street	Sharonmclobe@gmail.co	I am a property owner or renter	
12/22/2025 8:09:43	Patricia Spaulding	27 Caroline St.	Greentreenc@gmail.com	I am a property owner or renter	This building is dangerously not maintained. Parts of the roof fell off last year and sat on the ground next to the sidewalk for months. I've been afraid to walk by it on a windy day. I was wondering if it had been condemned, but I guess not.
12/22/2025 8:26:37	Alden Cadwell	283 South Union Street	aldenbc@gmail.com	I am concerned that the permit	
12/22/2025 9:45:29	William Reilly	254 South Union St	wjreilly7@gmail.com	I am a property owner or renter	
12/22/2025 9:49:06	Cailey Gibson	154 Locust Terrace	caileysgibson@gmail.cc	I am a property owner or renter	

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City of
Burlington, Vermont
645 Pine Street

Zoning Permit – Conditions of Approval

ZP #: 25-566

Tax ID: 053-3-045-000

Issue Date: November 20, 2025

Decision: Approve

Property Address: 457 Saint Paul Street

Description: Proposed renovation of existing storefront, adding new door and windows.

Project Permit Conditions:

1. Vermont Commercial Building Energy Standards apply to this project. Compliance with the standards is the Owner's responsibility. For more information, see http://publicservice.vermont.gov/energy_efficiency.
2. Per **Section 2.7.8, Withhold Permit**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. In this case, there are four open and expired zoning permits: ZP-08-133 (residing the building); ZP-08-181 (establish a cafe within a portion of the convenience store); ZP-10-807 (sign for One Love Market); and ZP-12-894 (replace roof). Certificates of Occupancy for these expired zoning permits can be requested online: [Zoning Certificate of Occupancy Request - City of Burlington, VT](#). Some of these expired permits may be superseded by more recent ones as determined by zoning staff.

Standard Permit Conditions:

1. **Other City, State or Federal Permits.** The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions. Wastewater permits are issued by the State and are frequently required as a result of expansion or change in use.
Note: All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from the Department of Permitting & Inspections Trades Division. All construction permits must be closed out by way of approved inspections by Trades before issuance of a Zoning Certificate of Occupancy (ZCO) by the Zoning Division as per Condition 3, below. **Note:** All projects involving earth disturbance of 400 square feet or more require a reviewed and approved erosion prevention and sediment control (EPSC) permit prior to the start of construction. This review is closed out by way of a completed EPSC Permit and an inspection by Stormwater Program staff or their designee before issuance of a ZCO as noted above.
2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced within 1 year of approval. The owner shall complete the approved project and obtain a ZCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) within 3 years or be subject to enforcement actions.

These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).

3. **Zoning Certificate of Occupancy (ZCO):** It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a ZCO.

If the project is partially completed, meets “prior to issuance of a ZCO” conditions of approval, meets all life and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. **Upon completion of the project**, applicant shall request and obtain a Final ZCO from the Zoning Division (located at 645 Pine Street). Additional information on how to request and obtain this ZCO is available at this office. **Failure to obtain a Zoning certificate of occupancy** places the property in violation of the CDO and is subject to enforcement.

In addition, **Failure to obtain a ZCO within the time limits above is subject to** “after the fact” fees ranging from \$75 - \$1500.

4. **Project Modifications.** The project shall be completed, operated, and maintained in accordance with: (a) the conditions of this permit and (b) the permit application, plans (which have been stamped “approved” and dated by the administrative officer), and exhibits on file with the Board or administrative officer and other material representations. In the event of any conflict, the terms and conditions of this permit shall supersede the approved plans and exhibits. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.
5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final ZCO.
6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.
7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.
8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.

9. **Transfer of Ownership. All zoning permits run with the land.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.
10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to two hundred dollars (\$200) per day, municipal tickets, and/or additional permitting fees.
11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.
If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.
13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.
14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and/or City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

An interested person may appeal a decision of the Zoning Administrator to the Development Review Board within 15 days after the decision date per Sec. 12.2.2, *Appeals of Administrative Officer Decisions*. Appeals may be filed online at [burlingtonvt.viewpointcloud.com/categories/1098](https://www.burlingtonvt.viewpointcloud.com/categories/1098) or in-person at 645 Pine Street, Burlington, Vermont. <https://www.burlingtonvt.gov/DPI/Appealing-a-Zoning-Decision>



Renovate storefront

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS
REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION.
ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE
FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED *William 261* DATE 11/20/2025
ZONING PERMIT # ZP-25-566
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT





Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/19/2025 15:19:42	Steve Levy	106 Locust Street	stevelev53@gmail.com	I am a property owner or renter i	The person/entity who hired workers who violated the 10pm quiet hours should be fined appropriately.
12/19/2025 16:06:26	Mathew Viens	516 Saint Paul Street	mlviens@comcast.net	I am a property owner or renter i	
12/19/2025 16:28:12	Scott Michael Mapes	426 South Winooski Ave.	smmapes@aol.com	I am a property owner or renter i	
12/19/2025 16:42:37	Andrea Gray	153 Howard St. , Burlingt	Agray4448@gmail.com	I am a property owner or renter i	
12/19/2025 16:46:21	Blaine Paxton	26 Clymer St	Bkpaxton@gmail.com	I am a property owner or renter i	
12/19/2025 16:46:34	Roberta goldstein	29 spruce st.	Birdy1111@yahoo.com	I am a property owner or renter i	
12/19/2025 16:48:40	Karen Guth	46 Howard St	Karendguth@gmail.com	I am a property owner or renter i	
12/19/2025 16:54:10	Lisa DeNatale	319 South Union Street	lisadenatale2@gmail.cor	I am concerned that this busine:	
12/19/2025 16:54:33	Megan Eaton	4 Catherine Street	Msamanthae@gmail.cor	I live in the immediate neighborh	
12/19/2025 16:57:02	Patricia Ferreira	3 Berry Street, BTV	vtoneybee@gmail.com	I am a property owner or renter i	This is a no-brainer. The city should issue a cease and desist order.
12/19/2025 16:58:34	Eric Hart	6 Ledgemere Street	ehart@hartlaser.net	I am a property owner or renter i	
12/19/2025 16:58:51	Anne Knott	92A Howard Street	amknott66@gmail.com	I am a property owner or renter i	
12/19/2025 16:59:22	Charlotte Barrett	47 Bayview St. Burlingt	char.k.barrett@gmail.cor	I am concerned that the design i	
12/19/2025 17:00:28	Margaret Skinner	93 Howard Street	mskinner@uvm.edu	I am a property owner or renter i	Given the challenges of doing any renovation in the 5 Sisters neighborhood, I am shocked that there may not have been the proper oversight in this case. The design as planned is not in keeping with the neighborhood.
12/19/2025 17:01:35	Amy Mellencamp	110 Summit Street, Burlii	amy.mellencamp@gmail	I live in the immediate neighborh	
12/19/2025 17:02:59	Steve Madden	29 Perrotta Place, Burling	stevemadden802@gmail	I am concerned that this busine:	
12/19/2025 17:08:46	ginini stern	262 so prospect street 01	ginnistern@hotmail.com	I am a property owner or renter i	
12/19/2025 17:11:06	Zoe	Richards	zrichards772@gmail.con	I am a property owner or renter i	
12/19/2025 17:11:38	Maryann Paterniti	110 Caroline Street , Burl	maryann.paterniti@gmai	I am a property owner or renter i	
12/19/2025 17:12:49	Robert Paterniti	110 Caroline Street, Burli	robertpaterniti@gmail.co	I am a property owner or renter i	
12/19/2025 17:13:17	Carin Lilly	7 Catherine st	Carinlilly@hotmail.com	I am a property owner or renter i	I'm so disheartened by that space sitting empty. I even emailed the property manager a couple times a few years ago, inquiring into the rental of it to make it a general store and I never heard back. It has so much potential beyond a "convenience store" vibe.
12/19/2025 17:14:30	Robert Shapiro	16 Summit Ridge, Burling	rsburlington@gmail.com	I am a property owner or renter i	It is unacceptable that the owner/developer did not post the required notice. If it is indeed the Handy family, I think they are quite familiar with Burlington's regulations. Work should be stopped and reversed if necessary to comply with the law.
12/19/2025 17:17:40	Bob George	85 South St Burlington	Robertanthonygeorge@g	I am concerned that this busine:	
12/19/2025 17:18:24	Miller Pearsall	55 Spruce Street	Millerpearsall@yahoo. Co	I am a property owner or renter i	
12/19/2025 17:19:13	Kathryn Markert	451 St Paul	ktmarkert@gmail.com	I am a property owner or renter i	
12/19/2025 17:25:18	Katherine Plante	95 Hayward st	Kate@ridgelinerealestate	I am a property owner or renter i	The community should certainly have a say and has Wright to review plans
12/19/2025 17:27:08	Janine Pillitteri	120 Crescent Road, Burli	jpillitt@gmail.com	I am a property owner or renter i	I am primarily concerned that the permitting process was not followed and construction began without notice because ALL residents of Burlington MUST follow the permitting rules. NO ONE is excluded, and given that the responsible person(s) did NOT follow these rules indicates they are trying to do major renovations and establish this business "under the radar". It needs to stop immediately. In addition, this is NOT the type of business that belongs in this neighborhood. It is definitely not in the character of the neighborhood and is in very close proximity to the Mater Christie Catholic school that is attended by children in grades K-8.
12/19/2025 17:29:31	Andrew Simon	54 Locust St	sanschagrins@gmail.cor	I live in the immediate neighborh	Please enforce all city regulations and think about what the neighborhood needs.
12/19/2025 17:32:10	Laura Hollowell	102 Charlotte Street, Burl	lhollowelle@gmail.com	I am a property owner or renter i	I strongly oppose this redevelopment project. I am very concerned that neighbors have not been involved in decision-making so far.
12/19/2025 17:48:11	Ada Puches	87 Howard Street	adapuches@gmail.com	I am a property owner or renter i	
12/19/2025 17:52:12	James Mosenthal	467 South Union Stree	james.mosenthal@uvm.e	I am a property owner or renter i	
12/19/2025 17:58:05	Tasha Lansbury	35 Bayview st	Tashalansbury@gmail.cc	I am a property owner or renter i	
12/19/2025 18:11:48	Grace Ahmed	101 Howard Street	grace.ahmed@gmail.con	I am a property owner or renter i	
12/19/2025 19:21:52	Joshua Brown	15 Catherine Street	Joshua.brown.vermont@	I am a property owner or renter i	
12/19/2025 19:38:37	Kate Vetter	6 Golden Pl	Kate@katevetter.com	I am a property owner or renter i	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/19/2025 19:40:35	W. Dwight Aseltine	68 Marble Ave.	dwrightaseltine@yahoo.com	I am a property owner or renter i	When on-premise parking is examined and limited or denied as must be, it will be incumbent on the business to find other parking for deliveries and customer use, necessitating use of on-street metered parking or development of an adjacent property for pedestrian- and traffic-safe parking, which will exacerbate snow storage, drainage, and heat island issues at a busy intersection requiring good sight lines and in a neighborhood with insufficient stormwater capacity and growing climate- and thermal vehicle heat pollution. (There is just one stormwater catch basin on the west side of St. Paul St. from the corner of Howard St. down to the corner of Kilburn St.—insufficient for CURRENT rain and meltwater, let alone INCREASES from impervious surfaces and INCREASES in storm-delivered precipitation events.
12/19/2025 20:15:01	katharine montstream	57 clymer st	kmmstudio@gmail.com	I am concerned that the permitti	let's not rush and make sure whatever goes in there is a good fit for a residential area in terms of visibility and "coordinating" with the neighborhood. I add my voice to this effort because we simply cannot live in a City—or a country—that continuously devalues the processes by which construction occurs in residential OR commercial neighborhoods. Following the rules is what has governed these types of projects for many many long years. Since our neighborhood is already dealing with a spike in criminal activity, a new store in that location—with a brand identity as a convenience store primarily selling cigarettes and assorted other nonessential items—will be a magnet for exactly the activity that is not in keeping with the residential nature of our neighborhood. Not only do I object to the fact that the owner did not follow the process; I do not want that type of store there under any circumstances. I would say to the owner: do your due diligence; find out what this neighborhood needs and wants and build THAT.
12/19/2025 20:24:08	Janet Stambolian	11 Beech Street, Burlingt	lagirlvt48@gmail.com	I am a property owner or renter i	
12/19/2025 20:25:14	Elizabeth Clayton	90 Caroline St.	802eac@gmail.com	I am a property owner or renter i	
12/19/2025 20:38:06	Johanne Logue Larson	50 Charlotte Street	Jloguelarson@gmail.com	I am a property owner or renter i	
12/19/2025 22:11:59	Pam Laser	6 Ledgemere st. Burlingt	plaser@hartlaser.net	I am a property owner or renter i	
12/20/2025 0:47:18	Eleonor Wolf	435 Saint Paul St	Eleonor.c.wolf@gmail.co	I am a property owner or renter i	
12/20/2025 5:54:00	Valerie Wood-Lewis	66 Caroline Street	valerie.woodlewis@gmai	I am a property owner or renter i	
12/20/2025 6:15:34	Dale Wadhams	401 South Union St	dalewadhamsgmail.co	I am a property owner or renter i	
12/20/2025 8:13:24	Meghan Fitzpatrick	64 Charlotte St	Fitzbehrens@gmail.com	I am a property owner or renter i	
12/20/2025 8:28:41	Gregory Epler Wood	369 South Union Street	Grew2@hey.com	I am concerned that the permitti	
12/20/2025 8:37:05	Martha Mutz	137 Charlotte St, Burlingt	mutzm54@gmail.com	I am a property owner or renter i	
12/20/2025 10:18:36	Sarah Page	54 Catherine Street	Spag64@gmail.com	I am a property owner or renter i	
12/20/2025 11:40:44	Dana Poverman	416 So. Winooski Ave, Bu	danapoverman@gmail.co	I am a property owner or renter i	
12/20/2025 12:01:20	Bob Wolf	41 Caroline St	Bcwf41c@gmail.com	I am a property owner or renter i	
12/20/2025 12:35:01	Anna Paritsky	44 Marble Ave #2, Burling	annaparitsky@gmail.com	I am a property owner or renter i	
12/20/2025 13:11:24	Jeff Schneider	121 Howard Street	Jeffreyschneider@hotmail	I am a property owner or renter i	
12/20/2025 13:15:06	Michelle Keegan	121 Howard Street, Burlir	Keeganmichelle@hotmail	I am a property owner or renter i	
12/20/2025 17:16:28	Maeve Eberhardt	437 South Union Street	maeve.eberhardt@gmail.	I am a property owner or renter i	
12/20/2025 18:02:10	Samuel Osborne	442 S. Winooski Ave, Bur	Samuel.osborne@gmail.	I am a property owner or renter i	
12/20/2025 18:03:40	Eleanor Osborne	442 S. Winooski Ave	Eleanorosborne4@gmail	I am a property owner or renter i	
12/20/2025 19:46:24	Holly Hatch	396 S. Winooski Ave Burl	Hhatch63@gmail.com	I am a property owner or renter i	
12/20/2025 19:49:11	Jonathan Boright	420 South Winooski AVE	jboright@gmail.com	I am a property owner or renter i	We have concerns about the new proprietors ability to be conscientious of their new neighbors. The initial construction day included loud demolition well after 11:00 PM.
12/20/2025 21:43:49	Caroline Crawford	47 Hillcrest Road	Caroline.crawford1027@	I am a property owner or renter i	
12/20/2025 22:05:55	Erin Avelle	420 S Winooski Ave	eavelle @gmail.com	I am a property owner or renter i	A market has always been highly valued in this location but this proposed market does not sound like it will serve our neighborhood needs. The permit process seemed rushed and secret and the nighttime demolition definitely doesn't give me confidence in the owner's/management's interest in taking our community's wellbeing into consideration.
12/20/2025 22:19:15	Andy Hatch	396 S. Winooski Ave.	ahatch63@gmail.com	I am a property owner or renter i	
12/21/2025 6:09:18	Rachel Morton	467 South Union St.	rachel@rachelmorton.art	I am a property owner or renter i	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/21/2025 10:06:53	Roy Feldman	68 Ledge Road	Rfeldmanvt@gmail.com	I am a property owner or renter i	
12/21/2025 10:07:56	Carolyn Hanson	118 spruce st	Carolyn@burlingtotelec	I am concerned that the permitti	
12/21/2025 10:43:29	Megan Epler Wood	369 South Union St.	Meganew@eplerwood.cc	I live in the immediate neighborh	
12/21/2025 11:06:55	Pamela Polston	356 S. Winooski Ave., Bur	ppolston@sevendaysvt.c	I am a property owner or renter i	
12/21/2025 11:59:44	Jurij Homziak	29 Crescent Terrace, Burl	juruj.homziak@gmail.cor	I am a property owner or renter i	
12/21/2025 12:19:06	Nancy Rabinowitz	35 Shelburne Street, Burl	Nancy@wildharedesign.c	I am a property owner or renter i	
12/21/2025 13:50:52	Robyn Schenck	118 Howard St.	rgschenck@aol.com	I am a property owner or renter i	I live 2 houses away from the business. I'm deeply concerned, and wish to have input on the proposed use of the building.
12/21/2025 15:00:49	Avery Rifkin	434 South Winooski Ave.	802-999-6474	I live in the immediate neighborh	
12/21/2025 15:01:58	Suzanne Gross	436 South Winoski Ave	Suzanne_gross@hotmail	I live in the immediate neighborh	
12/21/2025 15:07:05	Zoe Keating	126 Hayward	Zoekeating@duck.com	I am a property owner or renter i	This building is at the gateway to the 5 sisters neighborhood and one of our only commercial buildings. Whatever ends up in that spot has a real impact on residents and our feedback should be considered. But also, I wonder how these major changes to such a central feature of our neighborhood, one of the only commercial buildings, were able to go ahead without seemingly any approval process?
12/21/2025 15:29:06	Stephanie Mueller	354 South Union Street	Stephaniemueller100@gi	I am a property owner or renter i	
12/21/2025 16:18:31	Erica Houskeeper	23 Catherine Street, Burli	Ehousk@gmail.com	I am a property owner or renter i	
12/21/2025 16:19:39	Kait Sherman	101 Charlotte street	Kaitesherman@gmail.co	I am a property owner or renter i	
12/21/2025 16:19:51	Emily Schroder	25 Hayward St	emily.schroder1@gmail.c	I am a property owner or renter i	
12/21/2025 16:21:38	Devin colman	191 Prospect Parkway	Devincolman@mac.com	I live in the immediate neighborh	
12/21/2025 16:21:48	Jason Van Driesche	129 Caroline Street	Jason.vandriesche@hey.	I am a property owner or renter i	
12/21/2025 16:22:00	Steven Boutcher	319 South Union Street, E	steveboutcher@gmail.co	I am a property owner or renter i	
12/21/2025 16:22:03	Jennifer Sumner	49 Ledgemere St.	jlcolbert@yahoo.com	I am a property owner or renter i	
12/21/2025 16:24:48	Christine Koogle	451 Saint Paul St	Christine.koogle@gmail.i	I am a property owner or renter i	
12/21/2025 16:34:25	William Grass	108 Hayward St Burlingt	wgrass@yahoo.com	I am a property owner or renter i	
12/21/2025 16:34:38	Paula Alvarez	443 S Willard St	Paula.alvlop@gmajl.com	I am a property owner or renter i	
12/21/2025 16:40:36	Andrew Vota	65 Howard St	andy@andylvota.com	I am a property owner or renter i	
12/21/2025 16:42:06	Charlotte McCorkel	14 Beech Street Burlingt	Charlottemccorkel@gma	I live in the immediate neighborh	
12/21/2025 16:42:56	Jacquie Dragon	14 Beech Street	dragon.jacquie415@gma	I am a property owner or renter i	
12/21/2025 16:55:13	Tana Paddock	222 S. Winooski Ave, Bur	tanapaddock@gmail.con	I am a property owner or renter i	
12/21/2025 17:00:45	John Van Dijk	327 South Prospect Stre	javandijk@me.com	I am a property owner or renter i	
12/21/2025 17:02:48	Mary Doran	111 Hayward St	marykdoran@gmail.com	I am a property owner or renter i	
12/21/2025 17:04:45	Caitrin Garrett	492 S. Union St	cbg5579@yahoo.com	I am a property owner or renter i	
12/21/2025 17:06:02	Ben Throop	9 Catherine St	benthroop@gmail.com	I am a property owner or renter i	This building is an unkept eyesore and this owner is not a good neighbor. The city should be representing the neighborhood's interests here.
12/21/2025 17:12:41	Mike Lane	381 s Union st	Mikelanevt@gmail.com	I am a property owner or renter i	
12/21/2025 17:13:38	Clare Wool	153 Summit St Burlingt	clarewool@me.com	I am concerned that the design i	
12/21/2025 17:16:56	Alison Goss	15 Perrotta Place	Alisongoss55@gmail.coi	I am a property owner or renter i	
12/21/2025 17:21:33	Todd Rengel	46 Charlotte St	tregel@animusrex.com	I am a property owner or renter i	Progress and renewal anre important but a convenience store primarily focused on cigarettes seems out of keeping with a neighborhood with families. Light pollution is a real problem.
12/21/2025 17:26:58	Zpora Perry	52 Locust St	Zporaperry@gmail.com	I am a property owner or renter i	
12/21/2025 17:36:12	Benita Schachter	69 Charlotte Street	Bbma890@gmail.com	I am a property owner or renter i	There should be opportunity for community input on a design and use that impacts the neighborhood.
12/21/2025 17:50:19	Cara Chinchar	65 Howard St	Cara.chinchar@gmail.coi	I am a property owner or renter i	
12/21/2025 18:01:12	Mary Brust	445 Saint Paul Street	mdbrust@yahoo.com	I am a property owner or renter i	It is unbelievable to me that I had to take down a run down shed and make sure I was following all the rules and yet the Handy family can do whatever they want to this building and not be required to follow the same rules. This is a terrible design, terrible place for it and if DPW and DRB are going to make sure that I have to keep my windows and roof historically accurate, so should the Handys be required to follow the same rules.

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
12/21/2025 18:46:12	Patricia Rivers	159 Locust Terrace	pmlhoffmann@gmail.com	I am a property owner or renter i	
12/21/2025 18:54:13	Sarah Deschenes	50 Ledge Rd Burlington C	Deschesa@gmail.com	I am a property owner or renter i	
12/21/2025 19:05:58	Carolyn Bates	20. Caroline st	Cbatesbt@gmail.com	I am a property owner or renter i	
12/21/2025 19:07:54	John J Ryan	410 S. Winooski Avenue	devcycles@gmail.com	I am a property owner or renter i	
12/21/2025 19:26:36	Jeff Henebury	50 Clymer St	jeff.henebury@gmail.com	I am a property owner or renter i	
12/21/2025 19:54:08	Larry Lewack	61 Caroline St., Burlingto	macwacks@outlook.com	I am a property owner or renter i	
12/21/2025 19:55:53	Diana Eberhardt	204 S Union St Apt 6	deeberhardt@yahoo.com	I am a property owner or renter i	
12/21/2025 20:08:35	Lennon Mapes	426 South Winooski Ave	Lennonmapes01@gmail.	I live in the immediate neighborh	
12/21/2025 20:13:00	Lori Myers	79 Caroline st	Lorimyrs12@gmail.com	I am a property owner or renter i	
12/21/2025 20:15:37	Stephanie Larkin	96 Howard st	Larkinalive@gmail.com	I am a property owner or renter i	Nearly 20 years ago the historic arm of DPW required us to make costly changes to our design (tie in our roofline, move doors and change dimensions of windows) on a pretty basic house that was not listed as historic. They were costly requirements. How could 457 St Paul undergo a facelift with NONE of the oversight that I had to endure?
12/21/2025 20:28:12	Gabriella B	10 Catherine street	Gabriellabroga@gmail.cc	I am a property owner or renter i	
12/21/2025 21:08:28	Leighton Johnson	52 Locust Street	Ljohnsoniv@gmail.com	I am a property owner or renter i	Residential project require a great deal of permitting. Commercial projects should be held to the same standard.
12/21/2025 21:35:15	Molly O	11 Hayward St	Mcobrien698@gmail.com	I am a property owner or renter i	
12/21/2025 21:51:32	Brittany Reedman	77 Charlotte St, Burlingto	brittanyreedman@gmail.	I am a property owner or renter i	
12/21/2025 22:19:18	David Barron	23 Catherine St	Dave@pluckvermont.com	I am a property owner or renter i	
12/21/2025 22:22:46	Karen Downey	37 Catherine Street	kedot2018@gmail.com	I am a property owner or renter i	The neighborhood will benefit from a small food market or coffee shop that people can walk to since there is limited parking on St. Paul or Howard St. We do not need another marijuana shop since there is already one at the corner of Kilburn and St. Paul.
12/21/2025 22:57:40	Colleen Perron	120 Charlotte St Burlingt	Colleenperron@gmail.co	I am a property owner or renter i	
12/22/2025 0:53:29	Terrance McGrath	4 Shelburne Rd.	twiny@aol.com	I am concerned that the permitti	
12/22/2025 1:33:54	Bob Cieri	283 S Union #4	Bcieri@hotmail.com	I am a property owner or renter i	
12/22/2025 5:35:11	Bram Kleppner	469 S Willard St, Burlingt	bram.kleppner@gmail.cc	I am a property owner or renter i	
12/22/2025 5:55:14	Rich Kowalski	391 south union	Richard.kowalski@raymc	I am a property owner or renter i	
12/22/2025 6:00:07	Betsey Francklyn	845 South Prospect St	Betsey.francklyn@gmail.	I am a property owner or renter i	There are plenty of places to purchase cigarettes nearby.
12/22/2025 6:13:32	Linsey Foster-Mason	173 Howard St, Burlingto	linseyfm@gmail.com	I am a property owner or renter i	
12/22/2025 6:46:30	Sharon McConnell	22 Ledgemere Street	Sharonmclobe@gmail.cc	I am a property owner or renter i	
12/22/2025 8:09:43	Patricia Spaulding	27 Caroline St.	Greentreenc@gmail.com	I am a property owner or renter i	This building is dangerously not maintained. Parts of the roof fell off last year and sat on the ground next to the sidewalk for months. I've been afraid to walk by it on a windy day. I was wondering if it had been condemned, but I guess not.
12/22/2025 8:26:37	Alden Cadwell	283 South Union Street	aldenbc@gmail.com	I am concerned that the permitti	
12/22/2025 9:45:29	William Reilly	254 South Union St	wjreilly7@gmail.com	I am a property owner or renter i	
12/22/2025 9:49:06	Cailey Gibson	154 Locust Terrace	caileysgibson@gmail.co	I am a property owner or renter i	
12/22/2025 14:32:01	Dan Feeney	283 South Prospect Stre	danfeeney3@gmail.com	I am a property owner or renter i	
12/22/2025 14:32:43	Amy Feeney	283 South Prospect Stre	amyfeeney3@comcast.n	I am a property owner or renter i	
12/23/2025 17:06:37	Fran Mount	325 South Union St	Franmount325@gmail.cc	I am a property owner or renter i	
12/23/2025 17:55:27	Mickey Herman	399 South Winooski Aver	Mickeyherman@gmail.cc	I am a property owner or renter i	
1/4/2026 16:29:57	Fiona Mahurin	412 South Winooski Ave	fionamahurin@gmail.com	I am a property owner or renter i	
1/7/2026 16:53:17	John Van Dijk	327 S Prospect Street Bu	vandijkski@gmail.com	I am a property owner or renter i	Architecture is not representative of surroundings.
1/7/2026 17:00:03	Anita Danigelis	470 South Willard St., Bu	anitadanigelis@yahoo.cc	I am a property owner or renter i	The City is very picky (sometimes unreasonably so, in
1/7/2026 17:12:28	Kelly Krause	105 Charlotte Street	kbkrause@gmail.com	I am a property owner or renter i	
1/7/2026 17:18:45	Nancy Harkins	56 Hoover St	Nancyharkins651@gmai	I am concerned that the permitti	I am frustrated that individual homeowners are held to
1/7/2026 17:29:08	Tejinder K Grewal	114 Caroline St, Burlingt	Tkgrewal@hotmail.com	I am a property owner or renter i	
1/7/2026 18:07:46	Bob Wolf	41 Caroline St.	Bcwolf41c@gmail.com	I am a property owner or renter i	
1/7/2026 18:34:09	Roberta goldstein	29 spruce st.	Birdy1111@yahoo.com	I am a property owner or renter i	

Timestamp	Name	Address	Email Address	My interest in this project (check)	Additional comments that I would like to share with DPW and the DRB:
1/7/2026 18:39:58	Kim Bombard	196 Howard street	Kimberlybombard@aol.c	I am a property owner or renter i	
1/7/2026 18:44:53	Matthew NK Smith	443 S Willard st	mnksmith@gmail.com	I am a property owner or renter i	
1/7/2026 19:00:26	Brian Fisher	60 Clymer St, Burlington,	bjvt@gmavt.net	I am a property owner or renter i	
1/7/2026 19:01:19	Patricia Blute	78 Spruce Street Burlin	Pablute@aol.com	I am a property owner or renter i	
1/7/2026 19:06:16	Robert Shapiro	16 Summit Ridge - Burlin	rsburlington@gmail.com	I am a property owner or renter i	
1/7/2026 19:12:58	Isobel Straub	58 Locust Street	isobely.straub@gmail.co	I am a property owner or renter i	
1/7/2026 19:31:13	Caroline Hauser	16 Hoover street	Carolinehauser@mailbox	I am a property owner or renter i	
1/7/2026 19:48:30	Alissa Monte	111 Charlotte st.	Alissahellandmonte@gm	I am a property owner or renter i	
1/7/2026 19:55:22	Paul Hochanadel	97 Howard St	Paul.Hochanadel@gmail	I am a property owner or renter i	I really don't want this to be yet another marijuana dis
1/7/2026 20:04:09	Ama Amissah aidoo	83 Howard st	Amaaidoo08@gmail.com	I live in the immediate neighb	
1/7/2026 20:05:35	David Elron	134 Caroline Street, Burli	Alex.elron@gmail.com	I am a property owner or renter i	
1/7/2026 20:14:44	Bryan Mihok	517 Saint Paul Street	B@bryanvt.net	I am a property owner or renter i	
1/7/2026 20:17:59	Christopher Janeway	190 Locust Terrace	cwjanevay@gmail.com	I am a property owner or renter i	
1/7/2026 20:30:54	Pam Laser	6 Ledgemere st Burlingt	plaser@hartlaser.net	I am a property owner or renter i	
1/7/2026 20:34:47	Julie Kipp	87 Charlotte St.	drjuliekipp@gmail.com	I am a property owner or renter i	
1/7/2026 21:25:45	Gordon MacMaster	27 Meadow Rd	gordomacmaster@gmail	I live in the immediate neighb	
1/7/2026 21:42:29	Polly Mangan	35 Clymer St	Polly.ramsey@gmail.com	I am a property owner or renter i	
1/7/2026 22:04:19	Edwin Harvey	137 Charlotte St	edharv@icloud.com	I am a property owner or renter i	
1/8/2026 5:02:45	Jane Smith	436 S Willard St	the4reils@gmail.com	I am a property owner or renter i	
1/8/2026 10:52:37	Catherine Hall	378 South Union Street B	Catherinewhall@hotmail.	I am a property owner or renter i	
1/8/2026 11:07:23	cydney wolf	41 caroline street	cydneyljw@gmail.com	I am a property owner or renter i	
1/8/2026 17:09:41	John Reilly	436 S Willard St	Johnfxreilly@gmail.com	I am a property owner or renter i	
1/9/2026 7:29:53	Susan Krajac	13 Redstone Ter, Burlingt	suekrajac@gmail.com	I live in the immediate neighb	
1/13/2026 16:59:43	Mark Howe	22 Spruce St.	mah2139@nyu.edu	I am a property owner or renter i	
1/13/2026 17:02:04	Jeanne Buley	3 golden place Burlingt	JBuley @ MSN.com	I am a property owner or renter i	
1/13/2026 17:06:26	Bob Cieri	283 S Union Burlington	Bcieri@hotmail.com	I am a property owner or renter i	It's too ugly to be put innanywhere in VT
1/13/2026 17:06:43	Kaitlin O'Shea	11 Ward St, Burlington	kaitlinoshea@gmail.com	I am concerned that the design	
1/13/2026 17:10:16	Sally Ross	88 Charlotte St. Burlingt	sallyrr88@gmail.com	I am a property owner or renter i	
1/13/2026 17:11:29	Sharon McConnell	22 Ledgemere Street Bur	Sharonmclobe@gmail.cc	I am a property owner or renter i	
1/13/2026 17:18:37	Carin Lilly	7 Catherine st Burlington	Carinlilly@gmail.com	I am a property owner or renter i	
1/13/2026 17:30:41	Mindy Clawson	76 Hayward St. #3	mclaw2475@icloud.com	I live in the immediate neighb	
1/13/2026 17:31:00	Megan O'Hara	75 Spruce Street	megyn.ohara@gmail.com	I am a property owner or renter i	
1/13/2026 17:36:21	Gail Rose	32 chittenden Drive, Burli	grosevt@gmail.com	I am a property owner or renter i	
1/13/2026 17:37:09	Mickey Herman	399 South Winooski Aver	mickeyherman@gmail.cc	I am a property owner or renter i	
1/13/2026 17:39:52	Michael Egan	37 Catherine St	Egan1955@gmail.com	I am a property owner or renter i	
1/13/2026 19:16:15	Jenny Vivian	475S Willard St	jenfed@gmail.com	I am a property owner or renter i	
1/13/2026 19:17:09	Evi Cundiff	55 Ledgemere Street	xoxqopxow@gmail.com	I am a property owner or renter i	
1/13/2026 20:22:41	Trina Magi	78 Charlotte Street	tmagi444@gmail.com	I am a property owner or renter i	
1/13/2026 20:37:06	Caitlin Beattie	124 Maple St #2, Burlingt	beattie.caitie@gmail.com	I am a property owner or renter i	
1/13/2026 22:09:55	Dominique Danco	260 S Union St, Burlinto	ddanco@gmail.com	I am a property owner or renter i	
1/13/2026 22:12:42	Sarah Schiesser	45 Howard St	hello@sarahschiesser.co	I am a property owner or renter i	
1/13/2026 22:16:47	Tom Wironen	45 Howard st burlington	Twironen@gmail.com	I am a property owner or renter i	
1/13/2026 22:53:35	Laura Keating	335 S Union St	Lekeating@gmail.com	I am a property owner or renter i	This community doesn't need or want a vape shop!!
1/14/2026 6:12:18	Andrew Barker	4 Perrotta Place Burlingt	andy.barker.vt@gmail.co	I am concerned that the design	
1/14/2026 11:39:32	Anne Nelson Stoner	134 Caroline Street	annenelson14@gmail.co	I am a property owner or renter i	
1/15/2026 12:04:29	Caroline Wolf	57 1/2 Caroline Street	Caroline.w985@gmail.cc	I am a property owner or renter i	There is a great deal of broken class from the constru
1/15/2026 19:51:00	Brad Helpap	54 Howard Street	Bhelpap@gmail.com	I am a property owner or renter i	I am not supportive of this design - we need to discus
1/18/2026 12:16:29	Hope Green	457 South Willard Street,	hsgreenvt@gmail.com	I am a property owner or renter i	

GATEWAY TO THE SOUTH END OF BURLINGTON

Zoning Appeal to
DOB
ZAP-25-10



Administrative Approval was improper, should be revoked,
and Application re-filed for DRB review

Per Sec. 3.2.2, Administrative Review and Approval was improper because the façade replacement at 457 St. Paul Street does not qualify as a Certificate of Appropriateness **(COA) Level I** application and should in fact have been filed as a **COA Level II**.

Once re-filed, the COA Level II application **does not qualify for review and approval by the administrative officer** because the proposal is inconsistent with the thresholds and conditions enumerated for administrative review in 3.2.7(a) 7-13, and the proposal conflicts with Article 6 Design Standards and Development Principles; therefore, necessitating reviewed by the DRB.

Failure to demonstrate COA Level I eligibility

- Per 3.2.2(c), CAO Level I applications are only available for projects with an estimated construction cost of less than \$28,000.
- The application suggests an unsupported project cost of \$9,500 with no evidence.
- The application includes a partial quote from Portland Glass for one glass door and 10 glass storefront bays, measuring approximately 4'x8' each, but the cost column of the quote is cut off so there is no evidence of the actual cost quoted by Portland Glass.
- The Portland Glass quote also excludes demolition of the existing storefront, structural repairs, electrical wiring, structural support, blocking and other construction related trades costs associated with the

Portland Glass Quote as downloaded from the Permit Application

KEVIN DEWYEA
Estimator / Project Manager
Portland Glass
E-MAIL – kevin.dewyea@portlandglass.com

Job Name	Job Scope	
457 St. Paul Street, Burlington	Thermal Door & Storefront	Pricing valid until 12/04/2025

Qty	Scope of Work	U
	Furnish and install one new clear anodized medium-style thermal door with 10" bottom rail, standard push/pull handles, MS lock with cylinder & interior thumb turn, LCN 4040 heavy duty closer, threshold, sweep, three butt hinges with 1" clear low-e/argon insulated glass. Also, ten equal bays of storefront with the same clear low-e/argon insulated glass.	
INCLUSIONS	Field measurements, standard Tremco Dymonic FC grey caulking	
EXCLUSIONS	Demolition of existing structures, after hours' work, permits, unforeseen structural repairs, weather protection, final cleaning, rekeying cylinder, electrical wiring, structural support, blocking	

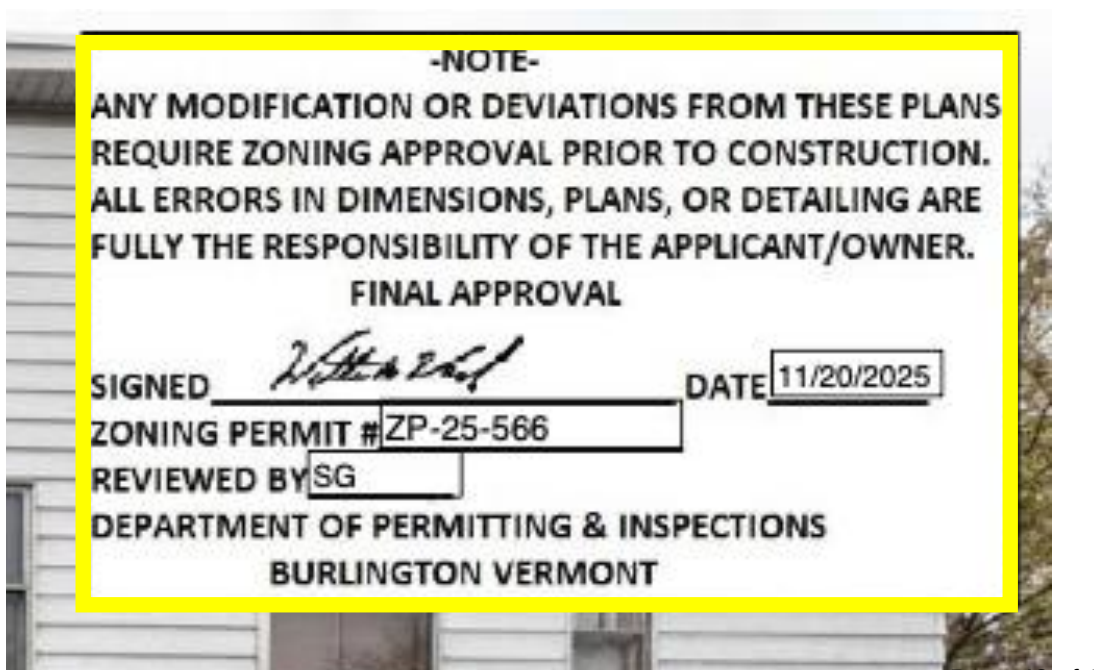
INCLUSIONS	Field measurements, standard Tremco Dymonic FC grey caulking
EXCLUSIONS	Demolition of existing structures, after hours' work, permits, unforeseen structural repairs, weather protection, final cleaning, rekeying cylinder, electrical wiring, structural support, blocking

Failure to demonstrate COA Level I eligibility

- We consulted a reputable local glass installer who confirmed that \$9,500 is significantly below the real cost for the proposed glass walls and door, and that in addition to the materials, the project would have significant additional costs associated with demolition and reconstruction of the façade.
- The \$9,500 construction cost estimate is unsupported and incorrect.
- The application fails to demonstrate the project costs are less than \$28,000; and since the project costs likely exceed \$28,000 the application should be refilled as a CAO Level II.



-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS
REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION.
ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE
FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED Walter Wolf DATE 11/20/2025
ZONING PERMIT # ZP-25-566
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT



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BURLINGTON VERMONT

This CAO Level II application must receive DRB review

Notwithstanding the staff's comments, once re-filed, the CAO Level II application is not eligible for administrative officer review, and must be reviewed by DRB because:

- The project is inconsistent with the thresholds and conditions that would qualify it for CAO II administrative officer review, as set forth in 3.2.7(a) 7-13.
- The project conflicts with several Article 6 Design Standards and Development Principles.

Non-Compliance with Article 6 Design Standards

Relevant and Conflicting Article 6 Part 3 Design Standards:

- 6.3.2.a.3 – Building openings
 - ***Principal entrances shall be clearly defined** and readily identifiable from a public street whether by a door, a canopy, porch, or other prominent architectural or landscape features*
 - *The window pattern should **add variety and interest to the architecture**, and be **proportioned to appear more vertical than horizontal**.*
- 6.3.2.d – Provide an active and inviting street edge
 - *Building facades shall be **varied** along the street edge by the **integration of architectural features, building materials, or physical step-backs of the façade** along its length.*
 - ***Large expanses of undifferentiated building wall shall be avoided**.*

Non-Compliance with Article 6 Design Standards

Relevant and Conflicting Article 6 Part 3 Design Standards:

- 6.3.2. (g) – Make advertising features complementary to the site

No information about advertising or signage is included in the application, which raises concerns about visual impacts and light pollution in the residential neighborhood.

Other light pollution concerns include:

- Full glass façade with spill light into surrounding residential neighborhood and into the direct viewshed of many residences.
- No information provided on hours of operations and how late/long the lights will be on.
- No information on external signage or lighted signs in windows.
- Only one other commercial business in area, the harbor shop, is

Night time current photo with glass being blocked by thick



Non-Compliance with Article 6 Design Standards

While the proposal clearly conflicts with the foregoing standards, the staff comments cite a single design standard in support of approval:

- 6.3.2.d – Provide an active and inviting street edge
 - ***Non-residential buildings*** should **provide visual access** into the interior of building at the street level through the use of **large transparent windows and/or window displays** in order to create a dynamic and engaging public streetscape.

Compliance with this standard alone does not overcome the project's other design deficiencies because:

- *The standard is a 'should' not a 'shall'.*
- The proposed full glass façade is excessive, unnecessary to meet this standard, and is inconsistent with the several standards cited above and the character of the neighborhood.
- Abundant examples exist of other similar businesses in same zoning district that provide visual access into the interior with designs that involve much less glass and a varied street edge (Kerry's

Other convenience store photos and adjacent commercial business



(0.4 miles from 457 St. Paul)



(0.8 miles from 457 St. Paul)



(0.4 miles from 457 St. Paul)



(Barber shop on same corner as 457 St. Paul)

Non-Compliance with Citywide Development Principles

We've just established the project fails to meet several of the City's design standards, or at best creates conflicts between those individual standards.

When such a conflict arises, Sec. 6.0.1 states greater ***discretion on the part of the DRB is required.***

In exerting that discretion, Sec. 6.0.1 directs that the City's **Development Principles** serve as the ***highest order of importance*** in decision making over the more specific Design Standards.

Non-Compliance with Citywide Development Principles

Relevant sections of the City's Development Principles include:

*Development in Burlington **shall**:*

*(a) **Complement its context** and environment – both natural and built, and **enhance the community** with creative design, durable materials, and quality construction.*

*(f) **Complement Burlington's architectural and cultural heritage** by conserving and/or **reflecting dominant design elements and characteristics of neighborhoods**, and **maintaining neighborhood proportions** of scale and mass.*

*(j) **Ensure the scale, massing, and dominant architectural elements contribute to the overall composition and developing character of the surrounding area.***

*(o) **Compose building facades at and near the street level with human-scaled elements** and details that promote pedestrian interest, comfort, and safety.*

Non-Compliance with Citywide Development Principles

When considering those Development Principles, it is clear the current proposal featuring a monolithic 8' glass wall along the entire frontage of the 457 St. Paul Street:

- **does not** compliment or enhance the community,
- **does not** compliment characteristics of the neighborhood and maintain neighborhood proportions of scale and mass,
- **does not** ensure dominant architectural elements contribute to the overall composition and developing character of the surrounding area,
- **does not** compose building facades at and near the street level with human-scaled elements

Non-Compliance with Citywide Development Principles

For these reasons alone, this CAO Level II project:

- does not qualify for administrative approval,
- must be reviewed on the merits by the DRB, and
- **can only be approved by the DRB if the design is consistent with and enhances the character of the neighborhood.**

The current proposal conflicts with and detracts from that character and **must be denied.**

Appropriateness of Proposed Use in Residential Corridor (RC) Zoning District

In addition to being inconsistent with the City's Development Principles and Design Standards, we are concerned that the proposed use may not qualify for our Residential Corridor (RC) Zoning District:

*Sec. 4.4.5(a)4 - **The Residential Corridor (RC)** district is intended for residential development that includes a mix of housing types such as duplex, triplex, quadplex, townhouse, and mid-sized, multi-unit and mixed-use buildings along major multi-modal transportation corridors that are adjacent to low intensity districts. Single-family detached dwellings are limited to buildings originally built for such purpose. New and infill development may be located closer to the street than historic development patterns, with building heights up to*

Appropriateness of Proposed Use in Residential Corridor (RC) Zoning District

As is clear from that definition, the RC district is **primarily residential**, and the limited commercial uses allowed in the RC district must be **neighborhood-serving**.

The proposed use here is a convenience store selling cigarettes, lottery tickets, soda and chips, and purportedly includes a vape shop.

- Based on the limited information provided in the application regarding use, the proposed use **will not serve the needs of the neighborhood**.
- Based on substantial input from neighbors, **there is little interest in patronizing a store** selling cigarettes, lottery tickets, soda, chips/typical convenience store items, and vapes.
- With limited parking, businesses at this location have long relied on foot traffic, and **without neighbor support, foot traffic is unlikely**.

Appropriateness of Proposed Use in Residential Corridor (RC) Zoning District

Due to the **apparent lack of neighborhood support for the proposed use**, there is also a real concern the business as proposed will fail, but not before completely demolishing and replacing the façade in a way that causes great aesthetic and light pollution impacts on neighboring properties and the character of the neighborhood, and makes a reversion back to a more appropriate façade much more difficult for any future tenant.

This question of **whether** the proposed use is in fact **neighborhood-serving** and has sufficient market demand to **remain viable**, only elevates the need for **careful DRB review** of any façade changes.

Burlington Development Review Board
Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401

RE: ZAP-25-10 ; 457 Saint Paul Street (RC, Ward 5)

Dear Review Board Members,

My name is Kathryn Markert. I moved to this neighborhood in the spring of 2021 after leaving a difficult living situation involving both a landlord and a neighbor. It had long been my dream to own a home in Burlington and put down roots in this community. That dream finally became a reality when I purchased my house in the South End. While the house was a fixer-upper and required some TLC after years of neglect, the neighbors have always been welcoming and supportive of my projects and improvements. You can tell that this is an incredibly community-oriented neighborhood. The home is an owner-occupied duplex and is rented to one tenant.

My home is located extremely close to 457 St. Paul, less than ten feet away at its closest point. I was a frequent visitor to Shy Guy Gelato, and The Neighborhood Market was a convenient and welcoming staple in the neighborhood. The proprietors of these businesses were active members of the community who made many positive contributions and were always willing to lend a hand when a neighbor needed help.

That corner once felt like the heart of the neighborhood, a place where people gathered, ran into friends, and enjoyed a sense of safety and connection. It was vibrant, social, and genuinely special. This sense of place matters to me and my community members.

Since Group Five Investments purchased the building in December of 2022, that sense of safety and vibrancy has steadily eroded. Businesses closed or moved, graffiti appeared, criminal activity increased, and squatters even occupied the open-air garage on the Howard Street side. Needles also became a recurring problem. Neighbors took matters into their own hands: picking up debris, discouraging illegal activity, and even organizing to paint over the graffiti. We should not have had to do this. Property ownership comes with responsibility, and that responsibility has not been met. I have personally experienced repeated issues due to the neglect of this property. Trash sometimes goes uncollected for weeks at a time. Debris and garbage blows into my yard from 457 St Paul. Users at the property throw cigarettes and construction materials onto my patio and treat the surrounding homes with complete disregard. It has been nearly impossible to reach anyone for help or accountability.

Last winter, a leak sent water pouring out of the side of the 457 St. Paul building and flooded my patio. Handy's Service Center is the contact for this property, and because it was a Sunday, no one was available. Finally, I was able to reach someone, but it took many hours for someone to come out. The incident left my walkways and patio iced over for many days. These are not minor inconveniences; it is a pattern of property neglect. The apartments above the retail space are poorly maintained, and there has not been a lock on the exterior door for years, despite the units being occupied. History matters. It directly informs why I, and many of my neighbors,

do not trust Group Five Investments to responsibly operate or oversee this construction project and any subsequent new business at this location.

The neighborhood does not need a convenience store. There are two less than a mile from 457 St Paul. It does not serve the character or long-term well-being of this community. The Five Sisters is a historic residential neighborhood known for its charm, walkability, and strong sense of place. The proposed façade alone is wildly out of scale with the surroundings and would visually degrade a historic streetscape. Beyond aesthetics, there are also serious concerns about safety and compliance. This is a pre-1978 building (built in 1950, according to the property database). There was no signage posted warning of potential lead exposure. To my knowledge, the building has not been remediated. Paint chips and debris are left scattered on the sidewalk. That is unacceptable. It signals a lack of understanding of, or a lack of concern for, basic safety requirements, which is sadly not surprising.

Parking is another major issue. I do not have a driveway and rely on street parking. There is already insufficient parking to support the existing businesses, such as the barbershop opposite 457, and the residents on this stretch. Nearby convenience stores, including Kerry's Kwik Stop and Rotary Mart, have ample parking and are regularly full. Any additional demand would significantly worsen an already strained situation, creating daily hardship for residents and increasing congestion at an already busy intersection.

In sum, Group Five Investments has not demonstrated responsible stewardship of this property. The City should not reward neglect by allowing it to continue without meaningful input from the community. Individual homeowners and small businesses are held to very strict standards in Burlington. Commercial property owners, such as Group Five must be held to the same, if not higher, standards for the benefit of their neighbors. This is a dense, historic residential neighborhood, and development here must be thoughtful, appropriate, and community-oriented. I am not asking for the space to remain vacant; I am asking that whatever occupies, it contributes positively to the neighborhood rather than becoming a source of stress, safety concerns, and decline.

Respectfully,

/s/ Kathryn Markert

Adjacent Property Owner & Resident

451 St. Paul Street

Signed in support,

/s/ Christine Koogler

Tenant

451 St. Paul Street

I have lived on upper Howard St for the last 30 years. The intersection of St. Paul, S. Winooski and Howard St is one I have either walked or driven through, I would have to say, daily in those 30 years. It would be nice to have a small convenience/grocery store at the intersection again. Longe Brothers long ago fit that need and it would be nice to have something similar in character in that same spot (although the store that did occupy that space for a while afterwards eventually left, I believe due to a lack of business). But we've also had the beloved Bite Me pizza there and the equally beloved Shy Guy gelato there, places that fit our community needs and people welcomed and patronized.

However, the building itself has never been on anyone's list of attractive structures and has long needed a facelift. All we're asking for is a facelift that is an improvement and that fits our residential neighborhood, not one where, when we walk or drive by, we shake our heads and say "God, what's happened to our neighborhood? It's starting to look like it's part of Shelburne Road." Shouldn't it instead look like it belongs here and serve as a gateway into our beautiful city and its residential community?

As examples of better design, directly across the street is 463/65 St. Paul which now houses both South End Style and The Shop, a beauty salon and a barber shop. That building's facade was moderately renovated prior to their moving in, and that renovation fit the neighborhood. There were no complaints.

Another example, even better, right at the roundabout a short distance away, is the relatively new Majestic restaurant, renovated from a car rental facility but with a real eye to matching the neighborhood's character. It's happily nestled into its spot and is highly popular. (I'd like to do a shoutout for the quality of the food there.)

And, just down the road is The Spot, a restaurant several years ago renovated from an old gas station. It went through the design review process, met some hurdles, had to make modifications to its design to fit the neighborhood, and again, is now happily part of our community. It fits. Each of these businesses made an effort to respect their surroundings, and the DRB stepped in when needed to ensure that happened. We're asking you to do that again.

There is something to be said for preserving the character of our neighborhoods, especially in this particular time when we want to build community, not harm it. We have something lovely here in the Five Sisters and in the Hill Section, a strong sense of community. Please help us, as you have in the past, not just to maintain our

neighborhood as it is or to freeze it in place, but to *enhance* it. We therefore are asking you to reconsider the design of 457 St. Paul's facade to make it compatible with that goal in mind. Thank you.

Linsey Foster-Mason, 173 Howard St, Burlington

My name is Robyn Schenck. I live two houses down from the property on the corner of Howard and Saint Paul. I've lived in this house for 39 years. My children grew up with Longe Brothers Store, then Bite Me pizza and then Shy Guy gelato. For all of my 39 years in my house, the businesses on that corner have been family-friendly hubs of our hood.

I have a friend who lives in an apartment above the store, and a long time ago, I had a boyfriend who lived above the store. It's that kind of neighborhood.

I was a single parent for 10 of the years in the '90's. Phil, the owner of Longe Brother's store, kept a key to my house in the cash register so that my children could get into the house if they were locked out. He would also allow them to buy snacks on credit. It's just that kind of neighborhood.

My elderly neighbor who lives in a Burlington land trust house right next to that building gets upset when people park too close to her driveway. She calls me when this happens and I run up to the barbershop to warn their customers to move their cars before they are towed. It's just that kind of neighborhood.

My house was built in 1880. Four years ago, I applied for a permit to replace my rickety windows with more energy efficient ones, aligning with the City's projection to be carbon free in the near future. My permit was declined because the windows I proposed were not up to par with the "historic character" of the neighborhood.

I contested the city's decision and asked them to consider all factors and make a more reasonable decision. The City re-evaluated and did make a reasonable decision, and my (still not cheap) windows were approved.

I believe the City has the power and the heart and the compassion to be reasonable, and can change decisions that are just wrong.

I ask that the City reconsider the proposed Mr. Convenience store, to put in something more aligned with the historic character of this neighborhood. If we hold homeowners to that standard, why would we not do the same for that building?

Our children's children deserve a safe and inviting business on that corner. It's that kind of neighborhood.

Sincerely,

Robyn Schenck, 118 Howard St.

To : Development Review Board
From: Andrew Simon
Date: January 16, 2026
Re: ZAP 25-10, ZP-25-566

I am writing in support of Jill Badolato's appeal of Administrative Approval of ZP-25-566 for exterior alterations of 457 St. Paul St. Along with Jill and almost 200 neighbors, I request that the DRB revoke the zoning permit that has been granted and require application referral to the Design Advisory Board and Development Review Board.

In her appeal, Ms. Badolato has focused on the external appearance of the building and how the light from the proposed glass storefront would negatively impact the neighbors. I would like to focus on a different aspect of the project: the proposed convenience store. While I do not know the aspects of the Comprehensive Development Ordinance that would address this element of the proposed development, I am aware, as a longtime resident of the South End, of the need for high-quality businesses that provide a service that knits the community together. Shy Guy Gelato was such a business, as was the earlier Longe Brothers' Market and even, for several years, the pizza place that occupied this pivotal corner building. I do not believe that a convenience store would benefit this part of the South End. I would note also that there are two other convenience stores within a few blocks of 457 St. Paul St., both with ample parking (in contrast with the corner in question).

I think the haste and sloppiness that characterized the initial stages of this latest renovation – and the lack of adherence to regulations – show that the proposed business is looking more for immediate profits than for community benefit. Surely this must be taken into consideration by the DRB as part of your deliberations on this matter.

Thank you in advance for taking action to slow down this process and to consider the needs of the community. I fully support the request to revoke the zoning permit and to require referral to your body and to the DAB.

Yours truly,

Andrew Simon
54 Locust St.
Burlington, VT

To Whom it May Concern,

My name is Mary Brust and I live at 445 Saint Paul Street, in Burlington. I have lived in this house since late 1999 and have owned it since June 2000. As such I have watched several businesses come into the space at 457 Saint Paul. When I first moved in, it was still Longe Bros, a wonderful, neighborhood market that served the community with what it wanted and needed. It was a sad day when Longe Bros closed. Since then, however, we've had some great efforts. **It's been great when we've had successful businesses that work to be a part of the neighborhood.**

I am not opposed to a business coming into the space, but as a close neighbor I have concerns about a convenience store, especially one that isn't connected to the neighborhood at all. With such a drastic design change, what will the impact be on the value of my house? **Where will everyone park?** The parking that Longe Bros had all got filled in and when the pizza places were in that space, **patrons routinely either parked IN my driveway, blocked me out of my driveway or sometimes blocked me into my driveway.** I don't care if they're only dashing in for a minute, I work 12 hour days and I shouldn't have to wait to pull into my own driveway. What will they do to ensure that doesn't happen?

What will they offer for trash? **When there were markets there before I constantly found litter thrown over the fence into my yard.** I even found discarded clothes sometimes. **I'm afraid that with increased traffic to and from a convenience store, there will be more people blocking me, more trash in my yard, more late night noise going past my bedroom window, more people sneaking through my yard.** Don't tell me it won't happen because that's EXACTLY what has happened with every other market in that space. I shouldn't have to tolerate that. Please consider these neighborhood concerns and send the proposal for more careful review.

Sincerely,

Mary Brust
445 Saint Paul St

To the Burlington city planning department:

I'm writing to request that you rescind the administrative approval for construction at the property at the corner of St. Paul and Howard. I've reviewed the proposed design, and it clearly violates (at least) items (f) and (h) in the "Intent and Citywide Development Principles" section of the City's Development Review Standards, which read as follows:

(f) Complement Burlington's architectural and cultural heritage by conserving and/or reflecting dominant design elements and characteristics of neighborhoods, and maintaining neighborhood proportions of scale and mass.

(h) Ensure that public buildings, structures, and spaces, be designed and constructed to the highest standards in order to reflect community values, inspire future development, foster civic pride, and serve as a model to others.

To this end, the proposed design for renovation of the property should be subject to DRB review.

Thank you.

Jason Van Driesche
129 Caroline Street, Burlington

Our neighborhood needs a friendly cornerstone that can't be controlled by someone who only wants to make money.

We need a heart warming welcoming corner store that looks more like a country store and mirrors the need of our neighbors from all sections of the neighborhood.

Let's not bring another depressing store into this town that only sells unhealthy food, lottery tickets, sodas and stuff that make people sick and unhappy like a gas station.

My friend tried to open the perfect neighborhood corner store there but when Handys bought the place the rent went from 600 to 1000 without even any renovation of the place. She knew exactly what we needed and we would have had a beautiful place where people meet in the morning talk to each other buy coffee, a paper, flowers , milk etc but she couldn't afford the ridiculous rent.

Please don't give into that. I hope the neighbors will show in good numbers and speak out against that.

Korinna Hillemann
Neighbor from South Union

Brad Helpap, 54 Howard Street:

"I am not supportive of this design - we need to discuss as residents and as a city to ensure smart and a cohesive design in this historic neighborhood. I agree with the appeal and intent."

Mary Brust, 445 Saint Paul Street:

"It is unbelievable to me that I had to take down a run down shed and make sure I was following all the rules and yet the Handy family can do whatever they want to this building and not be required to follow the same rules. This is a terrible design, terrible place for it and if DPW and DRB are going to make sure that I have to keep my windows and roof historically accurate, so should the Handys be required to follow the same rules."

Margaret Skinner, 93 Howard Street:

"Given the challenges of doing any renovation in the 5 Sisters neighborhood, I am shocked that there may not have been the proper oversight in this case. The design as planned is not in keeping with the neighborhood."

W. Dwight Aseltine, 68 Marble Ave.

"When on-premise parking is examined and limited or denied as must be, it will be incumbent on the business to find other parking for deliveries and customer use, necessitating use of on-street metered parking or development of an adjacent property for pedestrian- and traffic-safe parking, which will exacerbate snow storage, drainage, and heat island issues at a busy intersection requiring good sight lines and in a neighborhood with insufficient stormwater capacity and growing climate- and thermal vehicle heat pollution. (There is just one stormwater catch basin on the west side of St. Paul St. from the corner of Howard St. down to the corner of Kilburn St.—insufficient for CURRENT rain and meltwater, let alone INCREASES from impervious surfaces and INCREASES in storm-delivered precipitation events."

Zoe Keating, 126 Hayward:

"This building is at the gateway to the 5 sisters neighborhood and one of our only commercial buildings. Whatever ends up in that spot has a real impact on residents and our feedback should be considered. But also, I wonder how these major changes to such a central feature of our neighborhood, one of the only commercial buildings, were able to go ahead without seemingly any approval process?"

Carin Lilly, 7 Catherine St.:

"I'm so disheartened by that space sitting empty. I even emailed the property manager a couple times a few years ago, inquiring into the rental of it to make it a general store and I never heard back. It has so much potential beyond a "convenience store" vibe."

Robert Shapiro, 16 Summit Ridge:

"It is unacceptable that the owner/developer did not post the required notice. If it is indeed the Handy family, I think they are quite familiar with Burlington's regulations. Work should be stopped and reversed if necessary to comply with the law."

Laura Hollowell, 102 Charlotte Street::

"I strongly oppose this redevelopment project. I am very concerned that neighbors have not been involved in decision-making so far."

Janine Pillitteri, 120 Crescent Road, Burlington:

"I am primarily concerned that the permitting process was not followed and construction began without notice because ALL residents of Burlington MUST follow the permitting rules. NO ONE is excluded, and given that the responsible person(s) did NOT follow these rules indicates they are trying to do major renovations and establish this business "under the radar". It needs to stop immediately. In addition, this is NOT the type of business that belongs in this neighborhood. It is definitely not in the character of the neighborhood and is in very close proximity to the Mater Christie Catholic school that is attended by children in grades K-8.."

Katherine Plante, 95 Hayward st:

“The community should certainly have a say and has right to review plans”

Katharine Montstream, 57 Clymer st:

“Let's not rush and make sure whatever goes in there is a good fit for a residential area in terms of visibility and "coordinating" with the neighborhood.”

Janet Stambolian, 11 Beech Street:

“I add my voice to this effort because we simply cannot live in a City--or a country--that continuously devalues the processes by which construction occurs in residential OR commercial neighborhoods. Following the rules is what has governed these types of projects for many many long years. Since our neighborhood is already dealing with a spike in criminal activity, a new store in that location--with a brand identity as a convenience store primarily selling cigarettes and assorted other nonessential items--will be a magnet for exactly the activity that is not in keeping with the residential nature of our neighborhood. Not only do I object to the fact that the owner did not follow the process; I do not want that type of store there under any circumstances. I would say to the owner: do your due diligence; find out what this neighborhood needs and wants and build THAT.”

Stephanie Larkin, 96 Howard st:

“Nearly 20 years ago the historic arm of DPW required us to make costly changes to our design (tie in our roofline, move doors and change dimensions of windows) on a pretty basic house that was not listed as historic. They were costly requirements. How could 457 St Paul undergo a facelift with NONE of the oversight that I had to endure?

Erin Avelle, 420 S Winooski Ave:

“A market has always been highly valued in this location but this proposed market does not sound like it will serve our neighborhood needs. The permit process seemed rushed and secret and the nighttime demolition definitely doesn't give me confidence in the owner's/management's interest in taking our community's wellbeing into consideration.

Zoe Keating, 126 Hayward:

“This building is at the gateway to the 5 sisters neighborhood and one of our only commercial buildings. Whatever ends up in that spot has a real impact on residents and our feedback should be considered. But also, I wonder how these major changes to such a central feature of our neighborhood, one of the only commercial buildings, were able to go ahead without seemingly any approval process?”

Ben Throop, 9 Catherine St

“This building is an unkept eyesore and this owner is not a good neighbor. The city should be representing the neighborhood's interests here.”

Todd Rengel, 46 Charlotte St:

“Progress and renewal are important but a convenience store primarily focused on cigarettes seems out of keeping with a neighborhood with families. Light pollution is a real problem.”

Benita Schachter, 69 Charlotte Street:

“There should be opportunity for community input on a design and use that impacts the neighborhood.”

Jonathan Boright, 420 South Winooski Ave:

“We have concerns about the new proprietors ability to be conscientious of their new neighbors. The initial construction day included loud demolition well after 11:00 PM.”

Leighton Johnson, 52 Locust Street:

“Residential project require a great deal of permitting. Commercial projects should be held to the same standard.”

Patricia Spaulding, 27 Caroline St.:

“This building is dangerously not maintained. Parts of the roof fell off last year and sat on the ground next to the sidewalk for months. I've been afraid to walk by it on a windy day. I was wondering if it had been condemned, but I guess not.

John Van Dijk, 327 S Prospect Street:

“Architecture is not representative of surroundings.

Anita Danigelis 470 South Willard St.:

“The City is very picky (sometimes unreasonably so, in my opinion) in terms of getting permits for replacing windows and even the smallest exterior bits of residential buildings, so I'm very upset that this was allowed to happen.”

Miller Pearsell, 55 Spruce:

“In case I am unable to attend, the design of this business is not at all in alignment with our primarily historical neighborhood. The city attempts to limit home renovations that are not in strict alignment with historical features, yet this would act as an eye-sore in the center of our neighborhood”

Valerie Wood-Lewis, 66 Caroline St:

“I can't attend, but please help us retain the character of our neighborhood and design for health, connection, safety. This would be across from the kids' bus stop. Retail like the hair salons, or the former Shy Guy, are more fitting for the entrance to a residential neighborhood.

Steven Levy, 106 Locust St:

“The person/entity who hired workers who violated the 10pm quiet hours should be fined appropriately.”

Burlington Development Review Board
Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401

RE: ZAP-25-10 ; 457 Saint Paul Street (RC, Ward 5)

Dear Review Board Members,

My name is Kathryn Markert. I moved to this neighborhood in the spring of 2021 after leaving a difficult living situation involving both a landlord and a neighbor. It had long been my dream to own a home in Burlington and put down roots in this community. That dream finally became a reality when I purchased my house in the South End. While the house was a fixer-upper and required some TLC after years of neglect, the neighbors have always been welcoming and supportive of my projects and improvements. You can tell that this is an incredibly community-oriented neighborhood. The home is an owner-occupied duplex and is rented to one tenant.

My home is located extremely close to 457 St. Paul, less than ten feet away at its closest point. I was a frequent visitor to Shy Guy Gelato, and The Neighborhood Market was a convenient and welcoming staple in the neighborhood. The proprietors of these businesses were active members of the community who made many positive contributions and were always willing to lend a hand when a neighbor needed help.

That corner once felt like the heart of the neighborhood, a place where people gathered, ran into friends, and enjoyed a sense of safety and connection. It was vibrant, social, and genuinely special. This sense of place matters to me and my community members.

Since Group Five Investments purchased the building in December of 2022, that sense of safety and vibrancy has steadily eroded. Businesses closed or moved, graffiti appeared, criminal activity increased, and squatters even occupied the open-air garage on the Howard Street side. Needles also became a recurring problem. Neighbors took matters into their own hands: picking up debris, discouraging illegal activity, and even organizing to paint over the graffiti. We should not have had to do this. Property ownership comes with responsibility, and that responsibility has not been met. I have personally experienced repeated issues due to the neglect of this property. Trash sometimes goes uncollected for weeks at a time. Debris and garbage blows into my yard from 457 St Paul. Users at the property throw cigarettes and construction materials onto my patio and treat the surrounding homes with complete disregard. It has been nearly impossible to reach anyone for help or accountability.

Last winter, a leak sent water pouring out of the side of the 457 St. Paul building and flooded my patio. Handy's Service Center is the contact for this property, and because it was a Sunday, no one was available. Finally, I was able to reach someone, but it took many hours for someone to come out. The incident left my walkways and patio iced over for many days. These are not minor inconveniences; it is a pattern of property neglect. The apartments above the retail space are poorly maintained, and there has not been a lock on the exterior door for years, despite the units being occupied. History matters. It directly informs why I, and many of my neighbors,

do not trust Group Five Investments to responsibly operate or oversee this construction project and any subsequent new business at this location.

The neighborhood does not need a convenience store. There are two less than a mile from 457 St Paul. It does not serve the character or long-term well-being of this community. The Five Sisters is a historic residential neighborhood known for its charm, walkability, and strong sense of place. The proposed façade alone is wildly out of scale with the surroundings and would visually degrade a historic streetscape. Beyond aesthetics, there are also serious concerns about safety and compliance. This is a pre-1978 building (built in 1950, according to the property database). There was no signage posted warning of potential lead exposure. To my knowledge, the building has not been remediated. Paint chips and debris are left scattered on the sidewalk. That is unacceptable. It signals a lack of understanding of, or a lack of concern for, basic safety requirements, which is sadly not surprising.

Parking is another major issue. I do not have a driveway and rely on street parking. There is already insufficient parking to support the existing businesses, such as the barbershop opposite 457, and the residents on this stretch. Nearby convenience stores, including Kerry's Kwik Stop and Rotary Mart, have ample parking and are regularly full. Any additional demand would significantly worsen an already strained situation, creating daily hardship for residents and increasing congestion at an already busy intersection.

In sum, Group Five Investments has not demonstrated responsible stewardship of this property. The City should not reward neglect by allowing it to continue without meaningful input from the community. Individual homeowners and small businesses are held to very strict standards in Burlington. Commercial property owners, such as Group Five must be held to the same, if not higher, standards for the benefit of their neighbors. This is a dense, historic residential neighborhood, and development here must be thoughtful, appropriate, and community-oriented. I am not asking for the space to remain vacant; I am asking that whatever occupies, it contributes positively to the neighborhood rather than becoming a source of stress, safety concerns, and decline.

Respectfully,

/s/ Kathryn Markert

Adjacent Property Owner & Resident

451 St. Paul Street

Signed in support,

/s/ Christine Koogler

Tenant

451 St. Paul Street

I have lived on upper Howard St for the last 30 years. The intersection of St. Paul, S. Winooski and Howard St is one I have either walked or driven through, I would have to say, daily in those 30 years. It would be nice to have a small convenience/grocery store at the intersection again. Longe Brothers long ago fit that need and it would be nice to have something similar in character in that same spot (although the store that did occupy that space for a while afterwards eventually left, I believe due to a lack of business). But we've also had the beloved Bite Me pizza there and the equally beloved Shy Guy gelato there, places that fit our community needs and people welcomed and patronized.

However, the building itself has never been on anyone's list of attractive structures and has long needed a facelift. All we're asking for is a facelift that is an improvement and that fits our residential neighborhood, not one where, when we walk or drive by, we shake our heads and say "God, what's happened to our neighborhood? It's starting to look like it's part of Shelburne Road." Shouldn't it instead look like it belongs here and serve as a gateway into our beautiful city and its residential community?

As examples of better design, directly across the street is 463/65 St. Paul which now houses both South End Style and The Shop, a beauty salon and a barber shop. That building's facade was moderately renovated prior to their moving in, and that renovation fit the neighborhood. There were no complaints.

Another example, even better, right at the roundabout a short distance away, is the relatively new Majestic restaurant, renovated from a car rental facility but with a real eye to matching the neighborhood's character. It's happily nestled into its spot and is highly popular. (I'd like to do a shoutout for the quality of the food there.)

And, just down the road is The Spot, a restaurant several years ago renovated from an old gas station. It went through the design review process, met some hurdles, had to make modifications to its design to fit the neighborhood, and again, is now happily part of our community. It fits. Each of these businesses made an effort to respect their surroundings, and the DRB stepped in when needed to ensure that happened. We're asking you to do that again.

There is something to be said for preserving the character of our neighborhoods, especially in this particular time when we want to build community, not harm it. We have something lovely here in the Five Sisters and in the Hill Section, a strong sense of community. Please help us, as you have in the past, not just to maintain our

neighborhood as it is or to freeze it in place, but to *enhance* it. We therefore are asking you to reconsider the design of 457 St. Paul's facade to make it compatible with that goal in mind. Thank you.

Linsey Foster-Mason, 173 Howard St, Burlington

My name is Robyn Schenck. I live two houses down from the property on the corner of Howard and Saint Paul. I've lived in this house for 39 years. My children grew up with Longe Brothers Store, then Bite Me pizza and then Shy Guy gelato. For all of my 39 years in my house, the businesses on that corner have been family-friendly hubs of our hood.

I have a friend who lives in an apartment above the store, and a long time ago, I had a boyfriend who lived above the store. It's that kind of neighborhood.

I was a single parent for 10 of the years in the '90's. Phil, the owner of Longe Brother's store, kept a key to my house in the cash register so that my children could get into the house if they were locked out. He would also allow them to buy snacks on credit. It's just that kind of neighborhood.

My elderly neighbor who lives in a Burlington land trust house right next to that building gets upset when people park too close to her driveway. She calls me when this happens and I run up to the barbershop to warn their customers to move their cars before they are towed. It's just that kind of neighborhood.

My house was built in 1880. Four years ago, I applied for a permit to replace my rickety windows with more energy efficient ones, aligning with the City's projection to be carbon free in the near future. My permit was declined because the windows I proposed were not up to par with the "historic character" of the neighborhood.

I contested the city's decision and asked them to consider all factors and make a more reasonable decision. The City re-evaluated and did make a reasonable decision, and my (still not cheap) windows were approved.

I believe the City has the power and the heart and the compassion to be reasonable, and can change decisions that are just wrong.

I ask that the City reconsider the proposed Mr. Convenience store, to put in something more aligned with the historic character of this neighborhood. If we hold homeowners to that standard, why would we not do the same for that building?

Our children's children deserve a safe and inviting business on that corner. It's that kind of neighborhood.

Sincerely,

Robyn Schenck, 118 Howard St.

To : Development Review Board
From: Andrew Simon
Date: January 16, 2026
Re: ZAP 25-10, ZP-25-566

I am writing in support of Jill Badolato's appeal of Administrative Approval of ZP-25-566 for exterior alterations of 457 St. Paul St. Along with Jill and almost 200 neighbors, I request that the DRB revoke the zoning permit that has been granted and require application referral to the Design Advisory Board and Development Review Board.

In her appeal, Ms. Badolato has focused on the external appearance of the building and how the light from the proposed glass storefront would negatively impact the neighbors. I would like to focus on a different aspect of the project: the proposed convenience store. While I do not know the aspects of the Comprehensive Development Ordinance that would address this element of the proposed development, I am aware, as a longtime resident of the South End, of the need for high-quality businesses that provide a service that knits the community together. Shy Guy Gelato was such a business, as was the earlier Longe Brothers' Market and even, for several years, the pizza place that occupied this pivotal corner building. I do not believe that a convenience store would benefit this part of the South End. I would note also that there are two other convenience stores within a few blocks of 457 St. Paul St., both with ample parking (in contrast with the corner in question).

I think the haste and sloppiness that characterized the initial stages of this latest renovation – and the lack of adherence to regulations – show that the proposed business is looking more for immediate profits than for community benefit. Surely this must be taken into consideration by the DRB as part of your deliberations on this matter.

Thank you in advance for taking action to slow down this process and to consider the needs of the community. I fully support the request to revoke the zoning permit and to require referral to your body and to the DAB.

Yours truly,

Andrew Simon
54 Locust St.
Burlington, VT

To Whom it May Concern,

My name is Mary Brust and I live at 445 Saint Paul Street, in Burlington. I have lived in this house since late 1999 and have owned it since June 2000. As such I have watched several businesses come into the space at 457 Saint Paul. When I first moved in, it was still Longe Bros, a wonderful, neighborhood market that served the community with what it wanted and needed. It was a sad day when Longe Bros closed. Since then, however, we've had some great efforts. **It's been great when we've had successful businesses that work to be a part of the neighborhood.**

I am not opposed to a business coming into the space, but as a close neighbor I have concerns about a convenience store, especially one that isn't connected to the neighborhood at all. With such a drastic design change, what will the impact be on the value of my house? **Where will everyone park?** The parking that Longe Bros had all got filled in and when the pizza places were in that space, **patrons routinely either parked IN my driveway, blocked me out of my driveway or sometimes blocked me into my driveway.** I don't care if they're only dashing in for a minute, I work 12 hour days and I shouldn't have to wait to pull into my own driveway. What will they do to ensure that doesn't happen?

What will they offer for trash? **When there were markets there before I constantly found litter thrown over the fence into my yard.** I even found discarded clothes sometimes. **I'm afraid that with increased traffic to and from a convenience store, there will be more people blocking me, more trash in my yard, more late night noise going past my bedroom window, more people sneaking through my yard.** Don't tell me it won't happen because that's EXACTLY what has happened with every other market in that space. I shouldn't have to tolerate that. Please consider these neighborhood concerns and send the proposal for more careful review.

Sincerely,

Mary Brust
445 Saint Paul St

To the Burlington city planning department:

I'm writing to request that you rescind the administrative approval for construction at the property at the corner of St. Paul and Howard. I've reviewed the proposed design, and it clearly violates (at least) items (f) and (h) in the "Intent and Citywide Development Principles" section of the City's Development Review Standards, which read as follows:

(f) Complement Burlington's architectural and cultural heritage by conserving and/or reflecting dominant design elements and characteristics of neighborhoods, and maintaining neighborhood proportions of scale and mass.

(h) Ensure that public buildings, structures, and spaces, be designed and constructed to the highest standards in order to reflect community values, inspire future development, foster civic pride, and serve as a model to others.

To this end, the proposed design for renovation of the property should be subject to DRB review.

Thank you.

Jason Van Driesche
129 Caroline Street, Burlington

Our neighborhood needs a friendly cornerstone that can't be controlled by someone who only wants to make money.

We need a heart warming welcoming corner store that looks more like a country store and mirrors the need of our neighbors from all sections of the neighborhood.

Let's not bring another depressing store into this town that only sells unhealthy food, lottery tickets, sodas and stuff that make people sick and unhappy like a gas station.

My friend tried to open the perfect neighborhood corner store there but when Handys bought the place the rent went from 600 to 1000 without even any renovation of the place. She knew exactly what we needed and we would have had a beautiful place where people meet in the morning talk to each other buy coffee, a paper, flowers , milk etc but she couldn't afford the ridiculous rent.

Please don't give into that. I hope the neighbors will show in good numbers and speak out against that.

Korinna Hillemann
Neighbor from South Union

Brad Helpap, 54 Howard Street:

"I am not supportive of this design - we need to discuss as residents and as a city to ensure smart and a cohesive design in this historic neighborhood. I agree with the appeal and intent."

Mary Brust, 445 Saint Paul Street:

"It is unbelievable to me that I had to take down a run down shed and make sure I was following all the rules and yet the Handy family can do whatever they want to this building and not be required to follow the same rules. This is a terrible design, terrible place for it and if DPW and DRB are going to make sure that I have to keep my windows and roof historically accurate, so should the Handys be required to follow the same rules."

Margaret Skinner, 93 Howard Street:

"Given the challenges of doing any renovation in the 5 Sisters neighborhood, I am shocked that there may not have been the proper oversight in this case. The design as planned is not in keeping with the neighborhood."

W. Dwight Aseltine, 68 Marble Ave.

"When on-premise parking is examined and limited or denied as must be, it will be incumbent on the business to find other parking for deliveries and customer use, necessitating use of on-street metered parking or development of an adjacent property for pedestrian- and traffic-safe parking, which will exacerbate snow storage, drainage, and heat island issues at a busy intersection requiring good sight lines and in a neighborhood with insufficient stormwater capacity and growing climate- and thermal vehicle heat pollution. (There is just one stormwater catch basin on the west side of St. Paul St. from the corner of Howard St. down to the corner of Kilburn St.—insufficient for CURRENT rain and meltwater, let alone INCREASES from impervious surfaces and INCREASES in storm-delivered precipitation events."

Zoe Keating, 126 Hayward:

"This building is at the gateway to the 5 sisters neighborhood and one of our only commercial buildings. Whatever ends up in that spot has a real impact on residents and our feedback should be considered. But also, I wonder how these major changes to such a central feature of our neighborhood, one of the only commercial buildings, were able to go ahead without seemingly any approval process?"

Carin Lilly, 7 Catherine St.:

"I'm so disheartened by that space sitting empty. I even emailed the property manager a couple times a few years ago, inquiring into the rental of it to make it a general store and I never heard back. It has so much potential beyond a "convenience store" vibe."

Robert Shapiro, 16 Summit Ridge:

"It is unacceptable that the owner/developer did not post the required notice. If it is indeed the Handy family, I think they are quite familiar with Burlington's regulations. Work should be stopped and reversed if necessary to comply with the law."

Laura Hollowell, 102 Charlotte Street::

"I strongly oppose this redevelopment project. I am very concerned that neighbors have not been involved in decision-making so far."

Janine Pillitteri, 120 Crescent Road, Burlington:

"I am primarily concerned that the permitting process was not followed and construction began without notice because ALL residents of Burlington MUST follow the permitting rules. NO ONE is excluded, and given that the responsible person(s) did NOT follow these rules indicates they are trying to do major renovations and establish this business "under the radar". It needs to stop immediately. In addition, this is NOT the type of business that belongs in this neighborhood. It is definitely not in the character of the neighborhood and is in very close proximity to the Mater Christie Catholic school that is attended by children in grades K-8.."

Katherine Plante, 95 Hayward st:

“The community should certainly have a say and has right to review plans”

Katharine Montstream, 57 Clymer st:

“Let's not rush and make sure whatever goes in there is a good fit for a residential area in terms of visibility and "coordinating" with the neighborhood.”

Janet Stambolian, 11 Beech Street:

“I add my voice to this effort because we simply cannot live in a City--or a country--that continuously devalues the processes by which construction occurs in residential OR commercial neighborhoods. Following the rules is what has governed these types of projects for many many long years. Since our neighborhood is already dealing with a spike in criminal activity, a new store in that location--with a brand identity as a convenience store primarily selling cigarettes and assorted other nonessential items--will be a magnet for exactly the activity that is not in keeping with the residential nature of our neighborhood. Not only do I object to the fact that the owner did not follow the process; I do not want that type of store there under any circumstances. I would say to the owner: do your due diligence; find out what this neighborhood needs and wants and build THAT.”

Stephanie Larkin, 96 Howard st:

“Nearly 20 years ago the historic arm of DPW required us to make costly changes to our design (tie in our roofline, move doors and change dimensions of windows) on a pretty basic house that was not listed as historic. They were costly requirements. How could 457 St Paul undergo a facelift with NONE of the oversight that I had to endure?

Erin Avelle, 420 S Winooski Ave:

“A market has always been highly valued in this location but this proposed market does not sound like it will serve our neighborhood needs. The permit process seemed rushed and secret and the nighttime demolition definitely doesn't give me confidence in the owner's/management's interest in taking our community's wellbeing into consideration.

Zoe Keating, 126 Hayward:

“This building is at the gateway to the 5 sisters neighborhood and one of our only commercial buildings. Whatever ends up in that spot has a real impact on residents and our feedback should be considered. But also, I wonder how these major changes to such a central feature of our neighborhood, one of the only commercial buildings, were able to go ahead without seemingly any approval process?”

Ben Throop, 9 Catherine St

“This building is an unkept eyesore and this owner is not a good neighbor. The city should be representing the neighborhood's interests here.”

Todd Rengel, 46 Charlotte St:

“Progress and renewal are important but a convenience store primarily focused on cigarettes seems out of keeping with a neighborhood with families. Light pollution is a real problem.”

Benita Schachter, 69 Charlotte Street:

“There should be opportunity for community input on a design and use that impacts the neighborhood.”

Jonathan Boright, 420 South Winooski Ave:

“We have concerns about the new proprietors ability to be conscientious of their new neighbors. The initial construction day included loud demolition well after 11:00 PM.”

Leighton Johnson, 52 Locust Street:

“Residential project require a great deal of permitting. Commercial projects should be held to the same standard.”

Patricia Spaulding, 27 Caroline St.:

"This building is dangerously not maintained. Parts of the roof fell off last year and sat on the ground next to the sidewalk for months. I've been afraid to walk by it on a windy day. I was wondering if it had been condemned, but I guess not.

John Van Dijk, 327 S Prospect Street:

"Architecture is not representative of surroundings.

Anita Danigelis 470 South Willard St.:

"The City is very picky (sometimes unreasonably so, in my opinion) in terms of getting permits for replacing windows and even the smallest exterior bits of residential buildings, so I'm very upset that this was allowed to happen."

Miller Pearsell, 55 Spruce:

"In case I am unable to attend, the design of this business is not at all in alignment with our primarily historical neighborhood. The city attempts to limit home renovations that are not in strict alignment with historical features, yet this would act as an eye-sore in the center of our neighborhood"

Valerie Wood-Lewis, 66 Caroline St:

"I can't attend, but please help us retain the character of our neighborhood and design for health, connection, safety. This would be across from the kids' bus stop. Retail like the hair salons, or the former Shy Guy, are more fitting for the entrance to a residential neighborhood.

Steven Levy, 106 Locust St:

"The person/entity who hired workers who violated the 10pm quiet hours should be fined appropriately."



Renovate storefront

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS
REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION.
ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE
FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.

FINAL APPROVAL

SIGNED *[Signature]* DATE 11/20/2025

ZONING PERMIT # ZP-25-566

REVIEWED BY SG

DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

KEVIN DEWYEA
Estimator / Project Manager
Portland Glass
E-MAIL – kevin.dewyea@portlandglass.com

Job Name	Job Scope	
457 St. Paul Street, Burlington	Thermal Door & Storefront	Pricing valid until 12/04/2025

Qty	Scope of Work	U
	Furnish and install one new clear anodized medium-style thermal door with 10" bottom rail, standard push/pull handles, MS lock with cylinder & interior thumb turn, LCN 4040 heavy duty closer, threshold, sweep, three butt hinges with 1" clear low-e/argon insulated glass. Also, ten equal bays of storefront with the same clear low-e/argon insulated glass.	
INCLUSIONS	Field measurements, standard Tremco Dymonic FC grey caulking	
EXCLUSIONS	Demolition of existing structures, after hours' work, permits, unforeseen structural repairs, weather protection, final cleaning, rekeying cylinder, electrical wiring, structural support, blocking	

Burlington Development Review Board
Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401

RE: ZAP-25-10 ; 457 Saint Paul Street (RC, Ward 5)

Dear Review Board Members,

My name is Kathryn Markert. I moved to this neighborhood in the spring of 2021 after leaving a difficult living situation involving both a landlord and a neighbor. It had long been my dream to own a home in Burlington and put down roots in this community. That dream finally became a reality when I purchased my house in the South End. While the house was a fixer-upper and required some TLC after years of neglect, the neighbors have always been welcoming and supportive of my projects and improvements. You can tell that this is an incredibly community-oriented neighborhood. The home is an owner-occupied duplex and is rented to one tenant.

My home is located extremely close to 457 St. Paul, less than ten feet away at its closest point. I was a frequent visitor to Shy Guy Gelato, and The Neighborhood Market was a convenient and welcoming staple in the neighborhood. The proprietors of these businesses were active members of the community who made many positive contributions and were always willing to lend a hand when a neighbor needed help.

That corner once felt like the heart of the neighborhood, a place where people gathered, ran into friends, and enjoyed a sense of safety and connection. It was vibrant, social, and genuinely special. This sense of place matters to me and my community members.

Since Group Five Investments purchased the building in December of 2022, that sense of safety and vibrancy has steadily eroded. Businesses closed or moved, graffiti appeared, criminal activity increased, and squatters even occupied the open-air garage on the Howard Street side. Needles also became a recurring problem. Neighbors took matters into their own hands: picking up debris, discouraging illegal activity, and even organizing to paint over the graffiti. We should not have had to do this. Property ownership comes with responsibility, and that responsibility has not been met. I have personally experienced repeated issues due to the neglect of this property. Trash sometimes goes uncollected for weeks at a time. Debris and garbage blows into my yard from 457 St Paul. Users at the property throw cigarettes and construction materials onto my patio and treat the surrounding homes with complete disregard. It has been nearly impossible to reach anyone for help or accountability.

Last winter, a leak sent water pouring out of the side of the 457 St. Paul building and flooded my patio. Handy's Service Center is the contact for this property, and because it was a Sunday, no one was available. Finally, I was able to reach someone, but it took many hours for someone to come out. The incident left my walkways and patio iced over for many days. These are not minor inconveniences; it is a pattern of property neglect. The apartments above the retail space are poorly maintained, and there has not been a lock on the exterior door for years, despite the units being occupied. History matters. It directly informs why I, and many of my neighbors,

do not trust Group Five Investments to responsibly operate or oversee this construction project and any subsequent new business at this location.

The neighborhood does not need a convenience store. There are two less than a mile from 457 St Paul. It does not serve the character or long-term well-being of this community. The Five Sisters is a historic residential neighborhood known for its charm, walkability, and strong sense of place. The proposed façade alone is wildly out of scale with the surroundings and would visually degrade a historic streetscape. Beyond aesthetics, there are also serious concerns about safety and compliance. This is a pre-1978 building (built in 1950, according to the property database). There was no signage posted warning of potential lead exposure. To my knowledge, the building has not been remediated. Paint chips and debris are left scattered on the sidewalk. That is unacceptable. It signals a lack of understanding of, or a lack of concern for, basic safety requirements, which is sadly not surprising.

Parking is another major issue. I do not have a driveway and rely on street parking. There is already insufficient parking to support the existing businesses, such as the barbershop opposite 457, and the residents on this stretch. Nearby convenience stores, including Kerry's Kwik Stop and Rotary Mart, have ample parking and are regularly full. Any additional demand would significantly worsen an already strained situation, creating daily hardship for residents and increasing congestion at an already busy intersection.

In sum, Group Five Investments has not demonstrated responsible stewardship of this property. The City should not reward neglect by allowing it to continue without meaningful input from the community. Individual homeowners and small businesses are held to very strict standards in Burlington. Commercial property owners, such as Group Five must be held to the same, if not higher, standards for the benefit of their neighbors. This is a dense, historic residential neighborhood, and development here must be thoughtful, appropriate, and community-oriented. I am not asking for the space to remain vacant; I am asking that whatever occupies, it contributes positively to the neighborhood rather than becoming a source of stress, safety concerns, and decline.

Respectfully,

/s/ Kathryn Markert

Adjacent Property Owner & Resident

451 St. Paul Street

Signed in support,

/s/ Christine Koogler

Tenant

451 St. Paul Street

I'm Mickey Herman, and I live with my wife and young daughter at 399 South Winooski Avenue, which lies just over 300 feet from the subject property.

I favor development that is sensible and respectful of process; this project is neither. The staff report makes much of the fact that the proposed glass storefront satisfies the Article 6 standards. It may be true that this feature will provide "visual access into the interior of the building." This is but one aspect of the standards, however, and the proposed design runs counter to multiple other of the standards' requirements.

The design does not constitute the kind of sensitive and respectful redevelopment needed to protect the neighborhood's architectural and cultural heritage, as dictated by Sec. 6.2.2(d).

The design also fails to integrate harmoniously into the use, scale, and architectural details of existing buildings in the vicinity, as required by Sec. 6.3.2(a).

Moreover, the proposed window pattern does not add variety and interest to the architecture, and given its facade-wide nature, is not proportioned to be more vertical than horizontal, in each case as directed by Sec. 6.3.2(a)(3).

It cannot be that the design's apparent satisfaction of a single aspect of the Article 6 standards—the provision of visual access into the building's interior—excuses its plain non-compliance with other co-equal aspects of these standards.

Others will speak in more detail about the project's implausibly low cost estimate, and its implications for the applicable level of review. But as to process, it's disappointing that the staff report excuses the applicants failure to provide clear, good-faith cost estimates. By breezily waving away this shortcoming, the staff report sends the signal that applicants need not strictly adhere to application requirements, undermining trust in the process. The people of Burlington deserve better, and both staff and the board should demand more from those seeking the privilege of doing business in our community.

For these and the other reasons stated in the appeal and other submissions in the record, the board should revoke the administrative decision and conduct its own review of the project.

Mickey Herman, 399 S. Winooski

January 20, 2026

Attn: City of Burlington and DRB

I have been a resident of Burlington since I was 17. I raised a family on Howard Street. Over the years current and previous businesses on that corner have created a good little village. We may or may not have a legal leg to stand on, but either way this project is subpar. The developers seem slippery given their initial lack of process for permitting. If design review is about design, this should be stopped in its tracks. As our uniquely wonderful city descends into a fiscal and livability crisis why would we further devalue our homes and community with another "convenience store," and a particularly ugly one, whose ilk is replicated a half a dozen times within a mile. And what was meant by "a cigarette shop?" This begs for more clarity as to the nature of the proposed business. **Bad development decisions lead to more bad development.** And in that cycle, nobody is going to step up and do a kindness to that building and the neighborhood. When caring residents who support the city with their taxes and business patronage no longer want to live here, who pays the bills? It would not break my heart if this building were torn down and rebuilt. I hope the good factions of the free-enterprise system are still alive and well.

Andrea Gray
153 Howard Street
802-864-4448

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer



TO: Development Review Board
FROM: Scott Gustin
DATE: January 20, 2026
RE: ZAP-25-11; 20 Church Street

=====

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/Appellant: Cathedral Immaculate Conception Parish Charitable Trust / John Franco, Esq

Request: Appeal of notice of zoning violation related to tree cutting and removal.

Overview:

The appellant is contesting the notice of zoning violation (NOV ZCPT-25-12) issued following cutting and removal of trees from the property at 20 Pine Street. The NOV references the demolition zoning permit ZP-22-576 limiting tree clearing and also references Sec. 3.1.2, *Zoning Permit Required*, (a) *Exterior Work*, 9, that establishes the tree cutting and removal thresholds that require zoning permit approval. Completed tree cutting and removal is inconsistent with both the demolition zoning permit and with Sec. 3.1.2 (a) 9. Therefore, NOV ZCPT-25-12 was issued and is the subject of this appeal.

Recommendation: **Uphold administrative decision** based on the following findings:

I. Findings:

Zoning permit ZP-22-576 was approved by the Development Review Board on January 17, 2023. It included the demolition and removal of the church building, bell tower, parking lot, and impervious pathways and for the foundation hole to be filled, the site to be graded and seeded, and for the trees to be retained. The permit contained several conditions, including condition 2 that stated:

Upon representation of the applicant, the grove of trees shall remain after demolition. This is a critical condition of this approval.

Zoning permit ZP-22-576 was appealed to the Superior Court Environmental Division and to the Vermont Supreme Court. Both courts upheld zoning permit ZP-22-576 for demolition.

Demolition at the property commenced around the beginning of June 2025. A complaint was received on June 3, 2025 as to tree cutting that had occurred. Later that day, zoning staff went to the property and spoke with the individuals doing the demolition work and also followed up with the applicant representative. It was determined that four trees, at or above 10" caliper, had been

cut. Both the individuals doing the demolition work and the applicant representative were informed of the tree cutting threshold requiring zoning permit approval in Sec. 3.1.2 (a) 9:

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period.

As only four trees of 10” or greater caliper had been removed, no enforcement action was taken.

Another complaint about tree removal was received on September 14, 2025 asserting that more trees, about 6 or more, had been removed. Zoning staff again went to the property to observe conditions and confirmed the additional tree removal. A zoning enforcement warning letter was issued October 6, 2025 without remedy. An initial notice of zoning violation was issued November 17, 2025 but was rescinded due to administrative error. A subsequent notice of zoning violation, NOV ZCPT-25-12, was issued December 16, 2025 and notes the following:

More than 5 trees have been cut and removed without a corresponding zoning permit in violation of permit condition 2 of zoning permit ZP-22-576. Said condition states: “Upon representation of the applicant, the grove of trees shall remain after demolition. This is a critical condition of this approval.” Furthermore, Sec. 3.1.2, Zoning Permit Required, (a) Exterior Work, 9 notes that tree removal involving 6 or more trees, each of 10 inches or greater in caliper or the removal of 10 or more trees, each of which is 3 inches or greater in caliper during any consecutive 12-month period requires a zoning permit.

An appeal of this NOV was filed on December 30, 2025, within the 15-day appeal period.

The appeal incorrectly asserts that the city lacks jurisdiction on this matter under 24 V.S.A. §4413 and the related federal RLUIPA law. 24 V.S.A. §4413 reflects RLUIPA as applied by state statute. Vermont statute limits municipal review under 24 V.S.A. §4413 in the following circumstances:

- (a) (1) *The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:*
(C) *churches and other places of worship, convents, and parish houses.*

24 V.S.A. §4413 precluded much of the DRB’s review of ZP-22-576, but it did not preclude review of landscaping. Knowing that, the applicants excluded tree clearing from the demolition application. In fact, the applicants unambiguously represented to the DRB that no trees would be cleared. They did so to avoid regulatory oversight permitted within the limitations of 24 V.S.A. §4413 (see DRB minutes of 1.11.23).

The appeal notes the de novo appeal to the courts and argues that the DRB’s conditions of approval relative to tree retention were not carried over with the courts’ decisions. An appeal to the Environmental Division is de novo on the questions presented. The two questions presented were:

1. Whether a vacant structure which is not being used for religious purposes, has not been used for a religious purpose (or any other purpose) for more than four years, and is not going to be used for religious purposes in the future, nevertheless qualifies for the zoning exemption under 24 V.S.A. §4413?

2. Whether, assuming arguendo that 24 V.S.A. §4413 does apply, it precludes the Burlington DRB from considering whether the proposed demolition complies with Article 14 of the Burlington CDO and the CDO's "alternative compliance" standards?

Neither of these questions addressed the conditions of approval, including the tree retention. Further, the applicant did not cross-appeal and raise its own question or otherwise challenge the approval or conditions and, therefore, those conditions remain. Additionally, it is important to reiterate that the permit application included no tree clearing and intentionally so. The de novo review and the Court's approval was based upon that application.

The appeal asserts that the NOV fails to comply with notice requirements and due process. This argument is without merit. The NOV clearly notes the problem of cutting and removing more than 5 trees without a zoning permit and refers back to zoning permit ZP-22-576 and to the tree cutting threshold in Sec. 3.1.2 (a) 9 of the Comprehensive Development Ordinance.

The appeal selectively notes that remedy option 1 in the NOV, to restore the premises to its prior state, cannot be achieved midwinter. This assertion is true, but the appeal fails to note the other potential remedies to 2) obtain a zoning permit for the tree removal or 3) enter into an agreement with the city to extend deadlines in which to come into compliance with the city's ordinance.

The appeal also asserts that remedying the zoning violation would somehow incur environmental and economic waste. It asserts that the city is aware of redevelopment plans for the site and that replanting trees to remove them again is wasteful. This argument does not contest the violation. There is no pending zoning application for redevelopment of the property.

More than five trees of 10" or greater caliper were removed from the property at 20 Pine Street. Even applying the limitations of 24 V.S.A. §4413, a zoning permit is required for doing so. The applicants were aware of this standard during demolition application review and reminded of it shortly after demolition commenced. A zoning permit was not sought and is required. The notice of zoning violation was properly issued.

II. Recommended Motion:

Uphold the administrative decision.

CITY OF BURLINGTON
DEVELOPMENT REVIEW BOARD

IN RE: CATHEDRAL OF THE IMMACULATE *
CONCEPTION CATHEDRAL PARISH *
CHARITABLE TRUST, 20 PINE STREET *
NOTICE OF ZONING VIOLATION *
ZCPT-25-12 *

NOTICE OF APPEAL

Pursuant to 24 V.S.A. §§4465 and 4466, the Cathedral of the Immaculate Conception Charitable Trust hereby appeals the amended Notice of Violation dated December 16, 2025 regarding the trees removed during the demolition of the Cathedral of the Immaculate Conception at 20 Pine Street, Burlington. The bases of the appeal are as follows:

The Lack of Jurisdiction Under 24 V.S.A. §4413(a)(1)(C), the Church Autonomy Doctrine of the First Amendment, and the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

- The City *lacked* and also now *lacks* jurisdiction or constitutional authority to apply CDO Article 3 to the tree removal or to require or an after-the-fact “curative” permit for their replacement as set forth in *REMEDY OPTIONS* #2 of the NOV.
- The Trust successfully maintained in the appeal to the Vermont Supreme Court that this is an ecclesiastical process that is closely related to the underlying purpose as a church. *In re Cathedral of the Immaculate Parish Charitable Trust Appeal*, Vermont Supreme Court, 2024 VT 77 ¶¶ 18, 19. It is undisputed that the Roman Catholic Diocese of Burlington initiated procedures under canon law to deconsecrate the Cathedral through demolition. The Supreme Court held that the process of taking the property out of liturgical use -- deconsecration through demolition – is itself a religious use. The deconsecration of the cathedral through demolition therefore was exempted from the City’s jurisdiction by 24 V.S.A. §4413(a)(1)(C), which incorporates the church autonomy doctrine of the First Amendment of the U.S. Constitution, and RLUIPA. *Id.*
- This Supreme Court decision affirmed the Environmental Division’s *Judgment Order* of February 6, 2024 which held that “the zoning limitation of 24 V.S.A. §4413 apply, and therefore there are no substantive standards in the Burlington

Comprehensive Development Ordinance on which to deny Applicant's request for a demolition permit."

- Because the church autonomy doctrine falls under the protections of the First Amendment, the NOV constitutes an interference with those rights in violation of the Federal Civil Rights Act. 42 U.S.C. §1983.
- Relatedly, RLUIPA, 42 U.S.C. §2000cc(a)(1), prohibits government from imposing land use regulations that substantially burden religious exercise. Federal law sets a floor on the requirements under the U.S. Constitution that states must adopt or exceed the minimum when enacting state legislation.
- The Supreme Court's decision held that the exemption of 24 V.S.A. §4413(a)(1)(C) was enacted in 2003 to satisfy these "floor" federal requirements. Consequently, the exemption of §4413(a)(1)(C) must be construed "strictly" to avoid running afoul of them. *Id.* at ¶16.
- The City of Burlington's own *Brief* in the appeal to the Vermont Supreme Court at pp 6-7 judicially admitted that "(T)o apply the CDO *in any manner* that restricts the demolition would 'interfere with the Trust's intent to deconsecrate the Property...'" (emphasis supplied). This was consistent with the Environmental Division's *Judgment*.
- The removal of the trees was strictly limited to those necessary to allow the structures to be demolished safely. Those structures included the bell tower located on the southeast portion of the property. Because the removal these trees was an essential part of this exempted ecclesiastical process of "deconsecration by demolition," applying the tree removal permitting requirements of CDO Article 3, §3.1.2(a)(9), Certificate of Appropriateness Level II approval under §3.2.2(d), and the fees required by §3.2.4 "would interfere with the Trust's religious deconsecration of the Cathedral, its intended functional use as a place of worship," 2024 VT 7 at ¶21 and run afoul of the exemption §4413(a)(1)(C). Indeed, it would subject the tree removal necessary for the demolition of the structures to the very review from which the structures themselves were exempted, interfering with the deconsecration by demolition.

Collateral Estoppel and Res Judicata.

- A *de novo* appeal means it is conducted as if the prior DRB proceedings never occurred. *In Re Poole*, 154 Vt. 233, 245 (1978); *Chioffi v. Winooski Zoning Board*, 151 Vt. 9, 11 (1989). Permit condition 2 of the zoning permit ZP-22-5765 is not effective because it was supplanted by the *de novo* appeal to the Environmental Division.

- The City and the appellants did not ask, and the Environmental Division did not order, that any trees removed to accommodate the Cathedral demolition must be replaced. Therefore, replacement of these trees is barred by the preclusion doctrines of collateral estoppel (the case has been decided) and *res judicata* (additional claims not raised then cannot be raised now).

The Amended NOV Still Fails to Comply With the Notice Requirements Procedural Due Process.

- To satisfy due process, a zoning notice of violation must supply the factual bases for the allegation of violation. *Town of Randolph v. Estate of White*, 166 Vt. 280, 284-285 (1997). *Agency of Natural Resources v. Supeno*, 2018 VT 30, ¶9, 198 Vt. 277.¹ The amended December 16, 2025 Notice of Violation does not satisfy this requirement.
- While the amended NOV now alleges generally “removal of 6 or more trees, each of 10 inches or greater in caliper or the removal of 10 or more trees, each of which is 3 inches or more in caliper,” its VIOLATION DETAILS do not specify the number of trees, their caliper, or their location on the property. The supplied photograph accompanying in the VIOLATION DETAILS identify only four trees along the property’s Southeast corner in the southeast quadrant of the property. *White* makes clear that this is insufficient. Reasoning that “notice to laypersons should not require independent research to learn of their rights” and “notice provided to people of various levels of educations, experience, and resources should clearly inform the party...,” *White* rejected Randolph’s argument that due process is satisfied when the information is available to the landowner from sources outside the NOV itself such as the Town Attorney or the Zoning Administrator. Instead, “(A) zoning violation must contain the information required...(T)he notice must state the facts that support the finding of violation...” *Id.* at 284-285.

Impossibility and Good Faith.

- The demolition was commenced during the late spring of 2025. Because of a change order necessitated by asbestos remediation, it extended into the early fall.
- The window in Burlington’s climate for planting of honey locust trees is from late April thorough May. The Trust keep Scott Gustin and William Ward of Permitting and Inspections fully apprised of the limited scope of this tree

¹ In 1985 the U.S. Supreme Court ruled that in cases involving a deprivation of property rights, procedural due process requires notice of the charges, an explanation of the evidence, and an opportunity to respond to it. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546. Because zoning is in derogation of common law property rights it is to be construed in favor of the property owner. *In re Lathrop Partnership*, 2015 VT 49, ¶29, 199 Vt. 19. Otherwise, zoning enforcement risks arbitrary and capricious exercise of the police power in violation of due process. *Id.*

removal activity. Yet the amended NOV issued when winter has been long upon us and the ground frozen, ordering replanting by December 23rd or face \$200 in fines for each day that this does not occur. Moreover, as discussed above, the NOV does not specify which trees need to be replaced or where.

Environmental and Economic Waste.

- The City is aware that the property is pending a redevelopment proposal by a putative buyer. It has an agreement with the Trust regarding its property taxability which explicitly recognizes this. Twenty Pine Street lies within the Downtown Core of the form-based zoning ordinance Article 14. Article 14 encourages dense, highly urbanized development. It allows 100% lot coverage, §14.3.4-C-Lot Occupation-Building Placement. These provisions trump any conflicting provisions of the CDO such as the tree removal provisions, §14.1.3-Applicability. [Article 14 “shall take precedence without limitation over any duplicative or conflicting provisions of the other Articles of the *Burlington Comprehensive Development Ordinance* (BCDO)”]. The NOV would have the Trust waste money on tree replanting only to have the trees soon thereafter removed as part of redevelopment.

Relief Requested.

The NOV must be dismissed.

Dated at Burlington, Vermont this 30th day of December, 2025.

/s/ John L. Franco, Jr.

John L. Franco, Jr.
Counsel for the Trust
110 Main Street
Burlington, VT. 05401
johnfrancolaw@aol.com
(802) 864-7207



PERMITTING & INSPECTIONS

645 Pine Street
Burlington, VT 05402-0849

Housing: (802) 863-0442
Trades: (802) 863-9094
Zoning: (802) 865-7188

NOTICE OF ZONING VIOLATION (NOV ZCPT-25-12)

December 16, 2025
Matano, Salvatore R
Cathedral Immaculate Conception Parish
Charitable Trust
113 Elmwood Avenue
Burlington, VT 05401

Mailed Certified Mail 9590-9402-8556-3186-4499-37
And FIRST CLASS MAIL

NOTICE OF VIOLATION AT:
Address: 20 Pine Street, BURLINGTON, VT
TAX LOT 044-2-010-000

Zoning Violation ZCPT-25-12

Dear Owners,

It has come to the attention of this office that a zoning violation exists at 20 Pine Street, Burlington, Vt.

Description of Violation: More than 5 trees have been cut and removed without a corresponding zoning permit in violation of permit condition 2 of zoning permit ZP-22-576. Said condition states: "Upon representation of the applicant, the grove of trees shall remain after demolition. This is a critical condition of this approval." Furthermore, Sec. 3.1.2, Zoning Permit Required, (a) Exterior Work, 9 notes that tree removal involving 6 or more trees, each of 10 inches or greater in caliper or the removal of 10 or more trees, each of which is 3 inches or greater in caliper during any consecutive 12-month period requires a zoning permit.

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 4, 12, and 24 VSA §4451.

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars (\$200.00) for each day that a violation continues. You may submit an application to attempt correction of the violation, however, be advised application and filing fees are subject to a fee increase for permits required to correct a violation.

This correspondence serves as a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violation. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violation is not cured or remedied as provided for in this notice, the City will pursue enforcement of the violation as provided for by law.

This Notice of Violation (NOV) may be appealed to the Burlington Development Review Board in accordance with the provisions of CDO Sections 2.7.12 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV December 16, 2025, online at <https://burlingtonvt.viewpointcloud.com/categories/1098> and accompanied by the appropriate fee, (\$250), in accordance with Sec. 3.2.4(a) of the CDO. Or Appeal fee and complete application shall be filed with the City's Zoning Office (645 Pine Street) by **4 pm on December 31, 2025**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call Collin Naheedy or William Ward at (802) 863-0442.

Sincerely,

Sincerely,



William Ward
Zoning Administrative Officer



Collin Naheedy
Code Compliance Officer

Cc: Land Records for Tax Lot 044-2-010-000

VIOLATION DETAILS

LOCATION: 20 Pine Street, Burlington

DECISION DATE: December 16, 2025

VIOLATION DESCRIPTION: More than 5 trees have been cut and removed without a corresponding zoning permit in violation of permit condition 2 of zoning permit ZP-22-576. Said condition states: "Upon representation of the applicant, the grove of trees shall remain after demolition. This is a critical condition of this approval." Furthermore, Sec. 3.1.2, Zoning Permit Required, (a) Exterior Work, 9 notes that tree removal involving 6 or more trees, each of 10 inches or greater in caliper or the removal of 10 or more trees, each of which is 3 inches or greater in caliper during any consecutive 12-month period requires a zoning permit.

FINDINGS:



REMEDY OPTIONS: Within seven (7) days from receipt of this notice you may cure the violation by:

- 1) Removing the violation noted above by replanting all removed trees **and restoring the Premises to its prior state, and informing the Zoning Office that the violation has been removed so our office may verify compliance;** or

- 2) Obtaining approval from the City's Zoning Office for tree removal without an approved zoning permit (permit application fee is doubled if complete application is submitted within seven days from receipt of the NOV, tripled if a complete application is submitted 7-15 days from receipt of the NOV, or triple plus \$75 per hour of staff time (up to \$500) if a completed application is submitted after 15 days from date of NOV receipt). See CDO Section 2.7.8. **PLEASE NOTE:** If the zoning permit request is denied, the violation is **NOT** cured. Owner shall be required to remove the violation as noted in #1 above or request an agreement as noted in #3 below within five (5) business days from date of the permit denial; **or**
- 3) Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance (administrative fees required).

APPEAL RIGHTS: You have the right to appeal the enforcement officer's decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.12 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice**. **The deadline for filing an appeal is 4 pm on December 31, 2025.** Submit a complete application with ZV # and appropriate fee, (\$250), to the City's Zoning Office at 645 Pine St, or online at <https://burlingtonvt.viewpointcloud.com/categories/1098> accompanied by a memo stating the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

REGULATION CITATION: CDO Article(s): 2, 3, 4, 12 and 24 VSA §4451

IN REFERENCE TO PREVIOUSLY ISSUED NOV

The above Notice of Violation issued 12/16/25 rescinds the previous Notice of Violation issued 11/17/25. This new NOV includes language that more accurately describes the Zoning Violation present at the above address. This new NOV also triggers a new 15-day appeal period, as described above, and the \$250 already paid to appeal the original 11/17/25 NOV will be applied to the appeal fee associated with this new NOV issued 12/16/25 if it is appealed.

Burlington Development Review Board

645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Phone: (802) 865-7188

AJ LaRosa
Caitlin Halpert
Brad Rabinowitz
Geoffrey Hand
Brooks McArthur
Chase Taylor
Leo Sprinzen
Sean McKenzie (Alt.)
Emily O'Hara (Alt.)



Burlington Development Review Board Findings of Fact Deliberative Hearing Tuesday, January 11, 2023

In RE: ZP-22-576; 20 Pine Street (Ward 3C, FD6) (Tax Lot No. 044-2-010-000)

Owner/Applicant: John Caulo, LandPlan / Cathedral of the Immaculate Conception Charitable Trust; Monsignor Peter Routhier

Request: Demolition and removal of existing church building, bell tower, parking lot, and impervious pathways. Foundation hole to be filled and site will be graded and seeded. Planned landscape with trees will be retained.

Members Present:

AJ LaRosa
Caitlin Halpert
Brad Rabinowitz
Brooks McArthur
Chase Taylor
Leo Sprinzen

Evidence Presented:

The Board examined the materials submitted in support of this request along with the testimony of Applicant, submissions from members of the public entered into the record and testimony from members of the public.

I. FINDINGS

Background Information:

The applicants are seeking approval to demolish the building and all site improvements (parking area, walkways, and bell tower). The trees and lawn would remain. No development would remain on the lot, nor would there be any use.

20 Pine Street is a significant property within the city's downtown. It was identified within a 2010 *Survey of Modern Architecture in Burlington* funded with grant funds from the National Park Service through the Vermont Division for Historic Preservation and awarded to Burlington's Certified Government Program.

There is also a substantial body of evidence, including articles in national publications attesting to the importance of the structure and its companion landscape, in part due to the association

with the specific design professionals (Edward Larrabee Barnes and Dan Kiley) and the notable architectural style and siting of the building within the landscape.¹

Neither the building nor the landscape have been listed on the state or National Register of Historic Resources. Both, however, were determined eligible for listing during the Consultation Process for the Transit Center project on St. Paul Street in 2013. The Vermont Division for Historic Preservation resolutely defined both the building and landscape design as eligible under Criteria Consideration G (Properties That Have Achieved Significance Within the Last Fifty Years.) A revised agreement between Federal Highway Administration, Vermont Agency of Transportation, and the Vermont Division for Historic Preservation incorporated acknowledgement of the eligibility of these properties within the Area of Potential Effect (APE). The building is not fifty years old; it is forty-five years old.

The subject property is permitted as a place of worship and continues to be owned by a religious institution. Although worship services have ceased, no change in use of the property has been sought or permitted. A place of worship is a permitted use in the Comprehensive Development Ordinance. As such, it does not expire after a year of discontinuance like nonconforming uses do.

Vermont Statute limits municipal review under 24 V.S.A. §4413 in the following circumstances:

- (a) (1) *The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:*
- (C) *churches and other places of worship, convents, and parish houses.*

The property is located within the city's downtown, in the FD6 form code district. The application review standards of Article 14: *PlanBTV Downtown Code* apply. The statutory limitations noted in 24 V.S.A. §4413 substantially limit those review standards. Similarly, the standards for review of changes to historic structures under CDO Sec. 5.4.8, *Historic Buildings & Sites*, do not apply.

Application review process and criteria are two different things. Application review process is either administrative or Board review. The Comprehensive Development Ordinance specifics review process for all application types. Alternative compliance requires Board review. Application review criteria pertain regardless of review process. In this case, the application requires Board review. The applicable review criteria in this case are substantially limited by 24 V.S.A. §4413.

Sec. 14.2.2- *Applicability of the PlanBTV Downtown Code* states that all development comply with the standards of the code. Removal of the building and site improvements does not comply with the application review standards of Article 14. Sec. 14.7.3-*Variation from the Form: Administrative Relief, DRB Alternative Compliance, and Variances*, articulates several alternative paths for work not in compliance with the review standards of Article 14. The

¹ See *Architectural Record*, January 1979 and *Architecture + Urbanism*, June 1981.

proposed work does not fall within the limits afforded by administrative or board relief and likely does not satisfy variance criteria. Alternative compliance is applicable for this application and requires review by the Development Review Board in consultation with the Design Advisory Board.

The Design Advisory Board reviewed this application December 13, 2022 and unanimously recommended denial per the following motion:

The applicant should reconsider demolition and consider ways to keep the building and its landscape intact. We request that the City Attorney confirm whether Sec. 5.4.8 applies or not. There are other resources, like Patricia O'Donnel, that might provide leeway in the interpretation of standards to consider preservation. The DRB should review the full application packet to get a sense of the importance of this property to the community.

There is no question that the property is significant. The limited review under 24 V.S.A. §4413; however, precludes consideration of that significance under CDO Sec. 5.4.8, *Historic Buildings & Sites* and much of Article 14: *PlanBTV Downtown Code*. Though even if 24 V.S.A. §4413 did not apply, the provisions of 5.4.8 do not as the building does not qualify as a historic building under Article 5. It is not yet fifty years old. These findings reflect the input of the City Attorney.

Prior zoning actions for the property.

- **Zoning Permit 20-0810FC**; fence installation. April 2020. (20 Pine Street)
- **Zoning Permit 00-611**; demolish two unit residential structure for additional open space for the existing Catholic Church on the same parcel. (76 Cherry Street). Permit **Denied**, June 2000.
- **Zoning Permit 76-477 / Certificate of Appropriateness 75-48**; Erect a 105' 1 ¾" x 162'6" Church on the premises at 84 Cherry Street, with boundaries [sic] on St. Paul and Pine Streets. Also to create a 26 car off street parking area and landscape. October 22, 1975.

Article 14: PlanBTV Downtown Code

Section 14.7.2 Non-Conformities

In addition to that as specified in Article 5, Part 3 Non-Conformities of the Burlington Comprehensive Development Ordinance, any Building, Structure, Frontage, Development, Site, Improvement, or other appurtenance thereto which lawfully existed at the time of adoption of the applicable provision of this Article or any amendment thereto may be continued subject to the following provisions:

- a) Nothing in these regulations are intended to prevent normal repair and maintenance necessary to keep a Building, Structure, Site, Improvement or other appurtenance thereto in a safe and sound condition;*
- b) Any Building, Structure, Frontage, Development, Site, Improvement, or other appurtenance thereto which legally existed on the effective date of this Article that does not conform to the requirements of this Article may continue until a Substantial Modification is requested or Abandonment occurs.*

c) *Any nonconforming structure may be enlarged, maintained, repaired or altered, provided, however, that no enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part.*

d) *At such time when a Substantial Modification is requested or Abandonment occurs, only the affected portions(s) of the Building, Structure, Frontage, Development, Site, Improvement, or other appurtenance thereto shall be required to comply with the applicable provisions of this Article and to the greatest extent practicable in the determination of the Administrative Officer or unless relief is provided by the DRB pursuant to Sec. 14.7.3 below;*

and

d) *Buildings listed or eligible for listing on the State or National Register of Historic Places shall not be required to make any modifications under this section that would threaten their historic integrity.*

The property, in its existing developed conditions, is nonconforming. The proposed demolition removes that nonconformity and replaces it with no development or use. The demolition is not a “substantial modification” as defined in Sec. 14.8-Glossary and, therefore, does not require that the property be brought into compliance with the standards of Article 14. Lacking applicability of Sec. 5.4.8, *Historic Buildings & Sites*, redevelopment is not a requirement of demolition.

(Affirmative finding)

Article 14.7.3 Variation from the Form: Administrative Relief, DRB Alternative Compliance, and Variances

The planBTV Downtown Code is intended to result in By-Right approval where development occurs strictly in conformance with the requirements of the applicable Form District. In some instances, however, it may be necessary to vary the prescribed form in order to accommodate unique site and/or building circumstances in order to promote context-sensitive development. In such instances, an applicant may seek Administrative or Development Review Board approval for relief from the requirements as set forth below. Any and all relief from the prescribed standards shall run with the land and be binding on the Property Owner and its/their successor and assigns. Applications requesting relief shall be made in writing and in the form as determined by the Department.

Demolition is not expressly enabled or prohibited by Article 14. Demolition alone is not addressed at all. Even under the statutory limitations of 4413, form code standards as to building bulk, height, setbacks, etc. apply; however, in this case, the end result lacks anything to comply. A currently developed site is being converted to an entirely undeveloped site with no use at all.

The act of demolition requires a zoning permit. The proposed work does not comply with the standards of Article 14 and, therefore, requires review under Alternative Compliance. The review criteria of Alternative Compliance are substantially limited by 24 V.S.A. §4413, and the

complete demolition of the building and all site improvements leaves nothing to comply.
(Affirmative finding)

(b) Alternative Compliance Granted by the Development Review Board

Additional relief from the prescribed standards may be granted by the Development Review as provided below:

- i. *DRB Alternative Compliance: Relief from any non-numerical standard, and any numerical standard by no more than 20% of such requirement or an additional 10% beyond any Administrative Relief permitted above, may be granted by the Development Review Board after review and recommendation by the Design Advisory Board and a Public Hearing. Decisions by the DRB regarding any Alternative Compliance granted shall be made in writing and upon affirmative findings that:*
 - A. *the relief sought is necessary in order to accommodate unique site and/or Building circumstances or opportunities;*
Necessity of relief is beyond the scope of review enabled by 24 V.S.A. §4413.
 - B. *the relief if granted is the minimum necessary to achieve the desired result;*
Whether the relief granted is the minimum necessary is beyond the scope of review enabled by 24 V.S.A. §4413.
 - C. *the property will otherwise be developed consistent the purpose of this ordinance, the intent of the Form District, the intent and purpose of the section that the relief is being sought, and all other applicable standards;*
How the property will otherwise be developed is beyond the scope of review enabled by 24 V.S.A. §4413.
 - D. *the relief if granted will not impose an undue adverse burden on existing or future development of adjacent properties;*
Burden on the development of adjacent properties is beyond the scope of review enabled by 24 V.S.A. §4413.
 - E. *the relief if granted will yield a result equal to or better than strict compliance with the standard being relieved.*
Determination or equal or better end result is beyond the scope of review enabled by 24 V.S.A. §4413.

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Caitlin Halpert

I move that the Board grant approval for demolition and removal of the existing church building, bell tower, parking lot, and impervious pathways and for the foundation hole to be filled, the site to be graded and seeded, and for the trees to be retained, based on the findings in Section I above and subject to the following conditions:

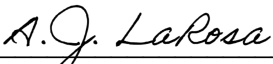
1. 24 VSA, Sec. 4413 does apply to this application and limits review. Though if it did not apply, section 5.4.8 does not. While the building is architecturally unique, it is not historic under the criteria of Burlington CDO Sec. 5.4.8.
2. Upon the representation of the applicant, the grove of trees shall remain after demolition. This is a critical condition of this approval.
3. The chain link fence shall come down.
4. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required.
5. Standard Conditions 1-15.

Seconded: Brooks McArthur

Vote: 4-2-0, motion carried

Dated at Burlington, Vermont, this 17th day of January 2023

Respectfully Submitted,



AJ LaRosa, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.



20 PINE STREET – BTV

Proposed Scope of Work

Demolition Permit Application

4 November 2022

Scope:

1. Demolish and remove existing Church structure and adjacent pedestrian sidewalks
2. Demolish and remove existing parking lot
3. Demolish and remove existing bell tower

-NOTE-

ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.

FINAL APPROVAL

SIGNED *W. H. 2nd* DATE 1/17/2023

ZONING PERMIT # ZP-22-576

REVIEWED BY SG

DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

AJ LaRosa: How does the 2019 de-consecration impact this application?

Jim Langan: The idea or fact that this is classified as a religious space has not been taken lightly by the parish to demolish this site. The ultimate idea for demolition is to prevent the site from being used in a way that the parish does not deem fit.

Brad Rabinowitz: We've heard a lot of testimony, but what we haven't heard is a parishioner saying that this building needs to be removed.

Jim Langan: Peter Routhier spoke to this and has submitted letters about the advocacy of this project, so the parish has addressed this.

Brooks McArthur: What is the intended functional use of this property?

Jim Langan: The language of VSA 4413 is clear and says the City cannot regulate certain church uses and upholds the church's decision to raze the building demolish the site.

AJ LaRosa: This is the question, what is the functional use of the property?

Jim Langan: To deny this application, would deny the church's right under VSA 4413.

AJ LaRosa: We're trying to understand the functional use of the property following the demolition of the church.

Leo Sprinzen: Can you de-consecrate something that isn't classified as a religious institution?

Peter Routhier: When we speak of de-consecration, we conduct a ceremony to remove the artifacts and cease the intended function of the facility. A consecration takes place when oil is smeared on the wall. Using the site for an alternative purpose would be appalling to the Catholic faith and would be a defamation to the intended use of the property. If it became a public space, it could be host to any sort of use.

AJ LaRosa: People have argued that VSA 4413 may not apply.

Jim Langan: For Burlington zoning regulations, this building has not attained an age of 50 years to meet the historic guidelines, and therefore, VSA 4413 does apply.

John Caulo: The limited uses of municipal review under VSA 4413 includes the landscaping encompassed by the grove of honey locust trees. That's why they are to remain.

Leo Sprinzen: The Secretary of the Interior would classify the site's use as religious, but currently, the site is a vacant building.

Peter Routhier: I was ordained as the first priest in this building in 1978 when it was opened.

Leo Sprinzen: Was it the intention for the parish to sell the building in 2018/19 when the site was de-consecrated?

Jim Langan: I was not privy to this at the time of the listing for sale.

Brad Rabinowitz: What will happen to the site after the building is demolished? Obviously there is a lot of sentiment from the community about this site, and zoning does have purview on what happens next with the site's development.

John Caulo: Not too long ago in 2019, the planning department created the form based code in the downtown, and the property should have been exempted.

Brad Rabinowitz: So there was no thought to what happens with this site for redevelopment?

Leo Sprinzen: The future use of the site is subject to zoning review.

AJ LaRosa: Hearing no additional questions or comments, I move we close the public hearing on this item and enter deliberative session.

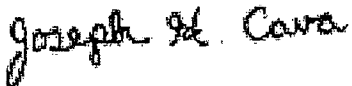
Caitlin Halpert: Motioned to approve the application for demolition, Brooks McArthur 2nd. Vote 4-2. Motion carries.

IV. Adjournment

6:45 PM.



Alexander J. LaRosa, Chair of Development Review Board
1/26/23
Date



Joseph H. Cava, Permitting & Inspections Permit Technician
1-20-23
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.

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 23-ENV-00010

**Cathedral of the Immaculate Parish Charitable
Trust Appeal**

JUDGMENT ORDER

This is an appeal of a City of Burlington Development Review Board (“DRB”) decision dated January 17, 2023 granting the Cathedral of the Immaculate Conception Parish Charitable Trust's (“Trust”) application to demolish an existing church building located at 20 Pine Street, Burlington, Vermont (the “Property”). Appellants are a group of Burlington residents—Carolyn Bates, Robert Devino, Pauline Kehoe, Amy Mentes, Jack Mentes, Margaret Mentes, Karyn Norwood, Liisa Reimann, Matthew Shoen, and Ronald Wanamaker (together, “Appellants”)—who oppose the demolition and appealed the DRB’s decision to this Court.

Appellants are represented by Attorneys Christopher Boyle and David Grayck. The Trust is represented by Attorney John Franco. The City of Burlington is represented by Attorney Malachi Brennan.

For the reasons set forth in the accompanying Decision on Motions, we conclude that the zoning limitations of 24 V.S.A. § 4413 apply, and therefore there are no substantive standards in the Burlington Comprehensive Development Ordinance on which to deny Applicant’s request for a demolition permit. Thus, Applicant’s motion is **GRANTED** and Appellants’ motion is **DENIED**.

This concludes the matter before the Court.

Electronically signed at Brattleboro, Vermont on Tuesday, February 6, 2024, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, reading "Thomas S. Durkin". The signature is stylized with a large, looping initial 'T' and a cursive 'Durkin'.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 23-ENV-00010

Cathedral of the Immaculate Parish Charitable Trust Appeal

DECISION ON CROSS-MOTIONS

Motion for Summary Judgment (Motion #10)

Filer: John L. Franco, Attorney for Applicant/Appellee Cathedral of the Immaculate Parish Charitable Trust

Filed Date: August 28, 2023

Memorandum in Opposition, filed on October 5, 2023, by Christopher Boyle, Attorney for Appellants.

Memorandum of Law in Support of Applicant's SJ Motion, filed on October 6, 2023, by Jonathan T. Rose, Attorney for the City of Burlington.

Reply to Memorandum in Opposition, filed by Attorney John Franco, on October 8, 2023.

Supplemental Memorandum of Law, filed by Attorney John Franco, on December 19, 2023.

Supplemental Memorandum of Law, filed on January 18, 2024, by Malachi T. Brennan, Attorney for the City of Burlington.

.....

Cross Motion for Summary Judgment (Motion #15)

Filer: Christopher Boyle, Attorney for Appellants

Filed Date: January 16, 2024

Memorandum in Opposition, filed by Attorney John Franco, on January 25, 2024.

Applicant/Appellee's motion is GRANTED; Appellants' motion is DENIED.

This is an appeal of a City of Burlington Development Review Board ("DRB") decision dated January 17, 2023 granting the Cathedral of the Immaculate Conception Parish Charitable Trust's ("Trust") application to demolish an existing church building located at 20 Pine Street, Burlington, Vermont (the "Property"). Appellants are a group of Burlington residents—Carolyn Bates, Robert Devino, Pauline Kehoe, Amy Menten, Jack Menten, Margaret Menten, Karyn Norwood, Liisa Reimann, Matthew Shoen, and Ronald Wanamaker (together, "Appellants")—who oppose the

proposed demolition and appealed the DRB's decision to this Court. Presently before the Court are the parties' cross motions for summary judgment.

The parties agree that this appeal can be decided on motions as a matter of law. The sole issue before the Court is whether the zoning limitations of 24 V.S.A. § 4413 apply to the Trust's application for a demolition permit, and if so, whether those limitations preclude review under Article 14, the Plan BTV Downtown Code, of the Burlington Comprehensive Development Ordinance ("CDO").¹ On December 14, 2023, this Court issued an entry order requesting that the parties submit supplemental memoranda regarding the application of 24 V.S.A. § 4413. Cathedral of the Immaculate Parish Charitable Trust Appeal, No. 23-ENV-00010 (Vt. Super. Ct. Env'tl. Div. Dec. 14, 2023) (Durkin, J.). To date, all parties have responded to the Court's request.²

Appellants are represented by Attorneys Christopher Boyle and David Grayck. The Trust is represented by Attorney John Franco. The City of Burlington is represented by Attorney Malachi Brennan.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party

¹ The Trust maintains that the Court need not address this threshold issue. According to the Trust, even if the provisions of § 4413 do not apply and there are no zoning limitations for the Property, because the church on the Property is less than fifty years old, the historic preservation criteria of the CDO (Art. 5 § 5.4.8) do not apply. In response, Appellants and the City of Burlington point to another section of the CDO, Article 14, which regulates development in the Downtown District. The Trust argues that the term "development," as used in Article 14, applies only to new construction such that the Property's existing improvements, and demolition thereof, are not regulated under Article 14. As discussed in a previous Entry Order, this Court concluded that the Property is otherwise subject to the standards in Article 14 unless the zoning limitations in 24 V.S.A. § 4413 apply. See Cathedral of the Immaculate Parish Charitable Trust Appeal, No. 23-ENV-00010 (Vt. Super. Ct. Env'tl. Div. Dec. 14, 2023) (Durkin, J.) (explaining that the term "development" as used in Article 14 includes demolition). Thus, we conclude that the Court must address this issue prior to addressing any other issue before the Court, because the Court's conclusions thereon could eliminate the remaining issues before the Court.

² The procedural history of these cross motions is unique. The Trust filed their initial motion for summary judgment on August 28, 2023. This motion only addressed the less than 50-year-old building exemption, rather than the application of 24 V.S.A. § 4413. Shortly thereafter, Appellants requested a discovery schedule and extended deadlines to respond to the Trust's motion. The Court granted Appellants' request. See Cathedral of Immaculate Parish Charitable Trust Appeal, No. 23-ENV-10 (Vt. Super Ct. Env'tl. Div. Oct. 3, 2023) (Durkin, J.). Shortly before the close of discovery, the Trust moved to stay the discovery deadlines until after the Court ruled on its pending motion for summary judgment. The Court granted that request, took the motion under advisement, and later lifted the stay so that the parties could complete discovery and respond to the Court's request for supplemental filings on the applicability of 24 V.S.A. § 4413. See Cathedral of Immaculate Parish Charitable Trust Appeal, No. 23-ENV-10 (Vt. Super. Ct. Env'tl. Div. Dec. 14, 2023) (Durkin, J.). This explains the five-month gap between cross-motions.

the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Commc'ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332. In determining whether there is any dispute over a material fact, “we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material.” White v. Quechee Lakes Landowners' Ass'n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A). We now address the pending motions with these procedural directives in mind.

Undisputed Material Facts

We recite the following factual background and procedural history, which we understand to be undisputed unless otherwise noted, based on the record now before us and for the purpose of deciding the pending pre-trial motions. The following are not specific factual findings relevant outside the scope of this decision on the pending motions. See Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (citing Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.)).

1. The Cathedral of the Immaculate Conception Parish Charitable Trust (previously defined as the “Trust”) currently owns the property located at 20 Pine Street in Burlington, Vermont (previously defined as the “Property”).

2. The former Cathedral of the Immaculate Conception (the “Cathedral”), a church located on the Property, was destroyed by arson on March 14, 1972. Trust’s Ex. 2 to Motion for Summary Judgment at 4.

3. The new Cathedral was granted a zoning permit in 1975, and construction was completed in 1977. Trust’s Ex. 3 to Motion for Summary Judgment at 3.

4. In May 2018, the Roman Catholic Diocese of Burlington initiated procedures under the Canon Law of the Roman Catholic Church to deconsecrate and demolish the Cathedral.³ Trust’s Ex. 5 to Supplemental Statement of Material Facts, filed Dec. 19, 2023.

5. Following these procedures, the Trust obtained approval to deconsecrate the Cathedral on September 5, 2022.

6. On October 27, 2022, the Trust applied for a demolition permit for the 20 Pine Street Property.

³ Pursuant to the ecclesiastical abstention doctrine, this Court does not have the authority to question the ecclesiastical decisions discussed herein. See Turner v. Roman Catholic Diocese of Burlington, Vermont, 2009 VT 101, ¶ 33, 186 Vt. 396 (explaining that courts are barred from “becoming too closely involved in the internal, ecclesiastical matters of religious institutions”). It is, however, undisputed that the Roman Catholic Diocese of Burlington undertook such actions. Further, the Court uses these undisputed facts to determine whether the intended functional use of the Property is as a church or place of worship as contemplated by 24 V.S.A. § 4413(a)(1)(C).

7. The Trust's application sought approval for the following: demolition and removal of the existing church building, bell tower, parking lot, and impervious pathways; filling the building's foundation; grading and seeding the grounds; and retention of the existing planned landscape with trees and lawn. Trust's Ex. 6 to Supplemental Statement of Material Facts at 2, filed Dec. 19, 2023.

8. The Trust's application did not, and does not, include plans to redevelop the Property. Id.

9. The Trust has represented that demolition is one of the ways that it can complete deconsecrating the Property. Trust's Ex. AEX2 to Supplemental Statement of Material Facts at 2, filed Dec. 19, 2023.

10. The Trust has, before the DRB and before this Court, indicated that it was contemplating a sale of the Property, but until the Property was cleared and a subsequent transaction fully executed, it intended to continue maintaining and using the Property. Id.

11. Sometime after filing the demolition permit application, the Trust entered into a purchase and sale agreement for the Property with a non-religious entity. Appellants' Ex. F to Cross-Motion for Summary Judgment at 2-3, filed January 17, 2024.

12. On January 11, 2023, the DRB approved the application and applied § 4413 to the Property. Appellants' Ex. H to Cross-Motion for Summary Judgment at 6, filed January 17, 2024.

13. Appellants filed a timely appeal of that decision to this Court.

Statement of Questions

In the Environmental Division, the Statement of Questions provides notice to other parties and this Court of the issues to be determined within the case and limits the scope of the appeal. In re Conlon CU Permit, No. 2-1-12 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Aug. 30, 2012) (Durkin, J.). As filed, Appellants' Statement of Questions presents the following questions for the Court's review:

1. Whether a vacant structure which is not being used for religious purposes, has not been used for a religious purpose (or any other purpose) for more than four years, and is not going to be used for religious purposes in the future, nevertheless qualifies for the zoning exemption under 24 V.S.A. § 4413?
2. Whether, assuming arguendo that 24 V.S.A. § 4413 does apply, it precludes the Burlington DRB from considering whether the proposed demolition complies with Article 14 of the Burlington CDO and the CDO'S "alternative compliance" standards?

Conclusions of Law

Title 24, Section 4413 states, in relevant part, that:

The following uses may be regulated only with respect to location, size, height, building bulk yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

...

(c) churches and other places of worship, convents, and parish houses.

24 V.S.A. § 4413, (c). Thus, the relevant inquiry under 24 V.S.A. § 4413 is whether the intended functional use of the Property is as a church or other place of worship.

Importantly, 24 V.S.A. § 4413 ensures that municipal land use regulations are applied in compliance with the federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”). In re Valsangiacomo, No. 130-8-03 Vtec, slip op. (Vt. Env. Ct. Dec. 21, 2004) (Wright, J.). Under RLUIPA, no government shall implement a land use regulation in a way that imposes a substantial burden on the religious exercise of a person or institution. 42 U.S.C. § 2000cc(a)(1). With this background in mind, we read 24 V.S.A. § 4413(a)(1)(c) to apply if the regulations interfere with a religious entity’s religious use of a church or place of worship.

The Trust has established with undisputed facts that the intended functional use of the Property, as it relates to their demolition application, involves matters of ecclesiastical importance. Pursuant to Canon Law of the Roman Catholic Church, the Trust underwent an ecclesiastical decision-making process that led it to ultimately deconsecrate the Property via demolition. The Court is without authority to question this ecclesiastical process or decision. See Watson v. Jones, 80 U.S. 679, 680 (1871) (explaining that civil courts must accept the ecclesiastical decisions of religious institutions). Despite this, however, the Court can conclude that this decision is inherently connected to the Property’s functioning as a church in the Roman Catholic faith.

Appellants argue that the limitations in 24 V.S.A. § 4413 cannot apply because the Trust conveyed equitable title to a non-religious buyer when it entered into a purchase and sale agreement to sell the Property, and therefore the intended functional use of the Property is not a church or place of worship but of whatever use of the Property that the subsequent purchaser may decide. This argument fails because it necessarily asks the Court to examine *future* development plans for the Property, which goes beyond the scope of the application currently before the Court. As the Court explained in response to Appellants’ motion to compel disclosure of the purchase and sale agreement,

any evidence of a buyer's identity or development plans for the Property are outside the scope of this Court's inquiry into the Trust's intended functional use of the Property as a place of worship and the demolition application presently before the Court, and thus requests an impermissible advisory opinion. Cathedral of the Immaculate Parish Charitable Trust Appeal, No. 23-ENV-00010 (Vt. Super. Ct. Env'tl. Div. Dec. 4, 2023) (Durkin, J.); see In re Baker, No. 2006-364 (Vt. May 2007) (three justice panel of the Vermont Supreme Court upholding an Environmental Court decision declining to examine evidence of future development plans when considering a pending subdivision application); see also In re Snowstone, LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28, 214 Vt. 587 (explaining the prohibition against advisory opinions). Despite Appellants' frequent use of the word "current" to define this future buyer and their intended use of the Property, the purported buyer's identity and their allegedly non-exempt use of the Property can only relate to future uses for the Property and are therefore outside the scope of this demolition permit proceeding.⁴

Our goal in interpreting a statute is to give effect to the intent of the Legislature. State v. Therrien, 2011 VT 120, ¶ 9, 191 Vt. 24. To ascertain legislative intent, we begin by looking at the plain language of the statute. Flint v. Dep't of Labor, 2017 VT 89, ¶ 5, 205 Vt. 558. If the plain language is clear and unambiguous, we enforce the statute according to its terms. Therrien, 2011 VT 120, ¶ 9. Here, the plain language of 24 V.S.A. § 4413 is clear and unambiguous. Municipal bylaws cannot be applied in a manner that interferes with the intended functional use of a church or place of worship. The Legislature clearly intended to lessen the impact of zoning regulation on religious entities and their properties within the State. Appellants' interpretation would heap greater zoning review on a religious entity that is seeking to administer its use of a church and is thus contrary to the plain language and legislative intent of 24 V.S.A. § 4413.

⁴ Appellants' motion uses the word "intend" as a verb, rather than an adjective, thus misinterpreting the statute. See e.g., Appellants' Memorandum of Law in Support of Cross-Motion for Summary Judgment at 17 ("[t]he Trust and its non-religious co-owner currently *intend to put* the 20 Pine Street Property to a non-religious functional use...") (emphasis added). When used as a verb in this context, the meaning of "intend" necessarily refers to a future purpose or plan, despite Appellants' insertion of the word "currently." In doing so, Appellants misconstrue the language of the statute, which uses the word "intended" preceded by the definite article "the" to indicate that the word is used as an adjective to describe a past or present intended use. Accordingly, how a buyer *intends to put* the Property to use in the future is irrelevant to this demolition proceeding.

Further, Appellants repeatedly assert that this buyer, a signatory to a purchase and sale agreement, is a "co-owner" of the Property under the theory of equitable title, such that their identity is directly relevant to this appeal. Appellants do not, however, point to any law that signatories to a purchase and sale agreement are co-owners in a zoning context and must be identified to apply for and receive permits. The Court will not adopt such a theory in this case, particularly when doing so would undercut the legislative intent of 24 V.S.A. § 4413 to limit the scope of zoning review on exempt uses.

The demolition application before us involves an important step in deconsecrating the Cathedral under ecclesiastical doctrines. The Trust's intent to deconsecrate the church must fall under the zoning limitation of 24 V.S.A. § 4413(a)(1)(C). A decision to the contrary would require the Court to analyze whether the standards in Article 14 prohibit demolition of the Property, thus interfering with the Trust's intent to deconsecrate the Property and its decisions as to how it wants to use the Cathedral overall.

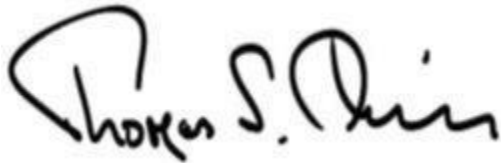
Thus, we conclude that § 4413 applies to the application presently before the Court. As such, the Court cannot apply the provisions of Article 14 of the CDO or any other substantive standard of the CDO. There are, therefore, no substantive standards to apply to the application. For this reason, the Court must answer Questions 1 and 2 of Appellants' Statement of Questions in the affirmative and conclude that the Trust is entitled to the demolition permit.

Conclusion

For the foregoing reasons, we conclude that there is no genuine dispute of material fact that the intended functional use of the Property is to deconsecrate the Cathedral, and therefore, the limitations of 24 V.S.A. § 4413 apply. As a result, there are no substantive standards in the CDO upon which to deny the Trust a demolition permit. We therefore **GRANT** the Trust's motion for summary judgment and **DENY** Appellants' motion.

This concludes the matter before the Court. A Judgment Order accompanies this Decision.

Electronically signed at Brattleboro, Vermont on Tuesday, February 6, 2024, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is stylized with a large, looping initial 'T' and a cursive 'Durkin'.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

2024 VT 77

DEC 06 2024

SUPREME COURT DOCKET NO. 24-AP-068

SEPTEMBER TERM, 2024

In re Cathedral of the Immaculate Parish
Charitable Trust Appeal
(Carolyn Bates et al., Appellants)

} APPEALED FROM:
}
} Superior Court,
} Environmental Division
}
} CASE NO. 23-ENV-00010

In the above-entitled cause, the Clerk will enter:

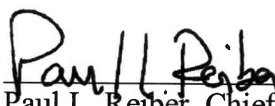
Affirmed.

FOR THE COURT:

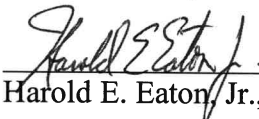


William D. Cohen, Associate Justice

Concurring:



Paul L. Reiber, Chief Justice



Harold E. Eaton, Jr., Associate Justice



Nancy J. Waples, Associate Justice



John A. Dooley, Associate Justice (Ret.),
Specially Assigned

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions by email at: JUD.Reporter@vtcourts.gov or by mail at: Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801, of any errors in order that corrections may be made before this opinion goes to press.

2024 VT 77

No. 24-AP-068

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

DEC 06 2024

In re Cathedral of the Immaculate Parish
Charitable Trust Appeal
(Carolyn Bates et al., Appellants)

Supreme Court

On Appeal from
Superior Court,
Environmental Division

September Term, 2024

Thomas S. Durkin, J.

David L. Grayck of Law Offices of David L. Grayck, North Bennington, and Christopher H. Boyle, Lincoln, for Appellants.

John F. Franco, Jr., Burlington, for Appellee Trust.

Malachi T. Brennan, Geoffrey H. Hand, and Megan E. Noonan of SRH Law PLLC, Burlington, for Appellee City of Burlington.

PRESENT: Reiber, C.J., Eaton, Cohen and Waples, JJ., and Dooley, J. (Ret.),
Specially Assigned

¶ 1. **COHEN, J.** A group of Burlington residents appeals the Environmental Division's summary judgment order upholding a permit for the Cathedral of the Immaculate Conception Parish Charitable Trust (Trust) to demolish church structures on Trust property. Residents argue the court erred in concluding that 24 V.S.A. § 4413(a)(1)(C) prevented the City of Burlington from applying its Comprehensive Development Ordinance (CDO) to restrain the Trust from demolishing the church structures. Residents also argue that the court erred in denying their motion to compel discovery of information regarding the pending sale of the property to a nonreligious buyer because they assert the sale is relevant to the applicability of § 4413(a)(1)(C). We affirm.

I. Factual and Procedural Background

¶ 2. The following facts were undisputed for purposes of summary judgment. The Trust owns property at 20 Pine Street in Burlington, Vermont. The Cathedral of Immaculate Conception has stood on the property since 1977. In May 2018, the Roman Catholic Diocese of Burlington initiated procedures to deconsecrate and demolish the Cathedral pursuant to the canon law of the Roman Catholic Church. According to the Trust, demolition is a way to deconsecrate the property because it will “cleanse” the property and prevent any future nonsacred use of the Cathedral. In September 2022, the Trust received permission from the Roman Catholic Church to deconsecrate the Cathedral.

¶ 3. In October 2022, the Trust applied for a permit with the City of Burlington’s Development Review Board to demolish the Cathedral. The demolition would remove the church buildings, bell tower, parking lot, and impervious pathways. At the time of its application, the Trust contemplated selling the property and thereafter entered into a purchase and sale agreement for the property with a nonreligious buyer.* However, the Trust did not plan to fully execute the transaction until the Cathedral was demolished and the property was cleared. The Trust would continue to maintain and use the property until that point.

¶ 4. In January 2023, the Board approved the permit application. The Board determined that the proposed demolition would neither comply with the application review standards in Article 14 of the CDO, nor would it likely qualify for a variance. However, the Board concluded that because the property was permitted as a place of worship and continued to be owned by a religious entity, 24 V.S.A. § 4413(a)(1)(C) substantially limited review under the CDO and the alternative compliance standards that would ordinarily govern the application were inapplicable. Section 4413(a)(1) of Title 24 states the following:

* The Trust stated at oral argument that the sale agreement from 2022 has since been terminated. The Trust entered into a new agreement with a different commercial entity sometime after this appeal was filed.

The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use: . . . (C) churches and other places of worship, convents, and parish houses.

The Board therefore voted to approve the permit.

¶ 5. Residents appealed the Board's decision to the Environmental Division. The Trust moved for summary judgment, arguing that the only provision of the CDO related to demolition is in Article 5 of the CDO, which did not apply because the Cathedral was not fifty years old, and that the CDO does not otherwise provide substantive standards for reviewing an application to demolish a building. The City of Burlington filed its own memorandum agreeing that summary judgment should be granted to the Trust because applying the review standards of Article 14 would violate § 4413(a)(1)(C) by interfering with the intended functional use of the property. In response, the court ordered the parties to submit additional briefing on the applicability of § 4413(a)(1)(C).

¶ 6. Residents opposed the Trust's motion and separately moved to compel discovery from the Trust regarding the pending sale of the property. The court denied this motion, concluding that the sought-after information was unrelated to the issue on appeal. The court explained that the appeal only required it to determine if § 4413(a)(1)(C) exempted the property from regulation under the CDO, and that question would be resolved by determining whether the CDO regulations had the effect of interfering with the intended functional use. The discovery sought would effectively go towards "future" intended functional use of the property, which the court lacked jurisdiction to decide. It explained that it only had authority to consider the past and present uses of the property under § 4413(a)(1)(C).

¶ 7. Residents subsequently filed a cross-motion for summary judgment, arguing that § 4413(a)(1)(C) did not apply to the Trust property because the Trust had conveyed equitable title

to a nonreligious buyer and the nonreligious buyer could not use the property for religious purposes.

¶ 8. In February 2024, the court issued a decision granting the Trust’s motion for summary judgment and denying residents’ cross-motion. The court determined that the relevant inquiry under § 4413(a)(1)(C) was whether the intended functional use of the property was for religious purposes. The court found it undisputed that the decision to demolish the Cathedral pursuant to the Roman Catholic Church’s deconsecration process involved matters of ecclesiastical significance and was inherently connected to the property’s intended functional use. The court concluded that it had no authority to question the ecclesiastical decision-making process to deconsecrate the property by demolishing the Cathedral.

The court rejected residents’ argument that § 4413(a)(1)(C) did not apply because equitable title had passed to the nonreligious buyer once the purchase and sale agreement was executed. It reasoned that residents were asking the court to look to the future development plans for the property, which exceeded the scope of the permit application. The court also found no support for residents’ contention that the future buyer was a co-owner for the purposes of zoning review. It concluded that the demolition application involved “an important step” in deconsecrating the Cathedral under the Roman Catholic Church’s ecclesiastical doctrines, and that applying the provisions of the CDO would interfere with the Trust’s intent to deconsecrate the property. It therefore held that § 4413(a)(1)(C) applied to the permit application. Thereafter, residents filed this appeal.

II. Analysis

¶ 9. We review a decision granting summary judgment de novo, using the same standard as the trial court. Vt. Coll. of Fine Arts v. City of Montpelier, 2017 VT 12, ¶ 7, 204 Vt. 215, 165 A.3d 1065. “Summary judgment is appropriate when, construing the facts as alleged by the nonmoving party and resolving reasonable doubts and inferences in favor of the nonmoving party,

there are no genuine issues of material fact and judgment is appropriate as a matter of law.” Sheldon v. Ruggiero, 2018 VT 125, ¶ 14, 209 Vt. 33, 202 A.3d 241 (citing V.R.C.P. 56). In our review of a motion for summary judgment, “we regard as true all allegations of the nonmoving party supported by admissible evidence and give the nonmoving party the benefit of all reasonable doubts and inferences.” Wood v. Wallin, 2024 VT 21, ¶ 8, ___ Vt. ___, 316 A.3d 266 (quotation omitted).

A. Ownership of the Property

¶ 10. Residents first argue that § 4413(a)(1)(C) does not limit the application of the City of Burlington’s CDO regulations because the Trust entered into a purchase and sale agreement with a nonreligious buyer prior to submitting its application for a permit to demolish the Cathedral. Residents assert that when the Trust entered into the agreement with a secular buyer, equitable title of the property transferred to the buyer, which cannot use the property for a religious purpose because the buyer is not a religious entity. We conclude that, even if the prospective buyer held equitable title at some point, ownership is not a determining factor for purposes of the analysis under § 4413(a)(1)(C).

¶ 11. “Our goal in interpreting a statute is to give effect to the intent of the Legislature. . . . If the plain language is clear and unambiguous, we enforce the statute according to its terms.” In re 204 N. Ave. NOV, 2019 VT 52, ¶ 5, 210 Vt. 572, 218 A.3d 24 (quotations omitted). As noted above, § 4413(a)(1) states:

The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use: . . . (C) churches and other places of worship, convents, and parish houses.

As is evident from the plain language of § 4413(a)(1), its applicability does not depend on the identity of the owner of a property. Rather, its unambiguous terms ask only whether a regulation

interferes with “the intended functional use” of the property. 24 V.S.A. § 4413(a)(1) (emphasis added). The ownership of the property does not govern whether § 4413(a)(1)(C) applies.

¶ 12. Our holding is consistent with the purpose of the zoning statutes. As we explained in Vermont Baptist Convention v. Burlington Zoning Board, the Legislature has authorized municipalities to regulate specific uses of land and structures, and density of population and intensity of use. 159 Vt. 28, 30-31, 613 A.2d 710, 711 (1992) (construing language previously found in 24 V.S.A. § 4401 that is now set forth in § 4411). A municipality’s zoning power must be consistent with the Legislature’s intent and grant of authority and “[t]his enumeration of power refers only to uses and structures, not the identity of the owner.” *Id.* at 31, 613 A.2d at 711. For this reason, we held in Vermont Baptist that the zoning board misclassified a building owned by a nonprofit religious organization as “semi-public” because the board was improperly focused on the nature of the owner, rather than the actual use of the property as a private office and apartment building. *Id.*; see also In re Sardi, 170 Vt. 623, 624-25, 751 A.2d 772, 774 (2000) (mem.) (noting municipality’s statutory zoning power “does not rely on the identity of the owner” but “only with the use of such areas”).

¶ 13. Similarly, the applicability of § 4413(a)(1) depends on use, rather than ownership. To read § 4413(a)(1) as relying on the ownership of the property would be to misconstrue the Legislature’s grant of authority. The Trust’s execution of a purchase and sale agreement with a potential buyer is therefore irrelevant to the issue of whether § 4413(a)(1) bars application of the CDO to the Trust’s permit request.

B. Use of the Property

¶ 14. Residents argue that even if ownership is not relevant and the nonreligious buyer could use the property for a religious purpose, the buyer and Trust were not using it for that purpose because the Trust intended to take the property “out of liturgical use.” Further, residents argue that the Trust indicated in its permit application that it expected the buyer to apply for

redevelopment of the property upon obtaining legal title. We disagree with residents' interpretation of "intended functional use."

¶ 15. To determine what constitutes the "intended functional use" of the property at issue, we first look to the plain language of the statute. In re 204 N. Ave. NOV, 2019 VT 52, ¶ 5. The statute provides that certain uses of property, including "churches and other places of worship," may only be regulated in limited respects and "only to the extent that regulations do not have the effect of interfering with the intended functional use." 24 V.S.A. § 4413(a)(1). Residents effectively interpret the term "intended" to include the future intent of the property owner. However, "intended" is a past participle adjective and past participle adjectives are typically used to describe a present state of being. See Henson v. Santander Consumer USA, Inc., 582 U.S. 79,84 (2017) (noting past participles, such as "owed," are "routinely used as adjectives to describe the present state of a thing"). "Intended" here plainly refers to the intent for the present use—in other words, the action for which the property owner seeks the permit.

¶ 16. Although the language of § 4413(a)(1) is clear, we note that residents' assertion that an applicant's future intent should be considered is contrary to the Legislature's intent expressed in the statute. See Shires Hous., Inc. v. Brown, 2017 VT 60, ¶ 9, 205 Vt. 186, 172 A.3d 1215 (holding where there is ambiguity we look to Legislature's intent as shown through entire statute, "its subject matter, effects and consequences, as well as the reason for and spirit of the law" (quotation omitted)). In 2000, the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) came into effect. RLUIPA prohibits a government from imposing land use regulations that substantially burden religious institutions and religious exercise absent a showing that the regulation is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1). Section 4413 was enacted in 2003 as part of a general revision to the municipal zoning statutes, after RLUIPA came into effect, and we presume that the Legislature was aware of the limitations RLUIPA set on regulating land used for religious purposes. See 2003,

No. 115 (Adj. Sess.), § 95; In re Verizon New England, Inc., 173 Vt. 327, 337-38, 795 A.2d 1196, 1204-05 (2002) (explaining federal law sets floor for requirements under U.S. Constitution and that states must adopt or exceed this minimum when enacting state legislation). We accordingly must construe 24 V.S.A. § 4413(a)(1)(C) strictly to avoid running afoul of RLUIPA. See generally Appeals of Valsangiacomo, Nos. 130-8-03 Vtec, 64-4-04 Vtec (Vt. Env't Ct. Dec. 21, 2004) [<https://perma.cc/8VAW-KDB2>] (recognizing 24 V.S.A. § 4413(a) guides compliance for zoning ordinances with RLUIPA). To allow review of, and require documentation for, a potential future use of a property at the same time as reviewing the present religious use would interfere with the applicant's ability to execute the present religious use and would not be consistent with the statutory purpose.

¶ 17. To hold otherwise would also allow zoning officials to engage in speculation as to future permits needed and would lead to advisory opinions by courts on appeal. "Courts are not authorized to issue advisory opinions because they exceed the constitutional mandate to decide only actual cases and controversies." In re Snowstone LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28, 214 Vt. 587, 256 A.3d 62. Accordingly, we have held that when considering appeals of applications for construction and zoning permits, the court's review is limited to the present intent at the time of the application and does not encompass potential future uses of the property. See, e.g., id. ¶ 29 (holding only issue on appeal regarding permit application is whether applicant properly received permit "and the necessity to seek any other permit was not properly before the court in an appeal of that authorization"); In re Baker, No. 2006-364, 2007 WL 5313379, at *3 (Vt. May 1, 2007) (unpub. mem.) [<https://perma.cc/UD2R-FAPE>] (affirming environmental court's decision declining to review evidence of future development and use of a property as part of a pending subdivision application). Whether a future legal owner might change the intended functional use of the property is immaterial to the current application. See Snowstone, 2021 VT

36, ¶ 29 (noting ruling on future permits an applicant may need, and not the permit on appeal, would be an advisory opinion).

¶ 18. As future potential use of the property is irrelevant to the § 4413(a)(1)(C) analysis, we turn to whether the Trust's intended use at the time of the application was religious in nature. The application sought a permit for the demolition of the Cathedral. The Cathedral had an existing permit as a place of worship and is owned by the Trust, which is a religious organization. It is undisputed that the Roman Catholic Diocese of Burlington initiated procedures under canon law to deconsecrate the Cathedral through demolition. The Trust maintains that this is an ecclesiastical process that is closely related to the underlying use of the property as a church, which we do not challenge here. See Turner v. Roman Cath. Diocese of Burlington, 2009 VT 101, ¶¶ 33-34, 186 Vt. 396, 987 A.2d 960 (holding courts are prohibited from "becoming too closely involved in the internal, ecclesiastical matters of religious institutions" and therefore must abstain from deciding questions rooted in religious doctrine).

¶ 19. Residents argue that the Trust stated in its application for demolition that the Trust intended to take the property "out of liturgical use" and expected the buyer to submit an application for redevelopment. However, the process for taking the property out of liturgical use—deconsecration through demolition—is itself a religious use for which the demolition permit was sought. Moreover, as discussed above, any future use by the buyer was not the intended use at the time of the application. Instead, the intended functional use of the property is to deconsecrate the Cathedral by demolition, which the Trust clearly stated in its permit application. The Trust did not state that it is demolishing the structures on behalf of the future buyer. Instead, as the Trust indicated, the potential buyer would have to submit its own applications for any future development. Any such applications were not before the Board or the trial court in this case.

¶ 20. For the same reason, we reject residents' claim that the court erred in denying their motion to compel discovery of the terms of the purchase and sale agreement for the Trust's

property. Neither the identity of the proposed buyer nor the buyer's potential future uses of the property were relevant to the issue on appeal, which is whether § 4413(a)(1)(C) barred application of the CDO to this permit application. See V.R.C.P. 26(b)(1) (requiring discovery to be "relevant to any party's claim or defense"); Lay v. Pettengill, 2011 VT 127, ¶¶ 39-40, 191 Vt. 141, 38 A.3d 1139 (upholding trial court's discretionary limitation of discovery requests under Rule 26(b)(1) where information sought was irrelevant to issues). Therefore, the court did not abuse its discretion in denying the motion. See Pcolar v. Casella Waste Sys., Inc., 2012 VT 58, ¶ 11, 192 Vt. 343, 59 A.3d 702 (quotation omitted) (explaining that discovery decisions, including decisions that refuse to compel discovery, "are left to the sound discretion of the trial judge").

¶ 21. Applying the CDO to refuse to permit the Trust to demolish the Cathedral would interfere with the Trust's religious deconsecration of the Cathedral, its intended functional use of a place of worship. We therefore conclude that § 4413(a)(1)(C) prohibits the City from applying the CDO to deny the permit to demolish the Cathedral. The environmental court correctly granted summary judgment for the Trust pursuant to § 4413(a)(1)(C) and denied summary judgment for residents.

Affirmed.

FOR THE COURT:


Associate Justice

From: Scott Gustin
Sent: Tuesday, June 3, 2025 8:08 AM
To: meg@donahueassociatesvt.com
Cc: dave@buildingwreckers.com
Subject: 20 Pine St

Good morning, Meg. Some of the trees have been felled at 20 Pine Street. Unsurprisingly, we have already heard about it. The grove of trees is required to remain. Photos are attached.

Scott

Scott Gustin, AICP, CFM
Principal Planner & Zoning Division Manager
Dept. of Permitting & Inspections
645 Pine Street, Burlington, VT
802-865-7189





From: Scott Gustin
Sent: Tuesday, June 3, 2025 10:24 AM
To: meg@donahueassociatesvt.com
Cc: William Ward <wward@burlingtonvt.gov>
Subject: 20 Pine Street - tree follow up

Good morning, Meg.

Bill and I went onsite to 20 Pine Street this morning and met with the couple of guys doing the demo work. We noted the concern about the trees that had been cut and the pertinent zoning requirements. Four trees had been cut, all pretty clearly at or above 10" caliper.

During the zoning application process, the applicants chose to leave the trees in place to avoid permit review under the applicable zoning standards. As a place of worship, even under the limited zoning standards allowed by statute, landscaping can be reviewed and regulated. The resultant zoning approval for the demo includes this condition as to the trees:

2. Upon the representation of the applicant, the grove of trees shall remain after demolition. This is a critical condition of this approval.

Neither the building permit or erosion control approval for this project govern tree removal or retention.

The zoning ordinance establishes the following thresholds for tree cutting and whether a zoning permit is needed:

9. Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period.

At this point, only 4 trees of 10" caliper or more have been cut. If either of these thresholds will be met, a zoning permit, reviewed and approved by the Development Review Board, is required beforehand. The individuals doing the demo work today said additional clearing may be needed. If that is the case, I suggest that a zoning application be filed ASAP. Alternatively, find a way to avoid cutting additional trees in excess of this threshold.

Scott

Scott Gustin, AICP, CFM
Principal Planner & Zoning Division Manager
Dept. of Permitting & Inspections
645 Pine Street, Burlington, VT
802-865-7189

From: Devin Colman <devincolman@mac.com>
Sent: Sunday, September 14, 2025 4:46 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: William Ward <wward@burlingtonvt.gov>
Subject: Re: Permit Violations at 20 Pine Street

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Scott and Bill,

Based on a visit to the 20 Pine Street construction site this afternoon, it's clear they have removed additional trees from the property. It's hard to tell how many from outside the fence, but based on the piles of tree trunks and debris, I'd say at least six, probably more. The attached photos show four distinct piles of tree debris.

Can you please look into this and let me know what you find? Based on our conversation in June, I understand they could remove one more tree and still be within the zoning standard, but anything beyond that would be a permit violation.

Thanks,
Devin









1/9/26, 3:28 PM
0° N

101 Cherry St
Burlington VT 05401



1/9/26, 3:29 PM

50° NE

101 Cherry St
Burlington VT 05401



TRUST'S DRB HEARING EXHIBIT LIST

- 1) U.S. District Court Dismissal Order
- 2) U.S. District Court Entry of Judgment and Appeal Notice
- 3) Environmental Division Appellants' Statement of Questions
- 4) Environmental Division Decision on Cross Motions
- 5) Environmental Division Judgment Order
- 6) City of Burlington Supreme Court Brief Excerpts
- 7) Supreme Court Decision
- 8) Site Plan for 20 Pine Street Storm Water Permit
- 9) 20 Pine Street CCTA 2015 Tree Removal Staff Comments
- 10) 20 Pine Street CCTA 2015 Tree Removal DRB Findings

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
2023 AUG 22 AM 10:16

PRESERVATION BURLINGTON,)
KARYN NORWOOD, LIISA REIMANN,)
and RON WANAMAKER,)

Plaintiffs,)

v.)

CATHEDRAL OF THE IMMACULATE)
CONCEPTION PARISH CHARITABLE)
TRUST and CITY OF BURLINGTON,)

Defendants.)

Case No. 2:23-cv-00039

CLERK
BY LAN
DEPUTY CLERK

OPINION AND ORDER
CONDITIONALLY GRANTING PLAINTIFFS' MOTION TO AMEND AND
GRANTING DEFENDANTS' MOTIONS TO DISMISS,
(Docs. 12, 21, 54)

Plaintiffs Karyn Norwood, Liisa Reimann, and Ron Wanamaker (collectively, “Plaintiffs”)¹ bring this action against Defendants Cathedral of the Immaculate Conception Parish Charitable Trust (the “Trust”) and City of Burlington (the “City”) (collectively, “Defendants”) under 42 U.S.C. § 1983, alleging that 24 V.S.A. § 4413 violates the Establishment Clause of the First Amendment by exempting religious facilities from local zoning requirements with which secular property owners must comply. Plaintiffs seek a declaratory judgment that the religious exemption provision of § 4413 is unconstitutional under the First Amendment² and an order enjoining the Trust

¹ In its April 14, 2023 Order, the court dismissed Preservation Burlington as a plaintiff. (Doc. 55.) On May 18, 2023, the court construed Ron Wanamaker’s unopposed motion to intervene as a motion to amend the Complaint and granted his request to be joined as a plaintiff in this action. (Doc. 70.)

² Pursuant to Fed. R. Civ. P. 5.1 and this court’s order, Plaintiffs served notice of their challenge to § 4413 on the Vermont Attorney General by letter dated March 30, 2023. *See* Fed. R. Civ. P. 5.1(a)(2) (“A party that files a pleading . . . drawing into question the constitutionality of a

from demolishing the former Cathedral of the Immaculate Conception (the “Cathedral”) until certain conditions are met. Plaintiffs are contemporaneously pursuing parallel litigation in state court. *See* Appellants’ Motion for Stay, *In re Cathedral of the Immaculate Conception Par. Charitable Tr., 20 Pine St.*, No. 23-ENV-10 (Vt. Super. Ct. Env’t Div. Mar. 1, 2023).³

Pending before the court are motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) filed by the Trust on February 27, 2023 (Doc. 12) and by the City on March 9, 2023. (Doc. 21.) The Trust responded to the City’s motion on March 10, 2023 (Doc. 24) to oppose the City’s request in the alternative for *Pullman* abstention. After the court held a hearing on the motions on March 30, 2023, Plaintiffs responded to both motions on April 13, 2023. (Doc. 52.) The Trust replied on April 14, 2023 (Doc. 57), and the City replied on May 4, 2023. (Doc. 65.)

On April 13, 2023, Plaintiffs filed a motion to amend their Complaint. (Doc. 54.) The Trust opposed the motion on April 14, 2023 (Doc. 56), and the City opposed it on May 4, 2023. (Doc. 64.) Plaintiffs replied on May 30, 2023. (Doc. 72.)

On August 11, 2023, the Trust moved to stay the filing of a discovery schedule pending the resolution of Defendants’ motions to dismiss (Doc. 79), which the City joined on August 15, 2023. (Doc. 80.) Plaintiffs have not opposed the motion. Their deadline for doing so has not yet expired.

federal or state statute must promptly . . . serve the notice and paper . . . on the state attorney general if a state statute is questioned[.]”). On April 7, 2023, the Vermont Attorney General filed a letter with the court declining to exercise its right to intervene at this time. (Doc. 51.)

³ In reviewing a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the court may consider facts subject to judicial notice, facts alleged in the complaint, “any written instrument attached to [the complaint] as an exhibit[.]” “documents incorporated in [the complaint] by reference[.]” and any documents considered “integral to the complaint.” *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 230 (2d Cir. 2016) (internal quotation marks and citations omitted). The court takes judicial notice of the March 1, 2023 motion for stay filed in the Environmental Division of the Vermont Superior Court to establish Plaintiffs’ parallel litigation in that forum. *See Glob. Network Commc’ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2d Cir. 2006) (“A court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.”) (internal quotation marks omitted).

Ms. Norwood, Ms. Reimann, and Mr. Wanamaker are self-represented. The Trust is represented by John L. Franco, Jr., Esq. The City is represented by Jonathan T. Rose, Esq., and Malachi T. Brennan, Esq.

I. Whether Plaintiffs Should Be Granted Leave to Amend.

Plaintiffs move to amend their Complaint to add factual allegations regarding the initial plans of the Roman Catholic Diocese of Burlington (the “Diocese”) to sell the Cathedral rather than demolish it, the Diocese’s subsequent repair of the Cathedral steps, and the conversion of other former Catholic churches in Vermont to secular use. Defendants oppose Plaintiffs’ motion on the grounds that the proposed amendments are futile.

A plaintiff may only amend his or her complaint “with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). The court “should freely give leave when justice so requires[,]” *id.*, and the Second Circuit has cautioned that “[a] *pro se* complaint should not be dismissed without the [c]ourt granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014) (internal quotation marks omitted) (quoting *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010)). However, “[l]eave may be denied ‘for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party.’” *TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014) (quoting *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007)). The court finds no bad faith or undue delay. It also finds no undue prejudice.

“[T]he standard for denying leave to amend based on futility is the same as the standard for granting a motion to dismiss.” *IBEW Loc. Union No. 58 Pension Tr. Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC*, 783 F.3d 383, 389 (2d Cir. 2015). Amendment is futile where there is a substantive problem with a cause of action that cannot be cured by better pleading. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000).

Defendants’ motions to dismiss turn on the adequacy of Plaintiffs’ allegations

regarding their standing to bring their Establishment Clause challenge to the constitutionality of 24 V.S.A. § 4413, a Vermont state statute limiting municipal discretion in zoning decisions.⁴ Plaintiffs' proposed additional allegations regarding the intended, actual, or possible uses of the Cathedral are not material to the resolution of that challenge and thus are arguably futile but, by the same token, cause no prejudice to Defendants.

In light of Plaintiffs' self-represented status and because they have not previously sought leave to amend, the court conditionally GRANTS Plaintiffs' motion to amend their Complaint. It will decide the pending motions to dismiss and the issue of futility in the context of the Amended Complaint ("AC"). *See* Fed. R. Civ. P. 1.; *see also Alice Peck Day Mem'l Hosp. v. Samuelson*, 2023 WL 4157434, at *1 (D. Vt. June 23, 2023) ("While the motions to dismiss were pending, [p]laintiffs moved to amend their Complaint[.] . . . This court granted [p]laintiffs' motion . . . stating that it would consider the pending motions to dismiss in light of Plaintiffs' [First Amended Complaint]."); *Wolfe v. Enochian BioSciences Denmark ApS*, 2022 WL 656747, at *2 (D. Vt. March 3, 2022) ("In order to further the just, speedy, and inexpensive determination of this

⁴ 24 V.S.A. § 4413 provides in relevant part:

(a)(1) The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- (A) State- or community-owned and operated institutions and facilities;
- (B) public and private schools and other educational institutions certified by the Agency of Education;
- (C) churches and other places of worship, convents, and parish houses;
- (D) public and private hospitals;
- (E) regional solid waste management facilities certified under 10 V.S.A. chapter 159;
- (F) hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

action, . . . the court GRANTS [p]laintiffs’ motion to amend and will consider Defendants’ motions to dismiss in light of the Amended Complaint.”).

II. Allegations in the AC.

Ms. Norwood is a Burlington resident who serves on Preservation Burlington’s board of directors. Ms. Reimann is a Burlington resident. The Trust is the owner of the Cathedral property, which is located at 20 Pine Street in Burlington, Vermont.

Plaintiffs allege that the Cathedral was designed by prominent World War II-era architects and completed in 1976. As “the premier example of modern architecture in the City of Burlington[,]” the Cathedral and its landscape architecture “have been acclaimed by both national publications and noted contemporary architects.” (Doc. 1 at 3, ¶¶ 9-10.)

The Burlington Development Review Board (“DRB”) has acknowledged that the Cathedral “is a significant property within the city’s downtown.” *Id.* ¶ 11 (internal quotation marks omitted). In 2012, the City recommended the Cathedral be listed in the National Register of Historic Places. In 2013, the Vermont Division for Historic Preservation, the Vermont Agency of Transportation, and the Federal Transit Administration found the Cathedral to be eligible for the State and National Registers of Historic Places. The Cathedral allegedly satisfies the National Register’s requirements for buildings that are less than fifty years old because it has “exceptional importance.” *Id.* ¶ 11 (internal quotation marks omitted). The DRB has nonetheless found that the Cathedral is not a “historic building” under its zoning regulations. Doc. 1-1 at 3.

The Cathedral was used for worship services from 1976 to 2018. On October 9, 2018, the Diocese announced that the Cathedral would be sold. At the time, the Diocese did not plan to demolish the building. Bishop Christopher Coyne allegedly stated that “the property could be converted to commercial or residential use, or both.” (Doc. 54-1 at 3, ¶ 12) (internal quotation marks omitted). The real estate listing for the Cathedral advertised “the opportunity to continue to utilize the existing building or develop a project that suits the Burlington market and landscape.” *Id.* (internal quotation marks omitted). After announcing the sale of the Cathedral, the Diocese allegedly spent \$600,000 repairing or replacing its steps.

On December 8, 2018, the final Mass in the Cathedral was held and the Cathedral was formally decommissioned as a place of worship. Its altar, tabernacle lamp, and part of the confessional have been removed. The building was fenced off and vacant for the four years preceding the filing of this action.

Plaintiffs allege that at least four other former Catholic churches in the Vermont Diocese have been converted to secular use. These churches include St. Margaret Mary Church in Arlington, Vermont, which is now a community-based arts and wellness center; St. John the Apostle in Johnson, Vermont, which is now a community and recovery center; Our Lady of Lourdes in Pownal, Vermont, which was sold to a private owner for use as a workshop and residence; and St. Sylvester Church in Graniteville, Vermont, which was sold to a private owner for use as a martial arts workshop and residence.

On or about October 27, 2022, the Trust applied for a zoning permit to demolish the Cathedral. The DRB held hearings regarding the Trust's demolition application on December 20, 2022 and January 11, 2023. Plaintiffs allege that although the Trust informed the DRB that it had no planned use for the property after the Cathedral's demolition, "the property is under contract to be sold to CityPlace Partners once the former cathedral is demolished." *Id.* at 4, ¶ 15. CityPlace Partners allegedly intends to use the property as a "staging area" for an adjacent project. *Id.*

On December 13, 2022, the Burlington Department of Permitting and Inspections issued an internal memorandum stating that 24 V.S.A. § 4413 prevented the Trust's zoning request from being reviewed under Article 14 of the Burlington Comprehensive Development Ordinance ("CDO"). Article 14 allegedly requires projects in downtown Burlington to comply with the City's municipal plan but allows the DRB to grant alternative modes of compliance when conformity is not possible or desirable.⁵

⁵ In light of the Complaint's references to the CDO's provisions, the court treats the CDO as incorporated by reference in the Complaint. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002) ("For purposes of . . . [R]ule [12(b)], the complaint is deemed to include any

After holding hearings on the Trust's zoning request on December 20, 2022 and January 11, 2023, the DRB issued a decision on January 17, 2023 granting the Trust's demolition permit. The decision stated that the CDO's standards for reviewing changes to historic buildings did not apply to the Cathedral as it was less than fifty years old. *See* Doc. 1-1 at 3 (“[E]ven if 24 V.S.A. § 4413 did not apply, the provision of 5.4.8 do not as the building does not qualify as a historic building under Article 5. It is not yet fifty years old. These findings reflect the input of the City Attorney.”). It further stated that the limitations that § 4413 imposes on municipal review of “churches and other places of worship, convents, and parish houses” “substantially limit[ed]” the DRB’s application of Article 14’s review standards. *Id.* at 2.⁶ Plaintiffs’ requested injunction would prevent the

written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference.”). Article 14 of the CDO provides in relevant part:

14.7.3 - Variation from the Form: Administrative Relief, DRB Alternative Compliance, and Variances

The planBTV Downtown Code is intended to result in By-Right approval where development occurs strictly in conformance with the requirements of the applicable Form District. In some instances, however, it may be necessary to vary the prescribed form in order to accommodate unique site and/ or building circumstances in order to promote context-sensitive development. In such instances, an applicant may seek Administrative or Development Review Board approval for relief from the requirements as set forth below.

City of Burlington, Article 14: PlanBTV Downtown Code (2021), https://www.burlingtonvt.gov/sites/default/files/Art14planBTVDowntownCode_20221003.pdf (last accessed August 21, 2023) (emphasis in original).

⁶ The DRB’s decision further explained its determination as follows:

Demolition is not expressly enabled or prohibited by Article 14. Demolition alone is not addressed at all. Even under the statutory limitations of 4413, form code standards as to building bulk, height, setbacks, etc. apply; however, in this case, the end result lacks anything to comply. A currently developed site is being converted to an entirely undeveloped site with no use at all.

The act of demolition requires a zoning permit. The proposed work does not comply with the standards of Article 14 and, therefore, requires review under Alternative Compliance. The review criteria of Alternative Compliance are substantially limited by 24 V.S.A. §4413, and the complete demolition of the building and all site improvements leaves nothing to comply.

(Doc. 1-1 at 4-5.)

Trust from demolishing the Cathedral and its landscape “unless and until the Burlington DRB issues a demolition permit following a determination that the demolition complies with Article 14[.]” (Doc. 1 at 5.)

III. Conclusions of Law and Analysis.

A. Standards of Review.

“A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it.” *Nike, Inc. v. Already, LLC*, 663 F.3d 89, 94 (2d Cir. 2011) (internal quotation marks omitted), *aff’d*, 568 U.S. 85 (2013). “‘The party invoking federal jurisdiction bears the burden of establishing’ that jurisdiction exists.” *Sharkey v. Quarantillo*, 541 F.3d 75, 82-83 (2d Cir. 2008) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), “the district court must take all uncontroverted facts in the complaint . . . as true, and draw all reasonable inferences in favor of the party asserting jurisdiction.” *Fountain v. Karim*, 838 F.3d 129, 134 (2d Cir. 2016) (internal alteration, citation, and quotation marks omitted).

To survive a motion to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plaintiffs must allege sufficient facts to “nudge[] their claims across the line from conceivable to plausible[.]” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

The sufficiency of a complaint under Rule 12(b)(6) is evaluated using a “two-pronged approach[.]” *Hayden v. Paterson*, 594 F.3d 150, 161 (2d Cir. 2010) (internal quotation marks omitted) (quoting *Iqbal*, 556 U.S. at 679). First, the court discounts legal conclusions and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements[.]” *Iqbal*, 556 U.S. at 678. The court is also

“not bound to accept as true a legal conclusion couched as a factual allegation[.]” *Id.* (internal quotation marks and citation omitted). Second, the court considers whether the factual allegations, taken as true, “plausibly give rise to an entitlement to relief.” *Id.* at 679. This second step is fact-bound and context-specific, requiring the court “to draw on its judicial experience and common sense.” *Id.* The court does not “weigh the evidence” or “evaluate the likelihood” that a plaintiff will prevail. *Christiansen v. Omnicom Grp., Inc.*, 852 F.3d 195, 201 (2d Cir. 2017).

Although Defendants cite additional materials in support of their motion to dismiss, those materials may only be considered for purposes of their subject matter jurisdiction challenge. *See Morrison v. Nat’l Australia Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008), *aff’d*, 561 U.S. 247 (2010) (“In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) a district court may consider evidence outside the pleadings.”). They cannot be considered in terms of whether the AC states a claim for which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6); *see also M.E.S., Inc. v. Snell*, 712 F.3d 666, 671 (2d Cir. 2013) (explaining that the court cannot consider “non-conclusory, non-hearsay statements outside the pleadings . . . under Rule 12(b)(6) unless they are incorporated within or integral to the complaint”).

B. Whether the Court Has Subject Matter Jurisdiction Over Plaintiffs’ Establishment Clause Claim.

Defendants seeks dismissal of the pending action under Fed. R. Civ. P. 12(b)(1) for lack of standing, arguing that Plaintiffs fail to satisfy the prudential standing requirements necessary to bring an Establishment Clause claim. Defendants also contend that Plaintiffs lack constitutional standing.

“Standing is a federal jurisdictional question ‘determining the power of the court to entertain the suit.’” *Carver v. City of N.Y.*, 621 F.3d 221, 225 (2d Cir. 2010) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Article III of the United States Constitution limits the jurisdiction of federal courts to “Cases” or “Controversies.” U.S. Const. art. III, § 2, cl. 1. “One element of the case-or-controversy requirement is that plaintiffs must establish that they have standing to sue.” *Keepers, Inc. v. City of Milford*,

807 F.3d 24, 38 (2d Cir. 2015) (internal quotation marks omitted).

To establish the “irreducible constitutional minimum of standing[.]” a plaintiff must demonstrate three elements: (1) that he or she has “suffered an injury in fact,” (2) which is “fairly traceable to the challenged action of the defendant,” and (3) which is “likely . . . [to] be redressed by a favorable decision.” *Lujan*, 504 U.S. at 560-61 (internal quotation marks, alterations, and footnote omitted). “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss [the court] presume[s] that general allegations embrace those specific facts that are necessary to support the claim.” *Id.* at 561 (alteration adopted) (internal quotation marks omitted).

“In addition to these core constitutional requirements, litigants must also satisfy ‘prudential standing,’ which embodies judicially self-imposed limits on the exercise of federal jurisdiction.” *Keepers, Inc.*, 807 F.3d at 39 (internal quotation marks omitted). The Second Circuit has explained that “because Establishment Clause injuries, by their nature, can be ‘particularly elusive[.]’” courts apply prudential standing principles to limit the class of litigants entitled to bring an Establishment Clause claim to parties that satisfy at least one of “three distinct theories of standing”: “(1) taxpayer, (2) direct harm, and (3) denial of benefits.” *Montesa v. Schwartz*, 836 F.3d 176, 195-96 (2d Cir. 2016) (observing that “[t]hese three theories evolved out of the unique context in which plaintiffs bring Establishment Clause claims”). “The party invoking federal jurisdiction bears the burden of establishing prudential and constitutional standing[.]” *Keepers, Inc.*, 807 F.3d at 39 (internal quotation marks omitted).

1. Whether Plaintiff Must Satisfy Prudential Standing.

As a threshold matter, Plaintiffs argue that prudential standing requirements are “not really standing requirements at all” and instead “go to the merits” of Defendants’ Rule 12(b)(6) arguments. (Doc. 72 at 1.) They contend that, at the jurisdictional stage, they need not establish their claim falls within one of the standing theories identified by the Second Circuit in *Montesa v. Schwartz*. This argument is without merit. Plaintiffs’ Establishment Clause claim is the sole claim pending before the court and Plaintiffs must

have both constitutional standing and prudential standing to allege it. Because constitutional standing at the pleading stage is relatively easily established, the court addresses prudential standing first.

The Second Circuit has recognized three types of standing for a party pursuing an Establishment Clause claim, which “developed in response to the concerns that gave rise to [the court’s] prudential standing jurisprudence[] and . . . have evolved to allow only particular types of Establishment Clause injuries to be adjudicated.” *Montesa*, 836 F.3d at 196. Courts in the Second Circuit address whether a plaintiff has plausibly alleged standing pursuant to one of these theories as part of a threshold jurisdictional analysis, not an inquiry into the merits.⁷ For their claim to survive Defendants’ Rule 12(b)(1) motions to dismiss, Plaintiffs must therefore plausibly allege standing to bring an Establishment Clause claim under one of the three types of standing: “taxpayer,” “direct harm,” or “denial of benefits.” *Id.* at 195-96.

2. Whether Plaintiffs Plausibly Allege Direct Harm or Direct Exposure Standing.

Plaintiffs contend that they have sufficiently alleged that they have standing under a direct harm or direct exposure theory, although they maintain that the Second Circuit’s decision in *Montesa v. Schwartz* “offers little guidance” (Doc. 72 at 10) because its facts are “not on point[,]” *id.* at 6, and its statement of the law is “dicta” and thus “[n]ot [p]ersuasive [a]uthority.” *Id.* at 9. *Montesa*, however, remains controlling precedent.

For the purposes of their direct exposure argument, Plaintiffs allege that they have suffered a “procedural injury” due to the City’s refusal to apply zoning requirements that

⁷ See, e.g., *Urso v. Mohammed*, 2023 WL 2456702, at *13 (D. Conn. Mar. 10, 2023) (citing *Montesa*, 836 F.3d at 195, 197, and granting summary judgment for defendant where plaintiff could not establish direct harm theory of standing under the Establishment Clause); *Citizens United to Protect Our Neighborhoods v. Vill. of Chestnut Ridge, New York*, 2022 WL 4647821, at *7-8 (S.D.N.Y. Sept. 30, 2022) (finding plaintiffs failed to establish taxpayer, direct harm, or denial of benefits standing required to bring an Establishment Clause claim and dismissing for lack of subject matter jurisdiction); *King v. New York by Hochul*, 2021 WL 765724, at *4 (N.D.N.Y. Feb. 26, 2021), *aff’d*, 2022 WL 1451446 (2d Cir. 2022) (holding plaintiff bringing Establishment Clause claim lacked standing because she did not suffer direct harm).

would apply to secular property owners and contend they will experience an “aesthetic injury” if the Cathedral, as an architecturally significant building, is demolished. *Id.* at 3. Plaintiffs allege that they will be “directly exposed” and “directly affected” by this harm because they reside in the community where the alleged injuries have occurred or will imminently occur and “regularly see and pass by” the Cathedral. *Id.* at 11 (internal quotation marks omitted). While these allegations may suffice for a claim brought under environmental laws, they do not provide standing for an Establishment Clause claim.

To establish standing under a direct exposure theory, a plaintiff may show either that he or she is (1) “personally constrained or otherwise subject to control under a governmental policy, regulation, or statute grounded in a ‘religious’ tenet or principle” (“religious law” cases), or (2) “personally confronted with a government-sponsored religious expression that directly touches the plaintiff’s religious or non-religious sensibilities” (“expression” cases). *Montesa*, 836 F.3d at 197. “In both situations, it is a plaintiff’s interaction with or exposure to the religious object of the challenged governmental action that gives rise to the injury.” *Id.* Because a plaintiff’s injury in an “expression” case “is often elusive, the connection between the plaintiff and the challenged action—i.e. the ‘exposure’—must be direct and immediate in order to satisfy the requirement that the plaintiff have a ‘direct and personal stake in the controversy.’” *Id.* (quoting *Sullivan v. Syracuse Hous. Auth.*, 962 F.2d 1101, 1107 (2d Cir. 1992)).

Plaintiffs claim that the City, constrained by § 4413 in its municipal zoning review of churches, improperly issued a permit allowing the Cathedral’s demolition to proceed. This, however, fails to accurately characterize the City’s decision. First, the City determined that the Cathedral was not a “historic” building. Plaintiffs do not contest this determination, although they contend the Cathedral is otherwise historically and architecturally significant. Second, the City relied on a neutral statute that exempts a number of uses whether they are secular or not. At best, Plaintiffs allege that the City took into consideration the Cathedral’s religious nature when it should not have. They do not plausibly allege this was a “government-promoted expression of religion.” *Id.*

The fact that Plaintiffs “have focused their concerns on their own backyards” is

also not enough to establish direct exposure where they are neither abutters nor will be affected differently than any other resident by the DRB's decision. *Southside Fair Hous. Comm. v. City of New York*, 928 F.2d 1336, 1342 (2d Cir. 1991) (finding plaintiffs who challenged city's sale of land to Hasidic congregation had standing to bring Establishment Clause challenge because they alleged sale would displace them from neighborhood); *see also Sullivan v. Syracuse Hous. Auth.*, 962 F.2d at 1108 (finding standing where plaintiff was deprived of the use and enjoyment of his public housing facilities due to use by a Christian non-profit). To the extent that Plaintiffs claim that, if the Cathedral is demolished, they will be exposed to a government preference for religion, this does not constitute personal exposure to religious expression itself. *Compare Citizens United to Protect Our Neighborhoods v. Vill. of Chestnut Ridge, New York*, 2022 WL 4647821, at *8 (S.D.N.Y. Sept. 30, 2022) (holding that a zoning amendment permitting "expanded religious use of certain places" and construction of new places of worship did not "amount to direct exposures to religious expressions"), *with Cooper v. U.S. Postal Serv.*, 577 F.3d 479, 491 (2d Cir. 2009) (holding "direct contact with religious displays" in postal facility conferred standing).

Participation of a religious organization in a zoning dispute does not automatically give rise to an injury grounded in religious activity. *See Gagliardi v. City of Boca Raton*, 2017 WL 5239570, at *8 (S.D. Fla. Mar. 28, 2017) ("[Plaintiffs' alleged] injuries bear the clear hallmarks of a zoning dispute that incidentally involves a religious organization rather than a dispute about Government support of religious activity."). Plaintiffs' alleged harm, deprivation of their aesthetic interest in the Cathedral, is thus an indirect effect that is "too far removed, too attenuated" from the allegedly unconstitutional restriction on municipal zoning review to confer standing. *See Montesa*, 836 F.3d at 189-99 (declining to find standing based on a direct exposure theory where students alleged that they were "deprived of educational services because public funds, which otherwise would have been available to them, were diverted to" religious institutions).

Plaintiffs contend that *Montesa* takes too narrow a view of standing in Establishment Clause cases. Even under the more expansive view endorsed by the dissent

in that case, however, they fail to allege that the City’s zoning review practice cause them more than an “‘indefinite’ injury indistinguishable from that suffered by the public at large[.]” *Id.* at 203 (Reiss, J., dissenting) (citing *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 72 (2d Cir. 2001)); *see also Altman*, 245 F.3d at 72 (“[T]he party who invokes the power must be able to show, not only that the [practice] is invalid but that he has sustained or is immediately in danger of sustaining *some direct injury* as a result of its enforcement, and not merely that he suffers in some indefinite way *in common with people generally.*”) (quoting *Doremus v. Bd. of Educ. of Borough of Hawthorne*, 342 U.S. 429, 434 (1952)) (emphasis supplied) (internal quotation marks omitted).

3. Whether Plaintiffs Plausibly Allege Taxpayer or Denial of Benefits Standing.

Plaintiffs also do not assert that they have taxpayer or denial of benefits standing. Their allegations would fare no better under either of those theories. Although taxpayers generally lack standing to challenge government action on the basis of their taxpayer status, “[i]n *Flast v. Cohen*, 392 U.S. 83 (1968), the Supreme Court recognized an exception to that rule and permitted a taxpayer to bring an Establishment Clause action when there is a logical link between his status as a taxpayer and the type of legislative enactment attacked as well as a nexus between that status and the precise nature of the constitutional infringement alleged.” *Citizens United to Protect Our Neighborhoods*, 2022 WL 4647821, at *7 (alterations adopted) (internal quotation marks omitted). The Second Circuit “presume[s] a municipal taxpayer’s relationship to the municipality is ‘direct and immediate’ such that the taxpayer suffers concrete injury whenever the challenged activity involves a measurable appropriation or loss of revenue[.]” *Altman*, 245 F.3d at 73 (quoting *United States v. City of New York*, 972 F.2d 464, 466 (2d Cir. 1992)) (internal quotation marks omitted). Plaintiffs allege that they are Burlington residents, but not that they are municipal taxpayers. They do not allege any “measurable appropriation or loss of revenue attributable” to the City’s challenged zoning practices. *Id.* at 74. Accordingly, they have not plausibly alleged taxpayer standing.

Under a denial of benefits theory, plaintiffs in an Establishment Clause case “may

demonstrate standing on the ground that they have incurred a cost or been denied a benefit on account of their religion.” *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 130 (2011). Plaintiffs do not allege they have personally incurred any costs or have been denied any benefits on account of their religion. *See Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 465 (1982) (holding that “the psychological consequence presumably produced by observation of conduct with which one disagrees . . . is not injury sufficient to confer standing under Art. III”).

Because Plaintiffs fail to plausibly allege the prudential standing requirements necessary to bring an Establishment Clause claim in federal court, the court lacks subject matter jurisdiction over their claim even if Plaintiffs could establish constitutional standing. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (“[S]ubject-matter jurisdiction . . . involves a court’s power to hear a case[.] . . . [W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.”); *In re U.S. Cath. Conf. (USCC)*, 885 F.2d 1020, 1023 (2d Cir. 1989) (“[W]hen a plaintiff lacks standing to bring suit, a court has no subject matter jurisdiction over the case.”). Pursuant to Fed. R. Civ. P. 12(b)(1), Defendants’ motions to dismiss are GRANTED.

C. Whether *Pullman* Abstention is Appropriate.

The City argues in the alternative that, if the court does not dismiss Plaintiffs’ claim under Rule 12(b)(1) or 12(b)(6), it should abstain from deciding this case while Plaintiffs’ parallel state court case is pending pursuant to the abstention doctrine articulated in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). Plaintiffs agree that *Pullman* abstention is appropriate and assert that “the case should be stayed pending a final state court decision, with an Order in place to preserve the status quo until the case is resolved.” (Doc. 41 at 2.)

Under the *Pullman* abstention doctrine, “federal courts should abstain from decision when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided.” *Hawaii Hous. Auth. v.*

Midkiff, 467 U.S. 229, 236 (1984). The City contends that the pending state court litigation raises unsettled issues of state law, including whether the Cathedral is a church or place of worship under § 4413 and whether § 4413 precludes the DRB from considering whether the Cathedral's demolition complies with Article 14 of the CDO.

"The doctrine of abstention . . . is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy *properly before it*." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976) (emphasis supplied) (internal quotation marks omitted). Because the court lacks subject matter jurisdiction over Plaintiffs' claim, it cannot abstain from exercising jurisdiction it does not have. In such circumstances, *Pullman* abstention does not provide an alternative ground for a stay or dismissal.

D. Whether to Stay the Filing of a Discovery Schedule.

Because Defendants are entitled to dismissal of the AC, the parties are no longer required to file a discovery schedule and no grounds for a stay exist. Whether to stay the filing of a discovery schedule is thus moot.

CONCLUSION

For the foregoing reasons, the court CONDITIONALLY GRANTS Plaintiffs' motion to amend their Complaint (Doc. 54) and GRANTS Defendants' motions to dismiss. (Docs. 12, 21.) The court does not address *sua sponte* whether Plaintiffs may seek leave to amend their Complaint a second time. Plaintiffs have been granted leave to amend their Complaint once and have not requested leave to do so again.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 22nd day of August, 2023.


Christina Reiss, District Judge
United States District Court

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF VERMONT
FEDERAL BUILDING
BURLINGTON, VERMONT 05402-0945

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JEFFREY S. EATON
CLERK

Civil Action: 2:23-cv-39

Date: August 28, 2023

Preservation Burlington et al v. Cathedral of the Immaculate Conception Parish Charitable Trust et al

NOTICE TO LITIGANTS

If you wish to appeal the enclosed judgment or order, you must file a Notice of Appeal within 30 days after entry of the judgment or order appealed from (or 60 days if the United States or an officer or agency of the United States is a party). Fed. R. App. P. 4(a)(1). The fee for filing an appeal is \$505.00.

If you wish to appeal but are unable to file your Notice of Appeal within 30 days [or 60 days if applicable] after the date of entry shown on line 2 below, then you have an additional 30 days to file a Motion for Extension of Time. The Motion for Extension of Time **must** be filed within 30 days after the date on line 3 below. Every Motion for Extension of Time must contain an explanation which demonstrates “good cause” or “excusable neglect” for failure to file the Notice of Appeal within the time limit required. Fed. R. App. P. 4(a)(5).

PLEASE TAKE NOTICE

- | | |
|---|---------------------------|
| 1. Judgment filed | <u>August 28, 2023</u> |
| 2. Date of Entry of Judgment on
the docket of this court | <u>August 28, 2023</u> |
| 3. Notice of Appeal MUST be
filed on or before | <u>September 27, 2023</u> |

/s/ Lisa Wright
Signature of Clerk or Deputy Clerk

STATE OF VERMONT
CHITTENDEN COUNTY

MAR 01 2023
VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

SUPERIOR COURT
ENVIRONMENTAL DIVISION

CIVIL NO. 23-ENV-10

IN RE: CATHEDRAL OF THE IMMACULATE PARISH
CHARITABLE TRUST, 20 PINE STREET

APPELLANTS' STATEMENT OF QUESTIONS

Appellants Ron Wanamaker, et al., raise the following questions on appeal:

1. Whether a vacant structure which is not being used for religious purposes, has not been used for a religious purpose (or any other purpose) for more than four years, and is not going to be used for religious purposes in the future, nevertheless qualifies for the zoning exemption under 24 V.S.A. § 4413?

2. Whether, assuming *arguendo* that 24 V.S.A. § 4413 does apply, it precludes the Burlington DRB from considering whether the proposed demolition complies with Article 14 of the Burlington CDO and the CDO's "alternative compliance" standards?

Dated: February 23, 2023
Burlington, Vermont

APPELLANTS



Ron Wanamaker, Spokesperson
Karyn Norwood
Matt Shoen
Amy Menten
Peg Menten
Jack Menten
Liisa Reimann
Carolyn Bates

Jen Colman
Mannie Lionni
Pauline Kehoe
Bob Devino

Cc: Cathedral of the Immaculate Parish Charitable Trust, 20 Pine Street
City of Burlington

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 23-ENV-00010

Cathedral of the Immaculate Parish Charitable Trust Appeal

DECISION ON CROSS-MOTIONS

Motion for Summary Judgment (Motion #10)

Filer: John L. Franco, Attorney for Applicant/Appellee Cathedral of the Immaculate Parish Charitable Trust

Filed Date: August 28, 2023

Memorandum in Opposition, filed on October 5, 2023, by Christopher Boyle, Attorney for Appellants.

Memorandum of Law in Support of Applicant's SJ Motion, filed on October 6, 2023, by Jonathan T. Rose, Attorney for the City of Burlington.

Reply to Memorandum in Opposition, filed by Attorney John Franco, on October 8, 2023.

Supplemental Memorandum of Law, filed by Attorney John Franco, on December 19, 2023.

Supplemental Memorandum of Law, filed on January 18, 2024, by Malachi T. Brennan, Attorney for the City of Burlington.

.....
Cross Motion for Summary Judgment (Motion #15)

Filer: Christopher Boyle, Attorney for Appellants

Filed Date: January 16, 2024

Memorandum in Opposition, filed by Attorney John Franco, on January 25, 2024.

Applicant/Appellee's motion is GRANTED; Appellants' motion is DENIED.

This is an appeal of a City of Burlington Development Review Board ("DRB") decision dated January 17, 2023 granting the Cathedral of the Immaculate Conception Parish Charitable Trust's ("Trust") application to demolish an existing church building located at 20 Pine Street, Burlington, Vermont (the "Property"). Appellants are a group of Burlington residents—Carolyn Bates, Robert Devino, Pauline Kehoe, Amy Menten, Jack Menten, Margaret Menten, Karyn Norwood, Liisa Reimann, Matthew Shoen, and Ronald Wanamaker (together, "Appellants")—who oppose the

proposed demolition and appealed the DRB's decision to this Court. Presently before the Court are the parties' cross motions for summary judgment.

The parties agree that this appeal can be decided on motions as a matter of law. The sole issue before the Court is whether the zoning limitations of 24 V.S.A. § 4413 apply to the Trust's application for a demolition permit, and if so, whether those limitations preclude review under Article 14, the Plan BTV Downtown Code, of the Burlington Comprehensive Development Ordinance ("CDO").¹ On December 14, 2023, this Court issued an entry order requesting that the parties submit supplemental memoranda regarding the application of 24 V.S.A. § 4413. Cathedral of the Immaculate Parish Charitable Trust Appeal, No. 23-ENV-00010 (Vt. Super. Ct. Env'tl. Div. Dec. 14, 2023) (Durkin, J.). To date, all parties have responded to the Court's request.²

Appellants are represented by Attorneys Christopher Boyle and David Grayck. The Trust is represented by Attorney John Franco. The City of Burlington is represented by Attorney Malachi Brennan.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party

¹ The Trust maintains that the Court need not address this threshold issue. According to the Trust, even if the provisions of § 4413 do not apply and there are no zoning limitations for the Property, because the church on the Property is less than fifty years old, the historic preservation criteria of the CDO (Art. 5 § 5.4.8) do not apply. In response, Appellants and the City of Burlington point to another section of the CDO, Article 14, which regulates development in the Downtown District. The Trust argues that the term "development," as used in Article 14, applies only to new construction such that the Property's existing improvements, and demolition thereof, are not regulated under Article 14. As discussed in a previous Entry Order, this Court concluded that the Property is otherwise subject to the standards in Article 14 unless the zoning limitations in 24 V.S.A. § 4413 apply. See Cathedral of the Immaculate Parish Charitable Trust Appeal, No. 23-ENV-00010 (Vt. Super. Ct. Env'tl. Div. Dec. 14, 2023) (Durkin, J.) (explaining that the term "development" as used in Article 14 includes demolition). Thus, we conclude that the Court must address this issue prior to addressing any other issue before the Court, because the Court's conclusions thereon could eliminate the remaining issues before the Court.

² The procedural history of these cross motions is unique. The Trust filed their initial motion for summary judgment on August 28, 2023. This motion only addressed the less than 50-year-old building exemption, rather than the application of 24 V.S.A. § 4413. Shortly thereafter, Appellants requested a discovery schedule and extended deadlines to respond to the Trust's motion. The Court granted Appellants' request. See Cathedral of Immaculate Parish Charitable Trust Appeal, No. 23-ENV-10 (Vt. Super Ct. Env'tl. Div. Oct. 3, 2023) (Durkin, J.). Shortly before the close of discovery, the Trust moved to stay the discovery deadlines until after the Court ruled on its pending motion for summary judgment. The Court granted that request, took the motion under advisement, and later lifted the stay so that the parties could complete discovery and respond to the Court's request for supplemental filings on the applicability of 24 V.S.A. § 4413. See Cathedral of Immaculate Parish Charitable Trust Appeal, No. 23-ENV-10 (Vt. Super. Ct. Env'tl. Div. Dec. 14, 2023) (Durkin, J.). This explains the five-month gap between cross-motions.

the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Commc'ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332. In determining whether there is any dispute over a material fact, “we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material.” White v. Quechee Lakes Landowners' Ass'n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A). We now address the pending motions with these procedural directives in mind.

Undisputed Material Facts

We recite the following factual background and procedural history, which we understand to be undisputed unless otherwise noted, based on the record now before us and for the purpose of deciding the pending pre-trial motions. The following are not specific factual findings relevant outside the scope of this decision on the pending motions. See Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (citing Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.)).

1. The Cathedral of the Immaculate Conception Parish Charitable Trust (previously defined as the “Trust”) currently owns the property located at 20 Pine Street in Burlington, Vermont (previously defined as the “Property”).

2. The former Cathedral of the Immaculate Conception (the “Cathedral”), a church located on the Property, was destroyed by arson on March 14, 1972. Trust’s Ex. 2 to Motion for Summary Judgment at 4.

3. The new Cathedral was granted a zoning permit in 1975, and construction was completed in 1977. Trust’s Ex. 3 to Motion for Summary Judgment at 3.

4. In May 2018, the Roman Catholic Diocese of Burlington initiated procedures under the Canon Law of the Roman Catholic Church to deconsecrate and demolish the Cathedral.³ Trust’s Ex. 5 to Supplemental Statement of Material Facts, filed Dec. 19, 2023.

5. Following these procedures, the Trust obtained approval to deconsecrate the Cathedral on September 5, 2022.

6. On October 27, 2022, the Trust applied for a demolition permit for the 20 Pine Street Property.

³ Pursuant to the ecclesiastical abstention doctrine, this Court does not have the authority to question the ecclesiastical decisions discussed herein. See Turner v. Roman Catholic Diocese of Burlington, Vermont, 2009 VT 101, ¶ 33, 186 Vt. 396 (explaining that courts are barred from “becoming too closely involved in the internal, ecclesiastical matters of religious institutions”). It is, however, undisputed that the Roman Catholic Diocese of Burlington undertook such actions. Further, the Court uses these undisputed facts to determine whether the intended functional use of the Property is as a church or place of worship as contemplated by 24 V.S.A. § 4413(a)(1)(C).

7. The Trust's application sought approval for the following: demolition and removal of the existing church building, bell tower, parking lot, and impervious pathways; filling the building's foundation; grading and seeding the grounds; and retention of the existing planned landscape with trees and lawn. Trust's Ex. 6 to Supplemental Statement of Material Facts at 2, filed Dec. 19, 2023.

8. The Trust's application did not, and does not, include plans to redevelop the Property. Id.

9. The Trust has represented that demolition is one of the ways that it can complete deconsecrating the Property. Trust's Ex. AEX2 to Supplemental Statement of Material Facts at 2, filed Dec. 19, 2023.

10. The Trust has, before the DRB and before this Court, indicated that it was contemplating a sale of the Property, but until the Property was cleared and a subsequent transaction fully executed, it intended to continue maintaining and using the Property. Id.

11. Sometime after filing the demolition permit application, the Trust entered into a purchase and sale agreement for the Property with a non-religious entity. Appellants' Ex. F to Cross-Motion for Summary Judgment at 2-3, filed January 17, 2024.

12. On January 11, 2023, the DRB approved the application and applied § 4413 to the Property. Appellants' Ex. H to Cross-Motion for Summary Judgment at 6, filed January 17, 2024.

13. Appellants filed a timely appeal of that decision to this Court.

Statement of Questions

In the Environmental Division, the Statement of Questions provides notice to other parties and this Court of the issues to be determined within the case and limits the scope of the appeal. In re Conlon CU Permit, No. 2-1-12 Vtec, slip op. at 1 (Vt. Super. Ct. Env'tl. Div. Aug. 30, 2012) (Durkin, J.). As filed, Appellants' Statement of Questions presents the following questions for the Court's review:

1. Whether a vacant structure which is not being used for religious purposes, has not been used for a religious purpose (or any other purpose) for more than four years, and is not going to be used for religious purposes in the future, nevertheless qualifies for the zoning exemption under 24 V.S.A. § 4413?
2. Whether, assuming arguendo that 24 V.S.A. § 4413 does apply, it precludes the Burlington DRB from considering whether the proposed demolition complies with Article 14 of the Burlington CDO and the CDO'S "alternative compliance" standards?

Conclusions of Law

Title 24, Section 4413 states, in relevant part, that:

The following uses may be regulated only with respect to location, size, height, building bulk yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

...

(c) churches and other places of worship, convents, and parish houses.

24 V.S.A. § 4413, (c). Thus, the relevant inquiry under 24 V.S.A. § 4413 is whether the intended functional use of the Property is as a church or other place of worship.

Importantly, 24 V.S.A. § 4413 ensures that municipal land use regulations are applied in compliance with the federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”). In re Valsangiacomo, No. 130-8-03 Vtec, slip op. (Vt. Env. Ct. Dec. 21, 2004) (Wright, J.). Under RLUIPA, no government shall implement a land use regulation in a way that imposes a substantial burden on the religious exercise of a person or institution. 42 U.S.C. § 2000cc(a)(1). With this background in mind, we read 24 V.S.A. § 4413(a)(1)(c) to apply if the regulations interfere with a religious entity’s religious use of a church or place of worship.

The Trust has established with undisputed facts that the intended functional use of the Property, as it relates to their demolition application, involves matters of ecclesiastical importance. Pursuant to Canon Law of the Roman Catholic Church, the Trust underwent an ecclesiastical decision-making process that led it to ultimately deconsecrate the Property via demolition. The Court is without authority to question this ecclesiastical process or decision. See Watson v. Jones, 80 U.S. 679, 680 (1871) (explaining that civil courts must accept the ecclesiastical decisions of religious institutions). Despite this, however, the Court can conclude that this decision is inherently connected to the Property’s functioning as a church in the Roman Catholic faith.

Appellants argue that the limitations in 24 V.S.A. § 4413 cannot apply because the Trust conveyed equitable title to a non-religious buyer when it entered into a purchase and sale agreement to sell the Property, and therefore the intended functional use of the Property is not a church or place of worship but of whatever use of the Property that the subsequent purchaser may decide. This argument fails because it necessarily asks the Court to examine *future* development plans for the Property, which goes beyond the scope of the application currently before the Court. As the Court explained in response to Appellants’ motion to compel disclosure of the purchase and sale agreement,

any evidence of a buyer's identity or development plans for the Property are outside the scope of this Court's inquiry into the Trust's intended functional use of the Property as a place of worship and the demolition application presently before the Court, and thus requests an impermissible advisory opinion. Cathedral of the Immaculate Parish Charitable Trust Appeal, No. 23-ENV-00010 (Vt. Super. Ct. Env'tl. Div. Dec. 4, 2023) (Durkin, J.); see In re Baker, No. 2006-364 (Vt. May 2007) (three justice panel of the Vermont Supreme Court upholding an Environmental Court decision declining to examine evidence of future development plans when considering a pending subdivision application); see also In re Snowstone, LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28, 214 Vt. 587 (explaining the prohibition against advisory opinions). Despite Appellants' frequent use of the word "current" to define this future buyer and their intended use of the Property, the purported buyer's identity and their allegedly non-exempt use of the Property can only relate to future uses for the Property and are therefore outside the scope of this demolition permit proceeding.⁴

Our goal in interpreting a statute is to give effect to the intent of the Legislature. State v. Therrien, 2011 VT 120, ¶ 9, 191 Vt. 24. To ascertain legislative intent, we begin by looking at the plain language of the statute. Flint v. Dep't of Labor, 2017 VT 89, ¶ 5, 205 Vt. 558. If the plain language is clear and unambiguous, we enforce the statute according to its terms. Therrien, 2011 VT 120, ¶ 9. Here, the plain language of 24 V.S.A. § 4413 is clear and unambiguous. Municipal bylaws cannot be applied in a manner that interferes with the intended functional use of a church or place of worship. The Legislature clearly intended to lessen the impact of zoning regulation on religious entities and their properties within the State. Appellants' interpretation would heap greater zoning review on a religious entity that is seeking to administer its use of a church and is thus contrary to the plain language and legislative intent of 24 V.S.A. § 4413.

⁴ Appellants' motion uses the word "intend" as a verb, rather than an adjective, thus misinterpreting the statute. See e.g., Appellants' Memorandum of Law in Support of Cross-Motion for Summary Judgment at 17 ("[t]he Trust and its non-religious co-owner currently *intend to put* the 20 Pine Street Property to a non-religious functional use...") (emphasis added). When used as a verb in this context, the meaning of "intend" necessarily refers to a future purpose or plan, despite Appellants' insertion of the word "currently." In doing so, Appellants misconstrue the language of the statute, which uses the word "intended" preceded by the definite article "the" to indicate that the word is used as an adjective to describe a past or present intended use. Accordingly, how a buyer *intends to put* the Property to use in the future is irrelevant to this demolition proceeding.

Further, Appellants repeatedly assert that this buyer, a signatory to a purchase and sale agreement, is a "co-owner" of the Property under the theory of equitable title, such that their identity is directly relevant to this appeal. Appellants do not, however, point to any law that signatories to a purchase and sale agreement are co-owners in a zoning context and must be identified to apply for and receive permits. The Court will not adopt such a theory in this case, particularly when doing so would undercut the legislative intent of 24 V.S.A. § 4413 to limit the scope of zoning review on exempt uses.

The demolition application before us involves an important step in deconsecrating the Cathedral under ecclesiastical doctrines. The Trust's intent to deconsecrate the church must fall under the zoning limitation of 24 V.S.A. § 4413(a)(1)(C). A decision to the contrary would require the Court to analyze whether the standards in Article 14 prohibit demolition of the Property, thus interfering with the Trust's intent to deconsecrate the Property and its decisions as to how it wants to use the Cathedral overall.

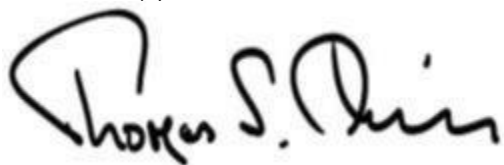
Thus, we conclude that § 4413 applies to the application presently before the Court. As such, the Court cannot apply the provisions of Article 14 of the CDO or any other substantive standard of the CDO. There are, therefore, no substantive standards to apply to the application. For this reason, the Court must answer Questions 1 and 2 of Appellants' Statement of Questions in the affirmative and conclude that the Trust is entitled to the demolition permit.

Conclusion

For the foregoing reasons, we conclude that there is no genuine dispute of material fact that the intended functional use of the Property is to deconsecrate the Cathedral, and therefore, the limitations of 24 V.S.A. § 4413 apply. As a result, there are no substantive standards in the CDO upon which to deny the Trust a demolition permit. We therefore **GRANT** the Trust's motion for summary judgment and **DENY** Appellants' motion.

This concludes the matter before the Court. A Judgment Order accompanies this Decision.

Electronically signed at Brattleboro, Vermont on Tuesday, February 6, 2024, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is stylized with a large, looping initial 'T' and a cursive 'Durkin'.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division

VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 23-ENV-00010

**Cathedral of the Immaculate Parish Charitable
Trust Appeal**

JUDGMENT ORDER

This is an appeal of a City of Burlington Development Review Board (“DRB”) decision dated January 17, 2023 granting the Cathedral of the Immaculate Conception Parish Charitable Trust's (“Trust”) application to demolish an existing church building located at 20 Pine Street, Burlington, Vermont (the “Property”). Appellants are a group of Burlington residents—Carolyn Bates, Robert Devino, Pauline Kehoe, Amy Mentes, Jack Mentes, Margaret Mentes, Karyn Norwood, Liisa Reimann, Matthew Shoen, and Ronald Wanamaker (together, “Appellants”)—who oppose the demolition and appealed the DRB’s decision to this Court.

Appellants are represented by Attorneys Christopher Boyle and David Grayck. The Trust is represented by Attorney John Franco. The City of Burlington is represented by Attorney Malachi Brennan.

For the reasons set forth in the accompanying Decision on Motions, we conclude that the zoning limitations of 24 V.S.A. § 4413 apply, and therefore there are no substantive standards in the Burlington Comprehensive Development Ordinance on which to deny Applicant’s request for a demolition permit. Thus, Applicant’s motion is **GRANTED** and Appellants’ motion is **DENIED**.

This concludes the matter before the Court.

Electronically signed at Brattleboro, Vermont on Tuesday, February 6, 2024, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is stylized with a large, looping initial 'T'.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division

IN THE SUPREME COURT OF THE STATE OF VERMONT
DOCKET NO. 24-AP-068

IN RE CATHEDRAL OF IMMACULATE PARISH CHARITABLE TRUST APPEAL
(CAROLYN BATES, ET AL.)

On Appeal from
Vermont Superior Court, Environmental Division
Docket No. 23-ENV-00010

Appellee the City of Burlington's Brief

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ARGUMENT

- I. **The Environmental Division correctly determined that 24 V.S.A. § 4413 applies and limits review of the Trust's demolition application.**
 - A. **24 V.S.A. § 4413 applies here because the deconsecration of the Cathedral property through demolition is a functional use of a "church" or "other place of worship" as a matter of religious doctrine.**

As the Environmental Division observed, there is no dispute that the Cathedral is currently permitted as a place of worship, or that it is owned and operated by a religious organization. PC-12; PC-983. The Cathedral therefore qualifies as a "church" or "other place of worship" under 24 V.S.A. § 4413, which prohibits the application of zoning standards in a manner that would "have the effect of interfering with the intended functional use" of churches or other places of worship. *Id.* § 4413(a)(1)(C). And here, the "intended functional use" is to deconsecrate the Cathedral by demolition.

The undisputed facts show the doctrinal religious basis for the Trust's decision to use the Cathedral property in that manner. *See* PC-984-86. Specifically, the Trust determined, after consulting with the Catholic Church's highest authorities, that demolition would be the "best way to help our parishioners cope with the loss of th[e] parish, cleanse the site, and prevent any future non-sacred use of the property," while allowing the Trust to "focus its resources on the religious mission and charitable work at" another nearby Cathedral. PC-985.

Therefore, there is no dispute in this case that the Trust has determined, as a matter of religious doctrine, that the most appropriate use of the Cathedral is deconsecration through demolition. Whether this intended functional use is the best use is a matter of religious doctrine and not a question the Burlington DRB or this Court can review. *See Turner v. Roman Catholic Diocese of Burlington, Vermont*, 2009 VT 101, ¶ 33, 186 Vt. 396, 987 A.2d 960 (explaining that ecclesiastical abstention doctrine prohibits courts from deciding questions of religious doctrine).² As the Environmental Division correctly

² Broadly speaking, the ecclesiastical abstention doctrine holds that the First Amendment prohibits civil courts from deciding questions of religious doctrine. *See, e.g., Belya v. Hilarion*, No. 20 Civ. 6597, 2021 WL 1997547, at *4 (S.D.N.Y. May 19, 2021) (doctrine prohibits "civil courts from interfering in or determining religious disputes" (citing *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952))).

observed, to apply the CDO in any manner that restricts the demolition would “interfere[] with the Trust’s intent to deconsecrate the Property and its decisions about how it wants to use the Cathedral overall.” PC-16.

Notably, no other use has been proposed for the Property in the application, which is for demolition only. *See* PC-1007-08. The permit does not, and cannot, authorize any use or development beyond the deconsecration by demolition. The Trust’s doctrinal rationale for demolition is not disputed, and prohibiting demolition would have the effect of limiting the “intended functional use” of the Cathedral. The DRB and the Environmental Division therefore correctly determined that § 4413 precludes the City from denying the permit request.

B. The future use of the Cathedral site by prospective purchasers is not relevant to the demolition application under review.

In this appeal, as below, Appellants do not question whether a demolition for religious purposes falls under § 4413. Instead, they argue that “equitable title” has passed on to a non-religious buyer, arising out of the apparent purchase and sale contract for the Property. This argument fails for at least two reasons.

First, Appellants cite several cases to support the unremarkable proposition that once a purchase and sale agreement has been executed, equitable title passes to the buyer. App. Br. at 8–9. However, none of these cases *require* a zoning authority to consider a buyer’s potential future uses of the Property or even consider the identity of a buyer at all. To the contrary, it is well established that the Environmental Division “does not have jurisdiction to determine private property rights.” *In re Woodstock Cmty. Trust & Hous. Vt.*, 2012 VT 87, ¶ 40, 192 Vt. 474, 60 A.3d 686 (citing *Nordlund v. Van Nostrand*, 2011 VT 79, ¶ 17, 190 Vt. 188, 27 A.3d 340). To advance a zoning application, the applicant faces only a “relatively low” burden “to produce some evidence of title or an interest in the property to be developed.” *Missbrenner & Legge SD Approval*, No. 80-7-19 Vtec, 2021 WL 625752, at *4 (Vt. Super. Ct. Env’tl. Div. Jan. 5, 2021). The Trust has clearly met that burden here.

Second, whether a property is a “church[] [or] other place[] of worship” for purposes of § 4413 depends on the property’s use,³ not its ownership. *See* 24 V.S.A.

³ Relying on *In re Baptist Fellowship of Randolph, Inc.*, 144 Vt. 636, 481 A.2d 1274 (1984), Appellants briefly argue that not all religious uses are exempt from “land use

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

2024 VT 77

DEC 06 2024

SUPREME COURT DOCKET NO. 24-AP-068

SEPTEMBER TERM, 2024

In re Cathedral of the Immaculate Parish
Charitable Trust Appeal
(Carolyn Bates et al., Appellants)

} APPEALED FROM:
}
} Superior Court,
} Environmental Division
}
} CASE NO. 23-ENV-00010

In the above-entitled cause, the Clerk will enter:

Affirmed.

FOR THE COURT:

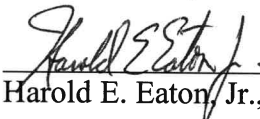


William D. Cohen, Associate Justice

Concurring:



Paul L. Reiber, Chief Justice



Harold E. Eaton, Jr., Associate Justice



Nancy J. Waples, Associate Justice



John A. Dooley, Associate Justice (Ret.),
Specially Assigned

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions by email at: JUD.Reporter@vtcourts.gov or by mail at: Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801, of any errors in order that corrections may be made before this opinion goes to press.

2024 VT 77

No. 24-AP-068

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

DEC 06 2024

In re Cathedral of the Immaculate Parish
Charitable Trust Appeal
(Carolyn Bates et al., Appellants)

Supreme Court

On Appeal from
Superior Court,
Environmental Division

September Term, 2024

Thomas S. Durkin, J.

David L. Grayck of Law Offices of David L. Grayck, North Bennington, and Christopher H. Boyle, Lincoln, for Appellants.

John F. Franco, Jr., Burlington, for Appellee Trust.

Malachi T. Brennan, Geoffrey H. Hand, and Megan E. Noonan of SRH Law PLLC, Burlington, for Appellee City of Burlington.

PRESENT: Reiber, C.J., Eaton, Cohen and Waples, JJ., and Dooley, J. (Ret.),
Specially Assigned

¶ 1. **COHEN, J.** A group of Burlington residents appeals the Environmental Division's summary judgment order upholding a permit for the Cathedral of the Immaculate Conception Parish Charitable Trust (Trust) to demolish church structures on Trust property. Residents argue the court erred in concluding that 24 V.S.A. § 4413(a)(1)(C) prevented the City of Burlington from applying its Comprehensive Development Ordinance (CDO) to restrain the Trust from demolishing the church structures. Residents also argue that the court erred in denying their motion to compel discovery of information regarding the pending sale of the property to a nonreligious buyer because they assert the sale is relevant to the applicability of § 4413(a)(1)(C). We affirm.

I. Factual and Procedural Background

¶ 2. The following facts were undisputed for purposes of summary judgment. The Trust owns property at 20 Pine Street in Burlington, Vermont. The Cathedral of Immaculate Conception has stood on the property since 1977. In May 2018, the Roman Catholic Diocese of Burlington initiated procedures to deconsecrate and demolish the Cathedral pursuant to the canon law of the Roman Catholic Church. According to the Trust, demolition is a way to deconsecrate the property because it will “cleanse” the property and prevent any future nonsacred use of the Cathedral. In September 2022, the Trust received permission from the Roman Catholic Church to deconsecrate the Cathedral.

¶ 3. In October 2022, the Trust applied for a permit with the City of Burlington’s Development Review Board to demolish the Cathedral. The demolition would remove the church buildings, bell tower, parking lot, and impervious pathways. At the time of its application, the Trust contemplated selling the property and thereafter entered into a purchase and sale agreement for the property with a nonreligious buyer.* However, the Trust did not plan to fully execute the transaction until the Cathedral was demolished and the property was cleared. The Trust would continue to maintain and use the property until that point.

¶ 4. In January 2023, the Board approved the permit application. The Board determined that the proposed demolition would neither comply with the application review standards in Article 14 of the CDO, nor would it likely qualify for a variance. However, the Board concluded that because the property was permitted as a place of worship and continued to be owned by a religious entity, 24 V.S.A. § 4413(a)(1)(C) substantially limited review under the CDO and the alternative compliance standards that would ordinarily govern the application were inapplicable. Section 4413(a)(1) of Title 24 states the following:

* The Trust stated at oral argument that the sale agreement from 2022 has since been terminated. The Trust entered into a new agreement with a different commercial entity sometime after this appeal was filed.

The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use: . . . (C) churches and other places of worship, convents, and parish houses.

The Board therefore voted to approve the permit.

¶ 5. Residents appealed the Board's decision to the Environmental Division. The Trust moved for summary judgment, arguing that the only provision of the CDO related to demolition is in Article 5 of the CDO, which did not apply because the Cathedral was not fifty years old, and that the CDO does not otherwise provide substantive standards for reviewing an application to demolish a building. The City of Burlington filed its own memorandum agreeing that summary judgment should be granted to the Trust because applying the review standards of Article 14 would violate § 4413(a)(1)(C) by interfering with the intended functional use of the property. In response, the court ordered the parties to submit additional briefing on the applicability of § 4413(a)(1)(C).

¶ 6. Residents opposed the Trust's motion and separately moved to compel discovery from the Trust regarding the pending sale of the property. The court denied this motion, concluding that the sought-after information was unrelated to the issue on appeal. The court explained that the appeal only required it to determine if § 4413(a)(1)(C) exempted the property from regulation under the CDO, and that question would be resolved by determining whether the CDO regulations had the effect of interfering with the intended functional use. The discovery sought would effectively go towards "future" intended functional use of the property, which the court lacked jurisdiction to decide. It explained that it only had authority to consider the past and present uses of the property under § 4413(a)(1)(C).

¶ 7. Residents subsequently filed a cross-motion for summary judgment, arguing that § 4413(a)(1)(C) did not apply to the Trust property because the Trust had conveyed equitable title

to a nonreligious buyer and the nonreligious buyer could not use the property for religious purposes.

¶ 8. In February 2024, the court issued a decision granting the Trust's motion for summary judgment and denying residents' cross-motion. The court determined that the relevant inquiry under § 4413(a)(1)(C) was whether the intended functional use of the property was for religious purposes. The court found it undisputed that the decision to demolish the Cathedral pursuant to the Roman Catholic Church's deconsecration process involved matters of ecclesiastical significance and was inherently connected to the property's intended functional use. The court concluded that it had no authority to question the ecclesiastical decision-making process to deconsecrate the property by demolishing the Cathedral.

The court rejected residents' argument that § 4413(a)(1)(C) did not apply because equitable title had passed to the nonreligious buyer once the purchase and sale agreement was executed. It reasoned that residents were asking the court to look to the future development plans for the property, which exceeded the scope of the permit application. The court also found no support for residents' contention that the future buyer was a co-owner for the purposes of zoning review. It concluded that the demolition application involved "an important step" in deconsecrating the Cathedral under the Roman Catholic Church's ecclesiastical doctrines, and that applying the provisions of the CDO would interfere with the Trust's intent to deconsecrate the property. It therefore held that § 4413(a)(1)(C) applied to the permit application. Thereafter, residents filed this appeal.

II. Analysis

¶ 9. We review a decision granting summary judgment de novo, using the same standard as the trial court. Vt. Coll. of Fine Arts v. City of Montpelier, 2017 VT 12, ¶ 7, 204 Vt. 215, 165 A.3d 1065. "Summary judgment is appropriate when, construing the facts as alleged by the nonmoving party and resolving reasonable doubts and inferences in favor of the nonmoving party,

there are no genuine issues of material fact and judgment is appropriate as a matter of law.” Sheldon v. Ruggiero, 2018 VT 125, ¶ 14, 209 Vt. 33, 202 A.3d 241 (citing V.R.C.P. 56). In our review of a motion for summary judgment, “we regard as true all allegations of the nonmoving party supported by admissible evidence and give the nonmoving party the benefit of all reasonable doubts and inferences.” Wood v. Wallin, 2024 VT 21, ¶ 8, ___ Vt. ___, 316 A.3d 266 (quotation omitted).

A. Ownership of the Property

¶ 10. Residents first argue that § 4413(a)(1)(C) does not limit the application of the City of Burlington’s CDO regulations because the Trust entered into a purchase and sale agreement with a nonreligious buyer prior to submitting its application for a permit to demolish the Cathedral. Residents assert that when the Trust entered into the agreement with a secular buyer, equitable title of the property transferred to the buyer, which cannot use the property for a religious purpose because the buyer is not a religious entity. We conclude that, even if the prospective buyer held equitable title at some point, ownership is not a determining factor for purposes of the analysis under § 4413(a)(1)(C).

¶ 11. “Our goal in interpreting a statute is to give effect to the intent of the Legislature. . . . If the plain language is clear and unambiguous, we enforce the statute according to its terms.” In re 204 N. Ave. NOV, 2019 VT 52, ¶ 5, 210 Vt. 572, 218 A.3d 24 (quotations omitted). As noted above, § 4413(a)(1) states:

The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use: . . . (C) churches and other places of worship, convents, and parish houses.

As is evident from the plain language of § 4413(a)(1), its applicability does not depend on the identity of the owner of a property. Rather, its unambiguous terms ask only whether a regulation

interferes with “the intended functional use” of the property. 24 V.S.A. § 4413(a)(1) (emphasis added). The ownership of the property does not govern whether § 4413(a)(1)(C) applies.

¶ 12. Our holding is consistent with the purpose of the zoning statutes. As we explained in Vermont Baptist Convention v. Burlington Zoning Board, the Legislature has authorized municipalities to regulate specific uses of land and structures, and density of population and intensity of use. 159 Vt. 28, 30-31, 613 A.2d 710, 711 (1992) (construing language previously found in 24 V.S.A. § 4401 that is now set forth in § 4411). A municipality’s zoning power must be consistent with the Legislature’s intent and grant of authority and “[t]his enumeration of power refers only to uses and structures, not the identity of the owner.” *Id.* at 31, 613 A.2d at 711. For this reason, we held in Vermont Baptist that the zoning board misclassified a building owned by a nonprofit religious organization as “semi-public” because the board was improperly focused on the nature of the owner, rather than the actual use of the property as a private office and apartment building. *Id.*; see also In re Sardi, 170 Vt. 623, 624-25, 751 A.2d 772, 774 (2000) (mem.) (noting municipality’s statutory zoning power “does not rely on the identity of the owner” but “only with the use of such areas”).

¶ 13. Similarly, the applicability of § 4413(a)(1) depends on use, rather than ownership. To read § 4413(a)(1) as relying on the ownership of the property would be to misconstrue the Legislature’s grant of authority. The Trust’s execution of a purchase and sale agreement with a potential buyer is therefore irrelevant to the issue of whether § 4413(a)(1) bars application of the CDO to the Trust’s permit request.

B. Use of the Property

¶ 14. Residents argue that even if ownership is not relevant and the nonreligious buyer could use the property for a religious purpose, the buyer and Trust were not using it for that purpose because the Trust intended to take the property “out of liturgical use.” Further, residents argue that the Trust indicated in its permit application that it expected the buyer to apply for

redevelopment of the property upon obtaining legal title. We disagree with residents' interpretation of "intended functional use."

¶ 15. To determine what constitutes the "intended functional use" of the property at issue, we first look to the plain language of the statute. In re 204 N. Ave. NOV, 2019 VT 52, ¶ 5. The statute provides that certain uses of property, including "churches and other places of worship," may only be regulated in limited respects and "only to the extent that regulations do not have the effect of interfering with the intended functional use." 24 V.S.A. § 4413(a)(1). Residents effectively interpret the term "intended" to include the future intent of the property owner. However, "intended" is a past participle adjective and past participle adjectives are typically used to describe a present state of being. See Henson v. Santander Consumer USA, Inc., 582 U.S. 79,84 (2017) (noting past participles, such as "owed," are "routinely used as adjectives to describe the present state of a thing"). "Intended" here plainly refers to the intent for the present use—in other words, the action for which the property owner seeks the permit.

¶ 16. Although the language of § 4413(a)(1) is clear, we note that residents' assertion that an applicant's future intent should be considered is contrary to the Legislature's intent expressed in the statute. See Shires Hous., Inc. v. Brown, 2017 VT 60, ¶ 9, 205 Vt. 186, 172 A.3d 1215 (holding where there is ambiguity we look to Legislature's intent as shown through entire statute, "its subject matter, effects and consequences, as well as the reason for and spirit of the law" (quotation omitted)). In 2000, the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) came into effect. RLUIPA prohibits a government from imposing land use regulations that substantially burden religious institutions and religious exercise absent a showing that the regulation is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1). Section 4413 was enacted in 2003 as part of a general revision to the municipal zoning statutes, after RLUIPA came into effect, and we presume that the Legislature was aware of the limitations RLUIPA set on regulating land used for religious purposes. See 2003,

No. 115 (Adj. Sess.), § 95; In re Verizon New England, Inc., 173 Vt. 327, 337-38, 795 A.2d 1196, 1204-05 (2002) (explaining federal law sets floor for requirements under U.S. Constitution and that states must adopt or exceed this minimum when enacting state legislation). We accordingly must construe 24 V.S.A. § 4413(a)(1)(C) strictly to avoid running afoul of RLUIPA. See generally Appeals of Valsangiacomo, Nos. 130-8-03 Vtec, 64-4-04 Vtec (Vt. Env't Ct. Dec. 21, 2004) [<https://perma.cc/8VAW-KDB2>] (recognizing 24 V.S.A. § 4413(a) guides compliance for zoning ordinances with RLUIPA). To allow review of, and require documentation for, a potential future use of a property at the same time as reviewing the present religious use would interfere with the applicant's ability to execute the present religious use and would not be consistent with the statutory purpose.

¶ 17. To hold otherwise would also allow zoning officials to engage in speculation as to future permits needed and would lead to advisory opinions by courts on appeal. "Courts are not authorized to issue advisory opinions because they exceed the constitutional mandate to decide only actual cases and controversies." In re Snowstone LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28, 214 Vt. 587, 256 A.3d 62. Accordingly, we have held that when considering appeals of applications for construction and zoning permits, the court's review is limited to the present intent at the time of the application and does not encompass potential future uses of the property. See, e.g., id. ¶ 29 (holding only issue on appeal regarding permit application is whether applicant properly received permit "and the necessity to seek any other permit was not properly before the court in an appeal of that authorization"); In re Baker, No. 2006-364, 2007 WL 5313379, at *3 (Vt. May 1, 2007) (unpub. mem.) [<https://perma.cc/UD2R-FAPE>] (affirming environmental court's decision declining to review evidence of future development and use of a property as part of a pending subdivision application). Whether a future legal owner might change the intended functional use of the property is immaterial to the current application. See Snowstone, 2021 VT

36, ¶ 29 (noting ruling on future permits an applicant may need, and not the permit on appeal, would be an advisory opinion).

¶ 18. As future potential use of the property is irrelevant to the § 4413(a)(1)(C) analysis, we turn to whether the Trust's intended use at the time of the application was religious in nature. The application sought a permit for the demolition of the Cathedral. The Cathedral had an existing permit as a place of worship and is owned by the Trust, which is a religious organization. It is undisputed that the Roman Catholic Diocese of Burlington initiated procedures under canon law to deconsecrate the Cathedral through demolition. The Trust maintains that this is an ecclesiastical process that is closely related to the underlying use of the property as a church, which we do not challenge here. See Turner v. Roman Cath. Diocese of Burlington, 2009 VT 101, ¶¶ 33-34, 186 Vt. 396, 987 A.2d 960 (holding courts are prohibited from "becoming too closely involved in the internal, ecclesiastical matters of religious institutions" and therefore must abstain from deciding questions rooted in religious doctrine).

¶ 19. Residents argue that the Trust stated in its application for demolition that the Trust intended to take the property "out of liturgical use" and expected the buyer to submit an application for redevelopment. However, the process for taking the property out of liturgical use—deconsecration through demolition—is itself a religious use for which the demolition permit was sought. Moreover, as discussed above, any future use by the buyer was not the intended use at the time of the application. Instead, the intended functional use of the property is to deconsecrate the Cathedral by demolition, which the Trust clearly stated in its permit application. The Trust did not state that it is demolishing the structures on behalf of the future buyer. Instead, as the Trust indicated, the potential buyer would have to submit its own applications for any future development. Any such applications were not before the Board or the trial court in this case.

¶ 20. For the same reason, we reject residents' claim that the court erred in denying their motion to compel discovery of the terms of the purchase and sale agreement for the Trust's

property. Neither the identity of the proposed buyer nor the buyer's potential future uses of the property were relevant to the issue on appeal, which is whether § 4413(a)(1)(C) barred application of the CDO to this permit application. See V.R.C.P. 26(b)(1) (requiring discovery to be "relevant to any party's claim or defense"); Lay v. Pettengill, 2011 VT 127, ¶¶ 39-40, 191 Vt. 141, 38 A.3d 1139 (upholding trial court's discretionary limitation of discovery requests under Rule 26(b)(1) where information sought was irrelevant to issues). Therefore, the court did not abuse its discretion in denying the motion. See Pcolar v. Casella Waste Sys., Inc., 2012 VT 58, ¶ 11, 192 Vt. 343, 59 A.3d 702 (quotation omitted) (explaining that discovery decisions, including decisions that refuse to compel discovery, "are left to the sound discretion of the trial judge").

¶ 21. Applying the CDO to refuse to permit the Trust to demolish the Cathedral would interfere with the Trust's religious deconsecration of the Cathedral, its intended functional use of a place of worship. We therefore conclude that § 4413(a)(1)(C) prohibits the City from applying the CDO to deny the permit to demolish the Cathedral. The environmental court correctly granted summary judgment for the Trust pursuant to § 4413(a)(1)(C) and denied summary judgment for residents.

Affirmed.

FOR THE COURT:

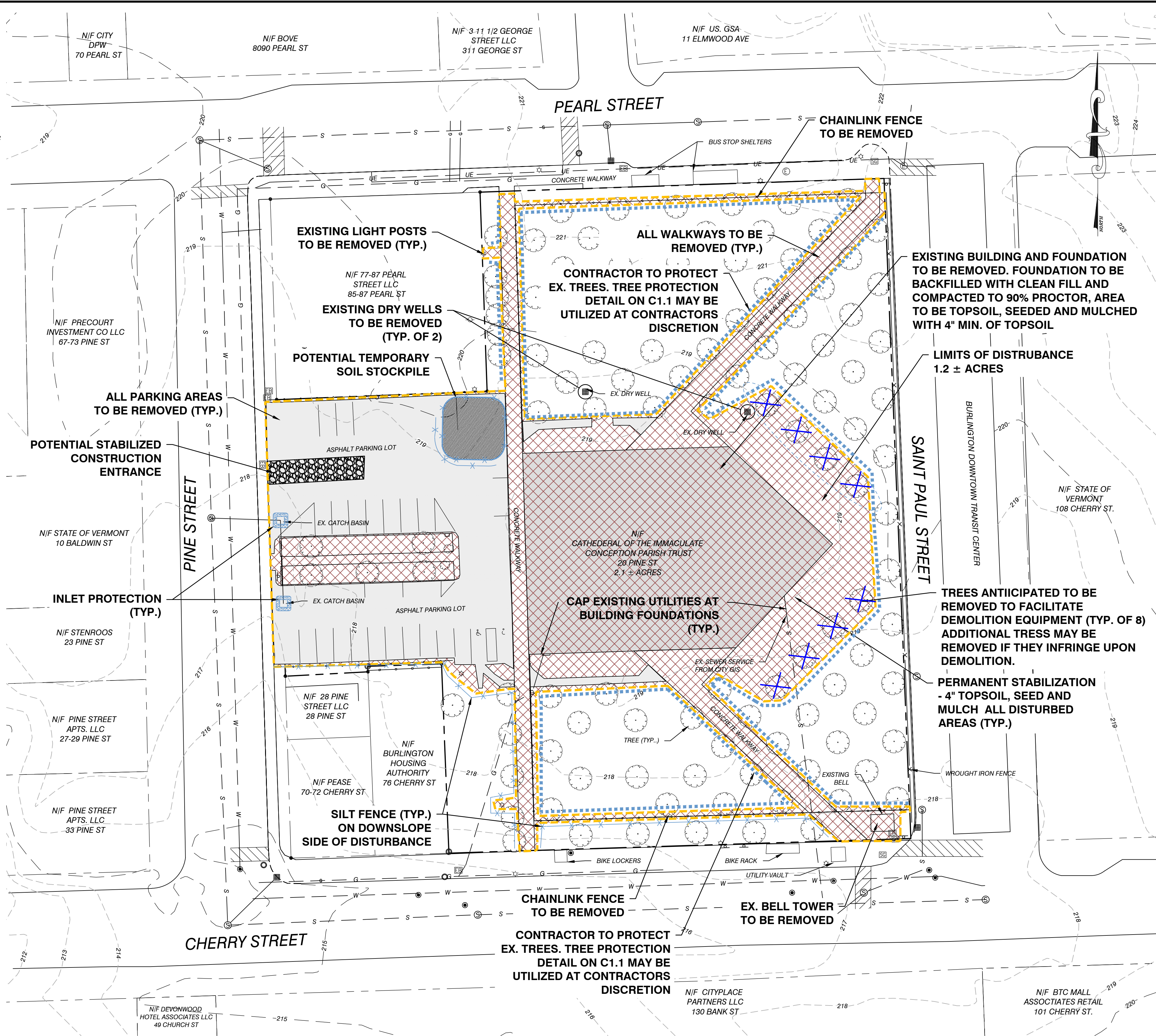

Associate Justice

1. UTILITIES SHOWN DO NOT PURPORT TO CONSTITUTE OR REPRESENT ALL UTILITIES LOCATED UPON OR ADJACENT TO THE SURVEYED PREMISES. EXISTING UTILITY LOCATIONS ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL FIELD VERIFY ALL UTILITY CONFLICTS. ALL DISCREPANCIES SHALL BE REPORTED TO THE ENGINEER. THE CONTRACTOR SHALL CONTACT DIG SAFE (888-344-7233) PRIOR TO ANY CONSTRUCTION.
2. THIS PLAN IS NOT A BOUNDARY SURVEY AND IS NOT INTENDED TO BE USED AS ONE.
3. SITE INFORMATION IS BASED UPON A PLAN ENTITLED "Sv-1 BOUNDARY SURVEY PLAT" PREPARED BY VHB AND DATED OCTOBER 1, 2021. ALL OTHER SITE INFORMATION IS BASED UPON ORTHOMETRIC PHOTOGRAPHY AND CITY GIS INFORMATION.
4. CONTOUR INFORMATION IS BASED UPON LIDAR DATA FROM VERMONT CENTER FOR GEOGRAPHIC INFORMATION STATE WIDE 1' CONTOURS, HORIZONTAL AND VERTICAL DATUM BASED ON VCS NAD 83 AND NAVD 88.

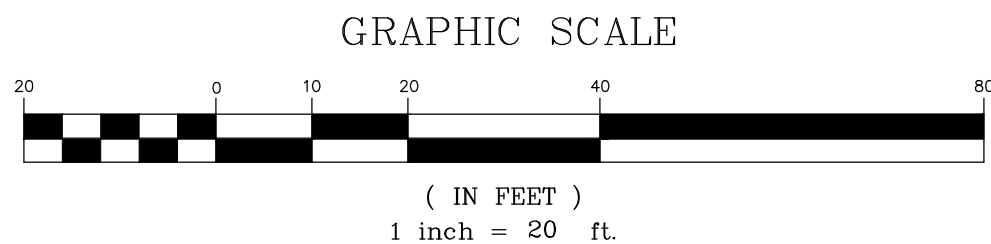
	APPROXIMATE PROPERTY LINE
-----100-----	EXISTING CONTOUR
=====	EXISTING CURB
-----X-----	EXISTING FENCE
-----	EXISTING GRAVEL
=====	EXISTING PAVEMENT
-----UE-----	EXISTING UNDERGROUND ELECTRIC
-----G-----	EXISTING GAS
-----ST-----	EXISTING STORM
-----S-----	EXISTING GRAVITY SEWER
-----W-----	EXISTING WATER
(S)	EXISTING SEWER MANHOLE
(B)	EXISTING CATCH BASIN
●	EXISTING SHUT OFF
Q	EXISTING UTILITY POLE
☆	EXISTING LIGHT POLE
	EXISTING SIGN
⊙	EXISTING DECIDUOUS TREE
○	IRON ROD/PIPE FOUND

The diagram illustrates six different erosion control measures, each with a corresponding icon and a descriptive label:

- SILT FENCE:** Represented by a blue line with three 'X' marks.
- LIMITS OF DISTURBANCE:** Represented by three yellow rectangular blocks.
- TOPSOIL, SEED, AND MULCH:** Represented by a cross-hatched rectangular area.
- STABILIZED CONSTRUCTION ENTRANCE:** Represented by a rectangular area filled with a pattern of circles.
- TREE PROTECTION (FENCING OPTIONAL):** Represented by a blue dashed line forming a semi-circle around a tree icon.
- INLET PROTECTION:** Represented by a blue square with a grid pattern.



NOTE:
The EPSC plan depicts one snap shot in time of the site. All construction sites are fluid in their day to day exposures and risks as it relates to minimizing sediment loss from the site. It is the responsibility of the Contractor to implement the necessary BMP's to comply with the Low Risk Handbook standards outlined on this sheet based on the interim site disturbance conditions which may or may not be shown on the EPSC Site Plan.



DATE	CHECKED	REVISION
04/16/25	JDL	DRY WELLS ADDED

C1.0

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

www.burlingtonvt.gov/pz/drb

Phone: (802) 865-7188

Fax: (802) 865-7195

Austin Hart

Michael Long

Jonathan Stevens

Brad Rabinowitz

Missa Aloisi

Israel Smith

A. J. LaRosa

Alexandra Zipparo (Alt.)

Jim Drummond (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, March 17, 2015, 5:00 p.m.

Contois Auditorium, City Hall, 149 Church Street, Burlington, VT

AGENDA

- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Certificate of Appropriateness**
 - 1. **15-0803CA: 20 PINE ST (D, Ward 3) CCTA / Cathedral of the Immaculate Conception Parish Charitable Trust**
Curbing and pavement within an 8' wide easement along western edge of St. Paul Street right-of-way (Project Manager: Mary O'Neil)
- V. **Sketch Plan**
 - 1. **15-0810SP; 10 University PI (I, Ward 1) UVM / Redstone & American Campus Communities**
Sketch plan review of proposed undergraduate student housing on Central Campus (Project Manager: Mary O'Neil)
- VI. **Other Business**
- VII. **Adjournment**

Applications and Plans may be viewed in the Planning and Zoning office, (City Hall, First Floor, 149 Church Street, Burlington), between the hours of 8:00 a.m. and 4:30 p.m.

All staff comments, plans and supporting documents will be available on the Planning and Zoning website at: www.burlingtonvt.gov/pz/drb/agendas approximately one week before the hearing.

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office and Development Review Board is considered public and cannot be kept confidential.

This agenda is distributed to: adjacent property owners of projects before the Development Review Board, Neighborhood Planning Assemblies, City Councilors, City Departments and interested parties. You may direct written comments to the Planning and Zoning Department, at the above address. Inquiries may be made by calling 865-7188. Oral comments may be given at the meeting by any persons on any project listed on the Agenda.

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401

<http://www.burlingtonvt.gov/PZ/>

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

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Sandrine Thibault, AICP, Comprehensive Planner

Jay Appleton, Senior GIS/IT Programmer/Analyst

Scott Gustin, AICP, CFM, Senior Planner

Mary O'Neil, AICP, Senior Planner

Vacant, Zoning Clerk

Elsie Tillotson, Department Secretary



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Senior Planner
Date: March 17, 2015
RE: 20 Pine Street ZP15-0803CA

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.

File: 15-0803CA

Location: 20 Pine Street

Zone: D **Ward:** 3

Date application accepted: February 18, 2015



Applicant/ Owner: Chittenden County Transportation Authority / Cathedral of the Immaculate Conception Parish Charitable Trust

Request: Curbing and pavement development within **an 8 foot wide easement** that extends from the south edge of the Pearl Street right-of-way to the north edge of the Cherry Street right-of-way along the western edge of the St. Paul Street right-of-way. The easement was granted to CCTA by the Cathedral of the Immaculate Conception Parish Charitable Trust to be used in association with the development of the Burlington Downtown Station project.

The applicant has received a **Non-Applicability for Zoning Permit Requirements** for the development of the Downtown Transit Station project area within the public right-of-way.

Background:

- There are no permits on file for the property.

Overview: The Downtown Burlington Transit Station is proposed to occupy the one-block section of St. Paul Street from Pearl to Cherry Street. Almost all of the work, both above and below grade is within the public right-of-way, and therefore outside zoning review.

The applicant (CCTA) has been granted an 8' easement along Diocesan property on the westerly side of the street to accommodate sidewalks, curbing and a fence. As the estimated construction cost exceeds \$24,000, the application is a level II COA requiring DRB approval.

Recommendation: Consent approval, per the following findings and conditions:

I. Findings

Article 4: Zoning Maps and Districts

Table 4.4.1-1 Dimensional Standards and Intensity

Maximum coverage in the Downtown zone is 100%. The application is directly at only the easement area: an 8' wide strip that is approximately 2,757 sq. ft. The application proposes a similar assembly of asphalt (1,735 sf), curb (173 sf.) and grass (849), on which the proposed fence will be located.

Front Yard Setback is the greater of 0' or 12' from the curb; however no structures are proposed within the easement area.

For Stormwater purposes, a de minimus determination was reached for proposed site changes.

For purposes of this standard, the application meets the standards.

Affirmative finding.

Article 5: Citywide General Regulations

Part 2: Dimensional Requirements

Section 5.2.1 Existing Small Lots

Not applicable.

Section 5.2.2 Required Frontage or Access

Not applicable.

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.1-1, above.

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks.

See Table 4.4.1-1, above.

Section 5.2.6 Building Height Limits

Not applicable.

Section 5.2.7 Density and Intensity of Development Calculations

Not applicable.

Part 3: Non-Conformities

Not applicable.

Part 4: Special Use Regulations

Not applicable.

Section 5.4.9 Brownfield Remediation

Not applicable.

Part 5: Performance Standards

Section 5.5.1 Nuisance Regulations.

No nuisances identified. **Affirmative finding.**

Section 5.5.2 Outdoor Lighting

There is no lighting identified within the 8' easement area on the plans. Not applicable.

Section 5.5.4 Tree Removal

Six trees fall within the Transit Center project area; however all are within the public right-of-way outside the easement area; therefore outside this review. Not applicable.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Not applicable.

Part 2: Site Plan Design Standards

(a) Protection of Important Natural Features

There are no important natural features present within the easement area. **Affirmative finding.**

(b) Topographical Alterations

No topo alterations are proposed. **Affirmative finding.**

(c) Protection of Important Public Views

There are no protected public views from this easement area. Not applicable.

(d) Protection of Important Cultural Resources

Not applicable.

(e) Supporting the Use of Renewable Energy Resources

No part of this application will prevent the use of solar, wind, geothermal, or water generated renewable energy resources. **Affirmative finding.**

(f) Brownfield Sites

None identified. Not applicable.

(g) Provide for Nature's events

The basis for this easement is to support the Transit Center development with curbing, sidewalks, underground utilities, and fencing. The Stormwater administration team has deemed the project involvement at this site to be "de minimus." **Affirmative finding.**

(h) Building Location and Orientation

Not applicable.

(i) Vehicular Access

Not applicable.

(j) Pedestrian Access

The proposed enhanced sidewalks with curbing will facilitate pedestrian access to the Transit Center, providing connectivity to the city sidewalk network. **Affirmative finding.**

(k) Accessibility for the handicapped

The easement area does not include crosswalk access; however the plan defines sidewalk access with detectable crosswalk identification and ramped access to enable access by all. **Affirmative finding.**

(l) Parking and Circulation

No parking is included within the project area. Circulation will benefit from the sidewalk/curbing development to complete the Transit Center. **Affirmative finding.**

(m) Landscaping and Fences

A fence application is anticipated under a separate application, and is not included herein. Tree removal is outside the easement area, within the public right-of-way and therefore not within this review scope. Not applicable.

(n) Public Plazas and Open Space

The limited project area will provide a benefit to the proposed Transit Center, which will quite effectively become a public area for commuters. **Affirmative finding.**

(o) Outdoor Lighting

There is no lighting proposed within the easement area. Not applicable.

(p) Integrate Infrastructure into the design

As this application largely addresses an extension of the public sidewalk and curbing, no additional infrastructure is anticipated to be included. Not applicable.

Part 3: Architectural Design Standards

Not applicable.

Article 7: Signs

Any signage on this easement area will require separate sign permit(s). **Affirmative finding as conditioned.**

Article 8: Parking

Not applicable

II. Conditions of Approval

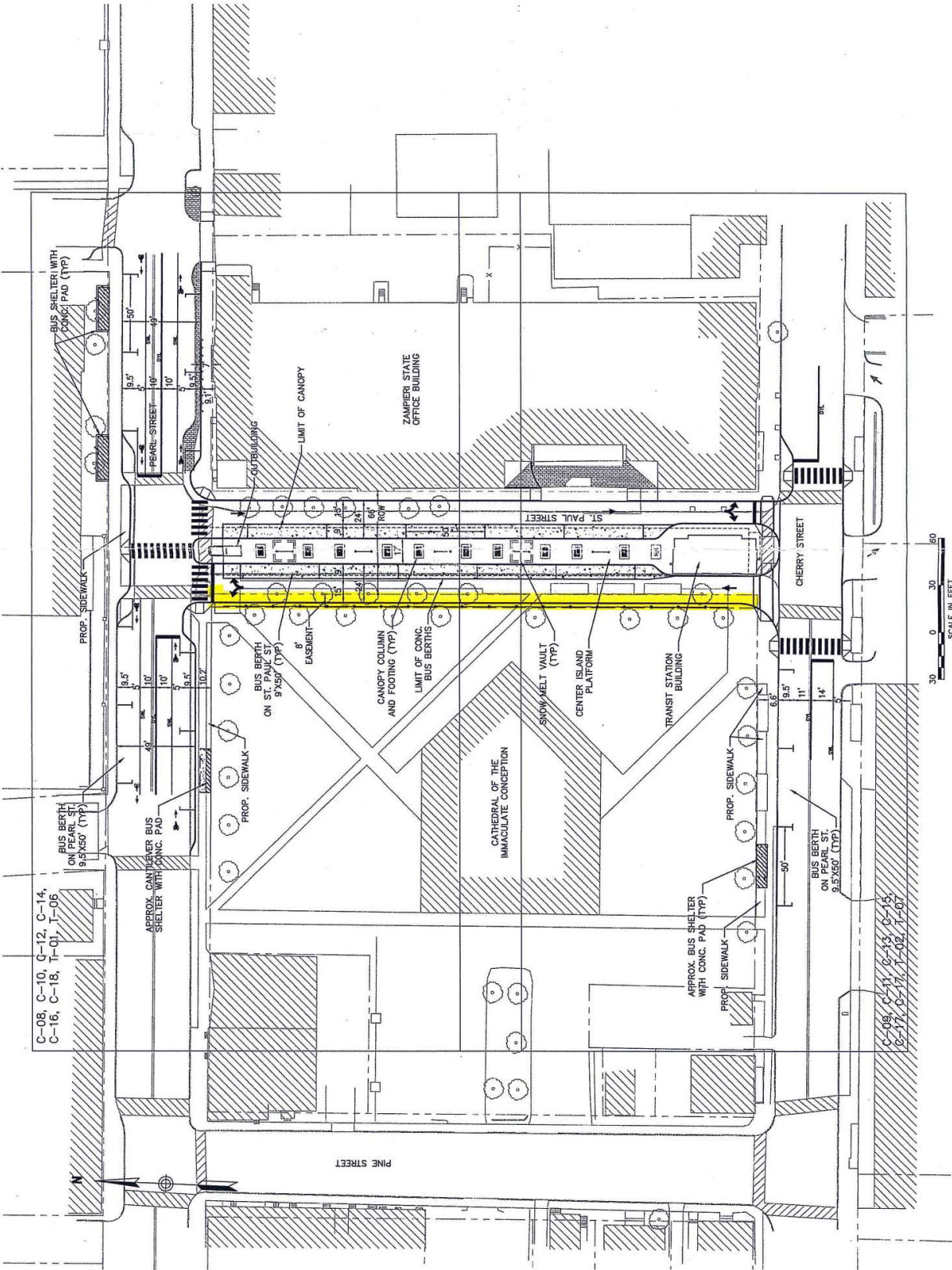
1. Any signage on this easement area will require separate sign permit(s) as may be required.
2. Standard Permit Conditions 1-15.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.





RECEIVED
FEB 18 2015
DEPARTMENT OF
PLANNING & ZONING



Vanasse Hangen Brustlin, Inc.
Transportation
Land Development
Environmental Services

truexculmins
WORKPLACE

RECEIVED
FEB 18 2015

**DEPARTMENT OF
PLANNING & ZONING**

[Signature]

Designed by **JR** Drawn by **JR** Checked by **ML**
 CAD checked by **ML** Approved by **ML**
 Date **AS NOTED** Date **November 17, 2014**
 Project Title **Downtown Burlington Station**

St. Paul Street
Burlington, Vermont

Revised for **Bid Documents**

Drawing Number **G-04**

Sheet **1155504**

1155504_KEY.PDW

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RECEIVED

FEB 18 2015

DEPARTMENT
PLANNING & ZONING

Drawn by: JTB
Checked by: JTB
Date: November 17, 2014
Project No.: 11585C-04

Downtown Burlington
Station

St. Paul Street
Burlington, Vermont
Issued for
Bid Documents

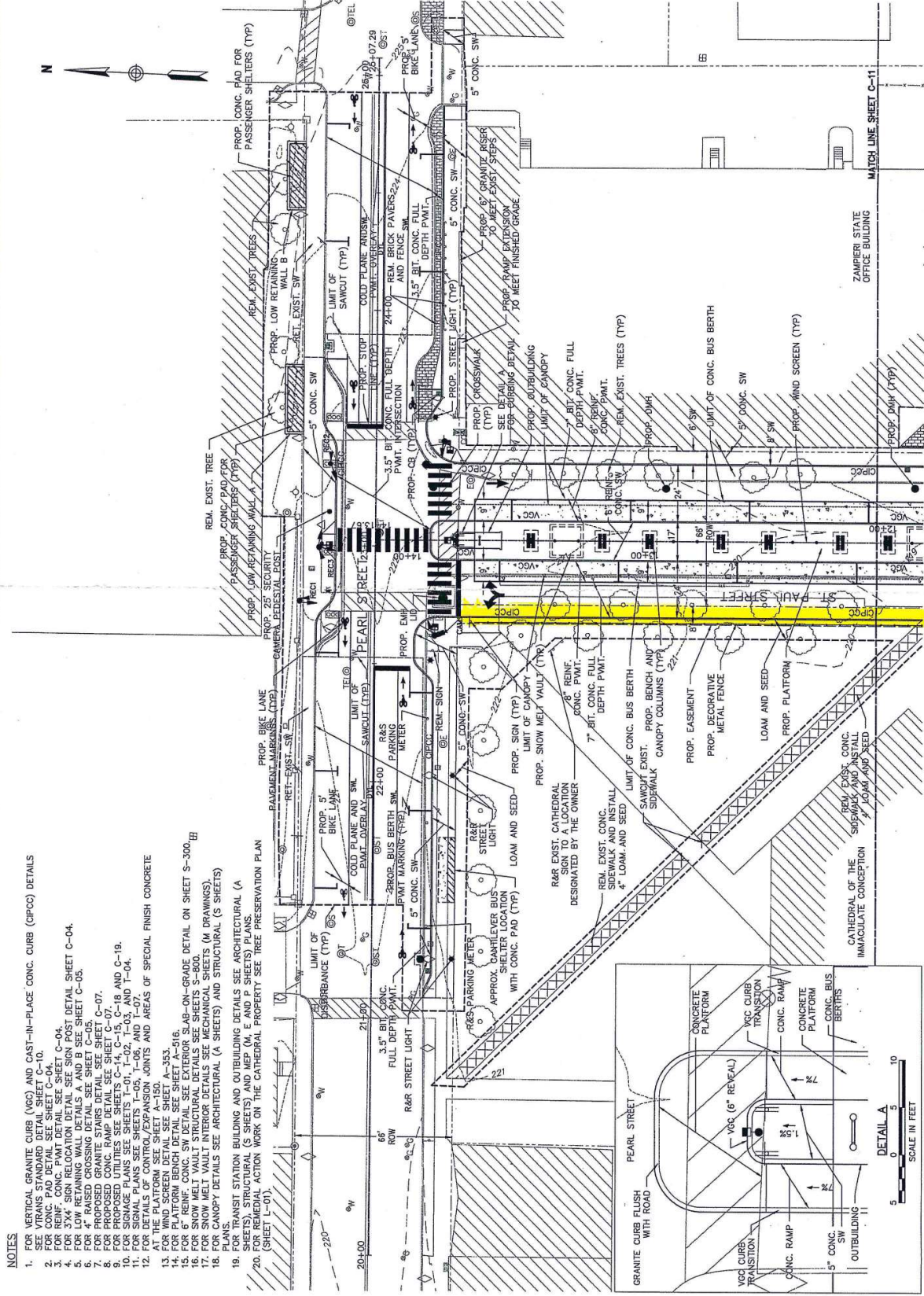
Drawn by: JTB

General Plan
1 of 2

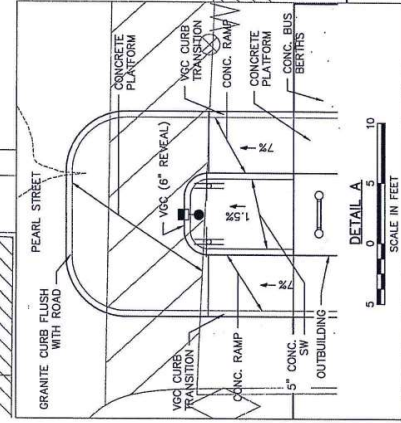
Project Number
11585C-04

Sheet
C-10

11585C-04.DWG



- NOTES**
1. FOR VERTICAL GRANITE CURB (VGC) AND CAST-IN-PLACE CONCRETE CURB (CIPC) DETAILS SEE VTRANS STANDARD DETAIL SHEET C-10.
 2. FOR 3'x4' SIGN RELOCATION DETAIL SEE SIGN POST DETAIL SHEET C-04.
 3. FOR 3'x4' SIGN RELOCATION DETAIL SEE SIGN POST DETAIL SHEET C-04.
 4. FOR 3'x4' SIGN RELOCATION DETAIL SEE SIGN POST DETAIL SHEET C-04.
 5. FOR 3'x4' SIGN RELOCATION DETAIL SEE SIGN POST DETAIL SHEET C-04.
 6. FOR 4' RAISED CROSSING DETAIL SEE SHEET C-05.
 7. FOR 4' RAISED CROSSING DETAIL SEE SHEET C-05.
 8. FOR PROPOSED CONC. RAMP DETAIL SEE SHEET C-07.
 9. FOR PROPOSED CONC. RAMP DETAIL SEE SHEET C-07.
 10. FOR SIGNAGE PLANS SEE SHEETS T-01, T-02, T-03, AND T-04.
 11. FOR SIGNAGE PLANS SEE SHEETS T-01, T-02, T-03, AND T-04.
 12. FOR DETAILS OF CONCRETE EXPANSION JOINTS AND AREAS OF SPECIAL FINISH CONCRETE AT THE PLATFORM SEE SHEET A-150.
 13. FOR WIND SCREEN DETAIL SEE SHEET A-353.
 14. FOR PLATFORM BENCH DETAIL SEE SHEET A-516.
 15. FOR PLATFORM BENCH DETAIL SEE SHEET A-516.
 16. FOR SNOW MELT VAULT STRUCTURAL DETAILS SEE MECHANICAL SHEETS (M DRAWINGS).
 17. FOR SNOW MELT VAULT STRUCTURAL DETAILS SEE MECHANICAL SHEETS (M DRAWINGS).
 18. FOR CANOPY DETAILS SEE ARCHITECTURAL (A SHEETS) AND STRUCTURAL (S SHEETS) PLANS.
 19. FOR CANOPY DETAILS SEE ARCHITECTURAL (A SHEETS) AND STRUCTURAL (S SHEETS) PLANS.
 20. FOR REMEDIAL ACTION WORK ON THE CATHEDRAL PROPERTY SEE TREE PRESERVATION PLAN (SHEET L-01).



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MATCH LINE SHEET C-11

ZAMPIERI STATE OFFICE BUILDING

CATHEDRAL OF THE IMMACULATE CONCEPTION

DETAIL A

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MATCH LINE SHEET C-11

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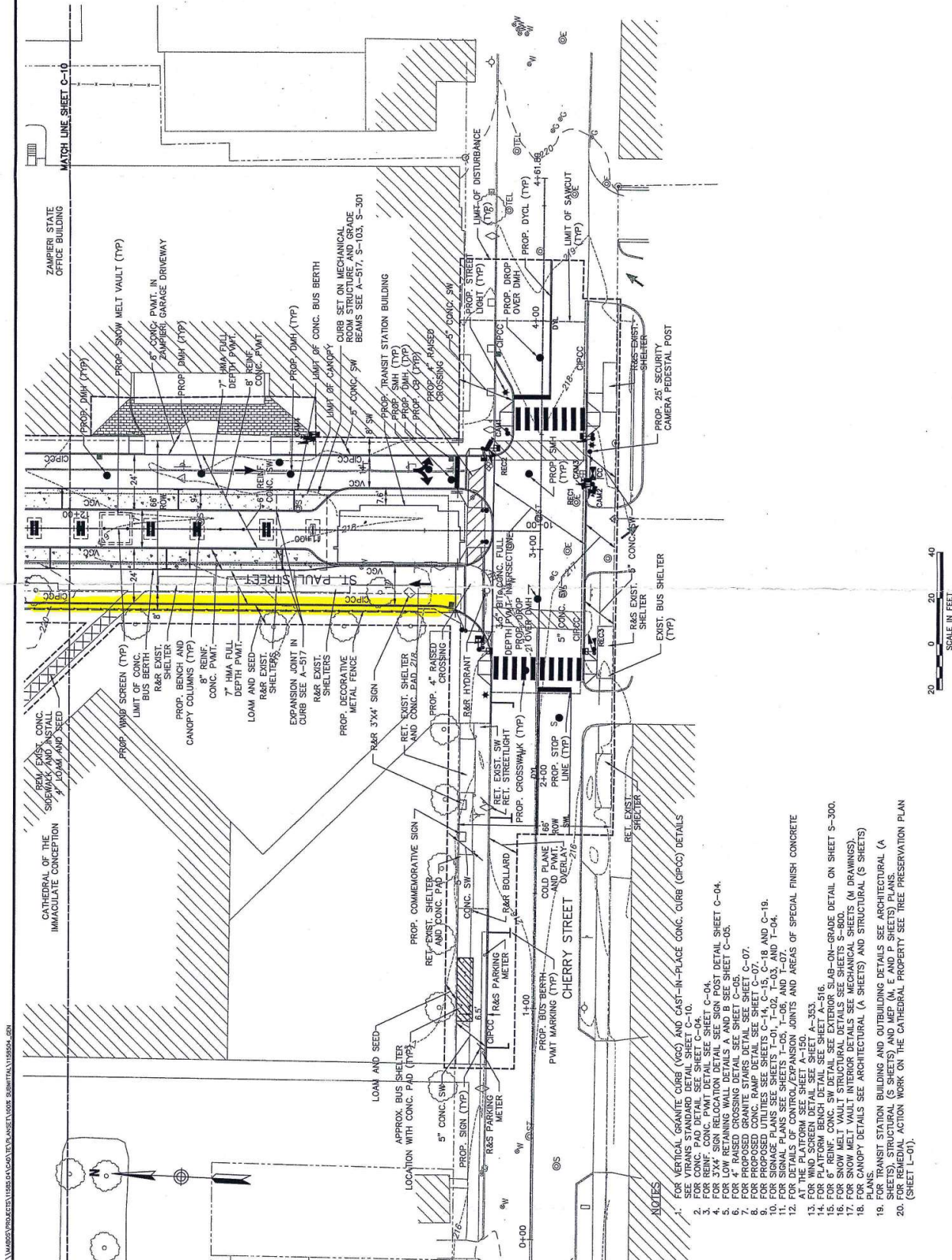
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Burlington Development Review Board
149 Church Street
Burlington, VT 05401
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Telephone: (802) 865-7188
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Austin Hart, Chair
Missa Aloisi
Alexander J. LaRosa
Michael Long
Brad Rabinowitz
Israel Smith
Jonathan Stevens
Alexandra Zipparo, (alternate)
Jim Drummond, (alternate)



Burlington Development Review Board
Findings of Fact
Deliberative Hearing Tuesday, March 17, 2015

Board Members Present: Austin Hart, Brad Rabinowitz, Alexander LaRosa, Jonathan Stevens, Israel Smith, Ali Zipparo, Jim Drummond. A. Hart does not participate in this review or deliberative.

Staff members present: Mary O'Neil.

File: 15-0803CA

Location: 20 Pine Street

Zone: D **Ward:** 3

Date application accepted: February 18, 2015

Applicant/ Owner: Chittenden County Transportation Authority / Cathedral of the Immaculate Conception Parish Charitable Trust

Request: Curbing and pavement development within an 8 foot wide easement that extends from the south edge of the Pearl Street right-of-way to the north edge of the Cherry Street right-of-way along the western edge of the St. Paul Street right-of-way. The easement was granted to CCTA by the Cathedral of the Immaculate Conception Parish Charitable Trust to be used in association with the development of the Burlington Downtown Station project.

The applicant has received a **Non-Applicability for Zoning Permit Requirements** for the development of the Downtown Transit Station project area within the public right-of-way.

Background:

- There are no permits on file for the property. The project site has been re-addressed as **100 Cherry Street**.

Overview: The Downtown Burlington Transit Station is proposed to occupy the one-block section of St. Paul Street from Pearl to Cherry Street. Almost all of the work, both above and below grade is within the public right-of-way, and therefore outside zoning review.

The applicant (CCTA) has been granted an 8' easement along Diocesan property on the westerly side of the street to accommodate sidewalks, curbing and a fence. As the estimated construction cost exceeds \$24,000, the application is a level II COA requiring DRB approval.

Evidence Presented:

The Board examined the materials submitted in support of this request. M. O'Neil confirmed receipt of an approved Stormwater Management Plan today.

I. Minutes

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

Findings of Fact

II. Motion by Brad Rabinowitz:

On 15-0803CA, 20 Pine Street, I move we approve the application and adopt staff findings and recommendations. With regard to the fence as discussed by the applicant but not submitted, the board feels this is an important aspect of this design and would encourage the staff to assure that the fence as approved be consistent with what was presented to the board.

III. Findings

Article 4: Zoning Maps and Districts

Table 4.4.1-1 Dimensional Standards and Intensity

Maximum coverage in the Downtown zone is 100%. The application is directly at only the easement area: an 8' wide strip that is approximately 2,757 sq. ft. The application proposes a similar assembly of asphalt (1,735 sf), curb (173 sf.) and grass (849), on which the proposed fence will be located.

Front Yard Setback is the greater of 0' or 12' from the curb; however no structures are proposed within the easement area.

For Stormwater purposes, a de minimus determination was reached for proposed site changes.

For purposes of this standard, the application meets the standards.

Affirmative finding.

Article 5: Citywide General Regulations

Part 2: Dimensional Requirements

Section 5.2.1 Existing Small Lots

Not applicable.

Section 5.2.2 Required Frontage or Access

Not applicable.

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.1-1, above.

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks.

See Table 4.4.1-1, above.

Section 5.2.6 Building Height Limits

Not applicable.

Section 5.2.7 Density and Intensity of Development Calculations

Not applicable.

Part 3: Non-Conformities

Findings of Fact

Not applicable.

Part 4: Special Use Regulations

Not applicable.

Section 5.4.9 Brownfield Remediation

Not applicable.

Part 5: Performance Standards

Section 5.5.1 Nuisance Regulations.

No nuisances identified. **Affirmative finding.**

Section 5.5.2 Outdoor Lighting

There is no lighting identified within the 8' easement area on the plans. Not applicable.

Section 5.5.4 Tree Removal

Six trees fall within the Transit Center project area; however all are within the public right-of-way outside the easement area; therefore outside this review. Not applicable.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Not applicable.

Part 2: Site Plan Design Standards

(a) Protection of Important Natural Features

There are no important natural features present within the easement area. **Affirmative finding.**

(b) Topographical Alterations

No topo alterations are proposed. **Affirmative finding.**

(c) Protection of Important Public Views

There are no protected public views from this easement area. Not applicable.

(d) Protection of Important Cultural Resources

Not applicable.

(e) Supporting the Use of Renewable Energy Resources

No part of this application will prevent the use of solar, wind, geothermal, or water generated renewable energy resources. **Affirmative finding.**

(f) Brownfield Sites

None identified. Not applicable.

(g) Provide for Nature's events

The basis for this easement is to support the Transit Center development with curbing, sidewalks, underground utilities, and fencing. The Stormwater administration team has deemed the project involvement at this site to be “de minimus.” **Affirmative finding.**

(h) Building Location and Orientation

Not applicable.

(i) Vehicular Access

Not applicable.

(j) Pedestrian Access

The proposed enhanced sidewalks with curbing will facilitate pedestrian access to the Transit Center, providing connectivity to the city sidewalk network. **Affirmative finding.**

(k) Accessibility for the handicapped

The easement area does not include crosswalk access; however the plan defines sidewalk access with detectable crosswalk identification and ramped access to enable access by all. **Affirmative finding.**

(l) Parking and Circulation

No parking is included within the project area. Circulation will benefit from the sidewalk/curbing development to complete the Transit Center. **Affirmative finding.**

(m) Landscaping and Fences

A fence application is anticipated under a separate application, and is not included herein.

Tree removal is outside the easement area, within the public right-of-way and therefore not within this review scope. Not applicable.

(n) Public Plazas and Open Space

The limited project area will provide a benefit to the proposed Transit Center, which will quite effectively become a public area for commuters. **Affirmative finding.**

(o) Outdoor Lighting

There is no lighting proposed within the easement area. Not applicable.

(p) Integrate Infrastructure into the design

As this application largely addresses an extension of the public sidewalk and curbing, no additional infrastructure is anticipated to be included. Not applicable.

Part 3: Architectural Design Standards

Not applicable.

Article 7: Signs

Any signage on this easement area will require separate sign permit(s). **Affirmative finding as conditioned.**

Article 8: Parking

Findings of Fact

Not applicable

IV. Conditions of Approval

1. Any signage on this easement area will require separate sign permit(s) as may be required.
2. Standard Permit Conditions 1-15.

Second: A. J. LaRosa

Vote: 5-1-0 (Jim Drummond)

Vote: motion carried

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court, Environmental Division. (Comprehensive Development Ordinance Article 12, Section 12.2.3 Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court within 30 days of the date of the written decision as follows:

(a) Notice of Appeal: The appeal shall be taken in such a manner as the Supreme Court or the environmental court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3, Vermont Statutes Annotated. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the DRB, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.)