



Burlington City Council Ordinance Committee

11/29/2016

City Council Ordinance Committee

Tuesday, November 29, 2016

Community Room, FFL

MINUTES

Present: Chair Chip Mason (CM), Sharon Bushor (SB), Max Tracy (MT)

Absent: None

Other City Staff: Gene Bergman (GB) (Staff Attorney), David E. White (DW) (PZ director), Kim Sturtevant (KS) (Staff Attorney)

Public: Joel Rippa, Peter Potts, Bruce Baker, Jeremy Farkes, Catherine Dingle, Beth Demas

CM called the meeting to order at 5:36 pm.

1.01 Agenda: SB moved to remove 4.02 (17-02) and put it on the 12/15 agenda and move 4.04 to the end of the agenda. MT seconded. The agenda was adopted as amended unanimously.

2.01 Public Forum: none

3.01 Approval of OC Minutes of 11/2/16: SB moved the minutes as amended (page 3, line 3, delete "density" and insert "set back and zone" and insert "DW said the setback is the average of 2 adjacent lots on both sides plus or minus 5 feet. It is the RL zone with 35' height."). MT 2d and they were approved unanimously as amended.

4.01 CDO Zoning Amendment 16-01, Thresholds for Major Impact Review:

DW explained the 2 major revisions: (1) based on committee comments and SB's concerns, a column is added to the table on page 2 for the RL district, they've held the threshold for major impact to what it is today in RL, and made the non-residential threshold slightly lower and (2) the neighborhood meeting requirement was amended to make the threshold consistent with the lowest threshold—meaning that even small projects in the downtown will have this meeting requirement.

CM pointed out that in the June 16 version, this is not applicable to the Institutional Core Campus Zone. DW agreed. DW walked through the table. SB pointed out that the Institutional Core campus was removed and DW agreed but it is not a substantive change because that area is exempt by statute because the property is owned by UVM. MT had DW confirm that the public meeting requirements are maintained in the latest version.



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SB said DW needs to correct typos (change "four" to "five" in the fourth line of the purpose, before the word "groups"; change "fifteen" to "ten" in the second line in sec. 3.2.1(d) before the word "thousand" and change "(15,000)" to "(10,000)" before "s.f.").

In the new chart, SB asked for an explanation as to why the natural area and parking space section were removed. DW said that natural areas have their own requirements, as do brownfields, and the parking space section is covered elsewhere.

SB pointed to an area where UVM owns property on both sides of the street and she noted that while not abutting or adjacent there was a cumulative impact when the owner develops both properties. This was discussed but no change was proposed or made.

Action: SB proposed to amend the typos in the purpose (5 from 4) and in section 3.2.1 pre-application (d) (from 15k to 10k) and with these amendments SB moved to approve the ordinance and refer it back to the CC for a Public Hearing and 2nd reading with a recommendation for adoption. MT seconded and the motion was passed unanimously.

4.02 CDO Zoning Amendment 17-02, Family Daycare Exceptions & Preschools:

Action: Per adoption of the agenda, this item was postponed to the 12/15/16 OC meeting.

4.03 CDO Zoning Amendment 17-03, Withhold Permit

DW said this was recommended by the PC as a step to address a community desire to hold owners accountable for violations and gives PZ right to hold up an application if there are outstanding zoning violations. DW said there has not been opposition.

Action: MT moved and SB 2nd to approve the ordinance and refer it back to the CC for a Public Hearing and 2nd reading with a recommendation for adoption. The motion passed unanimously.

4.04 CDO Zoning Amendment 16-11, Enforcement Period of Limitations

DW said this is to make sure the CDO fits well with the state statutes of limitations which limit the time municipalities have to bring a zoning enforcement action. KS said the desire was to put clarity on the 15 year SOL given that case law creates exemptions from the 15 year rule which are still disputed by some attorneys. There has been a concern about the interpretation of the applicability of the 15 year SOL for use violations, the prime example and subject of this contention. The uses at issue are primarily the unpermitted creation of a unit, the occupancy of units by unrelated people (the definition of "family") and parking. This amendment attempts to deal with the SOL issue when a use violation has gone on for a long time.



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DW gave an example of a property where zoning permits on record allow 5 units but both minimum housing and the tax assessor records indicate there are 8 units and the City has been taxing the property for the 8 units and registering those units as rentals. We need clarity as to how to deal with this situation. PZ has settled for a position where if a unit has been inspected and taxed, then it can be allowed.

Bruce Baker, a local attorney, said that Burlington is treating property differently than anywhere else in the area. The Bianchi decision set a 15 year period for clouds on title. He said there is a problem in Burlington with the keeping of zoning records. Other communities don't have this problem.

Peter Potts said that as a former PC chair, many things are legal that are not good policy. The amendment tries to give certainty and improve policy, to be user friendly and predictable. The current ways things are administered are not user friendly and predictable. The current situation puts Minimum Housing and the Assessor on a different page than PZ.

CM ask if the situation will be fixed by the passage of time. Cate Dingle said no, that permits get misplaced all the time even currently. Beth Demas said the change is meant to increase predictability over the long term. You need to have documents that you can rely on. Bruce Baker added that the non-recording of zoning permits has also created problems. The problem is exacerbated when lots merge.

DW said there are a lot of moving parts and while there have been improvements over time, there is a legacy of complications. The proposal says that if there hasn't been a problem health and safety wise and it has gone on for 15 years, then it should be allowed.

Jeremy Farkas questioned why a zoning permit, in the proposal, is not allowed for maintenance or to comply with building or housing code requirements.

CM asked them (all attorneys) to propose changes. Jeremy said a change should be made to allow maintenance or building or housing code orders.

SB said she has a lot of reservations. Most people comply. Some take advantage and are bad neighbors. She said that on the maintenance issue she'd prefer a stand-alone provision. She asked how sec. 2.7.11 (b) (5) works. KS said it means that the existence of, for example, parking that qualifies as stabilized cannot be used to meet requirements that would allow a further increase in the lot coverage for more parking.

SB questioned the parking use application. KS said the uses have to be known to the city to qualify. DW said a site plan could serve as knowledge by the city.





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SB questioned how the public will know about these ZA decisions and wants increased public notice. CM said the notice issue should be solvable.

SB said parking violations have been a big problem over the years and she believes that where there has been a series of complaints but nothing has been done by the city to correct the complained about problems, she doesn't think the violations should be "stabilized." DW noted that just because there is a complaint doesn't mean that there is a violation; the complaint has to be verified. SB said if people complained and the city hasn't dealt with it, she doesn't want to enable continuing violations. Bruce Baker said the Planning Commission tried to carve out parking from this proposal because parking is so ephemeral.

Jeremy Farkas pitched Colchester's way of issuing an opinion on violations. DW said this proposed amendment is Burlington's way of trying to get to that clarity. KS said this amendment is trying to clean up our zoning enforcement program and have a policy and practice to make it more predictable.

MT said the conversation also illuminates the records keeping issue. He's hearing that this is a disaster.

Action: CM moved to defer action until the next meeting, 12/15. SB 2nd and this motion was unanimously approved.

4.05 CDO 16-12, Rezone Fletcher Place to Residential Medium

DW said this amendment proposes to change zoning from institutional to RM. It comes at the request of some of the property owners although at least 2 or 3 of 6 or so property owners are opposed. CM asked what the makeup of the street is. KS pointed to the map and DW said all properties are residential, and most are multi-property. Staff proposed RM because it'd create less non-conformities than a RL zone. Burlington School District and UVM own property in this district; UVM's property has a residential use while BSD has one property that is not residential.

SB said this area was identified as an incorrectly zoned area during the last zoning rewrite eight years ago and it took this long to work through to this zoning change. CM asked what UVM's objection is. DW said that this zoning would prohibit non-residential institutional uses and therefore prevents UVM from converting its property to a non-residential use.

CM asked who is opposed. DW said UVM is one opponent and across from UVM's property the owner is opposed because it affects their development potential related to the slope going down to Riverside Ave.

DW noted that there are currently pending both litigation and a development and boundary line proposal that are affected by this change. The litigation relates to the boundary line adjustments. All of the subject properties are within this district.



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DW said he is trying to find common ground and narrowly define the area by following the existing lot lines. The Planning Commission rejected that because there was no proposed lot line adjustment. SB noted that this proposal is based on the needs of many and the lot line adjustment proposal came after the proposal to change the zoning was filed.

CM noted that opponents are not present but people need to show up to be heard. SB asked that a communication be sent to the council stating that things are in flux and if the litigation and lot line adjustment do change the matters, then further changes can be made.

Action: SB moved and MT 2nd to approve the ordinance and refer it back to the CC for a Public Hearing and 2nd reading with a recommendation for adoption. The motion passed unanimously.

5.01 Other Business: Next Meeting & Items to Review

CM will put agenda together.

6.01 Adjournment: MT moved and SB seconded to adjourn. The meeting was unanimously adjourned at 7:23 pm.

