

Burlington Development Review Board

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

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Wednesday, November 4, 2020, 5:00 PM

PUBLIC HEARING NOTICE

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/82309603006?pwd=TWsrVmV2RERaWW53anh2VkI5RmlOZz09>

Webinar ID: 823 0960 3006

Password: 842557

Telephone: +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. **21-0327AP; 2000 North Avenue (RL, Ward 7N) Oliver Kranichfeld**
Appeal of Notice of Violation #380034 pertaining to unpermitted interior garage construction and removal of required parking space.
2. **21-0358CA/CU; 40 Kingsland Terrace (RL, Ward 6S) Kellen Brumsted and Katie Mensen**
Remove existing garage; construct new garage with 770 square foot accessory dwelling unit.
3. **21-0326CA/CU; 254 South Union Street (RL, Ward 6S) William Reilly and Cynthia Secondi**
Establish bed & breakfast use, remove pool from site plan, and expand parking.
4. **21-0354AP; 75 Cherry Street (FD6, Ward 3C) BTC Mall Associates, LLC**
Appeal of Zoning Administrator decision regarding relinquishing permit 17-0662CA/MA.
5. **Burlington High School Relocation**
 - 21-0377CU; 12-22 North Street (NMU, Ward 3C) 24-28 North Street Burlington, LLC**
Burlington Tech Center space for educational use
 - 21-0381CU; 1251 North Ave (RL, Ward 4N) Saint Marks Parish Charitable Trust**
Burlington Tech Center space for educational use
 - 21-0378CU; 351 North Ave (NAC-CR, Ward 4N) 375 North Avenue, LLC**
Burlington Tech Center space for educational use
6. **2020-2025 Joint Institutional Parking Management Plan**

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.

United States Department of the Interior
National Park Service

**National Register of Historic Places
Continuation Sheet**

Section number 7 Page 17

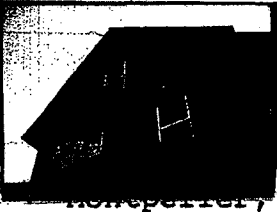
17. William Greenleaf House (254 South Union Street); 1887.

This is a handsome Queen Anne dwelling with Stick style elements whose central two story hip roof core is broken on three sides by 2 1/2 story, gabled projections, along with a 2 1/2 story wing in the rear. The gabled front facade features a canted bay window on the first story with flushboard panels above and below each window. A wood-shingled, bellcast roof over this bay rests on jigsawn brackets, and leads to a second story balcony surrounding paired windows. Above this, in the gable, is a recessed balcony with a round-arched opening. The entrance porch on the northwest corner features a pedimented gablet with a sunburst motif in the tympanum, which is echoed by radiating clapboards in a small, wedged shaped piece linking the porch roof to the front bay. A one story porch with a canted corner projects from the southwest (right front) corner. The two porches and the balcony feature turned posts on chamfered bases, simple curved brackets forming arched bays, and stickwork balustrades; the two porches rest on brick piers. A distinctive wide frieze of alternating diagonal and vertical boarding ranges along the entire front facade, introducing a Stick style element, which is seen again in the fascia boards at second story levels on the north and south walls. The canted south bay has large, paired brackets with pendant over the angled sections. Plain friezes and simple jigsawn brackets supporting molded cornices characterize each roof line. The stone foundation, plain water table and corner boards, simple bargeboards, and cornice returns further distinguish this house. The gable peaks have fishscale shingling while the remainder of the house is clapboarded; the roof is slate and the foundation redstone.

The house was built for William Greenleaf, an employee at the Customs House in Burlington.

17A. Barn/Garage (254 South Union Street); c.1888.

This is a 1 1/2 story, 2 x 2 bay, wood-framed structure with a gambrel slate roof. Sheathed in clapboards, it now features a wide garage door with ribbon windows, above which is a horizontal, 16-paned window. Side elevation windows are mostly multi-paned with architrave surrounds. Most likely this was built immediately after the house, c.1888.



VERMONT

Historic Preservation
Montpelier, VT 05602HISTORIC SITES & STRUCTURES SURVEY
Individual Structure Survey Form

COUNTY:	Chittenden
TOWN:	Burlington
LOCATION:	
COMMON NAME:	
FUNCTIONAL TYPE:	dwelling
OWNER:	
ADDRESS:	
ACCESSIBILITY TO PUBLIC:	Yes ☐ No ☒ Restricted ☐
LEVEL OF SIGNIFICANCE:	Local ☒ State ☒ National ☐

GENERAL DESCRIPTION:

Structural System

1. Foundation:	Stone ☒ Brick ☐ Concrete ☐ Concrete Block ☐
2. Wall Structure	
a. Wood Frame:	Post & Beam ☐ Balloon ☐ frame
b. Load Bearing Masonry:	Brick ☐ Stone ☐ Concrete ☐ Concrete Block ☐
c. Iron ☐ d. Steel ☐ e. Other:	
3. Wall Covering:	Clapboard ☒ Board & Batten ☐ Wood Shingle ☐ Shiplap ☐ Novelty ☐ Stucco ☐ Sheet Metal ☐ Alum. Asphalt Shingle ☐ Brick Veneer ☐ Stone Veneer ☐ Bonding Pattern: Other:
4. Roof Structure	
a. Truss:	Wood ☐ Iron ☐ Steel ☐ Concrete ☐
b. Other:	
5. Roof Covering:	Slate ☒ Wood Shingle ☐ Asphalt Shingle ☐ Sheet Metal ☐ Built Up ☐ Rolled ☐ Tile ☐ Other:
6. Engineering Structure:	
7. Other:	
Appendages:	Porches ☒ Towers ☐ Cupolas ☐ Dormers ☒ Chimneys ☐ Sheds ☐ Ells ☒ Wings ☒ Other:
Roof Style:	Gable ☐ Hip ☒ Shed ☐ Flat ☐ Mansard ☐ Gambrel ☐ Jerkinhead ☐ Saw Tooth ☐ With Monitor ☐ With Bellcast ☐ With Parapet ☐ With False Front ☐ Other:
Number of Stories:	2 1/2
Number of Bays:	irregular
Approximate Dimensions:	
Entrance Location:	left side

THREAT TO STRUCTURE:

No Threat ☐ Zoning ☐ Roads ☐
Development ☐ Deterioration ☐
Alteration ☐ Other:

SURVEY NUMBER:

254 So. Union

NEGATIVE FILE NUMBER:

77-A-206

UTM REFERENCES:

Zone/Easting/Northing

U.S.G.S. QUAD. MAP:

PRESENT FORMAL NAME:

ORIGINAL FORMAL NAME:

PRESENT USE: dwelling

ORIGINAL USE: dwelling

ARCHITECT/ENGINEER:

W. O. Spear

BUILDER/CONTRACTOR:

W. O. Spear

PHYSICAL CONDITION OF STRUCTURE:

Excellent ☐ Good ☒Fair ☐ Poor ☐

THEME:

STYLE: queen anne

DATE BUILT: 1887

LOCAL ATTITUDES:

Positive ☐ Negative ☐
Mixed ☐ Other:

ADDITIONAL ARCHITECTURAL OR STRUCTURAL DESCRIPTION:

Massing - barely discernable hipped roof central core with 2 1/2 story gabled facade projection, a 2 1/2 story gabled north wall projection and a 2 1/2 story gabled projecting bay on the south wall. With a 2 1/2 story rear wing.

Penetration - 1/1 sash with wooden molded window caps. Queen Anne colored glass window on south wall and north wall.

Entrance - double door with glazed transom.

Cornice - box cornice - with frieze of verticle boards with alternating beaded and flush boards. Some at diagonals. Angle brackets on south wall bay, with incised vergeboards in gable end. Faciaboard framing. 2 story gambrel roofed barn.

RELATED STRUCTURES: (Describe)

STATEMENT OF SIGNIFICANCE:

This Queen Anne residence is equal to the quality and character of the surrounding structures on Union St. It is particularly distinguished by its verticle and diagonal board frieze. The house was built for William Greenleaf who was an employee at the Customs house.

REFERENCES:

BFP 7/19/87; 1890, Sanborn maps; directories

MAP: (Indicate North In Circle)



SURROUNDING ENVIRONMENT:

Open Land ☐ Woodland ☐
Scattered Buildings ☐
Moderately Built Up ☒
Densely Built Up ☐
Residential ☒ Commercial ☐
Agricultural ☐ Industrial ☐
Roadside Strip Development ☐
Other:

RECORDED BY:

Clark Schoettle

ORGANIZATION:

VT Division for Historic Preservation

DATE RECORDED:

9/1/77





Department of Permitting and Inspections

645A Pine St, PO Box 849
Burlington, VT 05402-0849

VOICE (802) 863-0442

FAX: (802) 652-4221

TO: Development Review Board

From: Ted Miles,
Department of Permitting and Inspections

Date: Nov 4, 2020

RE: Report on **Appeal #21-0327AP**; Appeal of an Administrative Officer's Zoning Notice of Violation (ZV #380034) issued on September 10, 2020, enclosure of garage resulting in removal of required parking without a zoning permit for the property at 2000 North Ave, Burlington, Vermont.

Note: This is the Administrative Officer's report; decisions are made by the Development Review Board, which may overturn or uphold the Zoning Administrator's Decision. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Location: 2000 North Ave, Burlington, Vermont

Tax Lot # 023-3-052-000

Appellant: Oliver Kranichfeld

Representative: Oliver Kranichfeld

Applicable Regulations: CDO Articles 2, 3, 4, 5, 8, 12 and 24 VSA §4451

Appeal # 21-0327AP filed on September 25, 2020.

Violation:

- A. Enclosure of garage for living space resulting in elimination of required parking.
- B. **NOTE: The Short term rental has been discontinued and the listing has been removed. This violation has been RESOLVED and is no longer a zoning violation at this time.**

CDO Article 2. Enforcement Timeline

1. January 3, 2020. Zoning complaint received when a contractor applied for a permit for installation of a vent pipe through the roof of the garage. It was noted from the person doing the review that there was no permit on file for the enclosure of the garage.
2. January 7, 2020. Staff did a drive by of the property to identify and verify the complaint.
3. January 9, 2020. Warning letter sent to owner in regards to complaint.
4. July 13-24, 2020. Multiple emails with owner. Emails enclosed with packet.
5. September 10, 2020. A notice of Violation was mailed to the owner of the property noting the violation of enclosure of the garage resulting in removal of required parking space without a zoning permit.
6. September 25, 2020. Received appeal for Notice of Violation issued on September 10, 2020.

Background Information:

- Built 1980 as a single family home with a detached garage. This is a corner property with frontage on North Ave, River view drive and North View drive.
- November 2011. Zoning permit issued for Construct addition at rear of garage and raise garage roof height, new deck off back of new addition, construct mudroom between house and garage.
- April 2012. Zoning non-applicability issued for Replace siding, windows and roofing with new.
- April 2012. Zoning non-applicability issued for New mechanical equipment in basement, new bathroom, basement remodeling. Basement remains non-habitable space.
- April 2012. Zoning permit issued to Convert basement to habitable living space; new egress window.
- June 2012. Zoning permit issued for Addition of shed, new deck behind garage, and expansion of existing deck on house.
- June 2013. Zoning permit issued for Addition to existing deck, addition of concrete patio and walk areas, add awnings and lattice work around base of decks, new retaining wall.
- October 2018. Zoning permit issued to Install a new fence.
- Mr. Oliver Kranichfeld purchased the property in April 2017.
- Property listed in Assessor's Records as a single family home with a 7,803 sf lot.
- RL Zone, Ward 7N

CDO Article 3 Part 1: General provisions and Zoning permits

Sec. 3.1.2 (b) 1

1. Increase in habitable living space (including, but not limited to, attic, bedroom, basement, garage, and winterizing or otherwise enclosing a porch).

CDO Article 8 Part 1 General Requirements

There is insufficient remaining space in the driveway to accommodate the two required spaces outside of the city right of way as defined under section 8.

CDO Article 12. Appeals, Conditional Uses, Variances

Appellant filed a complete appeal as outlined under CDO Article 12 Sec. 12.2.2

SUMMARY:

Owner has acknowledged the use as an Airbnb short term rental and has discontinued that use. Owner also acknowledges that the garage has been enclosed as living space without proper permits as required under article 3 by increasing habitable space. The property currently does not have adequate parking on their property as required under Article 8.

CONCLUSION:

The Code Compliance Officer for Permitting and Inspections Department hereby requests the Development Review Board uphold ZV #380034 as valid. The following stipulations are recommended:

1. Within 30 calendar days from date of DRB decision, Appellant shall apply for the proper permits, zoning and trades permits, for the conversion of the garage and establish parking on owner's property or restore the property back to the last permitted use, that being a garage. An approved zoning permit will allow the owner one year to come into compliance.



PERMITTING & INSPECTIONS

645 Pine Street, Ste. A | PO Box 849
Burlington, VT 05402-0849

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

NOTICE OF ZONING VIOLATION (NOV 380034)

September 10, 2020

OLIVER KRANICHFELD
2000 North Ave
Burlington, Vt 05408

Mailed Certified Mail 70190140000108390847
And FIRST CLASS MAIL

NOTICE OF VIOLATION AT:
2000 NORTH AVENUE, BURLINGTON, VT
TAX LOT #023-3-052-000

Zoning Violation# 380034

Dear Owners,

It has come to the attention of this office that a zoning violation exists at 2000 North Avenue.

Description of Violation: Garage has been enclosed resulting in removal of required parking space without a zoning permit.

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 5, 8, 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 a zoning permit 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 September 10, 2020, and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Appeal fee and complete application shall be filed with the City's Zoning Office (645 Pine Street) by **4 pm on September 25, 2020** ; an appeal shall not be perfected until the fee is received.

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

Sincerely,

William Ward
Zoning Administrative Officer

Sincerely,

Theodore Miles
Code Compliance Officer

Enclosures: Violation Details

Cc: Land Records for Tax Lot # 023-3-052-000

VIOLATION DETAILS**LOCATION:** 2000 NORTH AVENUE**DECISION DATE:** September 10, 2020**VIOLATION DESCRIPTION:** Garage has been enclosed resulting in removal of required parking space without a zoning permit.**FINDINGS:** Over head door to garage has been removed and a solid wall constructed. Garage is now an enclosed space and no longer parking. Property is listed on www.airbnb.com as a short term rental.**REMEDY OPTIONS:** Within seven (7) days from receipt of this notice you may cure the violation by:

1) – Removing the violation noted above, remove the wall enclosure and return the overhead door for the garage use, **and informing the Code Enforcement Office that the violation has been removed so our office may verify compliance; or**

2) - Obtaining approval from the City's Zoning Office for change of garage use Without Permit, conversion of garage into enclosed space 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 Code Enforcement 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 September 25, 2020.** Submit a complete application with ZV# and appropriate fee to the City's Zoning Office, 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, 5, 8, 12 and 24 VSA §4451



09/11/2020 08:06



12/03/2012 11:58

Official Appeal of Notice of Violation of 2000 North Avenue

Tax Lot: #023-3-052-000

Zoning Violation# 3800034

To Whom it May Concern,

My name is Oliver Kranichfeld and I'm the sole property owner for a home located on 2000 North Avenue, Burlington, Vermont. I'm officially appealing the decision for Burlington to issue me a Zoning violation: #380034.

Description of Decision Under Appeal

Violation Description: Garage has been enclosed resulting in removal of required parking space without a zoning permit. (verbatim)

Key findings: Overhead door to garage has been removed and a solid wall constructed. Garage is now an enclosed space and no longer parking. Property is listed on www.airbnb.com as a short-term rental. (verbatim)

I'm appealing this violation on the basis of these findings because **A)** the driveway dimensions cited by Mr. Miles in previous communications are not reflected in the violation notice, which originally appeared to be the basis of the violation in the first place, and there is no clause stating that the driveway can't be used in a parallel fashion from the roadway while still meeting dimensional criteria listed in chart 8.1.11.1 of the CDO **B)** On the basis that I'm disputing the key findings description, with the false claims that the garage is/was used as a short-term AirBNB rental property. Previous communications with Mr. Miles confirms that he has had this unfounded suspicion since he initiated this process, despite the fact that I have repeatedly denied this claim and that he can't bring forth any evidence proving this. I worry that the language included in this false accusation, and especially including it as a "key finding," is leveraging this violation against me unfairly and unjustly, and I ask that the city remove this language before continuing any further with the violation and subsequent possible remedying options. **C)** My questions regarding the dimensions of the gravel section of the driveway were left unanswered and various calls to the office were left without reply. I needed and need guidance in what dimensions of the gravel driveway the office wants from me.

To specifically address the Air BNB rental accusation, I take exception to the utterly false claim that this garage unit was used in any way as an Air BNB. As one of the Key Findings, my violation notice states "Property listed on www.airbnb.com as a short-term rental. In his communications with me, Ted Miles has repeatedly tried to insinuate that he suspects my garage was being used as a rental property, which I have repeatedly denied. For the record, Ted's claim is absolutely, demonstrably false, and I challenge Mr. Miles to provide evidence to suggest otherwise. A single bedroom in my home was used on and off again as a short-term

rental from the summer of 2017 to the fall of 2019. I can provide a printed list of the ten total guests that stayed in my house on Air BNB in this said timeframe, along with their Air BNB reviews, in which some even specify their enjoyment of their *bedroom*, not their garage living space. My last guest through Air BNB left in October of 2019, almost a full year ago. So not only is this claim unfounded, but it goes even further to try to stack this case against me. This Air BNB rental was also compliant with tax regulations and its tax identification number was listed on Air BNB. I decided to discontinue hosting/renting through Air BNB due to the number of costly regulatory and taxes coming down the pipeline. I would like this violation to discontinue using any and all language from insinuating that this garage was used as a short-term rental property.

In reference to the garage property, I made the mistake of trusting my contractor to seek out and gain the necessary permits for approving of such a change, such as converting the garage door into an enclosed wall. Apparently, that never happened. For that, I apologize. However, I see the reaction of forcing me to re-install a garage door as costly, insensitive to some of my housing needs, and a waste of everyone's times and resources.

The nature of the violation amounts to Mr. Miles citing that now my driveway, which doesn't have (technically) the added benefit of the extended driveway into the garage. I use that word "technically" in regards to this matter because I see many other cars and trucks in my neighborhood parked in front of their garages with similar spacing. I also request that the city take into account that this entire property is not adjacent with any sidewalk, so there is no interference with pedestrian foot traffic, which I would think would be the driving rationale for driveway dimensions in accordance with city right-of-way in a case such as this. Mr. Miles stated prior to the violation that the driveway does not meet the 9 by 23 foot dimension standards if one takes into account the 15 foot right of way on North Avenue. After measuring the driveway, in accordance with this massive 15 foot right of way from the edge of North Avenue, the length comes roughly an inch and a half off from meeting these length requirements. Otherwise, the driveway would meet these requirements if I parked parallel with North Avenue.

Here are some of Ted Miles statements in emails to me regarding expanding the driveway with gravel:

"The easiest and least expensive way to resolve this, in my opinion, would be to install parking spaces next to the garage, other wise the wall on the garage would have to be returned to an overhead door and you would lose that space for what you are using it for currently. The choice is yours as I can only give guidance for resolution."- July 13

"The driveway does not have to be pavement, it can be gravel but if you use gravel it has to have a barrier to contain the gravel, such as 2x6 or such to contain the gravel from spreading."- July 15

I then never heard back again from Ted again after my final email on July 24: "Is there anything regarding the permit that you need to send me?"

In this email, I was directly asking for a zoning permit to begin my driveway/gravel project. Multiple calls to the office were not returned. To be honest, my life has been a whirlwind since returning back to the school in the COVID era with a new title. I ask for a little sensitivity to this. If my calls aren't being returned or emails answered, I don't know how to proceed because this process is complicated and I need some guidance from the very office issuing me the violation.

Description of Property Subject to Appeal

2000 North Avenue is a single story ranch on a corner lot. My home is very small and modest. The first floor is only 864 square feet of living space. While I don't have a roommate at the moment, I do own a dog, and the house used to accommodate a roommate and his dog, and prior to 2019, a roommate and a few different Air BNB guests at various junctures. I put a fence around my property last year to accommodate my dog. I bought the house at \$272,000 in April of 2017 and the appraisal was \$270,000. Prior to my purchase, the value of the home was increased by the sheer amount of work that the previous owner put into the home, including renovating/finishing the basement.

The single-car garage is a single story with high ceilings and a loft. I installed a wood stove with the proper permitting, including a permit for the wood stove fan. The previous owners had installed closets on both sides of the garage, as well as a large stage in the back of the garage by the sliding doors, which is elevated roughly two feet over the floor and takes up a lot of space. The garage has two windows and a woodstove. I use it primarily for needed storage space (a kayak and other outdoor gear), an exercise space (with weights), and a woodstove with a small couch. Since my home doesn't have a living room that can accommodate more than a few people at a time, I felt there was a need to have more open space on the property to mingle, work out, or store items in.

Reference to the Regulatory Provisions Applicable to the Appeal

The dimension requirements cited by Mr. Miles can be remedied in a few ways.

Regulation Citation: CDO Articles: 2,3,5,8,12 and 24 VSA S4451

According to parking dimensions in Article 8.1.11.1, listed in a table outlining minimum parking dimensional requirements. If parked at a 60 degree angle, my driveway would be in compliance, and it has enough room to accommodate a 60 degree parked car.

*the driveway also meets the dimensional required minimum if I choose to parallel park in the spot, and parallel to the roadway.

Relief Requested by the Appellant

For my driveway, I request that I receive approval from the city's zoning office to remedy this expanding the pre-existing driveway with gravel and a 2-inch barrier on the left side, which is exactly one of the options that Ted Miles told me that I can opt for in order to remedy this violation prior to the violation being officially issued. I was never given direction on how many feet I need to expand it despite asking, information that is critical in the planning and building of this. I ask for a recommended length in how much I need to expand it. For my garage, I request that I'm able to obtain approval from the city's Zoning office retroactively for the conversion based on the fact that there is a need for more living space, especially as I seek out a roommate in the near future. If I don't gain approval for this, then I will agree to re-install a garage door. I would need to know the answer to this, however, before I proceed with expanding the driveway. I would also ask if I don't get approval for retroactively enclosing garage, that the city give me a realistic timeline to find a reliable contractor who understands the permitting process and subsequently fixes the issue.

Alleged grounds why such requested relief is believed proper under the circumstances

- A) I don't see the zoning violation as impacting car traffic or pedestrian foot traffic with no adjacent sidewalk, so its overall impact on the community and its surroundings is very minimal.
- B) I believe that my relief requests are reasonable, particularly during a global pandemic, and while I'm starting a new, busy job as a Special Educator helping students with intensive needs in the Essex Westford School District.
- C) If the remedial option of expanding driveway with gravel and a barrier was available prior to this violation, I don't see any reason why it can't be an option now, other than purely designed to be punitive and/or heavy handed.
- D) I am an upstanding, taxpaying Burlington citizen with no criminal record, living on a teacher's salary and trying to make ends meet. This issue with the zoning office is causing me emotional distress beyond what I would like to endure, and I just want it to end.
- E) While I don't see the need to expand the driveway further horizontally, I am willing to accept this as a remedial option to compensate for the roughly 1.8 inches of driveway space that I need to satisfy the city's cited dimensional driveway requirements.
- F) While I may not gain approval, I hope that the city gives me a fair shake in hearing my request for a retroactive permit approval for converting my garage when hearing about such factors as needed living space and needed storage space.

I honestly hope that the city takes these factors into consideration and hears my case, and I hope that we can resolve this in a way that is fair to everyone, including myself. I honestly just want this issue to go away. If the city deems that the only course of action is for me to reinstall the garage door, I will be very disappointed, but I would have to abide by the ruling. My only

request if that is the decision is that the Zoning commission allow me a reasonable timeframe to get this completed with respect to finding a good, transparent contractor and going through the permit application process again.

Sincerely,

Oliver Kranichfeld

Scott Gustin

From: rosemary noonan <rnoonanb@me.com>
Sent: Sunday, October 25, 2020 12:47 PM
To: Scott Gustin
Cc: Oliverkranichfeld@gmail.com
Subject: November 4,2020 appeal of zoning issue at 2000 North Ave

External Message

Scott,

As I am unable to participate in the remote meeting on November 4 this is a response to the postcard notice received as an abutter to the above property. Having

owned 1984 North Ave since 1987 I have watched a few transformations at 2000 No Ave, and Oliver's has been the most responsible and aesthetically pleasing. He

moved in 2017 and the only noisy moments were for the Marathon. Hopefully the zoning board can be reasonable in resolving their issue with Oliver. Happy to answer

any questions re this matter. Thanks for your time.

Rosemary Noonan
1984 North Ave
Burlington, VT
(802) 922-2062
rnoonanb@me.com

Burlington Development Review Board

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

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Wednesday, November 4, 2020, 5:00 PM

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/82309603006?pwd=TWsrVmV2RERaWW53anh2VkI5RmlOZz09>

Webinar ID: 823 0960 3006

Password: 842557

Telephone: +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

Agenda

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Consent**
 - 1. 21-0326CU; 254 South Union Street (RL, Ward 6S) William Reilly and Cynthia Secondi**
Request for bed and breakfast use, remove pool from site plan, and permit parking expansion.
- V. Public Hearing**
 - 1. Burlington High School Relocation**
 - 21-0377CU; 12-22 North Street (NMU, Ward 3C) 24-28 North Street Burlington, LLC**
Burlington Tech Center space for educational use
 - 21-0381CU; 1251 North Ave (RL, Ward 4N) Saint Marks Parish Charitable Trust**
Burlington Tech Center space for educational use
 - 21-0378CU; 351 North Ave (NAC-CR, Ward 4N) 375 North Avenue, LLC**
Burlington Tech Center space for educational use
 - 2. 21-0327AP; 2000 North Avenue (RL, Ward 7N) Oliver Kranichfeld**
Appeal of Notice of Violation #380034 pertaining to unpermitted interior garage construction and removal of required parking space.
 - 3. 21-0358CA/CU; 40 Kingsland Terrace (RL, Ward 6S) Kellen Brumsted & Katie Mensen**
Remove existing garage; construct new garage with 770 square foot accessory dwelling unit.
 - 4. 21-0354AP; 75 Cherry Street (FD6, Ward 3C) BTC Mall Associates, LLC**
Appeal of Zoning Administrator Determination regarding relinquishing 17-0662CA/MA.
 - 5. Review of 2020-2025 Joint Institutional Parking Management Plan (To be deferred)**
- VI. Adjournment**

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.

BURLINGTON TECHNICAL CENTER

52 INSTITUTE ROAD, BURLINGTON, VT 05408 · 802-864-8426 · BTC.BSDVT.ORG

October 6, 2020

Department of Permitting and Inspections
645 Pine Street
Burlington, VT 05401-8451

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Burlington Technical Center (BTC) due to a facilities issue is unable to use our classrooms, shops, educational spaces and building. Because of the chemicals in the air and COVID-19 BTC has been forced to find alternative locations for our programs. Our Hybrid school model due to COVID has students split into 4 groups. Monday & Thursday AM, Monday & Thursday PM, Tuesday & Friday AM and Tuesday & Friday PM

BTC programs are looking to use these spaces as our classrooms. We have chosen these locations because of their proximity to BTC as our school serves 13 different High Schools from the region. Students are bussed to BTC and we need the locations to be close by. We chose the locations because of their size and ability to serve our educational purposes. Each location has days of the week for use, number of students each AM and PM, and each location will be visited by a BTC staff member to drop off mail and any educational supplies daily for 10-15 minutes.

Culinary Arts. Days of Week- Monday, Tuesday, Thursday, Friday. 3 students M/H AM 7 students M/H PM 7 students T/F AM 6 students T/F PM	St. Mark's Church 1251 North Ave, Burlington, VT 05408 1 employee (teacher) daily from 7:45- 3:30
Digital Media Lab Days of Week- Monday, Tuesday, Thursday, Friday. 7 students M/H AM 6 students M/H PM 10 students T/F AM 8 students T/F PM	Cambrian Rise Large 351 North Ave, Burlington, VT 05401 1 employee (teacher) daily from 7:45- 3:30
Design Illustration Days of Week- Monday,	Cambrian Rise Large 351 North Ave, Burlington, VT 05401

**BTC
Programs**

Advanced Manufacturing & Engineering • Automotive Body Repair • Automotive Science Technology • Aviation & Aerospace Technology
• Criminal Justice • Culinary Arts • Design & Illustration
Digital Media Lab • Health Sciences Academy • Human Services • Design Tech Foundational • Welding & Fabrication
Work Based Learning •

BURLINGTON TECHNICAL CENTER

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Tuesday, Thursday, Friday. 8 students M/H AM 6 students M/H PM 9 students T/F AM 6 students T/F PM	1 employee (teacher) daily from 7:45- 3:30
Health Sciences Advanced Days of Week- Monday, Tuesday, Thursday, Friday. 13 students M/H AM 13 students M/H PM 15 students T/F AM 13 students T/F PM	Cambrian Rise Large 351 North Ave, Burlington, VT 05401 1 employee (teacher) daily from 7:45- 3:30
Criminal Justice Days of Week- Monday, Tuesday, Thursday, Friday. 4 students M/H AM 6 students M/H PM 13 students T/F AM 3 students T/F PM	12-22 North Street Burlington, VT 05401 1 employee (teacher) daily from 7:45- 3:30

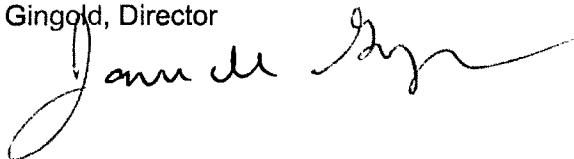
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Please let me know if we can provide any other information and we would be happy to help.

Sincerely,
Jason Gingold, Director



BTC
Programs

Advanced Manufacturing & Engineering • Automotive Body Repair • Automotive Science Technology • Aviation & Aerospace Technology
• Criminal Justice • Culinary Arts • Design & Illustration
Digital Media Lab • Health Sciences Academy • Human Services • Design Tech Foundational • Welding & Fabrication
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Department of Permitting and Inspections

645 Pine Street
Burlington, VT 05401-8415
Phone: (802) 865-7188

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Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS: 10-22 North Ave

PROPERTY OWNER*: AJ Rossman

*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS: 412 NORTH AVE

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE: 802 503 5523

EMAIL: ajrossman70@gmail.com

SIGNATURE: [Signature]

APPLICANT: Burlington School District

POSTAL ADDRESS: 150 Colchester Ave

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE: 802-864-8453

EMAIL: [Email]

SIGNATURE: [Signature]

Property owner signature authorizes the applicant (if noted) to act on owner's behalf for all matters pertaining to this zoning permit application. Signature also consents to the proposed work and to inspection by city zoning staff to close out the zoning permit upon project completion.

Description of Proposed Project: Burlington High School (Current) Justice program space for educational use for 18 students. Conditional Use

Existing Use of Property: ☐ Single Family ☐ Multi Family: # ___ Units ☐ Other: ___

Proposed Use of Property: ☐ Single Family ☐ Multi Family: # ___ Units ☒ Other: Educational Use

• Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes ☐ No ☒

(If yes, the Vermont Residential/Commercial Building Energy Standards (VRBES/VCBES) apply. Please visit the following links for more information: http://publicservice.vermont.gov/energy_efficiency/vbes OR http://publicservice.vermont.gov/energy_efficiency/vbes.)

• Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes ☐ No ☒

(If yes, you will need to submit the 'Erosion Prevention and Sediment Control Plan' questionnaire, with a site plan)

• For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes ☐ No ☒

(If yes, you will need to submit the 'Stormwater Management Plan' questionnaire, with a site plan)

• Are you proposing any work within, below, or above the public right of way? Yes ☐ No ☒

(If yes, you will need to receive prior approval from the Department of Public Works)

• Are you proposing any onsite food or beverage production/manufacturing? Yes ☐ No ☒

(If yes, you will need to consult with Water Resources Division at the Department of Public Works: 863-4601)

Estimated Construction Cost (value)*: \$ 0

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Zoning Division at 802-865-7188, or visit the office at 645 Pine Street.

Office Use Only: Zone: NMU Eligible for Design Review? 4 Age of House 1980 Lot Size 6343

Type: SN ___ AW ___ FC ___ BA ___ COA 1 ___ COA 2 ___ COA 3 ___ CU ☒ MA ___ VR ___ HO ___ SP ___ DT ___ MP ___

Check No. 1008855 Amount Paid 195 Zoning Permit # 21-0377CJ

12-22 North

— Office 2 (Study Space)



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Office 2 is 112 sf (14' 7" x 7' 9"). It has 1 window and whiteboard.

Become a member and apply to rent this space [here](#).

+ Office 3 (Study Space)

+ SW Suite: Offices 4, 5 and 6 (OPEN)

+ Office 7 (Study Space)

+ Shared Outdoor Space (Private office, Study Space)

+ Conference Room Flex Space (Private office, Study Space)

+ Fishbowl (Private office, Study Space)

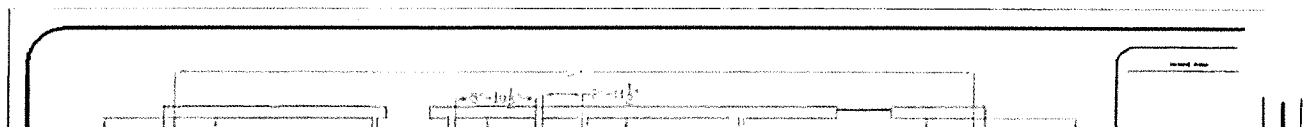
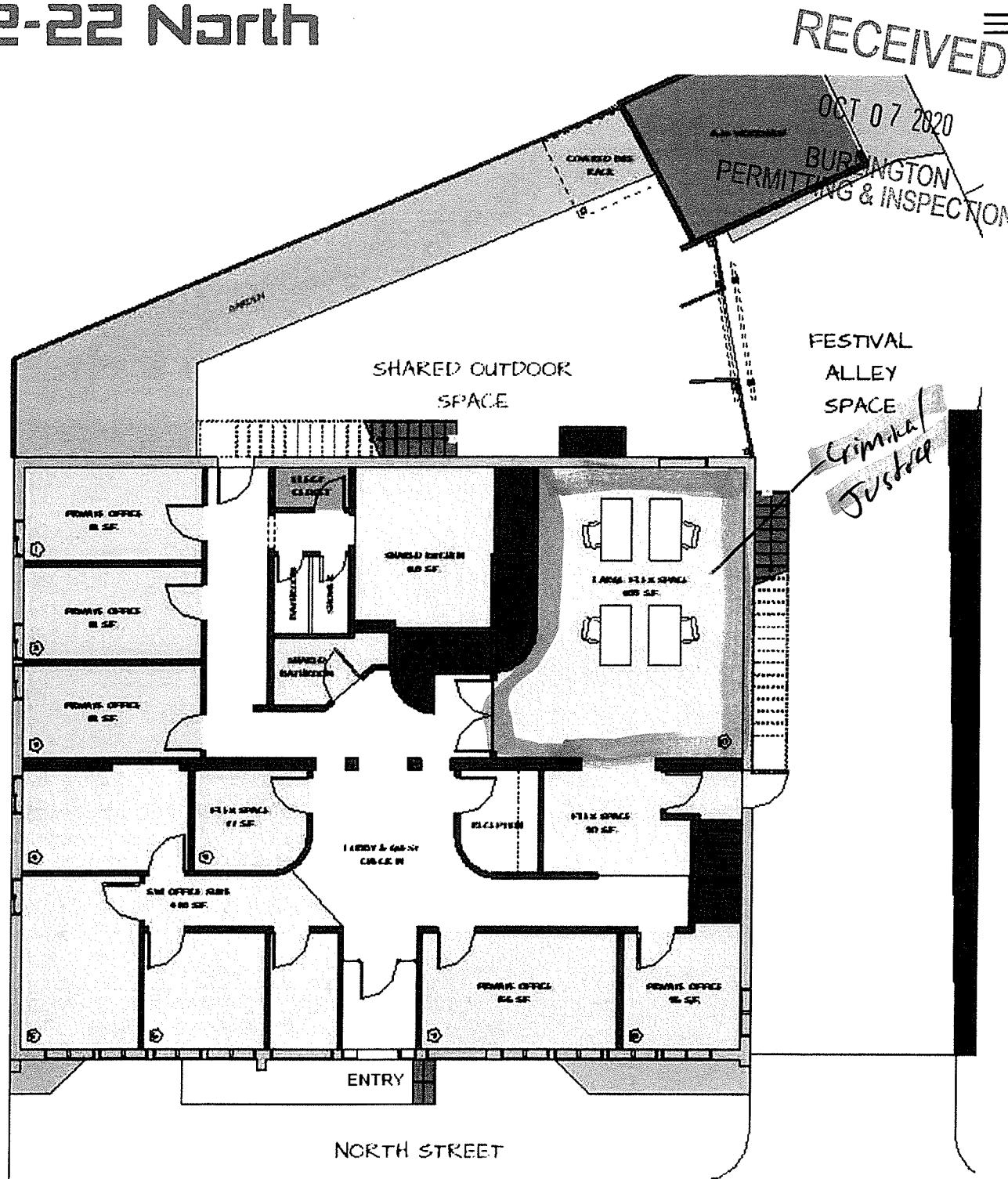
+ Office 1 (Occupied)

+ Office 8 (Occupied)

10/6/2020

Offices – 12-22 North: Vermont Green Offices

12-22 North





Department of Permitting and Inspections

645 Pine Street
Burlington, VT 05401-8415
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Zoning Permit Application

Use this form for **ALL** zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS:

Cambridge Road

PROPERTY

OWNER*: 375 NORTH AVENUE LLC

*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS: P.O. Box 1335

CITY, ST, ZIP: BURLINGTON, VT 05402-1335

DAY PHONE: 802-343-7055

EMAIL: EFARROW@FARROWPROPERTIESVT.COM

SIGNATURE:

Eric Farrow

APPLICANT:

Burlington

POSTAL ADDRESS:

150 Colchester Ave

CITY, ST, ZIP:

Burlington, VT 05401

DAY PHONE:

802-864-8453

EMAIL:

insp@cityofburlingtonvt.org

SIGNATURE:

me

Property owner signature authorizes the applicant (if noted) to act on owner's behalf for all matters pertaining to this zoning permit application. Signature also consents to the proposed work and to inspection by city zoning staff to close out the zoning permit upon project completion.

Description of Proposed Project:

Design Programs Space For Educational Use
for 47 students

Existing Use of Property: ☐ Single Family ☐ Multi Family: #___ Units ☐ Other:

Proposed Use of Property: ☐ Single Family ☐ Multi Family: #___ Units ☒ Other: Educational Use

• Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes ☐ No ☒

(If yes, the Vermont Residential/Commercial Building Energy Standards (VRBES/VCBES) apply. Please visit the following links for more information:

http://publicservice.vermont.gov/energy_efficiency/rbes or http://publicservice.vermont.gov/energy_efficiency/cbes)

• Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes ☐ No ☒

(If yes, you will need to submit the 'Erosion Prevention and Sediment Control Plan' questionnaire, with a site plan)

• For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes ☐ No ☒

(If yes, you will need to submit the 'Stormwater Management Plan' questionnaire, with a site plan)

• Are you proposing any work within, below, or above the public right of way? Yes ☐ No ☒

(If yes, you will need to receive prior approval from the Department of Public Works)

• Are you proposing any onsite food or beverage production/manufacturing? Yes ☐ No ☒

(If yes, you will need to consult with Water Resources Division at the Department of Public Works: 863-4501)

Estimated Construction Cost (value)*: \$ 40,000

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Zoning Division at 802-865-7188, or visit the office at 645 Pine Street.

Office Use Only: Zone: NAL Eligible for Design Review? Y Age of House _____ Lot Size _____

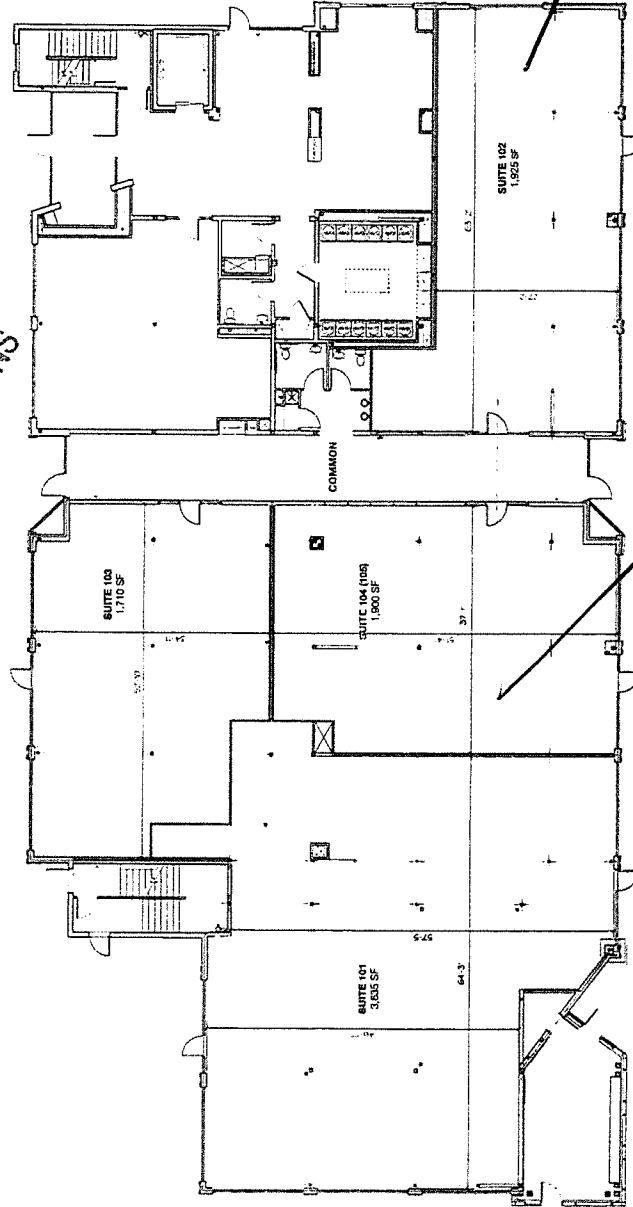
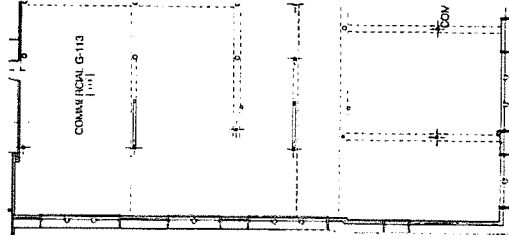
Type: SN _____ AW _____ FC _____ BA _____ COA 1 _____ COA 2 _____ COA 3 _____ CUX _____ MA _____ VR _____ HO _____ SP _____ DT _____ MP _____

Check No. 1008855

Amount Paid 195

Zoning Permit # 21-0378W

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Health

Design
media

THE RISE - FIRST FLOOR PLAN - AREA SUMMARY



Department of Permitting and Inspections

645 Pine Street
Burlington, VT 05401-8415
Phone: (802) 865-7188

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Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS:

1251 North Avenue

PROPERTY OWNER*:

St Mark's Church

APPLICANT:

Burlington School Dist.

*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS:

1251 North Avenue

POSTAL ADDRESS:

150 Colchester Ave

CITY, ST, ZIP:

Burlington, VT 05408

CITY, ST, ZIP:

Burlington, VT 05408

DAY PHONE:

M Broder 802-523-2828

DAY PHONE:

802-864-8453

EMAIL:

Dallas S. St. Mark's

EMAIL:

Mspauld@burlingtonvt.org

SIGNATURE:

Dallas S. St. Mark's

SIGNATURE:

Mspauld@burlingtonvt.org

Property owner signature authorizes the applicant (if noted) to act on owner's behalf for all matters pertaining to this zoning permit application. Signature also consents to the proposed work and to inspection by city zoning staff to close out the zoning permit upon project completion.

Description of Proposed Project:

Burlington Tech Center Culinary Program space for educational use for 13 students. Conditional Use

Existing Use of Property:

☐ Single Family

☐ Multi Family: #__ Units

☒ Other:

Church

Proposed Use of Property:

☐ Single Family

☐ Multi Family: #__ Units

☒ Other:

Educational Use

- Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes ☐ No ☒

(If yes, the Vermont Residential/Commercial Building Energy Standards (VRBES/VCBES) apply. Please visit the following links for more information:

http://publicservice.vermont.gov/energy_efficiency/rbes or http://publicservice.vermont.gov/energy_efficiency/cbes)

- Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes ☐ No ☒

(If yes, you will need to submit the 'Erosion Prevention and Sediment Control Plan' questionnaire, with a site plan)

- For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes ☐ No ☒

(If yes, you will need to submit the 'Stormwater Management Plan' questionnaire, with a site plan)

- Are you proposing any work within, below, or above the public right of way? Yes ☐ No ☒

(If yes, you will need to receive prior approval from the Department of Public Works)

- Are you proposing any onsite food or beverage production/manufacturing? Yes ☐ No ☒

(If yes, you will need to consult with Water Resources Division at the Department of Public Works: 863-4501)

Estimated Construction Cost (value)*: \$

1000

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Zoning Division at 802-865-7188, or visit the office at 645 Pine Street.

Office Use Only: Zone:

RL

Eligible for Design Review?

Y

Age of House

1940

Lot Size

161403

Type: SN

AW

FC

BA

COA 1

COA 2

COA 3

CU

MA

VR

HO

SP

DT

MP

Check No.

1008855

Amount Paid

195

Zoning Permit #

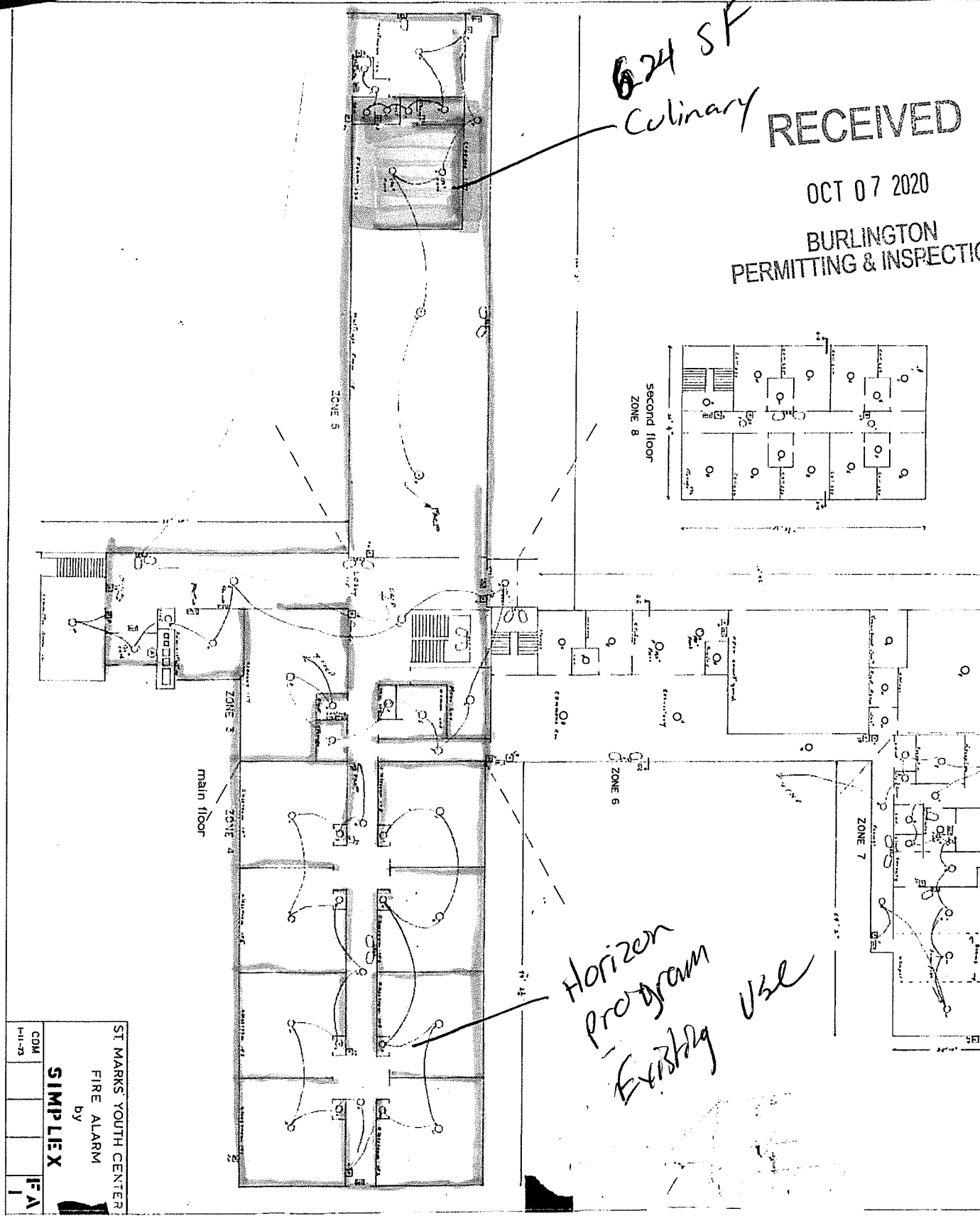
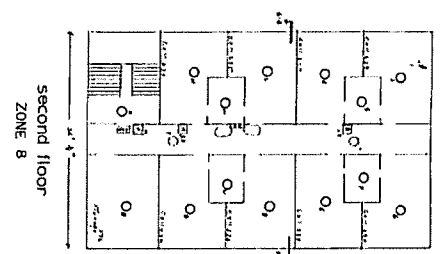
21-03820

624 SF
Culinary

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Horizon
Program
Existing Use

ST MARKS YOUTH CENTER			
FIRE ALARM			
by			
SIMPLEX			
CDM			FA
1-11-73			1

Department of Permitting and Inspections

Zoning Division
149 Church Street
Burlington, VT 05401
<http://www.burlingtonvt.gov/PZ/>
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Theodore Miles, Interim Code Compliance Officer
Charlene Orton, Permitting and Inspections Administrator
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Alison Davis, Zoning Clerk



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: November 4, 2020
RE: BHS relocation

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 Numbers: ZP21-0377CU 12-22 North Street (**Zone** NMU, **Ward** 3C)
ZP21-0378CU; 351 North Avenue (Cambrian Rise Building B, **Zone** NAC-CR, **Ward** 4N)
ZP21-0381CU; 1251 North Avenue (St. Mark's Church, **Zone** RL **Ward** 4N)

Date application accepted: October 7, 2020

Applicant/ Owner: Burlington School District / AJ Rossman (North St); 375 North Ave LLC
Eric Farrell (Cambrian Rise); St. Mark's Church.

Request: Temporary relocation of educational services due to closure of Burlington High School.

Background:

12-22 North Street:

- **Zoning Permit 91-193;** Installation of double hung window, first floor in rear of building. No change in use. December 1990.
- **Zoning Permit 01-110;** **Change of use from office space to educational**/office on the first floor, Residential unit and artist studio on the second floor. No exterior changes included. August 2000.
- **Zoning Permit 02-341;** Convert entire second floor to residential unit; Currently 1 residential unit and 33 sf artist studio. March 2002.
- **Zoning Permit 05-385CA;** Installation of photovoltaic panels on lower roof of building. February 2005.
- **Zoning Permit 08-016CA;** install solar tracker. July 2009.
- **Zoning Permit 13-0462FC;** install solid privacy fence in rear yard and across driveway at rear with gates. October 2012.
- **Zoning Permit 14-0636CA;** Replace 5 windows (identified as phases I and III). December 2013.

- **Zoning Permit 15-0121CA**; replace three existing skylights in kind. Two on front and one on back. July 2014.
- **Zoning Permit 17-0699CA**; Replace rotted decking boards on south entrance ramp and landing. January 2017.

351 North Avenue; Cambrian Rise (Building B)

- **Zoning Permit 16-1183SP**; Sketch plan review of 700+ unit planned unit development with mixed commercial and residential uses, related buildings, and infrastructure. June 2016.
- **Zoning Permit 17-0252SP**; Second sketch plan review of planned unit development with mixed commercial and residential uses, related buildings, and infrastructure. October 2016.
- **Zoning Permit 17-0267SD**; Preliminary plat review of 11-lot subdivision. No development included. October 2016.
- **Zoning Permit 18-0791CA**; Revisions to Buildings B & G, with additional floor added to Building B. No change to total units in project; revisions to design of buildings and proposed transportation hub; revision to road phasing plan. May 2018.
- **Zoning Permit 21-0166CA**; Re-purpose 4000 sf of commercial area on the first floor of the existing building into 4 additional apartments, increasing the total number of residential units in the Rise from 90 to 94. August 2020.

1251 North Avenue (St. Mark's Church)

- **Non-applicability of Zoning Permit Requirements 18-0286NA**; patch in holes in parking lot, including three curb cuts. Line stripe parking lot. **September 2017.**
- **Non-applicability of Zoning Permit Requirements 16-1043NA**; continuing use of parish educational center for alternative educational program of BSD known as "Horizons." Space used as per floor plans. April 2016.
- **Non-applicability of Zoning Permit Requirements 11-507NA**; interior upgrades, sprinkler, fire alarm system. December 2010.
- **Zoning Permit 12-0634AW**; installation of two awning over two separate entries on north and south sides of church. December 2011.
- **Zoning Permit 11-0525CA**; change of use from convent to group home for 16 residents with 24 hour on site staff counselors. January 2011. Permit relinquished February 2011.
- **Zoning Permit 96-568**; installation of externally illuminated freestanding sign for St. Mark's Church. May 1996.
- **Zoning Permit 11-1080CU**, large day care up to 30 children within convent. August 2011.
- **Zoning Permit 02-016**; replace existing portions of the glass block in the cupola portion of the church with awning style windows that include a faux glassblock appearance. July 2001.

- **Zoning Permit 97-074CU**; use one pre-school classroom for 12 children as a small daycare center. June 1997.
- **Zoning Permit 94-066CU**, conditional use to operate a large day care center (up to 59). Application withdrawn. June 1994.

Overview: Burlington School District is looking to relocate several of its classrooms due to a facilities issue. Some identified locations are administratively permissible, while others require Conditional Use review for *Secondary Schools* or *Technical/Trades Schools* per Appendix A, Use Table of the CDO. 1251 North Avenue (St. Mark's Catholic Church) and Building B at Cambrian Rise (251 North Avenue) both require Conditional Use review for the propose uses.

It has been determined that 12-22 North Street was previously permitted for educational use on the first floor, so no additional review is required for that space.

Recommended motion: **Conditional Use consent approval**, per the following Findings and conditions:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, 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. See attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 3: Impact Fees

251 North Avenue

The first floor of building B was approved for commercial use (ZP18-0791CA.) The change of use to educational has a diminished impact fee calculation per the Impact Fee Calculation for 2021. Therefore, no additional Impact Fees shall be due.

1251 North Avenue (St. Mark's Catholic Church)

The 624 sf. Requested for the Culinary Arts program is currently the parish hall community kitchen facility. As an accessory use to the Church, the new use will fall into the same category as the existing use ("Offices and Other") so no impact fees will be incurred. **Affirmative finding.**

Part 5: Conditional Use

Section 3.5.6 Conditional Use Review Criteria

(a)Conditional Use Review Standards:

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

1251 North Avenue, St. Mark's Church

The application proposes the use of an existing commercial kitchen (624 sf) within the parish facility for the Culinary Arts program. No more than 7 students will be present concurrent with one employee (teacher) during school hours. Classes will be daily, with students distributed throughout the school week (Monday, Tuesday, Thursday and Friday) from 7:45-3:30 pm. The existing public utilities and services are able to support the use.

351 North Avenue, Cambrian Rise Building B

Three programs are proposed at this location:

- a. Digital Media Lab (no more than 10 students and one teacher; 7:45-3:30 daily)
- b. Design Illustration (not more than 9 students and one teacher at any one time, daily from 7:45-3:30) (Total area for Design Media and Media Lab 7,245 sf); and
- c. Health Sciences Advance (up to 15 students and one teacher, daily 7:45-3:30) (1,925 sf.)

The existing public utilities and services are able to support the use. **Affirmative finding.**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

1251 North Avenue, St. Mark's Church

This site is within the low density residential zoning district, but the chosen site is a community oriented use with existing facilities capable of hosting the anticipated temporary use by students.

351 North Avenue, Cambrian Rise Building B

Although originally identified as commercial space in Zoning Permit 18-0791CA, the available space is perfectly adaptable to the educational use now requested. The NAC – Cambrian Rise (NAC-CR) was intended to create a new center for mixed use development that allows for a range of housing types and tenures, including complimentary general office, institutional and neighborhood oriented small-scale retail and service uses. The insertion of educational services is consistent with the intent as described.

Although not directly anticipating the challenge of relocating the entire secondary school, the following references from the Municipal Development Plan may apply: (Plan BTV)

- Strengthen partnerships between local businesses, institutions, non-profit and government agencies, and neighboring communities to actively support, attract, and retain diverse economic development and job opportunities, and create additional opportunities to retain youth. (P. 43.)
- Being a leader of and center for innovation and problem solving (P. 45.)
- Enabling a range of land use and development models that respond to, and benefit from, evolving needs of households, new technologies, and changing environmental and economic factors. (P. 49.)

Affirmative finding.

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

There are no anticipated nuisance impacts at either location. The educational services will be provided indoors in existing facilities. **Affirmative finding.**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

Both sites (1251 North Avenue and 351 North Avenue) are located on a major thoroughfare within the city and on public bus routes. Sending school districts will transport students to these locations for classes. BHS students will utilize local transit (GMT), bike or walk.

Affirmative finding.

and,

5. *The utilization of renewable energy resources;*

Nothing within these applications will preclude the use of wind, water, solar, geothermal or other renewable energy resources. **Affirmative finding.**

and,

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.*

Any fit-up will be subject to all applicable building and life safety codes. **Affirmative finding as conditioned.**

(C) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

Not applicable.

2. *Time limits for construction.*

Both locations are existing developed sites. Any interior work will be subject to trades permit review. **Affirmative finding as conditioned.**

3. *Hours of operation and/or construction to reduce the impacts on surrounding properties.*

Hours of operation are limited to the traditional school day: 7:45-3:30. No adverse impacts to surrounding property is anticipated. **Affirmative finding.**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions;*

Any change in the use will require review under the regulations in effect at the time of application. **Affirmative finding as conditioned.**

and,

5. *Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

The imposition of additional performance standards is at the discretion of the Development Review Board. There is nothing identifiable within the proposal to suggest a requirement for safeguards. **Affirmative finding.**

Article 4: Zoning Maps and Districts

Re: 351 North Avenue, Cambrian Rise Building B

Section 4.4.2 Neighborhood Mixed Use Districts

The Neighborhood Mixed Use districts promote development that combines non-residential and residential uses on a single site. These zones allow an increased intensity of development than would typically be found in the surrounding residential areas, and provides neighborhood oriented goods and services and employment opportunities within walking and biking distance. This development type will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new commercial and residential opportunities in the City. The emphasis of nonresidential uses should primarily be oriented to serving the needs of the surrounding residential neighborhoods and other neighborhood commercial uses.

Development is intended to consist primarily of businesses on the ground floor with housing and other non-residential uses on upper stories. The exception to this is the NAC – Cambrian Rise district that is intended to be more residential in nature than the other Neighborhood Mixed Use districts and thereby is expected to incorporate residential uses at the street level.

4. *The NAC – Cambrian Rise (NAC-CR) is intended to create a new center for mixed use development that allows for a range of housing types and tenures, and to accommodate a diverse range of complimentary general office, institutional and neighborhood oriented small-scale retail and service uses. Much of the development is intended to be densely concentrated and oriented towards North Avenue, with new buildings that are complimentary to the iconic historic former-orphanage. Development should be compact, pedestrian-oriented and enhance the community with creative design, durable materials, and quality construction. Buildings fronting on North Avenue should be oriented toward and activate North Avenue, while buildings fronting on new streets should be oriented toward and activate those streets. Buildings and landscaping should work together to contribute to the physical definition of streets as civic places, with buildings at and near the street level composed of human-scaled elements and details that promote pedestrian interest, comfort, and safety. Parking should to be hidden behind, to the side, within, or underneath principle buildings, and screened from view from public streets and community spaces.*

The first floor of Building B was originally permitted as commercial space; however the conversion to education use is consistent with the intent to accommodate *a range of complimentary general office, institutional and neighborhood oriented small scale service use*. Educational use will also align with the overall district intent to *be oriented to serving the needs of surrounding residential neighborhoods* and avail itself of easy transit use, particularly as the public transit hub is located in this building. **Affirmative finding.**

Table 4.4.2 -1 Dimensional Standards and Density

There are no physical changes to the exterior of the building. Not applicable.

(b) Permitted and Conditional Uses

Educational use / Technical/Trades School are Conditional Uses in NAC-CR. See Section 3.5.6, Conditional Use Review Criteria (above) and Appendix A, Use Table.

Article 8: Parking

BSD students will largely rely on GMT buses but those students from other sending schools will be transported by those sending schools' buses. Here is a breakdown of the parking requirements per the CDO:

351 North Avenue (Cambrian Rise) is within the new Multi Modal Mixed Use Parking District, which has no minimum vehicular parking requirements.

Permit 18-0791CA approved commercial use in the area now proposed for Educational/Technical use. The parking approved under that plan required 2 parking spaces for every 1,000 sf, or 18 parking spaces for the 9,170 sf. Table 8.1.8-1 would require 5 parking spaces per classroom, or 15. As the parking requirement would be less for the new use, the existing, approved parking plan is adequate and no Transportation Demand Management is required.

There is a public transportation hub at the corner of this building, which can be readily utilized by students arriving by GMT.

Bicycle parking requirements are as follows:

Long Term: 1/20,000 sf

Short Term: 4/classroom

For the 9,170 sf dedicated to Design Media, Design Illustration and Health, **no Long Term** spaces would be required, but **16 short term** (based on four classrooms on the floor plan.)

If class areas are combined, the required bicycle parking may be reduced accordingly.

Bicycle parking was approved for the originally permitted uses at Cambrian Rise, and will be available for this newly proposed educational use.

1251 North Avenue (St. Mark's Church) is within the new Multi-Modal Multi-Use Parking District, and therefore has no minimum parking requirements. As the building footprint is less than 8,000 sf, no Transportation Demand Management Program is required (Section 8.1.16.)

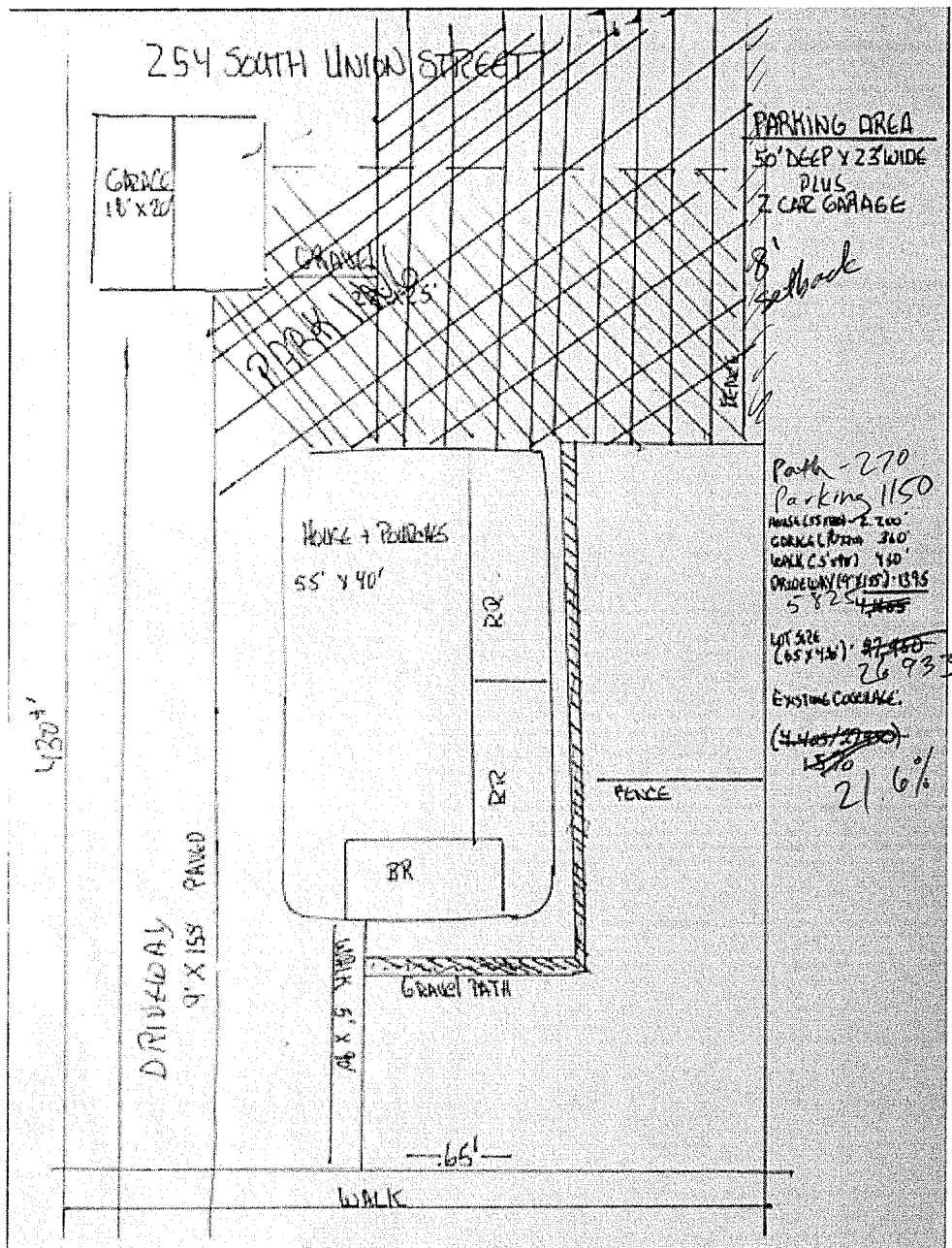
The site has its own parking lot associated with the principal religious use, which would be underutilized during the school week and could provide any additional parking as required. The one classroom/culinary space would spur a parking requirement of 5 vehicular parking spaces, and 4 short term bicycle parking spaces. Students will be arriving by GMT, or alternately by school bus from sending schools.

Affirmative finding as conditioned.

II. Conditions of Approval

1. For the 351 North Avenue (Cambrian Rise) location, **4 bicycle parking spaces** shall be identified for use **per classroom**. If (per the floor plans) 4 classrooms are intended, 16 short term bicycle parking spaces will be required. Existing bicycle parking facilities may be employed toward this requirement.
2. For 1251 North Avenue, **4 short term bicycle parking spaces** will be required, and 5 vehicular spaces within the existing shared-use parking lot to be utilized during the school day.
3. 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. See attached list for guidance on open permits/violations.
4. Any future uses shall be reviewed under the regulations in effect at the time of application.
5. 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.



Park - 270
 Parking 1150
 PARKING LOT - 2200
 GARAGE (1700) 310
 LEASE (5.5 yr) 750
 DRIVEWAY (4.5 yr) 1395
 5825 ~~4405~~
 W/L 3626
 (6.5 yr) 27,400
 26,935
 EXISTING COVERAGE
 (4.4 yr) ~~27,400~~
 15%
 216%

Layne Darfler

From: William Reilly <wjreilly7@gmail.com>
Sent: Wednesday, September 23, 2020 1:36 PM
To: Layne Darfler
Cc: Theodore Miles
Subject: Re: Zoning Violation# 293920: 254 S. Union St.

[WARNING] External Message

Hello Layne, Ted,

Good points, clarification needed.

- The site plan submitted today matches the site plan on file (7.8.91). The area designated as above ground pool is now listed as gravel (23'X25'=575').
- The path was misidentified as a side walk on the 7.8.91 site plan. It was never a side walk and has been a path (3'x90'=270') for 30+ years.
- Adding the former pool location/gravel area (575') & path (270') to total lot coverage: $845' + 4,405' = 5,250'$
 $5,250 / 4,405 \times 100 = 11.9\%$ lot coverage. ~~11.9%~~ 21.6% per updated site plan
- Bedrooms are on the same floor as shown. We are not a B&B/ AirBnB, we do not serve meals. We provide bedrooms. We do however, pay state and local rooms & meals taxes. B&B is a Burlington city designation to describe short term rentals. The term B&B implies that meals are served. That is not true. We are an owner occupied residence that for 30+ years has periodically leased rooms thereby continuing the practice of previous owners going back to the early 1950's.

Hope this explains things.
(attachment)

October 26, 2020

Hello Burlington DRB board members,

I am writing at the request of my neighbors Bill Reilly and Cyn Secondi. I understand from Bill that, because of city regulations, they must document their long-standing practice of renting rooms.

Our kids grew up together and I can confirm they have rented portions of their home for as long as I lived in the South Union Street neighborhood (since 1989).

Sincerely,

Andrea Gray
153 Howard Street
Burlington

Ryan Morrison

From: William Reilly <wjreilly7@gmail.com>
Sent: Wednesday, October 28, 2020 4:51 PM
To: Ryan Morrison
Cc: Marc Wiener; csecondi@gmail.com
Subject: Re: 254 South Union Street short term rental application
Attachments: Andrea Grey.docx

[WARNING] External Message

Hello Ryan,

Thanks for the guidance.

Attached please find.

- Updated site plan highlighting the parking area
- 3 letters from neighbors confirming room rental going back more than 15 years.
 - Marc Jacobs
 - Andrea Grey
 - Polly Thompson

That should be the documentation needed. Comments and questions welcomed.

Be well, take care,

Polly Thompson

20 Westminster Terrace Bellows Falls, VT 05101

October 23, 2020

To Whom It May Concern:

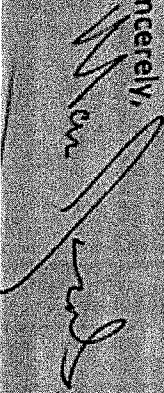
In September 1980, my husband Julian Thompson and I rented an apartment from William and Cyndie Reilly. The apartment was located in their residence at 254 S. Union St.

October 24, 2020

To Whom It May Concern:

I live at 260 South Union Street and have been a neighbor of Bill and Cyndie Reilly since 1994. I can confirm they have rented rooms since at least 1992 when I purchased 260 South Union Street. Years ago, it was not at all unusual for young families owning houses in this neighborhood to rent out rooms to defray the cost of owning homes.

Sincerely,



William Reilly
254 South Union Guest House
Burlington, VT 05401
www.254southunion.com
802-522-0031

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Alison Davis, Planning & Zoning Clerk
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: November 4, 2020
RE: 21-0326CU; 254 South Union 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.

File: ZP21-0326CU

Location: 254 South Union Street

Zone: RL **Ward:** 6S

Date application accepted: September 22, 2020

Owner / Applicant: William Reilly & Cynthia Secondi / William Reilly

Parking District: Neighborhood

Request: The applicant seeks approval to permit an existing single family home as a historic inn with 4 guest rooms, and to permit the previous removal of a pool placed on the rear parking area.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Background:

- **Zoning Permit 92-006;** installation of an above ground swimming pool with surrounding fence. Approved 7/8/91.
- **Non-Applicability of Zoning Permit 19-615NA;** driveway repair. Approved 3/7/19.

Overview:

The applicant proposes to convert the single family home at 254 South Union Street into a historic inn while residing at the property. The proposal was originally submitted as a bed and breakfast/short term rental application, but given the nature of the application, it is more fitting of a historic inn. The structure, built in 1887, is included as a contributing historic resource on both national and state historic registers (South Union Street Historic District). The applicant states that they have been intermittently renting rooms since 1978, and prior to that, the previous owners had rented rooms here since the 1950s.

The proposal also includes an after-the-fact pool removal from the rear parking area.

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

I. Findings

Appendix A: Use Table – All Zoning Districts

'Historic Inn' is a Conditional Use in the RL zoning district. Section 5.4.2 CDO, which specifically addresses historic inns applies. See below. **Affirmative finding.**

Article 2: Administrative Mechanisms

Part 7, Enforcement:

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. There is one zoning permit (ZP92-006) that has not been closed out. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 5: Conditional Use and Major Impact Review

Section 3.5.6 Review Criteria

(a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities, or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The proposal will have minimal impact on public utilities, facilities and services. **Affirmative finding.**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the Municipal Development Plan;*

The property is within an established residential neighborhood and a residential zoning district. The Residential Low Density (RL) zoning district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. Historic Inns are specifically included as a conditional use in the underlying zone. It is located on a relatively busy residential street and, with parking in the rear, the single family appearance of the structure from the street will not be altered. **Affirmative finding.**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

No greater impacts are anticipated than other residential uses in the area. **Affirmative finding.**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation, safety for all modes; and adequate transportation demand management strategies;*

This parcel is located along South Union Street, a residential street that connects the downtown center to the Shelburne Street corridor. The long driveway provides access to vehicular parking behind the home. There are transit stops along the street, the closest being at the intersections of

South Union St/Maple St and South Union St/Adams St, both essentially within one block. Sidewalks line both sides of the street. **Affirmative finding.**

5. *The utilization of renewable energy resources;*
Nothing within the application prevents the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**
and;

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.*
The applicant will have to ensure compliance with state regulations regarding short-term guest room rentals, including but not limited to payment of required rooms and meals taxes. The applicant notes that they have been paying state and local rooms & meals taxes already.
Affirmative finding as conditioned.

(c) Conditions of Approval

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;*

As noted above, the proposal also includes the after-the-fact removal of a swimming pool from the rear parking area. As required by Sec. 5.4.2 (g), parking for historic inns must be adequately screened from neighboring properties and from the public street. The parking is in the rear, behind the house and is non-visible from South Union Street. There is a vegetative strip between the neighboring property and the parking area. The applicant will have to demonstrate that this vegetative strip provides an adequate screen, or install additional screening measures to accomplish this requirement. **Affirmative finding as conditioned.**

2. *Time limits for construction.*

Should the parking area be reconfigured and/or the parking area screening be improved, the applicant will have one year to at least start the work, and two more years to complete it.
Affirmative finding.

3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*
It is recommended that guest check-ins for the historic inn use be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisances. **Affirmative finding as conditioned.**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions,*
Should the applicant wish to alter the use, such alteration will require review and permitting under regulations in effect at that time. **Affirmative finding as conditioned.**
and

5. *Such additional reasonable performance standards, conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*
None identified.

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

(a) Purpose

1. The Residential Low Density (RL) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. The district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhood's development history.

Historic Inns are conditional uses within the RL district, and the proposal is compliant within the underlying zone. **Affirmative finding.**

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

Table 4.4.5-1 Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W.

Single detached dwelling, RL Minimum 60' frontage, RL Minimum 6,000 sq ft lot size.

The property has 66.75 ft of frontage along South Union Street, and is 26,933 sf in size.

Affirmative finding.

Table 4.4.5-2 Base Residential Density

The base density allowance in the RL district is 7 units per acre. The property, with its single family use, more than meets the density limit. There is a density limit for historic inns based on the number of guest rooms. See Sec. 5.4.2 below. **Affirmative finding.**

Table 4.4.5-3 Residential District Dimensional Standards

No new development is proposed. The plans indicate an existing lot coverage of 21.6%, well under the 35% limit. **Affirmative finding.**

(c) Permitted and Conditional Uses

'Historic Inn' is a conditional use in the RL zoning district, per Appendix A. **Affirmative finding.**

(d) District Specific Regulations

1. Setbacks

A. Encroachment for residential driveways

Not applicable.

B. Encroachment into the Waterfront Setback

Not applicable.

2. Height

Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features

Not applicable.

4. Accessory Residential Structures and Uses

Not applicable.

5. *Residential Density*

A. *Additional Unit to multi-family*

Not applicable.

B. *Additions to Existing Residential Structures*

Not applicable.

C. *Residential Occupancy Limits*

In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.

Not applicable.

6. *Uses*

A. *Exception for Existing Neighborhood Commercial Uses*

Not applicable.

7. *Residential Development Bonuses*

Not applicable.

Article 5: Citywide General Regulations

Part 2: Dimensional Requirements

Section 5.2.5 Setbacks

(b) Exceptions to Yard Setback Requirements

5. Accessory Structures and Parking Areas. *Accessory structures no more than fifteen (15) feet in height, parking areas, and driveways may project into a required side and rear yard setback provided they are no less than five (5) feet from a side or rear property line where such a setback is required.*

According to the site plan, the parking area behind the inn is setback 8 ft from the side yard property line. **Affirmative finding.**

Part 4: Special Use Regulations

Section 5.4.2 Historic Inns

In addition to the applicable provisions of Art 3, Part 5 for conditional uses, and site and design review standards in Art 6, the following additional regulations shall be applicable to an application involving a historic inn:

(a) *Historic Building:*

The principal building shall be listed or eligible for listing on the State or National Register of Historic Places, and located on a lot of record as of January 1, 2007 a minimum of one-half (1/2) acre (21,780 square feet) in size and located on a major street.

The principal building is listed on the South Union Street Historic District (National Register), and also on the State Historic Register. The structure was constructed in 1887 and remains a contributing historic resource. No alterations are proposed to the building. The property is 26,933 sf in size, and is located on South Union Street which is a major connecting street between downtown and the Shelburne St corridor. **Affirmative finding.**

(b) *Owner-Occupied:*

In districts where a Historic Inn is a conditional use, the premises shall be occupied by a person as their primary residence who is an owner of the property or of the business. For purposes of this subsection only, an “owner” is defined as someone who holds, at least, a twenty-five (25%) percent ownership interest in the property or in the business.

The property owners reside, and shall continue to reside, on the property. This is their primary residence. **Affirmative finding as conditioned.**

(c) *Guestrooms:*

The maximum number of guestrooms allowed shall be based on an overall density of twelve (12) rooms per acre. In districts where a Historic Inn is a conditional use, the DRB may determine that a lesser number of rooms is appropriate, based on their consideration of the impact of the proposed use on neighboring properties and traffic on nearby streets.

Given a lot size of 26,933 sf, the inn could have up to 7 guest rooms. The inn proposes 4 guest rooms. **Affirmative finding.**

(d) *Exterior Modifications:*

Any exterior modifications to the principal structure and changes to the site plan shall be subject to the development review standards for historic buildings in Sec 5.4.8.

The proposal involves no exterior modifications to the principal structure. However, an after-the-fact removal of an above ground swimming pool previously placed on the rear parking area is included as part of this application. **Affirmative finding.**

(e) *Dining Facilities:*

Common dining facilities for overnight guests and their guests may be included where a Historic Inn is a permitted use. In districts where a Historic Inn is a conditional use, regular meals may be limited if so determined by the DRB based on their consideration of the impact of the proposed use on neighboring properties and traffic on nearby streets.

The applicant indicates that no meals are provided for guests, just bedrooms. **Not applicable.**

(f) *Ancillary Events:*

In districts where a Historic Inn is a permitted use, ancillary events are allowed. In districts where a Historic Inn is a conditional use, ancillary events may be permitted only at the discretion of the DRB based on their consideration of the impact of the proposed use on neighboring properties and traffic on nearby streets, and if so permitted shall be limited to indoor business meetings and meals in conjunction with those meetings for overnight guests and no more than four (4) invited guests.

The applicant indicates that there are no ancillary events held. **Not applicable.**

(g) *Parking:*

- 1. The full setback requirements as for a new principal structure shall be applied to new parking areas in the RL districts; and,*
- 2. All parking shall be adequately screened from neighboring properties and the public street.*

With a setback of 8 ft, the existing parking area complies with the principal structure setback requirement – which is 10% of the lot width. 66.75 ft of frontage results in a 6.675 ft side yard setback. Existing landscaping/vegetation between the parking area and the neighboring lot to the south exists and provides a screen – however, at the time of report preparation, it is unknown if it is fully adequate for screening purposes. The applicant will have to provide information pertaining

to the existing screening, or if it is deemed insufficient, additional screening measures must be installed. **Affirmative finding as conditioned.**

Part 5: Performance Standards

Section 5.5.1 Nuisance Regulations

Nothing within the application suggests non-compliance with applicable nuisance regulations and performance standards per the requirement of the Burlington Code of Ordinances. **Affirmative finding.**

Section 5.5.2 Outdoor Lighting

New lighting is not proposed. **Not applicable.**

Section 5.5.3 Stormwater and Erosion Control

Not applicable.

Section 5.5.4 Tree Removal

Not applicable.

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

Single family uses in the Neighborhood Parking District require 2 parking spaces. Historic Inns require 1 parking space per guest room. With there being four guest rooms, a total of 6 parking spaces is required. The two car garage and parking area provides the required 6 parking spaces. **Affirmative finding.**

II. Conditions of Approval

1. Per **Section 2.7.8, Withhold Permit**, all zoning permits issued after July 13, 1989 must be closed out (issued a Certificate of Occupancy) prior to issuance of a Final Certificate of Occupancy for this permit. See attached permit list. Upon expiration of this new zoning permit, no additional zoning permits may be issued until it, and all prior zoning permits, have been closed out with final certificate(s) of occupancy. It is recommended that certificates of occupancy for the old zoning permits be sought prior to seeking a certificate of occupancy for the new zoning permit.
2. **Prior to the release of the zoning permit**, the applicant shall demonstrate to staff that the existing vegetation between the parking area and the property to the south provides an adequate screen for the parking area, OR additional screening measures shall be installed, subject to staff review and approval.
3. The subject property must be, and remain, owner occupied as a primary residence as long as the Historic Inn use remains in operation.
4. It is recommended that guest check-ins for the Inn be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
5. All guest parking shall be on-site and off-street.
6. The applicant will have to ensure compliance with state regulations regarding short-term guest room rentals, including but not limited to payment of required rooms and meals taxes and compliance with Division of Fire Safety standards and Health Department standards.
7. Any additional guest rooms, or physical alteration, will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.

8. 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, and shall meet all energy efficiency codes of the city and state as required.
9. Standard Permit Conditions 1-15.

September 28, 2020

Via Hand Delivery

Scott Gustin, Principal Planner
Bradford L. Rabinowitz, Principal Planner
City of Burlington Development Review Board
Office of City Planning
City Hall, 3rd Floor
149 Church Street
Burlington, VT 05401

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BURLINGTON
PERMITTING & INSPECTIONS

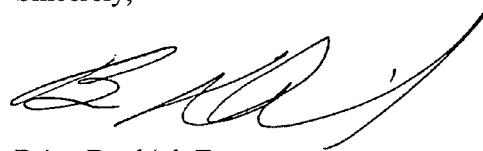
**Re: Zoning Permit 17-0662CA/MA – Notice of Appeal Pursuant to CDO Section 12.2.2 of
September 14, 2020 Zoning Administrator Decision**

Dear Mr. Gustin:

Enclosed please find BTC Mall Associates, LLC's ("BTC") appeal of the September 14, 2020 Zoning Administrator Decision, related to 75 Cherry Street (Parcel ID 044-4-033-000) which concludes that BTC cannot relinquish the above-referenced zoning permit.

Please contact me if you need additional information or have any questions.

Sincerely,



Brian Dunkiel, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
Counsel for BTC Mall Associates, LLC and Devonwood
Investors, LLC

cc: Don Sinex, BTC Mall Associates, LLC



Department of Permitting and Inspections

645 Pine Street
Burlington, VT 05401-8415
Phone: (802) 865-7188
www.burlingtonvt.gov/dpi

Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

SUBJECT LOCATION ADDRESS: 75 Cherry Street

Subject Property Owner: BTC Mall Associates, LLC and Devonwood Investors, LLC

Appellant: BTC Mall Associates, LLC and Devonwood Investors, LLC

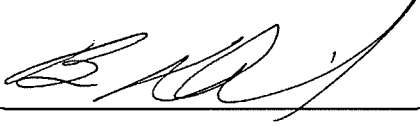
Agent/Representative: Brian Dunkiel, Esq.

Mailing Address: PO Box 545

City, St, Zip: Burlington, VT 05402-0545

Day Phone: (802) 860-1003

Email: bdunkiel@dunkielsaunders.com

Appellant Signature: 

Date: 9/28/20

In order for your request to be considered complete, **ALL** of the following information **must** be provided, as applicable:

- ☐ The Appeal **fee of \$250**;
- ☐ Description of the decision under appeal;
- ☐ Description of the property subject to the appeal;
- ☐ Reference to the regulatory provisions applicable to the appeal;
- ☐ Relief requested by the appellant;
- ☐ Alleged grounds why such requested relief is believed proper under the circumstances.

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OCT 01 2020

BURLINGTON
PERMITTING & INSPECTIONS

Office Use Only:

Check No. 16289

Amount Paid 250

Zoning Permit # 21-0354AP

RECEIVED
OCT 01 2020
PERMITTING & INSPECTION
BURLINGTON

CITY OF BURLINGTON DEVELOPMENT REVIEW BOARD

NOTICE OF APPEAL

BTC Mall Associates, LLC and Devonwood Investors, LLC (collectively, "BTC"), through undersigned counsel, hereby give notice of their intent to appeal to the Burlington Development Review Board ("DRB") the Decision of the Zoning Administrator in an email dated September 14, 2020 (attached hereto as **Exhibit 1**) concluding that BTC cannot relinquish zoning permit 17-0662CA/MA. This appeal is taken pursuant to Section 12.2.2 of the Burlington Comprehensive Development Code ("CDO").

Name of Appellant: BTC Mall Associates, LLC & Devonwood Investors, LLC

Address of Appellant: 101 Cherry Street Suite 440
Burlington, VT 05401

Property Identification: 75 Cherry Street

Party Status: Property owner

Regulatory provisions applicable to the appeal:

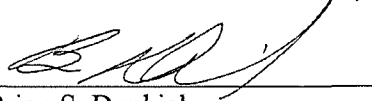
This appeal involves CDO § 3.2.9 along with other rules, regulations, and statutes associated with Appellant's appeal.

Relief Requested: Reverse Zoning Administrator's determination of September 14, 2020 that BTC may not relinquish Permit No. 17-0662CA/MA.

Grounds for Relief: The CDO provides no authority for the Zoning Administrator to deny relinquishment of a permit; the September 14, 2020 decision is without any basis in the applicable rules, regulations, or statutes.

Dated this 28th day of September, 2020.

BTC MALL ASSOCIATES, LLC
DEVONWOOD INVESTORS, LLC

By: 

Brian S. Dunkiel
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
91 College Street
Burlington, VT 05402
(802) 860-1003
bdunkiel@dunkielsaunders.com

From: Scott Gustin <SGustin@burlingtonvt.gov>
Date: September 14, 2020 at 9:58:40 AM EDT
To: Donald Sinex <dsinex7184@gmail.com>
Cc: "LShelkrot@langrock.com" <LShelkrot@langrock.com>, Roger Roisman <roger@rmroisman.com>, James Aronoff <Jim.Aronoff@ThompsonHine.com>, William Ward <wward@burlingtonvt.gov>, Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov>
Subject: RE: Relinquishment of Issued Zoning Permit

Good morning Don,

I've reviewed your request submitted below and have conferred with other pertinent city staff. Zoning permit 17-0662CA/MA, issued for the mixed use redevelopment of the mall, cannot be relinquished because it was released and acted on, at least in part (i.e. demolition of the rear portion of the mall). In the event that a new zoning permit is approved for redevelopment of the site and acted on, that new zoning permit could supersede 17-0662CA/MA.

Scott

Scott Gustin, AICP, CFM
 Principal Planner & Asst. Administrative Officer
 Dept. of Permitting & Inspections
 645 Pine Street
 Burlington, VT 05401
 (802) 865-7189

RECEIVED
 OCT 01 2020
 BURLINGTON
 PERMITTING & INSPECTIONS

From: Donald Sinex [<mailto:dsinex7184@gmail.com>]
Sent: Friday, September 04, 2020 3:05 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: LShelkrot@langrock.com; Roger Roisman <roger@rmroisman.com>; James Aronoff <Jim.Aronoff@thompsonhine.com>
Subject: Relinquishment of Issued Zoning Permit

[WARNING]: External Message

Scott,

I attach a letter addressed to the DRB that relinquishes the earlier issued zoning permit for the BTC development project.

Donald F. Sinex
Managing Member
Devonwood Investors, LLC
212-203-2018
dsinex@devonwoodinvestors.com

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

Department of Permitting & Inspections

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

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: November 4, 2020
RE: 21-0354AP; 75 Cherry 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: 3C

Owner/Appellant: BTC Mall Associates, LLC & Devonwood Investors, LLC/ Brian Dunkiel, Esq

Request: Appeal of administrative zoning decision regarding relinquishing zoning permit 17-0662CA/MA.

Overview:

The appellant is appealing an administrative zoning decision that zoning permit 17-0622CA/MA cannot be relinquished. The subject zoning permit was issued for redevelopment of the former Burlington Town Center mall site. The zoning permit was released and acted upon; however, the approved building and site improvements will not be built. The applicant is looking to abandon (relinquish) that zoning permit and apply anew for a different project under separate zoning permit. The subject zoning permit cannot be relinquished because it was acted on in part by demolishing a section of the mall.

Recommendation: Uphold administrative decision based on the following findings:

I. Findings:

Zoning permit 17-0622CA/MA was approved by the Development Review Board on March 17, 2017. It was appealed to Superior Court Environmental Division. A stipulation agreement was reached among the parties, and the project was ultimately approved July 17, 2017.

Pre-release conditions associated with the zoning permit were met in full November 16, 2017, and the zoning permit was picked up by the applicant the same day. The zoning permit contains a number of conditions, including standard condition 3 that reads:

3. **Unified Certificate of Occupancy (UCO):** 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 UCO.

If the project is partially completed, meets “prior to issuance of a UCO” conditions of approval, meets all health 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 UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. **Failure to obtain a certificate of occupancy** places the property in violation of the CDO and is subject to enforcement. In addition, **Failure to obtain a UCO within the time limits above is subject to** “after the fact” fees ranging from \$75 - \$1500 (in addition to the UCO fee).

Demolition work ensued December 2017 and continued through August 2018. At that point, activity at the construction site essentially stopped. Work associated with the zoning permit started within a year as required by standard condition 2, which reads in part:

2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced by **July 17, 2018**. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) by **July 17, 2020**, or be subject to enforcement actions.

Zoning permit 17-0662CA/MA was issued and acted upon within specified time limits.

On September 4, 2020, the applicant submitted a letter by way of email (followed up with hard copy) seeking to relinquish zoning permit 17-0662CA/MA.

An administrative response to the applicant was emailed September 14, 2020 indicating that the zoning permit cannot be relinquished because it was acted upon in part.

An appeal of that emailed decision was received by the Department of Permitting & Inspections October 1, 2020. This date is 18 days following the September 14 email and is untimely. The appeal letter is dated September 28, 2020 – the last day of a 15-day appeal period on administrative decisions. The appeal should be dismissed as untimely.

It bears noting that the applicant is separately pursuing an amendment to the project phasing for zoning permit 17-0662CA/MA. This application was submitted November 20, 2019 and has been deferred by the applicant for about a year but will be heard by the Development Review Board November 17, 2020. It is incongruous that the applicant seeks to somehow keep zoning permit 17-0662CA/MA alive with this phasing amendment while at the same time trying to abandon it by relinquishment.

As the zoning permit was acted upon, it must now be closed out. Standard condition 3 is based upon Sec. 3.2.11, *Zoning Certificate of Occupancy*, which requires issuance of a certificate of occupancy in order 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. The subject property has certainly changed as a result of partial action on the zoning permit.

Not all issued zoning permits are acted upon. As a result, the Department of Permitting & Inspections has created an administrative means of closing such permits by way of relinquishment.

Applicants who have not acted on an approved zoning permit in any way and do not intend to do so may request that the zoning permit be relinquished. A form is completed and submitted by the applicant. An inspector follows up to confirm that no work associated with the zoning permit was done and then closes the zoning permit record by relinquishing the permit. The Comprehensive Development Ordinance does not articulate standards to relinquish a zoning permit. Relinquishment is simply an administrative means to close the permit record for projects not acted upon in any way.

Zoning permit 17-0662CA/MA has been acted upon and cannot be relinquished. The applicant could seek to close the zoning permit with a certificate of occupancy; however, given the obvious lack of project completion, it would likely fail inspection and not be issued a certificate of occupancy.

The applicant has recently submitted a new zoning permit application for redevelopment of the subject property. If that zoning application is approved and a zoning permit is issued, that new zoning permit could supersede the original zoning permit 17-0662CA/MA, thereby negating the need for a certificate of occupancy for the original zoning permit. Superseding a prior zoning permit is an administrative way of addressing projects that are approved and then amended with subsequent permit(s) prior to completion of construction. Doing so keeps the permit record clean and closes the zoning permit for the project as ultimately approved and constructed.

Zoning permit 17-0662CA/MA has been acted upon in part. Therefore, it cannot be relinquished. The applicant could seek to close the zoning permit with a certificate of occupancy. Given the likely failure to obtain a certificate of occupancy, the more appropriate route would be to simply supersede zoning permit 17-0662CA/MA with a new zoning permit for redevelopment of the property.

II. Recommended Motion:

Dismiss the appeal as untimely or uphold the zoning decision relative to relinquishing zoning permit 17-0662CA/MA.

November 2, 2020

By Email

Scott Gustin, Principal Planner & Asst. Administrative Officer
City of Burlington Development Review Board
Office of City Planning
City Hall, 3rd Floor
149 Church Street
Burlington, VT 05401
sgustin@burlingtonvt.gov

Re: Zoning Permit No. 17-0662CA/MA – Notice of Appeal Pursuant to CDO Section 12.2.2 of September 14, 2020 Zoning Administrator Decision

Dear Board Members:

I write on behalf of BTC Mall Associates, LLC's ("BTC") regarding its appeal of the September 14, 2020 Zoning Administrator Decision, noticed for consideration in the Board's November 4, 2020 meeting. This letter provides a brief factual and legal background underlying BTC's appeal. I look forward to discussing these issues with you.

This Board issued to BTC Permit No. 17-0662CA/MA which covers the mixed-use redevelopment of the Burlington Town Center Mall located at 75 Cherry St.¹ BTC has since abandoned the project as permitted and is in the process of putting forward a new project at the 75 Cherry St. site for consideration. Planning is already underway on the new project—on October 9, 2020, BTC presented its construction plans before the Ward 2 and 3 Neighborhood Planning Assembly, and on October 15, 2020, BTC submitted an application for 75 Cherry St. to the Zoning Division.

By letter dated September 3, 2020, BTC notified the Board that it had abandoned the permitted project and was relinquishing Permit No. 17-0662CA/MA. *See* Exhibit 2, 9/3/2020 Ltr from Donald Sinex, Manager, BTC Mall Associates, LLC to Burlington DRB. On September 4, 2020, in response to BTC's notice, the Zoning Administrator wrote to BTC that it could not relinquish Permit No. 17-0662CA/MA "because it was released and acted on, at least in part." *See* Exhibit 1, Scott Gustin Email of 9/14/20, also appended to BTC's notice of appeal. Counsel for BTC followed up with the Zoning Administrator, seeking to understand the authority under which the Zoning Administrator purported to act. *See* Exhibit 3, Scott Gustin Email of 9/18/20.

¹ The DRB approved Permit No. 17-0662CA/MA on March 17, 2017, which was subsequently modified by the Environmental Division in a Judgment Order dated July 17, 2017 in the matter captioned *Devonwood Investors, LLC 75 Cherry Street*, Docket No. 39-4-17 Vtec, and amended by the Zoning Administrator on February 23, 2018, and by the DRB on April 17, 2018.

The Zoning Administrator responded that he would “follow up shortly,” but provided no further response. *Id.* This appeal of the Zoning Administrator’s decision follows.²

The Zoning Administrator’s authority is expressly circumscribed by statute and the Burlington Comprehensive Development Ordinance (“CDO”). An administrative officer “shall administer the bylaws literally and shall not have the power to permit any land development that is not in conformance with those bylaws.” 24 V.S.A. § 4448. *See also* Burlington CDO § 2.3.3 (“The administrative officer shall administer the provisions of this ordinance and any amendments thereto and other applicable bylaws literally, and shall have no power to permit any land development that is not in conformance with this ordinance.”). Any authority delegated from the Legislature to the municipality not expressly delegated to the administrative officer is retained by the municipality, and the Zoning Administrator is constrained to the letter of the CDO.

The CDO and the DRB’s own bylaws delegate no authority to the Zoning Administrator to decline relinquishment of a permit. CDO § 3.2.7(a). “Relinquish” or any analogue do not appear in the CDO or the bylaws. This Board should reverse the Zoning Administrator’s decision purporting to deny BTC’s relinquishment of Permit No. 17-0662CA/MA.

Apart from lacking any support in the CDO, the reasoning in the staff report on this issue also would lead to the absurd conclusion that the City can compel a zoning permittee to construct a permitted project so that it can obtain a Certificate of Occupancy. That notion is simply untenable—a zoning permit does not *require* its holder to complete the contemplated project; it *allows* the permittee to construct the project. Indeed, as the Zoning Administrator recognizes, not all zoning permits result in a built project for a variety of reasons. There is no authority to prevent a permittee from abandoning or relinquishing an existing permit. The Zoning Administrator has acted beyond its statutory and regulatory authority in specifying the categories of projects it deems may be relinquished in the absence of any delegated guidance.

Please contact me if you need additional information or have any questions.

Sincerely,



Brian Dunkiel, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
Counsel for BTC Mall Associates, LLC

cc: Don Sinex, BTC Mall Associates, LLC

² BTC, through counsel, hand-delivered the appeal to the City Zoning Office on September 28, 2020, 14 days after the Zoning Administrator’s decision. Apparently as a result of COVID-19 protocols, the person making the delivery was not allowed access to City Hall, but a representative of that office took delivery at the entrance to City Hall. *See* Exhibit 4, Affidavit of Scott Scribi. The Zoning Administrator’s contention that the appeal was not filed until October 1, 2020 is incorrect.

From: Scott Gustin <SGustin@burlingtonvt.gov>
Date: September 14, 2020 at 9:58:40 AM EDT
To: Donald Sinex <dsinex7184@gmail.com>
Cc: "LShelkrot@langrock.com" <LShelkrot@langrock.com>, Roger Roisman <roger@rmroisman.com>, James Aronoff <Jim.Aronoff@ThompsonHine.com>, William Ward <wward@burlingtonvt.gov>, Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov>
Subject: RE: Relinquishment of Issued Zoning Permit

Good morning Don,

I've reviewed your request submitted below and have conferred with other pertinent city staff. Zoning permit 17-0662CA/MA, issued for the mixed use redevelopment of the mall, cannot be relinquished because it was released and acted on, at least in part (i.e. demolition of the rear portion of the mall). In the event that a new zoning permit is approved for redevelopment of the site and acted on, that new zoning permit could supersede 17-0662CA/MA.

Scott

Scott Gustin, AICP, CFM
Principal Planner & Asst. Administrative Officer
Dept. of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
(802) 865-7189

From: Donald Sinex [<mailto:dsinex7184@gmail.com>]
Sent: Friday, September 04, 2020 3:05 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: LShelkrot@langrock.com; Roger Roisman <roger@rmroisman.com>; James Aronoff <Jim.Aronoff@thompsonhine.com>
Subject: Relinquishment of Issued Zoning Permit

[WARNING]: External Message

Scott,

I attach a letter addressed to the DRB that relinquishes the earlier issued zoning permit for the BTC development project.

Donald F. Sinex
Managing Member
Devonwood Investors, LLC
212-203-2018
dsinex@devonwoodinvestors.com

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

BTC Mall Associates, LLC
c/o Donald F. Sinex, Manager
3730 N Ocean Drive, 6-B
West Palm Beach, Florida 33404

September 3, 2020

VIA EMAIL FAX FEDERAL EXPRESS

Burlington Development Review Board
645A Pine Street
Burlington, VT 05401

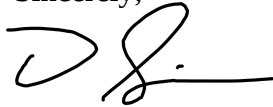
Re: File No. ZP17-0662CA/MA dated March 17, 2017

To Whom It May Concern:

Please be advised that BTC Mall Associates, LLC, Devonwood Investors, LLC and their associated and affiliated entities ("BTC"), hereby abandon, withdraw and relinquish the submission to the Burlington Planning & Zoning Department for the Burlington Town Center project, as approved by the Burlington Development Review Board decision for File No. ZP17-0662CA/MA, dated March 17, 2017, as modified by the Judgment Order dated July 17, 2018 in the matter captioned *Devonwood Investors, LLC 75 Cherry Street*, Docket No 38-4-17 Vtec.

BTC looks forward to submitting a new project for approval in the near future.

Sincerely,



Manager
BTC Mall Associates, LLC

CC: Mayor Miro Weinberger
City Attorney, City of Burlington
Marc Heath, Esq.
Jeremy Farkas, Esq.

From: **Scott Gustin** <SGustin@burlingtonvt.gov>
Date: Fri, Sep 18, 2020 at 2:48 PM
Subject: RE: Relinquishment of Issued Zoning Permit
To: Brian Dunkiel <bdunkiel@dunkielsaunders.com>
Cc: Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov>, Jesse Beck <jbeck@ffinc.com>

Good afternoon Brian,

I'm looking to check in with others as to the specifics around zoning permit relinquishment and will follow up shortly.

As to my recommendation for the NPA, it's based on the introduction of more than 5 additional dwelling units as compared to the prior iteration of the project presented to the public this past winter. This alone is sufficient to necessitate a pre-application NPA meeting. See Sec. 3.2.1 (d) of the CDO. I think skipping it would leave the project vulnerable to procedural challenge.

Scott

Scott Gustin, AICP, CFM

Principal Planner & Asst. Administrative Officer

Dept. of Permitting & Inspections

645 Pine Street

Burlington, VT 05401

(802) 865-7189

From: Brian Dunkiel [mailto:bdunkiel@dunkielsaunders.com]
Sent: Tuesday, September 15, 2020 5:00 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov>; Jesse Beck <jbeck@ffinc.com>
Subject: FW: Relinquishment of Issued Zoning Permit

[WARNING]: External Message

Hi Scott,

I am writing on behalf of BTC and look forward to continue to work with you, on behalf of BTC, to advance the revised project through the zoning review process. BTC is eager to file a zoning application for the revised project.

BTC received your email of September 14 purporting to reject its September 4 notice abandoning, withdrawing and relinquishing its submission related to the Burlington Town Center project. BTC disagrees with your conclusion, and wants to understand the basis for your decision.

In your email, you do not explain the basis for your authority as the zoning administrator to reject the notice, and BTC has not been able to locate any authority supporting your claim that the permit cannot be relinquished because it has been partially acted upon. Could you please identify the authority you rely on so that we can better understand the zoning administrator's position? If the zoning administrator's position is based on past practice, we would also request that you provide examples of situations in which a notice of relinquishment was rejected for similar reasons.

In addition, it is my understanding that you recently notified BTC that it needs to present the revised project at an NPA meeting before it can file a zoning application. However, you may recall, BTC held two public meetings earlier this year on the project, including following the notice requirements in the P&Z guidance. BTC is eager to file an application. Can you please explain why the public meetings earlier this year do not satisfy the BZO 3.2.1(d) requirement?

Thank you,

Brian

Begin forwarded message:

From: Scott Gustin <SGustin@burlingtonvt.gov>
Date: September 14, 2020 at 9:58:40 AM EDT
To: Donald Sinex <dsinex7184@gmail.com>
Cc: "LShelkrot@langrock.com" <LShelkrot@langrock.com>, Roger Roisman <roger@rmroisman.com>, James Aronoff <Jim.Aronoff@ThompsonHine.com>, William Ward <wward@burlingtonvt.gov>, Kimberlee Sturtevant

[<ksturtevant@burlingtonvt.gov>](mailto:ksturtevant@burlingtonvt.gov)

Subject: RE: Relinquishment of Issued Zoning Permit

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Scott

Scott Gustin, AICP, CFM

Principal Planner & Asst. Administrative Officer

Dept. of Permitting & Inspections

645 Pine Street

Burlington, VT 05401

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From: Donald Sinex [<mailto:dsinex7184@gmail.com>]

Sent: Friday, September 04, 2020 3:05 PM

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Cc: LShelkrot@langrock.com; Roger Roisman

<roger@rmroisman.com>; James Aronoff

<Jim.Aronoff@thompsonhine.com>

Subject: Relinquishment of Issued Zoning Permit

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Donald F. Sinex

Managing Member

Devonwood Investors, LLC

212-203-2018

dsinex@devonwoodinvestors.com

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

--

Brian Dunkiel, Esq.

Dunkiel Saunders Elliott Raubvogel & Hand PLLC

91 College Street

Burlington, VT 05401

802-860-1003 x 104

802-860-1208 (fax)

bdunkiel@dunkielsaunders.com

New website: www.dunkielsaunders.com



This message may contain information that is privileged and confidential. Unless you are the addressee (or authorized to receive email for the addressee), you may not use, copy, or disclose to anyone this message or any of the information contained in this message. If you have received the message in error, please advise the sender by email reply to bdunkiel@dunkielsaunders.com and delete the message. Thank you very much.

CITY OF BURLINGTON DEVELOPMENT REVIEW BOARD

In re: 75 Cherry Street, BTC Mall Associates Appeal
of Zoning Administrator decision regarding
relinquishing permit 17-0662CA/MA

21-0354AP

AFFIDAVIT OF SCOTT SCRIBI

Scott Scribi, affiant, being first duly sworn, hereby deposes and states as follows:

1. My name is Scott Scribi. I am an Office Coordinator at Dunkiel Saunders Elliot Raubvogel & Hand, PLLC. My business address is 91 College Street, in Burlington, Vermont.
2. My affidavit supports BTC Mall Associate's ("BTC") Appeal of the Zoning Administrators decision regarding relinquishing permit 17-0662CA/MA.
3. On September 28, 2020 I was directed by a paralegal in my office to hand deliver a Notice of Appeal in the above-captioned matter on behalf of BTC to Scott Gustin in the City of Burlington's Office of City Planning.
4. I arrived at City Hall around 4PM on the 28th with a sealed envelope addressed to Scott Gustin and bearing the Notice of Appeal materials, and entered the building.
5. At the door, I was greeted by City personnel, who asked my business.
6. I stated that I was delivering materials to Scott Gustin in the Office of City Planning on the third floor.
7. I was informed that I could not enter the building and access the third floor, apparently due to CVOVID-19 protocols. I was told that someone from Scott Gustin's office would come retrieve the envelope for me.
8. Shortly thereafter, another City employee arrived on the elevator and informed me that he would deliver the envelope to Scott Gustin's office. I delivered the sealed envelope to him.

I solemnly affirm that the above statement is true and accurate to the best of my knowledge and belief, under the pains and penalties of perjury.



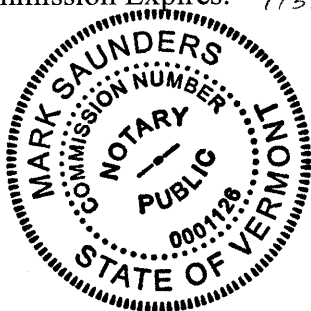
Scott Scribi

Affirmed to before me on this 2nd of November, 2020



Notary Public

My Commission Expires: 1/31/2021



Burlington Development Review Board

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

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Wednesday, November 4, 2020, 5:00 PM

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/82309603006?pwd=TWsrVmV2RERaWW53anh2VkI5RmlOZz09>

Webinar ID: 823 0960 3006

Password: 842557

Telephone: +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

Agenda

Board Members Present: Brad Rabinowitz: AJ LaRosa, Geoff Hand, Brooks McArthur, Caitlin Halpert, Springer Harris

Not Present: Kienan Christianson, Ravi Venkataraman (Alt), Sean McKenzie (Alt)

Staff Present: Scott Gustin, Mary O'Neil, Ryan Morrison, Theodore Miles, Alison Davis

I. Agenda

B. Rabinowitz: Some changes to the agenda. 12-22 North Street is being removed from agenda and BHS has withdrawn the application because it is already a permitted use. 40 Kingsland Terrace has been removed from agenda because it needs to go back to Design Advisory Board. 75 Cherry Street has been requested to defer to December 15th agenda. Joint Institutional Management Plan to be moved to November 17th agenda.

II. Communications

B. Rabinowitz: All communications are in packet

III. Minutes

B. Rabinowitz: Included in packet

IV. Consent

1. 21-0326CU; 254 South Union Street (RL, Ward 6S) William Reilly and Cynthia Secondi

Request for bed and breakfast use, remove pool from site plan, and permit parking expansion.

William Reilly appeared on behalf of application
No public provided testimony

B. Rabinowitz: Explains that application is recommended for approval as a consent item and there are recommended conditions of approval. Asks if applicant has reviewed staff report and staff recommendations, and if they have any disagreements with them.

W. Reilly: No disagreements.

B. Rabinowitz: Asks if any members of the Board object to treating this item as consent.

No objections

The programs and services of the City of Burlington are accessible to people with disabilities. Individuals who require special arrangements to participate are encouraged to contact the Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).

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B. Rabinowitz: Asks if there is anyone from the public who has comments for application.

No public

S. Harris: Motion to adopt staff findings and approve application with conditions

C. Halpert: Seconds

6-0-0

V. Public Hearing

1. Burlington High School Relocation

~~**21-0377CU; 12-22 North Street (NMU, Ward 3C) 24-28 North Street Burlington, LLC**~~
~~Burlington Tech Center space for educational use~~

No longer on agenda. Already permitted use.

21-0381CU; 1251 North Ave (RL, Ward 4N) Saint Marks Parish Charitable Trust
Burlington Tech Center space for educational use

21-0378CU; 351 North Ave (NAC-CR, Ward 4N) 375 North Avenue, LLC
Burlington Tech Center space for educational use

Geoff Hand recused

Marty Spaulding and Jason Gingold appeared on behalf of application

No public provided testimony

B. Rabinowitz: Asks for overview of projects.

M. Spaulding: Explains current situation. Building is closed due to PCBs. Students are working remotely, difficult to do with Tech Center students. Requesting change of use for both Cambrian Rise and St. Mark's Church. Three programs in three different spaces at Cambrian Rise and culinary program moving into St. Mark's Church. Ranging from 14-17 students per program. Explains more about relocation.

B. Rabinowitz: Asks if there are questions from the Board

S. Harris: Asks if comfortable surrounding conditions for more bike parking spaces

M. Spaulding: Yes

B. Rabinowitz: Both locations seem well suited for uses. Closes public hearing.

2. 21-0327AP; 2000 North Avenue (RL, Ward 7N) Oliver Kranichfeld

Appeal of Notice of Violation #380034 pertaining to unpermitted interior garage construction and removal of required parking space.

Oliver Kranichfeld and Ted Miles appeared on behalf of appeal

No public provided testimony

B. Rabinowitz: Asks to explain violation and possible resolutions to violation.

T. Miles: Explains situation. AirBnB issue has been resolved, no longer a violation. Enclosure of garage to living space is the violation. No permits have been filed for this work. Reached out to owner in July, explained zoning permit is required. No response, so violation was issued. Owner appealed violation. By enclosing the garage, the parking spaces are lost. Currently no parking on property.

B. Rabinowitz: Asks to speak on two issues. 1) applying for permit for the conversion of the garage, and 2) address the parking issue.

O. Kranichfeld: Was notified about a potential zoning violation and reached out to Ted. Disagreed on some measurements. Closed off the garage working with a contractor and he assumed he got all the necessary permits. Explains what has happened with garage.

B. Rabinowitz: Asks about how many parking spaces can fit in garage. Asks about dimensions from garage to street and public right-of-way. Explains dilemma of parking needing to be on property and not on public right-of-way.

O. Kranichfeld: Answers questions and explains/walk-thru of property.

T. Miles: Explains he recommended the space between the shed and garage to convert to parking.

C. Halpert: Asks if property owner has any issues with applying for necessary permits to remedy this violation.

O. Kranichfeld: Would have to explore options because of parking requirements

B. Rabinowitz: Resolution would be for you to submit an application to remedy this violation. Closes public hearing.

3. ~~21-0358CA/CU; 40 Kingsland Terrace (RL, Ward 6S) Kellen Brumsted & Katie Mense~~

~~Remove existing garage; construct new garage with 770 square foot accessory dwelling unit.~~

G. Hand: Motion to defer to December 15th

B. McArthur: Seconds

6-0-0

4. 21-0354AP; 75 Cherry Street (FD6, Ward 3C) BTC Mall Associates, LLC

Appeal of Zoning Administrator Determination regarding relinquishing 17-0662CA/MA.
Request to defer

Geoff Hand and AJ LaRosa recused

B. McArthur: motion to defer to December 15th

S. Harris: Seconds motion

4-0-0

5. Review of 2020-2025 Joint Institutional Parking Management Plan (To be deferred)

To be reviewed on 11/17/2020

VI. Adjournment

Meeting adjourned 5:40pm

Bradford L. Rabinowitz, Chair of Development Review Board

Date

Alison Davis

Alison Davis, Zoning Clerk

Date

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

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