

Burlington Development Review Board

Department of Permitting & Inspections
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BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, August 18, 2020, 5:00 PM PUBLIC HEARING NOTICE

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/86007795506?pwd=a0pzU0xWd00yZTBnek5MTnRhZmJHQT09>

Webinar ID: 860 0779 5506

Password: 842557

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

- 1. 21-0018CA/CU; 119 Spruce Street (RL, Ward 6S) Chris Khamnei**
Remove garage and pantry addition on rear of structure and construct new garage.
- 2. 20-0717CA/MA; 273 Pearl Street (RH, Ward 8E) Triple Tree Group, LLC, (Bruce Baker, Greg Doremus)**
Planned Unit Development involving 273 Pearl St, 11 Hungerford Terrace, 15 Hungerford Terrace, and 21 Hungerford Terrace. Demolish porch and move garage at 21 Hungerford; demolish garage at 11 Hungerford. Construct 12-unit residential building with related parking and supporting infrastructure.

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.

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Department of Permitting & Inspections

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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: August 18, 2020
RE: DRB Bylaw Amendment

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Proposed amendments to the DRB's bylaws reflect the change from Planning & Zoning to Permitting & Inspections. A change to Section VIII, N is also proposed to simply refer to the application time limits in Sec. 3.2.5 of the CDO rather than restate them in the bylaws. Presently, the standards differ and should not.

CITY OF BURLINGTON DEVELOPMENT REVIEW BOARD (DRB)

Rules of Procedure and Conflict of Interest Policy

Section I: Authority and Purpose.

The Development Review Board of the City of Burlington hereby adopts the following rules of procedure (hereinafter referred to as “Rules”) in accordance with 24 V.S.A. § 4461(a), 1 V.S.A. §§ 312(e), (f), and (h), and Section 2.4.1-2.4.6 of the Burlington Comprehensive Development Ordinance.

Legal Requirements

The DRB is required to adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct under Sec. 2.4.3 Rules of Procedure of the *Burlington Comprehensive Development Ordinance* and 24 VSA §4461(a), and must conduct its proceedings in accordance with Vermont’s Open Meeting Law.

The Role of the Chair

Much like the moderator at town meeting, the job of the chairperson is to effectively manage participation by the participants. Most importantly, the chair’s role is to make an effort that those who have a right to participate realize that right, and to allow for those in attendance to be heard. However, it is important to remember that the chair is more than a neutral facilitator. The chair of a small board, such as a local zoning board, has the right to vote, the right to make and second motions, and the right to question participants, just as any other member of the board.

Finally, while many boards elect the most senior member as chair, the most important attributes for a chairperson are the ability to facilitate a meeting or hearing and knowledge of the planning and zoning process. These attributes may or may not be linked to the length of one’s tenure on the board. Moreover, a long-serving member may be more effective as a regular member where he or she can focus on analyzing the matter at hand instead of running the meeting.

Section II: Policy.

These Rules are adopted to ensure consistent and fair treatment of applicants, interested persons, and participants, orderly and efficient public proceedings, and compliance with state and federal law. These Rules shall also ensure that no board member will gain a personal or financial advantage from his or her service on the DRB, so that the public trust in municipal government will be preserved. Anything not explicitly conveyed in these bylaws shall be governed by Robert’s Rules of Order.

Section III: Definitions.

- A. “DRB” means the Development Review Board.
- B. “Board member” means a regular or alternate member of the DRB.
- C. “Conflict of interest” means any one of the following:
 - 1. A direct personal interest of a board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, an individual with a close personal relationship to a board member in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
 - 2. A direct or indirect financial interest of a board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, an individual with a close personal relationship to a board member in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
 - 3. A situation where a board member has publicly displayed or expressed a prejudgment of the merits of a particular proceeding before the DRB. This shall not apply to a member’s particular political views or general opinion on a given issue.
 - 4. A situation where a board member has not disclosed ex parte communications with a party in a proceeding before the DRB, pursuant to Section XII of these Rules.
- D. “Deliberative session” means a public or private session of the DRB to weigh, examine, and discuss the reasons for and against an act or decision, from which the public may be excluded. There shall be neither taking of evidence nor submission of testimony, nor is a deliberative session required to be publicly noticed. The DRB may enter deliberative session by majority vote, and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.
- E. “Executive session” means a session of a public body from which the public is excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.
- F. “Ex parte communication” means direct or indirect communication between a member of the DRB and any party, party’s representative, party’s counsel or any person regarding any proposal before the panel that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
- G. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any board member.

- I. "Recuse" means to remove oneself from a particular DRB proceeding because of a real or perceived conflict of interest.

Section IV: Appointment and Removal of members

Pursuant to Article 2, Part 4 of the Burlington Comprehensive Development Ordinance, the DRB shall consist of seven regular and two alternate members appointed by City Council. Appointment to the DRB shall be for a term of three consecutive years. Members may be appointed to successive terms without limitation. Any member desiring reappointment, or city resident desiring an appointment to the DRB, must apply to the City Clerk's office and obtain a nomination form from a member of the City Council.

At a meeting in July of each year, the DRB shall hold an organizational meeting and elect by majority vote, a Chair and Vice Chair from its members, and shall also elect a Clerk who may or may not be a DRB member or a municipal employee. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the DRB.

- A. The Chair shall preside at all meetings, hearings, and deliberative sessions, decide all points of order or procedure, and appoint members to any committee of the DRB. The Chair may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration.
- B. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, recused or at the Chair's request. In the event that both the Chair and Vice Chair are absent or recused, the remaining longest serving member of the board shall assume the duties of Chair.
- C. It shall be the duty of all members to review the minutes and other official records of DRB meetings and actions, and correct and ratify these when appropriate and necessary.
- D. ~~Planning & Zoning~~ Department of Permitting & Inspections staff shall take minutes of all meetings.

Alternate members are appointed to temporarily serve as board members in the event of a recusal or absence of one or more regular members.

- A. Whenever a regular member is recused or is expected to be absent from the DRB, the chairperson of the DRB, or his or her designee, may request that an alternate serve as an active member of the DRB by selecting an individual from the roster.
- B. An alternate member who is called upon to serve shall be required to be a part of the DRB until a final decision is made on any application heard by the DRB while serving as an active member. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.

Upon majority vote, the DRB may request that the City Council remove a board member from the DRB. Board members may be removed for cause by the City Council upon written charges and after public hearing. 24 V.S.A. § 4460(c).

Section V: Committees

- A. **Standing Committees.** The Board shall appoint at least one (1) member to the Planning Commission Ordinance Committee, and at least one (1) member to the Planning Commission Long-Range Planning Committee.
- B. **Ad hoc Committees and Commission Liaisons:** From time to time ad hoc committees and board liaisons to other ad hoc committees may be established by the DRB for special assignments that do not fall within the general purview of standing committees.

Section VI: Regular and Special Meetings.

Regular meetings shall be held in the City Hall, or other publicly accessible location, as warranted based on the number of projects pending. Meeting length shall be at the discretion of the Chair in concurrence with the majority of members present, but should generally not exceed 3 hours. The Chair may cancel meetings at any time.

- A. Special meetings may be called by the Chair, provided at least 24 hours notice is given to each member, and the time and place of each special meeting is publicly announced at least 24 hours before the meeting.
- B. A quorum shall consist of four participating members of the board.
- C. Board members may participate by telephone or other communication device as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the board member.
- D. All meetings shall be open to the public unless the DRB has entered a closed deliberative or executive session. The DRB may only hold an executive session pursuant to the reasons permitted by 1 V.S.A. § 313, and only after a majority vote to enter executive session.
- E. All business shall be conducted in the same order as it appears on the agenda, except the Chair may alter the order of items to be considered as needed, such as to accommodate a late or missing project applicant.
- F. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).

- G. At each meeting, speakers may participate on an agenda item but only when recognized by the Chair. Such comment may be limited to three minutes per speaker, unless the Chair sets a different time limit.
- H. Notice for hearings on the adoption, amendment, or repeal of the bylaw and other regulatory tools shall be pursuant to 24 V.S.A. § 4444, as amended and Section 2.6.2 of the Burlington Comprehensive Development Ordinance.

Section VII: Executive Session.

(a) The DRB may hold an executive session from which the public is excluded after the affirmative vote of a majority of its members present. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session. Minutes of an executive session need not be taken, but if they are, shall not be made public. The DRB may not hold an executive session except to consider one or more of the following:

1. Contracts, mediation, civil actions, or prosecutions, where premature general public knowledge would clearly place the municipality, other public body, or person involved at a substantial disadvantage;
2. Discussion of the conduct of a board member;
3. A clear and imminent peril to the public safety;
4. Discussion or consideration of records or documents excepted from the access to public records provisions of section 317(b) of 1 V.S.A. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

(b) Attendance in executive session shall be limited to members of the DRB, and, in the discretion of the DRB, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

Section VIII: Proceedings and Order of Business.

All meetings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. § 310(5) (B). Proceedings shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a) (1), (2), as amended.

The Chair shall conduct the proceeding in substantially the following manner:

- A. Open the proceeding by reading the warning of the proceeding.

- B. Ask all who are interested in an agenda item to identify themselves at the time of proceeding on the item of interest and to provide contact information.
- C. Direct the applicant or his/her representative and all persons wishing to participate in a proceeding to take the following oath: *I hereby swear or affirm that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth, under the pains and penalties of perjury.*
- D. Accept written information presented to the DRB, including but not limited to staff and other boards/commissions' recommendations.
- E. Invite the applicant or applicant's representative to present such application or proposal.
- F. Invite DRB members to ask questions of the applicant, applicant's representative, or of City staff.
- G. Invite the public to present information regarding the application or proposal.
- H. Invite the applicant, applicant's representative, city staff or members of the public to respond to information presented.
- I. Invite DRB members to ask any additional questions or provide comments.
- J. Allow final comments or questions from the applicant or applicant's representative.
- K. The Chair shall either adjourn the proceeding to a time certain, continue the proceeding without a time certain subject to additional public notice being provided as to the time and place of any future proceeding, or close the proceedings.
- L. If new information becomes available or if the DRB finds it needs more information to render its decision after the close of the proceeding, but before the DRB decision, then the DRB may re-open the proceeding. No information can be received while the proceeding is closed.
- M. Upon final adjournment, the DRB shall set a time and place for a deliberative session, which shall be public unless otherwise stated.
- N. Time limits for application review shall be as articulated in Sec. 3.2.5, Completeness of Submission, Administrator's Action, of the Comprehensive Development Ordinance. ~~The proceeding for any application shall be deemed to start the first time it appears on the DRB's agenda and if a public hearing has been warned it shall also be open at that particular DRB meeting. In no event shall a proceeding (i.e. public hearing or not) extend for a period of more than six (6) months. In case of extenuating circumstances, the DRB may grant up to two (2) extensions of up to three (3) months each. If an initial extension is granted and the application lies dormant (no revised plans, information submitted) for the three (3) month duration of the extension, the DRB shall not grant another extension.~~

Section IX: Site Visits.

Board members are encouraged to visit each site individually, however, no testimony shall be taken and no ex parte communication shall occur. Site visits by a quorum of the DRB shall be held pursuant to the following conditions:

- A. If, the Chair determines that a site visit by a quorum of the DRB will be necessary, the site visit shall be scheduled and the date, time and place shall be announced during the meeting.
- B. If necessary, the DRB may recess a hearing and conduct a site visit at a property which is the subject of an application before the DRB.
- C. If necessary, the DRB may adjourn a hearing to a time certain to conduct a site visit at a property which is the subject of an application before the DRB.
- D. The minutes of the proceeding shall reflect that a site visit was held, who was present, and the nature and duration of the site visit.

Section X: Service List.

~~Planning & Zoning~~ Permitting & Inspections staff shall provide a sign up sheet for individuals present at the hearing to provide contact information and to identify the agenda item of interest. A service list shall be prepared from the provided sign up sheet and from any persons who provided testimony or requested to be added on the service list in writing. All decisions of the DRB, related to the particular agenda item, shall be mailed to those on the list.

Any other documents filed with the DRB that are requested must be provided to persons on the list upon payment of reproduction and mailing costs.

Section XI: Decisions.

The DRB may make decisions in deliberative session. Deliberative sessions may or may not be open to the public and agendas are to be posted at least 24 hours in advance. 1 V.S.A. §§ 312(e), (f). Members of the DRB who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that proceeding, unless such absent DRB members review video or audio recordings of the proceedings.

The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The chair has the same voting rights as other members and can make motions.
- C. A second shall be required for a motion to have the floor.

- D. All members present are expected to vote unless they have recused themselves.
- E. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- F. For a motion to succeed, it must receive the concurrence of four participating members of the DRB, regardless of how many members are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).
- G. The DRB shall issue a written decision within 45 days of the close of the final proceedings.
 - a. In the case when a public hearing took place, a written decision signed by the Chair of the DRB constitutes a final decision. This written decision shall include any conditions of approval.
 - b. In the case when no formal public hearing took place, the motion made by the board at the end of the proceeding constitutes a final decision.

Section XII: Conflicts of Interest.

- A. **Procedures.** Participation, disclosure of conflicts, and recusal shall be governed by the following procedures:

1. **Participation.** A board member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration.
2. **Disclosure.** Board members with a conflict of interest shall state so prior to commencement of the proceeding. (Refer to Section III of these bylaws for details on how to recognize a conflict of interest.)

When recognized by the Chair, any person may request disclosure of potential conflicts of interest. Nonetheless, after disclosing a conflict or perceived conflict, if a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall state on the record the nature of the potential conflict of interest, and the reason(s) why the member believes he or she is able to act in the matter fairly, objectively, and in the public interest.

This statement shall be part of the minutes of the proceeding pertaining to the matter under consideration.

3. **Recusal.** A board member shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
 - a. The applicant or any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.

- b. The DRB may, by majority vote, (exclude or recuse) one of its members if there is reasonable public perception that a conflict of interest exists.
- c. A board member who has recused him or herself from a proceeding shall not sit with the DRB, deliberate with the DRB, or participate in that proceeding as a board member in any capacity.
- d. If a previously unknown conflict is discovered, the DRB may take evidence pertaining to the conflict, and if appropriate, adjourn to a deliberative session to address the conflict.
- e. The DRB may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the DRB. The DRB may then resume the proceeding with sufficient members present.

B. Ex Parte Communications. Ex parte communication is prohibited. Any DRB member who inadvertently conducts ex parte communication must disclose such communication as required below.

- 1. **Disclosure.** At each hearing, Board members who have received written ex parte communications shall place on the record copies of all written communications received as well as all written responses to those communications. Members shall prepare a memorandum or state the substance of any and all oral communications received, all responses made and the identity of each person making the ex parte communication.

C. Progressive Consequences for Failure to Follow the Conflict of Interest Procedures. In cases where the conflict of interest procedures in Section XI have not been followed, the DRB may take progressive action to discipline an offending board member. In the discipline of a member, the DRB shall follow these steps in order:

- 1. The Chair shall meet informally, in private, with the board member to discuss possible conflict of interest violation.
- 2. The DRB may meet to discuss the conduct of the board member. Executive session may be used for such discussion. 1 V.S.A. § 313(4). The board member may request that this meeting occur in public. If appropriate, the DRB may admonish the offending board member in private.
- 3. If the DRB decides that further action is warranted, the DRB may admonish the offending board member at an open meeting and reflect this action in the minutes of the meeting. The board member shall be given the opportunity to respond to the admonishment.

4. Upon majority vote, the DRB may request that the offending board member resign from the DRB. The DRB shall then notify the City Council of this majority vote.

Section XIII: Administrative Review.

The DRB hereby authorizes administrative review in addition to that which is already provided for in the Comprehensive Development Ordinance per Sec. 3.2.7 (b) *Further Delegation by the Development Review Board* for the following application types:

1. De minimus telecommunications facilities
2. Landscaping projects and regular turf maintenance including cutting, filling, re-grading, and reseeding that do not involve the construction of new buildings.
3. New single family homes under a PUD approval that conform to design templates reviewed and approved by the DRB, including those subject to design review.
4. New single family homes proposed as replacements for existing manufactured homes within the North Avenue Cooperative 1106 North Avenue (formerly Farrington's Trailer Park) consistent with the requirements of Section 5.4.12 Mobile Home Parks.
5. Any Level II zoning permit application within the NAC-Cambrian Rise (NAC-CR) zoning district that is not subject to Major Impact or Conditional Use review (Article 3, Part 5), Article 10 (Subdivision review), Article 11 (Planned Unit Development) or include any parking waiver.
6. Any new surface parking within an institutional core campus overlay district that otherwise qualifies for administrative review.

If an application is submitted for such application type that results in substantial adverse impact under any of the standards set forth in the CDO, it shall not be eligible for administrative review under this section. Further, no amendment issued as an administrative review shall have the effect of substantively altering any DRB decision and related conditions of approval.

Section XIV: Amendments.

These rules may be amended at any regular or special meeting by a two-third vote of the number of regular board members, provided that each DRB member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken. Only those amendments which are presented to the members prior to the meeting may be amended at that meeting.

Department of Permitting & Inspections

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

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TO: Development Review Board
FROM: Scott Gustin
DATE: August 18, 2020
RE: 21-0018CA/CU; 119 Spruce Street

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 6S

Owner/Applicant: Chris Khamnei

Request: Remove garage and pantry addition on rear of structure and construct new garage.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations)

Background Information:

The home at 119 Spruce Street was constructed circa 1895 and is included in the Vermont Register of Historic Places. The detached garage, which has been demolished, was not part of the original construction. It first shows up in the 1942 Sanborn Map and also appears in early aerial imagery dating to 1962. The historic listing notes construction circa 1920. Construction in the 1940's is consistent with the applicant's assertion that it was built some 50 years following construction of the residence.

This application is after-the-fact to demolish the garage and to replace it with an attached garage. A new driveway will access the proposed garage, and the existing porch will be widened to sit fully on top of the proposed garage. A wrap-around side and rear deck is also proposed. The aluminum siding will be removed from the residence, and the wooden clapboards underneath will remain and be repaired as necessary. A small rear pantry addition has also been removed. The age of the pantry is unclear; however, it appears in the first Sanborn map of the area dating to 1919.

The demolition work occurred in or around June 2020. The new garage has not yet been constructed. Demolition of historic structures requires Conditional Use Review, per Section 5.4.8 (d) of the Comprehensive Development Ordinance.

Elevation and site plans have been provided and have been improved upon revision. They remain; however, insufficiently clear to depict exactly what the end result will look like.

Previous zoning actions for this property are noted below:

- 5/14/20, Approval of boundary line adjustment and driveway reconfiguration

- 2/22/16, Approval for window replacement and dormer construction

Recommendation: Initial review and continuation pending receipt of acceptable building elevation drawings and site plan.

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (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 demolition and new construction will have no effect on this criterion. **(Affirmative finding)**

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

This is a low density residential district; the loss of a characteristically small detached garage located in the backyard will not result in a loss of residential units or overall character of the zoning district. Removal of the rear pantry will not affect the use of the residence as a single family home. **(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;*

Demolition and replacement included in this application is not expected to generate nuisance impacts from noise, odor, dust, and the like. **(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;*

There is no anticipated change to traffic. **(Affirmative finding)**

5. *The utilization of renewable energy resources;*

No part of this application would prevent the use of wind, water, solar, or other renewable energy resources. **(Affirmative finding)**

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

Note that a curb cut and related curb cut permit issued by Dept. of Public Works will be required to access the new attached garage. **(Affirmative finding as conditioned)**

(b) Major Impact Review Standards

Not applicable.

(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.

Demolition and replacement work will not produce adverse effects in need of mitigation.

(Affirmative finding)

2. Time limits for construction.

No construction timeline or phasing are included in this proposal. A shortened 1-year timeframe will apply for the zoning permit, as it addresses a violation (demolition without first obtaining a zoning permit). **(Affirmative finding as conditions)**

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

Hours of operation are not applicable for use of the private accessory garage.

Construction hours are not specified. Typical construction hours in residential areas are Monday – Friday from 7:30 AM – 5:30 PM. Saturday construction may occur for interior work only. No work on Sunday. **(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; and,

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

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.

Not applicable.

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(1) Residential Low Density (RL)

The Residential Low Density (RL) district is intended primarily for low density residential development in the form of single family detached dwellings and duplexes. In this case, the existing use as a single detached dwelling will not change. **(Affirmative finding)**

(b) Dimensional Standards and Density

Residential density remains unchanged at 1 dwelling unit.

Following the recent lot line adjustment and permitted removal of the shared driveway, lot coverage was 14.7%. This figure is ~ 1% different than shown in the present application and can likely be explained by the applicant's use of incorrect lot size. The boundary survey associated with the lot line adjustment shows a resultant lot size of 16,324 sf (rather than 17,316 sf in the present application). As proposed, lot coverage will increase to 14.6% (not 16.8% as shown in the

proposed site plan). This increased lot coverage remains below the maximum permissible 35%. The discrepancy in lot size and coverage needs to be resolved in revised project plans. Note that the proposed site plan depicts a 30' X 50' wide "temporary" parking with jobsite trailer location in the front yard. This item must be removed from the site plan, as it is not approvable for use as parking. A job site trailer need not be included in the zoning permit in any event.

The front and rear yard setbacks remain unchanged. The attached garage will extend several feet to the west. It remains well beyond the 20' side yard setback. An existing encroachment into the east side yard setback will remain unchanged.

Building height will remain unchanged. **(Affirmative finding as conditioned)**

(c) Permitted and Conditional Uses

The permitted single family home use remains unchanged. **(Affirmative finding)**

Article 5: Citywide General Regulations

Part 4: Special Use Regulations

Sec. 5.4.8 Historic Buildings and Sites

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

The residence at 119 Spruce Street is listed in the National Register of Historic Places. Therefore, the following standards apply to the proposed alterations.

(b) Standards and Guidelines:

1. *A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.*

The residence is a single detached dwelling. The use will remain unchanged. **(Affirmative finding)**

2. *The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.*

The aluminum siding wrapping the structure will be removed to expose the original wooden clapboard siding. The clapboards will be repaired as needed. Removal of the rear pantry will be imperceptible from the street. The front porch of the residence will be extended by 4' to reach over the proposed garage. The steps to the front entry will be widened as well. The garage will be set to the side and below the original structure leaving the integrity of the front façade intact. The proposed deck along the west and southern sides will be largely concealed from view from the street.

The elevation drawings included with this application provide a general sense of the proposed alterations; however, they are not completely accurate. For instance, the west elevation lacks any depiction of the newly constructed garage, and depiction of the deck is rough at best. **(No finding possible – incomplete elevation plans)**

3. *Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.*
No conjectural features are proposed. **(Affirmative finding)**
4. *Changes to a property that have acquired historic significance in their own right will be retained and preserved.*
The garage was not part of the original construction of the residence and is included in the historic register. See item (d), *Demolition of Historic Structures*, below.
5. *Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.*
The un-original aluminum siding will be removed, and the wooden clapboard siding underneath will be revealed and repaired as needed. Fenestration and roofing will remain unchanged. The front porch will be retained and widened with like materials and design.
(Affirmative finding)
6. *Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.*
Except for the rear pantry to be removed, no historic features are proposed to be removed or replaced. **(Affirmative finding)**
7. *Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*
None are identified in submission materials. **(Affirmative finding)**
8. *Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.*
The property is of no known archaeological significance. **(Affirmative finding)**
9. *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.*
The new attached garage is relatively small and, using the grade of the site and excavation, set below the front porch. The elevation drawings imply a more significant widening of the front porch than the 4' widening actually proposed. Details as to how the garage will attach to the home are unclear as to the materials and placement (recessed, flush, projecting). Finished grades to the west alongside the new driveway and garage are also unclear. **(No finding possible – incomplete elevation & site plans)**

10. *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

See above.

(d) Demolition of Historic Buildings:

2. Standards for Review of Demolition.

Demolition of a historic structure shall only be approved by the DRB pursuant to the provisions of Art. 3, Part 5 for Conditional Use Review and in accordance with the following standards:

A. The structure proposed for demolition is structurally unsound despite ongoing efforts by the owner to properly maintain the structure;

See criterion B below.

or,

B. The structure cannot be rehabilitated or reused on site as part of any economically beneficial use of the property in conformance with the intent and requirements of the underlying zoning district; and, the structure cannot be practicably moved to another site within the district;

The demolished garage was fairly small as a single bay, one story structure. The applicant asserts that the concrete foundation had failed and has provided photographs that show substantial cracking and disintegration. The applicant also asserts that the tin roof leaked and lead to structural damage of the wooden framing underneath. There are no permits (trades or zoning) evident for repair work for this structure. It was apparently neglected; however, it bears noting that the applicant has owned the structure just since 2016. Given the asserted condition of the garage prior to demolition and the apparent lack of effort to maintain it, additional information is needed as to the condition of the garage, its progressive deterioration over the years, and whether or not it was demolition by neglect.

Similarly for the pantry, the applicant asserts that the roof leaked, and wood rot was evident. The pantry was a small rear appendage to the residence and is not specifically mentioned as character defining feature in the historic listing for the property. Its removal is to be followed by installation of a rear deck for use by occupants of the residence. **(No finding possible - garage)**

or,

C. The proposed redevelopment of the site will provide a substantial community-wide benefit that outweighs the historic or architectural significance of the building proposed for demolition.

See criterion C above.

And all of the following:

D. The demolition and redevelopment proposal mitigates to the greatest extent practical any impact to the historical importance of other structures located on the property and adjacent properties;

Demolition of the detached garage does not substantially impact the historic home. It was located relatively far behind the home in the backyard. Its significance was as a typical example of an “automobile shed” of the immediate post-war years. No unique architectural features of the garage are included in the listing. Utilizing the slope of the property, the proposed garage will be set

underneath the residence and will have relatively little impact on the integrity of this historic building. A photo of the garage about to be demolished has been provided for documentation.

Similarly, removal of the pantry has little impact on the residence. It was a small, single story feature located in the rear and could not be viewed from the street. Photo documentation has been provided as a minimal amount of mitigation. **(Affirmative finding)**

E. All historically and architecturally important design, features, construction techniques, examples of craftsmanship and materials have been properly documented using the applicable standards of the Historic American Building Survey (HABS) and made available to historians, architectural historians and others interested in Burlington's architectural history;
See D. above.

and,

F. The applicant has agreed to redevelop the site after demolition pursuant to an approved redevelopment plan which provides for a replacement structure(s).

(i) Such a plan shall be compatible with the historical integrity and enhances the architectural character of the immediate area, neighborhood, and district;

(ii) Such plans must include an acceptable timetable and guarantees which may include performance bonds/letters of credit for demolition and completion of the project; and,

(iii) The time between demolition and commencement of new construction generally shall not exceed six (6) months.

The applicant proposes an attached garage as a replacement for the demolished detached garage. While the new garage will alter the primary façade of the residence, it will be set below and to the side, taking advantage of grades on the property. The integrity of the primary façade remains intact, and the new garage clearly reads as new and secondary to the original construction. As mentioned previously, a 1-year timeline will apply to this zoning permit approval for commencement and completion of construction. **(Affirmative finding)**

This requirement may be waived if the applicant agrees to deed restrict the property to provide for open space or recreational uses where such a restriction constitutes a greater benefit to the community than the property's redevelopment.

There has been no such deed restriction proffered; nor is it warranted. **(Affirmative finding)**

3. Deconstruction: Salvage and Reuse of Historic Building Materials.

The applicant shall be encouraged to sell or reclaim a structure and all historic building materials, or permit others to salvage them and to provide an opportunity for others to purchase or reclaim the building or its materials for future use. An applicant may be required to advertise the availability of the structure and materials for sale or salvage in a local newspaper on at least three (3) occasions prior to demolition.

Demolition has occurred. The opportunity for salvage or reuse has passed. **(Not applicable)**

II. Conditions of Approval

None recommended at this time.



Department of Permitting and Inspections

149 Church Street, City Hall
Burlington, VT 05401-8415
Phone: (802) 865-7188
Fax: (802) 865-7195

www.burlingtonvt.gov/pz

Zoning Permit Application

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

PROJECT LOCATION ADDRESS: 119 Spruce Street

PROPERTY

OWNER*: Chris C. Khamnei

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

POSTAL ADDRESS: 82 Overlake Park

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE: (802) 222-6090

EMAIL: chris@rentinvt.com

SIGNATURE:

Digitally signed by Chris Khamnei
DN: cn=Chris Khamnei, o=Green Mountain Real
Estate, ou, email=chris@rentinvt.com, c=US
Date: 2020.06.19 06:37:12 -04'00'

I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this zoning permit application.

APPLICANT: _____

POSTAL ADDRESS: _____

CITY, ST, ZIP: _____

DAY PHONE: _____

EMAIL: _____

SIGNATURE: _____

Description of Proposed Project: Remove aluminum siding and expose original clapboards. Remove 1948 garage and asphalt driveway & parking in the backyard. Remove pantry. Extend front porch by four feet to the west. Add deck to west and south side. Place garage under porch and deck as in site plan.

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

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

• **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)*: \$ 35,000

(*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 in the lower level of City Hall, 149 Church Street.

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

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

Check No. Amount Paid Zoning Permit #

Justification of Removal of the Garage and Pantry

119 Spruce Street was built in 1895. The garage was added sometime about 1942.

The garage has a poured concrete foundation that has cracked and is unusable in multiple locations. The roof was tin and was rusted through which rotted the entire roof material making it unsafe. The walls were 2"x4"x8' construction without sheathing or any other finishing on the interior. The exterior was sheathed with 3/4" type bead board in rough condition.

The garage was built partially on the neighbors property and with no setback whatsoever. There was a previous zoning permit from 129 Spruce Street that removed the driveway its own garage and access to the subject garage which was approved. That permit was acted upon and the driveway was removed. Access was no longer available to the subject garage and it became useless. It's removal allows this single family house to have ample green space for a backyard as opposed to unsightly parking and a driveway.

The pantry was in similar condition with a leaking roof and rotted wood. The metal posts holding up the pantry had rotted and it was pulling on the house. The pressure treated decking and stairs had disintegrated.

There was no indication that this was original to the historic house of 1895. It lacked a red-stone foundation. It's removal allows for an open deck to the backyard where a family and children can enjoy the space.



OPEN DECK: 496 ft²
SIDEWALK: 120 ft²
LOT SIZE: 17,816 ft²

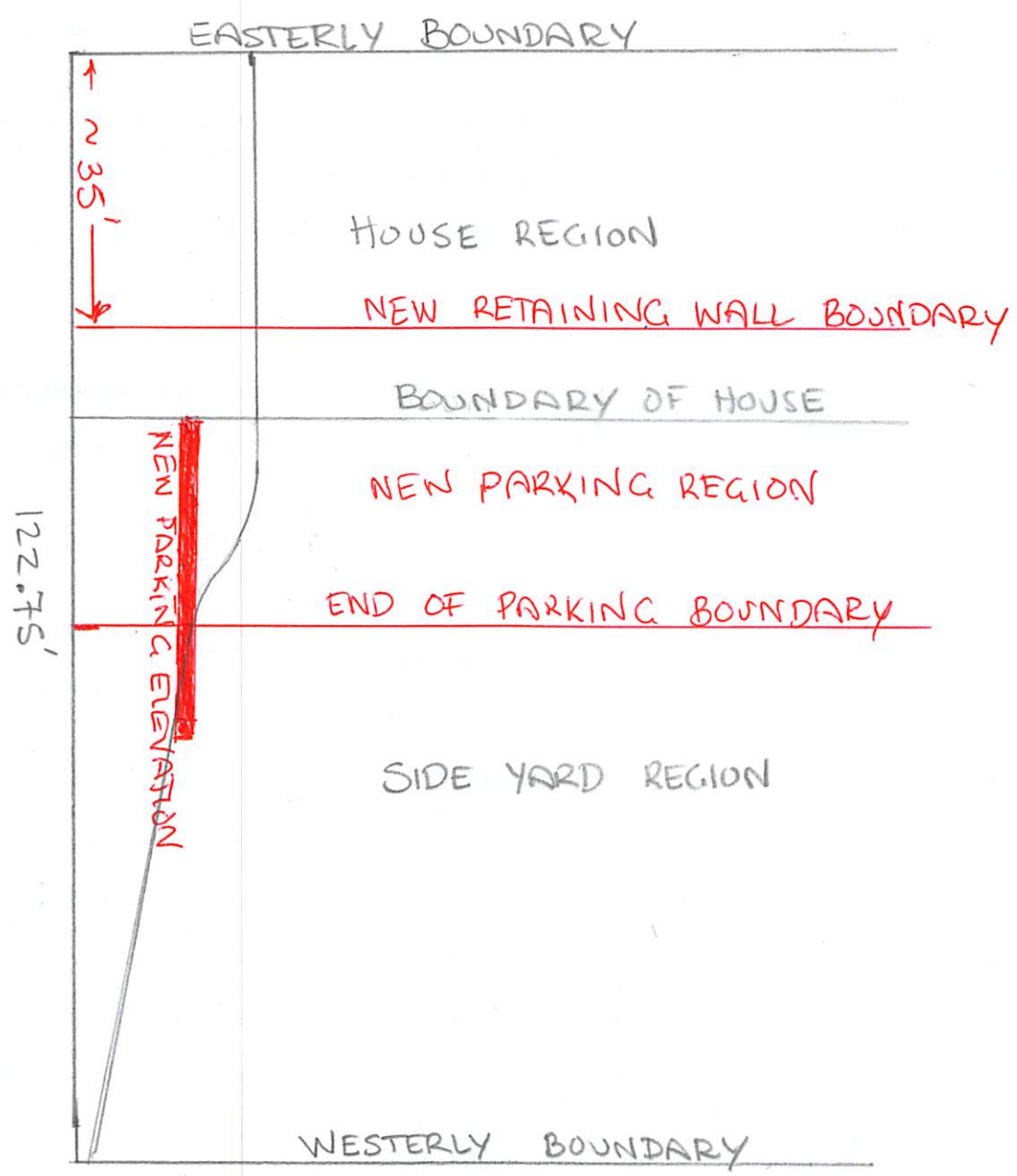
8/11/20

ELEVATIONS

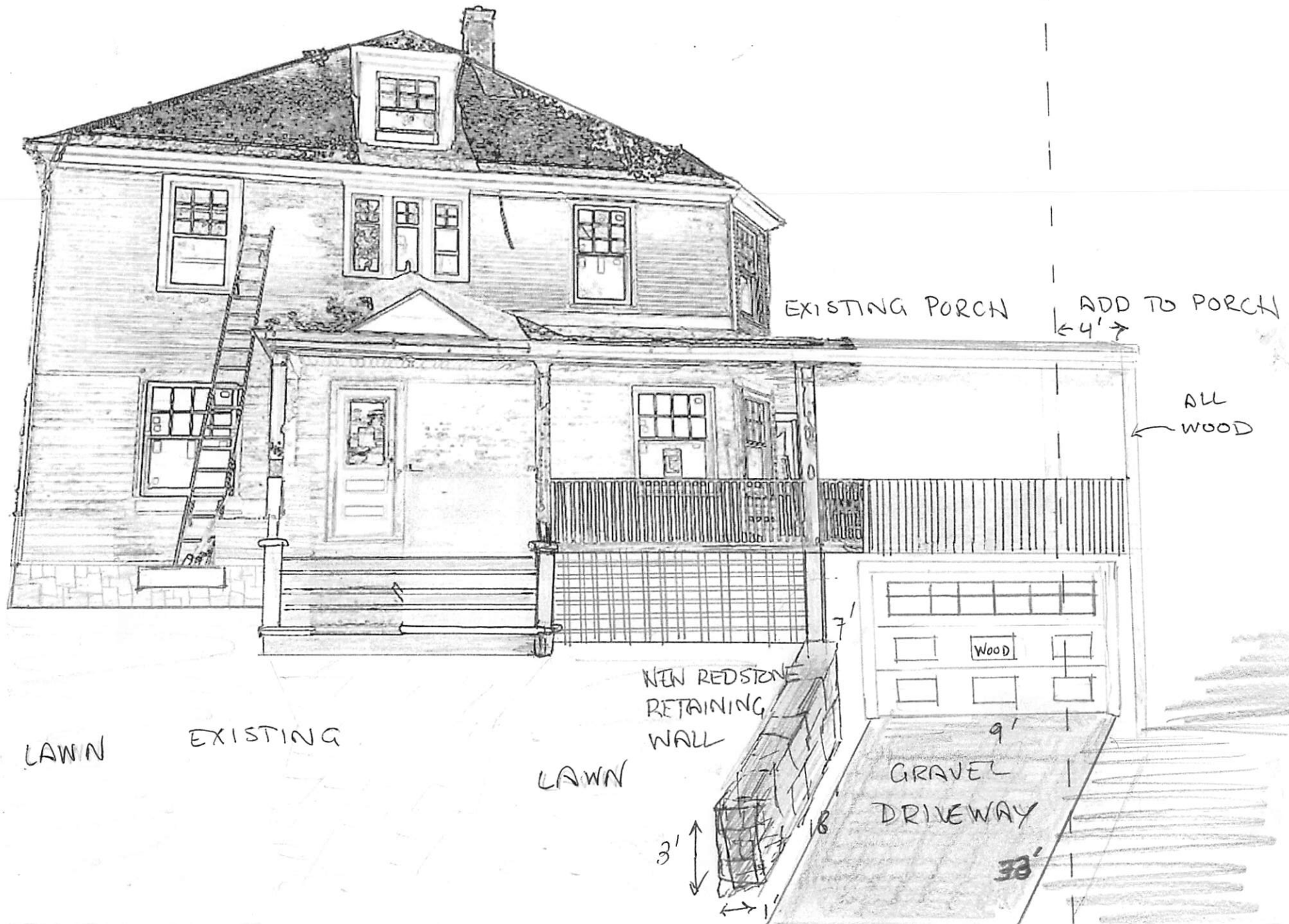
TOPOGRAPHICAL MAP

119 SPRUCE ST

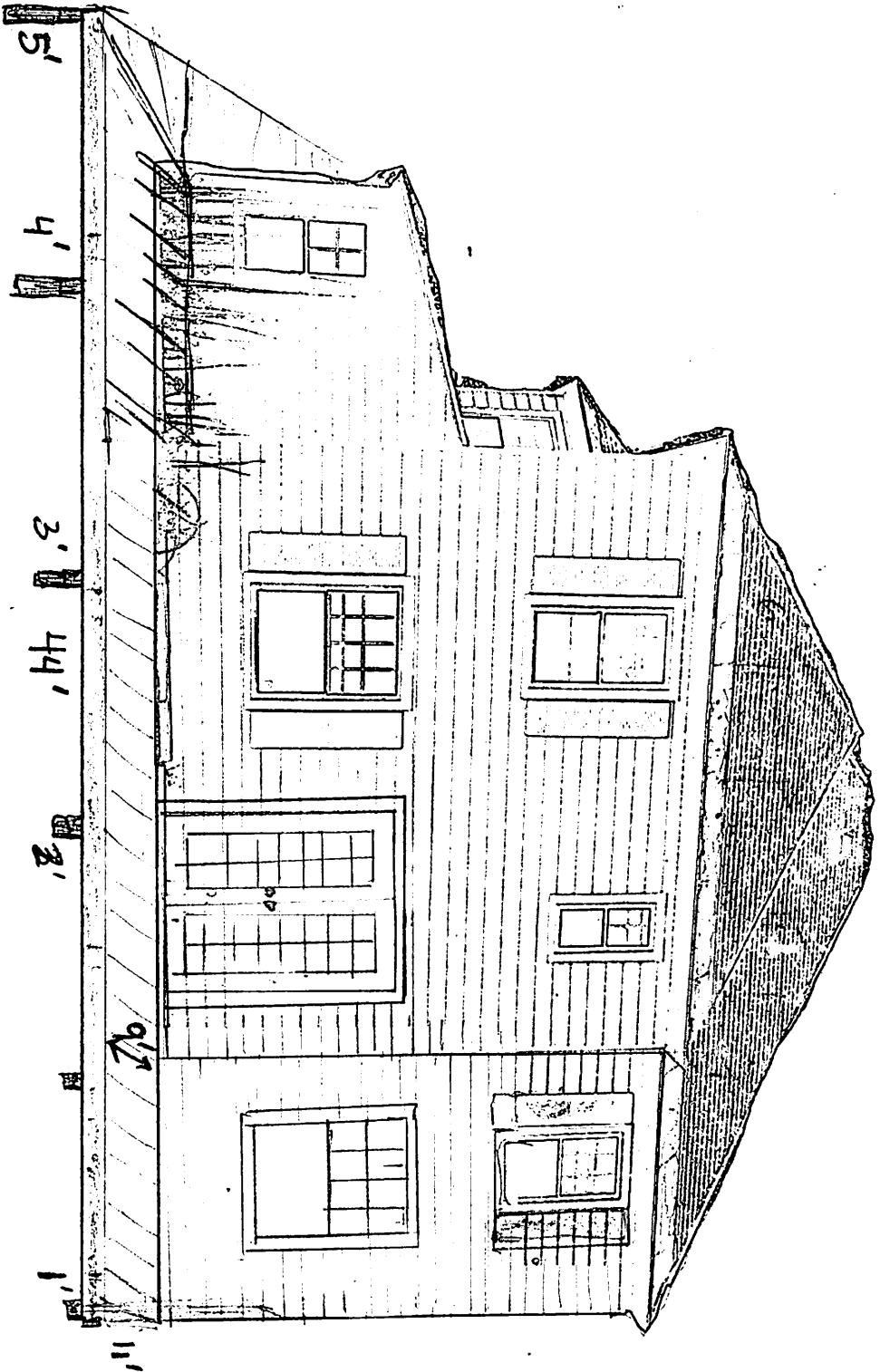
SCALE: 20' = 1"



NORTH ELEVATION



SOUTH - BACK - ELEVATION



119 Spruce St - East Elevation



No Change to East Elevation

119 SPRUCE ST - WEST ELEVATION



Appearance of West Elevation remains the same with exception that the porch is identically extended west by four feet.

There is a 11' section of deck added to the southwest corner of the building that wraps around into the south elevation deck. Any section of deck greater than 3' off the ground will have railings to match the front porch.

JELD-WEN French 60-in x 80-in External Grilles Bisque Steel Left-Hand Out-swing Double Door French Patio Door



Door Type French
Glass Insulation Low-E
Rough Opening Height (Inches) 79.1875
Rough Opening Width (Inches) 60
Actual Depth (Inches) 4.5625
Actual Width (Inches) 59.5
Actual Height (Inches) 78.6875
Common Size (W x H) 60-in x 80-in
Common Width (Inches) 60
Core Type Insulating core
Glass Style External grilles
Handing Left-hand outswing
Material Steel
Weatherstripping Included Yes
Brickmould Included No
ENERGY STAR Certified Northern Zone Yes
Warranty 10-year limited
Actual Width with Sidelights (Inches) 59.5
Jamb Depth (Inches) 4.5625
Jamb Depth Measurement 4-9/16-in
Configuration Prehung double door

Gallery Collection 8 ft. x 7 ft. 18.4 R-Value Intellicore Insulated Ultra-Grain Medium Garage Door – SQ22 Window



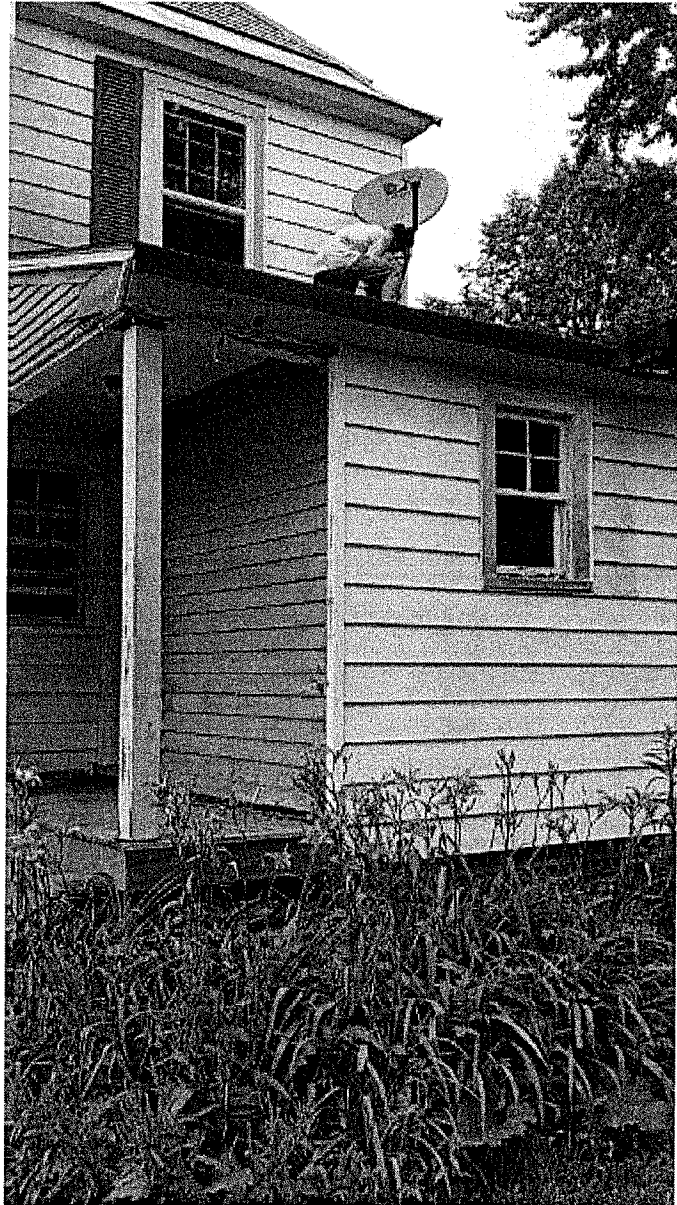
Garage Door Size 8 ft x 7 ft
Product Depth (in.) 2
Product Height (in.) 84
Product Width (in.) 96
Single Door
Insulated, With Windows
Carriage House
Insulation R-Value 18.4
Number of Windows 4
Product Weight (lb.) 114lb
WindCode Rating W1
Window Type Clear Glass

RECEIVED

JUL 08 2020

BURLINGTON
PERMITTING & INSPEC





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BURLINGTON
PERMITTING & INSPECTION



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, wedgeshaped 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)

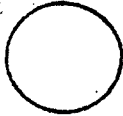
STATEMENT OF SIGNIFICANCE:

This Queen Anne residence is equal to the quality and character of the surrounding structures on Union St. It is particularly distinguished by it 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

Scott Gustin

From: Susan Molzon
Sent: Monday, August 10, 2020 3:40 PM
To: 'Conley, Jenn'
Cc: John Caulo; Justin Worthley; Brian Dunkiel; Norm Baldwin; Caleb Manna; Laura Wheelock; Scott Gustin
Subject: RE: [External] Re: Midday impact of Burton Hub project

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Jenn,

Norm and I have reviewed the additional information provided by both you and John Caulo. We are still not comfortable with signing off on daytime use of the performing arts venue for 300 people between the hours of 9AM-4PM without a more thorough understanding of the impacts on traffic operations.

In response to John's comments that this is an existing use, we would need to see prior approvals and documentation to confirm there are no new trips as John stated.

In response to your additional traffic analysis, we have concerns about the operation of the Home/Pine intersection. Based on available data in the surrounding area, we know that there are also midday traffic peaks and somewhat consistent volume throughout the day. We would like to better understand how the shift in primary directions of travel and volumes throughout the day impact the operation of the Home/Pine intersection.

Thanks,

Susan

Susan M. Molzon, P.E.
Senior Public Works Engineer

Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
Office: 802-540-0557
smolzon@burlingtonvt.gov

From: Conley, Jenn <jconley@vhb.com>
Sent: Tuesday, August 4, 2020 2:04 PM
To: Susan Molzon <smolzon@burlingtonvt.gov>
Cc: John Caulo <john.caulo@gmail.com>; Justin Worthley <JustinW@burton.com>; Brian Dunkiel <bdunkiel@dunkielsaunders.com>; Norm Baldwin <nbaldwin@burlingtonvt.gov>; Caleb Manna <cmanna@burlingtonvt.gov>; Laura Wheelock <lwheelock@burlingtonvt.gov>
Subject: RE: [External] Re: Midday impact of Burton Hub project

WARNING: External Message

Thank you Susan.

Jenn Conley
Director of Transportation Systems

P 802.497.6191
www.vhb.com

From: Susan Molzon <smolzon@burlingtonvt.gov>
Sent: Tuesday, August 4, 2020 2:03 PM
To: Conley, Jenn <jconley@vhb.com>
Cc: John Caulo <john.caulo@gmail.com>; Justin Worthley <JustinW@burton.com>; Brian Dunkiel <bdunkiel@dunkielsaunders.com>; Norm Baldwin <nbaldwin@burlingtonvt.gov>; Caleb Manna <cmanna@burlingtonvt.gov>; Laura Wheelock <lwheelock@burlingtonvt.gov>
Subject: [External] Re: Midday impact of Burton Hub project

Hi Jenn,

We will try to review and provide comments quickly, but I can't guarantee we will have that in the next few hours before the DRB. Regarding the Champlain Parkway, the latest information on the progress of the project, as well as recent updates to the City Council, is available on the project website at champlainparkway.com.

Thanks,
Susan

On Aug 4, 2020, at 1:49 PM, Conley, Jenn <jconley@vhb.com> wrote:

[WARNING: External Message]

Susan,

We are before the DRB again this evening for the Burton Hub project. I wonder if you would be providing them with comments prior to the meeting on either this topic or regarding the status of the Champlain Parkway? (I had emailed you earlier on the neighborhood group's assertion that there had been no change in the status of the Champlain Parkway in the past two years)

Thank you,
Jenn

Jenn Conley
Director of Transportation Systems

P 802.497.6191
www.vhb.com

From: Conley, Jenn
Sent: Monday, August 3, 2020 10:04 PM
To: Susan Molzon <smolzon@burlingtonvt.gov>
Cc: John Caulo <john.caulo@gmail.com>; Justin Worthley <JustinW@burton.com>; Brian Dunkiel <bdunkiel@dunkielsaunders.com>
Subject: Midday impact of Burton Hub project

Susan,

As discussed on the phone, this email addresses the question of midday events at the Higher Ground location. Please contact me with any questions.

Baseline Traffic Volumes

VTrans automatic traffic recorders collected traffic volume information on Queen City Park Road (Industrial Parkway as it was called at that time) on Thursday, June 14, 2018. The data shows that on that day, the PM peak hour occurred from 3 to 4 pm when 141 vehicles traveled on Queen City Park Road. Earlier in the day, the closest traffic volume to that level was when 108 vehicles traveled on Queen City Park Road. Therefore, the baseline traffic volumes during times outside of the PM peak period are at least 30 percent lower than the PM peak period.

Trip Generation

The trip generation of a maximum 300 person daytime event corresponds to 120 trips using a vehicle occupancy of 2.5 people per car. Following a similar trip distribution to the existing Higher Ground facility (consistent with the Traffic Impact Study) results in 96 trips to and from Home Avenue if everyone arrives or departs during the same hour.

These 96 trips are significantly lower than the trip generation anticipated and analyzed during the PM peak hour. As shown in the Traffic Impact Study, during the PM peak, a total of 173 trips were assigned to Queen City Parkway at its intersection with Home Avenue. Therefore, during the midday peak, the trip generation impact is significantly lower than has been analyzed in the Traffic Impact Study.

Conclusion

Based on the existing traffic patterns on Queen City Park Road, where hourly traffic volumes during the midday hours is 30 percent lower than the PM peak hour, and the Burton Hub trip generation, which during the midday peak hour is 50 percent lower than the PM peak hour, the worst case scenario was analyzed in the Traffic Impact Study. The midday traffic volumes experienced with the traffic associated with a daytime 300 person event will be significantly less than was analyzed for the PM peak hour.

Please contact me with any questions,
Jenn

Jenn Conley, PE, PTOE

Director of Transportation Systems

<image001.gif>

40 IDX Drive
Building 100, Suite 200
South Burlington, VT 05403-7771
O 802.497.6191 | M 802.345.2321
jconley@vhb.com

Engineers | Scientists | Planners | Designers
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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.

Scott Gustin

From: Gary Keller <gary.a.keller@gmail.com>
Sent: Wednesday, August 05, 2020 9:19 AM
To: Scott Gustin
Subject: citizen comment re: Burton Conditional Use Application Aug. 5th, 2020
Attachments: letter re higher ground.docx

[WARNING] External Message

Design Review Board

Aug. 5th, 2020

Re: Burton Conditional Use Application

SGustin,

My name is Gary Keller. I live at 11 Lyons Ave in Queen City Park. I want to express specific concerns that I have regarding the considered Higher Ground Concert Venue, in this email and also as an attachment. I have been the chairman of the QCP Prudential Committee of Fire District #1 until I stepped down last month, though I am speaking today ONLY as a private citizen. Queen City Park has been a wonderful community to live in. I do appreciate the hopes and aspirations to develop a larger music venue to further improve our already wonderful music scene in Burlington.

However, since the proposed development is immediately next to quiet residential communities and already has very limited access including even the inherent delays from a one-way bridge, I think it is also very important and necessary that you take extraordinary steps to not provide harm to the neighborhoods too close to your project. I am very concerned about traffic before and after a concert causing significant delays a couple of days each week potentially causing significant inconvenience to nearby residents just trying to get to work or to get home. I also am very concerned about a larger music venue bringing larger numbers of people from even further distances leading to more people looking for a place to relax and imbibe whatever they prefer to before or after a concert or even needing to find a place to park overnight after a concert.

A significant team of people sternly directing traffic away from adjacent communities and only to the music venue is a minimum to preserve the environment in our neighborhoods. I respectfully request that the city of Burlington consider passing a rule that requires specific adequate measures be in place to control related traffic to not significantly inconvenience adjacent neighborhoods and that this rule be followed regularly and be subject to periodic review and a hearing for possible revoking of license to continue. Thank you for considering, Gary Keller

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AUG 05 2020

BURLINGTON
PERMITTING & INSPECTIONS

Design Review Board
Aug. 5th, 2020
Re: Burton Conditional Use Application

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Scott Gustin

From: Candace Smith <candace@myfairpoint.net>

Sent: Wednesday, August 05, 2020 11:40 AM

To: Scott Gustin

Subject: CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.
Burton/Higher Ground

WARNING: External Message

I am not in favor of Higher Ground coming so close to our neighborhoods. Problems with late night noise has already been mentioned. I live at Lake Forest and already some people speed through a short cut to Flynn.

There would seem to be better options elsewhere.
candace smith

Scott Gustin

From: Lawrence Smith <wlbsmithvt@gmail.com>
Sent: Wednesday, August 05, 2020 4:33 PM
To: Scott Gustin
Subject: CRZ PResentation Submittals
Attachments: dg portion final.pdf; DRB Mtg 8-4-20 (J Ellis) Final.pdf; 2 Tocci # 1.pdf; Geddes Burt presentation ver 1_1.pdf; DRB Michael Human Powered Trips.pdf; Laura Traffic Study Assessment.pdf; Sharon DRB Statement.pdf; LS Intro and Conclusion 7-3-2020.pdf

WARNING: External Message

Greetings Scott,

I am attaching all but one of the presentation files from the CRZ presentation last night. I will be receiving the last file this evening and will forward it to you tomorrow.

Please forward this to AJ and the other members of the board, and apologize to AJ for me for my tardiness. I said I would have these to you this morning but it has taken more time than I expected to get them collected.

Thank you, and please be in touch if you or any of the board members have any questions.

Laurie Smith
802-363-8070

RECEIVED

AUG 05 2020

BURLINGTON
PERMITTING & INSPECTIONS

My name is Doug Goodman, I am a South Burlington resident and member of the CRZ. I live on Central Avenue. I also own 364 Queen City Park Road, my property there is a direct abutter, my tenants are very concerned that the quiet neighborhood they love is about to become something more like Church Street.

The first issue that we would like to address is related to public safety and covered by Review Standard #1.

The Public Safety and Policing Burdens created by this venue are well stated in Burlington Police Chief Morrison's letter of April 17, 2020. The Chief specifically states that "the challenge will be that some of the larger events have the potential to divert BPD resources during times when those resources are normally focused on downtown Burlington". The chief went on to write "large gatherings in the parking lots, before and after large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements; and, for the South Burlington Police Department (SBPD), after hours activity potentially leaking into Red Rocks Park and down Central Ave." ending with the statement "Accordingly, BPD approval of the application is contingent upon assurances by Burton and Higher Ground that" and followed by a list of assurances.

The April 30, 2020 follow-up letter from BPD Deputy Chief John Murad signed off on the "assurances" based on the Operational Management Plan submitted by the applicants. However, neither the City nor the Residents have any realistic remedy if that Plan falls short, or if the operator does not adhere to it in full. We request that any approval of this permit be conditioned on the creation of a binding agreement that remedies this potential issue.

In the email dated June 19, 2019 from South Burlington Police Chief Shawn Burke to South Burlington City Manager Kevin Dorn, it states that at venues of this kind, the evidence is that even good faith efforts by the operator will not suffice without police intervention: "There are some acts that draw more alcohol, drugs, and disruptive crowds which need the help of city services to keep patrons safe, it is what it is."

Based on the historical evidence, and given the large increase in capacity compared to the South Burlington venue, the best case scenario is that BPD (and SBPD) can expect to make several hundred service visits per year, largely concentrated between 10 PM and midnight but also extending into the small hours of the morning. If past is prologue, these visits will involve, among other things, motor vehicle complaints, incidents of intoxication, generalized "disturbance," accidents, drugs, sex offenses, and assaults, as per the SBPD/SBFD Response log.

Finally it is important to note that the BPD initial and follow up reviews of this Burton proposal occurred prior to the outbreak of the Covid Pandemic, social justice outcries, and the recent City Council decision to reduce the BPD by 30%. This change from 105 to 72 police officers for the city will have a significant, and potentially critical impact on the already limited response capabilities of the BPD.

In light of this significant action by the City Council, we request that the DRB ask the BPD to reassess their Project Review and continue this hearing until this reassessment is completed. We further request that the DRB invite BPD, SBPD, and other municipal safety organizations to a DRB meeting to address the issue of safety comprehensively, and also provide an opportunity for surrounding residents to have their safety concerns addressed.

Thank you for your time.

RECEIVED

AUG 05 2020

BURLINGTON
PERMITTING & INSPECTIONS

August 4, 2020

Mr. Lawrence Smith
50 Central Ave,
South Burlington, VT 05403

Cell: 802-363-8070
e-Mail: wlbsmithvt@gmail.com

Subject: Peer Review of
Hub Project Noise Assessment

Dear Mr. Smith,

As requested, I have reviewed Burton Snowboards & Higher Ground Hub Project Noise Assessment dated April 20, 2020 prepared by RSG, White River Junction, Vermont. The Hub Project is to renovate the Burton Snowboard facility at 266 Queen City Park Road into an indoor entertainment venue with restaurants, retail space, and an indoor recreation area, as well including Burton offices, prototyping workshop, and manufacturing facility. The RSG report notes that the project will:

- Comply with Sec. 21-13(b)(1) of the Burlington Noise Control Ordinance.
- Not cause an "undue adverse impact on aesthetics" prohibited by the Vermont Act 250 process.
- Comply with WHO Community Noise Guidelines.

The RSG report only addresses the (b)(1) *General prohibition* of the Burlington Noise Ordinance. However, it is my understanding that the Hub Project must also comply with Sec. 21-13 (b)(2)(a) *Radios, television sets, musical instruments, phonographs and similar devices*; and Sec. 21-13 (b)(2)(c) *Parties and other social events*. These subsections are here quoted in full:

Sec. 21-13 (b)(2)(a) *Radios, television sets, musical instruments, phonographs and similar devices.* The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.

Sec. 21-13 (b)(2)(c) *Parties and other social events.* Notwithstanding section (b)(1), it shall be unlawful for any person who is participating in a party or other social event to actively make unreasonably loud noise. A party or other social event is defined as a gathering upon the premises of one or more persons not residing at the premises. Unreasonably loud noise is noise that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of a premises to allow a party or other social event occurring in or about the premises to produce unreasonably loud noise. There is a rebuttable presumption that all residents of the premises have allowed such party or other social event to occur in or about the premises. All

residents of the premises are responsible for such unreasonable noise made, each having joint and several liability.

This letter presents our conclusions regarding the analysis methods employed by RSG and makes recommendations on how the analysis should be revised to better protect the surrounding residential community.

Noise Standards

The Burlington Noise Control Ordinance is a nuisance type prohibiting “...any person to make or cause to be made any loud or unreasonable noise.” As the Act 250 process requires consideration of impacts in areas outside the primary jurisdiction, the Hub Project is also subject to the City of South Burlington Section A.3(b)(ii) noise ordinance limiting Hub Project sound to 45 dBA at night (12:00 AM and 8:00 AM). The ordinance notes this to be a “one-hour average”, presumably the A-weight one-hour equivalent sound level ($LA_{eq,1-hr}$). Music played at this level in neighborhoods, though compliant, may be clearly identifiable and “...out of character with the area...” as prohibited by Act 250.

It is my opinion that use of the equivalent sound level is most appropriate for broadband, indistinct sound such as that produced by ventilation equipment, for example, which contains no information. Music and speech are distinct, easily identifiable sounds that contain distracting information. We recommend that, in addition to adhering to applicable limits, a design goal for music transient sound be developed to minimize impact. Based on prior work of this firm¹, the community should be sufficiently protected if the 1st percentile A-weighted music and voice sound level ($LAF_{01,1-hr}$) does not exceed the existing residual sound level, expressed as the 90th percentile A-weighted sound level ($LAF_{90,1-hr}$), by more than 5 dBA. This correctly recognizes that the audibility of music in the environment is perceptible depending on the amount by which it exceeds the otherwise existing ambient sound level.

Music Sound Level

The RSG report assumes music sound will have an average ($LA_{eq,1-hr}$) sound level of 99 dBA. In the above footnoted paper, the A-weighted equivalent sound level for music of all genre ranged from 71 dBA (jazz and classical at the lowest levels) to 104 dBA (rock). The corresponding 1st percentile A-weighted sound level ranged between 79 and 107 dBA as measured mid-audience under the pavilion at Great Woods in Mansfield, MA. I would recommend that that performing acts be required to limit sound to an $LA_{eq,10 min}$ of 105 dBA and that this be used by RSG in its analysis. The high level I have suggested, as a practical matter, is important to many rock acts wishing to maintain their entertainment value.

Building Sound Isolation

Wall and roof section sketches, and a description of how their sound isolation performance has been determined, should be provided. Of most importance is the ability of the building to limit the transmission of low frequency sound to the community. This aspect of building design is important as

¹ Cavanaugh, W.J.; Tocci, G.C.; “Criteria for community acceptance of outdoor concert sound...a progress report on continuing research”, The 2002 International Congress and Exposition on Noise Control Engineering, Dearborn, MI, USA, August 19-21, 2002.

low frequency rhythm sound (bass beat) is generally the dominant source of complaints by residents living near entertainment venues.

Building Mechanical Systems

The report indicates that the building will be served by three existing Carrier rooftop air handling units producing sound power levels of 78-87 dBA (assumed to be based on field measurements) and two new units producing sound power levels of 86 and 87 dBA. I would recommend that manufacturer technical information for the new units be submitted when available.

Lounge Crowd Sound

Sound produced by patrons in the outdoor lounge with space for 150 to 300 patrons was modeled as 15 "loud" male voices. ANSI S3.5 Methods for Calculation of the Speech Intelligibility Index provides one-third octave band power spectral densities for normal, raised, loud, and shouting vocal effort. From this information, the sound power level of 1 loud male vocal effort is 85 dBA. For 15 voices, the total A-weighted sound power emitted, instead of 88 dBA, would be 97 dBA.

In a similar outdoor rooftop patio of a private downtown club, the average sound level measured in the seating area of a typical outdoor restaurant was 75 dBA. This level was applied to the design of an outdoor rooftop patio of a proposed private club. The corresponding sound power level for the maximum occupancy of 65 patrons was 98 dBA. Increasing the patron count from 65 to 300 would increase the emitted sound power level emitted from 98 dBA to 105 dBA.

For an outdoor hotel roof deck with 18 of 50 patrons speaking with normal vocal effort (instead of loud vocal effort), the total power emitted was 88 dBA. Scaling this up to 300 patrons would increase the sound power level to 92 dBA.

The RSG corrected assumption of an emitted sound power level of 97 dBA is probably on the low side compared with the scaled-up club roof deck emission of 105 dBA and the scaled-up hotel outdoor roof patio emission of 92 dBA. An assumed sound power emission of 100 dBA may be more appropriate.

The report does not provide details on shielding by buildings, the lounge elevation, nor possible screening by barriers to reduce crowd sound transmitted to the community. The analysis of the lounge would benefit from consideration of these and other details. In addition, some consideration should be given to sound transmission through double doors accessing the event space during concerts.

Parking Lot Sound

Without the Cadna model input file, it is not possible to evaluate parking lot sound power levels used in modeling. The Cadna parking lot computational standards do not include sound associated with crowds arriving at or departing from music events. This would require sound measurements near a similar event parking area during patron arrival and departure, at least to confirm the appropriateness of the Cadna standard algorithms for parking lot sound. We also wish to emphasize the Hub Project management decision to prohibit tailgating in facility parking areas. Barriers screening parking lot sound levels may provide some benefit as well.

Computer Modeling

I am familiar with Cadna and its methods for evaluating sound. It is among the correct tools to use for evaluating Hub Project sound. However, its inputs should be modified to reflect the above-mentioned descriptors, and to evaluate the potential for low frequency rhythm sound (bass sound) most often the source of community complaints in connection with entertainment facilities. Cadna can be used to evaluate other controls, among them sound barriers to screen sound from sensitive areas.

Conclusions

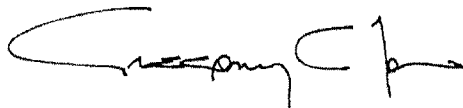
The organization of the technical study of potential impact of the proposed Hub Project is generally correct. However, though the regulations cited are important, they do not adequately protect the residential community from exposure to unwanted entertainment sound. Protecting residential areas requires developing design goals that incorporate existing background sound levels obtained through actual sound monitoring of existing conditions. Revising the study to develop design goals for sound as we have suggested, providing more detail on building envelope and outdoor lounge design, and investigating possible use of barriers to screen sound would provide better certainty that impacts have been minimized through project design.

* * *

If I can provide further detail, please do not hesitate to contact me. Thank you.

Sincerely,

CAVANAUGH TOCCI

A handwritten signature in black ink, appearing to read 'Gregory C. Tocci', with a stylized flourish at the end.

Gregory C. Tocci, Sr. Principal Consultant

S:\Leads And Proposals\2020\Higher Ground\Higher Ground 1b.Docx

MIKE START

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AUG 05 2020

BURLINGTON
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Good evening, my name is Michael Turner, I live at 110 Central Ave in Queen City Park, South Burlington. I am a member of the CRZ and an interested party of these proceedings. My focus this evening is going to be a visual presentation of pedestrian and bicycle movement in the vicinity of the event venue.

First, though, I'd like to briefly introduce you to our neighborhood. Queen City Park consists of about 85 homes with the average age of the home owner in their mid-60s. We also have families with children ranging from infants to teenagers. The only way into our neighborhood is by driving south on Central Ave from its T intersection at QCP Rd, passing by the Red Rocks Park parking area. The only exit from Queen City Park is the reverse of this. There are no sidewalks on Central Ave or anywhere in Queen City Park.

Our neighborhood generates significant daily vehicular traffic, including drivers coming & going to work & local destinations, waste removal trucks, heating oil & propane trucks, and contractors.

Those of us who live here are very active & tend to walk & bike to area destinations such as City Market, Hannaford, or downtown Burlington. Due to the broad lack of pedestrian and cyclist infrastructure, it can be quite harrowing to bike or walk to a sidewalk or bike lane on Home Ave or Austin Drive or along QCP Road past Arthur Court. There are no sidewalks between Central Ave & Home Ave, and a dirt path leading to & beyond the catwalk on the one lane RR bridge where the road is very narrow and in generally poor condition. Since QCP Road is the designated road used by all GMT busses and Barrett trucks it can be extremely dangerous.

I now want to provide you with a visual of what Burton has proposed in their Additional Information for South Burlington TIS memo. This is what they consider adequate for what they call "human powered trips". This is what our neighbors deal with on a daily basis – Burton is suggesting that walkers and bikers will safely navigate in the dark and in a possibly inebriated state, QCP Road until they can eventually get to a sidewalk on Home Ave or in South Burlington.

Human Powered Trips

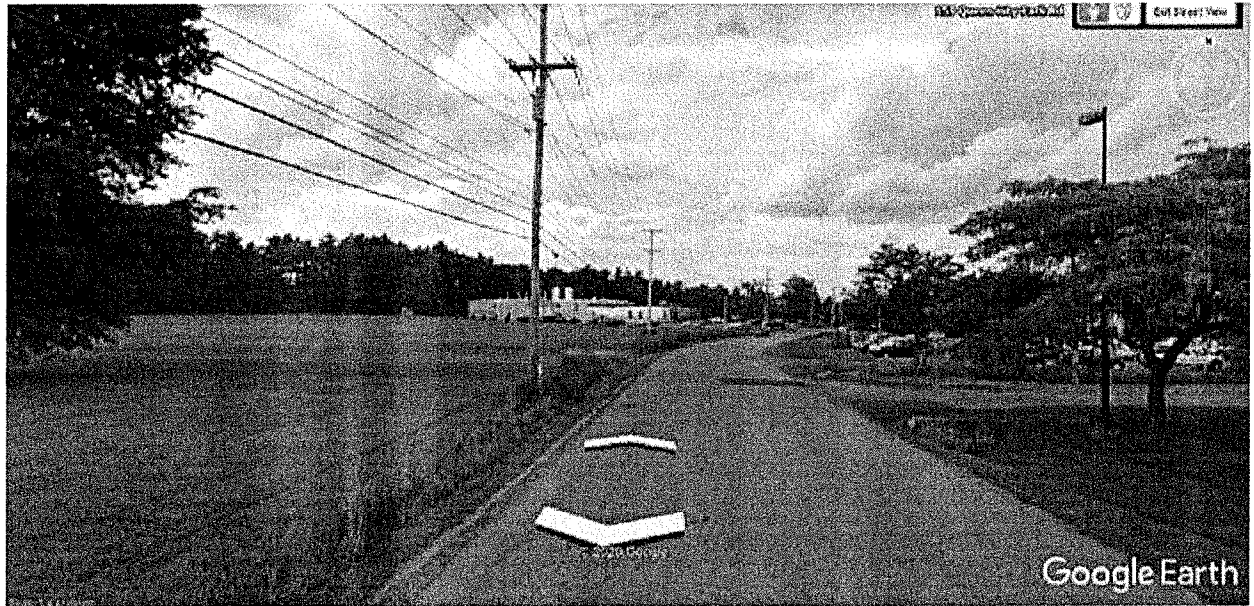
I'd like to **quote** from Burtons Additional Information for South Burlington document, "South Burlington raised a concern regarding trips made by human powered modes such as bicycling and walking. Although based on the time frame of the typical show, walking and cycling trips will be low, some local residents may choose these modes. For trips made by bicycle, Higher Ground will encourage patrons to exit the site and proceed north on Queen City Park Road, turn right onto Home Avenue and travel to local destinations rather than leaving the site to the south where a cyclist would have to cross the single lane bridge. Without proper lighting on the bicycle, travel to the south may cause a safety concern where a driver in the opposing direction did not see the cyclist on the bridge before proceeding. The Higher Ground operational plan will include informing Higher Ground staff to direct all cyclists to the safer route.

Pedestrians will be able to proceed in either direction. To the north pedestrians will travel on sidewalks within the Burton site and then either along the eastern roadway edge or cross to the sidewalk on the western side of Queen City Park Road to connect to the sidewalk network on Home Avenue".

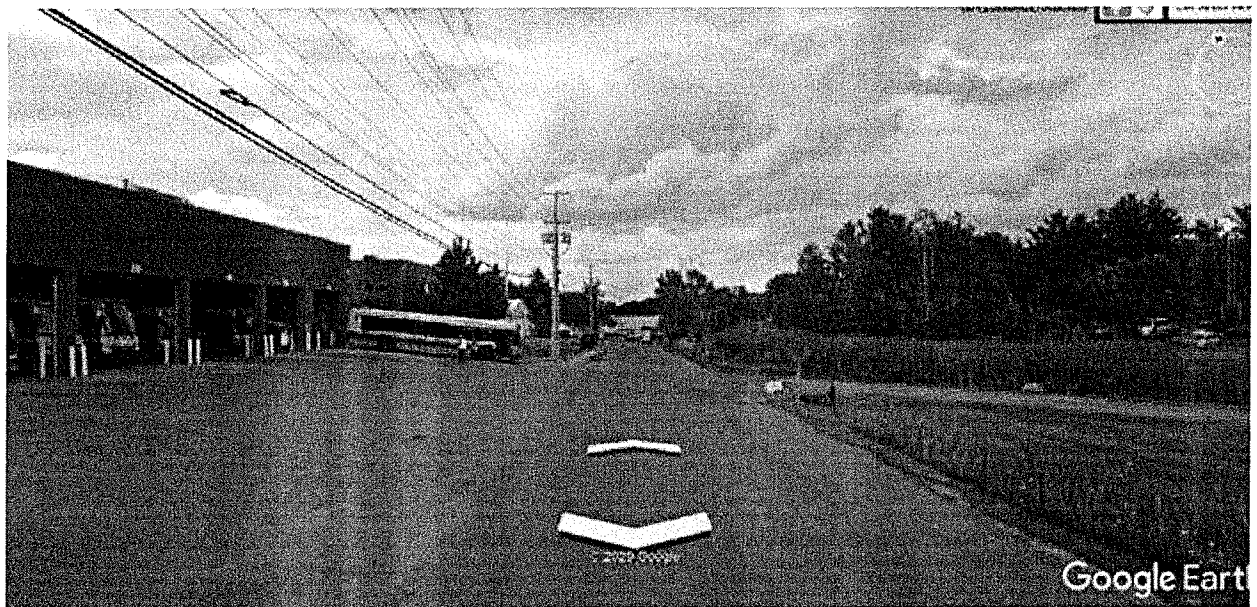
It should be noted that Barrett trucks and Public Buses travel exclusively to the south and over the Queen City Park Rd one lane bridge.

I now have a few slides of the area from Google maps

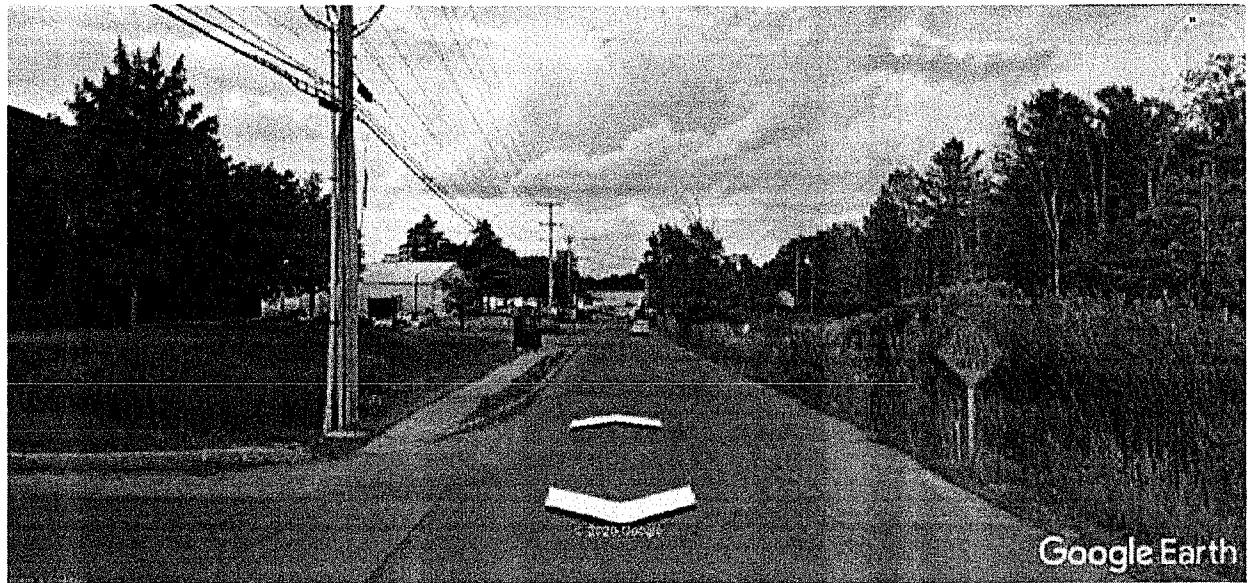
EXITING VENUE TO THE NORTH TOWARD HOME AVE



Proceeding north toward Home Ave. Burton north entrance on right.



Proceeding north past Burton HQ marsh

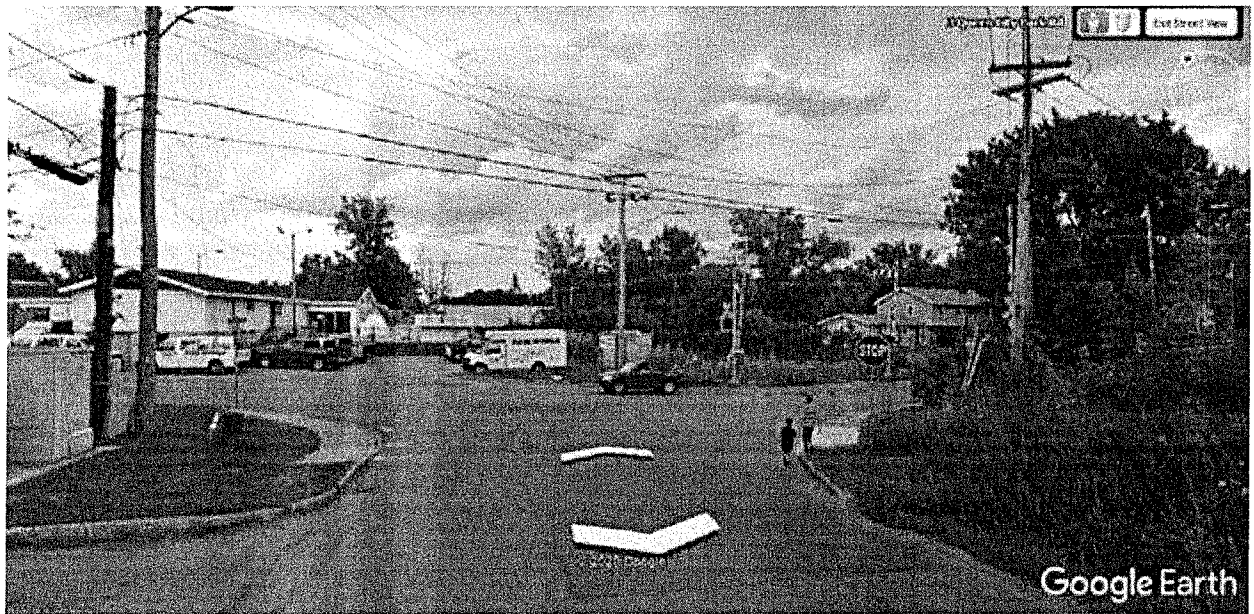


Proceeding north past GMT office parking access on left



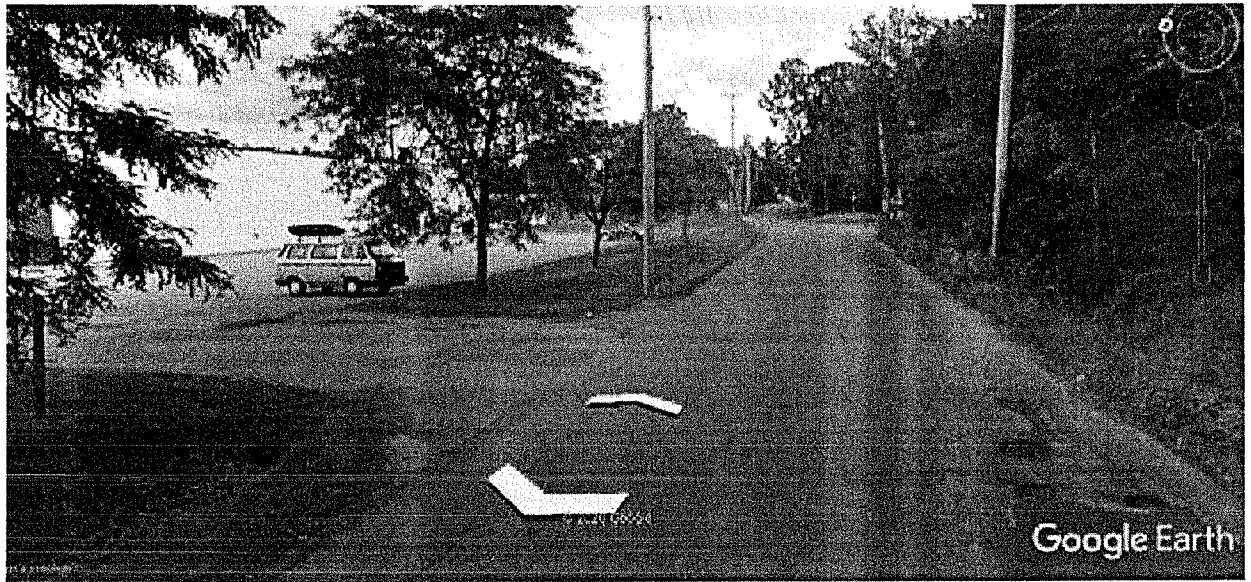
INTERSECTION OF QUEEN CITY PARK ROAD AND HOME AVE.

Event attendees will TURN RIGHT into Home Ave TO LEAVE the AREA. TURNING LEFT ACCESSES RED ROCKS Condos AND the SOUTH COVE NEIGHBORHOOD WITH NO OUTLET ROAD. A LEFT TURN ALSO provides access to OAK LEDGE TOWNHOUSE AND CONDO NEIGHBORHOOD WITH ACCESS TO FLYNN AVE.

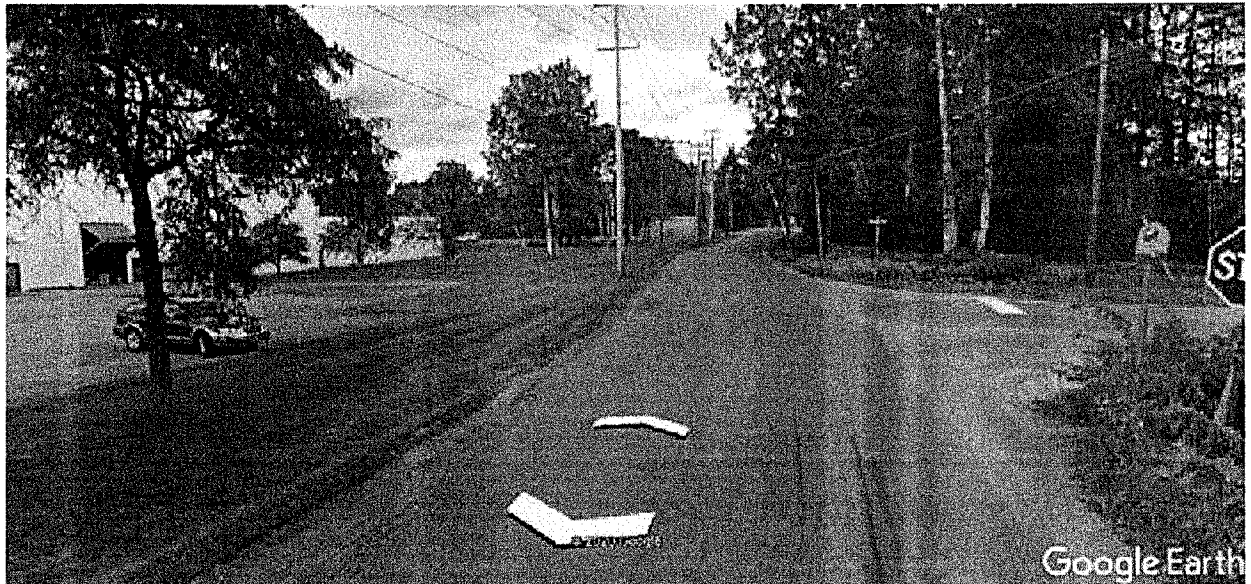


Continued quote from Burton Memo to SB., "Pedestrian trips to the south will require the crossing of Queen City Park Road to access the side path to the south of the roadway and safely cross the single lane bridge. As outlined above, these pedestrians will proceed along the roadway edge until reaching the sidewalk on the south side of Queen City Park Road just east of Arthur Court.

EXITING VENUE TO THE EAST ALONG QUEEN CITY PARK ROAD TOWARD SHELBURNE RD



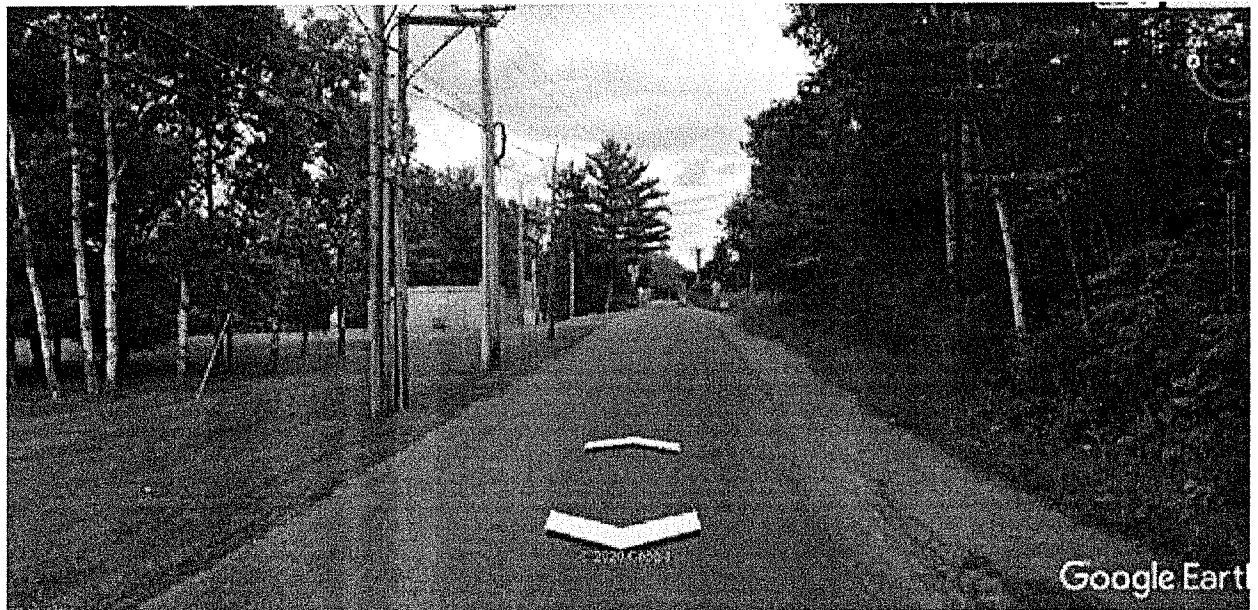
APPROACHING CENTRAL AVE 3 WAY (WITH TWO STOP SIGNS) INTERSECTION



HEADING EAST ON QCP RD TOWARD ONE LANE BRIDGE (NO SIDEWALKS)

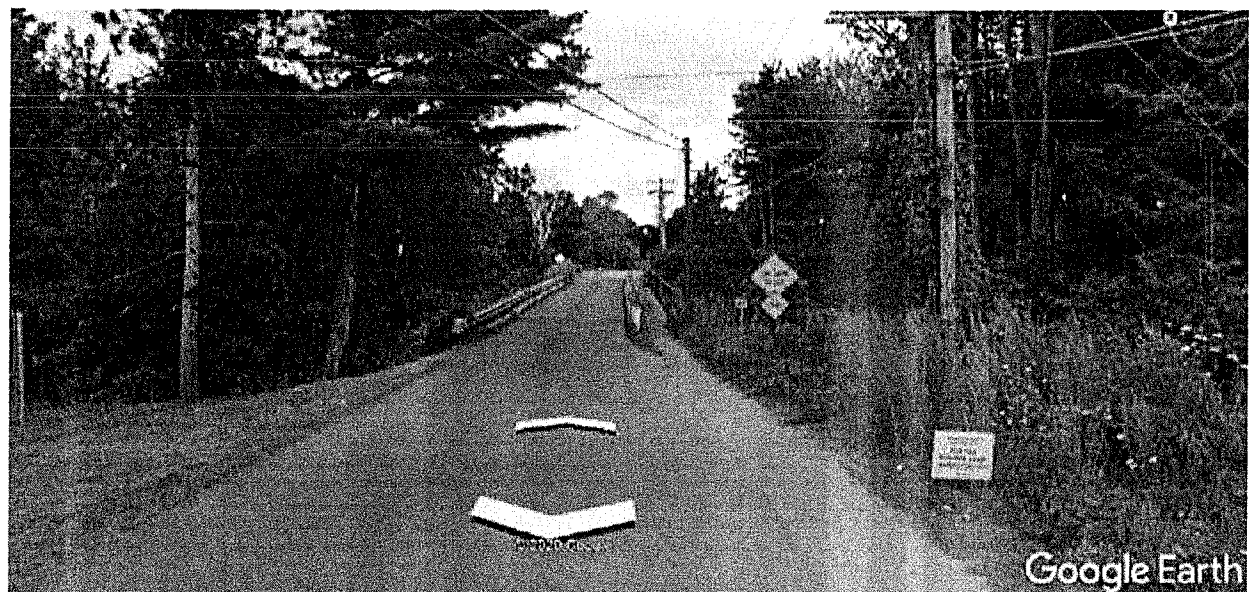


HEADING EAST ON QCP RD TOWARD BRIDGE ON GRAVEL WALKWAY

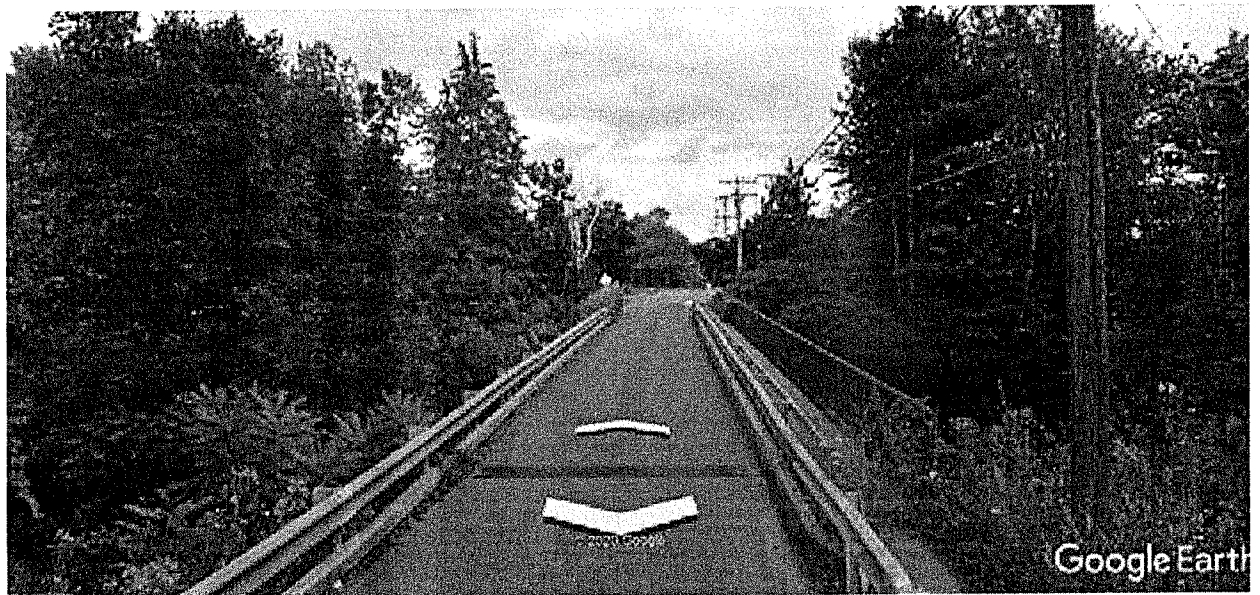




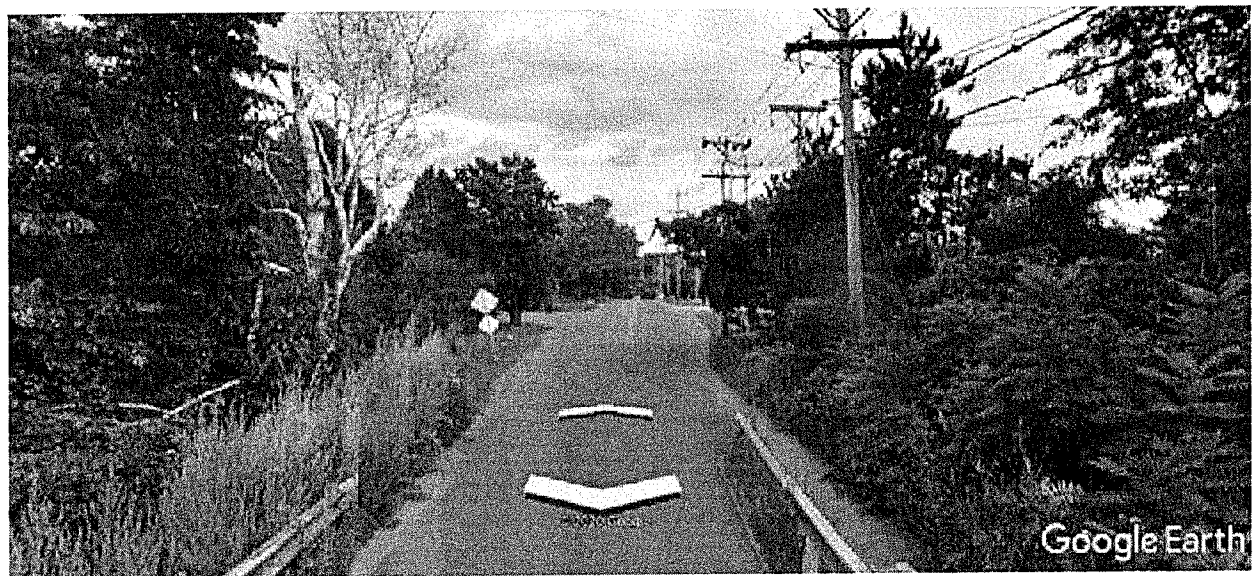
APPROACH TO ONE LANE BRIDGE WITH STEEL GRATE WALKWAY ON SOUTH SIDE. PET OWNERS WALK PETS ACROSS BRIDGE IN ROADWAY AS GRATES ARE NOT PET PAW FRIENDLY. BICYCLES DO NOT USE GRATES EITHER.



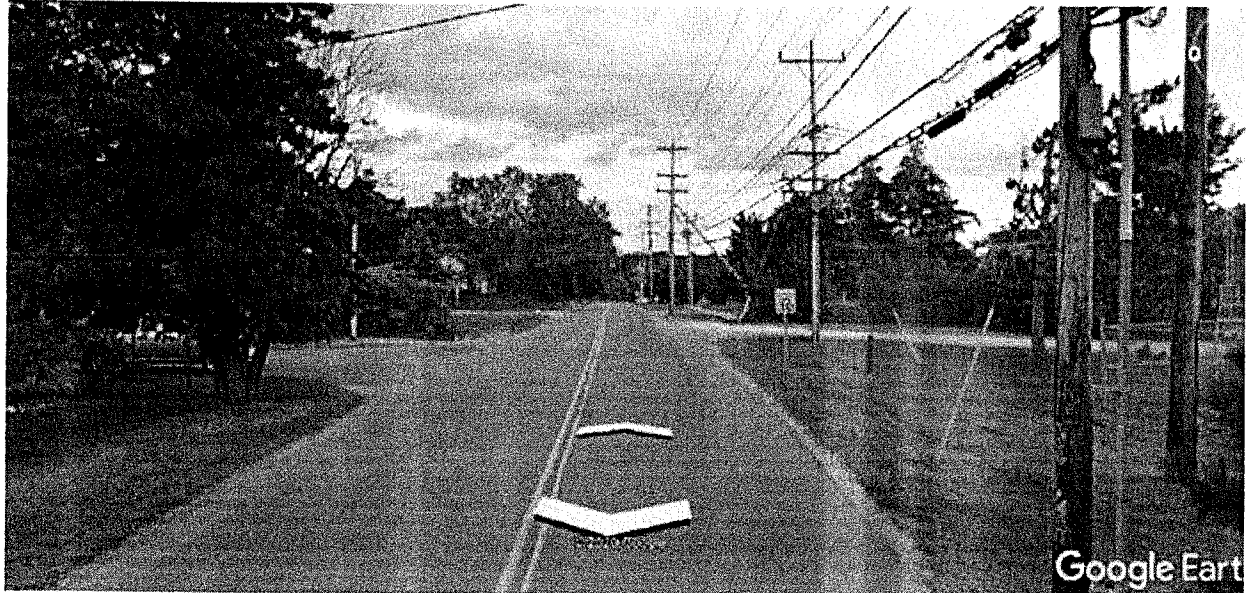
ONE LANE BRIDGE WITH STEEL GRATE WALKWAY ON SOUTH SIDE



EXITING BRIDGE ONTO SHOULDER OF QCP RD



EXITING BRIDGE ONTO QCP SHOULDER AT CHAMPLAIN WATER DISTRICT FACILITY. Arthur Court on left.



Accidents at the one lane bridge happen when vehicles misjudge the entrance width and drive into the end of the guardrails. I have witnessed 3 such impalement accidents while living here. Alcohol consumption at Burton Hub events may exacerbate this problem.

Beyond the grated walkway on the bridge there is a 150' dirt shoulder before accessing a sidewalk at the Champlain Water District facility. Safety infrastructure is almost entirely lacking as evidenced by these photos.

Thank you, I hope this presentation gives you an on the ground look at the reality of pedestrian and bicycle travel within the immediate area of the proposed event facility.

I now turn this back over to Laura Waters

RECEIVED

AUG 05 2020

I am Sharon O'Neill, a member of Citizens for Responsible Zoning (CRZ) Steering Committee and live in the Arthur Court neighborhood in Burlington which is a direct abutter to the proposed Burton/Higher Ground Hub.

I moved to Arthur Court 5 years ago, and have been active in my community since becoming a Burlington resident. I definitely am not in any way anti- Burton or Higher Ground. In fact, both my sons grew up boarding at Smuggler's Notch, through Burton sponsored programs and decked out in Burton gear. My family has always been proud that Burton is a Vermont company that believes in and supports Vermont youth and communities; our cat is even named Burton!

When looking for a place to live, I was hoping to find a place that offered me some of what I loved about living in Fairfax, while also offering me close proximity to the University where I work and downtown Burlington. Arthur Court has been a perfect fit! We have green space, are close to the bike path, our 6 units in a cul-de-sac means no through traffic and minimal noise. We have a tight neighborhood of people who all look out for one another.

Residents of Arthur Court gathered on Sunday, July 5th. The concerns I will outline are current and representative of our neighborhood.

- 1) Not only is the scale of this proposed project not in line with the size and scope of the businesses and neighborhoods that surround the site, the area lacks the infrastructure to support the impact the hub will have on the area.
- 2) Burton predicts that up to 600 cars and trucks will be exiting the venue multiple nights per week, between 11 pm - 2 am, over compromised residential streets that lack safe sidewalks, flashing crosswalks and appropriate lighting. Most of us in Arthur Court work, and this influx of noise during the weekends, defined as starting on Thursday, will certainly impact our ability to sleep.
- 3) Also, of concern is whether there are enough on-site parking spots to support 200-600 cars for the shows, plus the staff for the venue and food court. Determination should not be made by assuming that people will carpool. My neighbors are concerned that our road could potentially become an alternative parking lot which brings additional noise and safety concerns. There are times when this has happened in the past and cars parking on both sides of

our narrow road could make it impossible for emergency vehicles to reach residents in a timely manner.

4) Initially, we were not as concerned about music/crowd noise coming from inside the venue because we believed/were led to believe that there would be “state of the art” sound proofing as is required for musical integrity inside the venue. However, the submitted permit notes insulation and sheetrock for the plan. My neighborhood requests that there be a more complete sound proofing plan in place before considering approving this permit. Additionally, the site sits in a natural amphitheater that is lower than the surrounding neighborhoods, making sound reduction especially challenging.

5) We question the impact of a 2300 sq. ft outdoor smoking lounge so close to our neighborhood. Smoke and voices will definitely carry. My neighborhood asks that the DRB put guidelines in place to help mitigate the impacts this will have.

Last, for the reasons I’ve outlined we don’t believe that recent public messages from Burton and Higher Ground indicating that the project will have little or no impact are informed by our reality as neighbors. Additionally, referring to our group as “Nimbies” and a “small and noisy group” does not show respect that our concerns are important to Burton and Higher Ground and certainly does not show that they are trying to work on establishing a working trust with us as neighbors.

Both Burton and Higher Ground have a long history of positive community involvement. My neighborhood requests that the DRB require Burton/Higher Ground to more carefully consider these issues, and to keep in mind the well-being and voice of the community neighbors that will be directly, and perhaps negatively, impacted by this large project.

Hello. My name is Janice Ellis. I own and live at the property known as Redrock condominiums at 161 Austin Drive, which is in the immediate neighborhood of the Burton campus. I am a member of the CRZ. I am here to speak on behalf of CRZ and also as an interested person in my own right.

I purchased my condo because of the location - close to the parks and the quiet, residential neighborhoods surrounding it.

However, despite this relative peace, the area is not without its noise challenges. Given my neighborhood's close proximity to the businesses on QCP Road, we are already impacted by such things as occasional music, loud speaker announcements, cars and crowds which accompany Burton's weekend sales, group celebrations at the outdoor skate park and other events. All of these occasional events, though inescapable, tend to be tolerable because they are the exception, not the norm.

Enforcement is also a recurring issue. My neighborhood has struggled with fairly frequent noise ordinance violations by a business on QCP Road, and the city administration has chosen not to enforce the ordinance. I am very concerned that a similar situation will arise if a large music venue with a 2,300 sq ft outdoor patio and outdoor seating for food vendors, is allowed to open on QCP Road. Even proactive management of the attendees in cars/Ubers/buses & bikers coming to and from the proposed venue will not mitigate the noise pollution it will create.

Your decision regarding this permit will significantly impact the quality of life in the neighborhood surrounding the proposed Burton & HG project. When making your decision, please consider what you are asking the area residents to live with if you approve the project as it is currently proposed.

PRESENTERS:

Lori Hayes: CRZ Project Overview

Laurie Smith: Presentation Overview

Doug Goodman: CRZ Safety Services concerns

Les Blomberg: Noise Pollution Clearinghouse & Greg Tocci: Cavanaugh Tocci: Noise Study concerns

Janice Ellis: Personal Testimony

Sharon O'Neil: Personal Testimony

Laura Waters: Transportation and related infrastructure concerns

David Geddes: TIS Review and concerns

Mike Turner: Infrastructure walkthrough

Laurie Smith: Conclusion



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Burton HUB Traffic Impact Study: A Critical Review

David Geddes, Ph.D.
Geddes Analytics LLC

Objectives

1. What questions are asked?
2. What questions have not been asked?
3. What are critical assumptions?
4. Are all data fully assessed and presented?
5. What are the red flags (critical limiting factors)?





What questions are asked? What questions are **not** asked?

- Focus on traffic throughput
- Wave of data ... incomplete analysis
 - TIS devotes almost all data, analysis, and reporting to daytime traffic
 - Glosses over or obfuscates inconvenient data
 - Fails to address red flags, choke points, and critical limiting factors
- Avoids the elephant in the room
 - 222 incremental daytime trips vs. 1,000 incremental evening and night trips
- What is the impact on residential quality of life?
 - Driveway access on crowded streets
 - Public safety for pedestrians, bicyclists, children. Etc.
 - Pollution (exhaust, noise, light)



What are critical assumptions?

Champlain Parkway

- The TIS builds its case on the assumption that Champlain Parkway will be built.
 - “The future conditions for the project sit and study area focused on the anticipated Champlain Parkway traffic patterns...” (VRB memorandum, October 2, 2019, page 5).
- Vermont case law applicable to the situation.
 - Aspirational or speculative components of municipal plans do not count in the evaluation process.
- Completion 5+ years out ... if ever (See Cindy Hill letter attached to Frank Kochman submission)

Events per year

- Burton claims 100 to 120 shows per year, i.e., 1.9 to 2.3 per week (See Burton “update” of June 2020).



A key viewpoint

”... music, food and skateboard fans would have to thread their way through a residential neighborhood – or across a single-lane railroad bridge – to reach this corner of Burlington. The status quo, in other words, is a deal-killer.”

- Justin Worthley quoted in a *Burlington Free Press* article (January 16, 2019) about a Planning Commission meeting



Red flag #1: QCP Road One Lane Bridge

Critical choke point at QCP Road one-lane bridge

- The VHB traffic analysis fails to assess properly the choke point at the QCP Road one-lane bridge.
- The VHB engineers conducted an informal **daytime** drive-by assessment of bridge traffic and operation.
- This assessment provides no realistic information concerning the impact of a continuous stream of cars attempting to pass over the bridge during the period immediately before and after a concert, effectively blocking passage to anyone heading the other direction.
- Even if we are looking at only “peak-hour” effects to which the TIS devotes almost all its reporting and conclusions, the congestion that will be created on some of the local intersections



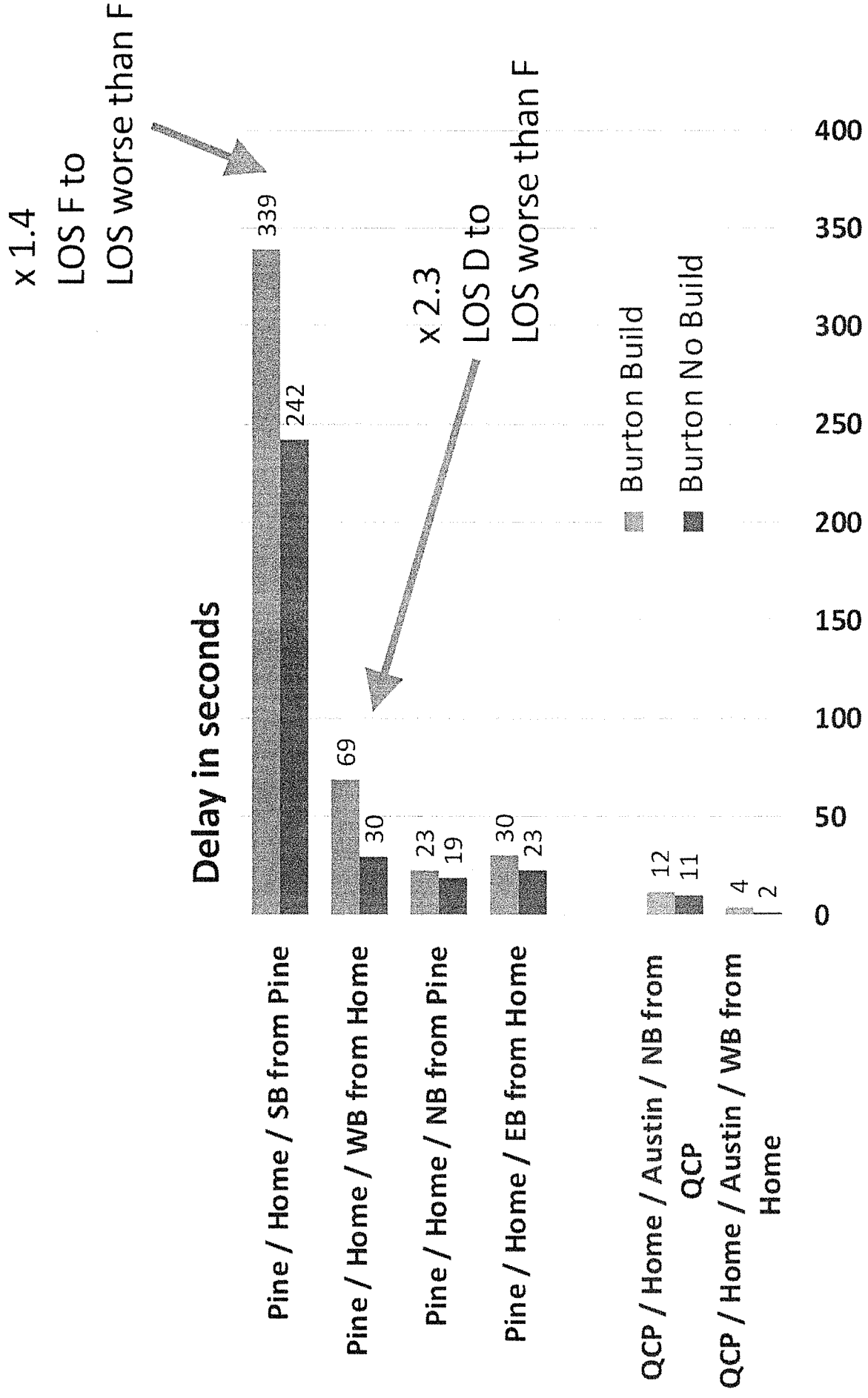
Red flag #2: Pine St.-Home Ave. Intersection

Table 4: Unsignalized Intersection Capacity Summary

Intersection Movement	Champlain Parkway No Build						Champlain Parkway Build					
	Burton No Build			Burton Build			Burton No Build			Burton Build		
	v/c ⁺	Delay*	LOS **	v/c ⁺	Delay*	LOS **	v/c ⁺	Delay*	LOS **	v/c ⁺	Delay*	LOS **
2008												
AM	Queen City Park / Home Ave / Austin Dr											
	WB from Home Ave											
	0.09	5.2	A	0.09	5.2	A	0.09	5.2	A	0.09	5.2	A
	NB from Queen City Park Rd											
	0.08	10.6	B	0.08	10.6	B	0.08	10.6	B	0.08	10.6	B
	Pine St / Home Ave											
	EB from Home Ave											
	0.59	22.5	C	0.59	22.5	C	0.18	8.7	A	0.18	8.7	A
	WB from Home Ave											
	0.93	52.7	F	0.93	52.7	F	0.15	7.9	A	0.15	7.9	A
PM	Queen City Park (north)											
	NB left onto Queen City Park Rd											
	0.49	19.3	C	0.49	19.3	C	0.10	8.2	A	0.10	8.2	A
	SB from Pine St											
	1.01	70.3	F	1.01	70.3	F	0.20	8.9	A	0.20	8.9	A
	Queen City Park / Home Ave / Austin Dr											
	WB from Home Ave											
	0.03	1.7	A	0.11	4.4	A	0.03	1.7	A	0.11	4.4	A
	NB from Queen City Park Rd											
	0.14	10.5	B	0.21	12.2	B	0.14	10.5	B	0.21	12.2	B
	Pine St / Home Ave											
	EB from Home Ave											
	0.62	22.8	C	0.72	30.3	D	0.11	8.3	A	0.11	8.3	A
	WB from Home Ave											
	0.76	29.7	D	1.00	68.7	F	0.25	8.8	A	0.27	9.0	A
	US 7 / Queen City Park (north)											
	NB left onto Queen City Park Rd											
	0.51	18.8	C	0.57	22.7	C	0.06	7.9	A	0.06	8.0	A
	SB from Pine St											
	1.47	241.8	F	1.69	338.9	F	0.24	9.3	A	0.25	9.3	A



Red flag #2: Pine St.-Home Ave. Intersection





Red flag #3: Home / RR / QCP Road Multimodal Intersection

Multimodal use of this intersection

- Poor pavement
- Limited sidewalks and bike lanes
- Flooding
- Large curb radii



Red flag #4: Incremental truck traffic

Incremental truck traffic on Home Avenue

- Burton-South Burlington agreement pushes **all** Burton-related truck traffic onto Home Avenue, a small residential street
- Burton-South Burlington agreement item 2, Guidance for Service Vehicles (January 9, 2020) – “At your [South Burlington’s] request, Burton will advise all Burton-related truck traffic that will be using the gated service entrance to approach the Burton campus on QCPR from Home Avenue, and not from the One-Way (sic) bridge.”
- Transportation engineers made no attempt to quantify truck traffic volume or impact.

Red flag #5: Roadway Conditions



Can the roadway support massive increase in vehicle traffic?

- Over 225,000 incremental car trips
- Unknown number of incremental truck and bus trips
- Poor current roadway at Home Ave. from Batchelder to QCP road
- Poor paving at RR crossing
- Flooding and freezing

Concert events	
Events per week	4
Cars per event	350
Total trip per event (in and out)	700
Trips per week	2,800
Trips per year	145,600
Weekday AM and PM	
Weekday AM trips (daily)	6
Weekday PM trips (daily)	222
Total daytime trips	228
Trips per week	1,596
Trips per year	82,992
Total incremental trips	228,592

AM and PM data from VRB memorandum, October 2, 2019, page 7.



Summary

The Burlington HUB proposed development would add 222 PM rush hour trips, 1,000 evening and nighttime concert-related trips, plus an unknown volume of truck traffic.

- TIS focuses only on daytime traffic
- Studiously ignores evening and nighttime traffic
- #1: Causes significant PM and evening rush hour choke point on one-lane bridge
- #2: Significantly degrades LOS at Pine Street – Home Avenue intersection.
- #3: Degrades Home Ave – RR – QCP Road multimodal area
- #4: Pushes all Burton truck traffic onto Home Ave.
- #5: Massive increase in vehicle traffic on poor quality roads

Laura Waters Traffic Impact Study Assessment – August 4, 2020

Good evening, my name is Laura Waters & I live at 50 Central Ave in Queen City Park, South Burlington which is in the immediate neighborhood of the Burton campus. I am here to speak on behalf of the CRZ and also as an interested person in my own right.. My focus this evening is going to be the April 23 Traffic Impact Study & the follow up Additional Information for South Burlington.

A little background, I spent my over 30 year career as an environmental consultant for clients such as the Air Force, the Air National Guard and MARTA – Metropolitan Atlanta Rapid Transit Authority, so I have reviewed & prepared my share of reports & studies. The following comments are only examples and in no way reflect the full extent of the deficiencies of this report.

Remember that this applicant seeks approval for a 1,500 person venue which they estimated could include up to 500 vehicles (at 3 people per vehicle) entering between 6:00 – 7:00pm & leaving the venue between 11:00pm & 2:00am. However, per Norm Baldwin's email to Susan Molzen dated 7/31/202 he states" I think three people per vehicle under-estimates the volume of traffic introduced. Perhaps a happy medium of 2.5 per vehicle works."

This translates into the possibility of 600 vehicles.

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**APRIL 23, 2020
TRAFFIC IMPACT STUDY**

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EXAMPLE OF ORIGINAL STUDY FLAWS

Roadway Characteristics - Traffic study states that there were **significant construction projects** (Pine Street, KMART access) in the area that at the time of the study (July 2019) are likely to affect volumes at the intersections within the study area. Also, they assessed the traffic as through rather than assessing the condensed, high traffic volumes that would occur on the surrounding streets before & after concerts.

Trip Distribution - In the past Burton has stated that traffic issues would mostly be resolved by the Champlain Parkway but the report states on **Page 8** that traffic will stay on existing routes even if Champlain Pkwy constructed

Home/Pine intersection would be severely impacted. Their data indicates that there will be possible delays up to 350 seconds at the southbound Home Ave/Pine Street approach (Table 4, Page 13).



60 cars = 10 – 12% of possible traffic

Burton made a written agreement with SB concerning sending their trucks & buses down Home Ave from US-7. However, as stated on **Page 10** of the TIS, Burlington has redirected truck & bus traffic off of this portion of Home Ave to try to spare the residents the impact of this heavy traffic.

In addition, the safety aspect under *Safe Streets to School* was not addressed. In the Champlain Elementary School Travel Plan – “Home Avenue and Pine Street: This is a four way stop with no crossing guard to assist children. There is only a sidewalk on the east side of Pine Street, so all pedestrians cross to get to that sidewalk. Parents report that cars in their hurry to get through the intersection ignore pedestrians.” Even though school hours typically do not overlap with the PM peak hours, there are school functions that do occur in the evening and the children and families would be walking home from these activities via this intersection.

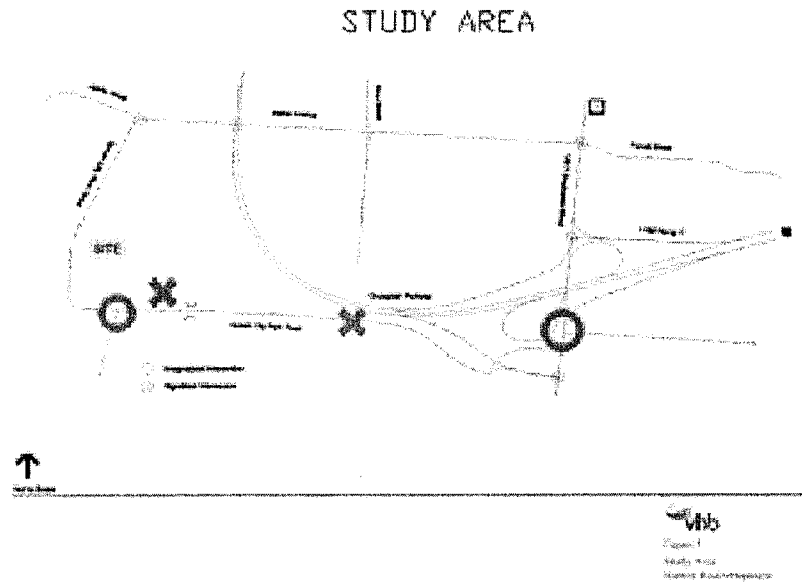
Parking Evaluation

The current plan for this venue has ~425 parking spaces but the venue has been approved for 500 vehicles (or 600 if you go along with Norm Baldwin’s assumption of 2.5 people per vehicle). The parking management plan does not address what they plan for the anticipated additional 75 or 175 vehicles or any vehicle parking that is off of their campus. Justin Worthley stated previously that Burton has no control over where people park on public streets such as Central Ave in South Burlington.

OMISSIONS

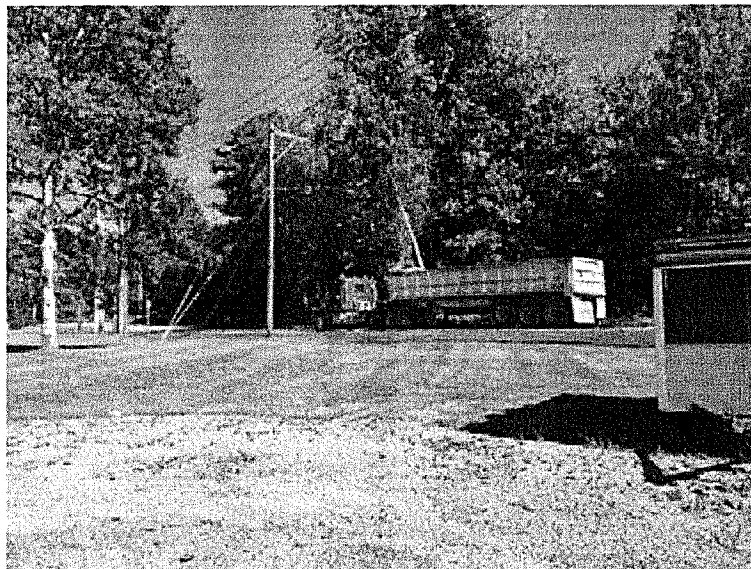
Examples are the study area (**Page 2**) which did not include an assessment of the QCP Rd & Central Ave intersection (which the city’s consultant repeatedly questioned), Swift Street at US7, or the 5 curb cuts that the venue attendees will use pre & post concerts.

They are also assuming that once the Champlain Parkway is in place, Pine Street will dead end at the Champlain Parkway and no longer connect to Queen City Park Road.

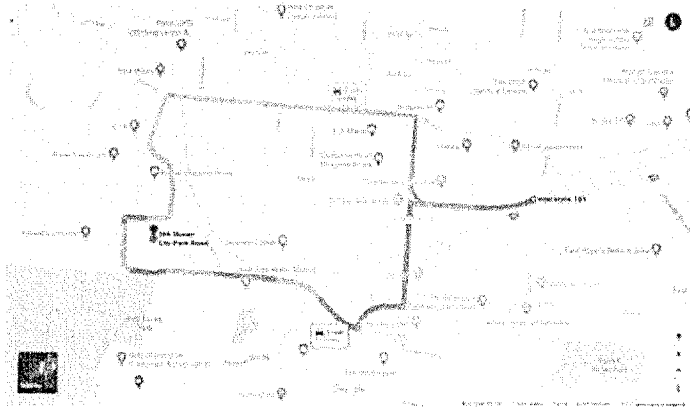


The Safety Assessment did not include discussion of the South Burlington high crash area southbound from Swift Street on US-7. No mention of the impact of the proposed new curb cut that would be located between Central Ave and the one lane bridge.

There was no assessment of the impact of the Barrett heavy truck traffic or the multiple GMT bus trips along QCP Road.



The traffic data from HG states that **trip distribution** - 30% from the north, 20% from the south & 50% from I-189. They anticipate up to 500 vehicles for a large show which means up to 70% of the traffic attending a concert could be turning onto QCP Road from the north & south off of Rt 7 (or up to 350 additional cars could be making that turn onto QCP Road).



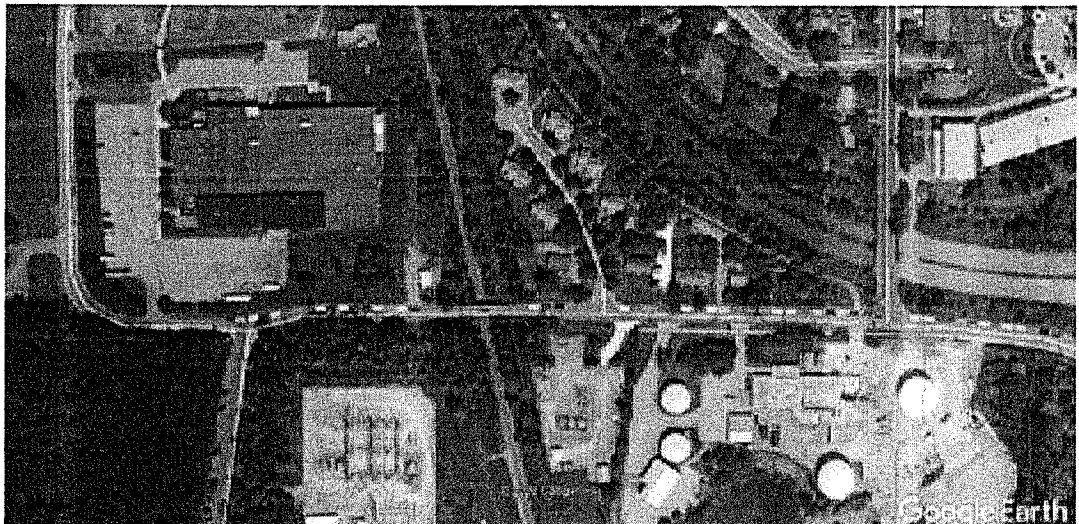
APRIL 23, 2020

ADDITIONAL INFORMATION FOR SOUTH BURLINGTON VERMONT

EXAMPLE OF REPORT FLAWS

Existing Roadway Conditions – 400 feet of side path from Central to the one lane bridge. What they are referring to is a small paved walk at the west corner of Central Ave the remaining is a dirt shoulder where vehicles pull over to let vehicles coming west over the bridge pass.

Other Analysis - Study states that PM peak hour traffic entering site more likely to use Home Ave to reach the site. However, existing site trip generation (Page 4) states that 60% will travel over the one lane bridge = 300 vehicles. Completely contradicts other conclusions.



60 cars = 10 – 12% of possible traffic

Also the BFP June 20, 2020 article quotes Justin Worthley: "Traffic would rely on the one-way (sic) bridge on Queen City Park ..."

South Burlington Report Conclusion

Burton/Higher Ground are declaring that the operational plan addresses the concerns raised by the neighbors and officials with concerns regarding traffic, parking and safety. There is no doubt that Higher Ground is skilled at moving large crowds & vehicles associated with venue attendees. However, the operational plan is heavily weighted toward signage & control of intoxicated patrons. The plan does nothing to protect the surrounding neighborhoods from the vehicular impact coming on QCP Road across the one lane bridge as neighbors, Barrett Trucks and GMT buses are attempting to travel locally on the same route, it in no way can protect the neighbors on Home Ave from traffic disruption between QCP Road and Rt 7, it does not address the traffic backups from the RR crossing near the QCP Road /Home Ave intersection, it does not protect our neighborhood from pre-concert patron encroachment when staff tells tailgaters to, as Mark Balderson said, "go somewhere else".

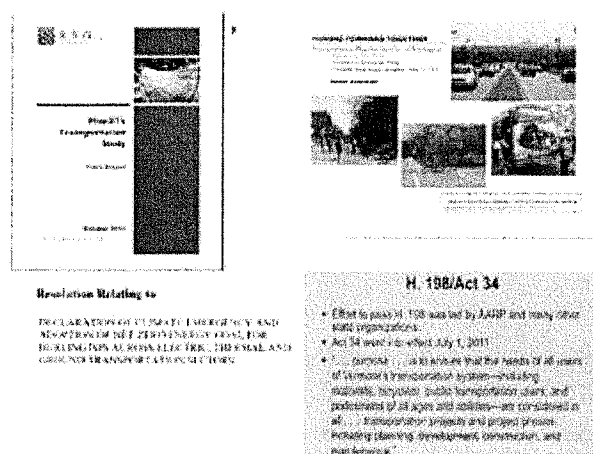
In addition, the site is working to encourage non-automobile trips by working with GMT and area colleges to provide busses and shuttles for patrons to the site. Where is this included in the traffic study?

Finally, the plan contains direction to staff to ensure that cyclist travel on the safer of the two routes leaving the site when visibility is poor.

Human Powered Trips – does not pass the straight face test. Mike Turner will discuss further

MIKE TURNER'S NEIGHBORHOOD DISCUSSION HERE

The following goals, declarations and requirements do not into appear to have been incorporated into the TIS.



These include:

PLANBTV GOALS/DESIRED PLANNING OUTCOMES

- Provide a focused sustainable transportation and accessibility system within the context of the existing street network and emphasizing alternatives to the single occupancy vehicle (SOV).
- Provide the quality and capacity of public infrastructure, including pedestrian, bicycle, parking, and/or transit-related facilities, necessary to support new or expanded commercial and residential development.

MOVING FORWARD TOGETHER

Transportation Plan for the City of Burlington

- Safety is of critical importance, particularly where walkers and bikers interact with cars and trucks.
- Walking is the fundamental urban transportation mode and is an essential part of all trips, especially transit trips. Walking is healthy, good for the environment, and does not contribute to congestion. This Transportation Plan envisions a fully walkable city.
- Biking
The Transportation Plan supports biking as a transportation choice that is non-polluting, energy efficient, and promotes good health. This Transportation Plan calls for a complete bike network.

CLIMATE EMERGENCY DECLARATION – September 2019

- **BE IT FURTHER RESOLVED** that the City Council and the City of Burlington issue a call to action for all Burlingtonians to take steps to reduce and eventually eliminate fossil fuel use across the electric, thermal and ground transportation sectors in our community, including weatherizing homes and buildings, installing efficient electric heating and cooling technologies, reducing vehicle miles traveled through walking and biking and public mass transit, and switching from fossil fuel vehicles to electric-powered vehicles for transportation;

Act 34: MUNICIPAL REQUIREMENTS UNDER THE ACT

- A complete streets policy for Vermont is implemented by Act 34 of the 2011 Legislature: An act relating to a transportation policy that considers all users. The purpose of this bill is to ensure that the needs of all users of Vermont's transportation system—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—are considered in all state and municipally managed transportation projects and project phases, including planning, development, construction, and maintenance, except in the case of

projects or project components involving unpaved highways. These “complete streets” principles shall be integral to the transportation policy of Vermont. All levels of government are subject to the provisions of the act, and the following outlines the specific requirements for municipalities: 19 V.S.A. § 309d.

CLOSING

In closing, the conclusion of the TIS states: “the delay increases associated with the project at the study area intersections are anticipated to be minor except at the intersection of Pine Street and Home Avenue when the Champlain Parkway is not constructed”. I did not discuss the Champlain Parkway in this review because of the many, many unknowns and years that are associated with its final approval & construction.

However, until recently, Burton insisted that the Champlain Parkway was critical to this project:

BFP January 16, 2019 article. “The Parkway is critical,” Worthley told member of the Planning Commission. Without easy access via the Champlain Parkway, he added music, food and skateboard fans would have to thread their way through a residential neighborhood – or across a single-lane railroad bridge – to reach this corner of Burlington. The status quo, in other words, is a deal-killer.

During the **1/17/19 NPA 5 meeting:** (Transcriptions from Justin Worthley) – Concerns about 1 way bridge. Sketchy. Talking to PW. Rd is challenge, *a lot of congestion, buses, Barrett trucks, employees, walking dogs, skateboarding, no sidewalks, no bike lanes*. Talking to city. Need to work on that. With parkway, people will come & go on parkway rather than across bridge.

But, most recently, Burton has stated:

BFP June 20, 2020 article. “Traffic would rely on the one-way bridge on Queen City Park road and would be “deterred” from turning onto Central Avenue (South Burlington) before and after concerts.

So, which is it? Do they need the Champlain Parkway for this proposed venue or will Burton & the city be happy as 500 cars, and I quote: “thread their way through a residential neighborhood – or across a single-lane railroad bridge”.

The TIS did not adequately address even the most fundamental aspects of how this proposed redevelopment could be an option until the appropriate infrastructure, including the Champlain Parkway, is completed.

I respectfully ask that the DRB require Burton's traffic consultant to prepare a thorough Transportation Impact Study that follows the VTrans Traffic Impact Study Guidelines and meets the above City of Burlington and State of Vermont criteria to address safe infrastructure for bicyclists, public transportation users, and pedestrians of all ages and abilities. I urge the board to include conditions of approval to require that all transportation infrastructure needed to support a project of this magnitude is in place before this venue opens for business.

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Good afternoon and thank you all for your service and your commitment to ensuring that Burlington continues to be a vibrant and livable city for all its residents.

My name is Laurie Smith I own and live at the property known as 50 Central Ave., South Burlington, which is in the immediate neighborhood of the Burton campus. I am here to speak on behalf of CRZ and also as an interested person in my own right”.

Our group is very much in favor of having the Burton campus revitalized. However this project as outlined is out of scale for the location. Our goal is to ensure that the neighborhoods surrounding this property are not negatively impacted by this development. We think this can be accomplished by a reduction in scale and the imposition of structural conditions that can be easily enforced.

We will be as brief as possible while still effectively covering the main deficiencies in the noise and transportation studies, and addressing public safety, as well as the significant infrastructure improvements that in our opinion must be addressed and mitigated before the DRB can approve this Permit.

Creating a rock concert venue for up to 1,500 people, serving alcohol, including a 2,300 sq ft outdoor lounge, and operating past 10PM and occasionally into the wee hours of the morning will negatively impact the quality of life for, and has the potential to make life miserable at times for, the adjoining residential neighborhoods.

What makes Burlington special is that there are quiet neighborhoods within the city. Preserving this is essential to maintaining quality of life for our residents and ensuring that people want to continue to live locally. The city noise ordinance, which is designed to contain disturbances from parties and large gatherings, is the reason that the residential neighborhoods around the university and colleges remain livable. Our south end neighborhoods deserve the same protections that are granted by this ordinance. Even approved uses within the E-LM zone are required to operate within the constraints of the noise ordinance. After the fact compliance is much harder to enforce and this Conditional Use process is designed to preemptively protect citizens from undue noise impacts. The scale and hours of operation of this venue as proposed will have noise impacts that are in direct violation of Burlington’s Noise Ordinance. 5.5.1 of the Burlington CDO states no permit shall be issued without compliance with the noise ordinance

The E-LM zone was originally established and designed as an industrial park and until last year the use proposed in this application was not allowed. The infrastructure in this area was not designed for and is not suitable for pedestrians, bicycles and high volume traffic, and is in a location that has no direct access to arterial roads. These facts prevent this application from being able to satisfy the Conditional Use Review Standards until such time as the city and/or

Burton complete the improvements necessary to ensure the safety of the public around this venue.

We will address these and other pertinent deficiencies in this presentation and urge the DRB to condition remedies to all of the deficiencies prior to approval of this application.

I now introduce Doug Goodman who will speak to safety issues:

CONCLUSION:

In closing, thank you again for giving us the time to make this presentation.

Because of the number of unresolved issues regarding traffic, noise, and safety we urge this board to consider holding separate hearings for each of these issues to ensure that they are comprehensively reviewed and properly mitigated. In particular, we ask that the applicant provide the raw data our noise experts have requested and that we be given a reasonable amount of time to analyze it.

Your decision on this application will impact many Burlington and South Burlington residents. If this venue is approved, without ensuring that the above issues are resolved, there will be ongoing disturbances that will be difficult if not impossible to fix in retrospect.

We ask that you either deny this permit application as presented or take the time to further investigate and to impose conditions of approval that ensure that the issues we have raised are addressed and resolved.

The following specific conditions seem necessary and appropriate to be included as part of any approval of this application:

- Postponing operation of this venue until completion of Champlain Parkway and all other necessary infrastructure including, but not limited to, sidewalks bike lanes, crosswalks, and relocation of truck and bus access away from Central Ave and the one way bridge.

CU Criteria #4:

- Address safe infrastructure for bicyclists, public transportation users, and pedestrians of all ages and abilities,
 - Completion of, at least, a continuous sidewalk/crosswalk along entire length of QCP Road from Home Ave. to the existing sidewalk at the Champlain Water District plant.
 - Completion of bike lanes on QCP Road, Home Ave., and Pine St.

- Address the significant traffic, pedestrian & bicyclist infrastructure deficiencies at the one lane bridge.
- Locate all curb-cuts from the Burton Campus to exit west onto the section of QCP Road that is heading north towards Home Ave to direct Truck and Vehicular traffic towards the Champlain Parkway.
- Restrict hours of operation.
- Creation of a legally binding, enforceable Operational Management Plan acceptable to, AND INDEPENDENTLY ENFORCEABLE BY, INTERESTED PERSONS IN THIS PROCEEDING.

In addition, before issuance of any permit, we request completion of current ambient noise level monitoring and collection at the SW or SE corner of Central Ave, cul de sac at Arthur Court, RedRocks Condos behind E-LM zone, and/or other locations as agreed upon by RSG & Cavanaugh Tocci, and sound analysis and mitigation recommendations by Greg Tocci be completed to ensure that there will not be adverse noise impacts from late night operation. CU criteria # 2 & 6.

I trust that as a board you will take these concerns into consideration, and thank you again for your commitment to keeping Burlington vibrant and livable.

We are open to any questions you have for us. Thank you.

Good Evening Board Members,

For the record, my name is Lori Hayes, I live at 3 Lyons Ave in Queen City Park. I represent both the Citizens for Responsible Zoning, the CRZ, and myself as a South Burlington resident.

The CRZ, despite being characterized in a recent email by Justin Worthley, as a small group of "critics attempting to dominate the narrative", actually represents dozens of households in each of the communities surrounding the Burton campus, including Queen City Park, Red Rocks, Arthur Court, Ledgewood, Dunder Rd., Southwind, South Crest, Home Ave, and South Cove. We neighbors are legitimately concerned about the scale, scope and impact of this proposed project.

As you will hear from my fellow neighbors, the CRZ has worked hard to focus on the science and fact-based components of Burton's application as submitted, not on fears, emotions, or on the reliance of unsupported promises that everything will be "just fine".

We remain concerned that there are serious gaps in the information we are all are receiving. CRZ members have been told time, and time again, in our good faith negotiations with Burton staff that our ongoing concerns would be fully detailed and addressed in the Management Plan.

However, this limited 1.5 page document offers little additional information outside of details related to concert security, parking and compliance with liquor laws. It doesn't address any day-time activities, nor does it discuss how tail-gating outside the campus will be handled. It doesn't specify how the BPD and SBPD police will incorporate additional concert-related calls given upcoming force downsizing. Regarding late-night intermittent noise, Burton and Higher Ground offer nothing. But this is the biggest source of anticipated sleep disturbance, as our expert(s) will explain.

Most importantly, it doesn't address how any of these action steps will be enforced, or even if they will be enforceable at all. Higher Ground/Burton staff have no authority outside their campus limits, police resources are always limited on busy nights, and we all know that signage, for such things as dog walking and parking at Red Rocks Park, is often ignored and rarely enforced.

We as neighbors are very worried that the responsibilities of enforcement will, in practicality, fall on us. We will be the ones in the position of having to alert the police, the city or Higher Ground staff, if and when, something goes wrong. We can't express how much we don't want that role.

The CRZ trusts that you members of the DRB will hold this application to each and every standard by which you are required to judge a proposal. No doubt, Burton is a valuable asset to the community and the idea of a community "hub" has real merit. But Burton's giant "cool factor" and solid community history can't be enough to overshadow the serious information gaps presented in this application you are reviewing.

Thank you for your work, and I yield my time.

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Scott Gustin

From: Stephanie Auge <twirl25@gmail.com>
Sent: Saturday, August 08, 2020 7:55 AM
To: Scott Gustin
Subject: Concerns regarding Burton venue

WARNING: External Message

Dear Mr. Guston,

I have lived on Dunder Rd. for 44 years. The South end was a wonderful place to raise our children and we continue to enjoy its peacefulness at this stage of our lives.

I am extremely concerned about the concert venue Burton is proposing. We could endure and enjoy the music and noise from the Reggae Festival..but that was once a year.

Our home backs up to the woods and we can hear loud noise from Industrial Ave. The people in Queen City Park will feel the brunt of this noise, not only from the venue attraction, but also the noise the large number of cars will generate.

I know many of these people as I taught their children in school. It is a great area which will be unfairly impacted by this proposal.

There are other places more suitable.

Please consider them.

Thank you.

Stephanie Auge

Scott Gustin

From: Stephanie Herrick <stephherrick@myfairpoint.net>
Sent: Saturday, August 08, 2020 11:04 AM
To: Scott Gustin
Subject: Re: Burton/Higher Ground

[WARNING]: External Message

Dear Scott and Members of the DRB,

My main concern, as I said at the 8/4 hearing, is the large outdoor lounge. There is no outside lounge at this time, so one would have to be constructed (which is much more than a facade improvement). I see no way to control the noise in an outside lounge. There will be voices, perhaps drinks served, waiters going in and out, music that is either on cell phone or heard when doors open and close. As you have heard several times, the noise travels easily to us at Redrocks, as we are higher than other buildings in the area.

I am also concerned with the number of concerts that are planned. Being over 100, they will be every Thursday, Friday, and Saturday nights throughout the year. Both the traffic and noise will destroy the residential quality of the surrounding area. Please consider this in making your decision.

Thank you for your service to Burlington.

Stephanie Herrick

651 9818

161 Austin Drive Unit 151

Scott Gustin

From: Matthew Kolan <matthew.kolan@yahoo.com>
Sent: Sunday, August 09, 2020 7:34 PM
To: Scott Gustin
Subject: Comments on burton proposal

WARNING: External Message

Hi Scott,

My name is Matt Kolan and I live at 32 Central Ave - just 100 yards down the street from the proposed Higher Ground/Burton concert venue that is being reviewed by the DRB. I am writing to formally express my opposition to this development project. I am a musician, and a lover of live music. I have actually played at Higher Ground many times myself. When I first learned of this project, the idea of bringing a live music venue to our neighborhood seemed very exciting and promising. However, after having attended a number of meetings with Burton and Higher Ground, and having reviewed the development plans, I have become very disheartened by this proposal. It's become evident that the scale of this project and the inevitable impacts on the neighborhoods and Red Rocks park will be unreasonable. The most significant of these impacts include late night noise that will undoubtedly keep us awake when hundreds of concert goers spill out into the parking lot (after midnight, multiple nights per week). While Higher Ground has publicly suggested they will do everything to soundproof the concert venue, the late night neighborhood noise will be caused by raucous concert goers leaving the venue. Anyone who has stood in the parking lot of the current Higher Ground location (which is much smaller than this proposed venue) as a large show empties into the parking lot will recognize the unreasonable impact that this will have on the surrounding neighborhoods. Furthermore, there is no question that departing concert goers will often make their way into Red Rocks Park (a significant wildlife habitat area and ecological treasure) looking for something to do after the concert. Situating such a large concert venue in a residential neighborhood is disrespectful and completely inappropriate - especially when there are many locations that have better parking and infrastructure (no one-way bridge) and are not surrounded by residential areas.

I am not anti-development. I can imagine many thoughtful development projects that could utilize Burton's empty warehouse. I can also imagine a music venue in this location that could be community supported, and at the appropriate scale, minimize adverse and unreasonable impacts. This Higher Ground project is absolutely not one of them. The process and community conversations with Burton have made it abundantly clear that the major concerns expressed by the local community are not being reasonably attended to. One of the criteria for approving this development is that it does not cause unreasonable impact. As one of the closest neighbors to this concert venue, I cannot possibly imagine how the DRB could believe that this would be the case.

Thank you for reviewing my comments and I hope the DRB puts the well-being of its community members over the profit of a business enterprise that is inappropriately scaled and designed for this neighborhood.

Sincerely,

Matt Kolan
32 central ave

Scott Gustin

From: win741@aol.com
Sent: Monday, August 10, 2020 12:20 PM
To: Scott Gustin; vermontzoning@aol.com
Subject: Higher Ground

WARNING: External Message

Dear Mr. Gustin,

I posted the first message listed on this edition of the Front Porch Forum. Having received a number of responses from neighbors on this site, and following the request from them to write to you, I am including the original post.

Burton company claims to seek to be a truly positive presence in the neighborhood. So far it has certainly fulfilled this promise. However, an addition of a night club where alcohol, very high decibel music, gatherings of high numbers of primarily young adults in their twenties (and younger), with performances late into the small hours of the night/next day this demographic does not fit into any conceivable category of enhanced community family life.

The neighborhood they will place this in is one primarily, of day time businesses and very small homes/residences. Sound will reverberate within a bowl geographically: the land of this site is on the lower ground near Lake Champlain, from which sound will carry up eastward as well as to the south (deeply impacting Queen City/South Burlington neighborhood) and north (from Home Avenue to Flynn Avenue).

That is the sound, and it will reverberate in spite of sound proofing Burton claims will be in place (itself a recognition of problem). But that is only one factor. There are many other problems involved with such an expansion. The traffic will be heavy, at times of the night when this area is asleep because it is a neighborhood of young families with children who must be up early the following day.

While Burton claims a wholesome influence on those they will be affecting, whether early in the night before drinking and gaining a state of mind/body that does not inspire quiet, careful exits at one or two in the morning, or late into the night when a certain amount of reckless, loud behavior will predictably follow--surely Burton must know this cannot be contained or avoided.

Burton promises a regulated exit from their property as the audience departs (itself, once again, a recognition of a potential problem for the area), this can well be the case for the parking lot and nearby streets. However, once driving through the area, on Home, or Morse Place, or the other extremely small streets that challenge more than two cars to travel safely on--these streets and the small family homes that inhabit them will invariably be disturbed. Audiences will depart with the decibel challenging rhythms sustained in their fully equipped stereo systems, to retain the thrill of the sounds as long as possible.

There will also be foot traffic that cannot possibly be promised to be quiet, well behaved groupings.

Having once been a happy part of the audience of such places, I am fully familiar with the positive aspects of such venues, and of Higher Ground in particular. Such entertainment is wonderful in its proper place--a Higher Ground on Main Street in Burlington would certainly enhance our city! But to place it in this quiet area where such venues are not existent is unfair, thoughtless, intrusive, and problem-generating.

I look forward to hearing from you, and sharing with my fellow neighbors your thoughtful response.

Sincerely yours,
Winifred Don
Ward Five
Richardson Street

-----Original Message-----

From: Front Porch Forum <theaddition@frontporchforum.com>

To: win741@aol.com

Sent: Wed, Aug 5, 2020 4:54 pm
Subject: The Addition Front Porch Forum No. 3832



Compose

The Addition Forum

Issue No. 3832 • Aug 5, 2020



In This Issue:

Re: Higher Ground Proposal

Discussion • Winifred Don, Richardson St, Burlington

Hiroshima and Nagasaki Commemoration

Event • Jane Hendley, Flynn Ave, Burlington

Mayor's Updates: Covid-19, Cityplace, Racial Justice

Announcement • Office Of The Mayor, Mayor, Burlington

Resident Parking Renewal

Announcement • Shannon Trammell, Executive Assistant, Burlington Police Dept., Burlington

Re: Higher Ground Proposal

Winifred Don • Richardson St, Burlington

Discussion

I could not make this meeting: I was at one last year where it was so crowded with residents who opposed people are worried about such a huge addition that increases noise, crowds, crime, traffic, well beyond the can decide to approve this? Why isn't this on our ballot to vote for or against it?

Email Author

Reply to Forum

Hiroshima and Nagasaki Commemoration

Jane Hendley • Flynn Ave, Burlington

Event

When: Aug 6, 2020, 6:00 PM to 8:30 PM

The dropping of atomic bombs on the cities of Hiroshima and Nagasaki, Japan happened 75 years ago this year. The City of Burlington is hosting a series of events for several events on August 6 starting at 6:00 PM at the top of Church Street with a march and skits and

[Email Author](#)

[Reply to Forum](#)

Attention Burlington Landlords and Renters!

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Are you unable to pay rent, have back rent due, or at risk of losing your housing during COVID? The Vermont Tenant's Union is here to help. Contact us today at 802-253-1234 or info@vttenants.org. We are landlords and renters.

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Office Of The Mayor • Mayor, Burlington

Announcement

Neighbors,

Our community's sustained success in suppressing the coronavirus has been a remarkable, lifesaving achievement. It gives me confidence that we can do what needs to be done to get through this pandemic together.

The City will continue to do its part. Every day, your City team fights to keep the virus contained. We help ensure there is a strong testing, tracing, and isolation plan in place for the return of students, collaborate with the Regional Response Council (RRC) that has responded to over 1,500 individual requests since the pandemic began, and much more. I will continue to and deploy substantial emergency resources to keep the Burlington's COVID-19 response and recovery efforts on track.

Our success to date has hinged on collective action, and will only continue if all of us continue to do our part. To help you do your part we have assembled considerable coronavirus resources on the City website:

http://post.spmailtechno.com/f/a/a_0acoegFXi3Rywl3hDpzw~~/AAQuHwA~/RgRhDaGUP0QkaHR0cD
The site includes recordings of my regular conversations with Dr. Stephen Leffler of the UVM Medical Center.

CityPlace Burlington

In July, I directed our attorneys to issue a letter of default to the developer of CityPlace Burlington for their failure to be committed to completing the transformational redevelopment of the former mall into a vibrant, mixed-use community. It is unacceptable to me that one of the largest companies in the world is not making good on their promises to the community. If it does not happen quickly we will move forward with aggressive legal action to hold Brookfield accountable for their actions. http://post.spmailtechno.com/f/a/v3ex6SY5TZapi7_huyqVwQ~~/AAQuHwA~/RgRhDaGUP0QbaHR0cD

During this period of uncertainty with this important downtown project, I want residents to know three things. First, we have negotiated an agreement that has the developers paying for the City's project costs. Second, with the failing map, we are much closer to the planBTV vision of a vibrant, mixed-use neighborhood in this part of the City. Third, we are one of the major challenges we have faced together – from the BT lawsuit, the redevelopment of the northern part of the City until the vision the community voted for in 2016 is realized.

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The coronavirus has laid bare a terrible and longstanding truth: Black and brown Americans experience far more racism. This is why, in July, I worked with the Vermont Racial Justice Alliance and more than 30 Chittenden County residents in an ongoing joint action to eliminate race-based health disparities and eradicate systemic racism in Chittenden County.

To make progress, we will need to address all of the social determinants of individual and public health, find impactful partners in all of these areas, with more continuing to sign on. I am deeply and personally committed to this lasting change. You can read more about this declaration and immediate actions on the City website.

Talk to you soon,
Miro

Email Author

Reply to Forum

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Shannon Trammell • Executive Assistant, Burlington Police Dept., Burlington

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Email Author

Reply to Forum

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Scott Gustin

From: win741@aol.com
Sent: Monday, August 10, 2020 12:22 PM
To: Scott Gustin
Subject: Fwd: Higher Ground

WARNING: External Message

-----Original Message-----

To: SGustin@burlingtonvt.gov <SGustin@burlingtonvt.gov>; vermontzoning@aol.com <vermontzoning@aol.com>
Sent: Mon, Aug 10, 2020 12:19 pm
Subject: Higher Ground

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To: win741@aol.com

Sent: Wed, Aug 5, 2020 4:54 pm

Subject: The Addition Front Porch Forum No. 3832



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The Addition Forum

Issue No. 3832 • Aug 5, 2020



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Email Author

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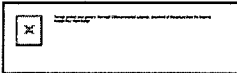
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SGustin,

My name is Gary Keller. I live at 11 Lyons Ave in Queen City Park. I want to share my recent experience and express specific concerns that I have regarding the considered Higher Ground Concert Venue, in this email and also as an attachment. I am here updating a previous letter that I had sent to you to highlight one especially important concern. I was on the QCP Prudential Committee of Fire District #1 for 15 years and the Chairperson until I stepped down last month, though I am speaking today ONLY as a private citizen. Queen City Park has been a wonderful community to live in. I do appreciate the hopes and aspirations to develop a larger music venue to further improve our already wonderful music scene in Burlington.

The actual day when you heard comments from the community re: this proposal I personally had a minor accident on the one-way bridge on Queen City Park Rd. I was on a bicycle and though I've done this many times before, I became flustered by three cars waiting to cross and I personally hit the fence spraining my hand and bruising a rib.

Crossing the bridge always depends on a "gentlemanly" process that generally works well with only limited traffic, except for the inevitable times that cars misjudge or aggressively attempt to cross the bridge from opposite directions at the same time. This can easily spiral into a worse altercation or accident especially with elevated blood alcohol levels after a concert, long frustrating waits and with vulnerable pedestrians or bicyclists. This would truly be "an accident waiting to happen" and only with very strict supervision to prevent an accident would it not be in my opinion gross negligence on the city's part.

Since the proposed development is immediately next to quiet residential communities and already has very limited access including even the inherent delays from a one-way bridge, I think it is also very important and necessary that you take extraordinary steps to not provide harm to the neighborhoods too close to your project. I am very concerned about traffic before and after a concert causing significant delays a couple of days each week potentially causing significant inconvenience to nearby residents just trying to get to work or to get home. I also am very concerned about a larger music venue bringing larger numbers of people from even further distances leading to more people looking for a place to relax and imbibe whatever they prefer to before or after a concert or even needing to find a place to park overnight after a concert.

A significant team of people sternly directing traffic away from adjacent communities and only to the music venue is a minimum to preserve the environment in our neighborhoods. I respectfully request that the city of Burlington consider passing a rule that requires specific adequate measures be in place to control related traffic to not significantly inconvenience adjacent neighborhoods and that this rule be followed regularly and be subject to periodic review and a hearing for possible revoking of the license to continue. Thank you for considering, Gary Keller

RECEIVED

Attachments area

AUG 05 2020

BURLINGTON
PERMITTING & INSPECTIONS

Scott Gustin

From: John Caulo <john.caulo@gmail.com>
Sent: Wednesday, August 12, 2020 9:50 AM
To: Scott Gustin
Cc: Justin Worthley; Susan Molzon; Norm Baldwin; Chapin Spencer
Subject: Re: FW: Burton

WARNING: External Message

Hi Scott:

As a followup to our convo just now, Susan and Norm's comments below have Justin and I scratching our heads. We think Susan and Norm have misunderstood the intent.

Burton is not contemplating using the proposed Performing Arts Center (PAC) for a PAC-related use. Rather, Burton is planning to use the PAC space for a variety of ongoing, previously permitted Burton-related uses that have utilized other spaces at the Burton campus. Burton regularly hosts large internal meetings, and also provides space in the 266 building for various private, public, and community events. These meetings range in size from a few dozen to a few hundred people, and also includes hosting our annual summer sale which attracts over 10,000 visitors over a 4 day period, including Thursday and Friday impacts.

Here are some examples of events regularly being held in Burton's 266 building which, in our view, could be held in the future in the PAC venue space during daytime hours when the space is vacant. Note that these are not "performing arts" events, but rather meetings, forums, workshops, that are currently held in other spaces in Burton's buildings depending on the size:

- Burton customer, and sales meetings – 50-300 people, multiple times per year
- Burton product launch and/or other marketing events – 50 – 200 people, multiple times per year
- Burton holiday parties, company meetings – 100 – 350 people, multiple times per year
- City of Burlington meetings such as
 - Plan BTVSouthEnd public forums,
 - Mayor's Department head meetings, etc. – 20-100+ people, multiple times per year
- Community forums – e.g. 2019 Amazon event in partnership with VCET – 50 - 250 people, multiple times per year
- Vermont Brewers Association annual meeting – 100 people
- Annual SAP Users Group meeting – 100+ people

Here is another way to consider the daytime use of the Property: If Burton decided to abandon the PAC concept and convert portions or all of the 85KSF building (#266), it would generate additional daytime traffic impacts over which DPW would have very little influence.

Based on our conversation, you seem to understand our point and do not disagree with the logic. We are interested in meeting w/DPW staff (copied here) ASAP to resolve this issue as we meet again with DRB Tuesday evening. Time is of the essence so whatever you can do to facilitate a meeting this would be appreciated. Thanks, Scott. -john

On Fri, Jul 31, 2020 at 3:24 PM Scott Gustin <SGustin@burlingtonvt.gov> wrote:

FYI,

August 11, 2020

TO: BURLINGTON DEVELOPMENT REVIEW BOARD

Re: Burton Hub: **Requests for Data**

Ladies and Gentlemen:

On behalf of CRZ Group, and in anticipation of the continued hearing scheduled for August 18, 2020 in the captioned matter, we make the following observations and requests:

1. Requests based on the comments of Gregory Tocci in his letter of August 3, 2020. In his letter, Mr. Tocci, whose credentials are beyond cavil, pointed out, among other things, that even allowing for its assumptions, **the RSG noise analysis incorrectly calculated outdoor lounge noise at 88 dBA instead of 97 dBA.** See (Tocci, page 2.) In terms of sound perception, the corrected figure is almost twice as loud. (See RSG Noise Assessment at page 20, which states that loudness doubles with each 10 decibel increase in metered sound.) Tocci also notes: “Without the Cadna model input file, it is not possible to evaluate parking lot sound power levels through the available traffic sound standards in Cadna. The Cadna parking lot sound computational standards do not include sound associated with crowds arriving at or departing from music events.” Id. Tocci also notes that an adequate review of interior and rooftop sound requires more detailed plans for the building rehab and the manufacturer’s technical data for the roof-top air-handling devices. Id. Accordingly, for Tocci’s use, CRZ Group requests that the DRB require the applicant to make timely delivery (in time for analysis before the August 18 hearing), of the following materials:
 - The Cadna model input file used by RSG in arriving at its findings and conclusions.
 - The manufacturers’ technical data for the rooftop air handling equipment discussed in the RSG Noise Assessment.
 - Wall and roof sections for the concert venue and a description of how sound isolation performance has been determined.
2. As also noted by Tocci, accurate determination of “the existing residual sound level” is important in determining the impact of the new sound sources. (Tocci, page 1-2.) Please require the applicant to make timely delivery of the raw data (if any) used by RSG in determining ambient sound levels for the area surrounding the new concert venue, including, without limitation, the monitoring date(s).
3. CRZ again asks that the DRB require the applicant to produce all of the raw data

underlying RSG's monitoring exercise at the existing Higher Ground facility in South Burlington, including, without limitation, (a) the date(s) of the monitoring exercise, (b) the number of persons in attendance, (c) the identity of the performers, (d) the time span during which the monitoring took place, and (e) all results as registered on the monitoring equipment. In light of the questionable reliability of RSG's report of the outdoor lounge noise (as noted above), it is reasonable and necessary to allow a review and attempted retrace of the data and process RSG relied upon for its foundational premises.

Respectfully submitted,

F.L. KOCHMAN, INC.

/s/Franklin L. Kochman

Franklin L. Kochman,

Attorney for CRZ Group

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: August 18, 2020
RE: 20-0854CA/CU; 266 Queen City Park Road

=====

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: ELM Ward: 5S

Owner/Applicant: Burton Corporation / LandPlan Development Associates

Request: Conditional use and certificate of appropriateness review of performing arts center within an existing mixed use commercial building. Associated building façade and rooftop mechanical alterations included.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking)

Background Information:

The applicant is seeking approval to convert 11,560 sf of vacant interior commercial space to a performing arts center. An additional 2,380 sf outdoor plaza is also associated with the proposed performing arts center. Maximum capacity for attendees is 1,500. Burton's primary industrial use of the building will remain. Additional non-industrial uses are contemplated but not included in this application.

Façade renovations are included in this proposal as are additional rooftop mechanical units. The site plan has been updated to call out a variety of minor site alterations relative to stormwater ponds, access, and 10 new parking spaces.

This application was initially reviewed by the DRB on July 7, 2020. The public hearing was continued to August 4, 2020 and then again to August 18, 2020. The findings have been revised to address information provided during and since the August 4 review.

Previous zoning actions for this property are as follows:

- 11/19/20, Approval for stormwater enhancements and parking layout revisions (appealed)
- 5/10/19, Approval for interior skate park
- 6/21/16, Approval for 3 exterior signs
- 11/3/15, Approval to relocate sculpture
- 5/16/14, Approval to install HVAC unit on rooftop
- 9/26/12, Approval to enclose footbridge

- 5/7/12, Approval of parking lot reconfiguration and landscaping improvements
- 8/25/11, Approval to establish showroom and construct façade improvements
- 3/18/11, Approval to install exhaust stack
- 10/29/10, Approval of façade and entryway alterations
- 6/7/10, Approval of new entry, windows, doors, and rooftop mechanical unit
- 11/2/01, Approval of new doors and demolish garage
- 8/13/98, Approval to heighten exhaust stack
- 6/11/98, Approval to install temporary office trailer

Recommendation: Continued review and deferral of action pending resolution of traffic impact considerations.

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (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 applicant has secured ability to serve letters from Burlington's Electric, Fire, and Police Departments. The Police Department endorsement is predicated on implementation of the proposed operational management plan for the performing arts center. This operational management plan will be incorporated into permit conditions.

Sufficient water and sewer service are available. A State of Vermont wastewater permit will be required for the new use. A capacity letter has been issued to the applicant by the Dept. of Public Works.

Impact fees will be due for the converted space included in this application and will be used to help offset impacts on city facilities. **(Affirmative finding as conditioned)**

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 subject property is located within the Enterprise – Light Manufacturing zone. This zone is intended primarily for manufacturing, distribution, processing and the like. The existing Burton facility is consistent with this intent.

In June 2019, the City Council adopted a zoning amendment (ZA-19-07) to allow additional non-traditional commercial uses in the E-LM zone. The intent of the amendment was three-fold: 1) to prioritize industrial and art production uses in the southern portion of the E-LM zone; 2) to leverage market-rate commercial uses to support more traditional industrial uses; and 3) to expand the allowable area of performing arts centers within the district. The proposed performing arts

center is consistent with this intent. It is a newly allowable use of an acceptable size and serves to make Burton's primary industrial use more viable. **(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;*

The proposed performing arts center is not expected to generate nuisance impacts from odor, dust, heat and vibrations that may be more typically associated with industrial uses. Noise impacts are a concern. Therefore, the applicant has provided a professional noise assessment to address anticipated noise impacts associated with the proposed use.

The noise assessment, performed by RSG, is comprehensive and evaluates anticipated noise associated with interior public concert events and exterior events, including new mechanical equipment, folks in the outdoor plaza, and the post-concert exit of attendees. Evaluation is performed in light of local noise ordinances in both Burlington and South Burlington. Although daytime use of the venue by private parties is anticipated, the noise study does not address it. Daytime uses will be limited to just 300 attendees, and ambient noise levels are greater than during the overnight hours. Adverse noise impacts associated with daytime use of the venue are not expected.

Projected noise impacts are compared to existing conditions. As public concert events at the venue will be exclusively during the evening hours, projected noise impacts are compared to existing background noise levels during the evening hours. Background noise levels during the overnight hours (10:00 PM – 7:00 AM) typically range from 40 -45 dBA. The noise assessment projects that noise levels will remain within this range at the nearest residences both during concert events (42 dBA) and during crowd departure (44 dBA) once the show is over.

The applicant has provided supplemental noise analysis performed by RSG to address concerns related to intermittent noises. The analysis finds that even short maximum sound levels remain consistent or lower than those presently occurring in the area. The additional analysis also breaks down individual noise sources associated with concert music, rooftop mechanical equipment, the outdoor lounge, and vehicles accessing the parking lot. The analysis finds that individual sound sources vary (rooftop mechanical equipment appears to be the most significant sound generator) and that they are expected to be minimally perceptible from the closest residences.

The operational management plan addresses pre-concert queuing of folks outside the venue to limit crowd size and duration outside. No tailgating will be permitted. Provisions are made for quick and orderly departure following events with specific parameters for events of various sizes. As noted previously, Burlington Police Department support of the project is contingent on implementation of this operational management plan to limit off-site impacts related to the proposed use.

It is important to note that the projected noise impacts assume implementation of proposed mitigation measures. These measures include sheet-rocking the ceiling and insulating a bare metal exterior wall within the venue. Additional insulation could improve these sound-deadening efforts to further offset impacts in the nearby neighborhoods.

As is sometimes done with traffic analyses, follow up noise analyses should be performed by the applicant once the venue is operational in order to determine actual impacts. Additional noise mitigation measures may be warranted or not, depending on the results of the analyses.

(Affirmative finding as conditioned)

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;*

A traffic analysis and related addendum have been provided. The analysis includes the standard items as to anticipated trip generation, high crash location identification, and intersection level of service (LOS) in build and no-build scenarios. Baseline traffic conditions are compared with and without the performing arts center, with and without the Champlain Parkway, now and in 2028.

While not central to the traffic study, note that the study cites onsite parking numbers that are inconsistent with the zoning permit records for the property and with the site plan included in the application. Additional parking detail is included under Article 8.

Anticipated trip generation is significant in the PM peak hour (net increase of 222) but much less so during the AM peak hour (net increase of 6). Impacts on nearby intersections vary. Some experience virtually no change while others, in particular the Shelburne Street/I-189 Ramp C, experience a drop in level of service from E to F. The unsignalized intersection at Pine Street and Home Avenue is also markedly impacted under a no-build Champlain Parkway scenario. Hosting events in the evening hours serves to lessen potential traffic impacts on the PM peak hour, though impacts remain significant. To address concerns of nearby residents, specific provision is included in the operational management plan to preclude accidental use of nearby Central Avenue in South Burlington by departing attendees.

Written comments from the Department of Public Works have been provided and will be incorporated into permit conditions. Public Works concurs with the findings in the traffic study and makes a number of recommendations. In an effort to reduce PM peak hour traffic impacts, Public Works requests that events at the proposed venue not draw traffic until after 6:00 PM Monday through Friday. Such could be accomplished by limiting event times to 6:30 PM or later.

Public Works has provided supplemental comments specifically as to daytime use of the venue, and the applicant has responded with additional traffic analysis. Concerns remain; however, as to anticipated impacts on nearby intersections and traffic volume implications. Public Works has requested additional information to more thoroughly understand impacts on traffic operations. Resolution is needed. **(No finding possible)**

and,

5. *The utilization of renewable energy resources;*

There is an existing solar array next door at Burton's 180 Queen City Park Road property, and the applicants will install an empty conduit line at 266 Queen City Park Road to support a possible future installation at this property. The application notes that at least 10 onsite parking spaces will

be dedicated for electrical vehicles with charging station capabilities. Parking spaces will also be provided for carpool vehicles. **(Affirmative finding)**

and,

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

As conditioned.

(b) Major Impact Review Standards
Not applicable.

(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.*

Noise mitigation measures are proposed in order to decrease off-site noise impacts related to the proposed venue. See criterion (a) 3 above. **(Affirmative finding)**

2. *Time limits for construction.*

No construction timeline or phasing are included in the project plans. The standard 3-year timeframe for zoning permits will apply. **(Affirmative finding)**

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

The application has been revised to note a maximum range of weekday evening operating hours for the venue to be 6:30 PM – 2:00 AM (6:00 PM start on holidays and weekends). It also notes the performing arts center will open one hour prior to the published start time of the event. The applicant has clarified that this means doors will open at 6:30 PM or later for weekday events (or 6:00 PM on holidays or weekends).

The application notes that the proposed venue will be available to host private and community events in addition to concerts. Daytime operation is noted as a possibility, and the applicant has provided some clarification. Weekday daytime use of the venue will be limited to 300 attendees. Doors would not open before 9:00 AM, and exiting times would not occur between 4:00 PM and 6:00 PM. Weekend daytime use remains unclear. The applicant has noted the possibility of matinees. Clarification is needed. **(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; and,*

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

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.*

See the recommended conditions.

Article 4: Maps & Districts

Sec. 4.4.3, Enterprise Districts:

(a) Purpose

(1) Light Manufacturing (E-LM)

The subject property is located in the E-LM zone which is intended as the primary commercial/industrial center of Burlington. Burton's primary industrial use is consistent with this intent. As noted previously, the applicable use standards in the E-LM zone have been opened up to allow non-traditional commercial uses to basically support the traditional industrial uses in the district. Performing arts centers are one such use. **(Affirmative finding)**

(b) Dimensional Standards & Density

Building FAR remains essentially unchanged.

Revised site plans clarify proposed site changes. Resultant lot coverage changes only slightly, going from 63.5% to 63.6%. The proposed lot coverage is under the maximum allowable 80% coverage.

Side setbacks remain unchanged. As a corner lot, there is no rear setback. The front yard setback is 5' minimum from the front property line. The 10 new parking spaces comply with this minimum front yard setback.

Building height remains unchanged. **(Affirmative finding)**

(c) Permitted & Conditional Uses

Subsection 2 of this criterion enables uses unrelated to industrial or art production on E-LM zone properties south of Home Avenue only when one or more industrial or art production uses exist on the lot and that the combined gross floor area of the unrelated uses does not exceed 49% of the GFA on the lot. Uses limited by this provision are identified in Footnote 27 of Appendix A – Use Table. A performing arts center is one such use included in Footnote 27. The performing arts center will be 11,560 sf (13.6% of the total 85,036 sf GFA). Note that floor plans depict the already-permitted 8,298 sf skateboard park (9.8% GFA) and a not-yet-permitted “food court” (~6,400). Combined, the non-industrial areas would total ~ 30% of total GFA within the building. The “food court” is not included in this application; however, it bears mentioning that the application asserts it will serve employees and will be open to the public. Cafes are allowable within this zone; however, they are limited in size to 1,500 sf.

Performing arts centers in the ELM zone are further limited by Footnote 32 that limits size to 15,000 square feet along Queen City Park Road (formerly Industrial Parkway). The proposed 11,560 sf performing arts center fits within this limitation, even if including the 2,380 sf outdoor plaza. **(Affirmative finding)**

(d) District Specific Regulations

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.6 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.6 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.6 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.6 (b) above.

Sec. 5.5.1, Nuisance Regulations

See Sec. 3.5.6 (a) 3.

Sec. 5.5.2, Outdoor Lighting

New lighting will illuminate the walkway beneath the proposed steel tube canopy structure along the building's west elevation as well as entryways on the south elevation. Fixture cut sheets have been provided and depict acceptable cutoff lighting fixtures. Locations are noted on project plans as well. Illumination levels are included in the fixture cut sheets, but a photometric plan has not yet been provided. One is needed to depict acceptable illumination levels for the covered walkway. Acceptable illumination levels are depicted for the entryway lights. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

As noted previously, the site plan has been updated to clearly indicate changes included in this application. They are limited to stormwater pond revision, 10 new parking spaces, and driveway access alterations. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The massing, height, and scale of the building remain unchanged. **(Affirmative finding)**

2. Roofs and Rooflines

Except for some minor revisions associated with revamped building entries, building roof and rooflines remain unchanged. **(Affirmative finding)**

3. Building Openings

Much of the façade renovations consist of new windows and doorways. New glazing is focused on the west building elevation; however, the north elevation receives additional glazing as well. The main entry into the building (on the west elevation) is significantly reworked to include a row of glass doors and a fixed canopy with storefront glazing above. New north-facing windows under the roofline of the venue space will introduce natural light into the space. Other alterations to the north elevation include additional windows along the northwest end and an embellished north building entry. Alterations to the south elevation are limited to reworking some of the private entries. **(Affirmative finding)**

(b) Protection of important architectural resources

The existing building is not historic, nor is it eligible for listing on an historic register. The proposed façade renovations will have no adverse impact on Burlington's architectural resources. **(Affirmative finding)**

(c) Protection of important public views

No identified public view corridors are adversely affected by the proposed renovations. **(Affirmative finding)**

(d) Provide an active and inviting street edge

The building as it exists today is largely industrial and appears that way from the street. The proposed façade renovations provide well-identified building entries that provide a more welcoming presence along the street. Existing walkways connect the parking areas to these revamped public building entries. The changes transform the building from one that appears largely closed to the public to one that is open and more inviting. **(Affirmative finding)**

(e) Quality of materials

Much of the building exterior will remain unchanged as metal siding. The west building elevation will be redone with glass fiber reinforced cement siding in horizontal and vertical arrangements. A small section of new metal siding will be installed over brick on the north elevation. The outdoor plaza will be enclosed with solid wood and metal fencing. Fiberglass windows will be installed throughout, except for aluminum-frame windows atop the performance space. A new steel canopy will be constructed alongside the west building elevation, presumably to provide shelter for patrons waiting to enter the building. The proposed materials are consistent with the commercial nature of the building and are of acceptable quality. **(Affirmative finding)**

(f) Reduce energy utilization

Applicable commercial energy codes pertain to the building renovations. The introduction of new windows will allow natural sunlight to illuminate the interior of the building during daylight hours. **(Affirmative finding)**

(g) Make advertising features complimentary to the site

Elevation drawings depict several new sign locations. No signage is included in this application and will be handled by way of separate zoning permit. **(Affirmative finding if conditioned)**

(h) Integrate infrastructure into the building design

Several new rooftop mechanical units are proposed. Some are depicted on elevation drawings. A roof plan has been provided to clearly depict existing and proposed mechanical unit locations.

Elevation drawings have been updated to depict screening of the mechanical units. **(Affirmative finding)**

(i) Make spaces safe and secure

Emergency vehicle access to the building appears to remain essentially unchanged. Adherence to applicable building codes will be required. **(Affirmative finding as conditioned)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

Under present conditions, the building has a total onsite parking requirement of 99 spaces (based on the manufacturing and skate park uses). Prior zoning permit 20-0514CA (which remains under appeal in court) revised the parking count from 180 existing spaces to 172 spaces. The current site plan for this application depicts 182 parking spaces. The proposed performing arts center will require 375 spaces (1 space per 4 seats – 1,500 proposed maximum capacity). Accounting for the existing manufacturing parking requirement for the 11,560 sf space, the net increase in required onsite parking is 360 spaces.

Parking information within the traffic analysis is inconsistent with parking information above and within the application site plan, although with the 10 new spaces, the discrepancy is less. The parking analysis refers to 181 spaces at the property (rather than 182) in combination with 276 at 180 Queen City Park Road (the zoning permit records show 244 spaces at 180 Queen City Park Road). As depicted in the current site plan, there is a combined availability of 426 parking spaces between both properties. Just 266 Queen City Park Road will require 459 parking spaces. A parking waiver is needed and is predicated on a parking management plan. **(Affirmative finding as conditioned – Sec. 8.1.15)**

Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans

The application proposes a parking management plan centered on shared use. Concert events open to the public will occur only in the evenings, after the daytime uses at the property have largely closed for the day. This shared-use parking arrangement is common and makes efficient use of a shared parking resource. The evening parking requirement of 375 spaces can be accommodated by the total available 426 parking spaces with no daytime use parking demand. Given that the parking plan is predicated on use of parking at both 180 Queen City Park Road and 266 Queen City Park Road, the shared parking at 180 Queen City Park Road will need to be secured by way of deed or easement for the duration of the performing arts center use at 266 Queen City Park Road. Such deed or easement will be subject to review and approval by the City Attorney's Office. The parking management plan acknowledges this requirement.

The parking management plan addresses daytime use of the proposed venue. Events are expected to be infrequent and will be limited to 300 attendees in any case. Such a limitation is important and limits parking to 75 spaces. The total daytime parking requirement is 159 spaces and can be accommodated by the 182 onsite parking spaces.

The parking management plan notes that alternative modes of transportation will be encouraged and that dedicated carpool spaces will be provided. More than the minimum required bike parking will also be provided. **(Affirmative finding)**

Sec. 8.2.5, Bicycle Parking Requirements

There is no specific bicycle parking requirement for performing arts centers. The closest approximation appears to be community centers which require 1 long term space per 20,000 sf and 1 short term space per 1,500 sf. As proposed, the performing arts center will require 1 long term bike parking space and 8 short term spaces. The long term space must be enclosed and secure. The short term spaces make take the form of bike racks and must be close to the public building entry. The application materials have been updated to include a tally of proposed short term and long term bike parking spaces. A total of 16 short term spaces will be provided along with a total of 4 long term spaces. Short term and long term bike parking locations need to be shown on the project plans. **(Affirmative finding as conditioned)**

II. Conditions of Approval

Conditions of approval are recommended in the event that traffic concerns expressed by the Department of Public Works are resolved prior to close of the public hearing.

1. **Prior to release of the zoning permit**, revised project plans addressing the following shall be submitted, subject to staff review and approval:
 - a. Photometric plan of the covered walkway consistent with the standards of Sec. 5.5.2;
 - b. Depiction of long term and short term bike parking spaces;
 - c. Clarification as to weekend and holiday daytime use of the performing arts center space; and,
 - d. Erosion prevention and sediment control plan and stormwater screening form approved by the Stormwater Program.
2. **Prior to issuance of a building permit** for the project-related construction, impact fees based on the square footage of the converted space shall be paid to the Zoning Division at the Department of Permitting & Inspections.
3. **Within the first 6 months of operation** and at the applicant's expense, the applicant shall perform a noise assessment:
 - a. Within this timeframe, the applicant shall coordinate a schedule with their noise consultant to conduct monitoring for three (3) events that are expected to be at full capacity;
 - b. Sound monitoring shall be conducted within the same geographic area covered by the Project Noise Assessment prepared by RSG dated 4/20/20; and,
 - c. If monitored sound levels from the performing arts center exceed 45dBA Leq (1-hour) at night (10:00 PM – 7:00 AM) at residential areas, additional sound mitigation measures will be required to bring noise levels into compliance (at or below 45dBA Leq).
4. Notwithstanding condition 3 above, this zoning permit requires installation of the Planned Mitigation measures noted in the Burton Snowboards & Higher Ground HUB Project Noise Assessment dated April 20, 2020.
5. Daytime use of the performing arts center shall be limited to 300 attendees. Doors shall not open for daytime uses of the performing arts center before 9:00 AM, and exiting times shall not occur between 4:00 PM and 6:00 PM. Evening use of the performing arts center shall be limited to 1,500 attendees. Doors shall not open for weekday evening uses of the performing arts center before 6:30 PM (6:00 PM for weekends and holidays). In no case shall any use of the performing arts center have an exiting time past 2:00 AM.
6. This zoning permit requires consistent implementation of the Burton Hub – Performing Arts Center (PAC) Operational Management Plan dated April 23, 2020. The Operational

Management Plan may be altered only upon review and approval by the Development Review Board following a public hearing.

7. This zoning permit requires execution of Department of Public Works' recommendations in their June 26, 2020 letter from Susan Molzon, P.E.
8. This zoning permit includes a 33-space parking waiver and is based on shared parking between 180 and 266 Queen City Park Road. The parking waiver is granted contingent on implementation of the Burton – Parking Management Plan dated July 7, 2020. Parking for use by the performing arts center located at 180 Queen City Park Road shall be secured by deed or easement for the duration of the performing arts center use. Such easement or deed is subject to review and approval by the city attorney prior to execution.
9. No exterior signs are included in this zoning permit. All exterior signs are subject to separate zoning permit(s).
10. A state wastewater permit is required.
11. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Permitting & Inspections as well as city and state energy code compliance and other permit(s) as may be required.
12. Standard permit conditions 1-15.

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
vacant
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, August 18, 2020, 5:00 PM

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/86007795506?pwd=a0pzU0xWd00yZTBnek5MTnRhZmJHQT09>

Webinar ID: 860 0779 5506

Password: 842557

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

Agenda

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

1. ~~20-0717CA/MA; 273 Pearl Street (RH, Ward 8E) Triple Tree Group, LLC, (Bruce Baker, Greg Doremus)~~

Planned Unit Development involving 273 Pearl St, 11 Hungerford Terrace, 15 Hungerford Terrace and 21 Hungerford Terrace. Demolish porch and move garage at 21 Hungerford; demolish garage at 11 Hungerford. Construct 12-unit residential building with related parking and supporting infrastructure. (Project Manager: Mary O'Neil) *Deferred to Sept 15th meeting.*

2. 20-0854CA/CU; 266 Queen City Park Rd (ELM, Ward 5S) Burton Corporation

Conditional use application to create 11,560 SF Performing Arts Center use within an existing 85,000+ SF structure; proposed façade improvements to existing building exterior. *Continued review.* (Project Manager: Scott Gustin)

3. 21-0018CA/CU; 119 Spruce Street (RL, Ward 6S) Chris Khamnei

Remove garage and pantry addition on rear of structure and construct new garage. (Project Manager: Scott Gustin)

V. Other Business

1. 20-0971CA/CU; 362 South Union Street (RL, Ward 6S) William Fellows and Tshen Shue

Amend condition #4 of approved zoning permit 20-0971CA/CU to remove the requirement to amend the shared driveway easement to accommodate the proposed development. (Project Manager: Ryan Morrison)

2. DRB Bylaw amendment

VI. Adjournment

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).
Printed on 100% Recycled Paper

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 Development Review Board

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

Brad Rabinowitz
AJ LaRosa
Geoffrey Hand
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Kienan Christianson
vacant
Ravi Venkataraman (Alt)
Sean McKenzie (Alt.)



Burlington Development Review Board Findings of Fact Monday, August 10, 2020

In RE: 20-0971CA/CU; 362 South Union Street (Ward 6S, RL) (Tax Lot No. 049-4-216-000)

Owner/Applicant: William Fellows & Tshen Shue / William Fellows

Request: The applicant seeks approval to demolish a detached garage and replace it with a new structure containing a two car garage and an attached second unit (duplex).

Members Present:

Brad Rabinowitz
AJ LaRosa
Springer Harris
Brooks McArthur
Kienan Christianson
Ravi Venkataraman
Sean McKenzie

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

The applicant proposes demolishing a damaged/structurally unsound garage and replacing it with a new 2-car, 2-story garage and an attached 2-story dwelling unit. The new structure will connect to the existing principle building (single family residence), making it all one structure and thus able to be considered a duplex. The existing garage is included in the property's listing in the South Union Street Historic District (national registry). The listing notes the garage as '*a square, clapboard sided, one story, two bay garage with a hip roof, two shuttered windows on the west and east facades and a small brick exterior chimney on the north façade, is located northeast of the main house. The roof is wood shingled, and has a broad gable above the garage doors on the south elevation. Each bay has a pair of hinged wooden doors.*' The principal structure on the property, a single family residence constructed c. 1900, will remain largely as-is – no changes are proposed except for the connection to the new garage and dwelling. Additionally, a garden house, c. 1935, also exists further back on the property.

The applicant has provided photos which show the deteriorated state of the garage. The applicant bought the property in June, 2018 and states that the garage was in its deteriorated state then.

The attached unit will be 2 stories, with a bedroom, dressing/study room and bathroom on the second floor, and a kitchen, bathroom and living space on the first floor. An attached patio and pool are proposed on the south side of the unit. And the new structure will connect to the rear of the existing single family home via an enclosed walkway to be considered a duplex.

The existing shared driveway will be repaved, and the footprint will be slightly altered to make vehicular access to the garage easier

The Design Advisory Board reviewed the proposal on July 14, 2020, and voted unanimously to approve the application as proposed with the following motion:

I move that we approve the demolition of the existing garage based on the applicant's sufficient reasons that warrant the demolition, including the additional documentation (photos); and that we approve the project as submitted. Further, with the applicant being an architect, he is qualified to make the determination that the garage is not structurally sound.

I. Findings

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. The applicant will have to secure a letter from the Department of Public Works verifying that there is adequate water and sewer capacity for the new dwelling unit. A state wastewater permit will be needed.

Affirmative finding as conditioned.

- 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. The district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history. The proposal will result in an additional dwelling unit on the property, classified as a duplex. **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 fully developed residential street. The property shares a driveway with 368 South Union Street, and has room for the required number of parking spaces (4). There are transit stops within walking distance along South Union Street (approx. 150 ft away), and sidewalks exist on both sides of the street. The proposal is not expected to create adverse impacts on the existing transportation system. **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 addition will be subject to applicable life safety and building standards. **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;*

The development will be located behind the primary single family home, and will be difficult to see from the street. The proposal will utilize existing and new landscaping to minimize the visual impact from surrounding properties. **Affirmative finding.**

2. *Time limits for construction.*

Standard time limits for construction are as follows: construction must commence within one year from the date of zoning permit issuance, and after that, an additional two years is available to finish the project. **Affirmative finding.**

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

Standard construction hours are 7:00 AM to 5:30 PM, Monday – Friday. Saturday construction hours may be allowed upon request to the Development Review Board. No work on Sunday. **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 family detached dwellings and duplexes. This district is typically characterized by a compact a cohesive residential development pattern reflective of the respective neighborhoods' development history.*

The property contains a single family residence and the proposal will result in its conversion to a duplex use, which is a conditional use in the RL zoning district. **Affirmative finding.**

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and the following standards:

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

Duplex, RL Minimum 60' frontage, RL Minimum 10,000 sq ft lot size.

362 South Union Street is a 16,468 sf lot, with 51 feet of frontage. The non-conforming frontage is considered existing and does not affect the property's eligibility for a duplex use. **Affirmative finding.**

Table 4.4.5-2 Base Residential Density

The base density allowance in the RL zoning district is 7 units per acre, and Table 4.4.5-1 CDO notes the minimum lot size required for a duplex use is 10,000 sf. The property is 16,468 sf in area.

$16,468 / 43,560 \text{ (acre)} = 0.378 \text{ acres}$

$2 \text{ units} / .378 = 5.3 \text{ units; less than the 7 unit/acre limitation}$

Affirmative finding.

Table 4.4.5-3 Residential District Dimensional Standards

Max. lot coverage: 35%; Max. height: 35 ft; Front yard setback min.: Ave. of 2 adjacent lots on both sides, +/- 5 ft; Side yard setback: 10% of lot width or average of side yard setback of 2 adjacent lots on both sides; Rear yard setback: 25% of lot depth, but in no event less than 20 ft.

The proposal will result in 33.8% lot coverage. Front yard setbacks are not an issue. Based on a lot width of 55.9 ft and depth of 281 ft, setbacks are 5.6 ft (side) and 70 ft (rear). Maximum height proposed is 24' 7". **Affirmative finding.**

(c) Permitted and Conditional Uses

Duplexes are a conditional use in the RL zoning district, per Appendix A. Article 13 defines duplex as “a single structure containing two (2) separate dwelling units, regardless of the type of construction...” It does not articulate the minimum degree of attachment. Commonly, garage space will connect two duplex units. In this case, an enclosed walkway is proposed. **Affirmative finding if the DRB concurs that the enclosed walkway constitutes an attachment.**

(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.

The residential occupancy provisions of the ordinance apply to home. **Affirmative finding.**

6. Uses

A. Exception for Existing Neighborhood Commercial Uses

Not applicable.

7. Residential Development Bonuses

Not applicable.

Article 5: Citywide General Regulations

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 5.4.8 Historic Buildings and Sites

The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:

- *To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;*
- *To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;*
- *To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,*
- *To promote the adaptive re-use of historic buildings and sites.*

(a)Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

As such, a building or site may be found to be eligible for listing on the state or national register of historic places and subject to the provisions of this section if all of the following conditions are present:

1. *The building is 50 years old or older;*
2. *The building or site is deemed to possess significance in illustrating or interpreting the heritage of the City, state or nation in history, architecture, archeology, technology and culture because one or more of the following conditions is present:*
 - A. *Association with events that have made a significant contribution to the broad patterns of history; or,*
 - B. *Association with the lives of persons significant in the past; or,*
 - C. *Embodiment of distinctive characteristics of a type, period, or method of construction, or representation of the work of a master, or possession of high artistic values, or representation of a significant or distinguishable entity whose components may lack individual distinction; or,*
 - D. *Maintenance of an exceptionally high degree of integrity, original site orientation and virtually all character defining elements intact; or,*

- E. Yielding, or may be likely to yield, information important to prehistory; and,*
3. *The building or site possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association*

The garage at 362 South Union Street is listed as historic on the South Union Street Historic District National Register. See attached listing sheet. Therefore, the standards of Section 5.4.8 apply to the garage. **Affirmative finding.**

(d) Demolition of Historic Buildings:

The purpose of this subsection is:

- To discourage the demolition of a historic building, and allow full consideration of alternatives to demolition, including rehabilitation, adaptive reuse, resale, or relocation;*
- Provide a procedure and criteria regarding the consideration of a proposal for the demolition of a historic building; and*
- To ensure that the community is compensated for the permanent loss of a historic resource by a redevelopment of clear and substantial benefit to the community, region, or state.*

1. Application for Demolition

For demolition applications involving a historic building, the applicant shall submit the following materials in addition to the submission requirements specified in Art. 3:

- A. *A report from a licensed engineer or architect who is experienced in rehabilitation of historic structures regarding the soundness of the structure and its suitability for rehabilitation;*

No such report has been submitted, and the DAB agreed that it wouldn't be necessary since the documentation provided clearly shows extensive damage throughout, ruling out rehabilitation. Photos submitted clearly show rotten/damaged siding and trim, interior wall and ceiling damage, and a cracked foundation. The image of the foundation alone on the garage's south side appears quite significant. **Affirmative finding.**

- B. *A statement addressing compliance with each applicable review standard for demolition;*

The application clearly intends for a complete reconstruction of the garage and additional living space for a second dwelling. While the applicant hasn't included in the application considerations for alternatives to demolition (rehabilitation, adaptive reuse, resale, or relocation), it appears that the most of the structure may not be salvageable due to rotten materials and a faulty foundation. **Affirmative finding.**

- C. *Where a case for economic hardship is claimed, an economic feasibility report prepared by an architect, developer, or appraiser, or other person experienced in the rehabilitation and adaptive reuse of historic structures that addressed:*

- (i) *the estimated market value of the property on which the structure lies, both before and after demolition or removal; and*
- (ii) *the feasibility of rehabilitation or reuse of the structure proposed for demolition or partial demolition;*

There is no claim for economic hardship. **Not applicable.**

- D. *A redevelopment plan for the site, and a statement of the effect of the proposed redevelopment on the architectural and historical qualities of other structures and the character of the neighborhood around the sites; and*

The application includes a plan for the redevelopment of the garage, while not affecting the other two listed historical structures on the property – the primary home at the front and the garden house in the rear. **Affirmative finding.**

- E. *Elevations, drawings, plans, statements, and other materials which satisfy the submission requirements specified in Art. 3, for any replacement structure or structures to be erected or constructed pursuant to a development plan.*

These materials are included in the application. **Affirmative finding.**

2. Standards for Review of Demolition

Demolition of a historic structure shall only be approved by the DRB pursuant to the provisions of Art. 3, Part 5 for Conditional Use Review and in accordance with the following standards:

- A. *The structure proposed for demolition is structurally unsound despite ongoing efforts by the owner to properly maintain the structure; or*

Although there is no professional analysis provided that addresses the soundness of the garage, photos submitted indicate that it may be beyond simple maintenance efforts to maintain. Specifically, the foundation on the south wall appears to be significantly cracked, and much of the walls (exterior and interior) appear to be significantly damaged/rotten. Since the current owners purchased the property only two years ago, it seems that they ‘adopted’ a dilapidated historic garage.

Affirmative finding.

- B. *The structure cannot be rehabilitated or reused on site as part of any economically beneficial use of the property in conformance with the intent and requirements of the underlying zoning district; and, the structure cannot be practicably moved to another site within the district; or*

Even short of a professional analysis from an engineer or architect, the majority of the garage materials appear to be damaged/rotten beyond the point of reuse.

Affirmative finding.

- C. *The proposed redevelopment of the site will provide a substantial community-wide benefit that outweighs the historic or architectural significance of the building proposed for demolition.*

The redevelopment of the garage and additional dwelling unit portion won’t necessarily provide a community-wide benefit since it is for personal use and will

be almost unseen from the street. The main point the applicants are trying to make is that the existing garage is damaged enough to warrant its demolition.

Affirmative finding.

And all of the following:

- D. The demolition and redevelopment proposal mitigates to the greatest extent practical any impact to the historical importance of other structures located on the property and adjacent properties;*

The other two historic structures on the property (the home and the rear garden house) will remain as-is. While the garage can be seen from adjacent properties, it, as well as the garden house, are difficult to see, if at all, from the public street.

Affirmative finding.

- E. All historically and architecturally important design, features, construction techniques, examples of craftsmanship and materials have been properly documented using the applicable standards of the Historic American Building Survey (HABS) and made available to historians, architectural historians and others interested in Burlington's architectural history; and*

The existing garage is documented in the South Union Street Historic District (National Listing), and photos are included with this application. **Affirmative finding.**

- F. The applicant has agreed to redevelop the site after demolition pursuant to an approved redevelopment plan which provides for a replacement structure(s).*

- (i) Such a plan shall be compatible with the historic integrity and enhances the architectural character of the immediate area, neighborhood, and district;*

The proposed replacement structure varies from the previous appearance, and may likely vary from other accessory structures in the immediate area. One such exception to this would be the recently approved garage at 129 Spruce Street that is completely new, and unique to the architectural stylings of similar accessory structures in the neighborhood. **Affirmative finding.**

- (ii) Such plans must include an acceptable timetable and guarantees which may include performance bonds/letters of credit for demolition and completion of the project; and*

The application includes a complete redevelopment; however no such timetable has been provided by the applicant. What is relevant here is that construction must commence within one year from the date of zoning permit issuance. Once that requirement has been met, the zoning permit is active for an additional 2 years (3 years total) in order to complete the project. **Affirmative finding.**

- (iii) The time between demolition and commencement of new construction generally shall not exceed six (6) months.*

See above. In order to keep the zoning permit effective, construction must start within a year of zoning permit approval. **Affirmative finding.**

This requirement may be waived if the applicant agrees to deed restrict the property to provide for open space or recreational uses where such a restriction constitutes a greater benefit to the community than the property's redevelopment.

The private property is in a developed residential neighborhood. This would not be likely. **Not applicable.**

3. Deconstruction: Salvage and Reuse of Historic Building Materials

The applicant shall be encouraged to sell or reclaim a structure and all historic building materials, or permit others to salvage them and to provide an opportunity for others to purchase or reclaim the building or its materials for future use. An applicant may be required to advertise the availability of the structure and materials for sale or salvage in a local newspaper on at least three (3) occasions prior to demolition.

The applicant should endeavor to salvage and reuse, or provide to others, whatever building materials can reasonably be salvaged. **Affirmative finding as conditioned.**

Section 5.5.2 Outdoor Lighting

Lighting fixtures are shown on an elevation drawing provided. Spec sheets will need to be submitted to staff for review and approval. **Affirmative finding as proposed.**

Section 5.5.3 Stormwater and Erosion Control

An Erosion Prevention and Sediment Control Plan has been submitted to the Stormwater Program Manager. Prior to the start of construction, this plan shall be approved. **Affirmative finding as conditioned.**

Section 5.5.4 Tree Removal

The existing conditions site plan shows one-two trees in the footprint of the new structure that will be removed. No other trees are proposed for removal. **Affirmative finding.**

Article 6: Development Review Standards

Part 1: Land Division Design Standards

No land division is proposed as part of this application. Not applicable.

Part 2: Site Plan Design Standards

Sec. 6.2.2 Review Standards

(a)Protection of Important Natural Features:

There are a few mature trees that line the north property line. The site plan indicates that there may be two (6" and 10" diameter) trees that will be removed to make way for the new structure. **Affirmative finding.**

(b) Topographical Alterations:

No topographical alterations are defined within the project application. **Not applicable.**

(c) Protection of Important Public Views:

There are no protected important views from or through this property. **Not applicable.**

(d) Protection of Important Cultural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Archeological sites likely to yield information important to the city's or the region's pre-history or history shall be evaluated, documented, and avoided whenever feasible. Where the proposed development involves sites listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8(b).

See Section 5.4.8, above. **Affirmative finding.**

(e) Supporting the Use of Renewable Energy Resources:

No part of this application precludes the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**

(f) Brownfield Sites:

This address is not listed on the Vermont DEC website for identified Brownfields. **Not applicable.**

(g) Provide for nature's events:

Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.

Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.

The applicant has provided an Erosion Prevention and Sediment Control Plan for review by the Stormwater engineering program. Their review and written approval will be a condition of any permit.

The main entrance to the second dwelling unit is inset from the wall of the structure and will provide cover from the elements. **Affirmative finding.**

(h) Building Location and Orientation:

The replacement garage is in a pre-existing location on the site, and the second dwelling unit portion will extend to the east off the garage. Overall, the new/replacement structure will be located behind the principle structure and difficult to see from the street. **Affirmative finding.**

(i) Vehicular Access:

Access will remain as existing, from South Union Street via a driveway that is shared with 368 South Union St. Parking will be provided off-street. **Affirmative finding.**

(j) Pedestrian Access:

Pedestrian access between the primary structure and the South Union St. sidewalk will remain. The site plan indicates a new enclosed walkway between the replacement structure and the primary structure. **Affirmative finding.**

(k) Accessibility for the Handicapped:

The building inspector has jurisdiction over ADA requirements. By his direction and per Chapter 8 of the Burlington Code of Ordinances, 4 to 14 units must provide 1 accessible unit. This review is conducted during the building permit stage. **Affirmative finding as conditioned.**

(l) Parking and Circulation:

Within the Neighborhood Parking District, 2 parking spaces are required for each residential unit. The two spaces in the garage and the two spaces behind each garage door satisfy this requirement. The site will continue to utilize the shared driveway (with 368 South Union Street) for access. **Affirmative finding.**

(m) Landscaping and Fences:

The plans indicate new and existing landscaping around the new/replacement structure. New plantings include evergreen hedges, border plants (species yet to be identified), and one new tree. No new fencing is proposed. **Affirmative finding as conditioned.**

(n) Public Plazas and Open Space:

There are no public plazas required, but the site plan illustrates areas for resident outdoor enjoyment. **Affirmative finding.**

(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

An elevation drawing shows the location for new light fixtures. Spec sheets for the fixtures proposed will need to be reviewed and approved by staff to ensure compliance with Sec. 5.5.2. **Affirmative finding as conditioned.**

(p) Integrate infrastructure into the design:

Exterior storage areas, machinery and equipment installations, service and loading areas, utility meters and structures, mailboxes, and similar accessory structures shall utilize setbacks, plantings, enclosures and other mitigation or screening methods to minimize their auditory and visual impact on the public street and neighboring properties to the extent practicable.

Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be placed underground whenever practicable. Trash and recycling bins and dumpsters shall be located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.

Any development involving the installation of machinery or equipment which emits heat, vapor, fumes, vibration, or noise shall minimize, insofar as practicable, any adverse impact on neighboring properties and the environment pursuant to the requirements of Article 5, Part 4 Performance Standards.

A mailbox is identified at the entrance to the second dwelling unit. Mechanical equipment and meters are not included and will need to be on a revised plan should they become part of the development. All electrical service to the new building will have to be underground.

Affirmative finding as conditioned.

Part 3: Architectural Design Standards

Sec. 6.3.2 Review Standards

(a)Relate development to its environment:

1. Massing, Height and Scale:

The existing garage is one story tall. The replacement garage is proposed at two stories, as well as the attached dwelling unit. While the massing, height and scale will increase substantially, the structure is located to the rear of the principle single family home and will not be easily seen from the street. It will be visible from adjacent properties. The proposal will not conflict with the massing, height, or scale of the existing principal dwelling. **Affirmative finding.**

2. Roofs and Rooflines.

The existing garage has a gable roof, and the applicant proposes a two-way slanted roof for the new structure. The roof will slant downward in a west-east manner over the garage, and then slant upward in the same west-east manner over the second dwelling unit. This roof type appears to be unique among those on other accessory buildings in the area, however, because it will be particularly difficult to see from the public street, it won't have a negative impact on the roofline appearance of the many existing homes along South Union Street. **Affirmative finding.**

3. Building Openings

There are a variety of building openings proposed on the new structure, with a mix of fixed, casement and awning windows. The garage portion of the structure will see a mix of fixed, awning and casement windows. On the rear façade (north), small awning windows will provide some natural sunlight into the garage and upper floor. On the west side, an awning and casement window is proposed, along with a row of fixed windows just below the roof line. This side also contains a man-door providing access to the garage. The 'front' of the garage portion (south) will have two garage doors at the ground level, and at the upper story level, there is one window proposed and a sliding door providing access to the balcony.

The enclosed walkway connector will be almost entirely glazed.

A mixture of fixed and casement windows are proposed on the second dwelling unit portion. Large picture windows are proposed and will provide ample sunlight into the living and sleeping areas on the first and second floors. Additionally, one door on the south side will be installed providing direct access to the patio. **Affirmative finding.**

(b) Protection of Important Architectural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.

See Section 5.4.8, above.

(c) Protection of Important Public Views:

There are no protected important views from this property. **Not applicable.**

(d) Provide an active and inviting street edge:

No changes are included for the principal building. **Not applicable.**

(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

The new building is proposed to with wood clapboard siding. Roofing will be formed metal. Windows will be aluminum clad wood windows. **Affirmative finding.**

(f) Reduce energy utilization:

All new construction shall meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances. **Affirmative finding as conditioned.**

(g) Make advertising features complementary to the site:

Not applicable. No signage is proposed.

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p), above.

(i) Make spaces secure and safe:

Redevelopment is subject to all applicable building and life safety codes as defined by the Burlington's Building Inspector and the Fire Marshal. **Affirmative finding as conditioned.**

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

Duplexes require 4 parking spaces (2 per unit) in the Neighborhood Parking District. The proposal includes a two car garage and two spaces behind each garage door for a total of four parking spaces. **Affirmative finding.**

Table 8.1.11-1 Minimum Parking Dimensions

The minimum back-up length for 90° angled parking spaces is 20 ft. Plan A-101 shows some back up space, but not enough to adequately back up within the confines of the shared driveway easement. Additionally, the two easternmost parking spaces will have a difficult time backing up and pulling forward without the other outdoor parking space (westernmost) being in the way.

The neighbor's driveway extends off the shared driveway directly behind the parking for the subject property, making backing up and maneuvering forward simple. However, the width of the shared driveway easement does not extend far enough to satisfy a 20 ft back-up space. The applicant states that this practice (utilizing the neighbor's driveway beyond the extent of the easement) already occurs and suggests that it will continue with the new proposal.

The CDO allows shared driveways and parking to straddle property lines. The easement is a private agreement between the two properties. However, as stated above, the easement does not go into the neighboring property far enough to accommodate a 20 ft back-up space. The applicant will have to amend the easement to establish that extra area for the full 20-ft back-up space into the neighboring property. **Affirmative finding as conditioned.**

II. MINUTES

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

III. MOTION

Motion: Brad Rabinowitz

I move that we **approve** the application and adopt Findings and Conditions noted herein.

IV. CONDITIONS OF APPROVAL

1. **Prior to the release of the zoning permit**, the applicant shall secure a letter of confirmation from the Department of Public Works verifying that there is adequate water and sewer capacity for the second dwelling unit.
2. **Prior to the release of the zoning permit**, light fixture spec sheets shall be submitted to staff for review and approval.
3. **Prior to the release of the zoning permit**, specific landscape species shall be submitted to staff for review and approval.
4. **Prior to the release of the zoning permit**, the applicant shall amend the shared driveway easement to accommodate a full 20 ft back-up space for the required parking.
5. **Prior to the start of construction**, the associate Erosion Prevention and Sediment Control plan shall be reviewed and approved by the Stormwater Program Manager.

6. Standard construction hours are 7:00 AM to 5:30 PM, Monday – Friday. Saturday construction hours may be allowed upon request to the Development Review Board. No work on Sunday.
7. If applicable, mechanical equipment and meters shall be identified on a revised site plan, along with their associated specification sheets, **prior to the release of the zoning permit**, subject to staff review and approval.
8. All electrical service to the new building shall be underground.
9. Construction of the proposed replacement structure shall commence within one year from the time of the existing garage's removal.
10. A state wastewater permit is required.
11. Residential occupancy limits apply. The occupancy of any dwelling unit is limited to members of a family as defined in Article 13. Not more than four unrelated adults may occupy either dwelling unit.
12. The applicant shall be encouraged to sell or reclaim a structure and all historic building materials, or permit others to salvage them and to provide an opportunity for others to purchase or reclaim the building of its materials for future use. An applicant may be required to advertise the availability of the structure and materials for sale or salvage in a local newspaper on at least three (3) occasions prior to demolition.
13. 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.
14. All new construction shall meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
15. Standard Permit Conditions 1-15.

Seconded: Brooks McArthur

Vote: 7-0-0, motion carried

Dated at Burlington, Vermont, this 11th day of August, 2020.

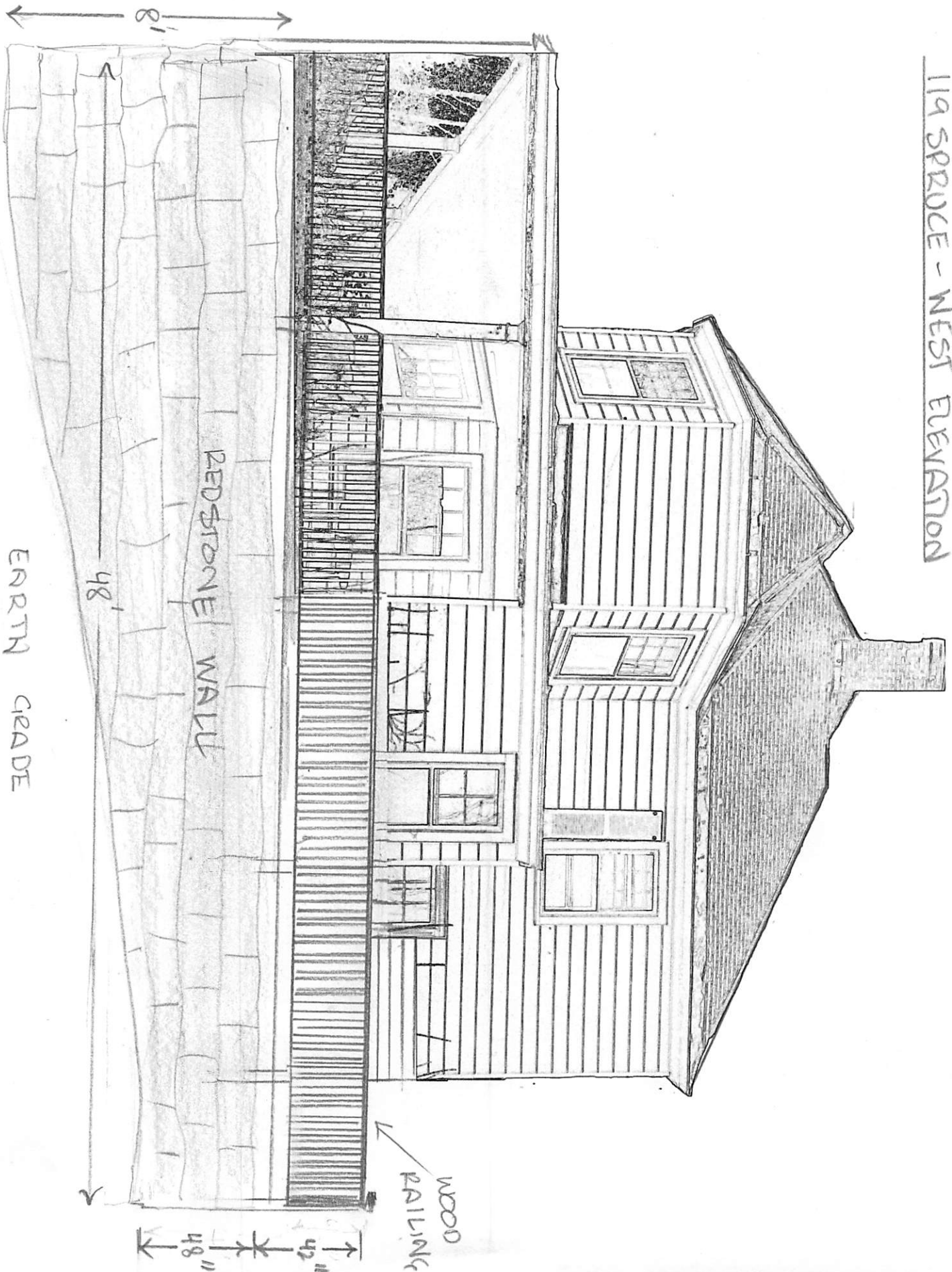
Respectfully Submitted,

Bradford L. Rabinowitz, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person

may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

119 SPRUCE - WEST ELEVATION



LANDPLAN
61 Central Avenue
Burlington, Vermont 05401
802/233-6640 john.caulo@gmail.com

MEMORANDUM

TO: Scott Gustin
FROM: John Caulo
RE: Supplemental Information: Burton PAC Conditional Use Application
DATE: 14 August 2020

This memorandum provides additional information in support of the above-referenced application. Specifically, this memorandum addresses the following items either raised at the DRB public hearing dated August 4, 2020, and/or included in Staff Comments released by Scott Gustin dated 8/13/20:

Supplemental Information - Traffic Impact Study: See attached memo prepared by VHB dated 8/12/20 which provides a rebuttal to the 8/4/20 DRB presentation by CRZ as well as supplemental information relative to the use of the “One-Way” bridge.

Proposed Condition 3: The applicant requests that proposed Condition 3 be modified to read as follows: “Prior to the issuance of the Zoning Permit for the Project, the Applicant shall provide a post-occupancy sound monitoring plan to be reviewed and approved by Staff. Key parameters of the Monitoring Plan to include:

1. Within the first 6 months of operation, Applicant shall coordinate schedule with noise consultant to conduct monitoring for three (3) events that are expected to be at full capacity.
2. Sound monitoring shall be conducted within the same geographic area covered by the Project Noise Assessment prepared by RSG dated 4/20/20.
3. All costs associated with execution of Sound Monitoring Plan to be the responsibility of the Applicant.
4. If monitored sound levels from the facility exceed 45 dBA Leq (1-hour) at night (10 PM to 7 AM) at residential areas, additional sound mitigation measures will be required to bring sound levels into compliance.
5. This condition can only be only be modified with the approval of the DRB after a public hearing.”

Proposed Condition 4: The applicant requests that proposed Condition 4 be modified to read as follows: “Notwithstanding Condition 3 above, this zoning permit requires installation of the Planned Mitigation measures that achieve the performance standards as identified in Section 5.3 of the *Burton Snowboards & Higher Ground HUB Project Noise Assessment* dated April 20, 2020, as follows:

1. The addition of at least one layer of drywall (e.g. 5/8" Type X) below the steel trusses over the performance space, or an alternative construction with similar or better overall sound transmission loss.
2. Adding to the performance space exterior metal walls an air gap with insulation and at least one layer of 5/8" Type X drywall to the interior, or an alternative construction with similar or better overall sound transmission loss.
3. This condition can only be modified with the approval of the DRB after a public hearing."

Proposed Condition 5: Please add the following sentence: "This condition can only be modified with the approval of the DRB after a public hearing."

Proposed Condition 7: Based on our conversation with DPW staff this afternoon, I understand Susan Molzon, PE will revise and update her communication dated 6/26/20 which will be included as a proposed condition, In addition, please add the following sentence at the bottom of revised Condition 7: "This condition can only be modified with the approval of the DRB after a public hearing."

Thanks for your ongoing assistance in processing this application, Scott. Please share this information with the DRB at your earliest convenience. We look forward to concluding the public hearing at next Tuesday's DRB meeting.



Memorandum

To: John Caulo, Project Manager

Date: August 12, 2020

Project #: 58237.00

From: Jenn Conley, PE, PTOE

Re: Burton Hub

Response to Traffic Questions Raised at DRB Hearing

VHB has conducted a Traffic Impact Study (TIS) for the proposed Performing Arts Center use, a component of the redevelopment of the Burton Hub properties located at 180 and 266 Queen City Park Road (formerly 80 and 152 Industrial Parkway) in Burlington, Vermont. The findings of the TIS have been summarized in a memorandum dated April 23, 2020. The TIS has undergone rigorous peer review by the City's Transportation Consultant, CHA. This review resulted in requests for additional information and some additional analysis checks. The impacts on the transportation system revealed by the TIS have been used by the Applicant and DPW to craft proposed conditions on the times of operation and other management criteria for the Performing Arts use to mitigate those impacts.

General Rebuttal to August, 4, 2020 DRB Presentation by CRZ

The presentation made during the August 4, 2020 DRB meeting by opponents to the proposed use assert the TIS is unreliable and flawed. The TIS follows applicable industry and professional standards to analyze the traffic impacts of the proposed Performing Arts use. The DRB can have confidence the TIS is valid and sound as it was reviewed not only by DPW, but also DPW's consultant, CHA. Atypical for a DRB hearing, this application has a peer reviewed TIS. Therefore, the TIS, along with the proposed permit conditions related to transportation, should be viewed as strong evidence that the impacts of the proposed use satisfy the Conditional Use criteria. Unlike the TIS, the presentation made by representatives of the CRZ during the August 4th hearing attempted to depict impacts of the proposed use that failed to follow any recognizable accepted traffic engineering methodologies.

In addition, the presentation made during the August 4, 2020 DRB meeting by project opponents misuse the TIS and the concerns raised fail to analyze the Performing Arts Center use reflecting the proposed conditions for this application. The DRB should use the TIS as it was used by the Applicant, DPW and CHA. The impacts on the transportation system revealed by the TIS have been used by the Applicant, DPW and CHA to craft proposed conditions on the times of operation and other management criteria for the Performing Arts use to mitigate those impacts. For example:

- Limiting the hours for peak events so that no performing arts traffic overlaps with the weekday commuter peak hours ensures that the impact level outlined in the TIS does not occur at any location
- Requiring monitoring and a fifty percent contribution to potential infrastructure improvements for site related traffic increases at the constrained intersection of Home Avenue and Pine will ensure that site traffic does not cause unreasonable impact at that location. With the condition that eliminates event traffic from overlapping with commuter peak traffic, it is unlikely that the level of traffic generated by the site will increase significantly at this location.
- Because the intersection of Home Avenue and the Champlain Parkway has been identified as an intersection of concern in the future, monitoring of that location and identification of mitigation measures has been included in the conditions.

40 IDX Drive, Building 100

Suite 200

South Burlington, Vermont 05403

One Lane Bridge

The City's Transportation Consultant CHA expressed a concern regarding the operation of the one lane bridge and requested additional analysis to simulate that condition by adding delay into the movement associated with each vehicle to account for the time spent traversing the bridge before another vehicle could enter the bridge. CHA requested this analysis be completed for both the conservatively high weekday commuter PM peak hour that was analyzed in the Traffic Impact Study (The TIS analyzed an overlap in commuter peak hour traffic and performing arts center traffic, but at this point, based on the proposed conditions, performing arts trips would not overlap with commuter trips due to the hours of operation in proposed Condition #5) as well as an analysis scenario that models that end of show time period. At end of the show, the existing traffic is extremely low and the addition of Performing Arts Center use related traffic exiting results in an operation where virtually all traffic crosses the bridge travelling in the same direction (to the east). CHA reviewed the traffic volume calculations as well as the analysis parameters and concluded:

We agree with the methodology used to represent the alternating one-way traffic operations on the Queen City Park Road bridge. These analyses show that the operations in the Build condition will be comparable to the No-Build conditions during the morning and afternoon peak hours, and that these operations will have low vehicle delays and short queues. The analyses also show that the one lane bridge can accommodate the projected traffic on Queen City Park Road during the evening condition after the end of events at the Higher Ground component of the project.

The commenters to the DRB presented diagrams that showed what it would look like if 60 vehicles were parked on Queen City Parkway. This depiction was just that – an illustration of 60 vehicles parked. It was not related to an analysis or simulation of the actual operations of the bridge or any other location.

Home Avenue and Pine Street

As outlined in the TIS and reviewed by DPW and CHA, the intersection analysis of Home Avenue and Pine Street indicates it currently operates with lengthy delays during the peak hours. At a constrained intersection, any additional trips will cause delay increases. As such, proposed condition #5 which limits the hours of operation to avoid impacting this location during the commuter peak hour mitigates this concern. In addition, the DPW's recommended condition of conducting a post-construction traffic analysis of the impacts at this location will quantify the project related impacts at this location. In the event that the impact is greater than anticipated, potential infrastructure improvements will be required. Once the Champlain Parkway is in place, the traffic volumes at this location are significantly reduced.

Conclusions

The DPW and CHA reviewed the TIS and found its methodologies accurate. The proposed permit conditions to be attached to this permit address the issues to the transportation system identified by the TIS.



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Conclusions

The DPW and CHA reviewed the TIS and found its methodologies accurate. The proposed permit conditions to be attached to this permit address the issues to the transportation system identified by the TIS.

F.L. Kochman, Inc.
P.O. Box 8084
Burlington, VT 05402-8084
(802) 863-2640
frank@kochmanlaw.com

August 17, 2020

TO: BURLINGTON DEVELOPMENT REVIEW BOARD

RE: BURTON HUB: **Applicability and Violation of the Burlington Noise Ordinance**

Ladies and Gentlemen:

Please consider the following comments submitted on behalf of CRZ Group.

The Burlington Noise Ordinance prohibits **“unreasonable noise”** generally, and, in particular, music and noises from social activity that are **“plainly audible” from “another property or from the street between the hours of 10:00 P.M. and 7:00 A.M.”** Burlington Code of Ordinances, Sections 21-13 (b) (1) and (2) (a) and (c). It also expressly prohibits **“permitting or directing the operation of ...machinery¹ outdoors between the hours of 9:00 PM and 7:00 AM.”** Id., subsection 2 (d). The Noise Ordinance is applicable to the proposed use by reason of CDO sections 5.5.1² and conditional use criterion 6.^{3,4}

In his Memo to Justin Worthley dated August 3, 2020, Eddie Duncan, the applicant’s noise consultant, suggests without discussion that the application is exempt from the Noise Ordinance. (Duncan Memo, page 8, n.1) That suggestion is not correct, for the reasons explained in the Appendix to this letter.

Notwithstanding his suggestion of non-applicability, Mr. Duncan goes on to argue that the proposed performing arts center *complies* with the Noise Ordinance. In doing so, he strains to introduce “ambiguity” where there is none: Quibbling with Mr. Blomberg’s use of the term “detect” as synonymous with the term “plainly audible,” Duncan writes: “One can detect a lot of

¹ e.g., rooftop air handling machinery in this case.

² “All applications for a zoning permit shall be required to demonstrate compliance with the applicable nuisance regulations and performance standards pursuant to the requirements of the Burlington Code of Ordinances. **All such standards shall be met for all uses ... as determined or measured at the property line...**” CDO section 5.5.1. (Emphasis added.)

³ “[T]he proposed conditional use and any related development shall not result in an undue adverse effect on... (6) Any standards or factors set forth in existing City bylaws and city and state ordinances.” CDO section 3.5.6 (a). In our context, any violation of the Noise Ordinance must be understood as “undue.” The DRB does not have authority to waive the Noise Ordinance or any other city or state law.

⁴ The Noise Ordinance is also relevant to conditional use criterion (3) for its definition of “public nuisance.”

sound that is not audible and discernible by a human listener with instrumentation.” (Duncan memo of 8/3 at page 8.) (Emphasis added.) Neither the ordinance nor Blomberg implies anything about “instrumentation.” To an objective reader, the injection of that idea is an obvious red herring. Under the Noise Ordinance, after 10 PM, musically generated sound and/or noise arising from social activity is a public nuisance if a human being with normal auditory function can easily hear it from the street. There is no other plausible meaning of the term “plainly audible.”⁵ Id., (Noise Ordinance sections (b) (2) (a) and (c).) Moreover, after 9 PM, all noise generated by machinery is expressly prohibited out of doors. (Noise Ordinance section (b) (2) (d).)

Taking the diagrams on pages 16 and 17 of RSG’s original Noise Assessment at face value,⁶ the diagram on page 16 indicates that the sound level where the property adjoins the north side of Queen City Park Road will be 50 dBA Leq during concerts. The post-concert diagram on page 17 indicates that the sound level will be 55 dBA Leq at the same location. According to the Noise Assessment:

“... [b]ackground sound levels (Leq) at night (10 PM to 7 AM) are generally in the low 40s between 40 and 45 dBA. During the quietest times at night, sound levels can be in the low 30’s dBA.” (Noise Assessment at page 8.)

Duncan reaffirms this finding on page 4 of his August 3 Memo. Also, he reports, for the first time, the results of a monitoring exercise he conducted in 2010 for the purpose of demonstrating background noise.⁷ Consistent with his general statement about “the quietest times,” his graph of

⁵ Duncan strains to introduce “ambiguity” where there is none with the proposition that “[o]ne can detect a lot of sound that is not audible and discernible by a human listener with instrumentation.” Duncan memo of 8/3 at page 8. (Emphasis added.) Neither the ordinance nor Blomberg implies anything about “instrumentation.” To an objective reader, the injection of that idea is an obvious red herring.

⁶ For the sake of the argument only. CRZ Group does not acknowledge the accuracy of the diagrams, which will require more data to determine, as separately requested, nor does it agree that they use the appropriate measure. As previously shown, according to the Vermont Supreme Court in the Lathrop and Russell cases, the true impact cannot be evaluated without analysis of the frequency, intensity, and duration of instantaneous sound. For extended quotations from the Court, see the undersigned’s letter of July 28, page 3. See also Gregory Tocci letter of August 4, in which RSG’s use of the “equivalent sound level” (Leq) for music is implicitly criticized:

It is my opinion that use of the equivalent sound level is most appropriate for broadband, indistinct sound such as that produced by ventilation equipment, for example, which contains no information. Music and speech are distinct, easily identifiable sounds that contain distracting information. We would recommend that... a design goal for music transient sound be developed to minimize impact... [T]he community should be sufficiently protected if the 1st percentile A-weighted music sound level (LAF01,1-hr) expressed as the 90th percentile A-weighted sound level (LAF90,1-hr), does not exceed the existing residual sound level, by more than 5 dBA.

Tocci Letter, Page 1-2. (Emphasis added.)

⁷ Duncan’s 2017 “background monitoring” exercise, as also reported for the first time in his August 3 Memo, is not material to the issue. It applied to a single property, with the monitoring instrument located directly behind Rhino

the metered sound indicates that, during the operative portion of the night (10 PM to 2 AM), the “Leq” level for two of the three nights shown was in the low 30’s. (Duncan 8/3 memo, page 6, figure 3.) **Duncan’s finding regarding “the quietest times at night” is the one piece of data that is most pertinent to the comparison that concerns us.**⁸ The band will be cutting loose, people will be gathering in the outdoor lounge, and car, truck, and motorcycle engines will be roaring to life at precisely those times that are now the quietest. Thus, during the *relevant* portion of the night, the sound will be plainly audible to the naked ear “from the street” and the sound level differential at the Burton south property line will well exceed the 5 dBA limit necessary for “protection of the community”⁹ (50 – 55 dBA versus “low 30’s”). (Noise Ordinance, Sections (b) (1) and (b) (2) (a) and (c).

In summary: (1) The Noise Ordinance is applicable to the proposed use. (2) The noise to be generated between 10 PM and 2 AM (a) will endanger the peace of others and the welfare of the community and (b) will be plainly audible at the property line. Under either of the general or specific standards, it will violate the Noise Ordinance. Consequently, the application fails the test of CDO section 5.5.1 and cannot be approved for operation after 10 PM.¹⁰

Finally, this letter addresses only the Noise Ordinance, without prejudice to all other objections to the application raised or to be raised by CRZ Group.

Respectfully submitted,

Is/Franklin L. Kochman

Franklin L. Kochman, Attorney for CRZ Group

Foods, an all-night factory quite far from the south line of the Burton property. (See “Monitor A” on the diagram at page 5 of Duncan’s memo.) There is currently no late night activity along Burton’s south line.

⁸ One of the purposes of the Noise Ordinance is to “prevent noise which is prolonged or **unsuitable for the time and place...**” Noise Ordinance, section (a).

⁹ See footnote 6, above. Tocci’s 5 dBA limit for a tolerable differential between existing and proposed conditions would also disqualify the project under CDO section 3.5.6 (a) (3).

¹⁰ The Noise Ordinance bars the operation of the rooftop air handling units after 9 PM. CRZ Group does not consider the one hour difference material to its concerns. However, that machinery must be taken into account, although RSG’s combined Leq measure is not sufficient to reflect the impact of the music component, per Tocci. See footnote 6, above.

Appendix: Applicability of the Noise Ordinance

Duncan suggests that the application is exempt from the Noise Ordinance by reason of its subsection (c) (5).¹¹ (Duncan Memo, page 8, n1.) The proposed use is outside the reach of all of the listed exemptions. That is obvious in almost all of the cases. The exemption for “[p]ersons operating an event or activity under authority of an entertainment permit” gives pause but it, too, dissolves on examination. The ordinance governing entertainment permits (the “Entertainment Permit Ordinance”) requires a permit for any “live public music or performance on the premises of any bar, cabaret, club, hotel or restaurant that holds a first class and/or third class liquor license...” See general ordinances, section 19-18 (a). (Emphasis added.)

The proposed use will be situated in the E-LM zoning district. None of a “bar,” “club,” “hotel,” or “restaurant” is permitted in the E-LM district (see table of uses at the end of the CDO), and the term “cabaret” is not mentioned.

The proposed use is none of those things. Rather, it is a “performing arts center,” defined as “[a]n establishment primarily used for performing arts performances which may include permanent seating.” (CDO. Article 13.) (Emphasis added.)

Footnote 32 of the CDO table of uses, applicable to performing arts centers, allows “accessory space for preparation and serving of food and beverages, including alcohol...” The applicant’s performing arts center may require a liquor license if – and only if -- it exercises its option to serve alcohol, but that will not make it a “bar” under the CDO, in which the term “bar” is defined as “[a]n establishment... primarily devoted to the serving and on-premise consumption of alcoholic beverages...”. The performing arts center is not a “club” as defined in the CDO, and it is obviously not a hotel.

Any cabaret-*like* or restaurant-*like* activity of the Performing Arts Center will be subordinate and incidental to its primary use as a performance venue. The entertainment permit ordinance is designed to reach facilities in which the opposite is true; that is, those in which the performance function is incidental to a facility’s status as a bar, etc. The City Council easily, and in fewer words, could have described the permissible accessory activity for performing arts centers as a “bar,” “cabaret,” or “restaurant,” but it did not. In carving out the accessory use for performing arts centers, the City Council avoided terms that may have brought the use within the scope of the entertainment permit requirement.

If a performing arts center serves no alcohol, it would not need an entertainment permit and certainly would be subject to the noise ordinance. It makes

¹¹ “(5) Events and activities conducted by or permitted by the city. Persons operating an event or activity under authority of an entertainment permit, parade/street event permit, solid waste license, or parks special use permit shall comply with all conditions of such permits or licenses with respect to noise control issues.” (Emphasis added.)

little sense to construe the Noise Ordinance as applicable only to performing arts centers that do not serve alcohol.

Finally, the required conditions of an entertainment permit put in doubt whether holders of such permits are intended to be truly exempt from the Noise Ordinance after all:

It shall be a standard condition of each [entertainment] permit that the applicant shall comply with all city ordinances and regulations...

Burlington General Ordinances section 19-18 (c).

The potential circular effect of this language on the Noise Ordinance has an Alice in Wonderland aspect: on the one hand, one is exempt; on the other hand, one must comply.¹² This anomaly indicates that the true intention of the portion of the Noise Ordinance dealing with entertainment permits is to leave the full extent of noise restrictions for such permits to the discretion of the City Council on a case-by-case basis – but with the standards of the Noise Ordinance as a mandatory minimum. This interpretation best reconciles the interplay of the two ordinances.

Exemptions should be construed narrowly against their operation. The Noise Ordinance must be interpreted to apply to performing arts centers regardless of their permissible accessory uses, either directly or because the standard condition imposed by the Entertainment Permit Ordinance makes it so.

¹² Compare the quoted language from the Entertainment Permit Ordinance with the language of Noise Ordinance subsection (c) (5) at footnote 11, above.

Scott Gustin

From: Karen Huber <karenannehuber@gmail.com>
Sent: Monday, August 17, 2020 11:21 AM
To: Scott Gustin
Subject: Burton Higher Ground Project

[WARNING]: External Message

>
> TO: Planning and Zoning, City of Burlington
>
> ATTN: Scott Gustin, Principal Planner
>
> FM: K. A. Huber, Burlington, VT
>
> RE: Burton/Higher Ground Project
>
> As the above-referenced project is reviewed, please think of the impact it will have on the surrounding community.
>
> Currently the Burlington south end neighborhoods are very quiet - a pin may be heard dropping by 10 p.m. The demographics vary from young families to senior citizens. The car traffic is light with a fair amount of pedestrian and bicycle traffic. If there's a Burton Higher Ground down the street, the occasional car passing by on a Saturday night could increase to more than 2,000 cars per musical show (assuming 1,000 of the 1,500 tickets drive to and from the venue). This could occur as often as three times a week. That's a lot of traffic! And it's going to be mostly young adults who are excited and after a night at the Burton complex probably impaired. The small roads are riddled with stop signs and potholes and of course there's the one-way bridge and the late night freight trains - has anyone thought about them? When the patrons make their return trip to I-89 at 2 a.m, they'll be traversing these quiet neighborhoods while children sleep.
>
> What about COVID???? Higher Ground is staging outdoor concerts in parking lots. Could that happen at Burton? Covid impacts business long enough, they'll need to do a Outdoor Drive-In type of venue. As it is when Burton has one of their events, we can hear it everywhere from South Burlington, South Cove, Home Avenue, Ledgewood to Southwinds. The area is a big bowl - all the sound is circulated around the rim and even amplified.
>
> Surely there's a better alternative for Higher Ground, especially as the Pandemic is changing the performing arts paradigm. It would be fantastic to have Higher Ground in Burlington. The City of Burlington might resume negotiations with Higher Ground for Memorial Auditorium or a more suitable location. Because the little residential avenues of Burlington's southend are not appropriate.
>
> Thank you,
> K. A. Huber
> Ledgewood Circle

Ben Traverse
92 Home Avenue
Burlington, Vermont 05401
bentraverse@gmail.com

August 18, 2020

Re: 266 Queen City Park Road

Dear Members of the Development Review Board,

My family and I live at 92 Home Avenue, at the northwest corner of Home Avenue and Pine Street. I write to supplement verbal comments provided at your meeting of August 4. I favor the commercial development that has taken place in the South End over the past few years. New stores, food, and drink establishments have made a very positive impact on our community. I trust the Applicant's project will similarly make positive contributions to the South End and the City as a whole. Burton is an upstanding employer and a conscientious community steward, and these traits have rung true as they have engaged our neighborhoods during the zoning and permitting processes.

The limited focus of this letter is on traffic concerns at the Home Avenue and Pine Street intersection. This focus is not intended to detract from the legitimate concerns raised by my neighbors during your review process. Additionally, I understand that as of the date of this letter, DPW is still seeking information as to how certain daytime uses by the Applicant may impact traffic at the Home Avenue and Pine Street intersection. I welcome any further traffic mitigation efforts recommended by DPW and do not mean to suggest that the ideas raised below represent the solutions to traffic concerns.

1. **Pre-Parkway Traffic Calming** – I firmly believe the construction of the Champlain Parkway will solve many, if not all, of the traffic concerns for Home Avenue and Pine Street. Given the Parkway's history, though, it is impossible to not be skeptical about the City's construction timeline. As such, it is hard to be comfortable with DPW's recommendation to this Board that traffic calming measures wait until the completion of the Parkway. (See June 26, 2020 DPW Comments).

Other Home Avenue neighbors and I intend on organizing a traffic calming petition for Home Avenue, through DPW's regular channels for these efforts. **My proposal is that the Applicant should be required to participate in and contribute towards any resident-driven DPW traffic calming process.** Practically speaking, if Parkway construction is on schedule, this will likely mean that any traffic calming measures will not occur until after the project's completion. If there is any substantial delay in

construction, however, then requiring that the Applicant participate in any resident-driven traffic calming process may allow for the collaborative implementation of pre-Parkway measures.

2. **Consider Extension of the Operational Management Plan** – the Applicant’s Operational Management Plan contemplates that for larger events, a “third ring” of staff will extend into the Applicant’s parking lots, but no further. While I do not expect the Applicant to be locked into further security efforts through this Board’s review process, **I suggest that the application’s approval be contingent on a commitment from the Applicant to continue to work with South End neighbors, perhaps through the Ward 5 Neighborhood Planning Assembly, to consider how its Operational Management Plan may be further tweaked to mitigate traffic issues along Home Avenue.** For larger events, perhaps temporary signage or additional personnel at Home Avenue intersections may be useful. I am no expert, and do not have the answers now, but there is benefit to be found in knowing the Operational Management Plan is an item that may be revisited once this Board’s process is complete.

Thank you for your due diligence in considering this matter. I appreciate your careful review of neighbor comments.

Sincerely,

Ben Traverse

Cc: Justin Worthley, Burton
Susan Molzon, DPW
Seth Mobley, Home Avenue neighbor
Kyle Creason, Home Avenue neighbor

Justification of Removal of the Garage and Pantry

The Single Family Home located at 119 Spruce Street was built in 1895. The garage was added sometime about 1942. My wife and I purchased the property in 2016 to make it our residence but it did not work out.

At the time we purchased the property, the garage's poured concrete foundation had been cracked in multiple places (probably for decades). The tin roof was rusted through and rotted the roofing material making it unsafe. The walls were 2"x4"x8' construction without sheathing or any other finishing on the interior. The exterior was sheathed with 3/4" type bead board in rough condition.

The garage was built partially on the neighbors property and with no setback whatsoever. There was a previous zoning permit from 129 Spruce Street that removed the driveway its own garage and access to the subject garage which was approved. That permit was acted upon and the driveway was removed. Access was no longer available to the subject garage and it became useless. Its removal allows this single family house to have ample green space for a backyard as opposed to unsightly parking and a driveway.

When we purchased, the pantry was in similar condition with a leaking roof and rotted wood. The metal posts holding up the pantry had rotted and it was pulling on the house. The pressure treated decking and stairs had disintegrated. Its removal allows for an open deck to the backyard where a family and children can enjoy the space. It was not original to the house.



Scott Gustin

From: Susan Molzon
Sent: Tuesday, August 18, 2020 2:42 PM
To: Scott Gustin
Cc: Norm Baldwin; Chapin Spencer; Caleb Manna; 'John Caulo'; 'Justin Worthley'; 'Con
Jenn'
Subject: Burton Hub
Attachments: VHB_BurtonHubMiddayTraffic_081720.pdf

Hi Scott,

This correspondence is to provide DPW comments and recommendations related to the proposed Burton Hub Redevelopment at 180 and 266 Queen City Park Road in advance of the 8/18 DRB hearing. DPW's previous comments and a Memo dated June 26, 2020 related to the Traffic Impact Study (TIS) dated April 23, 2020 remain valid, with clarification noted below.

- Per DPW's Memo dated June 26, 2020, DPW recommended the Applicant complete a post-construction traffic analysis of neighborhood traffic impacts along Home Avenue after the Burton Hub redevelopment project is completed. I wish to clarify that should the Champlain Parkway project be constructed, completed and opened to vehicular traffic prior to the opening of the redevelopment of Burton Hub, this condition may be waived by DPW in consideration of the TIS which predicts most vehicular traffic will be routed through the Champlain Parkway rather than Home Avenue after the Champlain Parkway is opened.

Following DPW's June 26th review, the Applicant has requested daytime use of the Performing Arts Center space for up to 300 persons. The Applicant has provided the attached additional traffic analysis titled "Burton Hub Midday Traffic Analysis" prepared by VHB and dated August 17, 2020. We have reviewed this analysis and agree with the conclusion that this daytime use will not have significant impacts on traffic operations in the surrounding area. Therefore, we do not object to the additional proposed use of the performing arts space for daytime use, with events restricted to not begin before 9AM and to not end between 4PM-6PM on weekdays, as proposed by the Applicant.

Please let me know if you have any additional questions. Thank you for the opportunity to review and provide comments.

Susan

Susan M. Molzon, P.E.
Senior Public Works Engineer

Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
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smolzon@burlingtonvt.gov

Please note: I am working remotely, but can still be reached at the phone number provided above.

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.

Burlington Development Review Board

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



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, August 18, 2020, 5:00 PM

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/86007795506?pwd=a0pzU0xWd00yZTBnek5MTnRhZmJHQT09>

Webinar ID: 860 0779 5506

Password: 842557

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

Minutes

Board Members Present: Brad Rabinowitz, Brooks McArthur, AJ LaRosa, Kienan Christianson, Geoff Hand, Sean McKenzie (Alt), Ravi Venkataraman (Alt)

Board Members Absent: Springer Harris

Staff Present: Scott Gustin, Ryan Morrison, Alison Davis

I. Agenda

B. Rabinowitz: One change to agenda

S. Gustin: 273 Pearl Street PUD item is no longer on agenda, looking to be deferred to future meeting. Design Advisory Board took longer than anticipated.

II. Communications

B. Rabinowitz: 266 Queen City Park Road item- all communications and all other documents posted online.

S. Gustin: Confirms

III. Minutes

B. Rabinowitz: August 4 minutes online to be deliberated

IV. Public Hearing

1. 20-0717CA/MA; 273 Pearl Street (RH, Ward 8E) Triple Tree Group, LLC, (Bruce Baker, Greg Doremus)

Planned Unit Development involving 273 Pearl St, 11 Hungerford Terrace, 15 Hungerford Terrace and 21 Hungerford Terrace. Demolish porch and move garage at 21 Hungerford; demolish garage at 11 Hungerford. Construct 12-unit residential building with related parking and supporting infrastructure. (Project Manager: Mary O'Neil) *Deferred to Sept 15th meeting.*

No public attended to speak on item.

K. Christianson: Motion to defer item to September 15th meeting.

R. Venkataraman: Seconds

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2. 20-0854CA/CU; 266 Queen City Park Rd (ELM, Ward 5S) Burton Corporation

Conditional use application to create 11,560 SF Performing Arts Center use within an existing 85,000+ SF structure; proposed façade improvements to existing building exterior. *Continued review.* (Project Manager: Scott Gustin)

G. Hand: Recused from agenda item

Applicants here: Justin Worthley, Brian Dunkiel, Eddie Duncan, Jennifer Conley, John Caulo, Alex Crothers, Alan Newman, Mark Balderson

Public: Kyle Creason, Janice Ellis, Sharon Bushor, Laurie Smith, Frank Kochman, Robert, Almy Landauer, Stephanie Herrick, Lori Hayes, Diane de Terra

B. Rabinowitz: Gives brief project details. This is the third meeting on project. Recently received more documentation and information on daytime traffic and noise.

B. Dunkiel: Speaks on conditional use proposal for mitigation of issues that public spoke on. Speaks on proposed conditions for permit. Speaks on proposed condition #3 that was sent in J Caulo's memorandum to S Gustin's from August 14, 2020. Asks about expectations for noise assessment study.

E. Duncan: Explains purpose for proposed condition #3 and further investigation into sound levels.

B. Dunkiel: Talks through list on edits for conditions and explains reasoning. Aligns with condition #4 for mitigation measures for noise. Explains reasoning for condition #5. Explains condition #7 addressing daytime use and communications with Burlington Department of Public Works. Explains larger events time limitations and when they are allowed to occur. Requests to add that conditions can be modified with approval of DRB and public hearing so conditions will "live on" with the use of the property.

J. Conley: Explains and gives details surrounding traffic concerns and the traffic studies. Explains proposed conditions to mitigate and monitor traffic location concerns.

B. Rabinowitz: Asks clarification question about large daytime events and the traffic study surrounding that.

A LaRosa: Asks traffic levels at Home Avenue and Pine Street intersection after an event.

J. Conley: Not sure how the traffic will be distributed on the way out of events. Explains difficulty with providing specific numbers and difficulty with measuring the routes people take to get home. Gives reasoning for numbers used. Explains half of site traffic would go east and half would go west. Explains analysis of historic data of conflicting traffic at Home Ave and Pine St intersection. Very rare that there would be a conflict vehicle at that intersection.

B. Dunkiel: Asks if there is any doubt about the capability of that intersection to handle these events.

J. Conley: No doubt because the traffic volumes are significantly higher during the weekday PM peak hour.

K. Christianson: Asks about traffic concerns surrounding lack of Champlain Parkway.

J. Conley: Explains that the conditions include both analyzed situations and review both situations. Conditions were developed to address the concerns that were identified in the traffic study with and without the Champlain Parkway.

R. Venkataraman: Asks about vehicle miles traveled and how far away patrons live.

J. Conley: Higher Ground traffic comes from all over. There is a population that comes from Burlington, but also a population that comes from other locations in Vermont.

R. Venkataraman: Asks if biking/walking infrastructure would improve traffic.

J. Conley: Not necessarily for the Higher Ground concerts.

B. Rabinowitz: Asks about rates of peoples leaving the venue and how that reflects in the analyses. Asks about traffic at Home Ave and Pine Street and the queue of cars.

J. Conley: Explains how they included the peak hour analysis and how it impacts the study. Gives details about how the four-way intersection analyses work. Explains how there will be very little delay involved.

B. Dunkiel: Introduces Eddie Duncan who will address the noise concerns. Addresses a few legal concerns.

E. Duncan: Explains proposed condition #3 and condition #4. References operational management plan. Explains outdoor lounge area screening/barrier was not included in the noise assessment, could reduce noise levels and improve noise mitigation. Addresses concerns from CRZ about sound levels and sound analysis. Explains maximum sound level and average sound level, and the noise assessment.

K. Christianson: Asks about the concentric circle procedure for public protection, asks about safety for people living near the project. Mentions concerns with attendees post-show.

J. Worthley: Benefits of proposal is that Higher Ground has been operating at another location at a similar size for a number of years and know how to do it responsibly. Not a tailgating environment. More parking at Burton location. Not going to have the issue of having to park in other places. Going to have clear rules about operations and expectations.

Recess meeting for 15 minutes

K. Creason: Expresses concerns with traffic study and number of cars leaving shows. Concerns with how the data is presented for the traffic study.

J. Ellis: CRZ members remain concerned with the impacts from the project. Concerns about noise, traffic, safety and infrastructure.

S. Bushor: Expresses concerns for noise and traffic. Asks to consider off-site parking.

L. Smith: Expresses concerns with noise levels.

F. Kochman: Responds to comments and concerns about noise ordinance.

Robert: Expresses concerns with noise levels late at night.

A. Landauer: Concerns about traffic. Concerns with drivers seeking alternate routes when there is a backup at an intersection.

S. Herrick: Concerns about traffic. Concerns about outdoor seating lounge with noise levels.

L. Hayes: Concern with post-show issues. Concerns with show attendee monitoring and enforcement.

D. de Terra: Concerns with noise, rowdy events. Concerns with lack of plans and mechanisms to handle these issues.

B. Rabinowitz: Closes public hearing.

3. 21-0018CA/CU; 119 Spruce Street (RL, Ward 6S) Chris Khamnei

Remove garage and pantry addition on rear of structure and construct new garage. (Project Manager: Scott Gustin)

Applicant: Chris Khamnei

Public: Carolyn Hanson, Steffen Hillemann

C. Khamnei: Gives background details about application for 119 Spruce Street. Gives details about 129 Spruce Street driveway and proposal for driveway. Gives history of project. Elevation drawing shows where garage is going, under porch in the lower elevation. Explains what is currently on property vs what is proposed.

G. Hand: Asks about existing conditions of property and what will need to be done to construct project.

C. Khamnei: Gives details about conditions and ground level.

G. Hand: Asks if other houses on street have this type of garage.

C. Khamnei: Nothing on this street, but there are a few examples in the surrounding area.

G. Hand: Asks about historical nature of home and how this project will impact that.

S. Gustin: Clarifies historical review and where this project falls.

B. McArthur: Asks if house will be used as single-family home

C. Khamnei: Single family home

C. Hanson: Lives across the street and has concerns about work happening. Explains that the proposed driveway and garage takes away with the historical value of the home. Proposes that the garage that was there should not have been taken down.

S. Hillemann: Concerns with what is going on with the property concerns with the redstone wall, addition, and lack of information and/or incorrect information provided about project. Provides details about concerns. Mentions property's tulip tree and concern with taking it down.

C. Khamnei: Responds to neighbor's concerns.

B. Rabinowitz: Closes public hearing.

V. Other Business

1. 20-0971CA/CU; 362 South Union Street (RL, Ward 6S) William Fellows and Tshen Shue

Amend condition #4 of approved zoning permit 20-0971CA/CU to remove the requirement to amend the shared driveway easement to accommodate the proposed development. (Project Manager: Ryan Morrison)

G. Hand: Recused

B. Rabinowitz: Amend conditions of approval to remove condition #4

B. McArthur: Seconds motion

6-0-0

2. DRB Bylaw amendment

G. Hand: Motion to approve

K. Christianson: Seconds

7-0-0

VI. Adjournment

Meeting adjourned 7:20pm.

Bradford L. Rabinowitz, Chair of Development Review Board

Date

Alison Davis *Alison Davis*

Alison Davis, Zoning Clerk

September 1, 2020

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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