



Burlington City Council Ordinance Committee 5/14/2019

City Council Ordinance Committee – Tuesday May 14, 2019

Contois Auditorium, City Hall

MINUTES

Members Present: Councilor Sharon Bushor (Acting Chair), Councilor Joan Shannon, Councilor Adam Roof

Staff Present: Nick Lopez (Assistant City Attorney), Meagan Tuttle (Planning & Zoning), Kim Sturtevant (Assistant City Attorney), David White (Planning & Zoning)

Others in Attendance: Ben Traverse, Elisa Nelson, Paul Smith, Candelin Wahl, Justin Worthley, Gabriel Harwood, Gail Asbury, Ryan Nick, Steve Carlson, Joe Speidel, Colin Hilliard, Gordon Sadler, Paul Boisbert, John Caulo, Alex Kruthers

Meeting called to order at 5:05 pm.

1. Agenda

- i. Motion to adopt/amend agenda

Motion to adopt agenda as follows: note revised Draft Minutes posted on 5/14 per Acting Chair Bushor; note written material for Item 4.01 added on 5/13/19 per Meagan Tuttle/Planning & Zoning; note written material re Item 4.01 titled "Public Comments" added on 5/14/19 per Acting Chair Bushor.

Motion by Councilor Adam Roof, seconded by Councilor Joan Shannon

Final Resolution: Motion Passes

Yes: Councilor Roof, Councilor Shannon, Councilor Bushor

1. Public Forum

2.01 Public Forum

Ben Traverse: I am a resident on Home Ave and Pine Street. The neighborhood as it exists right now is not properly



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equipped to handle an event center. The thought of a concert getting out late and hundreds of cars coming out to what is now a 4-way intersection, that is concerning. I do think that Burton should have an opportunity to go through a the conditional use application process in the future, but at some point the City is going to need to step in to make this new use compatible; infrastructure not currently built right now. What point in the process is the City going to talk about sidewalks, streets, signage, and other necessary protections?

Elisa Nelson: I do not believe that a performing arts center is appropriate in this neighborhood. The potential other users are perfectly acceptable and make sense in the industrial area. What is being considered are a number of possibilities, particularly related to the number of square feet that could be used for performing arts. It is currently a quiet neighborhood and not a place where hundreds of cars are coming through the neighborhood. This is a major difference and a completely inappropriate use. The one thing on this list that is not like the others is performing arts.

Paul Smith: This could result in 2100 square feet, which could be a tremendous change.

Candelin Wahl: My understanding is tonight is approval of a zoning ordinance, not approval of a particular project. I am very enthusiastic about having the arts district extending to this area.

Gabriel Harwood: There are a lot of possibilities, and I think that the performing arts would be a great addition that could fill these spaces with jobs, rather than leaving empty warehouses.

Gail Asbury: The people who are most affected by this are those on the border of the property. I am concerned about the noise impact and believe it will have a real detrimental effect on the neighborhood.

Ryan Nick: I echo the point that this is only about the zoning amendment and we should do whatever we can to support these industries because the businesses that previously used these facilities have left and are not coming back.

Joe Speidel: This would provide jobs for many different types of companies. This is also a conditional use, which means there will be plenty of opportunities for people to provide input and be thoughtful about how this can be rolled out.

Emily Lee: I am a member of the planning commission and this went through the Planning Commission. We went through much discussion and this was thoroughly vetted by the Commission. I personally supported this amendment because the industrial uses make noise which is to be expected in an industrial zone and I believe can be a benefit.

Paul Boisbert: The City really needs to have that kind of facility. I have been involved with a lot of projects throughout town, and none have worked out.



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Russ Kelly: I just wanted to come and support the zoning amendment. I am encouraged by the developed in the enterprise district and believe it is undergoing unique changes and meets the brand going on in the south end.

Councilor Bushor: I sent to our attorney, a number of emails that will now be attached to the agenda so people can see. There were 27 emails sent to me. Almost all of them were in support. One was from the chair of the Burlington Business Association. Another was from the Chair of the Burlington Chorale Society who said they were looking for other places where they could perform. The remainder expressed support and helped create viability for this area. After the meeting last week, I reached out to staff to ask whether this zoning amendment could consider a cap on the performing arts space. I suggested that staff look at that and be prepared to speak to address some of the concerns about the number of people that would be located at a site.

1. Minutes

3.01 Approval of Minutes of 5/7/19

Motion to adopt the minutes.

Motion by Councilor Roof, second by Councilor Shannon.

Final Resolution: Passes

Yes: Councilor Bushor, Councilor Shannon, Councilor Roof

1. For Committee Discussion/Possible Action

4.01 Comprehensive Development Ordinance – Commercial Use in the E-LM Zone, ZA #19-07A

Motion: to approve the amendment with the following changes: not expanding the 5,000 square footage cap on pine street, creating a 15,000 square footage cap for performing arts center uses south of Home Avenue, and also capture the new and amended footnotes provided by staff, with recommendation to City Council.

Councilor Roof made the motion, seconded by Councilor Bushor.

Final Resolution: Passes

Yes: Councilor Roof, Councilor Bushor

No: Councilor Shannon

Meagan Tuttle: We have tried to provide some additional consideration and edited the memo to make changes requested by the committee to provide additional information.



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[Ms. Tuttle provided an updated handout which better reflects the finished space in various lots.]

Meagan Tuttle: We added a number of definitions for other industrial uses, arts, general commercial, gross floor. These are provided to show the breadth of specific use types and how they are defined.

The concern in 4.4.3 was that there was some grey area. We updated this section to create a definition of industrial type use, art production type uses. We included more explicit language that references appendix A and clarifies what bucket all uses in the use table they fall into. Through our municipal development plan we have an open space protective plan which keeps an inventory of open space and wildlife corridors and other important resources. These have been well documented by various entities over time. We take impacts on natural resources and wildlife very seriously. There would be some wetlands that would have to be considered as part of a conditional use process. For anticipated traffic impacts, we know that the Champlain Parkway is an important facility to accommodate existing traffic to serve businesses in the district as well as any potential future expansion of business in that district. We have considered all of these are things as part of our broader planning for the south end.

Councilor Shannon: We asked for definitions of certain terms used in section 4.4.3, some of that has occurred, but I am not sure we have all of that. Performing arts center is in one of the buckets, does higher ground fall into the definition of performing arts center? If so, does this ordinance require a company like higher ground be greater than 49%

Meagan Tuttle No. The proposal removes certain terms and replaced it with "uses unrelated to industrial and art production uses". This does not include art performances.

Councilor Shannon: Okay thank you.

Councilor Bushor: I am satisfied at the changes made in response to our last meeting.

Councilor Roof: Can you explain the role that the Champlain Parkway will have on this part of town.

Meagan Tuttle: The Champlain Parkway can be an access point for the enterprise industrial area

Councilor Roof: So this will be considered a new access point to get to this part of town?



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Meagan Tuttle: Yes, and I believe this is also anticipated to have a new signal which should alleviate some of the traffic congestion problems.

Councilor Roof: With Champlain project in the pipeline, it creates a new and robust thoroughfare which limits the impact of residential uses.

Councilor Bushor: The signalization will also help address the noise that residents mentioned and the constant starting and stopping at the stop sign. I believe the Parkway project is slated to begin in December 2019 and be completed in 18 months or so.

Councilor Shannon: I think the problem with that logic is that we have been told for 50 years that the Champlain Parkway is coming. I do believe that the parkway is coming, but it is not here yet. So I don't think it is going to give people who live in this area much comfort. The other thing we don't know is how the parkway will work after it is finally completed. I would like to see how the parkway is actually working before we hang our hats on it as a solution. I do think that once built, it will provide better access to this area. The neighbors are not entitled to how things exist today, but they are entitled to zoning which limits what can be done today. I do think we are asking neighbors to take on a new burden that is not within the realm of zoning that they had signed up for. We have made changes because there was broad agreement in the community and they were supplemental as to what exists. We do not have this in this project. What we can hang our hat on is the community process we went through with PlanBTV. I wanted to pull the parts of PlanBTV that spoke to what the community vision is here and I don't think that this project fits that vision. Yes, we want arts uses, but I don't think that performing arts was intended when we were talking about this issue. We were intended art production which is in keeping of what the vision was for the district. What we are doing here should be consistent with the vision. That's why I don't see this fitting in, at least at this scale.

Councilor Bushor: If 49% were performing arts centers, that would result in a lot of square footage, which is concerning. By seeing the building and seeing a building that is 8,000 square feet, I came to realize that in some scenarios, we have not only done an amendment and coupled it with a capacity. I reached out to staff and asked how we could find a middle ground. If it is smaller, maybe it is not as incompatible as people feel it is. Meagan, have you prepared something for the committee to consider?

Meagan Tuttle: We previously didn't consider a limit because it is challenging to put a size limit on any type of use because the actual configuration can vary widely. The planning commission has removed size limits recently because it was causing issues for various configurations. We have also had applicants agree to size limits, but then come back 6 months later asking to amend the amendment because the size restriction was too difficult. We looked at the size of other performing spaces and their configurations:

Memorial: 10,000 sq. ft. in a facility close to 50,000 sq. ft.

Flynn: first floor is 15,000 square feet in a facility close to 40,000 square feet.



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Existing higher ground facility may be in the 12,000 sf neighborhood.

Arts riot in its current iteration is just under 5,000 sf but only serves about 300 people

The configuration can greatly impact the number of people that can be served. We would recommend somewhere in the 12,000 - 15,000 sf range to put a restriction, but also recognizing that we can't predict.

Councilor Bushor: If food is provided by Higher Ground, would that be included in the square footage?

Meagan Tuttle: If it is intended to be a bar or food service for the venue itself, it would be included in it.

Councilor Bushor: I am interested in a cap, and would err on the side of 12,000.

Councilor Roof: There are worst case scenarios that could come right now. Making decisions based upon worse case scenarios knowing there is additional procedures after tonight is difficult. There is a market at place here. Is there a market for a 40,000 sf venue?

Alan: I am with Higher Ground. My take is that there is no way that this community could ever support a 40,000 sf venue.

Councilor Roof: I am open to a cap. I am concerned of a cap that is too low and I believe that 12,000 sf is a little bit too low. I would like to have more wiggle room so that these things can be worked out in a subsequent DRB process on an individual basis.

Councilor Shannon: When we were reviewing the zoning changes for Arts Riot, we thought that 5,000 sf of performing arts space was too much. PlanBTV states that it is the intent to maintain an industrial area for business to grow. I still don't feel that this is consistent. I don't know how you argue that 12,000 square feet is a small space. And if that's what we wanted to know, that involves a larger process, like PlanBTV, which requires extensive public engagement. I am very hesitant to not mind what PlanBTV says because that was created by the community. What makes since is to extend what we have done in one section to another section, which is 5,000 sf for a supplemental use.

Councilor Roof: We are guided by a lot of things, including the Planning Commission, who is an entity that spends a lot more time on these issues. And we empower them with that role and I take their feedback seriously. And they did vote unanimously after grappling with many of the issues that we are dealing with. I think this was unpacked thoroughly by the Planning Commission. One theme in PlanBTV is this idea of trying to plan in a different economy. In walking around the south end, I was perplexed at how we have hundreds of thousands of vacant space. So we have a responsibility to play a



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role in addressing the changing economy. My point I want to end with here is that there is mixed feelings about this, but I am concerned about waiting until we have full consensus. I think that mixed opinions warrants sending this to full city council.

Meagan Tuttle: Consistency with PlanBTV south end is something that I have said over and over again. When the request originally came to us, it was simply to remove the footnote on these entirely. Our office was very clear that this was not consistent with PlanBTV south end. We gave the same advice at the very first Planning Commission meeting to make sure we are following the guidance of PlanBTV south end. PlanBTV south end also talks about creating a balance. When the Planning Commission was considering this, they felt that if general commercial uses were going to be allowed in this part of the neighborhood, they need to be in support of primary industrial uses which is the primary driver on the cap that is in the proposal. The Commission feels that a performing arts center is something that may not have been thought of as compatible in the past, but that makes sense given the evolving nature as long as it was conditioned with an industrial use as the primary use.

Justin Worthley: I am a representative of Burton. PlanBTV talks about exploring new uses in this very location. Some of the uses that the City has backed previously don't fall into light industrial uses. The plan is not etched in stone because it must evolve with the changing times. The 49% limitation is a huge compromise on our part. It will apply to 4 owners and 6 buildings in Burlington and would not apply to anyone else. In total, we are looking at a 12,000 sf venue, but I am concerned about creating a tight cap. Arts Riot has expressed that their 5,000 sf cap is extremely limiting and does not work. So what was a good intent initially to limit impacts is having unintended consequences. If you need a cap, I would suggest making it 20,000 sf. Tonight is a vote to have a vote. It is killing me that we have put in hundreds of hours of staff time and extensive conversations and that this could be killed in committee before even being considered by City Council.

Councilor Bushor: We are part of the City Council and they look to us on these issues.

John Caulo: This is not Burton and Higher Ground. This is about those other businesses that are on the street. You are talking about the exodus of business. The market is not there for industrial tenants.

Elisa Nelson: We are willing to consider something slightly higher than 5,000 sf. But I think that it would be highly inappropriate to permit someone to come in at 12,000 sf and then determine that it is too detrimental to the neighborhood. We are only asking for a limit on one of those uses in that chart. It is the one use that many in the neighborhood see as a concern.

Councilor Roof: I am supportive of moving this forward either determining a cap now or leaving it to the City Council to consider a cap.

Councilor Shannon: I think there is room for further discussion. I agree that this committee should not kill something and that the City Council may want a broader discussion. I am not averse to making accommodations for opportunities that



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the City wants to take advantage of. We should not deny a hearing to the full City Council and make it the best proposal we can make, without recommendation.

Councilor Bushor: We have tried that approach and it is not a good idea to do. So I do not support moving this forward and asking the full City Council to do what this committee is assigned to do.

Councilor Shannon: That is not what I am suggesting.

Councilor Bushor: This amendment is not something I can move forward with because it does not have a cap. I am disappointed to hear that 12,000 sf is not reasonable.

Councilor Roof: I would like to see this move forward and am concerned about being overly prescriptive. I wonder whether 15,000 sf is a proposal that other committee members would consider.

Councilor Shannon: I am not comfortable moving this forward with more than the minimum necessary and it sounds like 12,000 sf is the space needed, and maybe less.

Councilor Roof: This is not Pine Street. And a 5,000 sf venue on Pine Street is very different space. The final determination on capacity is made by the fire marshal. I think 15,000 sf is appropriate and leaves a little bit of wiggle room.

Councilor Shannon: It is different than Pine Street and our vision has been to say no to any performing arts spaces there. I can't see supporting this without going through a community process.

Councilor Roof made the following motion: to adopt the amendment with an additional 15,000 sf cap on performance venues, with recommendation for City Council approval.

The motion was seconded by Council Bushor.

Councilor Bushor: Can Higher Ground representatives provide a description of the 4,000 sf component of their project?

Alex Kruthers: I am the founder of Higher Ground and this space will be in support of the assembly space.



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Councilor Bushor: Is there a rationale for a particular number?

Meagan Tuttle: It is hard for us to be able to make that determination without understanding the configuration.

Councilor Shannon: I think that 12,000 sf would be a reasonably thing to move toward City Council. My proposal would be to move forward this proposal without recommendation.

Meagan Tuttle: Any cap would be a footnote as it applies to performing arts center in Appendix A. Other than performing arts center, we have not changed what is conditionally allowed. The only difference is that footnote 27 is being applied to a number of uses throughout.

[Meagan Tuttle went through and identified the other added uses to the tables]

[There was also discussion about whether the amendment was intended to lift the 5,000 sf cap that currently exists on Pine Street.

Meagan: Also, to be clear, in the motion we need to ensure that footnote 27 has the same language utilized as 4.4.3 to make sure we are consistent with the changes made at the last meeting.

Councilor Bushor: I would like the attorneys to work with staff to keep the 5,000 sf limitation for Pine Street and Arts Riot and only apply the 15,000 sf limitation to performing arts center in the industrial district.

Councilor Roof amended his motion as follows: I move to approve the amendment with the following changes: not expanding the 5,000 square footage cap on pine street, creating a 15,000 sf cap for performing arts center uses south of Home Avenue, and also capture the new and amended footnotes provided by staff, with recommendation to City Council.

Councilor Bushor seconded the motion.

Final Resolution: Passes

Yes: Councilor Roof, Councilor Bushor



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No: Councilor Shannon

Councilor Bushor: I would like to create a communication for City Council relating to the discussion that occurred regarding the cap and the sf.

1. **Any Other Business**

5.01 Next Meeting(s) and Items to Review

None.

1. **Adjournment**

6.01 Motion to Adjourn

Councilor Roof moved to adjourn, seconded by Councilor Shannon.

The meeting of the City Council Ordinance Committee adjourned at 7:35 p.m