



City of Burlington, VT
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Burlington, VT 05401
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www.burlingtonvt.gov/plan

Burlington Planning Commission

Ordinance Committee

Remote Meeting

Thursday, March 3, 2022 @ 5:15 PM

Zoom: <https://us02web.zoom.us/j/83738544459?pwd=a2M5OVlmQ0xzTnE3dk5QVVhsN1J1Zz09>

Webinar ID: 837 3854 4459

Password: 962253

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AGENDA

1. Discussion of public art standards within the form code districts.
2. Adjournment

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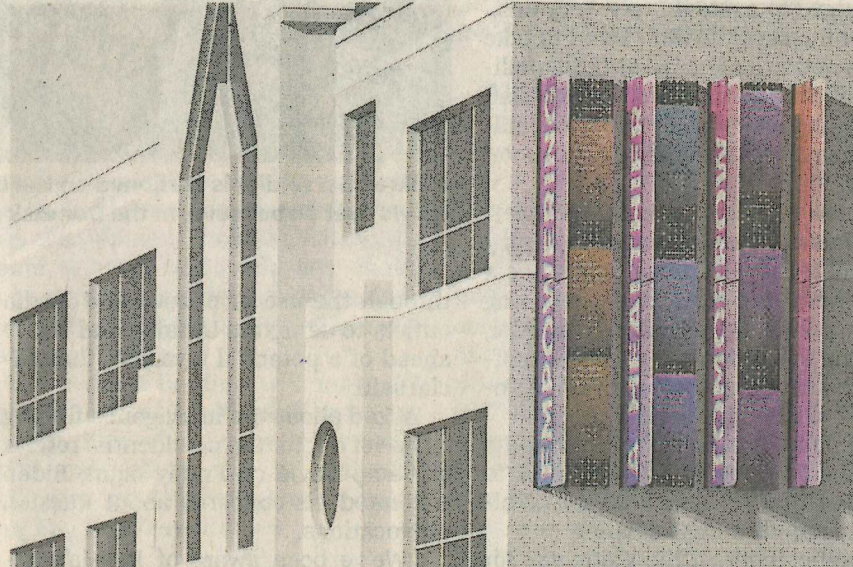
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A design by Dan Gottsegen, one of four finalists for a mural at the John J. Zampieri building. PHOTOS COURTESY MICHELE



Finalist Kathryn Wieggers' design.



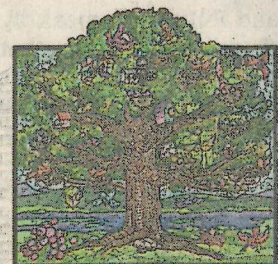
Noa Younse's final-four design at the John J. Zampieri State Office Building

Another public-art commission is underway for a new Vermont Department of Mental Health residential-recovery facility under construction in Essex. A presentation of preliminary design concepts will take place in early 2022.

Contact Brent Hallenbeck at bhallenbeck@freepressmedia.com. Follow Brent on Twitter at [ummm_twitter.com/](https://twitter.com/ummm_twitter)

"An art-select committee of building employees, community members and visual-arts experts will determine which of the artists will be selected to further develop their concept and create the final design."

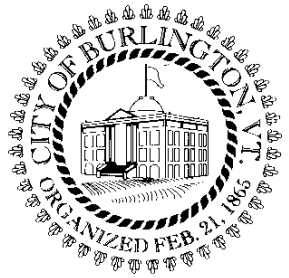
Phillip Godenschwager's design is



Department of Permitting and Inspections

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*William Ward, Director
Charlene Orton, Code Compliance Officer
Theodore Miles, Code Compliance Officer
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Vacant, Planning Technician
Celeste Crowley, Permit Administrator*



MEMORANDUM

To: Planning Commission Ordinance Committee
From: Mary O'Neil, AICP, Principal Planner
Date: March 3, 2022
RE: Public Art

Staff has recently received a communication from a city resident/DAB member with concerns about installed and proposed art installations around the City. His email came on the heels of a Burlington Free Press article announcing finalists for a downtown mural. The issue highlighted the absence of language relative to Public Art within the ordinance since the adoption of the Form Code.

Previously in the Comprehensive Development Ordinance, there existed bonus provisions that included Public Art; providing guidance on review, funding, placement and maintenance of any public art. With the adoption of Article 14 (Form Code), any language reference or regulations regarding Public Art are gone.

The Planning Commission Ordinance Committee is invited to consider the submission of Mr. Jay White, the existing absence of regulations within the Comprehensive Development Ordinance, and potential formulation of review standards for the installation of Public Art.

The language that previously addressed Public Art has been included for consideration, with the opportunity to utilize similar process and standards if deemed appropriate.

Email from Jay White, 1.10.2022:

Hi Mary,

Would you have a few minutes tomorrow before or after the DAB meeting when we could discuss a few design issues and how I might get involved with resolving them? I'm willing to volunteer to write letters on behalf of the City in these matters if it would help.

The issue is added items on projects that were not in the approved design and how these issues should be addressed:

77 Pine has several 6" diameter, 20' high angled bright yellow pipes acting as a "sculpture" of some kind in the front walk. Please drive by and look at it on your way in tomorrow. I was not on the committee when 77 Pine was approved, but I find it difficult that these sloping bright yellow pipes would have been approved, or that they meet seismic structural or ADA standards. Blind people will hit their heads on them. I think the City should require these tall, sloping yellow pipes to be removed or included in a new permit if they were not in the approved design.

Arts Riot indicated they would remove their ugly cow-watering troughs they used as planters with their tall 6x6 posts coming out of the "planters" when they came before DAB and showed their new wood elevations that we approved. Instead of removing them, they put them all on the sidewalk, blocking needed pedestrian space. Last summer they were still using them as planters (although mostly with weeds) and the cow watering troughs are conflicting with the newly approved wall dividers and are blocking needed pedestrian access. Drive by that project too. They look terrible and add clutter. Can the City ask that they be removed or that they apply for a permit to keep them?

The State Arts Council is sponsoring what I think I remember is a \$20,000 "Art in Public Buildings" project on the **John Zampieri Courthouse** on the Cherry Street side. But they are treating it as an Arts **On** Public Buildings.

Finalists include: 2-story wall sculptures: one with about six, 10 foot high vertical signs projecting signs on the east wall near Cherry Street advertising a dozen or so social programs — and the other one with several bright 3-foot diameter "flowers" made of three dimensional fiberglass combined with brightly painted lime green "leaves" and "stems" painted directly on the red bricks and concrete bands, "growing" nearly all the way to the roof on the left side of the Cherry Street entrance — to new stained glass walls blocking off both major alcoves. Lots of clear glass in that one that will kill hundreds of birds if it wins the competition.

Doesn't this kind of "graffiti" have to go through DAB before this landmark building is seriously and permanently damaged? The original architect of the Zampieri Building would be aghast. And as you know as a preservationist, paint on red brick is not reversible.

I love Burlington and how strong our permit system is with your team's significant skill.

But I think some areas are in distress and some important areas are needing stronger control to reduce unnecessary clutter and with little regard for historic preservation or design consistency with the surrounding character of historic neighborhoods. I'm not sure what to do about it, so I'm asking for help so I perhaps can become less frustrated about it and the sense of uncontrolled clutter can get more tame with more class.

Jay White, AIA
(DAB Member)

Where is Public Art mentioned in the Comprehensive Development Ordinance?

Article 4:

Section 4.4.1 Downtown Mixed Use Districts (FD6, FD5, and Downtown Waterfront Public Trust)

* Note! None of this section currently applies. It is provided for information purposes.

C. Permitted Encroachments

The DRB may approve one or more of the following within the required waterfront setback: structures such as walkways, planters, benches, fountains, public art, sitting walls and other improvements which will enhance the pedestrian environment and enjoyment of the waterfront; and public marinas, public recreational piers, ferry docks, lake excursion facilities, and open-air markets, provided pedestrian circulation is not unreasonably impaired.

4.4.1 5. D. Public Art (bonuses)

D. Public Art:

An additional 10 feet of building height and corresponding FAR may be permitted at the discretion of the DRB for the construction or rehabilitation of buildings that incorporates a commitment to public art.

(i) In order to qualify for the public art bonus, projects must:

- 1) include artworks that visually instigate pedestrian interest by reinventing the design of everyday functional elements (i.e. lighting, benches, pavement/hardscape), creating visual or thematic links to other artworks or design projects within 3 blocks, visually telling a story, and/or integrating texture, color, light, transparency or movement/activity into the design.
- 2) commit no less than two (2%) percent of their total construction costs, or \$40,000, whichever is greater, to the public art features per each 10 feet of height or 1.0 FAR allowance up to a maximum of 20 feet or 2.0 FAR. For the purposes of this bonus, total construction costs mean the sum of all construction costs shown on all building permits associated with the project. For projects involving the expansion and/or rehabilitation of buildings, total construction costs shall mean the combined costs of new construction and the costs of improvements to the property as shown on all building permits associated with the project.
- 3) attend a Pre-Application Conference with the City Arts Public Art Committee (CAPAC), where they shall present an Art Plan for CAPAC review. The Art Plan must:
 - a. Present a budget detailing the proposed expenditure of funds on the project's Public Art features relative to total construction costs.
 - b. Describe in detail the applicant's process for selection of artist(s) and artwork(s) and how that process will foster collaboration among artist(s)

and other building design team members.

- c. Identify the intended site(s), media, and materials of artwork(s).
- d. Describe the qualifying artwork, including artist concept drawings.
- e. Detail the schedule for the selection, fabrication and installation of the artwork.

No Pre-Application conference with CAPAC shall be held until the applicant has submitted a fee in the full amount determined by City Arts as part of that department's customary fee-setting process.

- 4) receive formal approval of the Art Plan by CAPAC, CAPAC's formal approval of the Art Plan shall be conveyed in a memo to the DRB, including any and all Public Art Conditions of Approval. The Public Art Conditions of Approval shall be accepted by the applicant and recorded in a Covenant between the applicant and the City.
- (ii) The installation of all Public Art features required as Public Art Conditions of Approval shall be complete before a Certificate of Occupancy is granted. Prior to receiving a Certificate of Occupancy, the applicant must submit a final written report to CAPAC, including visual documentation (slide, photos, etc.) of all Public Art features and a detailed statement of project expenses. Copies of contracts with art consultant(s) and artist(s) must be attached. No Certificate of Occupancy shall be granted without the issuance of a Final Approval Notice from CAPAC.

If the CAPAC determines it impossible for the applicant to complete installation of all required Public Art features prior to granting the Certificate of Occupancy, a Conditional CO may be granted. In such an event, the Conditional Certificate of Occupancy shall be granted only when the applicant posts a performance bond in the full amount dedicated for the Public Art. In addition, CAPAC must approve, in writing to the Building Inspector, a timeline for completion of the Public Art project.

- (iii) The following City of Burlington Public Art Standards shall guide the CAPAC's and DRB's review of all applications seeking to utilize the Public Art Bonus. These standards are basic principles that help clarify the nature of Public Art as it relates to the comprehensive development ordinance of the City of Burlington. They are a series of concepts about reviewing Public Art Bonus proposals, and about designing new, or maintaining, repairing, or replacing existing Public Art Bonus eligible or permitted features through the design review process.

1) Eligible Art Expenditures

Eligible art expenditures include: The work of art itself; design fees for artists invited to submit proposals; selected artist(s)' operating costs; travel related to the integration of the art with the project; transportation of the work to the site; installation of the artwork; identification plaques and labels, frames, mats, mountings, anchors, containments, pedestals, or

materials necessary for the installation, location or security of the artwork(s); photographs of completed works.

2) Ineligible Art Expenditures

Ineligible art expenditures include: Art exhibitions and educational activities; architect's fees; land costs; utility fee associated with electrical, water, or mechanical services used to activate the works of art; and, in connection with the works of art, registration, dedication, unveiling, security and publicity after selection.

3) Location of Art

Maximum visibility of the art is of primary concern. Art must be sited on the exterior of the building and/or at locations(s) clearly visible and freely accessible by the public from the sidewalk during daylight hours. The applicant will guarantee public access to the artwork(s). The art is a permanent part of the development and must remain in place for the life of the building. Works may be portable, as well as fixed, as long as the art is always at or adjacent to the site and accessible to the public.

4) Maintenance

Art must be maintained and repaired as necessary in accordance with accepted curatorial standards set forth in the Public Art Conditions of Approval by CAPAC. Stolen or vandalized art must be replaced or repaired as close as possible to its original form. So far as practical, in the event repair of a work is required, the responsible artist(s) shall be notified and given the opportunity to complete the repair for a reasonable fee. If the original artist is not available, a qualified professional, such as an art conservator, shall conduct any necessary repairs. Installation, future preservation, maintenance, and replacement if necessary, of the public art provided within this bonus program, or replacement Public Art features that have undergone the same process outlined in this ordinance, is assured for, through the covenant with the City, for as long as the building or buildings should stand.

The City Council may supplement this provision with regulations implanting it which may promulgate from time to time by Resolution. Such regulations must be consistent with the requirement of this provision.

Article 7 Signs

Section 7.1.3 (Exemptions)

- (j) Murals: Non-commercial artistic expression in the form of a unique hand-produced work of visual art which is tiled, painted directly upon, or otherwise affixed or placed directly onto an exterior wall of a building or structure provided that the Mural:
 - 1. does not contain any advertising copy, symbols, lettering, logos or other such recognized branding related to products or services provided on the premises where the mural is located except where otherwise permitted and incorporated into a permitted Sign Type as provided in Secs. 7.2.2 through 7.2.14 Sign Types;
 - 2. is placed on a Secondary Frontage or non-street-facing side or rear elevation of a Building or Structure; and,
 - 3. is not illuminated.

Article 14 (States Section 4 of Article 4 doesn't apply)

14.1.3 -APPLICABILITY

This planBTV Downtown Code shall be applicable to all lands within the Downtown and Waterfront District as mapped or described on the Burlington Regulating Plan ([Section 14.2](#)), as such may be changed from time to time, pursuant to [Section 14.2](#) - Regulating Plan. Any and all subdivision of land, development, and construction or modification of all Improvements, land, Buildings, and Structures in the Downtown and Waterfront District shall occur only in accordance with this Article 14 planBTV Downtown Code as in effect on the date of acceptance of the completed application for approval of the applicable Project Plan submitted pursuant to [Section 14.7](#) Administration and Procedures.

To the extent applicable, and not otherwise in conflict with this Article 14-planBTV Downtown Code, the following sections of the *Burlington Comprehensive Development Ordinance* (CDO) shall also continue to apply:

- a) Article 1 - General Provisions
- b) Article 2 - Administrative Mechanisms;
- c) Article 3 - Applications, Permits and Project Reviews, Parts 1, 2, 3, 5 and 6;
- d) [Article 4 - Zoning Maps and Districts, Parts 1, 2, 3, and Part 5 Sec. 4.5.4;](#)
- e) Article 5 - Citywide General Regulations, Parts 1, 2, 3, Sec. 5.4.7, Sec. 5.4.8, and 5;
- f) Article 7 - Signs
- g) Article 9 - Inclusionary and Replacement Housing;
- h) Article 10 - Subdivision Review;
- i) Article 12 - Variances and Appeals; and,
- j) Article 13 - Definitions.

[In each case, the standards and requirements applicable to the Downtown and Waterfront District Regulating Plan and this Article 14 shall take precedence without limitation over any duplicative or conflicting provisions of the other Articles of the *Burlington Comprehensive Development Ordinance* \(BCDO\).](#)

If there is any conflict between the provisions of this Article 14 and any provisions of any other existing City codes, ordinances, regulations or standards (the "Existing Local Codes"), the provisions of this Article 14 shall take precedence over such conflicting provisions except for City and state Building, Fire, Health and Safety Codes.



Burlington Planning Commission

Ordinance Committee Meeting Minutes

Thursday, March 3, 2022 @ 5:15 PM

Remote Meeting

Attendance

- **Committee Members:** Yves Bradley, Caitlin Halpert, Leo Sprinzen, and Bruce Baker
- **Absent:** Emily Lee
- **Public:** Jay White, Doreen Kraft, Sara Katz, Devin Colman, Brian Leet, Patrick (?).
- **Staff:** Mary O'Neil (Permitting & Inspections)

1. Discussion of Public Art; its absence from the CDO since the adoption of the Form Code.

Mary O'Neil (staff) began an introduction with the history of Public Art regulations within the CDO as a bonus provision under Article 4; regulations that were eliminated upon the adoption of Article 14 (Form Code.) She also introduced a letter of concern from Jay White, a member of the Design Advisory Board detailing projects within the city and no perceived oversight.

Jay White introduced his comments with examples. He detailed two top issues: Damage to buildings (which may be ameliorated with conditions that the art installation has to be reversible and can be removed without damage to the building), and Safety (mounting, wind load, structural stability.)

Mary outlined the difference between art installed in the public domain and/or publically funded; and those projects on private property. That difference resulted in the removal from the website of the Standards provided by Burlington City Arts, related solely to public funds/public projects. (Some of the Commission members has already read them.)

There was broad discussion; initially Bruce, Caitlin and Leo voiced an unwillingness to create a permit/review process that would be perceived to create a barrier or to assess qualities of any proposed art.

Brian Leet (guest) was invited to speak, and he underlined the difference between art funded by the public, and art visible to the public but on private property. He also identified the issue of free speech.

Bruce then acknowledged health and safety concerns, and the issue of introduction of structure that probably requires a permit. He also differentiated between what is removable – like lawn furniture, and historic preservation standards within the ordinance relative to reversibility. He suggested that existing ordinance may already cover many of the identified issues.

Caitlin Halpert found questionable the suggestion of review based on the quality of the art piece. If an engineer deems the installation safe, than it should be acceptable.

The Commission then discussed other potential areas of concern, i.e. height, Clear Site Triangle, and permit cost. They disagree that omission of language from the Form Code does not expressly prohibit public art. Mary asserted that staff has no role or interest in assessing qualities of art installations, but suggested language of allowance within the Code. Mary also alluded to prescriptive standards within the Code relative to window transparency and percentage of building openings that could potentially be affected by an installation, depending upon how it interacts with a building in the downtown.

Doreen Kraft and Sara Katz offered support and continued participation in the discussion.

Brian Leet suggested that if an art installation is of a scale and size that engineering is required, then yes, it should be regulated under those factors.

Bruce Baker requested staff to propose some language, where public art is encouraged without barriers; perhaps doesn't require a permit under specific circumstances and would be subject to building code.

No action taken.

2. Adjournment

The Committee adjourned at 6:15 PM.