

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

AJ LaRosa
Caitlin Halpert
Geoff Hand
Sean McKenzie
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Evan Gould, (Alternate)
Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 17, 2023, 5:00 PM

MINUTES

Hybrid & In Person (at 645 Pine Street) Meeting

Board Members Present: AJ LaRosa (5:17 PM), Caitlin Halpert, Geoff Hand (5:20 PM), Sean McKenzie (5:12 PM) Brad Rabinowitz (5:05 PM), Leo Sprinzen, and Evan Gould

Board Members Absent: Chase Taylor

Staff Members Present: Mary O'Neil, Ted Miles, and Joseph Cava

Staff Members Absent: Scott Gustin and Garret King

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

1. ZP-23-398; 300 Flynn Avenue (NMU, Ward 5) Howard Center for Human Services, Inc. / Joe Weith

Conditional use approval to demolish existing 24,042 square foot building to construct a new 50,100 square foot building. (Project Manager, Mary O'Neil)

Sam Beall, Sandy McGuire, Kevin Worden, Michael Willard, and Joe Weith: Sworn in.

Sam Beall: This project was presented at sketch plan review.

Sandy McGuire: I'm excited to present the redevelopment plans for the Howard Center. This will enable an expansion of current and future services while supporting staff with day-to-day operations.

Kevin Worden: The landscape plan is cohesive with the existing landscape and wetlands. We worked with someone to delineate the wetlands and preserve the shade over the ravine. The proposed building is over double the size of the existing building. Water runoff will be managed and redistributed on site through the improved parking lot, which will facilitate the movement of vehicles and patients.

Sam Beall: During the Conservation Board meeting, we addressed landscaping of native plant species.

Michael Willard: We are proposing a mixture of shade trees and oriental plantings, while preserving as many existing trees as possible. The lighting plan is kept confined to the core of the property along with additional sconce lighting on the building. This lighting plan is meant to recognize the maximum and minimum light ratio requirements with the highest wattage being constrained to the core of the property.

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

Leo Sprinzen: So, the proposal is for additional lighting with a higher wattage?

Michael Willard: No, central lighting will have a higher wattage, but the lighting on the outskirts of the property will have a lower wattage to reduce the impacts of light on surrounding neighbors.

Mary O'Neil: The Max/Min ratio is to prevent unevenness of lighting, which might make parts of the parking lot too dark for comfort. It is about lighting uniformity across the site.

Sam Beall: We have re-oriented and opened the building to the parking area since most patients will be arriving by car. The proposed materials include a terracotta colored base wall layer and boardwalk style entry to create a warm and inviting entrance. The Pine Street and Flynn Avenue facades have been updated to create more engaged street facades. Before continuing, I'll open this to staff comments and questions.

AJ LaRosa: Are there any comments or questions from the board?

Brad Rabinowitz: Is there still a rooftop terrace?

Mary O'Neil: Yes, but conditioned by the height exemption standard not to be used for human occupancy. The potting sink remains.

AJ LaRosa: I appreciate the articulated emphasis on expanded pedestrian access. Are there any additional questions from the board? Hearing none, are there any questions of comments from the public?

Joe Weith: I noted that one of the conditions was conformity with the maximum/minimum lighting standards.

AJ LaRosa: Yes, and we'll review that during deliberative. Hearing no additional comments or questions, we will close the hearing on this item and deliberate later on.

2. ZAP-23-11; 457 South Willard Street (RL, Ward 6) Hope Green / Mark Hall

Appeal of Notice of Violation, ZCPT-23-24, for fence replacement. (Project Manager, Ted Miles)
Hope Green, owner, present, Mark Hall, Jordan Buntain, and Kim Sturtevant: Sworn in.

AJ LaRosa: Can you tell us about the facts of this case?

Ted Miles: Yes, the fence was replaced with a retaining wall below. The fence was permitted in the 1980s, but the retaining wall was not permitted. Another issue is that the location of the approved fence was moved when the retaining wall was constructed. The fence is also in violation of the clear site triangle because of its height. The fence that was previously permitted was a pre-existing non-conformity, but all new fences constructed are not allowed to be more than three feet in height within the Clear Sight Triangle. The property owner appealed the complaint in a timely manner.

Caitlin Halpert: How was the height of the fence measured?

Ted Miles: From the ground to the top of the fence.

AJ LaRosa: Do you know how the ordinance was written at the time the previous fence was approved?

Ted Miles: I do not.

Geoff Hand: What would the solution be to drop the height of the fence and bring it into conformity?

Ted Miles: The property owner has lost the status for a pre-existing non-conformity. The timeline to reconstruct a pre-existing non-conformity is one year. The existing fence was reconstructed two years ago after the previous fence was demolished. The solution is for the applicant to apply for a zoning permit for the changes.

AJ LaRosa: Height wise, a portion of the fence is at ground level and visually appears to be the same height as the previously existing fence.

Brad Rabinowitz: So, people can rebuild without permits if they are replacing something as it previously existed?

Ted Miles: Correct.

Caitlin Halpert: Do retaining walls require a zoning permit?

Ted Miles: Yes, it is a safety issue for pedestrians. This is why we are here.

Geoff Hand: It looks like the height of the old fence visually aligns with the combined height of the new retaining wall and fence.

Ted Miles: This property has an incline, but the height is measured from the height of the street curb.

Geoff Hand: So the old fence is grandfathered, but do we have an exact height of the old fence?

Ted Miles: No, but the new fence height measures seven feet three inches in height.

AJ LaRosa: Are there any additional comments or questions from the board? Hearing none, we'll open it up to the applicant team.

Mark Hall: Our position is that the first three feet of the fence is free because this was a pre-existing feature of the property. Raising the fence isn't meaningful because the fence has been pulled back from the street. We would have to destroy the existing landscaping to bring the fence into conformity. Our position is that an eight-foot-high hedgerow would not need zoning approval, and it creates a hardship for the property owner to destroy what currently exists to bring the property into compliance.

Sean McKenzie: Are these standard six-foot tall fence panels?

Hope Green: Yes, we replaced the fence because it was sagging towards the street.

Geoff Hand: We struggle with projects like this because any increase in the non-conformity is a violation of the ordinance.

Mark Hall: This project did not increase the degree of non-conformity.

Geoff Hand: The clear sight triangle is what is in question here. The retaining wall has increased the height of the previous non-conformity.

AJ LaRosa: Where in the ordinance does it specify the need for zoning?

Mary O'Neil: The retaining wall is within two feet of the property line, which would trigger zoning review and review by the Development Review Board.

Mark Hall: We had a similar case where we could not install a see through fence, but we could install shrubbery which would block the clear sight triangle. It seems silly to demolish something that has been in place for over 40 years.

Sean McKenzie: Can you tell me if the post on the corner of the shared drive from the previous fence was replaced?

Hope Green: I would think it would have been replaced. I should have called the zoning office before I commenced with this project.

Jordan Buntain: This is a shared access written in my deed.

Kim Sturtevant: Changing the height does increase the non-conformity. There is a line in the ordinance, which forbids increases in non-conformity. Looking at the original permit, I'm not seeing the setback changes in the installed fence.

Hope Green: The setback has not changed since buying this property in 1986.

Mark Hall: It is written in neighboring deeds that property owners share a portion of the central drive.

Geoff Hand: (To Attorney Sturtevant): A notice of violation was not issued on the basis of the setback, but on the non-conformity. The limited solution would be to reduce the height of the existing fence within the clear site triangle.

Kim Sturtevant: This fence is in non-conformance and would need to be rebuilt to the existing regulations.

Brad Rabinowitz: So the footprint would need to be built in conformity with the regulations as they currently exist because of the extended time used to reconstruct the non-conformity? [Discussion about the deadline to replace an existing non-conformity: Does the one year clock begin when the fence is removed, or when the Notice of Violation is issued?]

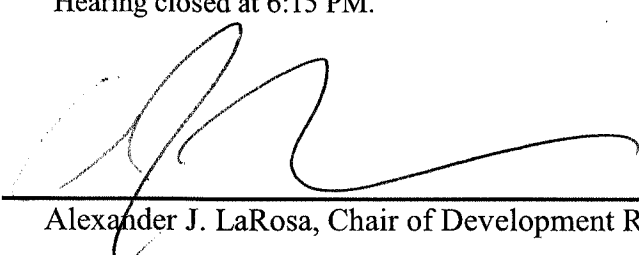
Mark Hall: It's wrong that properties lose their grandfathered non-conformity status. There is no statutory regulation that supports this loss.

Geoff Hand: The City would not issue a notice of violation on the basis of fence height. The change of location factors into this.

AJ LaRosa: Are there any additional questions or comments? Hearing none, we'll close the hearing on this item and deliberate on this.

V. Adjournment

Hearing closed at 6:15 PM.



Alexander J. LaRosa, Chair of Development Review Board

11/21/23

Date

Joseph H. Cava


Joseph H. Cava, Permitting & Inspections Permit Technician

11-21-23

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.

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.

