

## Burlington Development Review Board

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Chase Taylor  
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### BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 6, 2026, 5:00 PM

#### MINUTES

*Hybrid & In Person (at 645 Pine Street) Meeting*

**Board Members Present:** Caitlin Halpert, Evan Gould, Sean McKenzie, Miles Waite, Chase Taylor, and Marina Loughlin (5:05 PM)

**Board Members Absent:** Geoff Hand

**Staff Members Present:** Mary O'Neil, Matthew Clark, and Joseph Cava

**Staff Members Absent:** Scott Gustin and Kirk Dressing

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

**1. ZAP-26-13; 92 Adams Street (RM, Ward 6) 92 Adams Realty, LLC / Marcia Hemley**

Appeal of administrative denial for 15-year determination for an unpermitted parking area under ZP-26-338. (Project Manager, Scott Gustin)

Robert Hemley, Marcia Hemley, and Kim Sturtevant: Sworn in.

Caitlin Halpert: This is an appeal of an administrative denial. Is the appellant present?

Robert Hemley: Yes.

Caitlin Halpert: We will hear the facts of the case from City staff members, and then open it up to the appellant to speak. Can you tell us about this case and the basis of the denial?

Mary O'Neil: This is an appeal of an administrative denial under 15-year statute of limitations. In 1983, parking was expanded beyond what was previously approved. Under the statute of limitations, the parking area would need to be documented that it has been in place for 15 years or more. The staff report refers to case laws and utilizes the Zoning Administrators Handbook. Since 1983, the extent of parking has crept beyond what was previously approved. I do have a statement for review, but I will wait until you hear the appellant's case to share it.

Caitlin Halpert: So parking has been expanding since 2005.

Evan Gould: Are there any off site measurements?

Mary O'Neil: A site plan from 2022 was submitted, which deviates beyond what existed in 1983. One zoning permit application submittal was denied due to incompleteness, but another one is

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pending for payment of the application fees for the issuance of the Zoning Certificate of Occupancy (ZCO). If you agree, I feel it would be helpful to show you the plans. The 2012 permit for a fence shows that the parking area has been crossed out with annotations for the fence only. I cannot confirm the thinking of the previous Planner who reviewed this application. The 1983 site plan plan also includes measurements identifying the extent of the previously existing parking area before it was expanded. The first version of the 2022 site plan shows a greatly expanded parking area with single depth parking when compared to the 1983 site plan. Double-depth parking abutting existing property lines is shown in the second draft of the 2022 site plan. The third draft shows what currently exists.

Caitlin Halpert: This did not come up through a Zoning Compliance Officer's discovery, but a request for a determination.

Mary O'Neil: Correct.

Caitlin Halpert: Are there any questions or comments from members of the Board?

Miles Waite: How many tenants are at this property?

Mary O'Neil: There is a prior zoning permit application submittal for a conversion of the building to include two residential dwelling units. This permit remains active without the issuance of a ZCO to assist with its closure.

Caitlin Halpert: Hearing no additional questions or comments from members of the Board, we will now open it up to the appellant to speak.

Robert Hemley: The only new materials regarding this appeal's submission is what is in the binders before you. Marcia obtained this building in 1983, and it has only been used for office spaces. The parking area in the rear was expanded from 2,700 square feet to 3800 square feet. The measurements has not changed since the last expansion in 2005. The City's argument regarding enforcement and the discovery rule falls under the statute of limitations. There is no ambiguity in this going up to the Vermont Supreme Court. The principles outlined in the Zoning Administrators Handbook has not been officially adopted under Vermont State Statute. The City did not take any action until recently, which is over twenty years later. An assertion was made by Scott that the lot was expanded, utilizing aerials photos, but there is no discovery rule. We submitted two declarations attesting to the fact that there have been no further expansions to the parking area since 2005. There were a number of disabled individuals being seen in these office spaces, which led to the expansions, to better accommodate their limitations. The discovery rule relies on expression of enforcement. The City fire department also has made annual inspections of the property including electrical improvements and upgrades, and they should have noticed the expanded parking area.

Marcia Hemley: There was never any conversion from office space to residential dwelling units, and this application should have been withdrawn.

Robert Hemley: When there was an expansion and when the City decides to enforce something is what should be considered. Any questions?

Evan Gould: Why was a permit not sought for the 2005 expansion?

Marcia Hemley: The expansion was in response to disabled individuals and emergent circumstances.

Robert Hemley: I am confident that this issue can be stopped here at this Board, without any further appealable action taken to the Vermont Superior Court Environmental Division (VSCED) or the Vermont Supreme Court.

Sean McKenzie: I am looking at two different places where the 15-year determination starts the clock on enforcement.

Robert Hemley: The timeline starts during the first three to six years, and the 15-year statute of limitation applies to zoning violations when the violation is reasonably discovered. Two different cases reference the discovery rule and how it does not apply. At this time, it does not exist. There is no discovery rule, and it should have been noticed.

Sean McKenzie: Thank you.

Caitlin Halpert: Mary, I know you said you wanted to share something.

Mary O'Neil: As a caveat, this expansion occurred on a large lot behind a larger building. We, in the Zoning Division, did not have visual access to recognize the expansion. The submission by the Hemley's on behalf of Norman Benoit, we did not have an application submittal with an accompanying updated site plan to warrant zoning enforcement.

Kim Sturtevant: There were references to offices down the street that I have personally worked in. I can support that the plantings make it difficult to discern whether the parking area was expanded or not. There was an application that brought attention to this area. There is case law and policy for zoning non-conformity and enforcement of zoning violations. This interpretation does not support the argument for the statute of limitations. In addition, the referenced handbook is put out by the state of Vermont.

Caitlin Halpert: Can you expand on in and out traffic at this site?

Kim Sturtevant: Before 2012, there was not as much traffic to the site.

Evan Gould: To be clear, the individuals are acting as zoning administrators.

Kim Sturtevant: There were numerous individuals going in and out supporting that there is more than one unit located at this property.

Evan Gould: Under the statute of limitations, what is your opinion on the discovery rule?

Kim Sturtevant: The zoning statute of limitations is split between higher and lower courts. It is based on the totality of everything in consideration. The Richardson case from 2004 for example was based on the type of use and not the discovery.

Robert Hemley: Norman's declaration states that there has been no changes since 2005. The statute of limitations does bar the zoning violation process in this case. The Vermont Supreme Court interprets this literally. Other factors of consideration includes dangerous or hazardous conditions, which does not exist here. The City would like this written into the handbook, but the Vermont Supreme Court has already overruled the lower courts in this type of matter.

Marcia Hemley: The path on the submitted site plan was measured incorrectly.

Robert Hemley: Norman has since corrected this mistake.

Caitlin Halpert: Are there any additional questions or comments from members of the public attending in person or present online wishing to speak? Hearing no additional questions or comments, we will close the hearing on this item to deliberate on it later on.

**2. ZAP-26-12; 281 Pearl Street (RH, Ward 8) Sisters & Brothers Investment Group, LLP / Matt Handy**

Appeal of issuance of Notice of Violation (NOV) under ZCPT-26-38. (Project Manager, Matthew Clark)

Joseph Handy, owner, present, William Ward, Brian Hehir, and Kim Sturtevant: Sworn in.

Caitlin Halpert: This is an appeal of an issuance of a Notice of Violation (NOV). We will hear the facts of the case from City staff members, and then open it up to the appellant to speak. Can you tell us about this case and the basis of the violation?

Matthew Clark: The use of this facility is classified as a service station, but parking has been a continuous attempted use at this site. The Comprehensive Development Ordinance (CDO) does not allow this as a primary use. Previously submitted zoning permit applications for this type of use have been denied and zoning enforcement has commenced.

Caitlin Halpert: Are there any questions or comments from members of the Board?

Miles Waite: So the 2024 NOV was appealed?

Matthew Clark: Yes, the appeal was found in favor of the City.

Caitlin Halpert: Are there any additional questions or comments from members of the Board?

William Ward: The pictures that you have in evidence of tow trucks and personal vehicles are evident of the use of this site. There is no permitted use of this property that would allow parking as a primary use.

Caitlin Halpert: Hearing no additional questions or comments from members of the Board, we will now open it up to the appellant to speak.

Brian Hehir: I am representing the property owners. The previous enforcement case involved paid parking. In this case, there is no paid or public parking. The existing parking is restricted to the property owners business. When a property owner leaves a vehicle parked at their property it is not a zoning violation. There are no allowable uses of this site beyond residential uses that would allow parking. This lot is not open to the public, but I will turn it over to the property owner to speak.

Joseph Handy: On many occasions, the City's Street Department is parking vehicles here without our permission for various projects like paving. For the nurses across the street, the parking lot use is beneficial to the community. This parking area has always been here. I pay over \$25,000.00 in property taxes, with no financial return from this site.

Caitlin Halpert: How would you describe the existing site?

Joseph Handy: I have my employees park their vehicles there so they can pick up the tow trucks.

Caitlin Halpert: Are there any additional questions or comments from members of the public attending in person or present online?

Kim Sturtevant: I was the attorney representing the litigation when the change of use was denied. There is also the fact that there are no business uses, including parking, that would be allowable through permitting.

Brian Hehir: The CDO does not prohibit the property owner from parking vehicles at this site. Previously, the City categorized this as a private parking lot, which is not defined in the CDO.

Evan Gould: The ordinance does not prohibit parking as long as it is a secondary use and not the primary use. Where does your assertion come from that parking needs to be paid for this to be a private parking lot?

Brian Hehir: I cannot find anything in the CDO that would not allow or prohibit the property owners from parking their own vehicles at the property.

Caitlin Halpert: Hearing no additional questions or comments, we will close the hearing on this item to deliberate on it later on.

**3. ZP-26-387; 146 East Avenue (RL, Ward 1) FMB East Avenue, LLC / Taylor Baker**

Proposed subdivision of existing residential lot to create a new 55' x 167' residential lot for the construction of a new single-family residence. Existing triplex to remain. (Project Manager, Kirk Dressing)

Caitlin Halpert: This application was withdrawn.

**V. Adjournment**

Hearing closed at 6:25 PM.

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 <https://burlingtonvt.portal.civicclerk.com/> or the office notice board, one week before the hearing for the order in which items will be heard.

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