



## State of Vermont

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# LAND USE PERMIT AMENDMENT

**CASE NO:** 4C1082-1  
3-11 1/2 George Street, LLC  
218 Overlake Drive  
Colchester, VT 05466

**LAWS/REGULATIONS INVOLVED**

10 V.S.A. §§ 6001 - 6093 (Act 250)

Moreau Dayle A Rev Trusts  
1683 St. Andrews Way  
Prescott, AZ 86301

and

City of Burlington  
149 Church Street  
Burlington, VT 05401

District Environmental Commission #4 hereby issues Land Use Permit Amendment #4C1082-1, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified Book 714, Page 546; Book 912, Page 458; Book 1193, Page 73; Book 655, Page 407; and Book 324, Page 555, of the land records of Burlington, Vermont.

This permit specifically authorizes the merging of five lots; demolition of buildings located at 64/68 Pearl Street, 13-15 and 19 George Street; the construction of a building containing a 78 room hotel with 1,700 sf of commercial space; the construction of a second building containing a 20 unit senior housing complex; and the construction of a 48 space underground parking garage and associated site improvements (collectively the "Project"). The Project located at 64 Pearl Street in Burlington, Vermont.

Jurisdiction attaches because the Project constitutes a development pursuant to 10 V.S.A. §6001(3)(A)(iv) and a material change to a permitted development and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittees, and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the Project as approved by the District Commission in accordance with the following conditions.
2. The Project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law #4C1082-1, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

Sheet 1 – “Existing Conditions,” dated January 14, 2019 (Exhibit #004);  
Sheet 2 – “Site Plan,” dated April 9, 2019, last revision December 10, 2019 (Exhibit #005b);  
Sheet 3 – “Overall Site Plan,” dated January 14, 2019 (Exhibit #006);  
Sheet 4 – “Sewer Details,” dated January 14, 2019 (Exhibit #007);  
Sheet 5 – “Water Details,” dated January 14, 2019 (Exhibit #008);  
Sheet 6 – “Roadway Details,” dated January 14, 2019 (Exhibit #009);  
Sheet E1 – “EPSC Pre-Construction Plan,” dated January 14, 2019 (Exhibit #010);  
Sheet E2 – “EPSC Construction Plan,” dated January 14, 2019, last revision January 29, 2019 (Exhibit #011);  
Sheet E3 - “EPSC Stabilization Plan,” dated January 14, 2019 (Exhibit #012);  
Sheet ST1 – “Stormwater Management Plan Treatment Standard Calculations,” dated January 14, 2019 (Exhibit #013);  
Sheet ST2 – “Stormwater Management Plan Post Condition Calculations,” dated January 14, 2019 (Exhibit #014);  
Sheet ST3 – “Stormwater Management Plan Construction Details,” dated January 14, 2019 (Exhibit #015);  
Sheet ST4 – “Stormwater Maintenance Plan,” dated January 14, 2019 (Exhibit #016);  
Sheet PL1 – “Boundary Plat,” dated December 25, 2018 (Exhibit #017);  
Sheet A2.0 – “Below Grade Parking,” dated March 19, 2019, last revision March 6, 2020 (Exhibit #018b);  
Sheet A4.1 – “Hotel East and West Elevations,” dated September 23, 2019 (Exhibit #019a);  
Sheet A4.2 – “Hotel North and South Elevations,” dated September 23, 2019 (Exhibit #020a);  
Sheet A4.1 – “George St. North Elevation,” dated October 11, 2019 (Exhibit #021a);  
Sheet A4.2 – “George St. East Elevation,” dated October 11, 2019 (Exhibit #022a);  
Sheet A4.3 – “George St. South Elevation,” dated October 11, 2019 (Exhibit #023a);  
Sheet A4.4 – “George St. West Elevation,” dated October 11, 2019 (Exhibit #024a);  
“Hotel – Perspective 1,” dated March 19, 2019 (Exhibit #025);  
“Hotel – Perspective 2,” dated March 19, 2019 (Exhibit #026);  
“Hotel – Perspective 3,” dated March 19, 2019 (Exhibit #027);  
“Hotel – Perspective 4,” dated March 19, 2019 (Exhibit #028);  
“Lofts – Perspective 1,” dated March 19, 2019 (Exhibit #029);  
“Lofts – Perspective 2,” dated March 19, 2019 (Exhibit #030);

“Lofts – Perspective 3,” dated March 19, 2019 (Exhibit #031);  
Sheet L-100 – “Site Amenities Plan,” dated January 15, 2019 (Exhibit #032);  
Sheet L-101 – “Landscape Plan,” dated January 15, 2019 (Exhibit #033);  
Sheet L-102 – “Lighting Plan,” dated January 15, 2019 (Exhibit #034);  
Sheet L-200 – “Landscape Details,” dated January 15, 2019 (Exhibit #035);  
Sheet L-300 – “Hardscape Details,” dated January 15, 2019 (Exhibit #036);  
Sheet L-301 – “Site Details,” dated January 15, 2019 (Exhibit #037); and  
Sheet L-400 – “Lighting Details,” dated January 15, 2019 (Exhibit #038).

3. All conditions of Land Use Permit #4C1082 are in full force and effect except as further amended herein.
4. The Permittees shall comply with all of the conditions of the following Agency of Natural Resources Permit:
  - a. Wastewater System and Potable Water Supply Permit #WW-4-5238 issued on July 31, 2019 by the ANR Drinking Water and Groundwater Protection Division.
5. Any nonmaterial changes to the permit listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
6. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
7. A copy of this permit and plans shall be on the site at all times throughout the construction process.
8. No change shall be made to the design, operation or use of this Project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. No further subdivision, alteration, and/or development on the tracts of land approved herein shall be permitted without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
10. Pursuant to 10 V.S.A. § 8005(c), the District Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
11. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittees and their successors and assigns.
12. Site work and exterior construction hours shall be limited to 7:00AM to 5:00PM Monday through Saturday, with no construction on Sundays or State or Federal Holidays.
13. The buildings approved herein are not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittees shall apply and receive amended

- approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.
14. The Permittees and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
  15. The Permittees shall implement the Construction Waste Reduction Plan. Exhibit #039a.
  16. Immediately upon initial grading or excavation, a stabilized construction entrance must be installed and maintained as shown on Exhibit #010. At a minimum, this entrance must be constructed and maintained in accordance with the specifications as described in the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006). No further clearing or construction may occur until the stabilized construction entrance is complete.
  17. The Permittees shall apply and maintain water and/or other agents approved by the Watershed Management Division on all roadways or disturbed areas within the Project during construction and until pavement and/or vegetation is fully established to control dust.
  18. At a minimum, the Permittees shall comply with the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
  19. The Permittees shall comply with Exhibits #010, 011 and 012 for erosion prevention and sediment control. The Permittees shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas.
  20. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
  21. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each workday. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).
  22. All disturbed areas of the site shall be stabilized, seeded and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 1. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction"

standards and specifications of the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).

23. In addition to conformance with all erosion prevention and sediment control conditions, the Permittees shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
24. The Permittee shall implement the parking management practices included in Exhibits #018b, 041, 042a, and 043a.
25. The Permittee shall pay a proportional transportation impact fee toward the Champlain Parkway project (MEGC M 5000(1)) and the Burlington Roundabout project (HES 5000(18)) pursuant to Act 145 – Transportation Impact Fees (2014). The transportation impact fee for the Champlain Parkway project is \$2,069 per PM peak hour trip and the transportation impact fee for the Burlington Roundabout project is \$1,217 per PM peak hour trip. The Applicant is afforded a 10% reduction in transportation fee as a result of the proposed Transportation Demand Management measures and a 50% reduction in the transportation impact fee, as the Project is located within a State Designated Neighborhood Development Area. The Permittees shall pay a total transportation impact fee of \$5,744 to the Vermont Agency of Transportation before commencement of construction (payment should be remitted to the Vermont Agency of Transportation Development Review and Permitting Services Section, Barre City Place, 219 North Main Street, Barre, VT 05641, Attn: Christopher Clow).
26. Prior to any site work, the Permittees shall install and maintain temporary fencing or flagging along around trees to be retained.
27. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a State approved disposal facility, so as to prevent groundwater pollution.
28. The Permittees and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits #033 and 035 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
29. The installation of exterior light fixtures is limited to those approved in Exhibits #034 and 038 and shall be mounted no higher than 20 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
30. The installation of exterior signage is limited to those approved in Exhibits #019a and 020a. The Permittees shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
31. The Permittees shall implement the following measures regarding historic sites:

- a. The Permittees will complete the “The Last Day at Bove’s Café” documentary within one year of the demolition of the building at 64/68 Pearl Street. Within two years from the demolition, the Applicant will provide a showing of the documentary for the public. The documentary will also be made available online for a minimum period of five years following completion. The documentary will include the following components at a minimum:
    - i. Footage shot during its last few days of operation.
    - ii. Testimonials and remembrances from at least four family members, staff and/or patrons of the restaurant.
    - iii. Historical maps, photo images, and other objects relevant to the family, business, building, and the relationship of the business and family within the Little Italy neighborhood in Burlington.
  - b. The Permittees will produce and display on site a wayfinding panel focused on the history of Bove’s Café in the context of Burlington’s “Little Italy” neighborhood. This panel shall supplement and be modeled from the existing wayfinding panels recounting the story of Little Italy. The text and images proposed for the panel shall be submitted to VDHP for review and approval prior to production. The panel shall be installed on the property and available for the public to view; it shall be fabricated and installed within one year of the completion of the new building on the property.
32. Pursuant to 30 V.S.A. § 53, the energy design and construction for both buildings shall comply with Vermont’s Commercial Building Energy Standards (“CBES”) and the CBES Stretch Guidelines in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this update can be found at:  
[http://publicservice.vermont.gov/energy\\_efficiency/cbes](http://publicservice.vermont.gov/energy_efficiency/cbes)  
<http://nrb.vermont.gov/sites/nrb/files/documents/9fprocedure.pdf>  
<http://nrb.vermont.gov/sites/nrb/files/documents/cbesstretch.pdf>
33. The installation and/or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
34. The Permittee, upon completion of the construction of each commercial building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).
35. The Permittees shall install infrastructure and pre-wiring for electric vehicle charging stations pursuant to C708.1 (CBES Stretch Guidelines). Exhibit #005b.
36. Should the City at any time agree to accept any private utilities being then operated by the Permittees and/or assigns and successors in interest, the Permittees and/or assigns and successors in interest shall be responsible to improve the same to City specifications and shall deed all lands involved with said improvements to the City. Such improvements may require a land use permit amendment.

37. The Permittees shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment and the Findings of Fact before any written contract of sale is entered into.
38. The Permittees shall reference the requirements and conditions imposed by Land Use Permit #4C1082-1 in all deeds of conveyance and leases.
39. Pursuant to 10 V.S.A. § 6090(b)(1) this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittees have not commenced construction and made substantial progress toward completion within the three year period in accordance with 10 V.S.A. § 6091(b).
40. All site work and construction shall be completed in accordance with the approved plans by **October 1, 2023**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.
41. The Permittees shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittees shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
42. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Essex Junction, Vermont, this 17<sup>th</sup> day of March 2020.

By /s/Thomas A. Little  
Thomas A. Little, Chair  
District #4 Commission

Members participating in this decision:  
Parker Riehle  
Scott Baldwin

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401.

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State of Vermont  
NATURAL RESOURCES BOARD  
DISTRICT 4 ENVIRONMENTAL COMMISSION  
111 West Street, Essex Junction, Vermont 05452

RE: 3-11 1/2 George Street, LLC  
218 Overlake Drive  
Colchester, VT 05466

Application #4C1082-1  
Findings of Fact  
Conclusions of Law, and Order  
10 V.S.A. §§ 6001-6093 (Act 250)

Moreau Dayle A Rev Trusts  
1683 St. Andrews Way  
Prescott, AZ 86301

and

City of Burlington  
149 Church Street  
Burlington, VT 05401

## **I. INTRODUCTION**

On May 13, 2019, 3-11 1/2 George Street, LLC, the City of Burlington and Moreau Dayle A Rev Trusts filed an application for an Act 250 permit for a project located at 64 Pearl Street in Burlington, Vermont. The Applicants' legal interest is ownership in deeds recorded in Book 714, Page 546; Book 912, Page 458; Book 1193, Page 73; Book 655, Page 407; and Book 324, Page 555, of the land records of Burlington, Vermont.

The project includes the merging of five existing lots; demolition of buildings located at 64/68 Pearl Street, 13-15 and 19 George Street; the construction of a building containing a 78 room hotel with 1,700 sf of commercial space; the construction of a second building containing a 20 unit senior housing complex; and the construction of a 48 space underground parking garage and associated site improvements (collectively the "Project"). The Project located at 64-68 Pearl Street, 13-15 George Street and 19 George Street in Burlington, Vermont.

The Commission held a hearing on this application on July 19, 2019. The Commission also conducted a site visit immediately before the hearing and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on March 13, 2020 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below, the Commission finds that the Project complies with 10 V.S.A § 6086(a) (Act 250).

## **II. JURISDICTION**

Jurisdiction attaches because the Project constitutes a development pursuant to 10 V.S.A. §6001(3)(A)(iv) and a material change to a permitted development and thus requires a permit amendment pursuant to Act 250 Rule 34.

### III. OFFICIAL NOTICE

Under 3 V.S.A. § 810(4) of the Administrative Procedure Act (“APA”), notice may be taken of judicially cognizable facts in contested cases. See 10 V.S.A § 6007(c) and 3 V.S.A. § 801(b)(2). Under § 810(1) of the APA, “[t]he rules of evidence as applied in civil cases .... shall be followed” in contested cases. Under the Vermont Rules of Evidence, “(a) judicially noticed fact must be one not subject to reasonable dispute in that it is ... (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b); See *In re: Handy*, 144 Vt.601, 613 (1984).

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e).

The Commission takes official notice of Land Use Permit #4C1082, the *Chittenden County ECOS Plan* (2018), the *planBTV Comprehensive Plan* (2019) and the *Burlington Comprehensive Development Ordinance* (2018), subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

### IV. AMENDMENT APPLICATION – RULE 34(E)

The threshold question on an amendment application is “whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.” Act 250 Rule 34(E)(1).

In this application, the applicant does not seek to amend such a critical permit condition, so the Commission may consider the merits of the amendment application without conducting the rest of the Rule 34(E) analysis.

### V. PARTY STATUS AND FRIENDS OF THE COMMISSION

#### A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) who attended the hearing are:

1. The **Applicants**, by Rick Bove of 3-11 1/2 George Street, LLC; Tim Hogan and Rob McCarthy of Melan Hotel Group; Paul O’Leary and Bryan Carrier of O’Leary Burke Civil Associates; Kevin Trout of Scott & Partners, Inc.; Roger Dickinson of Lamoureux & Dickinson Civil Engineers; and Justin Yandow of PeakCM, LLC.
2. The **Vermont Division of Historic Preservation** (“VDHP”) by Elizabeth Peebles at the July 19, 2019 hearing and through an entry of appearance dated July 18, 2019.

3. The **Vermont Agency of Transportation** (“VTrans”) by Christopher Clow through an entry of appearance, dated June 5, 2019.
4. The **Agency of Natural Resources** (“ANR”) by Jennifer Mojo through an entry of appearance dated July 19, 2019.
5. The **Chittenden County Regional Planning Commission** (“CCRPC”) by Charlie Baker through an entry of appearance dated June 28, 2019.

B. Interested Parties

At the hearing no requests for party status or Friends of the Commission status were made.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The Applicants have met the burden of proving compliance with the following criteria through submittal of the application. Therefore, the application shall serve as the Findings of Fact on the following criteria:

- |                                       |  |
|---------------------------------------|--|
| 1 - Air Pollution                     | 8(A) - Wildlife Habitat & Endangered Species |
| Water Pollution                       | 9(A) - Impact of Growth                      |
| 1(A) - Headwaters                     | 9(B) - Agricultural Soils                    |
| 1(B) - Waste Disposal                 | 9(C) - Productive Forest Soils               |
| 1(C) - Water Conservation             | 9(D) - Earth Resources                       |
| 1(D) - Floodways                      | 9(E) - Extraction of Earth Resources         |
| 1(E) - Streams                        | 9(F) - Energy Conservation                   |
| 1(F) - Shorelines                     | 9(G) - Private Utility Services              |
| 1(G) - Wetlands                       | 9(H) - Costs of Scattered Development        |
| 2 - Water Supply                      | 9(J) - Public Utility Services               |
| 3 - Impact on Existing Water Supplies | 9(K) - Effects on Public Investments         |
| 4 - Soil Erosion                      | 9(L) - Settlement Patterns                   |
| 6 - Educational Services              | 10 - Local and Regional Plans                |
| 7 - Municipal Services                |  |
| 8 - Natural Areas                     |  |

The findings of fact are based on the application, exhibits and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear and may apply to other sections of the decision.

The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

## **Criterion 5 - Transportation:**

### Findings of Fact

1. Currently, the Project area contains 48 off-street parking spaces, 30 of which are metered (3 hour maximum) spaces open to the public. There are also 6 off-street parking spaces at 13, 15 and 19 George Street, for a total of 54 current off-street parking spaces. Exhibit #041.
2. On-street parking on Monroe Street, North Champlain Street from Pearl Street to Monroe Street, and a portion of George Street are residential only parking areas restricted from 6:00AM to 6:00PM Monday through Friday. On-street parking on Pearl Street and a portion of George Street are metered parking spaces. Exhibit #041.
3. The Project includes 86 conventional off-street parking spaces. The underground parking lot (48 spaces) will be accessed from George Street at the existing curb cut north of Victoria Place and the above ground parking lot (38 spaces) will be accessed from Pearl Street at the existing curb cut west of Victoria Place. Exhibit #041. In the above ground parking lot, 8 spaces will be assigned for Victoria Place tenants/residents and 30 spaces would be available for day-time public use during weekdays from 8:00AM to 5:00PM and hotel use overnight on weekdays and on the weekends. In the underground parking lot 20 spaces will be assigned for the senior residential facility, 10 spaces will be assigned for Victoria Place tenants/residents and 18 spaces will be assigned for the hotel. Exhibits #042a and 043a.
4. According to the Traffic Impact and Parking Assessment ("TIA"), off-street parking demand would be 83 spaces on weekend days, 94 spaces on weekend nights<sup>1</sup>, 53 spaces on week days and 83 spaces on week nights. Exhibits #041 and 042a. 86 conventional off-street parking spaces will be available on-site except during the weekday daytime hours when only 56 conventional off-street parking spaces will be available on-site. In addition, the hotel valet service will stack park 10 additional vehicles in the underground parking lot, to provide the needed additional parking spaces during peak parking demand periods. Exhibit #018b, 041 and 043a. Provided that the Applicants follow the parking management practices included in Exhibits #018b, 041, 042a and 043a, there will be sufficient on-site parking for the Project.
5. The TIA made allowances for use of valet parking and the additional trips that will generate. It was assumed that arriving hotel guests would initially check in using the surface parking lot. Approximately 40% of those guests would then be directed to park in the underground parking lot, either by use of valet parking or by self-parking.<sup>2</sup> Exhibit #041.

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<sup>1</sup> The estimated parking demand for the weekend days and weekends nights is based on the hotel containing 93 rooms. The number of hotel rooms was revised to 78 during the course of the proceeding. The Commission considered the weekend parking estimates to be conservative.

<sup>2</sup> Due to one-way traffic restrictions, the anticipated route for traffic from the hotel entrance and above ground parking lot to the below ground parking lot would either be west on Pearl Street, north on North Champlain Street, east on

6. The TIA indicated that the Project would not cause undue adverse traffic congestion or safety conditions. Exhibits #041 and 059. VTrans concurred with the conclusions of the TIA and had no concerns relative to the impact of the Project on local traffic congestion, and safety. Exhibit #053.
7. The Project incorporates transportation demand management (“TDM”) strategies including bike parking, provides safe access to existing pedestrian access ways, is located within a walkable downtown area and is located near the Green Mountain Transit (“GMT”) Downtown Transit Center.
8. The adjoining streets to the Project have a 25 mph speed limit. Cross walks exist on Pearl Street and George Street.
9. Emergency vehicles access will be provided from Pearl Street and George Street and the above ground parking lot. Emergency vehicles may have limited access under the second story hotel overhang in the above grade parking lot, depending on height restrictions.
10. The existing curb cut on Pearl Street is located within the operational area of the signalized intersection at Pearl Street and Pine Street. Vehicles exiting the Project may have difficulty making a left turn from the Pearl Street access which could increase wait times for the turning movement.
11. The Project is not in a Transportation Improvement District (“TID”).
12. The Project is located approximately 0.6 miles from the Champlain Parkway project that is included on the VTrans Capital Program list (project number MEGC M 5000(1)). The Project is also located approximately 1.5 miles from the Burlington Roundabout project that is included on the VTrans Capital Program list (project number HES 5000(18)). Exhibit #053.
13. VTrans recommends a transportation impact fee of \$2,069 per PM peak hour trip for the Champlain Parkway project and \$1,217 per PM peak hour trip for the Burlington Roundabout project. VTrans also recommends a reduction of 60% of the total fee because the Project is located in a Neighborhood Development Area (50% reduction) and the Project has been planned to include appropriate TDM measures (10% reduction). The total impact fee will be \$5,744.<sup>3</sup> The Commission will by permit condition require that the Applicant will pay this fee to VTrans prior to the start of construction.

### Conclusions of Law

Criterion 5(A) requires that the Project “will not cause unreasonable congestion or unsafe conditions with respect to use of the highways.” See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the

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Monroe Street, and south of George Street, or east on Pearl Street, north on Elmwood Avenue, west on Peru Street and south on George Street.

<sup>3</sup> The transportation impact fee is based on the hotel containing 93 rooms. The number of hotel rooms was revised to 78 during the course of the proceeding but the Applicants elected to maintain the cost of the original transportation impact fee. Exhibit #063.

reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens.

Criterion 5(B) requires a project to, “as appropriate . . . incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether measure is reasonable, “given the type, scale and transportation impacts” of the proposed project.

As conditioned herein, the Commission concludes that the Project will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation. Given the proposed number of PM peak hour trips generated by the Project, a transportation impact fee of \$5,744 paid to VTrans sufficiently mitigates the transportation impacts resulting from the Project.

The Project complies with Criteria 5(A) and 5(B).

#### **Criterion 8 - Aesthetics, Scenic and Natural Beauty:**

##### Findings of Fact

14. The Project tract currently contains the former Bove’s Restaurant building (64/68 Pearl Street), two multi-family residential buildings (13-15 and 19 George Street) and a City-owned parking lot. The former Bove’s Restaurant and the two multi-family residential buildings are proposed to be demolished as part of the Project.
15. The Project tract is located within a mixed-use area along Pearl Street and George Street in Burlington, Vermont. To the north of the site are single-family and multi-family residential homes; to the east is the Stannard House, the Federal building and post office, transit station, Department of Health buildings and downtown Burlington; to the south is the Victoria Place building, Department of Labor building, other commercial buildings, the Church of Immaculate Conception and downtown Burlington; to the west is the Social Security building, multi-family residential buildings, commercial buildings and other residential structures.
16. The proposed hotel will have a commercial restaurant space on the first floor with hotel rooms on the second, third, fourth and fifth floors. The fifth story is set back from the Pearl Street façade to minimize the visual height of the building. An L-shaped segment of the hotel will be constructed north of the existing Victoria Place building, which will minimize the apparent mass of the building from Pearl Street. The Pearl Street façade will be finished with a combination of veneer brick in an art deco design, to recall the former Bove’s Restaurant. The remainder of the proposed hotel will be finished with a combination of veneer brick and metal panels, generally in earth-tones. Exhibits #019a, 020a, 025, 026, 027, 028 and 046.
17. The senior housing building presents a four-story facade to George Street, where the fourth story is set back from the façade to minimize the visual height of the building. The

front of the building will be finished with a masonry veneer while the sides and rear of the building are proposed to be finished with alternating horizontal sections of metal wall panels, generally in earth-tones. Exhibits #021a, 022a, 023a, 024a, 029, 030, 031 and 045.

18. New utility lines will be located underground, and utility pedestals and cabinets will be screened with vegetation. Existing overhead utility lines are located along George Street.
19. The approval by the City of Burlington Development Review Board dated April 16, 2019, limits the construction hours to 7:00AM to 5:00PM Monday through Saturday, with no construction on Sundays. Exhibit #048. The Commission will also limit construction hours such that no construction shall occur on State or Federal Holidays.
20. The Commission will by permit condition require that the trees to be retained as depicted on Exhibit #033 will be protected by fencing or flagging during construction.
21. The Project will be landscaped as outlined on Exhibits #033 and 035. The Applicants shall continually maintain the landscaping as approved.
22. A 6-foot tall cedar screening fence will be located along the northern property line to provide screening for adjoining properties from on-site traffic and lighting. Exhibits #005b and 037.
23. Exterior lighting will consist of building-mounted and bollard-like lights and will be installed as depicted on Exhibits #034 and 038. All fixtures will have concealed light sources and will be no more than 20 feet in height.
24. Signage to be installed includes two signs mounted on the proposed hotel building that will be backlit or lit by downcast lights, an unlit plaque mounted on the proposed hotel building and an unlit freestanding sign near the entrance to the hotel on Pearl Street. Exhibits #019a, 020a and 026. No other exterior signage is proposed to be installed at this time.
25. The regional plan that applies to the Project is the *Chittenden County ECOS Plan (2018)*. The municipal plan that applies to the Project is the *planBTV Comprehensive Plan (2019)*.
26. The *Burlington Comprehensive Development Ordinance (2018)* indicates that the hotel and parking area are located within the downtown center zoning district (FD5) which is specifically planned to include intense development with high lot coverage and large tall buildings placed close together, but should complement the historic development pattern, and sensitive transitions should be provided where there is a great difference in scale between old and new.
27. The *Burlington Comprehensive Development Ordinance (2018)* indicates that the senior housing building is located in the high density residential zoning district (RH) which is specifically planned to include high density attached multi-family residential developments. Development is intended to be intense with high lot coverage, large

buildings, and buildings placed close together. Parking is intended to be hidden either behind or underneath structures.

28. The Project was granted approval by the City of Burlington Development Review Board on April 16, 2019 in consideration of the *Burlington Comprehensive Development Ordinance* (2018). Exhibit #048.

### Conclusions of Law

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics, scenic and natural beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue.<sup>4</sup>

#### 1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including: (a) the nature of the project's surroundings; (b) the compatibility of the project's design with those surroundings; (c) the suitability of the colors and materials selected for the project; (d) the locations from which the project can be viewed; and (e) the potential impact of the project on open space.<sup>5</sup>

The Project is located in a mixed-use area along Pearl Street and George Street in Burlington, Vermont. The Project tract currently contains the former Bove's Restaurant, two multi-family residential buildings and a City-owned parking lot. The existing structures will be replaced by a four-story senior housing building and a five-story hotel, both of modern design. The new structure will be prominently visible to motorists and pedestrians from Pearl Street and George Street. Although the Project is generally consistent with buildings near the Burlington's downtown, it is not consistent with buildings located to the north or the existing on-site structures.

The Commission concludes that the Project will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

#### 2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (a) the project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (b) the project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (c) the Applicants failed to take generally available

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<sup>4</sup> In re: *Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010)(citations omitted); see also, In re: *Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law.

<sup>5</sup> In re: *Quechee Lakes Corp et al.* #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env'tl. Bd., Nov. 4, 1985)(cited in *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 12-13).



mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings.<sup>6</sup>

a. Clear, Written Community Standard

The Commission has reviewed relevant portions of *planBTV Comprehensive Plan* (2019). The Commission finds that the plan uses aspirational language (e.g., “may”, “should”, “strongly encouraged”) and not mandatory language (e.g., “shall”, “shall not”). The Courts have long held that aspirational language in a Town Plan serves as an inadequate foundation for regulatory prohibitions. No mandatory language prohibiting the proposed Project was identified in the plan.

The Commission has reviewed relevant portions of the *Burlington Comprehensive Development Ordinance* (2018). The Commission finds that the development regulations use mandatory and not merely aspirational language.

The proposed hotel and parking area are located within the downtown center zoning district (FD5) which is specifically planned to include intense development with high lot coverage and large tall buildings placed close together. The proposed senior housing building is located in the high density residential zoning district (RH) which is specifically planned to include high density attached multi-family residential developments. Additionally, the Project was granted affirmative findings by the City of Burlington Development Review Board on April 16, 2019 in due consideration of the *Burlington Comprehensive Development Ordinance* (2018).

The Commission finds that the proposed Project does not violate a clear community standard.

b. Offensive or Shocking Character

Criterion 8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever.<sup>7</sup> Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont.

The Commission acknowledges that the Project will be significantly different than the structures presently existing on the site and to the north of the site. Among other differences, the Project would transform the site to a much more densely built area. However, the Commission finds that the average person would not be shocked or offended to find a development of this nature at this location.

Given these considerations, while the effects would be substantial, the Commission concludes that the Project would not be offensive or shocking.

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<sup>6</sup> In re: *Rinkers*, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing In re: Times & Seasons, LLC, 2008 VT 7, ¶ 8; In re McShinsky, 153 Vt. at 592 ).

<sup>7</sup> In re: *Okemo Mountain, Inc.* #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986).

c. Generally Available Mitigating Steps

If a project has an adverse aesthetic effect, the applicant must take generally available mitigating steps to reduce the negative aesthetic impact of a particular project; failure to take advantage of available alternatives may render an aesthetic impact unduly adverse.<sup>8</sup> A generally available mitigating step is one that is reasonably feasible and does not frustrate either the project's purpose or Act 250's goals.

To mitigate the aesthetic impacts of the Project, the Applicants have designed the proposed five-story hotel to front on Pearl Street where the fifth story is set back from the Pearl Street façade to minimize the visual height of the building. An L-shaped segment of the hotel will be constructed north of the existing Victoria Place building, which will minimize the apparent mass of the building from Pearl Street. The Pearl Street façade will be finished with a combination of veneer brick in an art deco design, to recall the former Bove's Restaurant. The remainder of the proposed hotel will be finished with a combination of veneer brick and metal panels, generally in earth-tones.

The senior housing building presents a four-story facade to George Street, where the fourth story is set back from the façade to minimize the visual height of the building. The proposed building is larger than the residential building to the north but provides an adequate transition in building size from those buildings that front on Pearl Street. The front of the building will be finished with a masonry veneer while the sides and rear of the building are proposed to be finished with alternating horizontal sections of metal wall panels, generally in earth-tones.

Furthermore, utilities are proposed to be primarily underground or screened. Parking will be located underground or screened from view from Pearl Street and George Street. Landscaping will surround the buildings and all proposed lighting will be down-shielded.

Given all of these considerations, the Commission finds that the Applicants have taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

Based on the above, the Commission concludes that the Project will not have an undue adverse impact on the aesthetics or natural and scenic beauty of the area.

**Criterion 8 - Historic Sites:**

Findings of Fact

29. The Project tract currently contains the former Bove's Restaurant building (64/68 Pearl Street), two multi-family residential buildings (13-15 and 19 George Street) and a City-owned parking lot.

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<sup>8</sup> In re *Stokes Communications Corp.*, 164 Vt. 30, 39 (1995)(quoted in In re *Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010).

30. The Applicant evaluated the Project tract for archaeological sensitivity and determined that, as a result of previous ground disturbance and fill materials brought in historically, the Project tract does not have the potential to yield important archeological information. Exhibit #047. VDHP concurred with this conclusion and has no archaeological concerns related to the proposed Project. Exhibit #055.
31. The Applicant proposed that the buildings located at 13-15 and 19 George Street are eligible as contributing resources to a potential George Street Historic District. Exhibit #047. However, after evaluating the existing conditions of the two houses, VDHP has concluded that the resources do not pose sufficient historic integrity to be eligible individually or as part of a historic district listed in the State Register of Historic Places. Therefore, the buildings located at 13-15 and 19 George Street are not historic sites. Exhibit #055. Additionally, VDHP does not support the creation of a George Street Historic District as the significance of the collection of resources in this area stretches beyond this one street. Exhibit #055.
32. The former Bove's Restaurant located at 64/68 Pearl Street was listed on the State Register of Historic Places in 1993. Exhibit #047. The building is a 2.5-story long linear wood framed structure with the front gable facing Pearl Street and with two shed roof wings on the north elevation. The storefront contains structural glass and black and white tiles in an Art Deco style. Exhibit #047.
33. Immediately surrounding the Project tract are buildings listed on the State Register of Historic Places including 71-73 and 83 Pearl Street; 23, 27 and 31 George Street; and 65-67, 69 and 81 Monroe Street. The Stannard House, located at 3 George Street, is listed on both the State and National Register of Historic Places.
34. The Project would include the demolition of the former Bove's Restaurant building (64/68 Pearl Street), and the two multi-family residential buildings (13-15 and 19 George Street).
35. VDHP finds that the proposed new construction will be a change to the Project tract and will be in close proximity to the historic sites at 3 and 23 George Street. However, VDHP finds that the historic setting of 3 George Street has already been altered by the construction of Victoria Place. Also, VDHP finds that the most substantial effect on 23 George Street would be the replacement of two single-family houses with one large four-story senior residential building, but the setbacks of the new building will not overwhelm or detract from the significant characteristics of the building at 23 George Street. Exhibit #055.
36. VDHP concludes that the effects of the Project will not be so significant that they will create an unacceptable impact. Exhibit #055. However, VDHP recommends the following mitigation for the Project, and the Commission will by permit condition include the following:
  - a. Applicant will complete the "The Last Day at Bove's Café" documentary within one year of the demolition of the building at 64/68 Pearl Street. Within two years from the demolition, the Applicant will provide a showing of the documentary for the

public. The documentary will also be made available online for a minimum period of five years following completion. The documentary will include the following components at a minimum:

- i. Footage shot during its last few days of operation.
    - ii. Testimonials and remembrances from at least four family members, staff and/or patrons of the restaurant.
    - iii. Historical maps, photo images, and other objects relevant to the family, business, building, and the relationship of the business and family within the Little Italy neighborhood in Burlington.
  - b. Applicant will produce and display on site a wayfinding panel focused on the history of Bove's Café in the context of Burlington's "Little Italy" neighborhood. This panel shall supplement and be modeled for the existing wayfinding panels recounting the story of Little Italy. The text and images proposed for the panel shall be submitted to VDHP for review and approval prior to production. The panel shall be installed on the property and available for the public to view; it shall be fabricated and installed within one year of the completion of the new building on the property.
37. Provided that the stipulations outlined above are followed, VDHP concluded that the Project will have an adverse effect on historic sites, but the effect would not be undue. Exhibit #055.
38. At the July 19, 2019 public hearing, the Applicant's representative verbally agreed to the mitigating conditions set forth by VDHP and included above.
39. The Project was granted approval by the City of Burlington Development Review Board on April 16, 2019 in consideration of the *Burlington Comprehensive Development Ordinance* (2018). Exhibit #048. The DRB concluded that:
- a. All historically and architecturally important design, features, construction techniques, examples of craftsmanship and materials for the buildings proposed for demolition will be properly documented and made available to historians and others interested in Burlington's architectural history.
  - b. The applicant is encouraged to sell or reclaim a structure and all historic building materials, or facilitate safe salvage of buildings or their materials, or to provide an opportunity for others to purchase or reclaim the building or its materials for future use.

### Conclusions of Law

The Commission uses a three-part test to determine whether the Project meets the portion of Criterion 8 relating to historic sites. The Commission determines: (1) whether the project site

contains a historic site; (2) whether the project will have an adverse effect on the historic site; and (3) whether the adverse effect will be undue.<sup>9</sup>

#### 1. Presence of a Historic Site

“Historic site” is defined as “any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the State Register of Historic Places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant.” 10 V.S.A. § 6001(9).

The former Bove’s Restaurant located at 64/68 Pearl Street is listed on the State Register of Historic Places since 1993. Therefore, the Project tract contains one historic site.

Immediately surrounding the Project tract are buildings listed on the State Register of Historic Places including 71-73 and 83 Pearl Street; 23, 27 and 31 George Street; and 65-67, 69 and 81 Monroe Street. The Stannard House, located at 3 George Street, is listed on both the State and National Register of Historic Places.

#### 2. Adverse Effect

Important guidelines in evaluating if the proposed project will create an adverse effect on historic sites include: (a) whether there will be physical destruction, damage, or alteration of those qualities which make the site historic, such as an existing structure, landscape, or setting; and (b) whether the proposed project will have other effects on the historic structure, landscape, or setting which are incongruous or incompatible with the site’s historic qualities, including, but not limited to, such effects as isolation of an historic structure from its historic setting, new property uses, or new visual, audible or atmospheric elements.<sup>10</sup>

The Project includes the demolition of the former Bove’s Restaurant in order to construct a new five-story hotel. At a minimum, the removal of the former Bove’s Restaurant structure constitutes an adverse impact to the historic site. Accordingly, we must determine whether that impact is undue.

#### 3. Undue Adverse Effect

An adverse effect is undue if any of the following factors exists: (a) the applicant has failed to take generally available mitigating steps which a reasonable person would take to preserve the character of the historic site; (b) the proposed project will interfere with the ability of the public to interpret or appreciate the historic qualities of the site; (c) the cumulative effects on historic qualities of the site by the various components of a proposed project, when taken together, are so significant that they create an unacceptable impact;

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<sup>9</sup> In re: *Steven L. Reynolds and Harold and Eleanor Cadreact*, #4C1117-EB, Findings of Fact, Conclusions of Law, and Order at 5 (Vt. Env’tl. Bd. May 27, 2004); In re: *Manchester Commons Associates*, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env’tl. Bd. Sept. 29, 1995).

<sup>10</sup> In re: *Middlebury College*, #9AO177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env’tl. Bd. Jan. 26, 1990); cited In re: *OMYA, Inc. and Foster Brothers Farm, Inc.*, #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Env’tl. Bd. May 25, 1999), *aff’d*, *OMYA Inc. v. Town of Middlebury*, 171 Vt. 532 (2000).

and (d) the project violates a clear, written community standard which is intended to preserve the historic qualities of the site.<sup>11</sup>

The Project does not violate any clear written community standard that is intended to preserve the historic qualities of the site. Furthermore, the Applicants and VDHP have agreed upon conditions which set forth mitigation for the Project. VDHP has concluded that if the Applicants follows the mitigating conditions, then the Project will have an adverse effect on historic sites, but the effect would not be undue

Provided that the Applicants comply with the terms and conditions described in the Findings of Fact for Criterion 8 historic sites, the Commission concludes that the Project will not have an undue adverse effect on historic sites.

## **VII. SUMMARY CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit #4C1082-1, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

## **VIII. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C1082-1 is hereby issued.

DATED at Essex Junction Vermont, this 17<sup>th</sup> of March 2020.

By /s/Thomas A. Little  
Thomas A. Little, Chair  
District #4 Environmental Commission

Commissioners participating in this decision:  
Parker Riehle  
Scott Baldwin

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

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<sup>11</sup> In re: *OMYA, Inc. and Foster Brothers Farm, Inc.*, #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 40 (May 25, 1999), *aff'd*, *OMYA Inc. v. Town of Middlebury*, 171 Vt. 532 (2000); see also, *Manchester Commons*, *supra* at 22.

Findings of Fact, Conclusions of Law, and Order #4C1082-1  
Page 15

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401.

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# Exhibit List



<b>Application #</b>	4C1082-1 (3/13/20)
<b>Applicant(s)</b>	3-11 1/2 George Street, LLC
<b>Landowner(s)</b>	3-11 1/2 George Street, LLC / City of Burlington / Moreau Dayle A Rev Trusts
<b>Project Town(s):</b>	Burlington

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	5/13/19	001 Act 250 Application; and Cover Letter	Applicant
002	5/13/19	002 Schedule G	Applicant
003	5/13/19	003 Soils Map and USGS Location Plan	Applicant
004	5/13/19	004 SH 1 - Existing Conditions 1-14-19	Applicant
005	5/13/19	005 SH 2 - Site Plan 4-9-19	Applicant
005a	8/1/19	005a SH 2 - Site Plan Revised 7-26-19	Applicant
005b	3/5/20	005b SH 2 - Site Plan Revised 12-10-19	Applicant
006	5/13/19	006 SH 3 -Overall Site Plan 1-14-19	Applicant
007	5/13/19	007 SH 4 - Sewer Details 1-14-19	Applicant
008	5/13/19	008 SH 5 - Water Details 1-14-19	Applicant
009	5/13/19	009 SH 6 - Roadway Details 1-14-19	Applicant
010	5/13/19	010 SH E1 - EPSC Pre Construction Plan 1-14-19	Applicant
011	5/13/19	011 SH E2 - EPSC Construction Plan 1-29-19	Applicant
012	5/13/19	012 SH E3 - EPSC Post Construction Plan 1-14-19	Applicant
013	5/13/19	013 SH ST1 - Storm Treatment Standards 1-14-19	Applicant
014	5/13/19	014 SH ST2 - Storm Management Plan 1-14-19	Applicant
015	5/13/19	015 SH ST3 - Storm Details 1-14-19	Applicant
016	5/13/19	016 SH ST4 - Storm Maintenance Plan 1-14-19	Applicant
017	5/13/19	017 SH PL1 - Boundary Plat 4-30-19	Applicant
018	5/13/19	018 SH A2.0 - Below Grade Parking Layout 3-19-19	Applicant



No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
018a	8/1/19	018a SH A2.0 - Below Grade Parking Layout Revised 4-9-19	Applicant
018b	3/13/20	018b SH A2.0 - Below Grade Parking Layout Revised 3-6-20	Applicant
019	5/13/19	019 SH A4.1 - Hotel East & West Elevations 3-19-19	Applicant
019a	3/5/20	019a SH A4.1 - Hotel East and West Elevations Revised 9-23-19	Applicant
020	5/13/19	020 SH A4.2 - Hotel North & South Elevations 3-19-19	Applicant
020a	3/5/20	020a SH A4.2 - Hotel North and South Elevations Revised 9-23-19	Applicant
021	5/13/19	021 SH A4.1 - George St North Elevation 3-19-19	Applicant
021a	3/5/20	021a SH A4.1 - George St North Elevation Revised 10-11-19	Applicant
022	5/13/19	022 SH A4.2 - George St East Elevation 3-19-19	Applicant
022a	3/5/20	022a SH A4.2 - George St East Elevation Revised 10-11-19	Applicant
023	5/13/19	023 SH A4.3 - George St South Elevation 3-19-19	Applicant
023a	3/5/20	023a SH A4.3 - George St South Elevation Revised 10-11-19	Applicant
024	5/13/19	024 SH A4.4 - George St West Elevation 3-19-19	Applicant
024a	3/5/20	024a SH A4.4 - George St West Elevation Revised 10-11-19	Applicant
025	5/13/19	025 SH P1 - Hotel Perspective 3-19-19	Applicant
026	5/13/19	026 SH P2 - Hotel Perspective 3-19-19	Applicant
027	5/13/19	027 SH P3 - Hotel Perspective 3-19-19	Applicant
028	5/13/19	028 SH P4 - Hotel Perspective 3-19-19	Applicant
029	5/13/19	029 SH P5 - George St Perspective 3-19-19	Applicant
030	5/13/19	030 SH P6 - George St Perspective 3-19-19	Applicant
031	5/13/19	031 SH P7 - George St Perspective 3-19-19	Applicant
032	5/13/19	032 SH L100 - Site Amenities Plan 1-15-19	Applicant
033	5/13/19	033 SH L101 - Landscaping Plan 1-15-19	Applicant
034	5/13/19	034 SH L102 - Lighting Plan 1-15-19	Applicant
035	5/13/19	035 SH L200 - Landscaping Details 1-15-19	Applicant
036	5/13/19	036 SH L300 - Hardscape Details 1-15-19	Applicant
037	5/13/19	037 SH L301 - Site Details 1-15-19	Applicant
038	5/13/19	038 SH L400 - Lighting Details 1-15-19	Applicant
039	5/13/19	039 Construction Waste Reduction Plan	Applicant
039a	7/19/19	039a Construction Waste Reduction Plan Revised 7-16-19	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
040	5/13/19	040 Allocation Letter - Burlington	Applicant
041	5/13/19	041 Traffic Report 3-20-19	Applicant
042	5/13/19	042 Parking Analysis 4-9-19	Applicant
042a	3/5/20	042a Shared Parking Plan Revised 2-10-20	Applicant
043	5/13/19	043 Parking Management Plan	Applicant
043a	3/5/20	043a Parking Management Plan Revised 2-10-20	Applicant
044	5/13/19	044 Site Photos	Applicant
045	5/13/19	045 George St Lofts - Material Samples	Applicant
046	5/13/19	046 Hotel Champlain - Material Samples	Applicant
047	5/13/19	047 Historic Resources Review & Archaeological Review (UVM)	Applicant
048	5/13/19	048 Burlington Approval Letter 4-23-19	Applicant
049	5/13/19	049 Plan BTV - Future Land Use Map	Applicant
050	5/13/19	050 ECOS Plan - Future Land Use Map	Applicant
051	5/13/19	051 Act 250 Permit #4C1082	Applicant
052	5/13/19	052 Municipal Impact Questionnaire - Burlington	Applicant
053	6/7/19	053 VTrans Entry of Appearance and Comment Letter (6/7/19)	VTrans
054	6/28/19	054 CCRPC Review Letter (6/28/19)	Regional Planning Commission
055	7/18/19	055 VDHP Comment Letter (7/18/19)	DHP
056	7/19/19	056 ANR Entry of Appearance Comments (7/19/19)	ANR
057	8/1/19	057 Cover Letter by Bryan Currier re Hearing Recess Order Response (8/1/19)	Applicant
058	8/1/19	058 Wastewater Permit #WW-4-5238 (7/31/19)	Applicant
059	8/1/19	059 Technical Traffic Memorandum (4/2/19)	Applicant
060	8/1/19	060 Pinnacle Advisory Group Marketing Study (2/25/18)	Applicant
061	8/1/19	061 Email by Elizabeth Peebles re VDHP Fence Acceptance (7/25/19)	Applicant
062	3/5/20	062 Cover Letter by Bryan Currier re Supplemental Evidence #2 (3/5/20)	Applicant
063	3/13/20	063 Cover Letter by Bryan Currier re Supplemental Evidence #3 (3/13/20)	Applicant
064		064	
065		065	
066		066	
067		067	

## CERTIFICATE OF SERVICE

I hereby certify on this 17<sup>th</sup> day of March, 2020, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER #4C1082-1, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to [NRB.Act250Essex@vermont.gov](mailto:NRB.Act250Essex@vermont.gov)

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Regina Mahony, Planning Program Manager  
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### **FOR YOUR INFORMATION**

District #4 Environmental Commission  
Thomas Little, Chair  
Parker Riehle/Scott Baldwin  
111 West Street  
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 17<sup>th</sup> day of March, 2020.



Jessica Mason  
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