

Department of Planning and Zoning

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MEMORANDUM

TO: Bill Keogh, City Council President
Burlington City Councilors
Mayor Bob Kiss

CC: Eugene Bergman, Interim Code Enforcement Director
Steve Goodkind, Public Works Director
Ned Holt, DPW Inspection Services Div.

FROM: David E. White, AICP, Director of Planning & Zoning

DATE: Thursday, December 10, 2009

RE: Open Government – Dept. of Planning and Zoning Resolution

In September the City Council passed a resolution endorsing two recommendations of the 2008 Open Government Committee, and requesting the Director of Planning & Zoning prepare a plan to implement these recommendations. Per this request you will please find below the Dept. of Planning & Zoning's response and recommendations with regard to implementing these proposals.

1. Provide direct notice on some administratively-approved projects:

The first recommendation pertained to providing a direct notice to adjacent property owners for zoning applications that are reviewed administratively.

Currently public notice is provided for all zoning permit applications by means of:

- Public notice of all applications are posted **on-site** where they are "clearly visible from a public way" – the "Z" Card. This is a requirement placed on the applicant that is easily verified by the City, and can and has been enforced during the review process.
- A listing of all applications currently under review and their current status is available **online** at www.ci.burlington.vt.us/planning/zoning/status_report. This information is up-dated daily based on the permit information system, and is a service provided by the Department.
- All permits issued are posted in **City Clerk's Office** with copies to City Assessor within 3-days of the approval. This is a requirement placed on the City by state statute.

Currently (per statute and ordinance), adjacent property owners receive a direct notice by mail from the Dept. of Planning & Zoning **only** for those development applications that are heard by the Development Review Board.

In considering the Council's resolution, our Department has explored a number of possible alternatives with the common objective of providing neighbors earlier and direct notification of a zoning application under administrative review. It is important to understand in evaluating these alternatives these important factors:

- During FY2009, 86 applications and 8 appeals of administrative decisions were reviewed by the Development Review Board. In contrast, ~88% of all development applications (671) were reviewed administratively – nearly 9 times the number of projects reviewed by the DRB.
- Most applicants for these small projects are typical home owners and small contractors whose budgets and timelines are limited. Their alternative to getting a permit that they already perceive as costing too much, taking too long, and being too complicated is to do the work without permits. This places them at considerable financial and legal risk, and creates a potential life safety hazard as they would also not be obtaining a building permit for their project.
- Regardless of the approach, it is and will always remain an imperfect process. It is impossible to deliver every notice into the hands of every person who may have an interest. (e.g. Is it the owner or the tenant? What if they are away or the notice got lost in the mail?)
- Any additional requirements placed on applicants must be consistently applied, and must be verifiable with meaningful consequences if they fail to comply.
- The Council's recommendation is that only "some" administratively reviewed projects receive broader notice. The difficulty however is in defining which projects. Obvious examples might include demolitions, new units or major additions, but what about fences, tree cutting, decks or new windows that might impact perceived privacy. The Department's experience is even a very small project can be perceived as problematic by an adjacent property owner, so there are no simple thresholds to apply.
- The Department estimates that inadequate public notice is an issue raised in less than 1% of all projects reviewed in any given year.
- Finally taking into consideration the points above, the marginal additional benefit to an interested adjacent property owner needs to be weighed against the marginal additional cost (in both time and money) to the applicant and/or the City.

Alternatives:

1. Direct notice by mail for **all** development applications

The most complete and meaningful approach for informing neighbors to a zoning application under administrative review would be to provide a direct notice by mail for all development applications – administrative projects would be treated in the same way as projects that go to the DRB.

- Notice would be mailed to the property owner of record at the time an application was submitted.
- An interested adjacent owner would be free to contact the Department or the applicant for more information, but the administrative review would continue to be completed as soon as possible within 30-days per current statutory requirements.
- An interested adjacent owner would still be able appeal the administrative decision if they were unsatisfied with the outcome.

Pros: The most complete approach to ensuring (as best as possible) that all adjacent property-owners receive a direct notice based on the current requirements for the DRB. The burden of notice remains with the Department who already has the information and process in-place without placing an additional burden on the applicant.

Cons: Adds a significant additional expense in both direct costs (postage & materials) and staff-time to the Department.

	<u>Current</u> Expense	Anticipated Additional Expense (9x current)
Direct expenses	~\$8,500-10,000	~\$76,500-90,000
Personnel expenses	~ 5-8 hrs/wk	~45-72 hrs/wk or 1.0-1.8 FTE

2. Hand-delivered Postcards by the Applicant

A pre-printed postcard notice could be provided to the applicant to hand-deliver to all adjacent properties. The notice would indicate that an application has been made for a zoning permit and how to contact the Dept. for additional information.

Pros: A simple approach from the City’s perspective that places the burden of notice on the applicant.

Cons: No simple means of verifying that the notice was actually delivered by the applicant without requiring a formal “Service List” (e.g. Act 250 or Environmental Court) in order to ensure delivery with meaningful consequences. Documentation of Service would need to be provided prior to the Department processing the application. This will significantly complicate and possibly lengthen the permitting process from the perspective of the applicant. Notice may be going to a tenant rather than the owner.

	Anticipated Additional Expense
Direct expenses	~\$350 direct expenses
Personnel expenses	~15 hrs/wk or 0.375 FTE

Both of these alternatives would require an amendment to the Department's budget to accommodate the additional expenses, and require a change to the CDO to codify any change in responsibilities for notice.

2. Neighborhood presentations for "Major" Projects:

The second recommendation pertained to having applicants for "major" projects make one or more presentations within the effected neighborhood.

Currently Department staff regularly recommends to applicants of larger development projects that they consult with the respective NPA early in the project development process. These are typically projects that are subject to Major impact Review, but may also be smaller projects where the staff feels there may be some neighborhood concern/interest. Some applicants take advantage of this advice and often find this to be a very useful process, while others choose not to for whatever reason.

The most logical approach to implementing this recommendation would be to make this a requirement for all Major Impact Projects as follows:

- As part of the application submission, the applicant would need to provide documentation (methods of promotion including copies of advertisement/notices, an attendee sign-in sheet, and meeting notes) of holding one or more public meetings within the effected neighborhood.
- The NPA meeting could be one venue, but the applicant could choose to hold their own meeting independent of the NPA.
- Failure to hold the required public meeting would result in the application being incomplete and not undergoing review by the Department until this requirement has been satisfied.

This recommendation would require an amendment to the CDO to codify the requirement for, and documentation of, public meetings on major impact projects.

Please let me know if there are any questions or additional information I can provide.