



401 Main Street Application

DECISION ON THE MERITS

Sisters and Brothers Investment Group (Applicant) seeks zoning permit for the development of a 0.32-acre parcel located at 401 Main Street, Winooski, Vermont (the Subject Property). The Subject Property previously housed gas station, which Applicant proposes to replace with a 3-story mixed use building, with commercial space on the first floor and residential units on the second and third floors and associated parking (the Project). The City of Winooski Development Review Board (DRB) denied the application. Applicant subsequently appealed that denial to this Court.

Applicant is represented by Brian P. Hehir, Esq., the City of Winooski (City) is represented by Robert S. DiPalma, Esq., and Interested Party Winooski School District (the School District) is represented by Kristin C. Wright, Esq.

On February 14, 2023, this Court held a single-day trial via the WebEx platform.

Statement of Questions

Applicant filed a four-Question Statement of Questions. Applicant's Statement of Questions (filed October 15, 2021). These Questions as:

1. Whether or not the sole issue on appeal is whether or not the proposed drive-through window of the proposed Dunkin Donuts restaurant should be subject to limited hours of operation.
2. Whether or not the [A]pplicant/[A]ppellant is entitled to approval of the proposed drive-through window with no conditions regarding the hours of operation.

3. Whether or not the project may be built during the time when the hours of operation of the drive-through window is adjudicated in this appeal.

4. Whether or not the project as a whole shall be approved under the applicable zoning regulations.

Id.

Prior to trial, and as a part of the merits hearing in this matter, the parties agreed that the issue before the Court focused on traffic impacts from the Project, and more specifically, peak hour traffic impact from the drive-thru window of a Dunkin Donuts proposed as a part of the Project.

Additionally, the parties disagree about whether the City has reviewed and decided all other aspects of the Project and whether the Project complied with the City of Winooski Unified Land Use & Development Regulations (the Regulations) beyond the traffic issues. At the outset of trial, and during the morning recess, the Court reviewed City Exhibits 6, a Zoning Administrator Memorandum to the DRB dated July 15, 2021 and 7, the DRB's August 2021 denial of the application, and concluded that pursuant to Exhibit 6, the City's Zoning Administrator had provided a Certificate of Conformity for the Project, noting that the sole limitation to achieving a positive Site Plan review outcome was the shortcoming with Applicant's Traffic Impact Study. Furthermore, the City DRB review was limited to an analysis of Applicant's traffic study and proposed traffic and roadway impacts from the Project. See Exhibit 7.

With this background, our trial focused on whether the Project's traffic will adversely impact the City's roadways and facilities in and around the Parcel.

Findings of Fact

1. Sisters and Brothers Investment Group, LLP seeks a zoning permit for development of a 0.32-acre parcel located at 401 Main Street, Winooski, Vermont (the Subject Property).
2. The Subject Property is in the Gateway Zoning District, as defined by the City of Winooski Unified Land Use & Development Regulations (the Regulations).
3. The Subject Property was previously used as a gas station.

4. The Subject Property is abutted to the west by Main Street and to the south by Normand Street.
5. To the east and at the dead-end public portion of Normand Street is property owned by the School District.
6. The School District is accessible from both Main Street and Normand Street.
7. The public portion of Normand Street is one-way, allowing traffic to turn off Main Street into Normand Street.
8. The public portion of Normand Street dead-ends at the boundary of Normand Street and the School District's property.
9. In addition to public traffic using Normand Street, buses serving the School District also use Normand Street to access the School District property.
10. Because of the configuration of Normand Street and the surrounding properties, there is no way to exit Normand Street if a vehicle enters for purposes other than School District Purposes or through agreement with the School District allowing traffic to cross over School District property.
11. The School District has two large curb cuts immediately north of the Subject Property onto Main Street.
12. Although during a significant portion of the process before the City, the City was willing to consider transforming Normand Street from one-way to two-way traffic, it is no longer willing to do so due, in part, to the School District's busses using Normand Street.
13. During the time that the Subject Property was used as a gas station it was accessible by two curb cuts on Main Street.

The Project

14. Applicant proposes to develop the Subject Property with a 3-story mixed use building with approximately 2,600 square feet of commercial space on the first floor, and eight apartment units on the second and third floors (the Project).
15. The first floor will be occupied by 2 commercial tenants: a Dunkin Donuts coffee/donut shop with a drive-thru and a general commercial use tenant.

16. The Project's parking area will be reconfigured to allow shared driveway between 401 Main Street and 32 Normand Street.
17. The two existing large curb cuts on Main Street will be closed and replaced with a single egress-only curb cut on the north side of the Subject Property.
18. A curb cut is proposed on the south side of the Subject Property and north side of Norman Street, approximately 80 feet from the intersection of Normand Street and Main Street to serve both 401 Main Street and 32 Normand Street.
19. In December 2018, Applicant submitted its application for a zoning permit for the Project.
20. On January 30, 2019, the City Zoning Administrator issued a Certificate of Conformity regarding the Project (the Certificate). The Certificate included conditions required for permit approval.
21. The Certificate's condition at issue in this matter required Applicant to complete a Traffic Impact Study (TIS) to include information on trip generations from the known commercial tenant and review of turning movements.
22. Applicant provided a TIS prepared by Stantec in April 2019 (the April TIS).
23. The City provided responses to the April TIS in August 2019.
24. In this response document, the City notes that it "is open to reviewing a two-way traffic conversation for Normand Street."
25. The response document also makes note that the City requested Applicant to seek an access agreement from the School District allowing vehicle access from the Subject Property to the School District property and that the School District was not agreeable to permitting vehicles onto their property.
26. In a September 19, 2019 letter, the City provided "follow-up" comments regarding proposed site traffic flow. Again, the City stated it "is open to reviewing a two-way traffic conversion for the existing one-way Normand Street."
27. Applicant filed additional transportation information in April 2021.
28. In a May 5, 2021 letter, the City outlined two options leading to Permit approval. Either (a) eliminate the drive-thru, or (b) limit drive-thru hours until after 8:30 AM.

29. The City's May 5, 2021 letter notes that the City is not inclined to continue the conversation of revising Normand Street to two-way due to the School District bussing operations. This is because, under two-way operations, a bus making a right turn from Main Street to Normand Street would conflict with two-way traffic on Normand Street due to the buses' turning radii.

30. In a May 27, 2021 decision, the Zoning Administrator denied the zoning permit application, concluding that sufficient data or evidence had not been provided to successfully prove that the Project will not adversely impact the City's roadways and facilities in and around the Subject Property.

31. Applicant appealed this decision to the DRB.

32. In a July 15, 2021 memorandum from the Zoning Administrator to the DRB, the Zoning Administrator acknowledges that the School District would not allow Applicant's traffic to access the School District property, and that the potential conversion of Normand Street from one-way to two-way traffic was eliminated due to turning radii for School District buses.

33. This memorandum also notes that Applicant provided multiple iterations of the site plan and traffic impacts to address concerns related to pedestrian safety and traffic.

34. In an August 27, 2021 decision, the DRB denied Applicant's appeal of the Zoning Administrator's denial of the zoning permit application based on an inadequate TIS.

35. Appellants timely appealed the DRB decision to this Court.

36. Applicant provided a revised TIS based on the assumption that the initial section of Normand Street would be revised to allow two-way traffic.

37. Applicant's proposed Site Plan shows the initial section of Normand Street to be two-way traffic.

38. Applicant's TIS accounts for some traffic exiting the Project onto a two-way Normand Street, rather than all traffic exiting the single curb cut onto Main Street.

Conclusions of Law

The central question before the Court is whether the Project's traffic will adversely impact the City's roadways and facilities in and around the Subject Property.

Applicant's TIS and site plan is premised on Normand Street being reconfigured from one-way only to two-way traffic and concludes that the Project will not adversely impact City roadways and facilities. This TIS is based upon an approximately 2.5 year-long process before the City, during which the City made multiple requests and recommendations of Applicant which Applicant attempted to bring into fruition. Additionally, during this process, the City informed Applicant that it would be receptive to modifying traffic on Normand Street to two-way traffic, which would be in line with the traffic evidence presented to this Court.

During trial, the City provided testimony that it has no present intent to consider reconfiguring Normand Street to allow for two-way traffic. This is in part due to the School District's announcement that it would not allow non-school traffic to use its internal roadways and its objection to reconfiguring Normand Street to allow for two-way traffic due to the fact that its buses presently use Normand Street despite the School District's two curb cuts on Main Street.

As the party seeking to reverse the DRB's denial of the Project, Applicant bears the burden of proving that the Project complies with the Regulations. See In re Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 18, 195 Vt. 586 (citing L.M. Pike & Son, Inc. v. Town of Waterford, 130 Vt. 432, 437 (1972)). An applicant's failure to provide sufficient evidence to allow the Court to conclude that a project satisfies the applicable zoning regulations will be fatal to the application.

Applicant's traffic expert testified that the conclusions within the TIS are not altered if Normand Street remains one-way, meaning Applicant asserts that it has satisfied its burden in proving that the Project will not adversely impact the City's roadways and facilities in and around the Subject Property even if Normand Street remains a one-way. We are not persuaded by this testimony as all traffic would be forced to exit the single curb cut onto Main Street. Thus, the data upon which the TIS is based is inaccurate should Normand Street remain one-way, and all traffic be routed out of the Subject Property via Main Street.

We conclude that Applicant has failed to provide sufficient evidence to support a conclusion that the Project's traffic will not adversely impact the City's roadways and facilities in and around the Subject Property. More specifically, the traffic information within the TIS

assumes that some Project traffic will exit onto Normand Street which it presently cannot do. Traffic exiting the Subject Property onto Normand Street would have two options. First, it could turn left onto the one-way, leading towards the School District's property. That traffic would have no option but to cross over School District property to access the School District's curb cuts onto Main Street. Because there is no agreement allowing for this crossing, this traffic would be a trespass on the School District's property. Alternatively, traffic could violate the one-way traffic restriction and turn right onto Normand Street, towards Main Street. Because of this, there is no legal traffic pattern available to Applicant, to allow traffic to exit onto Normand Street from the Subject Property.¹ The traffic evidence Applicant has provided to show compliance with the Regulations, however, is reliant upon some traffic exiting the Subject Property via Normand Street as a two-way street, as was previously contemplated as a potential resolution to the practical traffic concerns in the Normand Street area.

As the City has indicated, for the above-referenced reasons, it has no present intent to reconfigure Normand Street for two-way traffic. We therefore cannot accept the TIS conclusions or Applicant's expert testimony as accurate to allow us to conclude that the Project's traffic will not adversely impact the City's roadways and facilities in and around the Parcel. As such, we conclude that the Project as proposed is not entitled to a zoning permit.

While not relevant to our conclusion, we note that this result, and the traffic concerns posed in the Normand Street area by its one-way status, is concerning for the Court. Ultimately, while denying the application is the legally correct result based on the present facts and circumstances, it appears to the Court to be an unjust result. This appeal represents only a portion of the Project's 2.5 year-long process, during this time Applicant sought to satisfy City requests and recommendations and the City indicated that it would be receptive to modifying traffic on Normand Street. This included undertaking the TIS that this Court concludes is presently deficient in light of the City's present position of maintaining the status quo of Normand Street in large part due to the School District's objection to the two-way traffic pattern. With the School District also taking the position that non-school traffic cannot cross

¹ The Court notes that this appears true for functionally any non-School District traffic on Normand Street, presenting a practical problem for traffic on a public street.

over School District property to access the School District's two large curb cuts on Main Street, Normand Street's one-way traffic pattern presents a practical problem for all public traffic entering Normand Street for non-school purposes. There is no legal way for this traffic to exit. Again, while the ultimate conclusion reached herein is the legally correct result, the Court is concerned with the unjust practical result.

While this Court cannot compel the parties to do so, it is hopeful that all appropriate stakeholders come to an appropriate solution to the practical problems at Normand Street that could hinder potential development in this area. The Applicant, in this regard, filed a post-trial motion to remand generally for the purpose of working through this traffic issue. While the City and the School District did not file replies to this motion, on March 6, 2022, the Court held a status conference on the motion, during which the City objected to the motion. The Court is therefore compelled to **DENY** the motion pursuant to V.R.E.C.P. Rule 5(i).

Conclusion

For the reasons set forth herein, we conclude that Applicant has failed to provide sufficient evidence to support a conclusion that the Project's traffic will not adversely impact the City's roadways and facilities in and around the Parcel. More specifically, the traffic information within the TIS assumes that some Project traffic will exit onto Normand Street, which it cannot. The application for site plan approval must therefore be **DENIED**.

This concludes the matter. A Judgment Order is issued concurrently.

Electronically signed March 27, 2023 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division