

CITY OF RUTLAND, VERMONT
Development Review Board Minutes
Monday October 29, 2018
CORRECTED

Development Review Board Members: Stephanie A. Lorentz, Al Paul, Jim Pell, Steve Wilk and Mike McClallen.

Members present: McClallen (Chair), Lorentz, Paul, Pell and Wilk.

NOTE TO READERS: THESE NOTES WERE PRODUCED FROM AN AUDIO RECORDING OF THE MEETING WHICH IS KEPT ON FILE AT CITY HALL IN THE BUILDING AND ZONING OFFICE. DUE TO THE FORMAT OF QUESTION AND ANSWER BY AN ATTORNEY, PORTIONS OF THESE NOTES ARE DONE TO REFLECT THAT FORMAT FOR CLARITY PURPOSES.

At 6:10 PM Chair McClallen called to order the Public Hearing regarding the prior Site Plan approval of a project at 5 North Main Street. The hearing was held to reopen proceedings for the Site Plan Review for purposes of receiving evidence related to deliveries, traffic and circulation.

Chair McClallen explained the DRB hearing process and that participation in the hearing was a prerequisite to the right to appeal. Anyone wishing to participate in the hearing was given a chance to swear in. In attendance for this hearing were:

- Michael Moser of West Rutland
- Laura Merone-Walsh of M.T. Associates (landowners)
- Frank Trombetta of M.T. Associates (landowners)
- Gregory Vasey of Hyde Park Associates (co-applicant, Five Guys franchise owner)
- Jim Anderson of Ryan, Smith and Carbine LTD
- Nicole Kesselring of Enman Kesselring Engineers

Chair McClallen then asked the applicants to explain the request. Mr. Anderson introduced himself and announced he was standing in for Attorney Joseph O'Rourke. He thanked the DRB for entertaining the motion to reconsider the decision. He apologized for the confusion created by prior evidence presented about delivery times, a material fact that is related to width of the curb cut needed in order to accommodate delivery vehicles. He stated they were glad for the opportunity to present new and additional evidence related to the point. He then introduced Mr. Vasey of Hyde Park Ventures.

Mr. Anderson conducted an interview of Gregory Vasey. Mr. Vasey introduced himself and gave his address. He explained he is employed by Hyde Park Ventures, the LLC through which they operate Five Guys Burgers. He is a managing partner of Hyde Park Ventures. A sub-entity of Hyde Park Ventures, Hyde Park Burgers, is the planned tenant for the 5 North Main Street location. They operate 32 restaurants currently. This would be their 33rd location. Mr. Vasey explained he was not able to make the August 1, 2018 hearing but he had authorized his engineer, Nicole Kesselring, to speak on his behalf. Mr. Vasey stated at the time of the August 1, 2018 hearing he had thought that deliveries would be received during the overnight hours. He stated he has since gained a different understanding. Since then he has been informed by Rinehart Distributors that the most likely window for delivery times will be 5AM – 9AM with wide variation within that timeframe. Mr. Vasey stated he has been in this business

nine years and that in his experience delivery schedules change. Rinehart has a contract to deliver to over 100 Five Guys restaurants throughout New England and the region. The distributor sets the delivery schedules and they are allowed to vary within the contractual obligations with Five Guys. Mr. Vasey stated that as a tenant at this location he would like a curb cut of adequate width to accommodate delivery trucks at any time. He stated this is necessary because should a delivery come at noon or 1PM because of a busy delivery schedule, it could cause significant trouble in the parking area if they were open for business. Mr. Vasey stated the types of trucks that would be making deliveries to this location would be tractor trailer trucks with a 48' trailer on the back of a daytime cab.

Attorney Anderson announced Mr. Vasey needed to leave early so if the DRB had any questions for him, they needed to be asked now.

DRB member Lorentz asked if Mr. Vasey owns the Five Guys restaurant in South Burlington. Mr. Vasey confirmed he does. Member Lorentz asked Mr. Vasey to explain how a tractor trailer maneuvers in and out of that site. Mr. Vasey stated that site has a large parking area behind it connected to Shaws which allows trucks to move in and out behind the building. Ms. Lorentz asked if the deliveries are always made by 48' length trailers. He said he has never seen anything smaller than that. Rinehart has said the deliveries to Five Guys are made on that length truck. Ms. Lorentz asked if they receive deliveries during their peak hours at other locations. He said it happens. Usually Rinehart calls ahead to inform the store. But, it presents an operational challenge in terms of staffing and overall management of operations during that time. However, it isn't something they can control as it is up to the distributor.

Ms. Lorentz asked for additional explanation of the truck movements. Mr. Vasey confirmed the trucks are able to pull in and deliver behind the store without encountering significant customer traffic. Ms. Lorentz stated that part of the DRB's concern is how the 5 North Main Street site, with its configuration, would work since the truck would be right in the middle of the parking lot. Mr. Vasey acknowledged that was true. He stated that Rinehart calls ahead so his staff would have the opportunity to set out cones to stop customers from using the parking that would be affected by the truck's presence. He said that this only impacts a portion of the overall "parking field". Ms. Lorentz noted it would affect the majority of parking spots that are closest to the building. Mr. Vasey conceded it "may" do that. Five Guys would work to reduce the overall impact, but it would definitely be an inconvenience as they cannot plan ahead on this in terms of staffing, for example. He stated this is not unique to Five Guys as truck deliveries, and changes to schedule are a regular challenge for food-based businesses. Deliveries are sometimes 6-8 hours off their schedule. The business deals with it or if there is no one at the restaurant to receive the delivery they go without product for a day.

Member Wilk asked if there had been a traffic study done at this location. Mr. Vasey said there was not anything done with respect to this property and project.

Member Paul asked if in the history of opening restaurants has there been high traffic at those times. Mr. Vasey said the opening days tend to be quite busy. In their experience, their busiest days in the sales history of the restaurants are in the first two weeks of opening. Mr. Vasey stated that the distributors are sensitive to the needs of the restaurant with respect to delivery in that time period.

Member Wilk pointed out that in the August 1, 2018 hearing testimony and information had been provided with regards to traffic counts. Mr. Vasey confirmed he had provided general traffic numbers but anticipated that the opening weeks would be quite busy. He said they would likely have uniformed staff helping to direct parking in the parking lot. He said that with the tight circulation / parking

situation at this location, they would likely hire off-duty police officers to direct traffic flow in order to decrease the impact on the surrounding community.

Ms. Lorentz asked if Mr. Vasey is familiar with the traffic pattern along North Main Street at noontime. He said he is familiar in a casual way.

Chair McClallen said there had been testimony provided by Nicole Kesselring at the August 1, 2018 hearing that the truck would pull in through the North Main Street access point then head toward the West Street access point and then reverse to the northernmost part of the property to unload there. Chair McClallen asked if that was the plan. Mr. Vasey said yes, that is the plan. Chair McClallen asked if that was the plan at noon. Mr. Vasey said that the plan would be to block off the spaces in the northern section of the parking lot with cones and truck would maneuver in the same manner as at other hours. Chair McClallen asked where the truck would exit. Mr. Vasey said presumably the truck would exit out the Business Route 4 / West Street side. Ms. Kesselring added that a truck could enter from West St and exit out the Route 7 / North Main Street side as there was room to make that movement. Chair McClallen asked for clarification about the direction from which the deliveries would likely be arriving at this site. Mr. Vasey confirmed delivery trucks would almost certainly be traveling either north or south on Route 7 before entering the site versus turning in from West St. He stated the most likely direction would be heading northbound toward Burlington.

Chair McClallen asked the DRB members and the member of the public if they had any further questions for Mr. Vasey. Ms. Lorentz asked for confirmation that the reason the truck would be entering then backing up is because deliveries would be received on the north side of the building. Nicole confirmed that the delivery door is on the north side of the building and it would be necessary to back the truck up in order to off-load at that location. Chair McClallen asked who would be speaking to the dimensions of the curb cut width. It was indicated that Nicole Kesselring would be the person speaking to that issue. Chair McClallen thanked Mr. Vasey for his testimony.

Attorney Anderson then introduced Nicole Kesselring of Enman Kesselring Engineers. Attorney Anderson asked Ms. Kesselring to introduce each of the numbered exhibits for the record. Ms. Kesselring stated that Zoning Administrator Tara Kelly had emailed (on October 22, 2018) several bullet points asking for information on behalf of the DRB. The first bullet point asked that a site plan be presented that incorporated all of the conditions of the DRB's September 14, 2018 decision.

Exhibit #1 is the site plan that incorporates all of those conditions. The 4 primary items changed from previous plans were the following:

- Pedestrian access along the westerly edge of the parking lot is added on the plan;
- Just to the east of the walkway the black lines represent the wheel stops that were requested;
- The access drive on North Main Street is depicted as 36' wide; and
- Three combination trash and recycle receptacles have been added to the plan (southwesterly corner of parking lot, south of the door to the restaurant, north end of the building).

Exhibit #2 corresponds to ZA Kelly's second bullet point. It is the exact same plan as Exhibit #1 but it shows a 48' wide access drive onto North Main Street.

Exhibits #3 - #6 address the vehicle turning movements.

- Exhibit #3 is the 48' curb cut showing the turning movements from the north and from the south

- Exhibit #4 shows the vehicle turning movements for the 36' driveway
- Exhibit #5 is the same vehicle turning movement as #3 but with an aerial image in the background that allows the lanes on North Main Street to be seen
- Exhibit #6 is the 36' driveway turning movement but with an aerial image in the background

DRB Member Lorentz noted that none of the exhibits showed the truck movement that would be made as it backed up to park and make deliveries and then proceeded to exit onto West Street. Ms. Kesselring confirmed that is true. There hadn't been any detail prepared that showed the truck exiting onto West Street. She clarified that all of the truck movements show trucks entering the site from North Main Street. She went on to describe the Northbound truck movement which shows the truck has to essentially make a u-turn after entering the site in order to align the cab and the trailer and then it can back up to make the delivery. She described the Southbound truck movement as entering the site in an "s-type" pattern and then the driver can back up to the delivery point.

Ms. Kesselring pointed out that the maneuvering a truck needs to do to pull into this site is not the same as a truck pulling into another location where a truck can make a 90 degree turn and then pull straight ahead down an access drive. In this case the driver has to continue maneuvering or else they would hit the building. The purple line represents the track of the cab. The green line represents the swing of the trailer. The continued maneuvering consumes a lot of area as it pulls into the site.

Ms. Kesselring continued down the list of bullet points sent by ZA Kelly. She stated the delivery times had been responded to by Mr. Vasey. She then referred to Exhibit #4 that shows the 36' access drive. They widened the turning radius at the street over what is out there currently. There is currently a mixture of turning radii on the different existing curb cuts some with a 5-8' radius such as on the existing northerly curb cut. On Exhibit #4 the turning radius at the street is shown as a 15' radius. A larger radius isn't possible because of the proximity of the road and the sidewalk. A larger radius would result in a larger "sweep" onto the site. In the two scenarios shown, a truck would consume the 36' curb cut width at various points in its movement. The concern of the applicants is that if a patron was trying to exit the site, there wouldn't be any room for another vehicle sitting there while a truck was trying to access at the same time. A 48' wide access drive (shown on Exhibit #3) provides more space for a vehicle to be sitting there while a truck is turning in or for a driver to anticipate that a truck is trying to enter the site and to scoot over as far as they can while the truck tries to maneuver into the site.

Lorentz noted it appears that in comparing Exhibit #3 and #4 in both scenarios the truck entering the site would take up nearly the entire swath and therefore either someone would need to be present to direct traffic or the truck would have to wait for the access drive to be clear before entering. Ms. Kesselring agreed it is possible that a truck would need to wait. However, the applicants have been most interested in exploring the scenario of another vehicle parked in the access drive at the time the truck wanted to enter. The plans show that it might be possible for a vehicle to be in the access drive waiting to turn south. But, if a vehicle were in the lane designated for left-hand turns onto North Main Street, the truck would need to wait for that lane to clear before it could enter the site. The scenario of allowing a vehicle to be in the right-hand turn lane may allow for less of a delay for trucks turning into the site and therefore creating less congestion on Route 7 / North Main Street.

Chair McClallen pointed out that when comparing the northbound movements on Exhibit #3 and #4, it appears the truck movement on #3 is taking a wider swing than the truck movement on #4. He based this comment on the way the green line tracks across the hatch mark painted area extending off of the southern end of the building. Ms. Kesselring concurred with Mr. McClallen's point and said she hadn't

picked up on that before. She stated she had someone else making the truck movements for her. But, she stated she saw what Mr. McClallen was saying. Mr. McClallen noted that the Southbound truck movement also used different turning movements to demonstrate feasibility of curb widths. Ms. Merone-Walsh of MT Associates interjected that Exhibit #4 shows one additional parking space more than Exhibit #3 on the east side of the northern parking lot section. Mr. McClallen clarified his observation is of the hatchmarks closest to the building (extending from the southern side of the building). Ms. Kesselring explained the difference is that with the 48' wide curb cut the truck is allowed to enter the site earlier and complete the turn differently on-site. Mr. McClallen feels the two site plans are different and on the 48' width, the trucks are simply allowed to come further into the parking lot before starting their turn. Ms. Kesselring stated she could overlay one on another or do some additional analysis to determine if Mr. McClallen's observation is correct and what the repercussions would be for making a tighter turn. After additional discussion, Ms. Kesselring noted she thinks that if the plans were altered as discussed, the truck would begin to run into the parking spaces on the west side before completing the turn.

Attorney Anderson asked Ms. Kesselring if she had completed her initial presentation explaining the significance of each exhibit. She said she had completed her initial presentation. Mr. Anderson then asked Ms. Kesselring if she had an opinion as to whether the width of the curb cut will have an impact on the ability for a delivery truck to access the premises. Ms. Kesselring stated in her opinion the 48' curb cut width is an improvement over the 36' curb cut width to allow for more maneuverability and also to allow for a vehicle to potentially be sitting in the entrance at the same time as a delivery truck. Exhibit #3 and #5 best illustrate this point. Attorney Anderson asked if it is fair to say that wider is better in terms of the ability of a delivery truck to access the premises? Ms. Kesselring said that although it is not the norm, in this case the wider width is better because of the way the truck can't just turn in and then straighten itself out. She stated that in her opinion, the wider entrance is important. Attorney Anderson noted that on the plans the widest curb cut shown is 48'. He asked if that width is optimal, in Ms. Kesselring's opinion, or had she initially recommended a wider curb cut. She noted they had originally showed a wider curb cut, but in her opinion 48' is sufficient. Attorney Anderson if the 54' curb cut get negotiated away in the process that she'd been part of. Ms. Kesselring stated "I think it has".

DRB member Wilk asked if Ms. Kesselring had tried different curb cut locations to see if truck traffic would be better accommodated if the curb cut were further to the north or south. Ms. Kesselring said they did not look at that. She explained that when they decreased the curb cuts from two to one they favored the existing southerly curb cut so they've just been working with that. The original two curb cuts provided for a total of 75' of driveway via a 35' curb cut on the north and a 40' curb cut on the south. By providing the consolidated curb cut they are decreasing the overall width of curb cuts along that stretch of North Main Street which, in their opinion, provides an overall improvement to the safety of pedestrians using the sidewalk. DRB member Wilk asked Ms. Kesselring if she is aware that the recommended curb cut size is 24' – 40' wide per access. Ms. Kesselring acknowledged that this is the VTrans standard. Mr. Wilk reminded everyone the reason this is being debated is because the proposed width is outside of that standard. The following is a close-to verbatim of the next section of the recording on file:

Attorney Anderson: Nicole, I understand what the VTrans regulations say. But does the VTrans standard change what the turning radius of the truck is pulling in and out of this site?

Ms. Kesselring: I'm not familiar enough with that.

Attorney Anderson: Well, let me put it this way. The turning radius of the truck is fixed by the laws of physics, isn't it?

Ms. Kesselring: Sure.

Attorney Anderson: And it's not going to change regardless of what the VTrans regulation says, is it?

Ms. Kesselring: No.

Attorney Anderson: So, a truck is going to need a certain size turning radius to get in and out of this site. Is that a correct statement?

Ms. Kesselring: Yes.

Attorney Anderson: And, is it generally true that the larger the curb cut the easier it is for the truck to access the site at peak traffic periods?

Ms. Kesselring: That's true.

Attorney Anderson: Just to pick up on the point that you had made a moment ago, reducing the number of curb cuts... how does that impact traffic safety out on the street, if at all?

Ms. Kesselring: Reducing the number of curb cuts reduces the conflict of vehicles on North Main Street and vehicles entering and existing the site. Makes it more predictable because everyone is utilizing one curb cut versus multiple different turning movements coming out of two curb cuts.

Attorney Anderson: Does the VTrans regulations refer to that as point of conflict, is it?

Ms. Kesselring: I don't know if that's the term they use. But, it's definitely a term used in the industry.

Attorney Anderson: So, the idea being, the fewer curb cuts, the fewer potential accident points, the fewer potential accidents.

Ms. Kesselring: Yes.

Attorney Anderson: Alright. Has the applicant here reduced the number of curb cuts?

Ms. Kesselring: Yes.

Attorney Anderson: From what? Two to one on North Main Street?

Ms. Kesselring: That's right.

Attorney Anderson: What impact on pedestrian safety does narrowing the curb cut have?

Ms. Kesselring: Well, it's the overall width. Because the pedestrians need to cross that driveway. So, going from a total of 75' to 48' feet provides some benefit.

Attorney Anderson: So, is it fair to say that the applicant is trying to balance safety issues with access issues?

No response.

Attorney Anderson: Excuse me, the ability of delivery trucks to access the site?

Ms. Kesselring: I think that's fair to say.

Attorney Anderson: Alright, so. The more time a delivery truck spends out on Route 7 waiting to access the property, that creates its own range of problems. True?

Ms. Kesselring: Sure. That would create a back-up on Route 7. For a northbound truck, it has the potential to back-up traffic through the intersection because of the proximity of the intersection. For a southbound truck, it has the potential to back-up traffic to the north where there are only two lanes. You can see it on the aerial, its right about at the point where the truck would be queuing up to get into the site where the lanes begin to split. Actually, from two lanes to four lanes. So, it has the potential to backup traffic in that westerly southbound lane. The other thing I want to point out, if it isn't clear on the diagram, the truck does take up two lanes to make its maneuver into the site. If the truck is coming southbound it has to swing its cab out to the left in order to make that righthand turn. Its probably a move you've seen trucks make all over the city. They often need a little more room so they need to swing out in the opposite direction in order to make that maneuver. So, if the southbound truck can't enter, it's truly consuming two lanes at this point at the entrance point. There could still be some vehicles that could get around it in the left lane.

Attorney Anderson: The Board asked in its bullet points for a detailed truck movement analysis for each curb cut width. Have you provided that specifically in any of your 6 exhibits?

Ms. Kesselring: Yes. For the 36' wide access, Exhibits 4 & 6. For the 48' wide access, Exhibits 3 & 5.

Attorney Anderson: Is there anything you need to add to what you've already said to address the Board's request to provide a detailed truck movement analysis for those curb cut widths?

Ms. Kesselring: I don't think so.

Attorney Anderson: Do you have an opinion about how on-site circulation and parking will be handled during delivery times?

Ms. Kesselring: I think Greg really addressed that. Because that's really an operational piece of how the restaurant will operate things. But I think its very feasible that if they had to they could place cones in these northerly parking spaces in order to allow the delivery truck in there and not block patrons that would then not be able to get their cars out the parking spaces. But, otherwise, cars that are parked along these spaces, the delivery truck just has to negotiate around them.

Chair McClallen: In your opinion, is it advisable to allow a vehicle to be exiting or entering when you have a truck trying to pull in?

Ms. Kesselring: I think it is done every day.

Chair McClallen: If you're already blocking off half of your parking lot with cones, is it advisable? Based on your truck movements, no matter the curb cut width, it appears the truck is cutting into all of the lanes in the access drive.

Ms. Kesselring: Sure. That's why we thought the 48' wide would be safer because there would be room for a car sit there, if it needs to, to get out of the way of the truck.

Attorney Anderson: The last of the Board's bullet points is a request for an explanation about why a curb cut that's greater than VTrans standards is needed and why that can't be accomplished with a different curb cut radii.

Ms. Kesselring: I touched on earlier that a larger radius just doesn't fit here with the proximity of the roadway to the sidewalk and the property line. So, the maximum radius that fits is a 15' radius. Which is larger than a lot of other radiuses in the City. We typically see 5' to 10' radiuses. I do see here that Wendy's just to the north does have larger, but probably fairly similar to the 15' radius.

Attorney Anderson: What width curb cut does the VTrans regulations call for this curb cut width to be limited to?

Ms. Kesselring: The VTrans standard would be between 24' and 40'.

Attorney Anderson: In your opinion is that adequate to allow a tractor trailer delivery truck to access the premises during normal business hours?

Ms. Kesselring: In our opinion, the 48' is necessary to allow a vehicle to get out of the way of a truck.

Attorney Anderson: And would even wider be better in terms of vehicle access to the site?

Ms. Kesselring: (long pause) I think you'd have to figure out where that balance point is?

Attorney Anderson: My point exactly. We're trying to balance pedestrian safety on sidewalks by narrowing the curb cuts versus widening the curb cuts to enhance traffic safety out on the street. Is that a fair statement as to the concerns that have to be balanced?

Ms. Kesselring: I think that's a fair statement.

Attorney Anderson: And that's basically what the DRB has to wrestle with, isn't it? But in any event, is 48' adequate to allow, in your opinion, to allow the truck to access the premises.

Ms. Kesselring: Yes.

Attorney Anderson asked if she had fully expressed her opinions in response to the board's concerns and questions. She indicated she had.

DRB Member Lorentz asked about VTrans regulations. She said she assumes when the regulations are written they look at all different sizes of trucks when they make the recommendation that the curb cut width be up to 40'. Ms. Kesselring responded that the uniqueness of the site is what is making the VTrans standard not fit well due to the narrowness of the lot, the proximity of the building to the roadway, and the resulting maneuver that the truck needs to make due to the uniqueness of the site.

DRB Member Pell asked if Ms. Kesselring had any idea how long the average stop would be for a truck to make deliveries? Ms. Kesselring responded that Greg said an hour to an hour and a half. Ms. Merone-Walsh described the process of unloading a truck, particularly related to food safety procedures, that a restaurant would need to do while unloading the truck. She said Greg said it could take up to two hours, based upon what the restaurant was getting on that delivery. Ms. Kesselring noted it would be possible for patrons to continue parking on the southside of the lot while the truck was parked on the northside. Ms. Merone-Walsh added that her business operates several Dunkin Donuts locations. She said that some of those sites are quite small but the trucks are able to work with the conditions to allow continued patronage of the stores. She noted it is amazing what the delivery drivers are able to do in order to limit interruption of business operations.

Ms. Lorentz asked to be shown on the plans the distance between the northern border and the first crosswalk area. Ms. Kesselring used a scale to measure it out and found that it is 66' on the east side and 73' at the west edge. The truck is 60' long. After consultation with Ms. Merone-Walsh, it was determined that the truck needs at least 12' clearance behind it to adequately unload. This means the parked truck would extend into the crosswalk by a couple of feet.

Mr. Wilk asked about the 36' curb width exhibit showing one lane entering and two lanes exiting. With the 48' it is the same number of lanes. He asked how wide are the proposed lanes in the 48' version. Ms. Kesselring explained that on the 36' wide version the lanes are the typical 12' lane which is pretty standard. In the 48' version they made the entrance lane 20' to give the truck some buffer when it

comes in and not have exiting traffic pinch it too much. The two exiting lanes were made 14' wide each. Mr. Wilk noted that the 20' lane width would be in place for the vast majority of traffic use. He expressed concern about driver behavior in a 20' wide lane in terms of vehicles doubling up trying to maneuver around other cars creating an unsafe situation. He suggested it ought to have clear markings so that vehicle traffic would behave as if the lane were narrower. Ms. Kesselring said this could be accomplished with a cross hatch painted line to create a center island effect leaving a 24' wide entrance and 24' exit which would be closer to the VTrans standard.

Frank Trombetta of M.T. Associates, the owner of the property, was introduced by Attorney Anderson. He confirmed that Five Guys would be a tenant of his. When asked if he had any opinion to express with regard to how wide the curb cut should be he responded that as the landlord he had two concerns. First was to be sure the tenant would have adequate width to operate his business. Second would be preserving the value of the property. He acknowledged that while it may be possible to change it back to a wider width in the future, he knows it is not always easy to do. He stated he is not an engineer but he is very concerned that 36' would not be adequate and would cause problems for this tenant and in the future.

Chair McClallen asked if there were any additional questions or comments. He opened it up to the public as well. No questions were asked.

Chair McClallen explained the decision and appeal process.
Hearing adjourned at 7:14 PM.

Respectfully submitted,
Tara Kelly
Development Review Board Clerk