

**ENC 1999-024**

In re Timberlake Assoc.

June 14, 1999

STATE OF VERMONT ENVIRONMENTAL COURT

Docket No. 4-1-98 Vtec

In re Appeal of: Timberlake Associates

DECISION AND ORDER

Appellant Timberlake Associates appealed from a decision of the Zoning Board of Adjustment (ZBA) of the City of Winooski, denying its application for conditional use approval to remove a brick wall and reorient the gasoline pumps at its property at the corner of Main and Platt Streets and to install a curb cut on Platt Street.

Appellant is represented by Liam L. Murphy, Esq. and William E. Simendinger; the City of Winooski is represented by Kristin C. Wright (FN1), Esq.; and a neighbor, Brian LaMothe, appeared and represented himself. An evidentiary hearing was held in this matter before Merideth Wright, Environmental Judge. The parties were given the opportunity to submit written requests for findings and memoranda of law. Upon consideration of the evidence and the written memoranda and proposed findings, the Court finds and concludes as follows.

Appellant owns a parcel of land at 155 Main Street, at the corner of Platt Street, in the R-2 Medium Density Residential zoning district. It contains a neighborhood grocery store, which is a conditional use in this district, and a gasoline station with self-service dispensers, which is a pre-existing nonconforming use. The present configuration of the station received a conditional use permit in 1992, as a change to a non-conforming use. It required the present orientation of the pumps and pump island. An earlier proposal denied in 1992 had proposed the pumps and pump island orientation and curb cut on Platt Street similar to the present proposal. The 1992 permit approved the project as a less intensive use than the pre-existing use, because it included the razing of one building on the property, defined the curb cuts along Main Street, and closed both the previous undefined curb cut on Platt Street and access to a driveway at the rear of the property formerly shared with the first residence on Platt Street. The 1992 permit was based on an expected trip generation of 82 vehicle trip ends.

The present application is before the Court as an amendment to the 1992 conditional use approval. Appellant seeks to reorient the gasoline pumps, to remove a portion of the wall along Platt Street, and to install a curb cut in Platt Street. The parties agreed that certain of the conditional use criteria were not at issue in this appeal. Accordingly, we will address the application under the following standards: §8.102 (a) (capacity of community facilities); §8.102(b) (character of area); §8.102(c) (traffic on roads and highways in the vicinity); §8.102(f) (scenic beauty, historic sites); and §8.102(g) (compliance with zoning and subdivision regulations). This latter requirement imports also the Court's consideration of the following other criteria from the performance standards of the zoning regulations: §9.300 (parking); §9.400 (loading), §9.700 (noise); §9.1500 (glare); and §9.1600 (buffer areas). In addition, site plan approval is required for the proposed changes under §8.200 (and see 24 V.S.A. §4407(5)), but the Planning Commission required ZBA action on the amendment of the conditional use permit before it would consider the application (FN2) for an amendment to the site plan approval with respect to the adequacy of traffic access, circulation and parking; landscaping and screening. Therefore, all that is

before the Court in the present appeal is the conditional use amendment, even though a site plan approval amendment would also be required for this project to go forward.

Platt Street is a residential street, with a church and a day care as well as older residential homes. Some of the older homes are historic in character, and some are listed on the State's historic register. The character of the area is that of an attractive older residential neighborhood with some compatible institutional uses (such as churches and elderly housing), located adjacent to a main arterial roadway (Main Street) with associated commercial and service uses such as gas stations and convenience stores.

Platt Street is wider than the usual residential street, and lacks any traffic calming devices such as speed bumps or areas of narrower curbing; therefore it experiences vehicles traveling at speeds above that posted for or safe for a residential street. Platt Street provides an alternative route to connect Main Street with areas in the easterly portion of the City, although the route is somewhat circuitous and may not provide much actual time saving compared to the more major roads. The fire department has a fire station on Main Street, and uses Platt Street for access to certain other locations in the City, particularly to two elderly housing buildings on Barlow Street. The peak hours for traffic at the nearby churches are Wednesday evenings and Sundays, not the peak hour on the adjacent roadway. The peak traffic flow on Main Street southbound is 500 vehicles in the afternoon peak hour and 600 in the morning peak hour. Main Street handles a traffic flow of approximately 11,000 vehicles per day, as opposed to 400-500 on Platt Street.

Appellant's experience with the layout approved in 1992 is that there is a bottleneck between the most northerly pump and where cars park to enter the store. Delays and awkward on-site turning maneuvers including backing up on-site are common. When a customer's vehicle is parked near the entrance to the store, cars at the back of the lot have difficulty exiting at the northerly curb cut. Appellant's experience with the lot layout since the 1992 application is a sufficiently changed circumstance to allow Appellant to reapply for a lot layout and curb cut (FN3) similar to that sought and denied at an earlier date.

The proposal would not adversely affect the capacity of any existing or planned community facilities, except for its effect on the traffic flow on Platt Street, which is not considered under this criterion. §8.102(a).

The proposal would adversely affect the residential character of the Platt Street area, as the curb cut on Platt Street would remove a protection for Platt Street pedestrians from conflict with vehicles using the site, would remove a protection for vehicles backing onto Platt Street from the residential driveways, and would remove a buffer for the residential street from the commercial uses on the subject lot. §8.102 (b); §9.1600.

The proposal would not adversely affect the scenic beauty of the area or any historic sites. The only visual effect would be the removal of the wall segment, which would not have an appreciable effect on the appearance of the area, and we cannot find that the small amount of added traffic turning left to drive down Platt Street would adversely affect the historic homes. §8.102(f)

The proposed layout would alleviate the on-site traffic flow problems. As proposed, the station is expected to generate 70 vehicle trip ends per hour. Of these, 17 trips are expected to exit the station onto Platt Street, of which fifteen are expected to turn right to wait at the corner to turn onto Main Street, and two are expected to turn left to drive down Platt Street. Of the 15, 10 will turn right on Main Street and only 5 will turn left. The level of service at that intersection is "A" for right hand turns onto Main, but only "D" for left-hand turns onto Main, an unacceptable level. Even the additional five left-hand-turning

vehicles is an unacceptable increase at this low a level of service, even though the total increase in vehicles is negligible compared to the traffic volumes on Main Street. §8.102(c).

The proposed curb cut has been designed to state standards and has been located to maximize the stacking distance along Platt Street for vehicles at the intersection. However, at certain times of day the traffic to be generated by the project may cause stacking on Platt Street of cars waiting to turn onto Main Street, especially of cars seeking to turn left onto Main Street, especially at times of day when the Platt Street residents are also proceeding in their vehicles towards Main Street. This stacking could result in blockage of the proposed curb cut.

Moreover, because the Planning Commission has not ruled on site plan approval, we cannot determine that the site plan standards in 24 V.S.A. §4407(5), as applied in §8.200, are met. In particular, from the evidence presented it is apparent that removal of the wall segment and installation of the curb cut will result in an increase in pedestrian-vehicle conflict on Platt Street. We cannot conclude that such an increase can be considered to be offset by any reduction in vehicles using the Main Street curb cuts, as the behavior and expectations of pedestrians (and skateboarders and bicyclers) on a residential street differs from that on a major arterial roadway. Therefore we cannot conclude that the proposal is in compliance with the site plan standards of the zoning regulations. §8.102(g).

Under §8.102(g) we must also consider other criteria from the performance standards of the zoning regulations. The proposal does not affect the project's ability to meet the §9.300 parking standards or the §9.400 loading standards. The site is small and had some difficulties as designed, but the proposal will not adversely affect those standards. Nor can we find that the removal of the wall, the reorientation of the pumps, and the installation of the curb cut, will cause the project to violate the performance standards as to noise at the property line, §9.700, or as to glare. §9.1500. While the perception of noise on Platt Street may increase from the curb cut, the actual amount of noise at the property boundary will not increase.

Based on the foregoing, it is hereby ORDERED and ADJUDGED that conditional use approval of a Platt Street curb cut for the proposed location is DENIED. This order is without prejudice to any future application Appellant may wish to make to either the ZBA or the Planning Commission for revisions to the site plan and orientation of the gasoline dispensers, without the Platt Street curb cut.

Dated at Barre, Vermont, this 14th day of June, 1999.

Merideth Wright Environmental Judge

FN1. Not related to Judge Wright.

FN2. Actually, the Planning Commission minutes suggest that the applicant withdrew that application in favor of the ZBA's consideration of the application.

FN3. It is the applicant, not the City, which has linked the reorientation of the gasoline dispensers with the curb cut. Nothing about the 1992 approval (or the present decision) would prevent the applicant from applying for a revised on-site circulation plan and reoriented gasoline pumps, independently of a Platt Street curb cut. Of course, such an application should probably be reviewed by the Planning Commission first, since on-site circulation is within the purview of site plan approval.

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