



LAND USE PERMIT AMENDMENT

State of Vermont

Natural Resources Board

District 4 Environmental Commission

111 West Street

Essex Junction, VT 05452

<https://nrb.vermont.gov/>

[phone] 802-879-5614

CASE NO: 4C1316-1

Lakeside Ovens, LLC

c/o Russ Scully

Scully Interactive

688 Pine Street

Burlington, VT 05401

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment 4C1316-1, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 1346, Page 232; and Book 393, Page 689, of the land records of the City of Burlington, Vermont, as the subject of deeds to Lakeside Ovens, LLC.

This permit specifically authorizes the demolition of an existing two-story 9,200-gross square foot office building and its replacement with a 14,450-gross square foot, three-story office building on the existing foundations with minimal site improvements. The use and building footprint will not change. The Project is located at 32 Lakeside Avenue in Burlington, Vermont.

Jurisdiction attaches because the Project constitutes a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate, and maintain the project as approved by the District 4 Environmental Commission (the "Commission") in accordance with the following conditions.
2. The Project shall be completed, operated, and maintained in accordance with the conditions of this permit and the permit application, plans, and exhibits on file with the Commission and other material representations.

The approved plans are:

Sheet C1.0 - "Existing Conditions and Demolition Plan," dated 6/23/20 (Exhibit 023);

Sheet C1.1 - "Site Layout and EPSC Plan," dated 6/23/20 (Exhibit 024);

Sheet C1.2 - "Site Grading and Utility Plan," dated 6/23/20 (Exhibit 025);

Sheet C2.0 - "Water and Sanitary Details," dated 6/23/20 (Exhibit 026);

Sheet C2.1 - "Site and Stormwater Details," dated 6/23/20 (Exhibit 027);

Sheet C2.2 - "EPSC Details," dated 6/23/20 (Exhibit 028);

Sheet XC-1.0 - "Existing Conditions Photographs - Building 32," dated 6/12/20 (Exhibit 029);

Sheet L1.0 - "Site Plan," dated 6/12/20 (Exhibit 030);

Sheet L1.1 - "Hula Campus Overall Site Plan," dated 6/12/20 (Exhibit 031);

Sheet A1.0 - "Plan First Level," dated 6/12/20 (Exhibit 032);

Sheet A2.0 - "Exterior Elevations," dated 6/12/20 (Exhibit 033);

Sheet A3.0 - "Sections," dated 6/12/20 (Exhibit 034); and

Sheet A4.0 - "Renderings," dated 6/12/20 (Exhibit 035).

3. All conditions of Land Use Permit 1316 and amendments are in full force and effect except as further amended herein.
4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit WW-4-5139-1 issued on September 4, 2020 by the ANR Drinking Water and Groundwater Protection Division;
 - b. Authorization of Notice of Intent 8275-9020.1 under Construction General Permit 3-9020 issued on June 29, 2020 by the ANR Watershed Management Division; and
 - c. Individual Stormwater Discharge Permit 8275-INDS.A issued on July 20, 2020 by the ANR Watershed Management Division.
5. Any nonmaterial changes to the permits 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 Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. Pursuant to 10 V.S.A. § 8005(c), the 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.
10. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. Construction hours shall be limited to Monday through Friday from 7:00 AM to 5:30 PM, and Saturdays from 8:00 AM to 4:30 PM. There will be no construction on Sundays and federal holidays.
12. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Control Plan on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
13. Immediately upon initial roadway clearing, a stabilized construction entrance must be installed and maintained as shown on Exhibit 024 (Site Layout & EPSC Plan) at the intersection of Lakeside Avenue and the Project driveway. At a minimum, this entrance must be constructed and maintained in accordance with the specifications as described in the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020). No further clearing or construction may occur until the stabilized construction entrance is complete.
14. No floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
15. The Permittee 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.
16. The Permittee shall be obligated to implement the Construction Site Waste Reduction Plan approved by the Agency of Natural Resources Solid Waste Management Program and included as Exhibits 004a and 004b (Construction Waste Management Plan; and Approval of this Plan by ANR's Solid Waste Division).

17. The Permittee shall comply with Exhibits 001, 024 and 028 (Schedule B, Site Layout & EPSC Plan, and EPSC Details) for erosion prevention and sediment control. The Permittee 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.
18. 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.
19. 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).
20. 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 15. 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 Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
21. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snow fencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
22. A copy of the approved erosion prevention and sediment control plan shall be on the site at all times during construction.
23. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee 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 Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.

24. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
25. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit 030 (Site Plan) and in accordance with all landscaping plans included in original Land Use Permit 4C1316 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
26. Prior to any site work, the Permittee shall install and maintain temporary fencing around any trees to be retained as depicted on Exhibit 030 (Site Plan).
27. The installation of exterior light fixtures is limited to those approved in Exhibits 030 and 036 (Site Plan; and July 8, 2020 email from Stephen Smith to District Coordinator), and shall be mounted no higher than 16 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.
28. The installation of exterior signage is limited to that approved in 059, 060, and 061 (email from Applicant, sign elevation, and rendering). The Permittee 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.
29. The building's cementitious siding, metal siding, aluminum mullion covers, wood, and foundation stucco will be finished in the colors depicted and described in Exhibits 059 and 062.
30. Pursuant to 30 V.S.A. § 53, the energy design and construction 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.
31. This land use permit amendment authorizes a total square footage of 145,700 gross square feet of office space across the entire Act 250-permitted campus. If, at a future date, the Permittee, or its successors in title, should contemplate increasing the square footage of office space on the entire Act 250-permitted campus to greater than 145,700 gross square feet (by converting common space to office space, or otherwise), a land use permit amendment shall be required in advance of that change.
32. The Permittee shall install infrastructure and pre-wiring for electric vehicle charging stations pursuant to C708.1 (Commercial Stretch Code Guidelines).

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 the 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 Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment before any written contract of sale is entered into.
36. 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 Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
37. All site work and construction shall be completed in accordance with the approved plans by **October 15, 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 a public hearing.
38. The Permittee 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. 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 Permittee 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.
39. 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 7th day of October 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, 2nd Floor, Suite 303, Burlington, VT 05401.



FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont
Natural Resources Board
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
<https://nrb.vermont.gov/>

[phone] 802-879-5614

CASE NO: 4C1316-1

Lakeside Ovens, LLC
688 Pine Street
Burlington, VT 05401

LAW/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 – 6111 (Act 250)

I. INTRODUCTION

On July 1, 2020, Lakeside Ovens, LLC filed an Act 250 application for a project generally described as the demolition of an existing two-story 9,200-gross square foot office building and its replacement with a 14,450-gross square foot, three-story office building on the existing foundations with minimal site improvements. The use and building footprint will not change. The Project is located at 32 Lakeside Avenue in Burlington, Vermont (the "Project"). The tracts of land consist of 14.96 acres. The Applicant's legal interest is ownership in fee simple identified in Book 1346, Page 232; and Book 393, Page 689, of the land records of the City of Burlington, Vermont, as the subject of deeds to Lakeside Ovens, LLC. This application was deemed complete on July 8, 2020.

The Commission convened a prehearing conference for application 4C1316-1 on August 14, 2020, for the purpose of identifying contested facts and legal issues, discussing party status, and determining a hearing schedule. Pursuant to Executive Order 01-20 and associated addenda and directives issued by Governor Scott based upon the coronavirus (COVID-19) emergency, this prehearing conference was conducted remotely via Microsoft Teams video conferencing software. The prehearing conference was conducted pursuant to Act 250 Rule 16, with Chair Thomas A. Little presiding.

On September 8, 2020, the District 4 Commission held a public hearing for application 4C1316-1. Pursuant to Executive Order 01-20 and associated Addenda and Directives issued by Governor Scott based upon the coronavirus (COVID-19) emergency, this hearing was conducted remotely via Microsoft Teams video conferencing software. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission

conducted a site visit of the proposed Project on the evening of September 8. The Commission adjourned the hearing on October 6, 2020, after receipt of the additional 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 material change to a permitted development or subdivision, 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 the following documents:

- Act 250 Land Use Permit 4C1316, and its associated permit application, plans, and exhibits on file with the District Commission;
- *Traffic Impact Study Guidelines*, Vermont Agency of Transportation (April 2019); and,
- Article 6 of the Burlington Comprehensive Development Ordinance, last updated July 18, 2014.

Accordingly, official notice is hereby taken of Act 250 Land Use Permit 4C1316, its associated permit application, plans, and exhibits on file with the District Commission, the VTrans *Traffic Impact Study Guidelines*, Vermont Agency of Transportation (April 2019); and Article 6 of the Burlington Comprehensive Development Ordinance, 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) are:

- The Applicant, by John Caulo of LandPlan; Stephen Smith and Owen Smith of Smith-Alvarez-Sienkiewicz, Architects; David Saladino of Vanasse Hangen Brustlin, Inc., and Hanna Wingate and Kevin Worden of Engineering Ventures, PC.
- The Vermont Division for Historic Preservation, by Elizabeth Peebles, and through an Entry of Appearance dated July 29, 2020 by Laura V. Trieschmann.
- The Vermont Agency of Transportation through an Entry of Appearance dated July 15, 2020 by Chris Clow.
- The municipality of Burlington not represented.
- The Burlington City Planning Commission not represented.
- The Regional Planning Commission through an Entry of Appearance dated September 1, 2020, by Charlie Baker, Executive Director.
- The State of Vermont Agency of Natural Resources (ANR) not represented.

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E).

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the prehearing conference on this application. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

- A. **Peter Bingham** (51 Lakeside Ave.): Preliminarily granted party status under Criterion 8 (Aesthetics and natural beauty).

- B. **Paul Wallace** (53 Lakeside Ave.): Preliminarily granted party status under Criteria 8 (Aesthetics and Natural Beauty) and 5(A) (Traffic); denied status under Criteria 9(A) (Impact of Growth) and 9(L) (Settlement Patterns).
- C. **Rebecca Wallace** (53 Lakeside Ave.): Preliminarily granted party status under Criteria 8 (Aesthetics and Natural Beauty) and 5(A) (Traffic); denied status under Criteria 9(A) (Impact of Growth) and 9(L) (Settlement Patterns).
- D. **Sue Prell** (57 ½ Lakeside Ave.): Preliminarily granted party status under Criteria 8 (Aesthetics and Natural Beauty) and 5(A) (Traffic); denied status under Criterion 9(L) (Settlement Patterns).
- E. **Maryanne Danis** (12 Central Ave.): Preliminarily granted party status under Criteria 8 (Aesthetics and Natural Beauty) and 5(A) (Traffic); denied status under Criteria 9(A) (Impact of Growth) and 9(L) (Settlement Patterns).
- F. **Suzanne Richman** (51 Lakeside Ave.): Preliminarily granted party status under Criteria 8 (Aesthetics and Natural Beauty) and 5(A) (Traffic).

ii. Final Party Status Determinations

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and revised the status of the following parties:

- A. **Sue Prell** (57 ½ Lakeside Ave.): Denied Final Party Status under Criteria 8 (Aesthetics and Natural Beauty), 5(A) (Traffic), and 9(L) (Settlement Patterns) for failure to participate in the proceeding by not appearing at the public hearing or filing testimony prior to the public hearing. 10 V.S.A. § 8504(d)(1)
- B. **Maryanne Danis** (12 Central Ave.): Denied Final Party Status under Criteria 8 (Aesthetics and Natural Beauty), 5(A) (Traffic), and 9(L) (Settlement Patterns) for failure to participate in the proceeding by not appearing at the public hearing or filing testimony prior to the public hearing. 10 V.S.A. § 8504(d)(1)
- C. **Suzanne Richman** (51 Lakeside Ave.): Denied Final Party Status under Criteria 8 (Aesthetics and Natural Beauty) and 5(A) (Traffic) for failure to participate in the proceeding by not appearing at the public hearing or filing testimony prior to the public hearing. 10 V.S.A. § 8504(d)(1)

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The District Commission initiated the review process on this application as a Minor application under Act 250 Rule 51 on July 8, 2020. The Commission distributed a notice and a proposed permit establishing a deadline of July 29, 2020, by which parties, or the Commission on its own motion, could request a hearing on this matter. The Commission received timely requests for a

public hearing from Peter Bingham under Criteria 5(A) (Traffic), 8 (Aesthetics and Natural Beauty), 9(A) Impact of Growth, and 9(L) (Settlement Patterns). On August 3, 2020, the Commission issued a Notice of Application and Prehearing Conference indicating that a prehearing conference would be held August 14, 2020. The Commission convened a prehearing conference for application 4C1316-1 on August 14, 2020, for the purpose of identifying contested facts and legal issues, discussing party status, and determining a hearing schedule. On August 21, 2020, the Commission issued a Prehearing Conference Report and Order indicating that a public hearing would be held because substantive issues were raised under Criteria 5(A) and 8. Pursuant to Act 250 Board Rule 51(F), the Commission need only prepare Findings of Fact and Conclusions of Law on those criteria or sub-criteria at issue during the hearing. Therefore, the following Findings of Fact are limited to Criterion 5(A) – Transportation Congestion & Safety, and Criterion 8 - Aesthetics.

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application:

- | | |
|---|--|
| 1 - Air Pollution | 8 – Historic Sites |
| 1 - Water Pollution | 8(A) - Wildlife Habitat & Endangered Species |
| 1(A) - Headwaters | 9(A) - Impact of Growth |
| 1(B) - Waste Disposal | 9(B) – Primary Agricultural Soils |
| 1(C) - Water Conservation | 9(C) - Productive Forest Soils |
| 1(D) - Floodways | 9(D) - Earth Resources |
| 1(E) - Streams | 9(E) - Extraction of Earth Resources |
| 1(F) - Shorelines | 9(F) - Energy Conservation |
| 1(G) - Wetlands | 9(G) - Private Utility Services |
| 2 - Water Supply | 9(H) - Costs of Scattered Development |
| 3 - Impact on Existing Water Supplies | 9(J) - Public Utility Services |
| 4 - Soil Erosion | 9(K) - Effects on Public Investments |
| 5(B) – Transportation Demand Management | 9(L) – Settlement Patterns |
| 6 - Educational Services | 10 - Local and Regional Plans |
| 7 - Municipal Services | |
| 8 – Natural Areas | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits 001 - 062, 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. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

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

Criterion 5(A) - Transportation:

Findings of Fact

1. The Project is not located in a Transportation Improvement District. VTrans has created a capital plan to address the transportation demands in the general area, and the Project will benefit from those transportation improvements.
 - a. The Project's traffic impacts were previously assessed in a Traffic Impact Study and Parking Assessment for the entire Hula Lakeside campus including 32 Lakeside Avenue, as well as 44-50 Lakeside Avenue, dated September 25, 2018. (Exhibit 008)
 - b. The current application for 32 Lakeside Avenue would increase the square footage of office space within that structure from 9,200 gross square feet to 14,450 gross square feet, an increase of 5,250 gross square feet. (Exhibit 038)
 - c. Since the date of the September 25, 2018 Traffic Impact Study, 10,000 square feet of what was originally planned as office space inside of the 50 Lakeside Avenue structure has been redesigned and reconfigured for use as common areas, including a cafeteria, fitness-wellness studio, locker and bike storage rooms, and common meeting rooms. (Exhibit 038 and Applicant Testimony)
 - d. The increase in square footage of office space in 32 Lakeside Avenue (5,250 gross square feet) is offset by the reduction in square footage of office space in 50 Lakeside Avenue (10,000 gross square feet), resulting in a net reduction in office space across the entire Hula Lakeside campus of 4,750 square feet. (Exhibit 038)
 - e. VTrans concurs with the conclusions of the September 25, 2018 Traffic Impact Study as well as the July 10, 2020 VHB Traffic Assessment for 32 Lakeside Avenue, and concurs with VHB's assessment that there will not be a net addition of trips on the campus based on what was previously approved, and has no concerns relative to traffic congestion or safety. (Exhibit 038) No contrary testimony or other evidence was presented at the hearing.
 - f. Based upon impacts outlined in the September 25, 2018 Traffic Impact Study, the Applicant previously paid a transportation impact fee in the amount of \$70,711

to the Vermont Agency of Transportation as mitigation for traffic impacts upon the Champlain Parkway and Burlington roundabout projects. (Land Use Permit 4C1316, condition 26)

- g. The developer has or will be paying a municipal transportation impact fee of \$3,601.50 to the City of Burlington based on 5,250 square feet area of net new office use. (Exhibit 037)
2. Road access to the Project site remains unchanged from the access detailed in the September 25, 2018 Traffic Impact Study. (Exhibit 001)
3. Parking at the Project site remains unchanged from the parking detailed in the September 25, 2018 Traffic Impact Study. (Exhibit 001)
4. Parking demand at the Project site was based on building square footage detailed in the September 25, 2018 Traffic Impact Study. (Exhibit 008)
5. The Applicant will install a new curb, landscaping strip, and a sidewalk on the north side of Lakeside Avenue, as well as pedestrian crossing “bump outs” and crosswalks at Conger Avenue and Central Avenue. (Applicant Testimony and Exhibits 024, 025, 031, and 048).
6. Sight distance from the entry driveway of the Project approaching from the west is roughly 370 feet and sight distance approaching from the east is roughly 300 feet. (Exhibit 048)
7. The September 25, 2018 Traffic Impact Study found Level of Service ‘A’ at the intersection of Lakeside and Central Avenues, after the subject Project and all associated projects on the Hula Lakeside campus are fully constructed and occupied. (Applicant Testimony and Exhibit 008)
8. Employees at the Hula Lakeside facility will be able to access the Hula Lakeside Campus from a gate along the Bike Path during business hours. (Applicant testimony)
9. Neighboring parties Paul and Rebecca Wallace expressed concerns that existing traffic already causes unsafe conditions in the neighborhood. (Paul and Rebecca Wallace testimony)
10. The September 25, 2018 Traffic Impact Study found that between 2013 and 2017, there were no reported crashes at the intersection of Lakeside and Central Avenues, and a total of six crashes along the length of Lakeside Avenue over this time period. Of these six crashes, none resulted in injury or fatality. (Applicant Testimony and Exhibit 008)

11. The Vermont Public Crash Data Query Tool revealed one reported vehicle crash and no pedestrian crashes at the Lakeside Avenue and Central Avenue intersection over the period 1/1/2015 – 8/24/2020. (Exhibit 048)
12. The September 25, 2018 Traffic Impact Study considered impacts to background traffic growth and trip distribution resulting from the Burlington City Place development and the construction of the Champlain Parkway. (Exhibit 008)
13. Neighboring parties Paul and Rebecca Wallace expressed concerns about traffic estimates in the Applicant's traffic analyses being based upon building usages and building square footages, rather than on estimated numbers of employees. (Paul and Rebecca Wallace testimony)
14. 30 people typically occupied the building at 32 Lakeside Avenue during the last six months of the property's occupancy by Galen Healthcare. (Exhibit 056)
15. The Applicant anticipates the employee population of the proposed building at 32 Lakeside to be in the range of 45-55 employees. (Exhibit 056a)
16. The wastewater system for 32 Lakeside is designed to accommodate a maximum population of 64 employees. (Exhibits 056a and 057)
17. The Institute of Transportation Engineers' (ITE) *Trip Generation Manual* serves as the primary source of information for estimating trip generation for a particular development project. ITE maintains a database of trip rates for various types of land uses. The ITE *Trip Generation Manual* recommends that physical site characteristic such as square feet of floor area, be used to estimate trip generation for a specific land use type, rather than tenant characteristics such as employees, which can change over time. In its *Traffic Impact Study Guidelines*, the Vermont Agency of Transportation supports this method for estimating trip generation based on land uses. (Exhibit 058 and VTrans *Traffic Impact Study Guidelines* (April 2019))
18. Parking for the Project is also based on square footage of office space. The Applicant's parking assessment concluded that the peak on-site parking demand generated by the redevelopment can be accommodated by the proposed parking plan. (Exhibit 008)
19. The Applicant has met the City of Burlington's design review standards for parking. (Exhibit 037)

Conclusions of Law

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

The Commission concludes that the redevelopment of 32 Lakeside Avenue will not cause unreasonable congestion 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 redevelopment of 32 Lakeside, which were included in the September 25, 2018 Traffic Impact Study, the Applicant paid an impact fee of \$3,601.50 to the City of Burlington Public Works Department for traffic-related capital improvements to accommodate the demands created by new growth throughout the city over the next six years. In addition, the Applicant paid \$70,711 in transportation impact fees to the Vermont Agency of Transportation, which is designated to be used for the Champlain Parkway and Burlington roundabout projects. These payments sufficiently mitigate any transportation impacts created by the Project.

The Applicant’s September 25, 2018 Traffic Impact Study provides ample evidence that the parking spaces provided at the Hula Lakeside campus are adequate for the demands of the Project.

The Commission appreciates the concerns expressed by Paul and Rebecca Wallace regarding traffic safety and parking; however, under Act 250, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. The Commission agrees with VHB’s assessment that “the 5,250 square feet of new office space contemplated in the current proposal will result in no net increase in total site trips and will have no impact on the conclusions of the 2018 Transportation Impact Study.” To ensure that this conclusion remains valid, the Commission will place a condition in the land use permit capping office space in the Hula Lakeside Complex at 145,700 gross square feet. If, at a future date, the Applicant, or successors in title, should contemplate increasing the square footage of office space on the campus (by converting common space to office space, or otherwise), a land use permit amendment shall be required in advance of that change.

The Commission finds that the redevelopment of 32 Lakeside is not likely to cause unreasonable congestion or unsafe conditions, given the traffic mitigation and impact fee payments made by the Applicant to the City of Burlington and the State of Vermont Agency of Transportation, the construction of sidewalks and crosswalks associated with the larger Hula

Lakeside campus project, and the current square footage of office space permitted in land use permit series 4C1316 (as conditioned). The Project complies with Criterion 5(A).

Criterion 8 - Aesthetics

Findings of Fact: Aesthetics, Scenic or Natural Beauty

20. The present site consists primarily of the existing Building 32, a single mature maple tree, and lawn. An approximately 9-foot tall steel sea wall along the property line holds back the earth fill that underlies the building site, which adjoins the shoreline of Lake Champlain. (Exhibit 033) The single existing maple tree west of the building shall be retained as depicted on Exhibit 030.
21. The existing smaller trees east of Building 32 shall be removed during construction, and replaced with thornless honeylocust trees as depicted on Exhibit 030. (Exhibits 030 and 037)
22. There is an existing cedar hedge on the south side of the Project site, apparently not on land owned or controlled by the Applicant. The Applicant proposes to replace this hedge if it is damaged or impaired during construction activities. (Exhibit 037)
23. The Project will be landscaped as outlined on Exhibit 30. The Applicant agrees to continually maintain the landscaping as approved.
24. Exterior lighting on the east side of the building will be mounted to the bottom of the entrance canopy roof deck, which is about 13 feet 6 inches above grade. Two exterior security lights will be wall-mounted on the west side of the building at 16 feet above grade. They will be sharp cutoff downlights activated by motion sensors. All lights will be warm spectrum LED. (Exhibit 36). All fixtures will 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.
25. Exterior fixtures at the entrance canopies will be controlled by a photo eye and will be on at night. (Exhibit 001)
26. The exterior of the building will be constructed of pre-finished metal and cementitious planks. The window frames will be made of aluminum with insulated glazing to replace existing single-glazed steel windows. The entrance porch will be made of wood and steel. The flat roofs will be of membrane construction. (Exhibit 001)
27. The building's fenestration, flat roofs, architectural style, and colors are complementary with Hula Lakeside Buildings 44 and 50 and with the other commercial and industrial

- buildings located just to the east of the site. (Exhibits 001, 033, 035, 037, 050, 059, 060, and 062)
28. The first story of the existing and proposed buildings is a walkout basement below street grade. Therefore, from street grade, the new building will appear to be a 2-story building (Applicant testimony) but, the Commission finds, it will be more than twice as tall as the existing building from street grade on the east side.
 29. The current building measures 12 feet in height from the street level to the front edge of the top of the roof. The proposed new building will measure 33.25 feet from the street level to the front edge of the top of the central roof. The new building will measure 29.5 feet in height from the street level to the front edge of the top of the two side roofs. The new building will measure 39.25 feet from the street level to the top of the metal-sided mechanical equipment screen atop the central roof. The mechanical equipment screen will occupy less than 10 percent of the roof area. (Exhibit 033 and Applicant testimony)
 30. The building's only sign will be stainless steel with the building number, "32," cut out. It will be mounted on the eastern side of the building, near the southeast corner. The sign will not be illuminated. (Exhibits 001, 059, 060 and 061)
 31. Article 6, Section 6.2.2(c), Review Standards, of the Burlington Comprehensive Development Ordinance states, "Protection of Important Public Views: Distant terminal views of Lake Champlain and the mountains to the east and west, and important public and cultural landmarks, framed by public rights-of-way or viewed from public spaces shall be maintained through sensitive siting and design to the extent practicable. This shall not be construed to include views from exclusively private property."
 32. On July 7, 2020, the Burlington Development Review Board determined that "there are no protected views from or through this site. As the building is proposed on the same footprint as the existing building, little alteration will be made of existing views from Lakeside Avenue." (Exhibit 037)
 33. Although the building replaces a building of lesser height, like the existing building, it fits into the embankment along the lakeshore. The massing and height of the proposed building are reasonably harmonious in this setting and particular lot situation. (Exhibit 037)
 34. A flat roof is proposed, consistent with other buildings on the parcel (Buildings 44 and 50) and the neighboring St. John's Club. (Exhibit 037)
 35. The Project was approved by the Burlington Development Review Board with a vote of "6-0-1 (GH recused)" on July 7, 2020. (Exhibit 037)

36. The proposed building will impact the viewshed from Lakeside Avenue by creating a taller building outline against the sky. (Applicant testimony)
37. The building design includes a covered exterior terrace at the proposed upper level in lieu of enclosed floor area. (Exhibits 033, 035, and 048)
38. The proposed building will be similarly reconstructed on the same foundation footprint as the existing building, oriented toward Lakeside Avenue with presentation toward the overall parcel access avenue and the lake. (Exhibit 037)
39. Peter Bingham lives at 51 Lakeside Avenue and can see views of the Adirondack Mountains, Lake Champlain, and the western sky from his first- and second-story windows. (Peter Bingham testimony)
40. Paul Wallace lives at 53 Lakeside Avenue and watches the sunset over 32 Lakeside Avenue from his living room. (Paul and Rebecca Wallace testimony)
41. From the perspective of 51 Lakeside Avenue: as the arc of the sun sets, it enters the limits of the existing building at 32 Lakeside at some point during the spring or summer; the sun appears to set behind the existing building through a portion of the summer; it is unknown whether the sun ever sets to the north of the existing building; sometime in early September, the sun begins to set to the south of the outline of the existing building. (Peter Bingham testimony)
42. From street level on Lakeside Avenue, views of the Adirondack mountains are currently partially obscured by the existing building. Those views of the mountains will remain partially obscured by the proposed new building. South of the proposed building, the western view will remain unchanged. (Applicant testimony and Exhibits 050 and 052)
43. When the sun is shining and is behind the proposed building, it will cast a shadow down Lakeside Avenue. (Exhibit 054 and Paul and Rebecca Wallace testimony)

CONCLUSIONS OF LAW

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8). This Project involves concerns under Criterion 8 related to aesthetics.

Conclusions of Law: Aesthetics and Scenic or Natural Beauty

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *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, *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20* (Vt. Env'tl. Bd. Nov. 4, 1985); *In re Halnon*, 174 Vt. 514 (*mem.*) (applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers*, No. 302-12-08 Vtec, *Decision and Order at 10-11* (Vt. Env'tl. Ct. May 17, 2010) (citing *Re: Susan Dollenmaier, #3W0125-5-EB, Findings, Conclusions and Order at 8* (Vt. Env'tl. Bd. Feb. 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, *slip op. at 5* (Vt. Env'tl. Ct. Feb. 15, 2008), *aff'd*, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses . . ." *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553-54 (1990)).

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 the following: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *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*).

The Project is located on the edge of an area that has been utilized for commercial and industrial development for many generations. The Project would demolish a structure that has been located on the site since the mid-20th Century, and would replace that structure with a taller structure to be located on the same footprint. Portions of the new structure will range from approximately 17.5 feet taller to approximately 27.25 feet taller than the current structure. The increased height of the new structure will decrease the visibility of the sky as viewed from nearby public rights of way. In addition, some views of Lake Champlain and the Adirondack Mountains will be reduced from some neighboring properties, including those of parties Wallace and Bingham.

Because it will directly impact scenic views from adjoining properties and public rights of way, this Project will have some 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: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) 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 (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. *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*).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Envtl. Bd. 4/9/02)*. A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Envtl. Bd. 12/21/00)*. A plan which states "consideration should be made . . ." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Envtl. Bd. Dec. 8, 2000)*.

The Commission has reviewed relevant portions of the municipal and regional plans, as well as Burlington's Comprehensive Development Ordinance. Article 6, Section 6.2.2(c), Review Standards, of the Burlington Comprehensive Development Ordinance states, "Protection of Important Public Views: Distant terminal views of Lake Champlain and the mountains to the east and west, and important public and cultural landmarks, framed by public rights-of-way or viewed from public spaces shall be maintained through sensitive siting and design to the extent practicable. This shall not be construed to include views from exclusively private property." See Finding of Fact 31.

The Commission concludes that the Project will not significantly impact "distant terminal views" (which we consider to include long-range, horizon views) of Lake Champlain or the Adirondack mountains on the lake's western shoreline, or any important public or cultural

landmarks, framed by public rights-of-way or as viewed from public spaces. Both the City of Burlington Development Review Board and the Chittenden County Regional Planning Commission concur with this assessment. Therefore, the proposed Project does not violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area.

(b) Offensive or Shocking Character

Criterion 8 “was intended to ensure that as development occurs, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont.” *Re: Barre Granite Quarries, LLC, Permit No. 7C1079-EB, Findings of Fact, Concl. of Law, & Order, at 78 (Vt. Env'tl. Bd. Dec. 8, 2000) (citing Horizon Dev. Corp., Permit No. 4C0841-EB, Findings of Fact, Concl. of Law, & Order, at 20 (Vt. Env'tl. Bd. Aug. 21, 1992))*. Pertinent to this application, Criterion 8 “was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from his or her property will remain the same forever.” *Re: John Larkin, Inc., Permit No. 4C0526-11R(2)-EB, Findings of Fact, Concl. of Law, & Order, at 9 (Vt. Env'tl. Bd. Oct. 11, 2005) (quoting Re: Okemo Mountain Inc. Permit No. 2W5051-8-EB, Findings of Fact, Concl. of Law, & Order, at 9 (Vt. Env'tl. Bd. Dec. 18, 1986))*. The Environmental Board cases applying Criterion 8 recognize that “change must and will come,” and that the Act 250 aesthetics analysis “will not be an impediment” to that change. *Id.* See also *Re: Rinkers, Inc., No. 302-12-08VTEC, 2010 WL 2024924 (Vt. Env'tl. Ct. May 17, 2010)*.

When evaluating whether a project is shocking or offensive, impacts must be considered from the perspective of the average person, not necessarily from the perspective of neighboring appellants. *McCullough Crushing Inc. Act 250 Exp., No. 3-1-10, Altered Decision on the Merits at 20 (2/16/2017)(citing In re Goddard College Conditional Use, Nos. 175-12-11 Vtec and 173-12-12 Vtec, slip op. at 14 (Vt. Super. Ct. Env'tl. Div. Jan. 6, 2014)*.

This Project will change the views that some residential neighbors will see from their properties, as well as some views of the western sky enjoyed by the local community and visitors to the neighborhood. However, the Project is not so out of character with its surroundings and does not so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. Based on the existing cluster of commercial and industrial uses on the historic Lakeside Ovens campus, of which Building 32 is a part, the proposed structure is not so inherently inappropriate to its surroundings that it will offend the sensibilities of the average person or diminish the scenic qualities of area. see *James E. Hand and John R. Hand, d/b/a Hand Motors and East Dorset Partnership, #8B0444-6- EB (Revised) (8/19/96). [EB #629R]*. Furthermore, similar development already exists on the site, is visible from the neighborhood, and would be expected on a historically commercial/industrial site. see *J. Philip Gerbode, #6F0396R-EB-1, FCO (1/29/92) (revising 3/25/91 FCO). [EB #486]*

Given all of these considerations, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating Steps

The question under this factor of the aesthetics analysis is whether the Applicant has “failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed Project with its surroundings.” *In re Times & Seasons, 2008 VT 7, ¶ 8*. If a project does have an adverse aesthetic effect, the applicant must “take generally available mitigating steps to reduce the negative aesthetic impact of a particular project,” otherwise, “[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse.” *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)*). 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 Applicant has limited the building height to only one additional story beyond the height of the existing structure. The footprint of the proposed building is identical to the footprint of the existing building. By limiting the proposed building's height, the Applicant has sought to minimize alteration of existing views from Lakeside Avenue. The Commission agrees with the Burlington DRB that the massing and height of the proposed building, as well as its flat roof, are congruent with the context and particular lot situation, and consistent with other buildings on the parcel and the neighboring St. John's Club. In addition, the Commission appreciates the Applicant's inclusion of a covered exterior terrace in lieu of enclosed floor area on a portion of the building's second story. This open terrace mitigates some of the loss of existing westward views from the Lakeside Avenue viewshed. The Applicant has agreed to install tree plantings in front of the building facing Lakeside Avenue, which will soften some of the building's appearance from the street. The building's Oko Skin cementitious siding, vertical metal siding, aluminum mullion covers, wood, and foundation stucco will be finished in the colors depicted in Exhibits 059 and 062. These colors are complementary with Hula Lakeside Buildings 44 and 50 and with the other commercial and industrial buildings located just to the east of the site.

Given all of these considerations, we find 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.

(d) Conclusion

Based on the foregoing analysis, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area. The Project complies with Criterion 8, Aesthetics.

VII. SUMMARY CONCLUSIONS 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 4C1316-1, 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 4C1316-1 is hereby issued.

DATED this 7th day of October 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.

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, 2nd Floor, Suite 303, Burlington, VT 05401.

Exhibit List



Application #	4C1316-1 (10/5/20)
Applicant(s)	Lakeside Ovens, LLC
Landowner(s)	Lakeside Ovens, LLC
Project Town(s):	Burlington

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	7/1/20	001 Act 250 Application	Applicant
001a	7/1/20	001a Application Signature Pages	Applicant
002	7/1/20	002 Cover Letter 7/1/2020	Applicant
003	7/1/20	003 Schedule G	Applicant
004	7/1/20	004 Construction Waste Management Plan (10/4/2018)	Applicant
004a	7/23/20	004a Construction Waste Management Plan Revised 7-10-20	Applicant
004b	7/23/20	004b Construction Waste Management Plan Approval (7/13/20)	Applicant
005	7/1/20	005 FEMA- Firmette 9/12/2018	Applicant
006	7/1/20	006 Wetland Classification Report 7/27/2018	Applicant
006a	7/1/20	006a Memo by Art Gilman 5/8/20	Applicant
007	7/1/20	007 End of Field Letter Report - Archaeological Ph 1 Site Identification Survey 11/26/2018	Applicant
008	7/1/20	008 VHB Traffic Report 9/25/2018	Applicant
009	7/1/20	009 Burlington School District Impact Questionnaire Request 05/12/2020	Applicant
009a	7/23/20	009a School Impact Questionnaire (7/13/20)	Applicant
010	7/1/20	010 Fire-Rescue- MIQ request 05/12/2020	Applicant
010a	7/23/20	010a Fire Dept Support Request and Ability to Serve Letter Revised 6-13-20	Applicant
010b	7/23/20	010b Fire Dept Ability to Serve Letter (7/13/20)	Applicant
011	7/1/20	011 Police- MIQ request 05/12/2020 & completed MIQ	Applicant
012	7/1/20	012 DPW- MIQ request 05/12/2020	Applicant
013	7/1/20	013 Solid Waste support request 05/12/2020	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
013a	7/23/20	013a Myers Ability to Serve (7/9/20)	Applicant
014	7/1/20	014 Ortho Location Map 9/12/2018	Applicant
015	7/1/20	015 Bob Popp request for comment 10/4/2018 ; VCGI Natural Resources exhibit, NRCS Soils maps & Bob Popp email	Applicant
016	7/1/20	016 Burlington Electric Dept support letter 05/12/2020 & response letter 05/13/2020	Applicant
017	7/1/20	017 Burlington Telecom support request letter 05/12/2020	Applicant
018	7/1/20	018 Vermont Gas support request letter 05/12/2020	Applicant
018a	7/23/20	018a Vermont Gas Ability to Serve (7/17/20)	Applicant
019	7/1/20	019 Burlington Parks-Recreation support request letter 05/12/2020 & no adverse impact memo response 06/09/2020	Applicant
020	7/1/20	020 Burlington Water Enterprise Land Use	Applicant
021	7/1/20	021 Chittenden Country Reg Plan ECOS Future Land Use	Applicant
022	7/1/20	022 Test Pits	Applicant
023	7/1/20	023 C1.0 Existing Conditions & Demolition Plan dated 06/23/2020	Applicant
024	7/1/20	024 C1.1 Site Layout & EPSC Plan dated 06/23/2020	Applicant
025	7/1/20	025 C1.2 Site Grading & Utility Plan dated 06/23/2020	Applicant
026	7/1/20	026 C2.0 Water & Sanitary Details dated 06/23/2020	Applicant
027	7/1/20	027 C2.1 Site & Stormwater Details dated 06/23/2020	Applicant
028	7/1/20	028 C2.2 EPSC Details, dated 06/23/2020	Applicant
029	7/1/20	029 XC-1.0 Existing Conditions Photographs- Building 32 dated 06/12/2020	Applicant
030	7/1/20	030 L-1.0 Site Plan dated 06/12/2020	Applicant
031	7/1/20	031 L-1.1 Hula Campus Overall Site Plan dated 06/12/2020	Applicant
032	7/1/20	032 A-1.0 Plan First Level dated 06/12/2020	Applicant
033	7/1/20	033 A-2.0 Exterior Elevations dated 06/12/2020	Applicant
034	7/1/20	034 A-3.0 Sections dated 06/12/2020	Applicant
035	7/1/20	035 A-4.0 Renderings dated 06/12/2020	Applicant
036	7/8/20	036 Email by Stephen Smith re Lighting Information (7/8/20)	Applicant
037	7/10/20	037 Burlington Development Review Board Findings of Fact (7/7/20)	Applicant
038	7/15/20	038 VTrans Entry of Appearance Comments (7/15/20)	VTrans
039	7/23/20	039 Cover Letter re Supplemental Information	Applicant
040	7/23/20	040 WW-4-5139-1_Application Received Letter (7/9/20)	Applicant
041	7/23/20	041 Stormwater Discharge Permit #8275-INDS.A (7/20/20)	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
042	7/23/20	042 Construction General Permit #8275-9020.1 (6/29/20)	Applicant
043	7/23/20	043 Fish and Wildlife Letter (7/14/20)	Applicant
044	7/23/20	044 Municipal Impact Questionnaire (7/21/20)	Applicant
045	7/27/20	045 Email to District Coordinator Requesting Hearing by Peter Bingham, Adjoiner on Behalf of Several Neighbors (7/27/20)	Abutter
046	7/29/20	046 VDHP Comment Letter (7/29/20)	DHP
047	8/13/20	047 Email by Almy Landauer, Adjoining Property Owner	Abutter
048	8/31/20	048 Memorandum by John Caulo re Supplemental Evidence for Criteria 5 and 8 (8/31/20)	Applicant
049	8/31/20	049 Partial City of Burlington Zoning Map	Applicant
050	8/31/20	050 West-facing Viewsheds of Project	Applicant
051	9/1/20	051 CCRPC Letter	Regional Planning Commission
052	9/1/20	052 Email by Peter Bingham, Adjoiner re Supplemental Information and Photos (9/1/20)	Abutter
053	9/2/20	053 Face Comments on Demolition of 32 Lakeside Avenue by Paul Wallace (9/2/20)	Abutter
054	9/2/20	054 Submittal by Paul Wallace, Adjoiner re Miscellaneous Information (9/2/20)	Abutter
055	9/14/20	055 Email by Suzanne Richman, Adjoiner/Party re Comment on Project (9/14/20)	Abutter
056	9/16/20	056 Email by John Caulo re HRO (9/16/20)	Applicant
	9/16/20	056a Addendum Email by John Caulo re Question 2 in HRO (9/16/20)	Applicant
057	9/16/20	057 WW-4-5139-1 Issued September 4, 2020	ANR
058	9/16/20	058 VHB Response to Recess Memo re Traffic (9/16/20)	Applicant
059	10/5/20	059 Email by John Caulo re Second HRO (10/2/20)	Applicant
060	10/5/20	060 Building Sign 1	Applicant
061	10/5/20	061 Building Sign 2	Applicant
062	10/5/20	062 HULA 32 Exterior Color Materials	Applicant
063		063	
064		064	
065		065	
066		066	
067		067	
068		068	
069		069	
070		070	

CERTIFICATE OF SERVICE

I hereby certify on this 7th day of October 2020, a copy of the foregoing ACT 250 LAND USE PERMIT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER #4C1316-1, 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

Lakeside Ovens, LLC
c/o Russ Scully, Scully Interactive
688 Pine Street
Burlington, VT 05401
russ@hulalakeside.com

John Caulo
LandPlan, c/o John Caulo
61 Central Avenue
Burlington, VT 05401
john.caulo@gmail.com

Hannah Wingate/Kevin Worden
Engineering Ventures
208 Flynn Ave., Suite 2A
Burlington, VT 05401
hannahw@engineeringventures.com
kevinw@engineeringventures.com

Steve Smith, Architect/Owen Smith
Smith-Alvarez-Sienkiewicz, Architects
117 St. Paul Street, Third Floor
Burlington, VT 05401
steve@sasarchitects.com
obsmith1313@gmail.com

David Saladino
Vanasse Hangen Brustlin, Inc.
40 IDX Drive
Building 100, Suite 200
South Burlington, VT 05403
dsaladino@vhb.com

Amy Bovee, Ass't City Clerk
Chair, City Council/Chair, City Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
abovee@burlingtonvt.gov

Chittenden County Regional Planning Commission
c/o Charlie Baker, Exec. Dir
Regina Mahony, Plann. Program Mgr.
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Elizabeth Lord, Land Use Attorney
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
anr.act250@vermont.gov

Barry Murphy/Vt. Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
psd.vtdps@vermont.gov

Craig Keller/Jeff Ramsey/Christopher Clow
VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
aot.act250@vermont.gov

Vt. Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov; james.duggan@vermont.gov
accd.projectreview@vermont.gov; laura.trieschmann@vermont.gov
elizabeth.peebles@vermont.gov

Peter Bingham
51 Lakeside Ave.
Burlington, VT 05401
Pbingh59@gmail.com

Paul Wallace
Rebecca Wallace
53 Lakeside Ave.
Burlington, VT 05401
Pdwallace08@gmail.com
rebstah@gmail.com

FOR YOUR INFORMATION

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

Sue Prell
57 ½ Lakeside Ave.
Burlington, VT 05401
ppansue@gmail.com

Maryanne Danis
12 Central Street
Burlington, VT 05401
mjdanis21@yahoo.com

Suzanne Richman
51 Lakeside Ave.
Burlington, VT 05401
suzannehummingbird@gmail.com

Almy Landauer
Almy.landauer@gmail.com

Dated at Essex Junction, Vermont, this 7th day of October, 2020.



Natural Resources Board Technician
879-5614
christine.commo@vermont.gov