



March 29, 2011

Linda Seavey, Director
Campus Planning Services
University of Vermont
109 South Prospect Street
Burlington, VT 05405

RE: Jurisdictional Opinion #4-225
Given buildings Curtain Wall, Burlington

Dear Linda:

This jurisdictional opinion is written pursuant to your written request of February 10, 2011 regarding the applicability of Act 250 jurisdiction over the proposed replacement of the curtain wall on the second level west elevation of the Given building. I have based my analysis on your submittals, comments from the State of Vermont Division of Historic Preservation and our site visit of March 24, 2011. For the reasons set forth below, I have determined that Act 250 jurisdiction does apply and a permit amendment is required.

Facts

1. The Given buildings were built in several phases during the years 1962 to 1966, with the west wing completed in 1968. The original exterior features include the flat roof and curtain walls of black, acid etched precast concrete, as well as a plate glass, hopper window system and white glass spandrels below the hopper system. The buildings were designed by the architectural firm of Skidmore, Owings & Merrill and associate architects Freeman, French, Freeman.
2. The proposal is to replace the existing window system at the second level west elevation of the Given building with a new insulated curtain wall system. The existing 1960's era, aluminum curtain wall system is significantly deteriorated, resulting in severe condensation that pools on the floors, substantial heating and cooling losses and occupant discomfort. The new system will match the existing aluminum material, with gray tint glazing on the windows to reduce solar gain and maintain building aesthetic. The lower white spandrel glass panel will be replaced with insulated white spandrel glass panels. It is expected to produce a significant improvement in energy efficiency, with an anticipated u-value of 0.326. The new curtain wall system will install in the same opening and closely match in appearance, size, dimensions and mullion divisions.



3. The District #4 Commission issued land use permit #4C0506-11 for the expansion of the MCHV campus of Fletcher Allen Health Care on March 5, 2001. Condition #24 of the permit states:

The Permittees shall carry out the following mitigation measures recommended by the State Division for Historic Preservation, as more particularly set forth in Exhibit #105 [emphasis added]:

- a. Photographic documentation of the Brown, Burgess, Alumni and Given Buildings, prior to demolition/alteration;
 - b. Development of an exhibit interpreting the history of the hospital;
 - c. Restoration of the Fletcher Building;
 - d. Nomination of Converse Hall to the State Register of Historic Places;
 - e. Retention of as much of the existing north wall of the Given Building as possible;
 - f. **Retention of remaining original exterior features on the west, east and south sides of the Given Building, to the extent reasonably possible;**
 - g. Restoration of the south entrance of the Given Building to original plans; and
 - f. Production of an historic context survey for the Alumni Building, to be conducted by a qualified historic preservation consultant in accordance with the Division's standards.
4. According to National Trust for Historic Preservation "Modernism roughly spans the time between World War I and the early 1970s. What we generally think of as the modernist ethic evolved first in Europe, among such architects as Le Corbusier, Ludwig Mies van der Rohe, and Walter Gropius, the latter two of the German Bauhaus school. The European modernists imbued their work with an inherent morality and social consciousness and were often associated with left-wing politics. Intrigued by the emerging technologies of the day, they embraced concrete, glass, and steel in their revolutionary creations. They eschewed ornament, rejecting what they saw as the frivolous strokes of Victorian and art nouveau styles. Their work was both spare (think of Mies' famous dictum "Less is more") and lyrical. Perhaps above all, they believed in function dictating form, though many architects, such as Le Corbusier, would eventually distance themselves from that tenet." Preservation Magazine May/June 2008.
5. The District Commission found compliance under Criterion 8 for LUP #4C0506-11 because with the proposed mitigation measures, as listed in Condition #24 of the permit, there would not be an undue adverse impact to historical resources from the expansion of the MCHV campus.

Issues

Does the proposed replacement of the curtain wall on the second level west elevation of the Given building require a permit or permit amendment from Act 250?

Analysis

The Given buildings were constructed in the 1960s therefore it is considered a pre-existing development pursuant to Act 250 Rule 2(C)(8) - any development in existence on June 1, 1970 and any development which was commenced before June 1, 1970 and completed by March 1, 1971. Proposed modifications or

changes to the Given buildings would normally be evaluated under Act 250 Rule 2(C)(7) - Substantial Change. Substantial change is defined as any change in a pre-existing development or subdivision which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. Section 6086(a)(1) through (a)(10).

However, LUP #4C0506-11 called out retention of several of the architectural features of the Given buildings as mitigation for impacts under Criterion 8 for the construction of the Renaissance project. Therefore, proposed changes to the Given buildings should be evaluated as a Material Change, pursuant to Act 250 Rule 2(C)(6), under LUP #4C0506-11

Act 250 Rule 3(C)(6) defines a material change as any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in an impact with respect to any of the criteria specified in 10 V.S.A. Section 6086(a)(1) through (a)(10).

The Environmental Board has adopted a two-prong test when applying Rule 34(A): (a) whether alteration (physical change or change in use) has or will take place; and (b) whether alteration has a significant impact on any finding, conclusion, term or condition of the project's permit, and the alteration may affect one or more of the values Act 250 protects. *McDonald's Corporation*, #1R0477-5-EB, Memorandum of Decision at 9-10 (Vt. Env. Bd. May 3, 2000); *Hiddenwood Subdivision*, Declaratory Ruling #378, Findings of Fact, Conclusions of Law and Order at 9-10 (Vt. Env. Bd. Jan. 12, 2000). The test for a Substantial change is exactly the same for the first prong and slightly different for the second prong.

The University of Vermont is proposing replacing almost 80% of the west wall. They would like to make the same changes to all elevations of the Given buildings but at the present time only the west wall changes are proposed. These are physical changes and therefore pass the first test of the Material Change Analysis. Modernist architecture is characterized by simplistic elements without ornaments. Hence if the most basic of changes affects one of the "defining characteristics" of a building, it could be deemed significant. Three out of the four elements that make up the west wall will be replaced. One of the defining features of the aluminum frame of the Given buildings are the indentations. These create a shadow effect on the frame as opposed to a flat aluminum frame. The indentations are proposed to be eliminated. Therefore, the proposed change has a significant impact on a condition of a permit since an original element will not be retained. Therefore, the second prong of the Material Change Analysis has been met

It has been argued that the cost to retain the indentations by custom extruding the aluminum frame is prohibitive. However, the test under the Material Change Analysis is whether the proposed change has a significant impact not only on a permit condition but also on the historic resource. No one has opined that the indentations are not significant defining features, only that the cost to retain them is prohibitive. It has not been submitted what the cost would be of a custom extruding of the aluminum frame and therefore it is unknown at this time if it is possible to retain that feature, to the extent reasonably possible as dictated by the permit condition. If the cost is prohibitive then the proposed change is keeping in-line with LUP #4C0506-11 Condition #24. However, the change would still have an impact with respect to Criteria 8 - historic resources and would then still meet the second prong of the Material Change Analysis. If the costs are prohibitive then it could be determined that the adverse effect on the historic resource is not undue. A test that is done in the context of a permit amendment decision.

Conclusions

Since the retention of remaining original exterior features on the west side of the Given buildings has not been preserved, to the extent reasonably possible, the proposed alteration has an impact on a finding and conclusion of a permit. Therefore a Material Change has occurred and a permit amendment is required.

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Ctr. Bldg., Drawer 20, Montpelier, VT, 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660)

If you have any questions regarding this jurisdictional determination, please call me at (802) 879-5658.

Sincerely,

/s/Peter E. Keibel
Peter E. Keibel
District #4 Coordinator

cc: Devin Colman, Historic Buildings Specialist, Division of Historic Preservation
Judith Ehrlich, Director of Operations, Division of Historic Preservation
Shirley Fortier, Assistant Planner, Campus Planning Services, UVM