

State of Vermont
NATURAL RESOURCES BOARD
DISTRICT 6 ENVIRONMENTAL COMMISSION
10 Baldwin Street, Montpelier, Vermont 05602

Act 250 Jurisdictional Opinion

This is a Jurisdictional Opinion based upon available information and a written request from the Landowner/Agent or Other Person. Any Notified Person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the District Coordinator (10 V.S.A. § 6007 (c) and Act 250 Rule 3 (b)) or an Appeal with the SUPERIOR COURT, Environmental Division within 30 days of the issuance of this opinion.

☒ I hereby request a jurisdictional opinion from the District Coordinator regarding the jurisdiction of 10 V.S.A. Chapter 151 (Act 250) over the project described below: David G. White, President, White + Burke, Inc., 40 College St., Suite 100, PO Box 1007, Burlington, VT 05402.

PROJECT DESCRIPTION:

The City of St. Albans, as part of its ongoing downtown revitalization efforts, proposes to develop a mixed-use project within its state-approved Downtown Development District on a City-owned site of slightly less than one acre located at 85-91 North Main Street, 8-12 Congress Street, and 10 Maiden Lane. To achieve this objective, the City is working with a private developer, Congress & Main, LLC, and Champlain Housing Trust (CHT). The project includes approximately 55,664 square feet of rental housing for a total of 54 residential units and approximately 24,270 square feet of commercial space for a total square footage of 79,934 across three separate buildings. Of the 54 total residential units, 30 will be affordable housing and 24 will be market-rate. The project involves the demolition of two existing buildings and construction of two new buildings.

Existing Act 250 permit: There is no existing Act 250 Permit on the subject property.

Project Type: ☒ Commercial ☒ Residential ☐ Municipal/State ☒ Mixed
 ☐ Agriculture ☐ Silviculture ☐ Other

Has the landowner subdivided before? ☐ Yes ☐ No ☒ N/A

AN ACT 250 PERMIT IS REQUIRED: ☐ YES ☒ NO

BASIS FOR DECISION:

As an initial matter, because the City of St. Albans has an official population between 6,000 and 10,000 residents, if the proposed project includes 75 or more housing units it constitutes a “development” and requires an Act 250 Permit. As noted above, the project proposes 54 total housing units.

Priority Housing Projects

The sections of the statute which govern the remainder of this analysis are 10 V.S.A. §§ 6001(3)(A)(iv)(I)(ff), (27), (28), (29) & (35). Taken together, these provisions establish an exemption from Act 250 jurisdiction for Priority Housing Projects. There is a several step process in determining whether a proposed project constitutes a “Priority Housing Project” under Act 250.

First, as the proposed Project falls entirely within the City of St. Albans Designated Downtown District and Growth Center, the project must qualify as either a mixed-use or mixed-income project, or any combination thereof.

Mixed-Use Projects

To qualify as “mixed-use,” a project must include both mixed income housing and construction of space for any combination of retail, office, services, artisan, and recreational and community facilities, and excluding industrial use, so long as at least 40% of the gross floor area of the buildings involved is mixed income housing. Here, Community College of Vermont is expected to be a tenant, among others, in the proposed mixed-use building and approximately 69.64% of the overall project’s gross floor area will be allocated to residential housing. Therefore, it must now be determined whether the project proposes mixed income housing.

Mixed Income & Affordable Housing

To qualify as “mixed income housing,” a project that includes rental housing must designate at least 20% of the housing units available for rent as affordable housing for a duration of at least 15 years.

Of the proposed project’s 54 housing units, at least 30 units will be owned, managed, and maintained as affordable housing by Champlain Housing Trust (CHT) for at least 30 years, well exceeding the 20%/15-year threshold. To then qualify as “affordable housing,” it must be demonstrated that the affordable units will be rented by occupants whose gross annual household income does not exceed 80% of the Burlington-South Burlington Metropolitan Statistical Area (MSA). Of the 30 CHT units proposed by this project, 8 will be rented at rates affordable to households earning less than 80% of the MSA median income, 13 will be rented to households earning less than 60% of the MSA median income, and the remaining 9 will be rented to households earning less than 50% of the MSA median income – all qualifying as “affordable housing.” Because 56% of the residential units proposed by the Project will be made available as affordable housing for well over 15 years, the Project satisfies the definition of “mixed income housing.” Therefore, because the Project includes both mixed income housing totaling more than 40% of the project’s total gross floor area along with other qualifying uses, the proposed Project qualifies as a “mixed-use” project and therefore constitutes a Priority Housing Project.

Demolition of Buildings Listed on State/National Register of Historic Places

If a proposed project requires demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places, the number of housing units for which Act 250 jurisdiction is triggered drops down to only ten, which this project clearly exceeds. However, demolition shall not be considered to create jurisdiction if the Vermont Division for Historic Preservation (VDHP) determines that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated.

Because the proposed Project falls within the St. Albans Historic District, which is listed in the National Register of Historic Places, and will include the demolition of two contributing buildings and the isolation of one contributing building from the rest of the historic district, the project required review by VDHP. Accordingly, VDHP issued a determination on March 29, 2019 that the demolition and isolation of historic buildings will have adverse effects upon the St. Albans Historic District. However, VDHP also determined that the adverse effects will be adequately mitigated with conditions that the developers have agreed to comply with and implement. VDHP confirms that the mitigation conditions will be enforceable through a March 22, 2019 Memorandum of Agreement between the Vermont Agency of Commerce, Vermont State Historic Preservation Officer, Vermont Housing and Conservation Board, Champlain Housing Trust, and City of Saint Albans, which is a legally binding document and is on file with Act 250.

Conclusion

For the foregoing reasons, it is concluded that the project as proposed constitutes a Priority Housing Project that is afforded exemption from Act 250 pursuant to 10 V.S.A. §§ 6001(3)(A)(iv)(I)(ff), and therefore an Act 250 Permit is not required.

Dated at Essex Junction, Vermont this 12th day of April 2019.



BY: _____
Josh Donabedian, District Coordinator
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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. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) 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 (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must 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.

CERTIFICATE OF SERVICE

I hereby certify on this 12th day of April, 2019 a copy of the foregoing **JURISDICTIONAL OPINION 6-016 (CITY OF ST. ALBANS)** 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.Act250Barre@vermont.gov

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