

TOWN OF NORWICH  
DEVELOPMENT REVIEW BOARD  
AGENDA  
Thursday, March 18, 2021  
7:00 PM

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Act 92 OML compliant meeting in response to covid-19 will be conducted via ZOOM.

ZOOM™ Access Information:

Topic: Development Review Board

Time: March 18, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting  
<https://us02web.zoom.us/j/89900487709>  
888 475 4499 US Toll-free  
877 853 5257 US Toll-free

1. **Call to Order, Roll Call**
2. **Approve Agenda**
3. **Approve Minutes – 2-18-21**
4. **Public Comments, Announcements and Correspondence**
  - a. Zoning Permit #58BSUB20 withdrawn
5. **Administrative Issues and Updates**
  - a. Membership Status – Terms Expiring 4-30-21
    - i. John Lawe
    - ii. Sue Pitiger
  - b. Conflict of Interest Policy for Board Members
6. **Public Hearings 7:15PM:**
  - a. Appeal of 1-6-21 Zoning Administrator Decision concerning an alleged violation caused by the Black Lives Mater (BLM) sign at 236 Main Street by Appellant, Stuart Richards, of 82 Elm Street. Application to be reviewed under the Norwich Zoning Regulations. (Continued from 2-18-21)
7. **Other Business**
8. **Adjournment**

Future Meeting: TBD

DRB Minutes available at: <http://norwich.vt.us/development-review-board-minutes/>

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TOWN OF NORWICH  
DEVELOPMENT REVIEW BOARD  
DRAFT MINUTES  
Thursday, February 18, 2021

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Act 92 OML compliant meeting conducted via Town of Norwich Zoom account. These proceedings were recorded.

**Members Present:** Arline Rotman (Chair), Sue Pitiger, John Lawe, Richard Stucker, John Carroll, Don McCabe,  
**Alternates Present:** Matt Stuart  
**Staff:** Francis (Clerk)  
**Public:** Barbara Tolman, Elissa Close, Brooke Harrington, Curt Barthel, Eleanor Huke, Emily Myers, Ethan Myers, Jay Van Arman, Jane Sobel, Ronal Sobel, Martha Nelson, Christopher Brady, Paul Horak, Marcia Cassidy, Tim Pangburn, Kate White, Curt Barthel, Marianne Bartel, Russell Schleipman, Corina Bell-Isle, Doug Hewitt, Stewart Richards, Miriam Richards, Pamela Thompson Smith, Linda Cook, Omer Trajman, Lily Trajman, Emily Blumsack. Jon Felde, Brie Swenson

- 1) **Call to Order:** Roll Call 7:08pm
- 2) **Agenda:**  
Carroll moved and Pitiger seconded a motion to approve the agenda. Motion carried 6 – 0.
- 3) **Minutes of 02-04-21**  
Carroll moved and Pitiger seconded a motion to approve the minutes of January 21, 2020 as amended (to state Carroll was absent). Motion carried 6 – 0.
- 4) **Public Comments and Announcements:** None
- 5) **Administrative Issues and Updates:** None
- 6) **Public Hearing 7:14pm**
  - a) **#58BSUB20 Continued from January 21, 2021: Preliminary Plan Review** of a subdivision Application by Russell F. Schleipman, Applicant and Landowner, to divide Lot #10-207.100 to create 2 lots at Union Village RD. Proposed Lot 1 to be  $\pm 4.28$  acres, undeveloped. Proposed Lot 2 to be  $\pm 10.8$  acres undeveloped.

Francis, as Clerk of the DRB reported on the questions posed at the site visit conducted on the subject lands at 4:00pm earlier the same day. Doug Hewitt PE, the applicant and Corina Belle-Isle led the board and ten abutters and neighbors on a site visit. The path of the proposed private road was shown to the point where two private driveways would commence servicing each of the two proposed lots. The proposed development envelope for Lot 1 was shown and the boundary between Lot 1 and Lot 2 was explained.

Questions raised at the site visit are summarized below with answers provided by Doug Hewitt, PE.

- What is the path of the proposed private road in relation to the existing power pole location at 66 Partridge Hill RD?
  - The precise path has yet to be confirmed and is subject to change on the basis of feedback from the board with regard to the grade permitted for the private road and other considerations
- What is the grade of the proposed private road?

- At no point will the grade exceed 17.5 percent
- How will this be achieved given the existing terrain?
  - A substantial amount of cut and fill will be needed to achieve this result
- Will tree removal be needed, and does this vary with the final width of the private road (the width being the subject of a waiver)?
  - Several trees will need to be removed; a wider road requirement will necessitate more trees being removed
- Is the soil depth of the area identified as the road-bed known?
  - No, but blasting may be necessary
- Is access to Lot 1 and 2 possible from Union Village RD?
  - There is a steep gully, additional permits from the state would be required, which would involve delineation of the stream, site assessment for any wetland impacts and substantial extra road length, because a series of switchbacks would be needed to traverse the steep slope present on proposed Lot 1. The conclusion has been that impacts using access from Partridge Hill are less.

Doug Hewitt PE, made a presentation on behalf of the applicants describing the path of the proposed private road, the dimensions of the proposed parcels (including a boundary line adjustment between Lot #10-201.000 (66 Partridge Hill RD) and Lot #10-207.100 which would reduce the remaining Lot# #10-201.000 from 5.9 acres to 4.0 acres with the 1.63 acres being added to the proposed Lot 2 (total area 4.75 acres).

Board members asked questions based on the applicable criteria laid out in Article III of the Norwich Subdivision Regulations (NSR) including the following:

- What is the width of the ROW for the private road servicing proposed Lots 1 and 2?
  - The requirement of the *Norwich Private Road Specifications* is a 50-foot ROW with a minimum width of 14 feet and two one-foot shoulders for the travelled portion of the ROW. The application includes a waiver request from 14 feet to 10 feet with two one-foot shoulders for the travelled portion and an increase in maximum grade from 12 percent to 17.5 percent intended to reduce project cost and impact on steep terrain
- What section of the private road exceeds 17.5 percent?
  - The maximum proposed grade is 17.5 percent. The section of private road exceeding 12 percent is approximately 180 feet in length and commences where the proposed road would connect with an existing roadbed (which would be improved) and continues past the parcel boundary between 66 Partridge Hill RD and proposed Lot 2.
- Why is access to Lot 1 and Lot 2 from Union Village Rd not possible? What is the total elevation gain from Union Village Rd to the boundary between proposed Lot 1 and Lot 2 compared to the elevation gain from the end of the cul-de-sac at 66 Partridge Hill to the point at which the private road becomes driveway access for Lot and Lot 2?
  - The approximate elevation gain from Union Village Rd to the point where the proposed private road ends for accessing proposed Lot and Lot 2 is 132 feet. The approximate elevation gain from the beginning of the proposed private road at 66 Partridge Hill RD to the same point is 82 feet.
- What is the reason to prefer the Partridge Hill access to Lot 1 and Lot 2 over Union Village?
  - There are less natural resource impacts, less visual impact (no switchbacks through the meadow) and cost
- Why does the private road take the path it does with regard to the property boundary

between 66 and 64 Partridge Hill?

- This path already requires cutting into the up-slope side of the proposed private road on 66 Partridge Hill RD. The path was determined by balancing out this impact with the distance the proposed ROW is from the property boundary. Pushing the road up-slope increases the size of the cut in the slope.
- The proposed private road is heavily shaded by trees, will that be safe in winter? Would the 14-foot width be safer?
  - The reduction in width will not significantly increase the extent of shading from evergreen trees. It will mostly be a surface (snowplowing) maintenance issue
- What is the status of existing 'lane' identified during the site visit?
  - The lane is a pre-existing access the proposal to use this alignment reduces impact, and works with the given topography
- Has thought been given to shifting the private road?
  - All other alignments involved substantially more impact
- Assuming the private road takes the proposed path, a lot of clearing will be needed how do you propose to mitigate that?
  - The plans show a ditch on the uphill side of the private road to transport stormwater downslope to Partridge Hill RD and the existing drainage structures

Chair Rotman opened the hearing to comments from the Public.

Elissa Close commented that Exhibit A-7 appears to exaggerate the grade of the existing driveway to 66 Partridge Hill RD. and sought to have a pdf of a slope map generated by the Agency of Natural Resources (ANR) Natural Resources Atlas admitted as an exhibit along with written comments submitted via email to the Clerk of the DRB in the past week. By common assent the DRB agreed to have the slope map and written comments admitted into evidence.

- IP-2 Close: Slope Map (ANR Natural Resource Atlas)
- IP-3 Close: Partridge Hill cul-de-sac safety issues
- IP-4 Close: Driveway. Steep slopes

Tim Pangburn referenced their written comments (see IP-1 in the packet). Exhibits A9 and A-10 show tree cover which has been recently removed (east of the existing driveway for 66 Partridge Hill). The removal of the trees has exacerbated existing problems with runoff leading to erosion of the road-bed and other stormwater issues.

Kate White asked that no waiver to road standards be granted without a detailed erosion control and stormwater plan being submitted. She further commented that the watercourse on Union Village Rd is not listed, there are no wetlands mapped and there are several examples of culverts connecting parcels to Union Village RD. Lastly, the buffering of the private road is on the side of 66 Partridge Hill (the applicants) not 64 Partridge Hill (the abutters).

Ronald Sobel was introduced by his wife Jane and spoke of the longstanding drainage problem experienced on their property as a consequence of run-off from 66 Partridge Hill, and feared that the proposed private road would cause similar issues.

Eleanor Huke submitted written testimony on February 15 and asked to have it entered into evidence. By common assent the board agreed to have her comments admitted into evidence.

IP-5 Huke: Schleipman Prop.

Huke commented that the ditching for Partridge Hill RD had filled in over time from silt, pebbles and new vegetation and that they no longer function.

Barbara Tolman commented that during the site visit the engineer (Doug Hewitt) had suggested that blasting may be needed. How does this meet the description in the application of 'practical design'?

Christopher Brady commented that the cul-de-sac is the perimeter of the Village Residential district, but that the Schleipman parcels are wholly in Rural Residential and asked that the DRB be sensitive to this breach of the Rural Residential district.

Marcia Cassidy asked would the proposed private road become a town road?

Brooke Harrington commented that she would like to echo the neighbors' concerns regarding safety, increased traffic and was distressed by the idea of blasting.

Christopher Brady remarked that the application was full of errors and omissions.

Elissa Close pointed the board to the need to address Section 3.7 Roads, Driveways and Pedestrian Access (D) Coordination with Adjoining Properties in the Norwich Subdivision Regulations.

Russell Schleipman replied to the comments by saying that he had lived on Partridge Hill for 60 years and that he hoped one day to build a home in the woods on Lot 2. And, that traffic impact would be negligible given that the development proposed only two new houses.

After a brief discussion the board agreed to continue the hearing to March 18, 2021.

**b) Appeal of 1-6-21 Zoning Administrator Decision** concerning an alleged violation caused by the Black Lives Matter (BLM) sign at 236 Main Street by Appellant, Stuart Richards, of 82 Elm Street. Application to be reviewed under the Norwich Zoning Regulations.

Mr. Richards noted the late hour and requested that the hearing on the appeal of the Zoning Administrator's decision be continued to March 18.

Mr. Richards sought to have comments provided via email and subsequent comments include for discussion by the board on March 18. The board gave a deadline for submitting further materials by March 10, 2021.

Stucker moved and Carroll to continue the hearing to March 18, 2021. Motion carried 7 – 0.

Meeting closed at 9:22pm

Respectfully submitted,  
Rod Francis

**Future Meetings:**

Thursday, March 18 at 7:00PM

DRB Minutes available at:

<http://Norwich.vt.us/development-review-board-minutes/>

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CHARTERED 1761

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## **TOWN OF NORWICH, VERMONT CONFLICT OF INTEREST POLICY**

**Article 1. Authority.** Under the authority granted in 24 VSA §2291(20), the Selectboard of the Town of Norwich hereby adopts the following policy concerning conflicts of interest applying to all elected and appointed Public Officers of the Town, including members of all Town committees and boards.

**Article 2. Purpose.** The purpose of this policy is to ensure that the business of this municipality will be conducted in such a way that no Public Officer of the municipality will gain a personal or financial advantage from his or her work for the municipality and so that the public trust in its Public Officers and public bodies will be preserved. It is also the intent of this policy to encourage all decisions made by municipal officials to be based on the best interest of the community at large. This policy further seeks to promote transparency as the best protection against the threats posed to good governance by real and perceived conflicts of interest.

**Article 3. Definitions.** For the purposes of this policy, the following definitions shall apply:

**A. Conflict of interest** means any of the following:

1. A significant direct personal or financial interest of a Public Officer, or of an immediate family member, business associate, employer, or employee of the official, in the discretionary outcome of a cause, proceeding, application, or any other decision pending before the official or before the agency or public body in which the official holds office or is employed. "Conflict of interest" does not arise in the case of votes or decisions on matters in which the Public Officer has a personal or financial interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision, in cases where a decision or act is not subject to the discretion of the official or the body of which he or she is a part, or where such personal or financial interest is *de minimis*;
2. A situation where a public officer has publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding. This shall not apply to a member's particular political views or general opinion on a given issue; and

3. A situation where a public officer has engaged in *ex parte* communications with a party in a quasi-judicial proceeding that is before the public body to which that public officer belongs.
- B. **Emergency** means an imminent threat or peril to the public health, safety and welfare.
- C. **Ex parte communication** means direct or indirect communication between a member of a public body and any party, party's representative, party's counsel, or any person interested in the outcome of a quasi-judicial proceeding that occurs outside the proceeding and concerns the substance or merits of the proceeding.
- D. **Official act or action** means any legislative, administrative or judicial act performed by an elected or appointed officer or employee while acting on behalf of the municipality. This term does not apply to ministerial acts or actions involving no discretion.
- E. **Public body** means any board, council, commission or committee of the municipality
- F. **Public interest** means an interest of the community as a whole, conferred generally upon all residents of the municipality.
- G. **Public officer** means a person elected or appointed to perform executive, administrative, legislative or quasi-judicial functions for the municipality or appointed to a public body.
- H. **Quasi-judicial proceeding** means a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, the result of which can be appealed by a party to a higher authority.
- I. **Financial interest** means a reasonably foreseeable financial effect, distinguishable from its effect on the public generally, on the Public Officer, a member of his or her immediate family, or on any of the following:
- (a) Any business entity in which the Public Officer has a direct or indirect investment.
  - (b) Any real property in which the Public Officer has a direct or indirect interest.
  - (c) Any source of income provided or promised to the Public Officer within 12 months prior to the time when the decision is made or action is taken.
  - (d) Any business entity in which the Public Officer is a director, officer, partner, trustee, or manager.
  - (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the Public Officer within 12 months prior to the time when the decision is made or action is taken.
- J. **Personal interest** is an outside interest that is non-financial in nature but could reasonably be considered to affect one's ability to make unbiased decisions. Personal interests are by their nature more difficult to identify, so that officials should be more aware of them in themselves and more circumspect in ascribing them to others.



**Article 4. Actions Not Permitted.**

- A. A public officer shall not participate in any discretionary official decision, action or inaction if he or she has a conflict of interest in the outcome of the action.
- B. A public officer shall not personally participate in a deliberation leading to an act or decision in which he or she has a conflict of interest.
- C. Public officers shall not accept gifts or other offerings for personal gain by virtue of their public office.
- D. Public officers shall not use for private gain or personal purposes public resources not available to the general public, including but not limited to Town staff time, equipment, supplies, or facilities.

**Article 5. Disclosure.** Candid, detailed disclosure is the single best protection against conflicts of interest. Appropriate disclosure earns the respect of the public and of fellow Public Officers. A public officer who has reason to believe that he or she has a potential conflict of interest or an appearance of such a conflict, but believes that he or she is able to act fairly, objectively and in the public interest because no actual conflict exists shall, prior to participating in any official action on the matter, disclose to the public body at a public hearing the matter under consideration, the nature of the potential or apparent conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest. Notwithstanding the foregoing, an actual or potential conflict need not be disclosed if the affected public officer chooses to recuse him or herself from consideration of or deliberation on the matter, except for publicly announcing the reason for recusal is due to a conflict or its potential.

**Article 6. Recusal.**

- A. A public officer shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
  - 1. Any person may request that a public officer recuse him or herself due to a perceived conflict of interest. Such request shall not constitute a requirement that the public officer recuse him or herself.
  - 2. A public officer who has recused him or herself from a proceeding shall not sit with or deliberate with the affected body, or participate in that proceeding as a member of that body in any capacity.
  - 3. Once there has been a disclosure of an actual or perceived conflict of interest, other public officers shall be afforded an opportunity to ask questions or make comments about the situation. If a previously unknown conflict is discovered, the affected body may take evidence pertaining to the conflict and, if appropriate, adjourn to a short deliberative session to address the conflict. Executive session may be used for such discussion, in accordance with 1 VSA Section 313(4).

4. The affected body may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the body, for example due to a lack of quorum. The body may then resume the proceeding once sufficient members are present.
5. In the case of a public officer who is an appointee, the public body which appointed that public officer shall have the authority to order that officer to recuse him or herself from the matter, subject to applicable law.

**Article 7. Quasi-Judicial Proceedings.** A higher conflict of interest standard applies in the context of quasi-judicial decision-making. Quasi-judicial decisions are rendered in situations where the rights of a particular individual are at stake (e.g., tax appeals, vicious dog hearings, land use decisions). In those situations, the affected individual has the right to receive constitutional due process, which includes the right to an impartial decision maker. If a municipal official with a conflict of interest participates in a quasi-judicial process, a court may determine that the official was not an impartial decision maker and may vacate the decision and order the matter be reconsidered without the participation of the conflicted member. See e.g. *Appeal of Janet Cote*, 257-11-02 Vtec (2003). Therefore, Public Officers should be more inclined to recuse themselves when they are participating in a quasi-judicial process.

**Article 8. Enforcement; Progressive Consequences for Failure to Follow the Town of Norwich Conflict of Interest Policy.** In cases where the conflict of interest procedures in Articles 5 and 6 have not been followed, the Selectboard may take progressive action to address possible violations of this policy. In taking these actions, the board shall follow these steps in order unless the public officer voluntarily waives any or all steps A, B, or C:

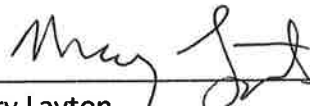
- A. The chair shall meet informally, in private, with the public officer to discuss possible conflict of interest violation, so long as such meeting would not itself constitute a quorum of the relevant public body.
- B. The Selectboard may meet to discuss the conduct of the public officer. Executive session may be used for such discussion, in accordance with 1 VSA §313(4). The public officer may request that this meeting occur in public. If appropriate, the board may admonish the offending public officer in private.
- C. If the board decides that further action is warranted, the board may admonish the offending public officer at an open meeting and reflect this action in the minutes of the meeting. The public officer shall be given the opportunity to respond to the admonishment.
- D. Appointed officials of the Town may be removed for cause following procedures required in 24 VSA §4323 (for the Planning Board, unless they are elected members) 24 VSA §4460 for the (Developmental Review Board), 24 VSA §4448 for the Zoning Administrator, 24 VSA §4503 (for the Conservation Commission).
- E. All other officials appointed by the Selectboard, and not covered by a contract, may be removed by majority vote of the Selectboard, or as may otherwise be dictated by statute.

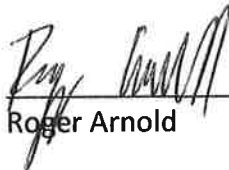
**Article 9. Effective Date.** This policy shall become effective immediately upon its adoption by the Town of Norwich Selectboard.

  
\_\_\_\_\_  
John Pepper, Chair

  
\_\_\_\_\_  
John Langhus

  
\_\_\_\_\_  
Claudette Brochu, Vice-Chair

  
\_\_\_\_\_  
Mary Layton

  
\_\_\_\_\_  
Roger Arnold

Adopted by Norwich Selectboard 4/28/10

Revised 6/23/10

Revised 7/27/11

Revised 8/23/17

Revised 5/23/18

Revised 2/27/19

TOWN OF NORWICH  
DEVELOPMENT REVIEW BOARD

DOCUMENTS AND INTERESTED PARTIES

**APPEAL:**       **Lot:**     #20-241.000  
                              236 Main ST

**Site Visit:** None

**Public Hearing Date:** February 18 continued to March 18, 2021

**Appellant:**     Stuart Richards  
                          PO Box 156  
                          Norwich, VT 05055

**Interested Parties:**     Stuart Richards  
                                  Omer Trajman

**NATURE OF APPEAL** - Appeal of 1-6-21 Zoning Administrator Decision concerning an alleged banner/sign violation at 236 Main Street by Appellant, Stuart Richards, of 82 Elm Street. Application to be reviewed under the Norwich Zoning Regulations.

The record in this appeal includes the following documents:

Submitted by Appellant:

- A-1\*   Memo to DRB from Stuart Richards, March 10, 2021, includes "Black Lives Matter opens up about finances", from *Valley News* February 24, 2021
- A-2\*   Memo to DRB from Stuart Richards "Appeal of Zoning Administrators Decision, February 17, 2021
- A-3    Appeal by Stuart Richards of a ZA decision, transmitted by email January 14, 2021
- A-4    Complaint by Stuart Richards, alleged violation of Zoning Regulations by a sign at 236 Main Street transmitted by email, January 4, 2021

Submitted by Zoning Administrator

- ZA-1   Zoning Administrator Response to Appeal by Stuart Richards, February 9, 2021
- ZA-2   Zoning Administrator Decision re: Zoning complaint by Stuart Richards concerning sign at 236 Main Street

\*new materials submitted for March 18 continued hearing

TO: Development Review Board

FROM: Stuart Richards

RE: Appeal of a Zoning Administrators Decision re BLM sign 236 Main St

DATE: March 10, 2021

This memo continues the appeal of Stuart Richards, a Norwich Resident and is intended to respond to and rebut the analysis of Norwich's Zoning Administrator contained in his memo dated February 9, 2021.

Attached please find a Valley News article entitled "Black Lives Matter Opens Up About Finances." The article describes the growth and size not only of the Black Lives Matter Global Organization but also of the many chapters of the BLM movement. It is quite clear that this is a very strong, powerful, nationwide, well funded organization. It is also quite clear that it is inconceivable that an oversize banner that advertises and supports Black Lives Matter could be considered "ornamental" or "non advertising" since the purpose of the sign is to support and advertise Black Lives Matter.



# Black Lives Matter opens up about finances

2/24/21 VN

Organization took in \$90M last year, committed \$21.7M in grant funding to chapters

By AARON MORRISON  
Associated Press

NEW YORK — The foundation widely seen as a steward of the Black Lives Matter movement says it took in just over \$90 million last year, according to a financial snapshot shared exclusively with The Associated Press.

The Black Lives Matter Global Network Foundation is now building infrastructure to catch up to the speed of its funding and plans to use its endowment to become known for more than protests after Black Americans die at the hands of police or vigilantes.

"We want to uplift Black joy and liberation, not just Black death. We want to see Black communities thriving, not just surviving," reads an impact report the foundation shared with the AP before releasing it.

This marks the first time in the movement's nearly eight-year history that BLM leaders have revealed a detailed look at their finances. The foundation's coffers and influence grew immensely following the May 2020 death of George Floyd, a Black man whose last breaths under the knee of a white Minneapolis police officer sparked protests across the U.S. and around the world.

That growth also caused longstanding tensions to boil over between some of the movement's grassroots organizers and national leaders — the former went public last fall with grievances about financial transparency, decision-making and accountability.

The foundation said it committed \$21.7 million in grant funding to official and unofficial BLM chapters, as well as 30 Black-led local organizations. It ended 2020 with a balance of more than \$60 million, after spending nearly a quarter of



AP FILE PHOTOGRAPH — TED S. WARREN  
**Protesters representing Black Lives Matter and Protect the Results march in Seattle last year.**

its assets on the grant funds and other charitable giving.

In its report, the BLM foundation said individual donations via its main fundraising platform averaged \$30.76. More than 10% of the donations were recurring. The report does not state who gave the money in 2020, and leaders declined to name prominent donors.

Last year, the foundation's expenses were approximately \$8.4 million — that includes staffing, operating and administrative costs, along with activities such as civic engagement, rapid response and crisis intervention.

One of its focuses for 2021 will be economic justice, particularly as it relates to the ongoing socioeconomic impact of COVID-19 on Black communities.

After the 2013 acquittal of George Zimmerman, the neighborhood watch volunteer who killed 17-year-old Trayvon Martin in Florida, BLM's founders pledged to build a decentralized movement governed by consensus of a members' collective. In 2015, a network of chapters was formed, as support and donations

poured in. But critics say the BLM Global Network Foundation has increasingly moved away from being a Black radical organizing hub and become a mainstream philanthropic and political organization run without democratic input from its earliest grassroots supporters.

BLM co-founder Patrisse Cullors told the AP that the foundation is focused on a "need to reinvest into Black communities."

"One of our biggest goals this year is taking the dollars we were able to raise in 2020 and building out the institution we've been trying to build for the last seven and a half years," she said in an interview.

Cullors, who was already active in her native Los Angeles, where she created her own social justice organization, Power and Dignity Now, became the global foundation's full-time executive director last year.

Fellow co-founders Alicia Garza, who is the principal at Black Futures Lab, and Opal Tometi, who created a Black new media and advocacy hub called Diaspora Rising, are not involved

with the foundation. Garza and Tometi do continue to make appearances as movement co-founders.

In 2020, the foundation spun off its network of chapters as a sister collective called BLM Grassroots. The chapters, along with other Black-led local organizations, became eligible in July for financial resources through a \$12 million grant fund. Although there are many groups that use "Black Lives Matter" or "BLM" in their names, less than a dozen are currently considered affiliates of the chapter network.

According to foundation records shared with the AP, several chapters, including in the cities of Washington, Philadelphia and Chicago, were notified last year of their eligibility to receive \$500,000 each in funding under a multiyear agreement. Only one BLM group in Denver has signed the agreement and received its funds in September.

A group of 10 chapters, called the #BLM10, rejected the foundation's funding offer last year and complained publicly about the lack of donor transparency. Foundation leaders say only a few of the 10 chapters are recognized as network affiliates.

In a letter released Nov. 30, the #BLM10 claimed most chapters have received little to no financial resources from the BLM movement since its launch in 2013. That has had adverse consequences for the scope of their organizing work, local chapter leaders told the AP.

The chapters are simply asking for an equal say in "this thing that our names are attached to, that they are doing in our names," said Black Lives Matter DC organizer April Goggans, who is part of the #BLM10 along with groups in Indianapolis, Oklahoma City, San Diego, Hudson Valley, New York, and elsewhere.

"We are BLM. We built this, each one of us," she said.



TO: Development Review Board

A-2

FROM: Stuart Richards

RE: Appeal of a Zoning Administrators Decision re BLM sign 236 Main St

DATE: February 17, 2021

This memo continues the appeal of Stuart Richards, a Norwich Resident and is intended to respond to and rebut the analysis of Norwich's Zoning Administrator contained in his memo dated February 9, 2021. The questions that need to be answered are whether the oversized Black Lives Matter (BLM) sign hanging from two trees conforms to the Norwich Zoning Regulations(NZR), to Vermont State Law and to federal law or is it "exempt" from applicable regulations . There is important information that is omitted and or misinterpreted in the Administrator's decision.

Table 3.4 on Page 41 of the NZR states the following exemption from the sign regulations: "One residential sign per dwelling unit identifying the occupant, not to exceed two square feet in area; and residential flags or banners intended solely for ornamental or non-advertising purposes." The Administrator focuses on two tests to arrive at his conclusion that the BLM sign merits an exemption under the NZR. The Administrator states that the terms "ornamental" and "non-advertising" are not defined in the NZR. But why should they be? We have dictionaries and Vermont state law that fulfill this purpose. The dictionary definition of "ornamental" is: "serving or intended as an ornament; decorative, "an ornamental fountain or plant." Does the BLM banner fit the dictionary definition of being ornamental. It clearly does not. The sign is intended to advertise and support a political message. The fact that the public may agree or disagree with that message does not make it any less of a political advertisement supporting a cause. One has to wonder if the Administrator would apply the same exemption for a banner advertising "Make America Great" or a "White Power" banner.

There is background to sign regulations that came into being decades ago because of the concern for excess signage degrading the natural beauty of our Green Mountain State and its effect on the tourist industry which was and still is one of the fundamental economic mainstays of the Vermont economy. Our lawmakers recognized that tourists were not coming to look at billboards and a proliferation of signs. The concern is expressed as "scattered outdoor advertising" as "detrimental" to scenery and economy -- 10 VSA 482(4). The concern is also expressed under the intent to prohibit "indiscriminate use" of outdoor advertising -- 10 VSA 483(3).

The second test the Administrator applies in granting an exemption is based on his interpretation that the Black Lives Matter banner is for "non-advertising purposes." In order to fully understand what advertising is the Vermont definition is helpful. "Title 10 : Conservation And Development Chapter 021 : Tourist Information Services (Cite as: 10 V.S.A. § 481) § 481. Definitions: As used in this chapter, the following terms are defined as follows: (4) Outdoor advertising means a sign that advertises, calls attention, or directs a person to a business, association, profession, commodity, product, institution, service, entertainment, person, place, thing, or activity of any kind whatsoever, and is visible from a highway or other public right-of-way." The Black Lives Matter movement has been described as comprised of a broad array of people, organizations and associations who are activists promoting a cause to increase membership and aid in fundraising to save Black lives. As such, a sign that advertises and supports this activity, its groups and organizations are required to conform to the NZR.

The Administrator instead of being guided by the Vermont statutory definition of advertising seeks other meanings and resorts to inapplicable court decisions. The City of Ladue case he cites rests on suppression of free speech. The NZR are not suppressing free speech. They are merely saying that size and the manner of display are important and in effect that you can't put a billboard up on your own property that is advertising. In addition, any individual can display a sign with whatever message they please on their own property

provided it conforms to the size, and display requirements and provided that the appropriate fee is paid. The Administrator also cites Reed v. Gilbert which also has nothing to do with this case. The Supreme Court was quite right in saying that non commercial signs shouldn't be treated differently because of their content. The content of the BLM sign is not the issue. The issue is whether the sign is an advertisement which it clearly is and whether the sign is decorative which it is not. The Administrator tries to make the case that there is case law and federal law that supersedes Vermont and Norwich law. However he hasn't cited any law that applies as indicated above. Because the issue is not the content of the sign, nor the suppression of free speech, nor the homeowner's right to post and promote an advertisement, there should be no exemption from the NZR. The homeowner is merely required to post his advertisement in conformance with the NZR.

It should be underscored that the NZR do not limit free speech for individual property owners, they merely require that a zoning permit be obtained and that the size and manner of display adhere to the NZR and that the required fee be paid. If the DRB upholds the Administrator's decision based on absence of definition for the word "decorative" and his interpretation of "non advertising," what we have is no regulation and any landowner could install a BLM billboard or other advertising of 20 feet by 50 feet or any size on his/her own property. The Appellant reiterates his request that the Administrator require the BLM sign conform to the NZR and that his decision be reversed.



**STUART L. RICHARDS**

PO Box 156, #82 Elm Street

Norwich, Vermont 05055

Tel: 802-649-3928

Fax: 802-649-3928

January 14, 2021

Norwich Development Review Board

Tracy Hall

Tracy Hall, 300 Main Street

PO Box 376

Norwich, Vermont 05055

Re: Appeal of Director, Planning & Zoning Decision regarding Black Lives Matter Banner/Sign under Norwich Zoning Regulations as Amended July 1, 2009

This letter is a formal appeal of the Director of Planning and Zoning decision (attached) which states that the oversize Black Lives Matter banner/sign hanging from two trees at the entrance to Norwich at 236 Main Street is an exempt banner/sign. The Director's decision states:

"There is no violation of the Norwich Zoning Regulations as amended July 1, 2009. Table 3.4 (1) Exempted Signs includes: [and] residential flags or banners intended solely for ornamental ~~of~~ (sic) or non-advertising purposes. I have concluded that your complaint refers to a banner for non-advertising purposes on a residential property which is explicitly exempt from the provisions of Section 3.11 including tables 3.4 and 3.5 of the NZR. The terms 'banners' 'ornamental' and 'non-advertising' are not defined in the NZR. This exemption extends to the size of the banner and the method of attachment."

It should be perfectly obvious and common sense should tell you that a "Black Lives Matter" banner is not "ornamental" nor is it for "non advertising purposes." The dictionary definition of ornamental is: "serving or intended as an ornament; decorative." There is nothing intended to be decorative or ornamental about an oversize Black Lives Matter banner/sign hanging from two trees at the entrance to Norwich. The sign is intended to convey a political opinion and is displayed for the express purpose of advertising and supporting the Black Lives Matter movement and organization and gathering more followers. It is not decorative or ornamental as would be flowers or other decorations and it is promotional advertising and supportive of Black Lives Matter both the movement and the organization.

To better understand why and how this sign supports Black Lives Matter groups and the Black Lives Matter movement one should understand the nature of the Black Lives Matter movement. There are millions of people in the US who support Black Lives Matter. Groups associated with Black Lives Matter have

raised approximately 10.6 billion dollars. This sign is in support of Black Lives Matter and is advertising Black Lives Matter and it obviously contradicts the ruling by the Director and it is impossible not to see that the sign is clearly not exempt from the requirements of the zoning regulations.

The appellant has no issue with the sign owner expressing a political opinion or supporting and advertising a political movement but that support should be done according to the Norwich zoning regulations governing size, location, installation and other applicable State and Norwich rules governing signs/banners. In addition, the owner should be required to obtain and pay for a permit.

The applicable fee of \$265 shall be hand carried if it can be received at Tracy Hall or mailed in the event that it cannot be received.



Stuart Richards

**Subject:** Signs  
**From:** Stuart Richards <srichards@globalrescue.com>  
**Date:** 1/4/2021, 10:27 PM  
**To:** Rod Francis <norwichvtplanner@gmail.com>  
**CC:** Herb Durfee <HDurfee@norwich.vt.us>

Rod,

There is an overly large Black Lives Matter sign at the entrance to Norwich. Does this sign have a permit? And if it does please explain how it conforms to the requirements of the Norwich Zoning Ordinance in Sections 3.11, 3.4 and 3.5. If it does not have a permit and does not conform to the Ordinance, kindly bring the sign into conformance. My objection to the sign relates to what appears to be its non conformance with the Ordinance.

I look forward to your prompt reply.

Thank you,

Stuart Richards

TOWN OF NORWICH  
PLANNING & ZONING

TO: Development review Board  
 FROM: Rod Francis, Planning Director  
 RE: Appeal of a Zoning Administrators Decision re BLM sign 236 Main St  
 DATE: February 09, 2021

### First Complaint

The initial complaint was transmitted via email on January 4, 2020 from Stuart Richards, 82 Elm St. Norwich. The complaint described an “overly large Black Lives Matter sign at the entrance to Norwich”. Richards asked if the sign had been given a permit, and sought an explanation as to how it conform[ed] to the ordinance Sections 3.11, 3.4 and 3.5.” Richards requested that if the sign did not have a permit and does not conform to the Ordinance that I take action as Zoning Administrator as it “appears to be ... in non-conformance with the Ordinance.”

#### Test 1: does the NZR allow for residential yard signs?

Yes. Section 3.11 Table 3.4 (1) exempts signs on residential property for “ornamental or non-advertising purposes”. [The terms “banners”, “ornamental”, and “non-advertising” are not defined in the Norwich Zoning Regulations (NZR)].

#### Test 2: is the BLM yard sign (banner) “non-advertising” speech?

Yes. I applied a test established by the US Supreme Court. In *Central Hudson Gas and Electric v. Public Svc. Comm’n* (1980) the US Supreme Court defined “commercial speech” as speech “that proposes a transaction”.

In the US Court of Appeals Ninth Circuit *Coastal Abstract Service Inc v First American Title Insurance Company* commercial speech is defined as “expression related solely to the economic interests of the speaker and its audience”.

After applying this two-part test, I was able to conclude that the BLM yard sign (banner) met a reasonable definition of ‘non-advertising’ and was thus exempt under Section 3.11 Table 3.4 (1) of the NZR. Concluding that the banner was exempt from review, the size and method of attachment were also beyond review. I transmitted my decision to Richards via email and first-class mail on January 6, 2021.

### Appeal of the Zoning Administrator Decision

Richards appealed this decision in a letter delivered by hand and email on January 14, 2021. In his appeal Richards rejects my conclusion that the BLM yard sign (banner) is “non-advertising” speech. The appellant is arguing that the BLM yard sign is a form of political advertising:

the sign is intended to convey a *political opinion* and is displayed for the express purpose of *advertising* and supporting Black Lives Matter movement and organization and gathering more followers. [emphasis added]

The appellant claims he has:

no issue with the sign owner expressing a political opinion or supporting and advertising a political movement but that support should be done according to the Norwich zoning regulations governing size, location, installation and other applicable State and Norwich rules governing signs/banners.



The NZR does not address political signs explicitly. There is an exemption under Section 3.11 Table 3.4 (1) for “[t]emporary election signs to be posted and removed in accordance with state law” but this sign does not reference an election, a candidate, a campaign, or a vote on a specific measure (such as an article or warrant). The BLM yard sign does not meet the definition for a temporary election sign.

The sign is not located in the state Right of Way (ROW), (this section of Main Street US is designated as US Route 5), and presents no hazard to vehicular or pedestrian traffic. These issues are addressed in 10 VSA §§494, 495 and NZR§3.11 Table 3.4(2).

The appellant clarifies that his issue is not with the content (speech), but the dimensions, location and installation of the sign. The appellant seeks to constrain the property owners right of expression to other means, or by applying dimensional standards from other parts of §3.11 Table 3.4.

Richards is making a “time, place, and manner” argument, claiming that this sign is in conflict with Norwich and state regulations with regard to size, location and installation. There is no provision in the NZR for regulating the size, location and installation of signs that are located on residential property and which also meet a reasonable definition of ‘non-advertising’ (see above). ‘Political’ signs as a form of speech are not regulated by the NZR.

The ability of a government body to regulate non-commercial, residential yard signs has been clearly curtailed by the US Supreme Court in *Ladue v Gillette* (1994). Here the court relied on previous decisions to take issue with banning entire avenues of expression (lawn signs). The court concluded:

Displaying a sign from ones' own residence carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means, for it provides information about the speaker's identity, an important component of many attempts to persuade. Residential signs are also an unusually cheap and convenient form of communication. Furthermore, the audience intended to be reached by a residential sign—neighbors—could not be reached nearly as well by other means. Pp. 13-14.

The court struck down the City of Ladue’s ordinance which strictly controlled signs. The court was concerned to prevent such “measures [which] can suppress too much speech by eliminating a common means of speaking”.

A municipality must show a compelling governmental interest when they propose regulations that may curtail first amendment rights. Whatever measures a government proposes must be narrowly tailored to achieve a compelling governmental objective to avoid violation of the right to equal protection under the laws. Beyond safety considerations local governments have little justification for restricting modes of speech such as yard signs.

The US Supreme Court has also limited the ability of a government body to distinguish between different forms of non-commercial speech. In *Reed v. Gilbert* (2015), the court found that a municipality cannot treat non-commercial signs differently based on their content. The NZR has not been revised to reflect this change in law. However, the town cannot distinguish between an ornamental holiday banner, a banner expressing support for a sports team, a banner conveying a religious message or a BLM banner.

## **Conclusion**

As Zoning Administrator, I have interpreted the Norwich Zoning Regulations literally and observed where there are gaps or absences in the regulations definitions or scope. Where necessary I have referred to authorities including case law and statute to confirm the application of the NZR.

In this matter I have found that the BLM sign is not commercial speech, but a protected class of signs in Norwich – a so-called “non-advertising” yard sign or banner.

If the Board is to reject my decision and find that the BLM yard sign is subject to §3.11 Table 3.4 then I would remind you that in reaching such a conclusion the board has engaged in a form of content-based review. As *Reed v Gilbert* makes clear, treating classes of non-commercial signs differently is unconstitutional.

As an officer of the town, I am obligated to caution the board that even where the local regulations may specify otherwise, I am compelled to act consistent with the federal law which supersedes local authority.

TOWN OF NORWICH  
PLANNING & ZONING

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January 6, 2021

VIA EMAIL AND FIRST CLASS MAIL

Stuart Richards

P.O. Box 156

Norwich, Vermont 05055

Mr. Richards,

Zoning Complaint 236 Main Street

On January 4, 2021 you lodged a complaint via email concerning the presence of a 'sign' attached to trees on the property of 236 Main Street. Specifically, that the 'sign' violates the Norwich Zoning Regulations as amended July 1, 2009 (NZR) Sections 3.11, Tables 3.4 and 3.5. In a follow up email on January 5, you also complained that the 'sign' was hanging on two trees and cite Table 3.4 (2) of the NZR as further evidence of a violation.

To investigate the complaint, I visited the property on January 5, 2021 and subsequently reviewed Section 3.11 of the NZR including Tables 3.4 and 3.5.

There is no violation of the Norwich Zoning Regulations as amended July 1, 2009. Table 3.4 (1) Exempted Signs includes:

[and] residential flags or banners intended solely for ornamental of non-advertising purposes.

I have concluded that your complaint refers to a banner for non-advertising purposes on a residential property which is explicitly exempt from the provisions of Section 3.11 including tables 3.4 and 3.5 of the NZR. The terms 'banners' 'ornamental' and 'non-advertising' are not defined in the NZR. This exemption extends to the size of the banner and the method of attachment.

This letter records my decision as Zoning Administrator. You have the right of appeal. If you choose to appeal this decision to the Norwich Development Review Board (DRB) please advise me so I may offer you assistance.

Sincerely,



Rod Francis  
Director of Planning & Zoning  
Town of Norwich

CC: Herb Durfee, Town Manager  
Omer Trejman, 236 Main Street





BLACK  
LIVES  
MATTER