

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
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Brad Rabinowitz
AJ LaRosa
Geoff Hand
Brooks McArthur
Kieran Christianson
Caitlin Halpert
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, December 21, 2021, 5:00 PM

PUBLIC HEARING NOTICE

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401
and

Zoom: <https://us02web.zoom.us/j/89866436310?pwd=UllSc25QaU9XclMwdnNWWURzY3NjQT09>

Password: 817716

Webinar ID: 898 6643 6310

Telephone: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833

- 1. ZAP-21-11; 164 North Willard Street Appeal (RL, Ward 1E) Luke Purvis**
Appeal of zoning application denial for installation of fence and related gates.
Continuance requested by appellant.
- 2. ZP-19-567; 15 Conger Avenue (RL-W, Ward 5S) Karen Maynard / Patricia Stratmann**
Time extension for approval to demolish existing structure and construct new single-family home and related site improvements.
- 3. ZP-21-509; 72-76 Elmwood Avenue (RH, Ward 2C) Michael Alvanos / PBGC LLC**
Construct three-unit detached residential building on site of former Methodist Church. One single family dwelling remains.
- 4. ZP-21-759; 77 Pine Street (FD6, Ward 3C) Grace Ciffo / Nedde Pine LLC**
Reconsideration of condition #22 "Rooftop mechanicals shall be screened", for ZP21-118OG, also related to ZP21-0927CA.

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/dr/ agendas or the office notice board, one week before the hearing for the order in which items will be heard.

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

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BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, December 21, 2021, 5:00 PM AGENDA

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- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Consent**
 1. **ZP-19-567; 15 Conger Avenue (RL-W, Ward 5S) Patricia Stratmann**
Time extension for approval to demolish existing structure and construct new single family home and related site improvements. (Project Manager, Scott Gustin)
- V. **Public Hearing**
 1. **ZAP-21-11; 164 North Willard Street Appeal (RL, Ward 1E) Luke Purvis**
Appeal of zoning application denial for installation of fence and related gates. *Continuance requested by appellant.* (Project Manager, Scott Gustin)
 2. **ZP-21-509; 72-76 Elmwood Avenue (RH, Ward 2C) Michael Alvanos / PBGC LLC**
Construct three-unit detached residential building on site of former Methodist Church. One single family dwelling remains. (Project Manager, Mary O'Neil)
 3. **ZP-21-759; 77 Pine Street (FD6, Ward 3C) Grace Ciffo / Nedde Pine LLC**
This Request is for the specific reconsideration of condition #22 "Rooftop mechanicals shall be screened", for ZP21-118OG, also related to ZP21-0927CA. (Project Manager, Mary O'Neil)
- VI. **Certificate of Appropriateness**
 1. **ZP-21-541; 410 Appletree Point Road (RL-W, Ward 4N) Charles Schmidt / Laura McCurdy**
Demolition of existing camp and construction of new single family home. (Project Manager, Scott Gustin)
- VII. **Adjournment**

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Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
vacant, Planning Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: December 21, 2021
RE: 20-0166CA/VR (ZP-19-567); 15 Conger Avenue

=====

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL-W Ward: 5S

Owner/Applicant: Patricia Stratmann

Request: Time extension for approval to demolish existing structure and construct new single family home and related site improvements.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews)

Background Information:

The applicant is requesting a time extension for zoning permit 20-0166CA/VR, which was granted for approval to demolish an existing 4-bay garage and to replace it with a new single family home and attached carport. Related site improvements such as a driveway, walkway, and landscaping are also included in the permit.

The subject zoning permit included a variance due to the small lot size. As a result, the extension request is subject to Development Review Board approval.

Previous zoning actions for this property are as follows:

- 11/8/19, Approval to replace garage with new single family dwelling
- 1/20/15, Approval to replace garage with new single family dwelling
- 5/14/14, Variance from Sec. 5.2.1, *Existing Small Lots*, 4,000 sf minimum lot restriction
- 3/18/14, Adverse determination of existing buildable small lot

Recommendation: **Consent approval** as per, and subject to, the following findings and conditions.

I. Findings

Article 3: Applications, Permits, and Project Reviews

Sec. 3.2.9, Zoning Permits

(d) Time Limits on Zoning Permits:

This section allows applicants 1 year to initiate work on their approved project and an additional 2 years (for a total of 3) to complete their project. Provision is made for up to two 1-year time extensions. Approval of a time extension is predicated on making the request prior to expiration of the zoning permit and continuing compliance with applicable zoning standards. In this case, the zoning permit was approved November 8, 2019 and is valid through November 8, 2022. Limited work has begun at the site. The requested extension would establish a new expiration date of November 8, 2023. The zoning permit remains compliant with applicable zoning standards in the RL-W zone. **(Affirmative finding)**

II. Condition of Approval

1. This approval is for a 1-year time extension of zoning permit 20-166CA/VR (ZP-19-567). The new expiration date is November 8, 2023. All other conditions and approved project plans of the zoning permit remain unchanged.

Burlington Development Review Board

149 Church Street, City Hall
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Brad Rabinowitz
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Springer Harris
Zoraya Hightower
Brooks McArthur
Kienan Christianson
Ravi Venkataraman (Alt)
Sean McKenzie (Alt.)



Burlington Development Review Board

Findings of Fact

Deliberative Hearing Tuesday, November 6, 2019

In RE: 20-0166CA/VR; 15 Conger Ave (Ward 5S, RL-W) (Tax Lot No. 053-2-026-000)

Owner/Applicant: Patrice A. Stratmann

Request: Demolish existing structure and construct new single family home and related site improvements. Lot size variance also included.

Members Present:

Brad Rabinowitz
AJ LaRosa
Zoraya Hightower
Brooks McArthur
Kienan Christianson
Sean McKenzie

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is requesting approval to demolish an existing 4-bay garage and to replace it with a new single family home and attached carport. Related site improvements such as a driveway, walkway, and landscaping are also proposed. The applicant received approval for a similar application in 2015; however, that proposal was never constructed.

The subject property is very small at just 2,933 sf. It is smaller than even the 4,000 sf minimum noted in Sec. 5.2.1, *Existing Small Lots*. As a result, development will be contingent on receipt of a variance. Such request is included in this application. The prior approval noted above was granted following issuance of a variance (the variance has now expired and must be renewed).

Relief is sought from the buildable small lot provisions of Sec. 5.2.1, *Existing Small Lots* that requires at least 4,000 sf to build on a small lot (i.e. less than the 6,000 sf minimum lot size) existing as of April 26, 1973. This property appears to date to September 29, 1972 and is just 2,933 sf in area. It contains only a 4-bay, single story garage structure.

The Design Advisory Board reviewed this application September 24, 2019 and recommended approval subject to the following conditions:

1. Any exterior light fixture on the front elevation should be cutoff to prevent glare.
2. The Board accepts location of the carport with an 8 ft. front yard setback, as the carport is not a garage. It contains no doors and is recessed from the front plane of the house.

No revised light fixture specifications have yet been provided. This item will, therefore, be addressed as a zoning permit condition.

Previous zoning actions for this property are as follows:

- 1/20/15, Approval to replace garage with new single family dwelling
- 5/14/14, Variance from Sec. 5.2.1, *Existing Small Lots*, 4,000 sf minimum lot restriction
- 3/18/14, Adverse determination of existing buildable small lot

Article 3: Applications, Permits, & Project Reviews

Part 3: Impact Fees

Sec. 3.3.2, Applicability

The proposed work will result in a new residential dwelling unit. Impact fees will be assessed on the new square footage of the home. **(Affirmative finding as conditioned)**

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Waterfront Residential Low Density (WRL)

The subject property is located in the WRL zone. This zone is intended primarily for single detached dwellings and duplexes. The proposed single family home is consistent with the intent of this zone. **(Affirmative finding)**

(b) Dimensional Standards & Density

The property is undersized at just 2,933 sf. Buildability is contingent on a variance per Article 12.

The property as it currently exists exceeds the maximum allowable lot coverage of 35% in the WRL zone. Just the garage's 1,600 sf footprint results in 57% lot coverage. Parking/driveway area brings existing lot coverage to about 90%. The proposed construction will lessen the existing building footprint and narrow the driveway down to just 18' wide. The resultant lot coverage would be 53.6% -- still nonconforming but substantially less so.

The minimum required side yard setbacks are 10% of the width or the average of four adjacent properties' (two on each side) side yard setbacks. In this case, there's only one property upon which to base the average side yard setback (27 Conger Ave). It has 0 side yard setback on both side yards. As proposed, the new home will have a 2.5' setback on the north side and a 5.5' setback on the south side. The proposed house will be set back 5' from the front property line, whereas the existing garage is ~ 11.' The proposed attached carport is 8' from the front property line. The front yard setback for this property is 7.5' +/- 5' (based on the average of neighboring homes). The existing garage sits ~ 1' from the rear property line, whereas the proposed home

will observe a 5' rear yard setback. At least a 20' rear yard setback is the minimum requirement. While 5' is nonconforming, the degree of nonconformity is lessened and is, therefore, acceptable.

The height of the existing garage is not noted; however, it is just 1 story. Building height is just 21' to the roof. Note that a rooftop access is depicted as well. This small feature extends to 29.' This height is less than the maximum permissible 35'. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The proposed single family home is a permitted use in the WRL zone. Note that the change in use and increased building size will require payment of impact fees per Article 3. **(Affirmative finding as conditioned)**

(d) District Specific Regulations

1. Setbacks

No setback encroachments under this provision are being sought. **(Not applicable)**

2. Height

No height bonuses are being sought. **(Not applicable)**

3. Lot Coverage

No lot coverage bonuses are being sought. **(Not applicable)**

4. Accessory Residential Structures and Uses

No accessory structures are proposed. **(Not applicable)**

5. Residential Density

The single family home is limited to occupancy by a family as defined in Article 13 of the Comprehensive Development Ordinance. **(Affirmative finding)**

6. Uses

No neighborhood commercial use is included in this proposal. **(Not applicable)**

7. Residential Development Bonuses

No development bonuses are being sought. **(Not applicable)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion.

(Affirmative finding)

Sec. 5.5.2, Outdoor Lighting

Outdoor lighting fixture cut sheets have been provided and depict typical residential lighting fixtures. Per the DAB's recommendation, the proposed fixture that is not cutoff must be replaced with a cutoff style fixture if it is to be used on the front elevation of the home. Fixture locations must be depicted on revised elevation drawings. **(Affirmative finding as conditioned)**

Sec. 5.5.3, Stormwater and Erosion Control

Since the application includes removal of the existing garage and construction of a new home, a "small project erosion control" plan is required. This plan has been reviewed and approved by the Stormwater Program manager. **(Affirmative finding)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The subject property contains no significant natural features. **(Affirmative finding)**

(b) Topographical alterations

The lot is flat and will remain so. No significant topographical changes are proposed.

(Affirmative finding)

(c) Protection of important public views

There are no important public views from or through the subject property. The property does not front any identified view corridor. **(Affirmative finding)**

(d) Protection of important cultural resources

The site itself is not historically significant, nor does it have any known archaeological significance. See Sec. 6.3.2 (b) below for historic significance the building itself. **(Affirmative finding)**

(e) Supporting the use of alternative energy

No alternative energy measures are included in the development proposal. The new structure will have no adverse impacts on alternative energy potential on the subject or neighboring properties. **(Affirmative finding)**

(f) Brownfield sites

The property is not an identified brownfield. **(Not applicable)**

(g) Provide for nature's events

The project as proposed is not large enough to require a post-construction stormwater management plan. A construction site erosion control plan is required and has been approved by the city's stormwater program staff. **(Affirmative finding)**

(h) Building location and orientation

The new home will face Conger Avenue with a clearly identifiable primary entrance. The new structure will be shifted closer to the street than the existing garage. The house will be set back 6' from the front property line, whereas the existing garage is ~ 11.' The proposed attached carport is 8' from the front property line.

The carport is set behind the front plane of the home as required by this criterion. This criterion also specifies a minimum 25' front yard setback for street-facing garages. The DAB found that the open-air carport structure is not a garage and that its placement at 8' from the front property line is acceptable. **(Affirmative finding)**

(i) Vehicular access

The new home will be served by a private driveway to access the attached 2-car carport. The driveway appears to be 18,' the maximum width permissible. **(Affirmative finding)**

(j) Pedestrian access

This criterion requires that a walkway be provided between the building's primary entrance and the public sidewalk. The site plan depicts a concrete walkway out to the sidewalk. **(Affirmative finding)**

(k) Accessibility for the handicapped

No handicap accessibility is evident in this proposal, nor is it required. **(Not applicable)**

(l) Parking and circulation

A 2-car carport will provide space for the required off-street parking associated with the single family home. It will be accessed by a short driveway. **(Affirmative finding)**

(m) Landscaping, fences, and retaining walls

A landscaping plan has been provided and depicts species and placement. New plantings will be installed to define the property boundaries and to accentuate the street-facing façade of the home. While basic, the proposed landscaping plan is acceptable for this new single family dwelling. **(Affirmative finding)**

(n) Public plazas and open space

No public plazas or open space are included in this proposal. **(Not applicable)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

Any new utility lines must be buried. No ground-mounted mechanical equipment is noted on the site plan. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The massing of the proposed structure is driven in large part by preservation of existing setback nonconformity without increasing the degree of nonconformity. In particular, the minimum rear yard setback is 25,' whereas the existing structure is ~1' from the rear property line. The existing building volume within that setback is retained by swapping some of the ground level of the existing garage with a second story on the new home. Additional back yard green space will appear as a result.

Beyond retention of nonconformity, the massing of the structure is boxy in appearance. From the street, the building is perceived as three separate components – living quarters, central entry, and carport. While difficult to discern in the elevation drawings, the carport is open-air with an enclosed “shed” at the rear behind the parking spaces. The scale of the structure is fairly small given the significant constraints of this very small lot. Building height is just 21' to the roof with a rooftop access extending to 29.' Note that only two of the four elevation drawings depict the rooftop access. It must be included on all elevation drawings. **(Affirmative finding as conditioned)**

2. Roofs and Rooflines

A flat roof is proposed. While uncommon for single family homes, there are several nearby residential structures with flat roofs. The three separate building components each has its own individual roof plane. **(Affirmative finding)**

3. Building Openings

The proposed fenestration is fairly basic and uniformly applied. Window size varies among the building levels, but they remain stylistically similar. **(Affirmative finding)**

(b) Protection of important architectural resources

The garage dates to 1900 but is not included in the State or National Register of Historic Places, nor does it appear to meet the eligibility criteria for review under Sec. 5.4.8, *Historic Buildings and Sites*. The proposed construction would not adversely impact Burlington's wealth of historically significant properties. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The project plans depict a primary entrance clearly visible from the street, and a walkway provides direct access to it from the public sidewalk. Fenestration and varying roof planes preclude uniform, blank expanses of building wall. **(Affirmative finding)**

(e) Quality of materials

The proposed structure will be clad in horizontal channel siding composite material by “Boral.” Trim is not noted and must be. Vertical cedar siding will be installed around the primary entrance. Clad wooden windows will be installed throughout. Membrane roofing will be installed. The rooftop access structure will be clad in cedar shingles with associated metal cable railings. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed construction must comply with the city’s current energy efficiency requirements. Note also that the State of Vermont’s new energy efficiency standards will apply to the new home. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

Not applicable.

(h) Integrate infrastructure into the building design

The landscape and site plans depict a utility meter enclosure on the north side of the home. Such location is appropriate. It must be depicted on the corresponding elevation drawing. No exterior mechanical equipment is proposed. Trash should be stored inside the home or “shed” until curb side pick-up days. **(Affirmative finding as conditioned)**

(i) Make spaces safe and secure

The building will be subject to current egress requirements. Building entries will be illuminated. **(Affirmative finding as conditioned)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the neighborhood parking district. The proposed single family dwelling requires 2 parking spaces. The carport contains room for 2 parking spaces. **(Affirmative finding)**

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The subject property is small at just 2,933 sf. It is well under the minimum lot size of 6,000 sf that applies in the WRL zone. The lot was created in 1972 and pre-dates the minimum lot size presently in effect. It is also smaller than the minimum 4,000 sf lot size specified in Sec. 5.2.1 that is intended to enable development of pre-existing lots that are less than the district minimum lot size. While the property is less than 4,000 sf, there are three other properties within the same block that are also less than 4,000 sf. They are 45 Lakeside Avenue (3,400 sf with a duplex), 10 Central Avenue (3,900 sf with a duplex), and 70 Wright Avenue (2,250 sf with a single family home). As with these other properties, the subject property, while small, is sufficiently large to contain a small residence. **(Affirmative finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As the lot is only 2,933 sf, it plainly fails to conform to the 4,000 sf minimum lot size stipulated in Sec. 5.2.1. Development is impossible without a variance from this requirement. **(Affirmative finding)**

(c) The unnecessary hardship has not been created by the applicant.

The hardship relative to Sec. 5.2.1 is related to the pre-existing small lot size. It is not a lot newly created by the applicant. **(Affirmative finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance from the limitations of Sec. 5.2.1 would not alter the essential character of the neighborhood or district in which the subject property is located. As noted previously, there are three other properties of less than 4,000 sf within the same block that contain residences and more within the greater neighborhood. **(Affirmative finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested variance from Sec. 5.2.1 is not a matter of degree. It is a requested exception to the minimum 4,000 sf lot size. As noted above, the 2,933 sf lot size is sufficient to contain a residence consistent with the character of the surrounding built environment. **(Affirmative finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

The requested variance would not result in the extension of a noncomplying situation or allow the initiation of a nonconforming use of land. The requested variance is sought in order to enable replacement of the existing nonconforming garage with a permitted residential use.

(Affirmative finding)

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: AJ LaRosa

I move that the Board grant certificate of appropriateness and lot size variance approval to demolish the existing structure and to construct a new single family home and related site improvements at 15 Conger Avenue based on the findings in Section I above and subject to the following conditions:

1. At least **seven days prior to issuance of a certificate of occupancy**, impact fees based on the square footage of the new residence shall be paid to the Department of Permitting & Inspections.
2. **Prior to release of the zoning permit**, revised plans addressing the following shall be submitted subject to staff review and approval:
 - a. Outdoor lighting fixture locations and revision to cutoff fixtures on the front elevation;
 - b. Rooftop access structure depicted on all elevation drawings;
 - c. Trim material noted on elevation drawings; and,
 - d. Utility meter enclosure depicted on the north elevation drawing.
3. A State of Vermont wastewater permit is required. It is the applicant's responsibility to inquire with the Vermont Department of Environmental Conservation, Wastewater Division as to the wastewater permit for the proposed use.
4. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other state or federal permit(s) as may be required, and shall meet all energy efficiency codes as required.
5. Standard permit conditions 1-15.

Seconded: Kienan Christianson

Vote: 6-0-0, motion carried

Dated at Burlington, Vermont, this ____ day of November 2019

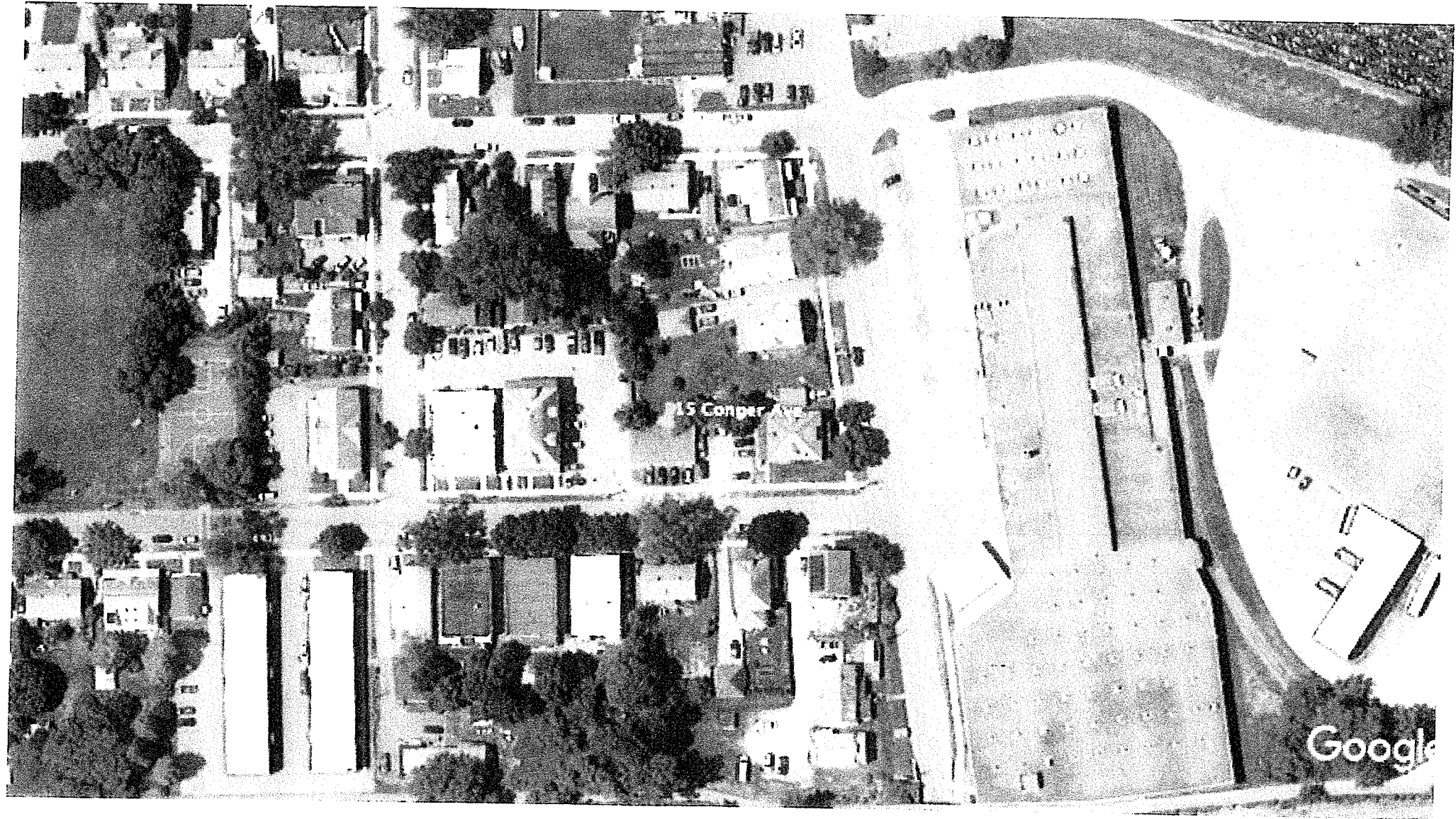
Respectfully Submitted,

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

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Architectural Design Concept

15 Conger Avenue, Burlington, Vermont

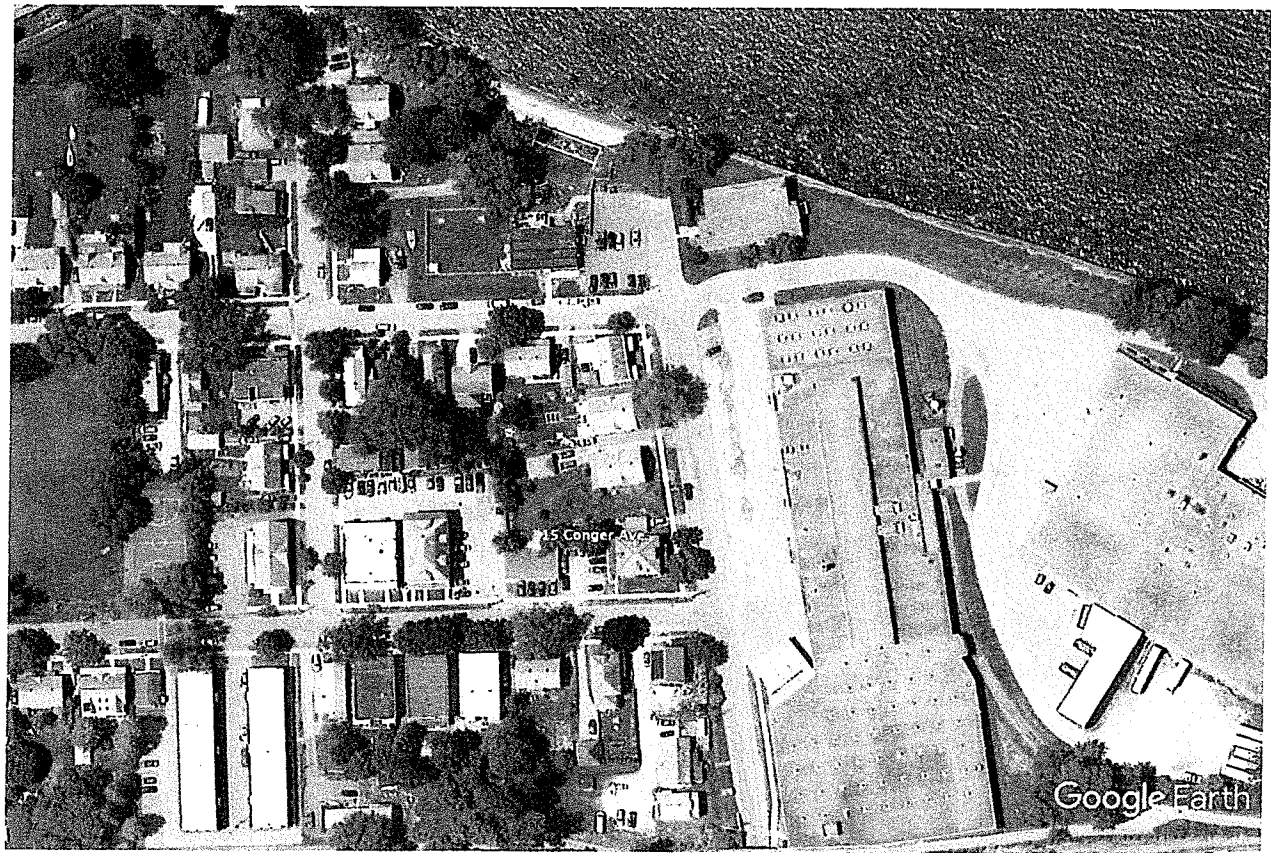


15 CONGER AVE., BURLINGTON, VERMONT
LOCATION

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ORIENTATION PHOTOS

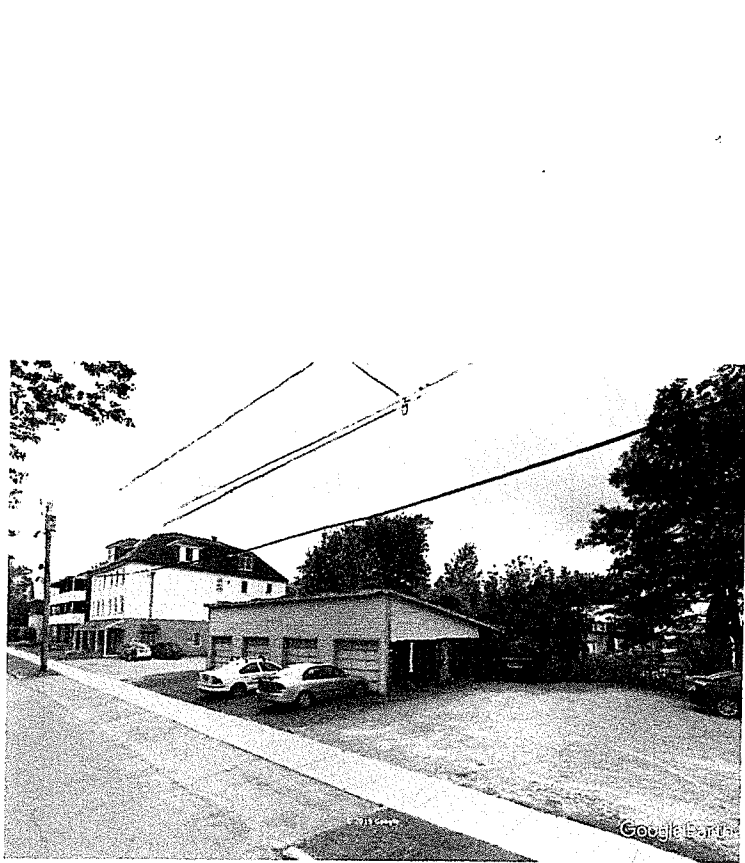
15-19 Conger Ave., Burlington, Vermont



Location Map



View to West



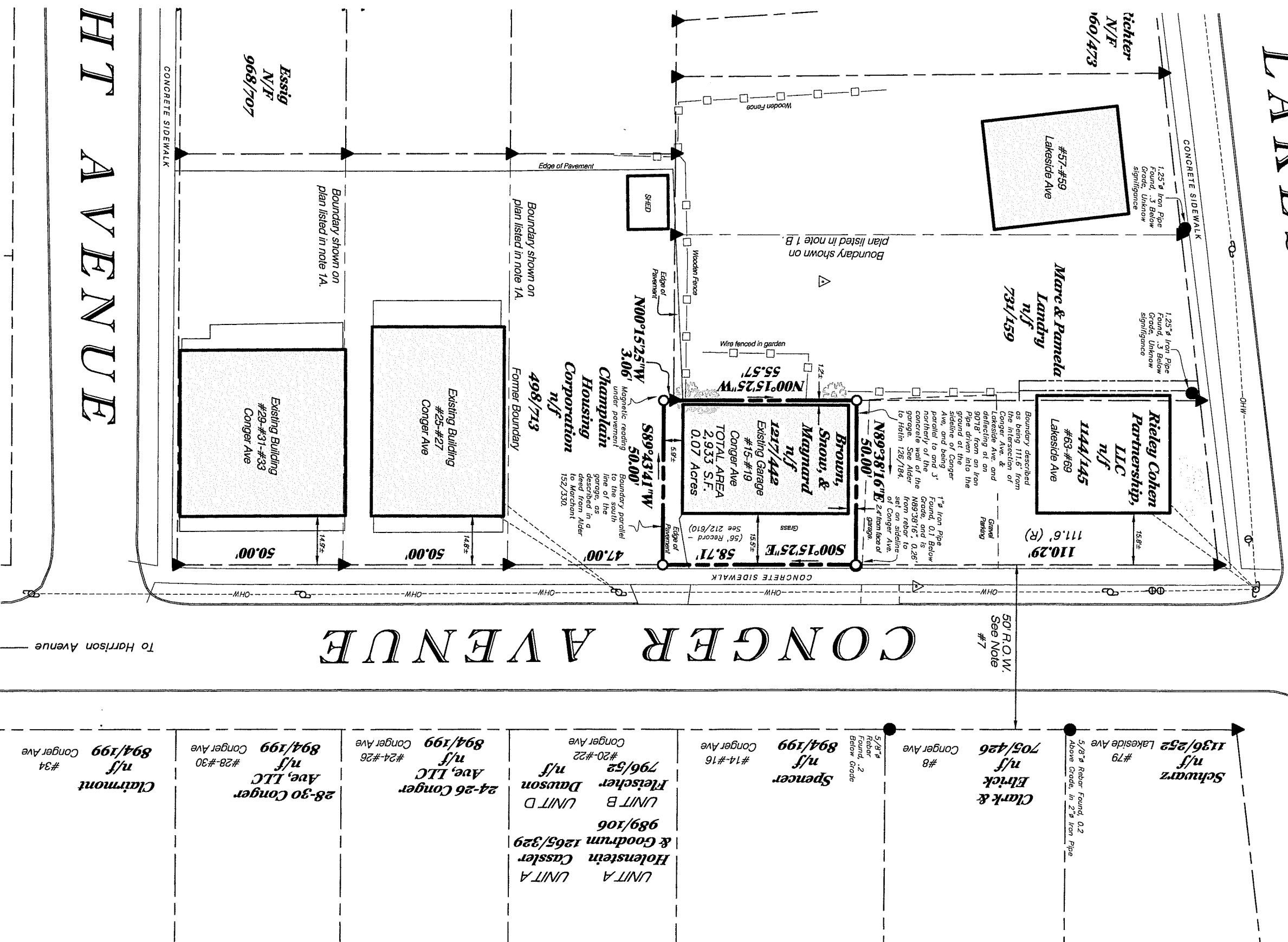
View to Southwest

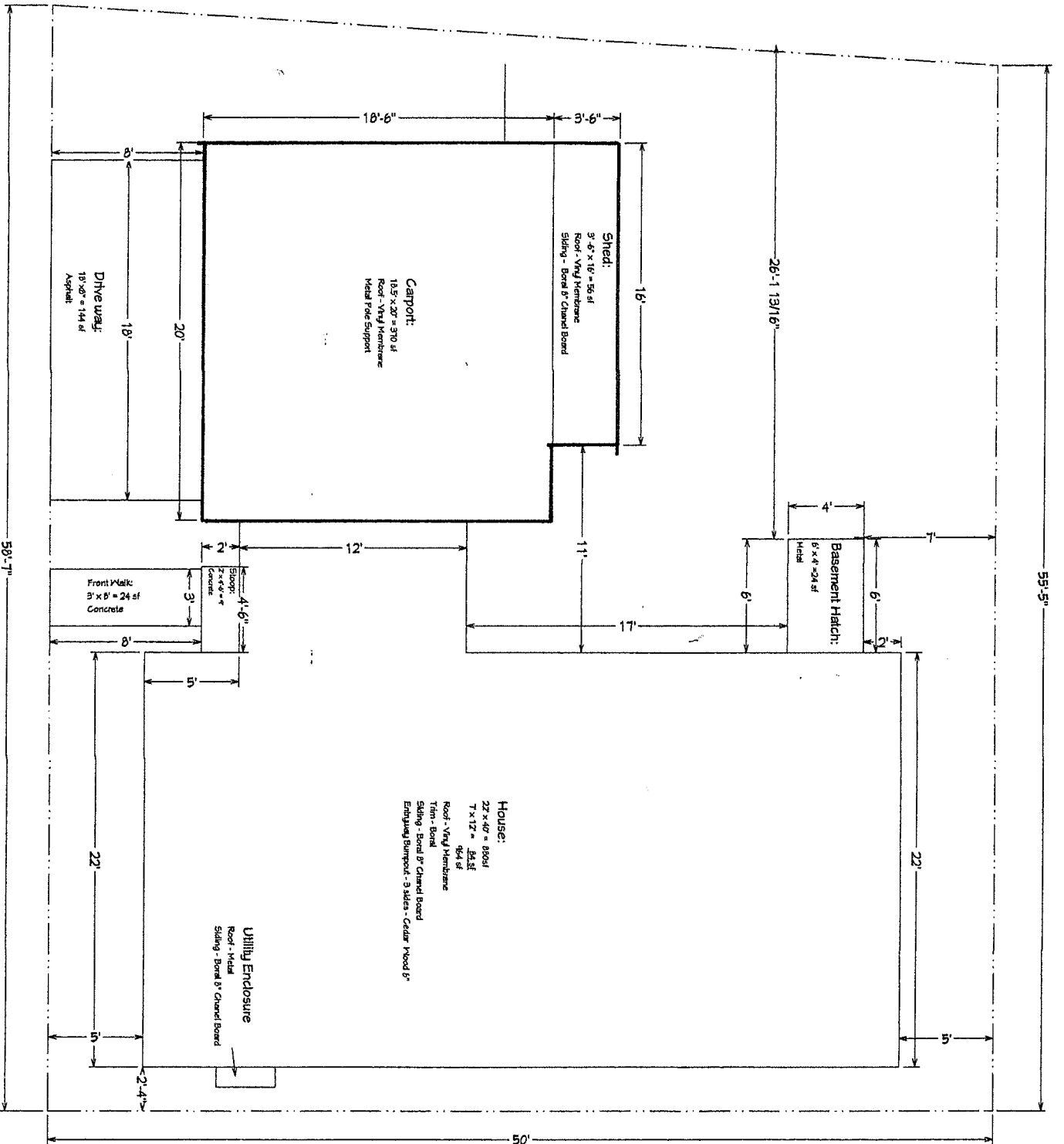
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To Pine Street

HT A VENUE





Site Plan

15/19 Conger Ave., Burlington, VT

Lot Size: 2435.50 sq FT

Existing Garage Coverage: Garage - 1650 sf

Driveway - 465 sf

Total - 2115 sf

Proposed Coverage:

House - 946 sf

Basement Hatch - 24 sf

Shed - 56 sf

Carport - 370 sf

Sloop - 9 sf

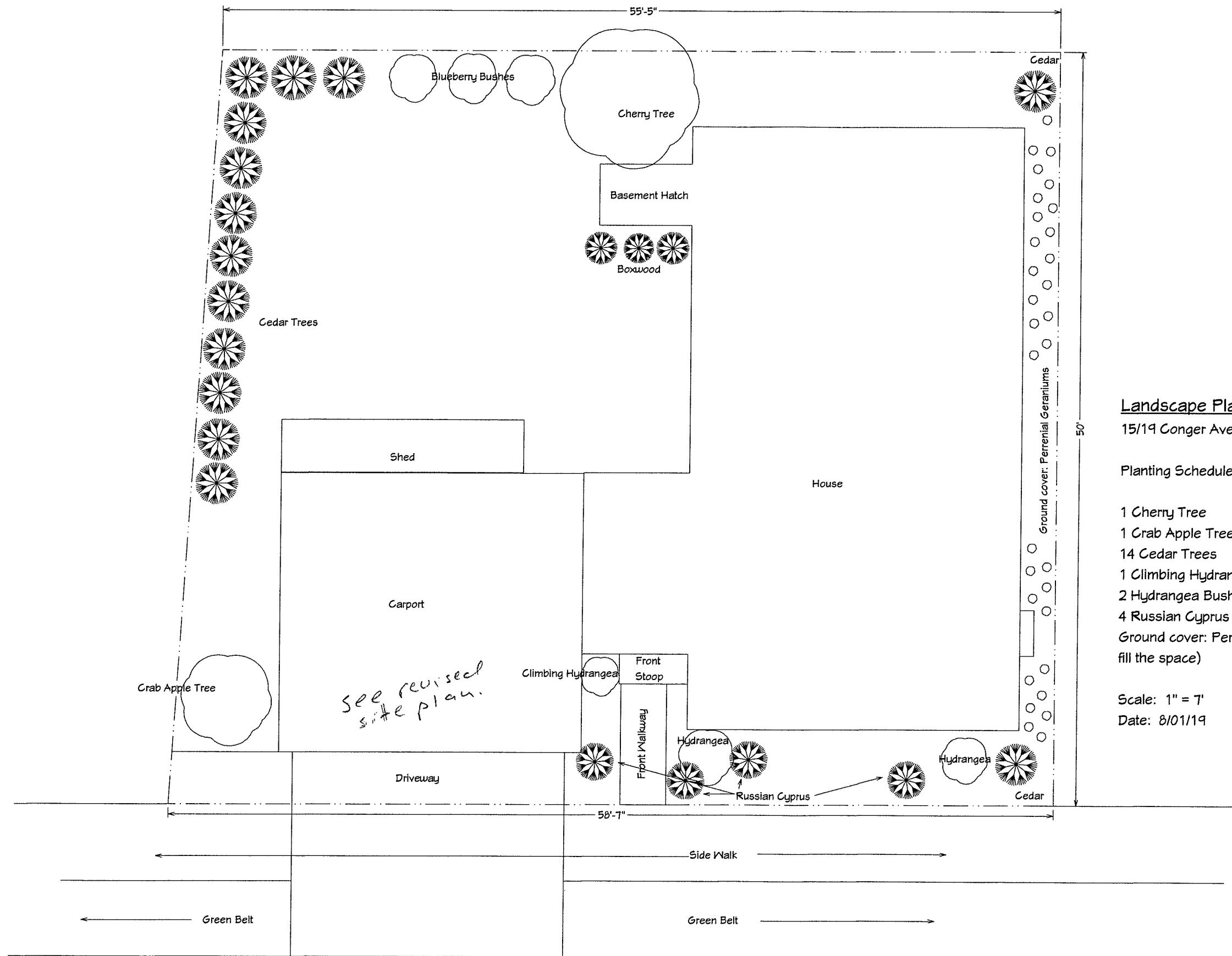
Front Walk - 24 sf

Drive - 144 sf (8')

Total - 1573 sf

Scale: 1" = 7'

Date: 9/19/19



Landscape Plan

15/19 Conger Ave., Burlington, VT

Planting Schedule

- 1 Cherry Tree
- 1 Crab Apple Tree
- 14 Cedar Trees
- 1 Climbing Hydrangea
- 2 Hydrangea Bush
- 4 Russian Cyprus
- Ground cover: Perennial Geraniums (enough to fill the space)

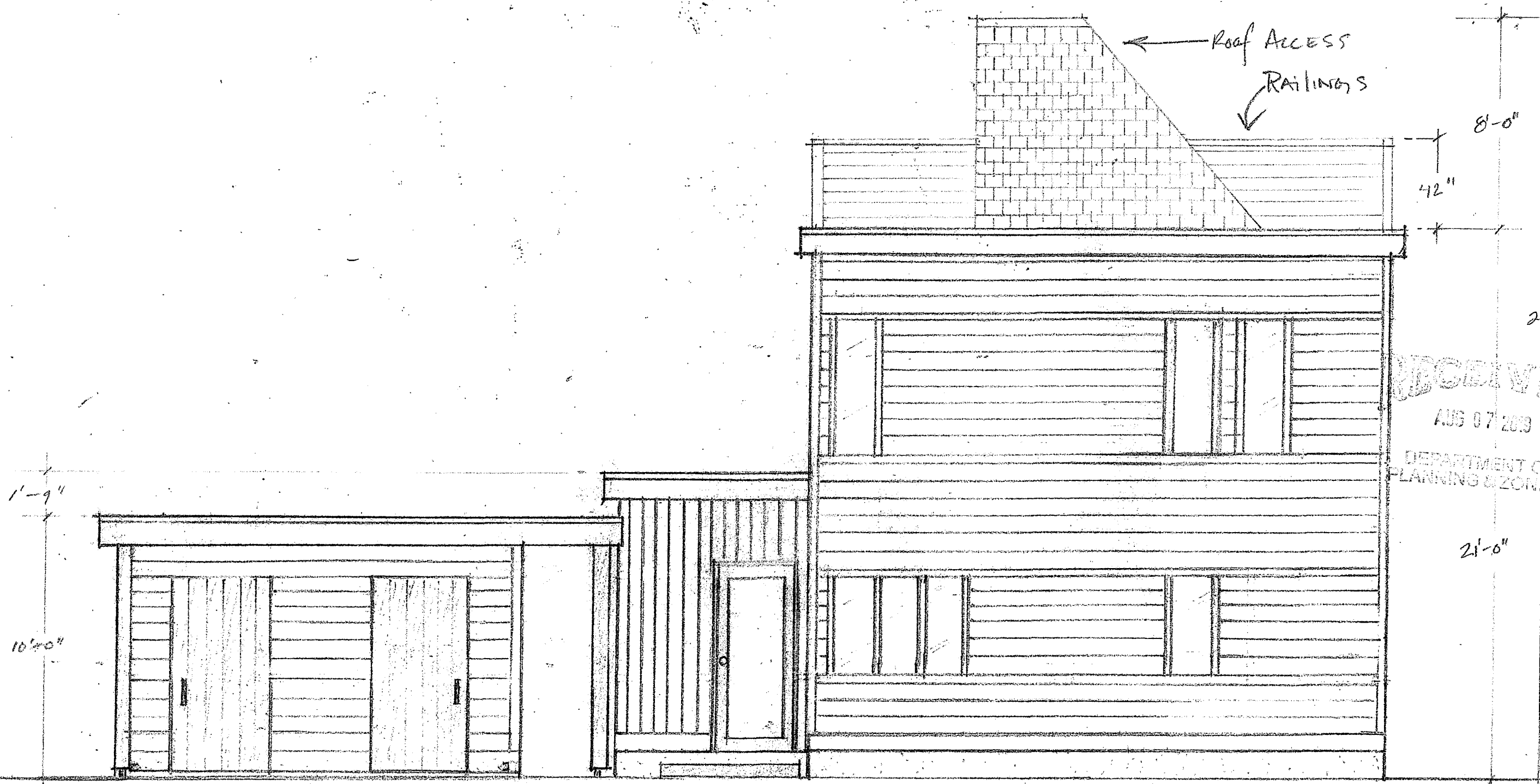
Scale: 1" = 7'

Date: 8/01/19

RECEIVED
AUG 07 2019
DEPARTMENT OF
PLANNING & ZONING

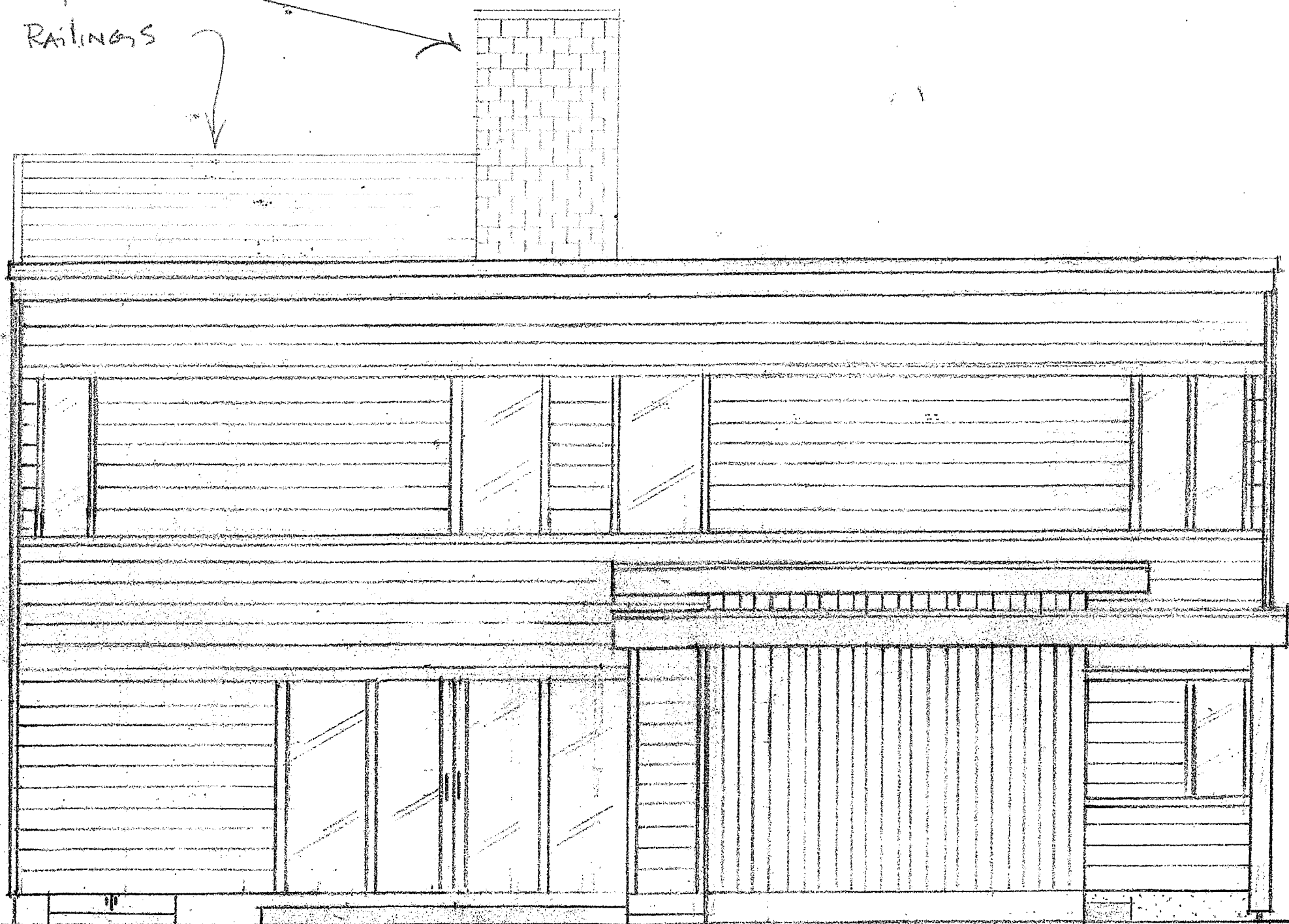
Roof Access

- * ACCESS STAIRS TO BE ENCLOSED IN SHINGLES (SHAKE)
- * RAILINGS TO BE WOOD (P.T.) STANCHIONS w/ SS CABLE



RESIDENCE 15/19 CONGER AVE., BURLINGTON, VT

Roof Access
Railings



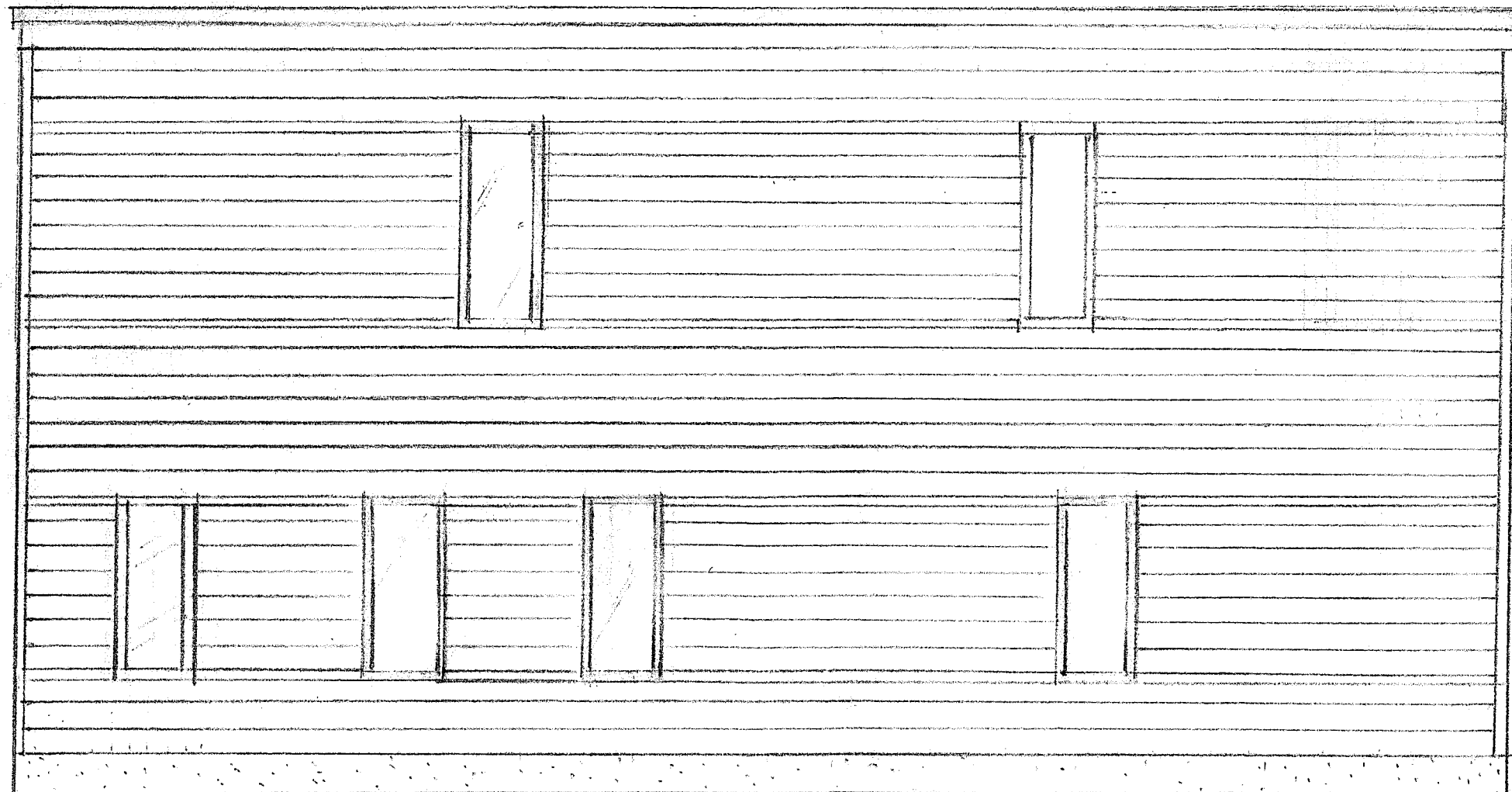
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DEPARTMENT OF
PLANNING & ZONING

RESIDENCE 15119 CONDER AVE., BURLINGTON, VT



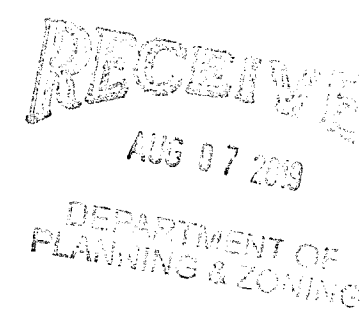
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DEPARTMENT OF
PLANNING & ZONING

RESIDENCE 1519 LONGIER AVE, BURLINGTON, VT

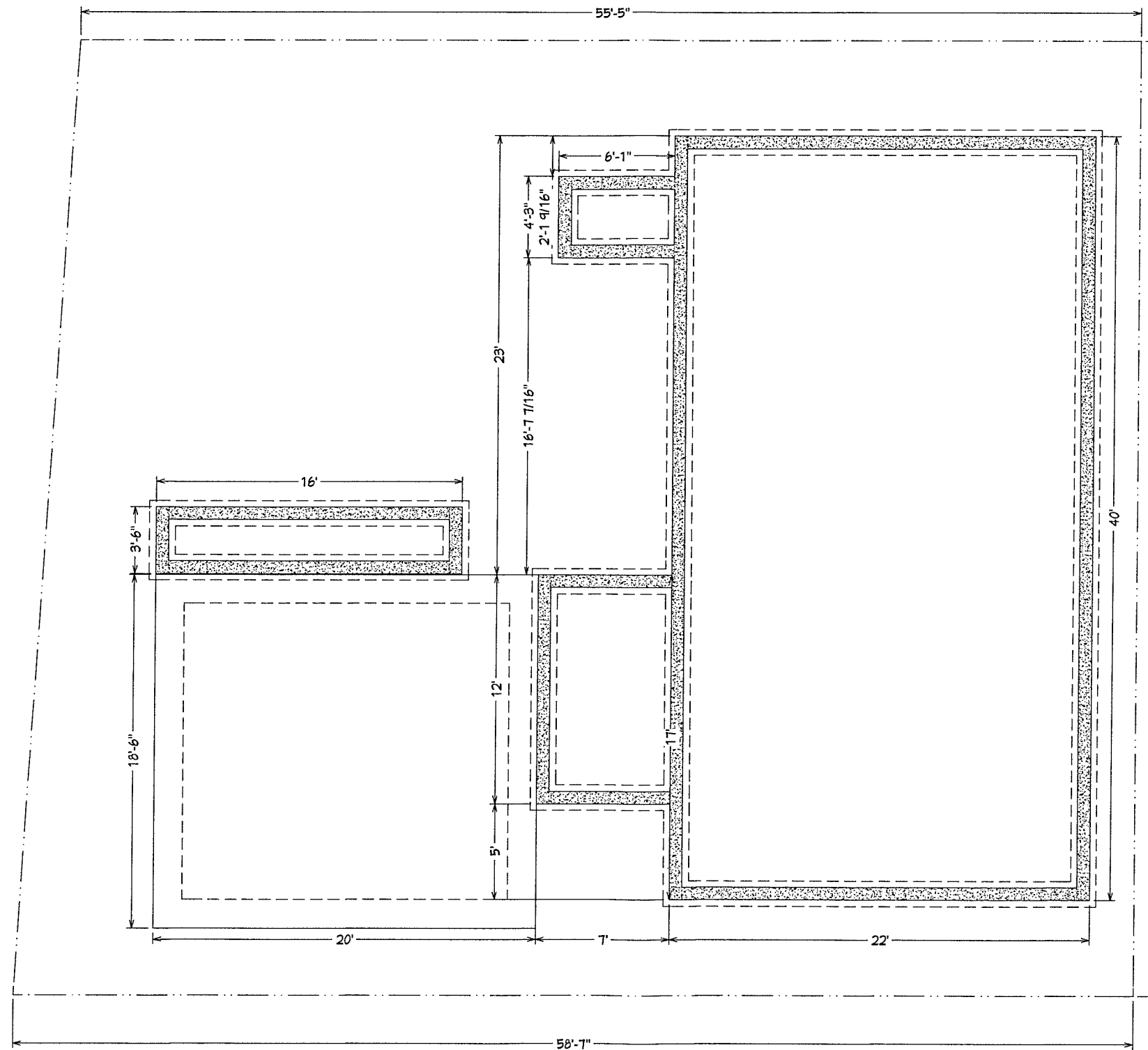


RECEIVED
AUG 07 2019
DEPARTMENT OF
PLANNING & ZONING

RESIDENCE 15/19 CONTER AVE., BURLINGTON, VT



Scale: 1" = 7'
Date: 8/01/19



RECEIVED
AUG 07 2019
DEPARTMENT OF
PLANNING & ZONING

Foundation Plan
15/19 Conger Ave., Burlington, VT
Scale: 1"= 7'
Date: 8/01/19

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Vacant, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: December 21, 2021
RE: ZP-21-541; 410 Appletree Point Road

=====

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: WRL Ward: 4N

Owner/Applicant: Charlie Schmidt / Laura McCurdy

Request: Demolition of existing residence and construction of new single family home.

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicant is seeking approval to demolish an existing residence and to replace it with a new single family home. The new home will be set further back from the lakeshore than the existing. The driveway will be reworked, and a "low mow" zone will be established along the lakeshore as required.

The Conservation Board reviewed this application November 1, 2021 and recommended approval of the application as presented.

The Design Advisory Board reviewed this application November 9, 2021. The Board recommended approval of the application with the recommendation that the "guest parking" be eliminated from the site plan. A revised site plan has not yet been submitted.

There are no previous zoning actions for this property.

Recommendation: Certificate of appropriateness approval as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications, Permits, and Project Reviews
Part 3: Impact Fees

Sec. 3.3.2, Applicability

The new construction triggers applicability of impact fees. Impact fees must be paid on the net new square footage of the new home. **(Affirmative finding as conditioned)**

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Waterfront Residential Low Density (WRL)

The subject property is located in the WRL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The replacement single family home is consistent with this purpose.

(Affirmative finding)

(b) Dimensional Standards & Density

The subject property is just over 1 acre in size and lacks frontage on a public road. Frontage is along a stem coming off of the private section of Appletree Point Road.

Residential density will remain unchanged at 1 dwelling unit.

Lot coverage will increase from 11% to 22%. It will remain below the 35% limit.

The lot is relatively deep, and the home will be set back 136' from the front property line. Waterfront properties in the WRL zone are not bound to the average front yard setback of neighboring properties beyond 50.' The proposed front yard setback is significantly less than the existing setback and is acceptable. Minimum side yard setbacks are 10% of the lot width. The proposed home complies with these setbacks. The lakeshore setback is 75' from the 100' elevation. The proposed home is compliant with this setback. A small seating terrace is proposed within the lakeshore setback and within the footprint of the existing home to be demolished. As the degree of encroachment into the waterfront setback will not increase, the location of the terrace is acceptable. The walkway to the terrace is an allowed encroachment into the waterfront setback.

The proposed home is just 18' to the peak of the roof, well below the 35' height limit.

(Affirmative finding)

(c) Permitted & Conditional Uses

The replacement single family home is a permitted use. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

See Sec. 4.4.5 (b) above relative to the nonconforming waterfront setback.

2. Height

No height bonuses are being sought. **(Not applicable)**

3. Lot Coverage

No lot coverage bonuses are being sought. **(Not applicable)**

4. Accessory Residential Structures and Uses

An accessory terrace is proposed along the lakeshore. As noted above, it complies with applicable dimensional requirements. **(Affirmative finding)**

5. Residential Density

The dwelling is limited to occupancy by a family as defined in the Comprehensive Development Ordinance. **(Affirmative finding)**

6. Uses

No neighborhood commercial use is included in this proposal. **(Not applicable)**

7. Residential Development Bonuses

No development bonuses are being sought. **(Not applicable)**

Sec. 4.5.4, Natural Resource Protection Overlay (NR) District

(c) District Specific Regulations: Riparian and Littoral Conservation Zone

The subject property is largely affected by the Riparian and Littoral Conservation Zone (250' width from the 100' lakeshore elevation). This overlay zone limits the clearing of vegetation and new stormwater outfalls. Limited tree removal is proposed, and several new trees will be planted. Most vegetation will be retained, and the required "low mow" zone is depicted along the property's shoreline. No new stormwater outfalls are proposed. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

(Not applicable)

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

Exterior building entries will be illuminated. An outdoor wall sconce fixture will be installed at several locations to provide this illumination. The fixture is cutoff and is acceptable.

(Affirmative finding)

Sec. 5.5.3, Stormwater and Erosion Control

As more than 400 sf of earth disturbance is proposed, a “small project erosion control” form is required. It has not yet been provided to the city’s stormwater program staff and must be.

(Affirmative finding as conditioned)

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The subject property is located along the Lake Champlain shoreline. The shoreline is an identified significant natural area. Much of the property is affected by the Natural Resource Protection Overlay District, specifically the riparian and littoral conservation zone, which stretches inland 250’ from the 95.5’ lakeshore elevation. The new home will be set further inland than the existing residence, and much of the footprint of the existing home will be filled, graded, and converted to green space. The new home is larger than the existing home, and the total development footprint doubles from 11% lot coverage to 22% coverage. Limited tree cutting is proposed along with the installation of a variety of new trees as depicted in the landscape plan.

The redevelopment of this property exceeds 400 sf and, therefore, requires a “low mow” zone along the lakeshore proportionate in size to the redeveloped area (with a maximum depth of 50’ and maximum span of 80% of the lakeshore frontage). Redeveloped lot coverage totals approximately 8,235 sf in this proposal. The required low mow zone is depicted on the site plan. It spans the entire width of the lakeshore and may be reduced to 80% if the applicant so chooses.

(Affirmative finding)

(b) Topographical alterations

Much of the lot is flat but drops steeply towards the lakeshore along its western boundary. Existing topographic conditions will remain largely unchanged. **(Affirmative finding)**

(c) Protection of important public views

Distant terminal views of Lake Champlain and the Adirondack mountains will remain essentially unchanged. There are no public views associated with this property. The proposed home is modest in scale, and most mature vegetation will be retained. Its construction will not adversely affect public views from the lake towards shore. **(Affirmative finding)**

(d) Protection of important cultural resources

The property contains no known archaeological resources. Much of the lakeshore is archaeologically sensitive. If, during construction, artifacts are unearthed, it is the applicant’s responsibility to stop earthwork and to contact the Vermont Division for Historic Preservation for further guidance. **(Affirmative finding as conditioned)**

(e) Supporting the use of alternative energy

Rooftop solar panels are depicted on the proposed building elevation drawings. The proposed home is well situated to take advantage of the site’s solar energy potential. **(Affirmative finding)**

(f) Brownfield sites

The subject property is not an identified brownfield. **(Not applicable)**

(g) Provide for nature's events

An erosion prevention and sediment control plan is required and is subject to review and approval by the city's stormwater program staff. Stormwater runoff will be handled largely by infiltration into surrounding green space. The front door is sheltered under a small overhang. **(Affirmative finding as conditioned)**

(h) Building location and orientation

As noted above, the new home will be set further from the lakeshore than the existing residence. Like most homes in the neighborhood, it will remain far back from the street edge. While situated more than 100' from the road, the new home will have a front door facing inland towards the road.

An attached garage will be located to the side of the home and will be set back from the front line of the home. The width of the garage is compliant. **(Affirmative finding)**

(i) Vehicular access

An existing driveway will continue to serve the property. The driveway will be reworked to access the proposed home. **(Affirmative finding)**

(j) Pedestrian access

This criterion requires that a pedestrian walkway be provided from the front door to the public sidewalk or street. This section of Appletree Point Road is private. No front walkway is proposed. Consistent with past practice in such situations, no front walkway is required. **(Affirmative finding)**

(k) Accessibility for the handicapped

No handicap accessibility is evident or required with this proposal. **(Not applicable)**

(l) Parking and circulation

Parking will be provided within the attached garage and within surface parking spaces adjoining the driveway. Circulation and access is provided via the private driveway. The four surface parking spaces are located in front of the residence. This criterion calls for parking to be placed to the side or rear of the building. More specifically, the standards of Sec. 8.1.12, (b) *Front Yard Parking and Residential Driveways*, requires that parking spaces in all residential zoning districts be located to the side or rear of the principal residential structure. Sec. 8.1.9, *Maximum On-Site Parking Spaces*, limits onsite parking to 125% of the minimum requirement. In this case, 2 parking spaces are the minimum requirement for a single family home in this "neighborhood" parking district. Up to 3 parking spaces may be allowed within the 125% limit. As a result, at least 2 of the parking spaces must be deleted and the remaining spaces relocated to the side of the home or incorporated into the driveway. The Design Advisory Board recommended eliminating the two "guest parking" spaces. **(Affirmative finding as conditioned, or Adverse finding if left unchanged)**

(m) Landscaping, fences, and retaining walls

Much of the lakeshore is vegetated, and only limited tree clearing is proposed. A basic landscaping plan has been provided and depicts several new trees to be planted in the green space

around the home. Several low landscaping walls are depicted in the project plans, but none appear to function as retaining walls. **(Affirmative finding)**

(n) Public plazas and open space

No public plaza or open space is included or required in this proposal. **(Not applicable)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

Utility lines must be buried as part of this reconstruction. The site plan depicts overhead lines and a relocated utility pole. Relocation of the pole may be moot in light of the undergrounding requirement for the lines. Utility meter locations are not evident and must be depicted and screened. **(Affirmative finding as conditioned)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The proposed home has a substantially larger footprint than the existing home; however, it is only a single story tall, whereas the existing home is 2 stories. The proposed home is of a scale similar to neighboring homes along this stretch of lakeshore. The perceived mass of the building reads as several distinct components with recesses and projections. The proposed home projects a simple elegance. **(Affirmative finding)**

2. Roofs and Rooflines

The proposed home will have gable roofs that intersect in the center. Gable roofs are common in this neighborhood and on single family homes generally. **(Affirmative finding)**

3. Building Openings

The primary front entrance is clearly articulated and is sheltered by a small overhang. Fenestration is appropriately scaled and stylistically appropriate for the proposed building design. **(Affirmative finding)**

(b) Protection of important architectural resources

The existing building is not listed on the state or national historic register, nor has it been deemed eligible for listing. Its removal will have no adverse impact on Burlington's wealth of important architectural resources. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

As with a number of homes in this neighborhood set far from Appletree Point Road, this home has little street presence. Although set well back from the road, the east elevation clearly reads as the home's primary façade and contains an obvious front entry. **(Affirmative finding)**

(e) Quality of materials

The proposed home will be clad in wooden vertical shiplap siding. Standing seam metal roofing will be installed on the roofs except for a small section of flat rubber roofing over the front entry. Clad wooden windows will be installed throughout. The materials proposed are of acceptable quality and durability for this new construction. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed building must comply with the current energy efficiency standards of Burlington and the State of Vermont. **(Affirmative finding)**

(g) Make advertising features complimentary to the site

No advertising is included in this proposal. **(Not applicable)**

(h) Integrate infrastructure into the building design

No rooftop mechanical equipment is depicted on the project plans. If any exterior equipment is proposed, rooftop or otherwise, it must be depicted and screened. **(Affirmative finding as conditioned)**

(i) Make spaces safe and secure

The proposed building must comply with the city's current egress requirements. Building entries will be illuminated. **(Affirmative finding)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the neighborhood parking district. As such, the single family dwelling requires 2 parking spaces. As noted previously, the 2 required parking spaces will be provided for within the garage and driveway. **(Affirmative finding)**

Sec. 8.1.9, Maximum On-Site Parking Spaces

See Sec. 6.2.2 (l).

Sec. 8.1.12, Limitations, Location, Use of Facilities

(b) Front Yard Parking Restricted and Residential Driveways

See Sec. 6.2.2. (l).

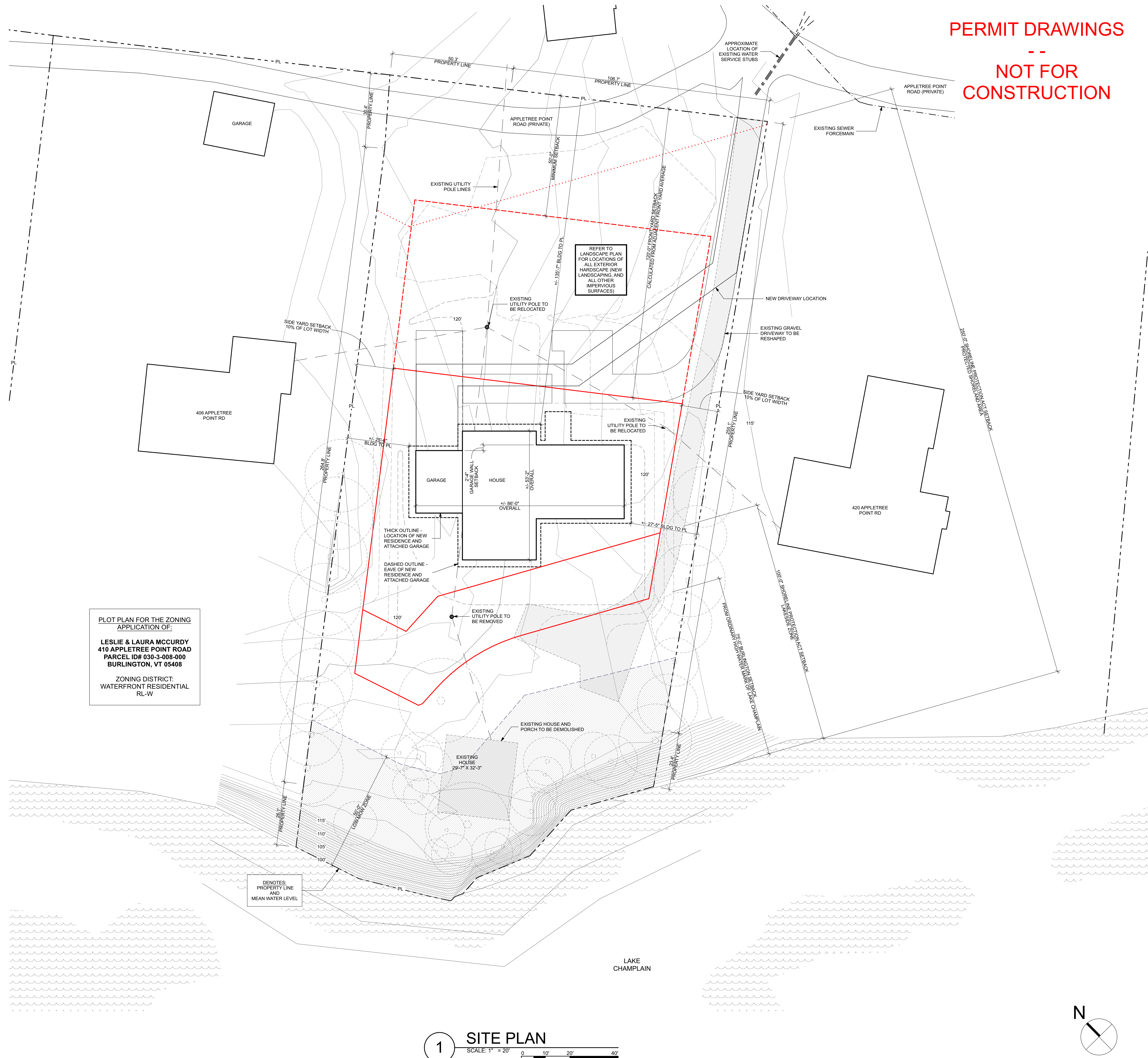
II. Conditions of Approval

1. **Prior to release of the zoning permit**, revised plans shall be submitted, subject to staff review and approval. Revisions shall include:
 - a. Deletion of 2 parking spaces and relocation of remaining surface parking spaces to the side of the proposed home or incorporated within the driveway;
 - b. Buried utility lines;
 - c. Utility meter locations and screening; and,
 - d. Depiction of any exterior mechanical equipment and related screening.
2. **Prior to release of the zoning permit**, the erosion prevention and sediment control plan shall be reviewed and approved by the city's stormwater program staff.
3. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Planning & Zoning Department the impact fee as calculated by staff based on the net new square footage of the proposed development.

4. In the event that artifacts are uncovered during excavation, it is the applicant's responsibility to contact the Vermont Division for Historic Preservation for further guidance.
5. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
6. Utility lines shall be buried.
7. Standard permit conditions 1-15.



COVERAGE CALCULATION	
EXISTING:	
HOUSE	953 SF
APPLETREE POINT RD	1,122 SF
DRIVE	3,088 SF
TOTAL	5,163 SF
LOT SIZE	46,946 SF
EXISTING COVERAGE =	11 %
PROPOSED:	
HOUSE (ROOF AREA)	4,016 SF
APPLETREE POINT RD	1,122 SF
DRIVE / AUTOCOURT	2,797 SF
HARDSCAPING	2,396 SF
CONCRETE WALLS	
BLUESTONE RISERS	
BLUESTONE PAVERS	
STONE DUST	
SLAB STONE PAVERS	
DRIP STONE	
TOTAL	10,331 SF
LOT SIZE	46,946 SF
PROPOSED COVERAGE =	22 %



29 NORTH ST
BRISTOL VT 05443
EHARCHITECT.COM
INFO@EHARCHITECT.COM
802 453 6401

**MCCURDY
RESIDENCE**

410 APPLETREE PT
BURLINGTON, VT

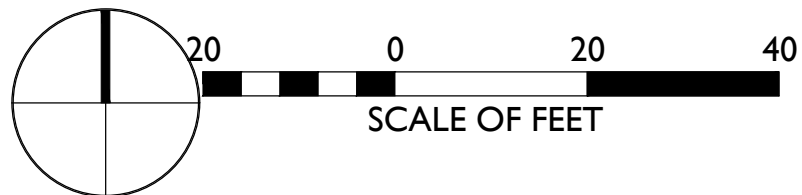
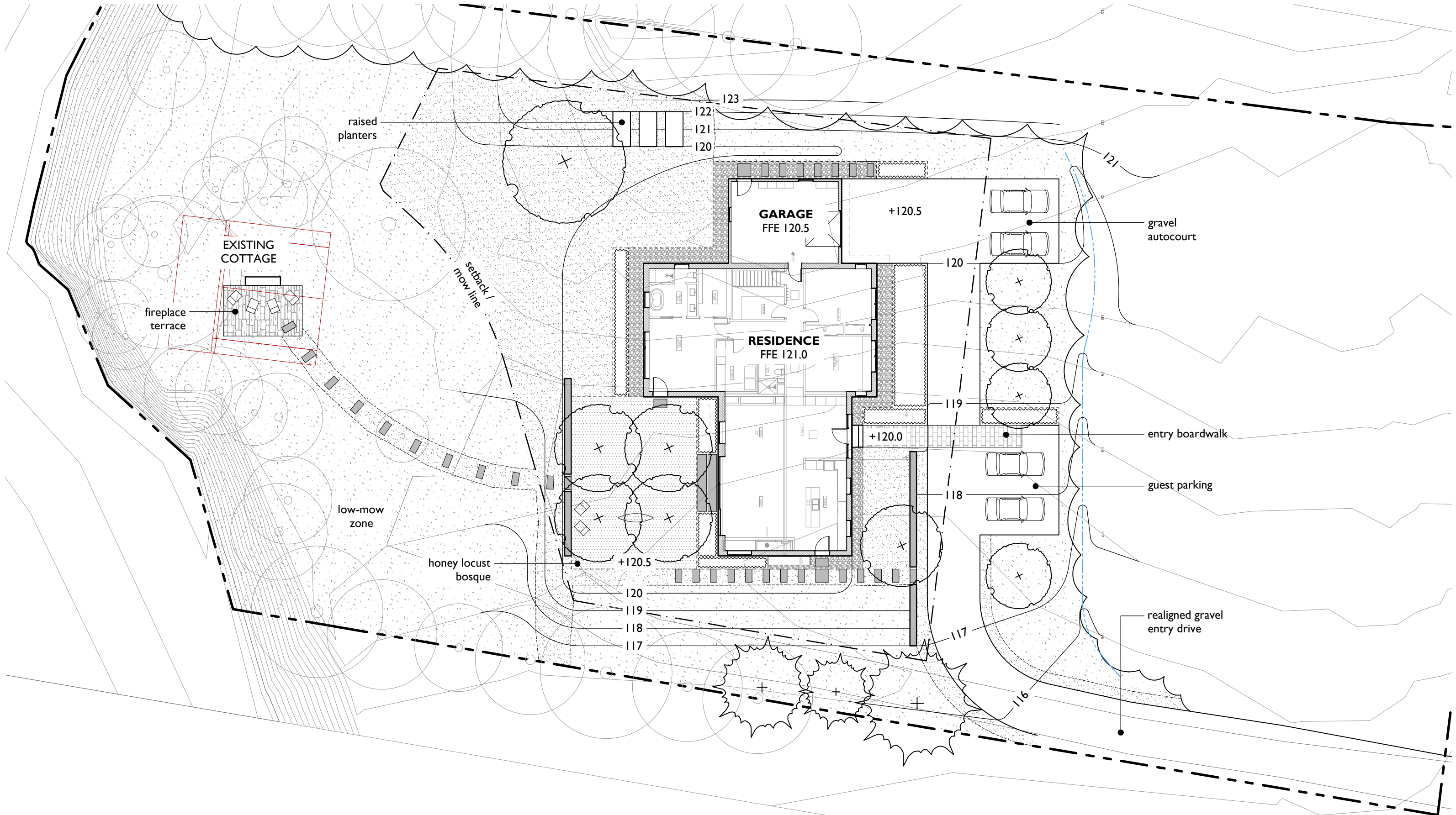
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SITE PLAN

A-001



MCCURDY RESIDENCE

CONCEPTUAL SITE PLAN

JOB NO. 21-020

SCALE 1"=20'

DATE 10.07.2021

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PERMIT DRAWINGS
--
NOT FOR
CONSTRUCTION



ELIZABETH HERRMANN
ARCHITECTURE + DESIGN

29 NORTH ST
BRISTOL VT 05443
EHARCHITECT.COM
INFO@EHARCHITECT.COM
802 453 6401

**MCCURDY
RESIDENCE**

410 APPLETREE PT
BURLINGTON, VT

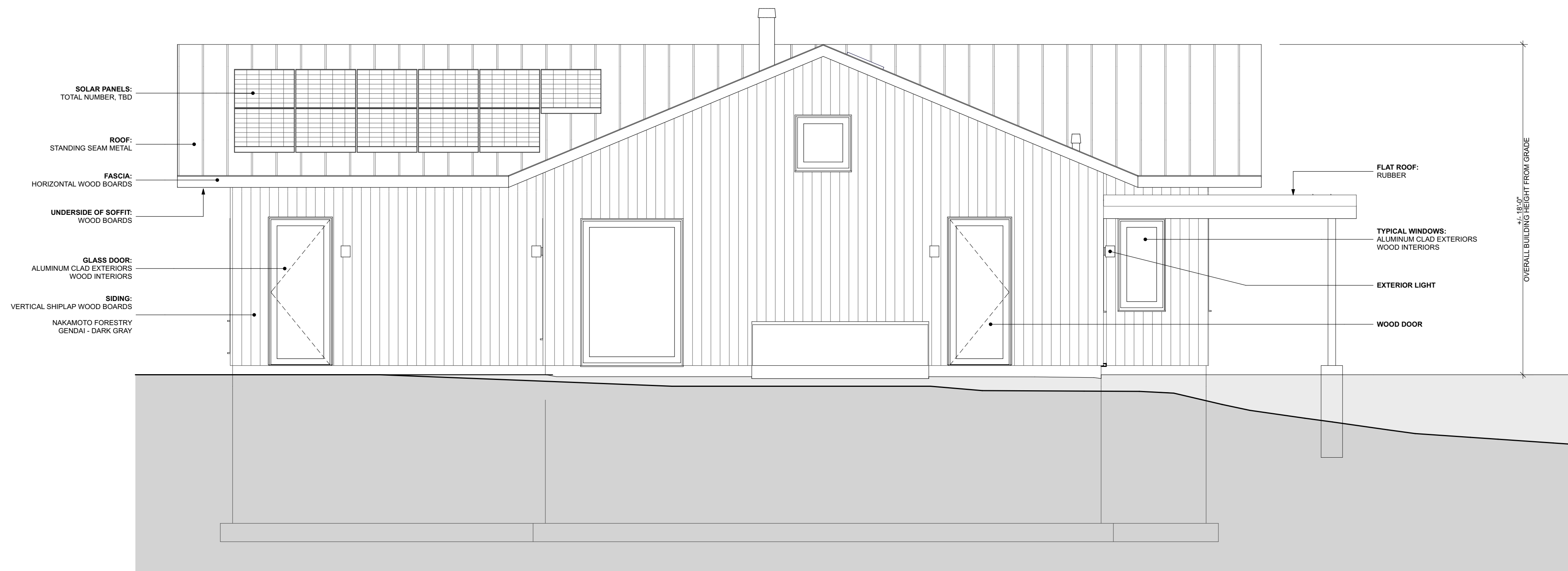
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PROPOSED ELEVATIONS

A-002



2 SOUTH ELEVATION

SCALE: 1/4" = 1'-0"

0 2' 4' 8'



1 WEST ELEVATION
SCALE: 1/4" = 1'-0"



BRAND

Maxim Lighting

DESCRIPTION

The Outpost II Outdoor Wall Sconce provides ample down-lighting to your exterior spaces to ensure safety and security all while adding a decorative touch to the architectural elements of your home. Finished in Black or Brushed Aluminum, the Outpost's sleek design works well with a number of decors. Place outside the entryways to light up your night. Available in three sizes. Wet location rated. Dark Sky approved. ETL listed. NOTE: Medium and Large size directs light in both directions, where as the small size only directs in one direction.



Shown in: Brushed Aluminum

SHADE COLOR	N/A
BODY FINISH	Brushed Aluminum
WATTAGE	6W
DIMMER	Standard 120V
DIMENSIONS	6"W x 7.25"H x 7.25"D
LAMP	1 x A19/Medium (E26)/6W/120V LED

Technical Information

PRODUCT DIMENSIONS	Backplate: 4.5" x 5"
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ITEM NUMBER	MAX1023911
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COMPANY	PROJECT	FIXTURE TYPE	APPROVED BY	DATE

Thermacore[®] COLLECTION



Premium insulated garage doors deliver maximum thermal efficiency and design flexibility.

The Genuine. The Original.



Built Better from the Inside Out

Door construction

Thermacore® Collection steel garage doors feature premium insulation construction and design which provides maximum thermal efficiency and reduced air infiltration for your garage space. This durable line of garage doors gives you many years of reliable operation while providing comfort and beauty to your home, even in extreme climates.



Thermacore® construction

Provides a continuous layer of foamed-in-place, CFC-free polyurethane insulation sandwiched between two layers of corrosion-resistant steel, for maximum thermal efficiency.



Durable finish

Interior-side hot-dipped galvanized steel backing, with two coats of baked-on polyester paint, provides strength and a finished, clean appearance.



In-between section thermal seals

With an air infiltration rating of up to 0.08 cfm, seals provide superior resistance to the elements.



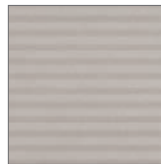
Bulb-type bottom weatherseal

Guards against wind and rain while providing a cushion when closing.

Multiple surface options



Embossed wood grain adds beauty, sophistication and durability.



Microgroove waved pattern creates a striking light effect.



Smooth, non-textured surface gives a modern look.



Pebble grain embossment creates an appealing pattern texture.

Wind Load options

Models 5740 and 5760 are FBC approved and will provide added protection to your home during high wind events, including hurricane-force winds.



Model 5740 (198) 7' high, Long Panel, White finish, Stockbridge 2 4-Lite windows



CLAD WOOD THERMOPLUS CLAD™

A higher performing version of our popular Thermo Clad line of windows and doors. The "Plus" indicates two layers of insulation that are constructed into the window and door frames. A perfect choice for projects aiming for Passive House or Net Zero levels of performance. A laminated, warp-resistant, solid timber construction frame. Triple compression air seals and exterior aluminum rainscreen cladding mounted on rails for an ultimate durability and rot resistance.

PERFORMANCE

Frame Depth = 88mm (3.46")

NFRC Values:

Fixed

U = 0.15 Btu/(h.ft².F)

SHGC = up to 0.40

VT = 0.56

Condensation Resistance = 74

Operable

U = 0.15 Btu/(h.ft².F)

SHGC = up to 0.36

VT = 0.51

Condensation Resistance = 76

CE Values:

U_f = 0.9 W/(m²K)

U_g = 0.53 W/(m²K)

U_w = 0.7 W/(m²K)

Ψ_i = 0.052 W/mK

TIMBER & FINISH OPTIONS

Timbers available: finger jointed pine (base timber), Clear Pine, Meranti, European White Oak, and Larch.

Interior Finish Options: RAL painted timber, or standard set of interior stains.

Exterior Finish Options: RAL Standard, RAL FS Premium, Tactile Series, and Anodized options.

CONFIGURATIONS AVAILABLE

Fixed

Tilt-turn, Tilt-only, Turn-only, Tilt-first

Fixed/Operable combinations

French window opening

Inswing Terrace Doors

Lift-Slide Doors

Inswing and Outswing Entry Doors

HARDWARE

European multi-point locking system with upto eight locking points on windows and four points on entry doors. Concealed hinges standard.

SIZING

Min frame width = 450mm (17.7")

Max frame width = 1521mm (59.8")

Min frame height = 402mm (16")

Max balcony door height = 2743mm (108")



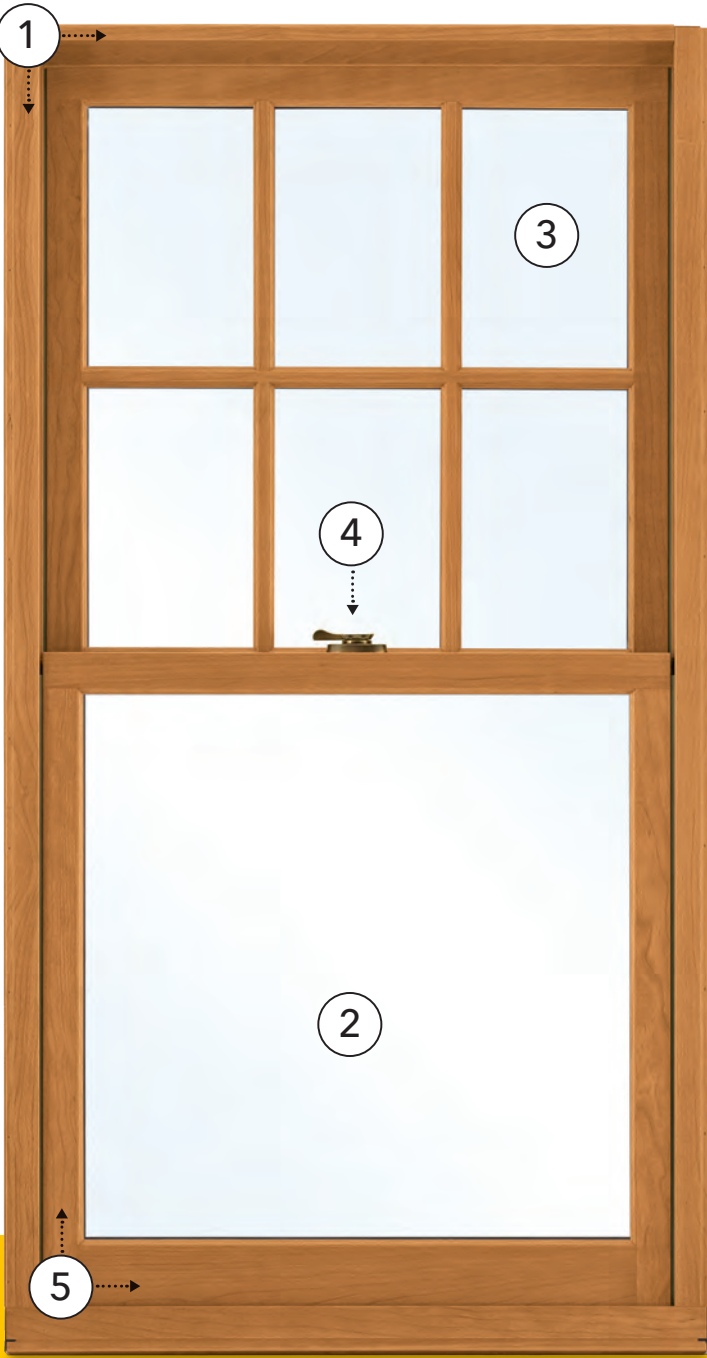
All performance data based on typical assemblies. Discuss specific performance values with a Zola Project Manager

ULTIMATE

MARVIN SIGNATURE™ COLLECTION



WINDOW TERMS AND DEFINITIONS



- 1. FRAME**
There are three components to the frame: the header across the top, the jambs down each side, and the sill across the bottom. Marvin frames are built strong with a variety of high-quality wood species.
- 2. GLAZING**
The glass in a window is called glazing. Marvin’s broad range of glazing options can meet both high-performance and refined aesthetic requirements.
- 3. LITE**
Each area of glass is called a lite. Marvin offers divided lite patterns for whatever look you wish to create.
- 4. HARDWARE**
Marvin uses only the highest quality locks, handles, hinges, lifts, and pulls-in a wide variety of durable finishes.
- 5. SASH**
The sash—operating or stationary—is comprised of horizontal rails, vertical stiles, and glazing. Marvin’s large solid sashes offer precise fit and ease of operation.

WINDOW OPERATING STYLES



DOUBLE HUNG
Double hung windows have two movable sash which operate vertically.



CASEMENT
A window that is hinged to its frame at the side and opens like a door.



GLIDER
A window with sash that slides horizontally to open and close.



AWNING
An awning is hinged to the frame at the top and opens outward. If hinged on the bottom, it’s called a hopper.



FIXED
An inoperable window with direct glaze or in-sash configurations. Available in a wide range of polygon and radius shapes.



TILT TURN
A European-style, dual function window that can swing in like a casement or open at the top like a hopper.

MORE FLEXIBILITY TO MEET ANY DESIGN CHALLENGE.

Marvin has an extensive selection of styles, sizes, shapes, and options.

DOUBLE HUNG WINDOWS

Marvin double hung windows combine state-of-the-art design with classic style. Advanced engineering and high-quality construction make our double hung windows incredibly durable, versatile, and easy to use.



ULTIMATE DOUBLE HUNG G2



Double Hung G2 window with Oil Rubbed Bronze hardware



Double Hung G2 windows in Ebony

ULTIMATE DOUBLE HUNG G2

The Ultimate Double Hung G2 window is an embodiment of our dedication to the craft of creating windows and doors. Influenced by the rich, historical significance of this window style and inspired by innovative design, each feature is thoughtfully added and every detail is carefully considered. This is all in service of shaping a window that deserves to be in the unique homes our customers desire.



INTERIOR



EXTERIOR



WASH MODE WITH SASH LOCK IN ANTIQUE BRASS

ULTIMATE DOUBLE HUNG G2

Engineered for performance and designed to inspire, each aspect of the Ultimate Double Hung G2 window was made with purpose. Our engineers consider every detail from the most innovative features to the most minute subtleties, all because the windows in your home help illuminate the most important parts of your life.

INTERIOR FEATURES AND PERFORMANCE

RICH WOOD INTERIOR

Offers beauty and warmth with six wood species and ten interior finish options.

NARROW CHECKRAIL

Provides a sleek aesthetic at 1 15⁄16 inches to maximize daylight opening while maintaining historical accuracy.

TILT WASH

Allows easy access to exterior glass for cleaning and maintenance.

RETRACTABLE SCREEN

A screen option that easily retracts out of sight when not in use and provides smooth, quiet operation.



INTERIOR SHADES

Integrate seamlessly into the window without visible cords or pulleys. The fit is precise with virtually no light bleed.

EXCLUSIVE AUTOLOCK

Activates when the sashes are closed, locking the window.

FIRST-RATE ENERGY EFFICIENCY

Meets ENERGY STAR® standards in energy efficiency with multiple glass options for various regions, climates, and weather needs.

SASH BALANCE SYSTEMS

Enables smooth operation at the largest sizes.

EXTERIOR FEATURES AND PERFORMANCE

DURABLE CLADDING

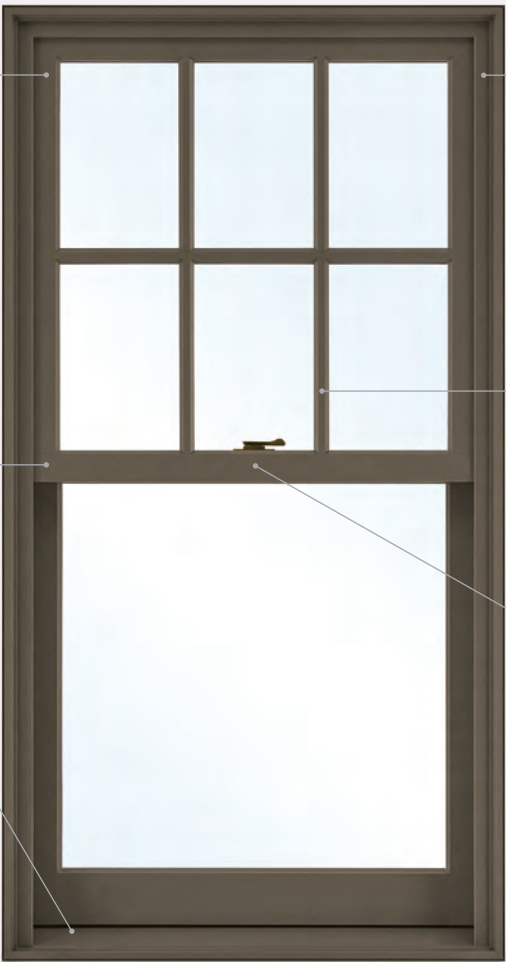
Exterior cladding made with the industry's highest level of certification, AAMA 2605, extruded aluminum and backed by a 20-year warranty against chalking and fading.

EXPANSIVE SIZES

Larger than 5 feet wide by 10 feet high.

TRADITIONAL SILL BEVEL

The 14-degree bevel provides optimal water management while maintaining a classic look.



SUPERIOR WEATHER PERFORMANCE

LC-PG50 on most sizes. Optional commercial (CW) performance and IZ3 certified coastal performance on most sizes.

DESIGN VERSATILITY

An array of simulated divided lite patterns, interior and exterior color options, ten hardware finishes, and archtop models.

ALUMINUM INTER-LOCK

Eliminates drafts and improves the window's overall structural integrity.

VELUX®

The No Leak Skylight™

Fixed Skylight

Deck and Curb-Mounted



Bringing light to life™

Go Solar. Save big!

Part of VELUX's goal in becoming the world leader in skylights has been to put to excellent use our most abundant natural resource: sunlight. By developing and manufacturing environmentally friendly products that allow daylight and fresh air into your home, we're helping reduce electricity dependency. And when you "Go Solar" by bundling certain products, you can really work to lower your carbon footprint!

Go Solar with VELUX to reduce your energy consumption and actively fine-tune the climate inside your home as the seasons change. By going solar, you can exchange artificial light for natural light and cut ties with those high energy bills.

Go Solar Cost Savings:



Fixed Skylight Option

Estimated price/savings

\$400	Fixed Skylight & Flashing
+ \$1,500	New Installation
\$1,900	Final Cost

\$1,900



Includes fixed skylight, factory-installed solar blind, and a free VELUX ACTIVE with NETATMO Gateway¹

Go Solar Option

Estimated price/savings

\$785	Fixed Skylight, Blind & Flashing
FREE	VELUX ACTIVE Gateway
+ \$1,500	New Installation
\$2,275	Subtotal Cost
- \$683	30% Federal Tax Credit*
\$1,592	Final Cost

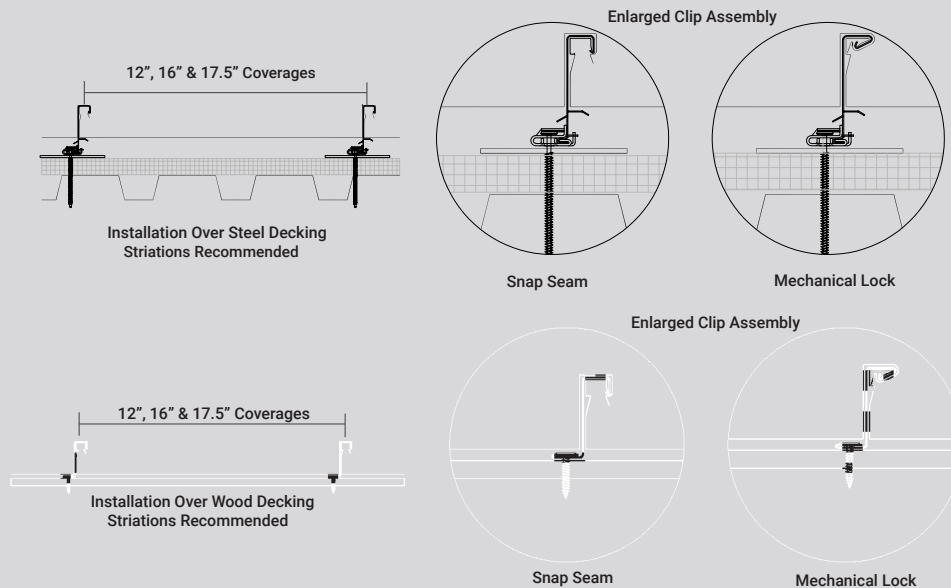
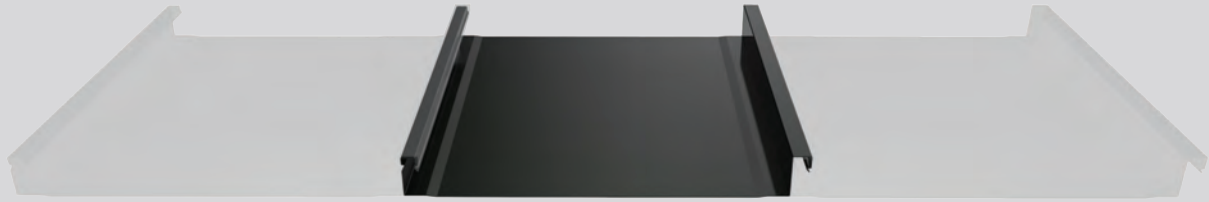
\$1,600*

**Go Solar
and save \$300²**

*Based on tax credit eligibility. For more information visit veluxusa.com/go-solar.

¹ VELUX ACTIVE Gateway not included with the Go Solar option for the VELUX Solar Powered "Fresh Air" Skylight.

² Actual installation costs will vary from these estimates based on new installation or replacement and common variables in roof construction and shaft construction.. Local delivery costs and applicable sales tax not considered for these estimates. These numbers are provided as estimates only.



Panel Overlap Detail Snap Seam Option



- 1. Clip System:** Fixed or Floating clip systems available
- 2. Substrate:** Can be used over open framing with a max span width of 60". Plywood substrate material shown.
- 3. Underlayment:** High Temp Ice & Water
- 4. Clip Relief**

Roof Coverage 12", 16" & 17.5"

Panel Gauges 22*, 24*

Fastener Options Concealed Clip System

Panel Length Up To 40' Shop Production
100'+ Run Onsite

Rib Height 2"

Roof Slope Minimum 3:12 in Snap Seam
Minimum 1/2:12 in Mechanical Seam
w/ Hot Melt Seam Mastic

Wind Uplift Rating ASTM E-1592 & UL580

Air Leakage ASTM E-1680

Water Penetration ASTM E-1646

Water Penetration under Static Water Pressure Head ASTM E-2140

Warranty Based on Paint System

* Grade 50

Version 1.1, 8/2020

NAKAMOTO FORESTRY

SKU# NM2005 - Gendai with Linseed Oil DARK GRAY



Installation Details

Overage

Please add a healthy overage ranging 15~20%, as shipping additional material can be very expensive.

Fastening (Exterior)

Two ring- or screw-shank headed face nails per furring strip within 1" of each edge

Substrate (Exterior)

Rigid furring minimum 16"OC

Installation Layout

Vertical or horizontal, all profiles

Dimensions & Grades Available

Select Grade			Premium Clear Grade	
6" Lap	6" S3S	8" S3S	6" Lap	
Profile	SF/pc	Length	Reveal	Thickness
6" Lap	5.33	145 11/16"	5 5/16"	9/16"
6" S3S	5.75	145 11/16"	5 11/16"	9/16"
8" S3S	7.75	145 11/16"	7 11/16"	9/16"

Prefinish Specifications

Prefinish Option	1 Coat Traditional Linseed Oil
Prefinish Color	Dark Gray
Exterior	Yes
Applications	
Interior Applications	No
Back-Oiling Option	Available
2nd Coat Oil Option	Not available
Shop-Applied Fire Retardant	Available
Fire-Retardant-Treated-Wood	Select grade shiplap only



Manufacturer

Nakamoto Forestry North America
Warehouse and Office (By Appt Only)
6400 SE 101st Ave Unit 2C & 3C
Portland Oregon 97266
Tel. (503) 512-6780
Mailing and Billing
4110 SE Hawthorne Blvd. #190
Portland Oregon 97214
Tel. (503) 512-6780

Yakisugi "shou sugi ban". The top layer of delicate soot is lightly brushed off, leaving a smooth, consistent, and dark surface, and an oil prefinish is applied prior to shipment. Suitable for exterior applications. Delivered ready to install.

.125

Product does not shed soot after installation

.125

Copy and Paste into Appropriate CSI Division

SECTION 06 26 00

CHARRED WOOD SIDING

.125

SKU# NM2005 - The SKU indicates surface and prefinish combination only. Please specify SKU together with dimensional profile and wood grade when ordering.

Surface & Texture

Gendai is a surface with a silky smooth, brushed, undulating soot layer, approximately 1/32" thick.

Species

Cryptomeria japonica, a monotypic genus in the Cypress family native to Japan. The Japanese name is "Sugi" (as in yakisugi and shou sugi ban), and in the West it is colloquially known as "Japanese Cedar".

Wood Grade

Select - JAS "Small Knot" grade allows for up to 20 tight or 10 dead knots per 79" (2m) board length. Unlimited combination of heartwood and sapwood, pith allowed. Checks allowed to 1/16" as long as plank stability, weather-resistance, and cosmetics are not adversely affected.

Premium Clear - JAS "Joko Mubushi" grade allows for up to 4 tight or 3 dead pinhole knots per 79" (2m) board length. Unlimited combination of heartwood and sapwood, no pith allowed. Checks allowed to 1/16" as long as plank stability, weather-resistance, and cosmetics are not adversely affected.

Fire Resistance

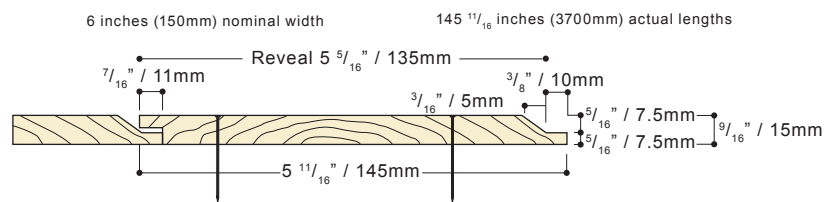
FRTW or shop-applied fire retardant pretreatment available to achieve CLASS A ASTM, UL, and CAN/ULC Flame Spread and Smoke Developed indices.

Moisture Content

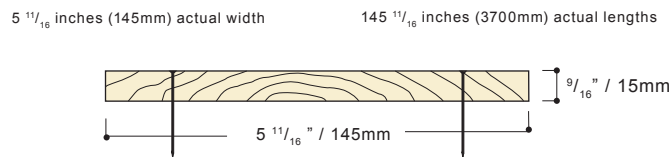
Air dried then burnt to 11~14% MC, but may fluctuate during transport or warehousing. Please acclimate on site for two weeks prior to installation.

.125

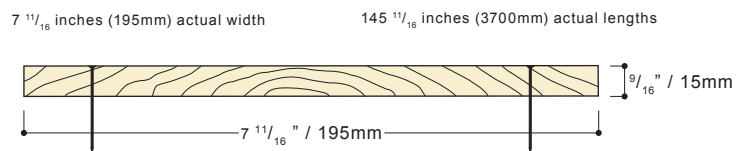
STANDARD GENDAI 1X6 SHIPLAP DIMENSIONS



STANDARD GENDAI 1X6 SQUARE EDGE DIMENSIONS



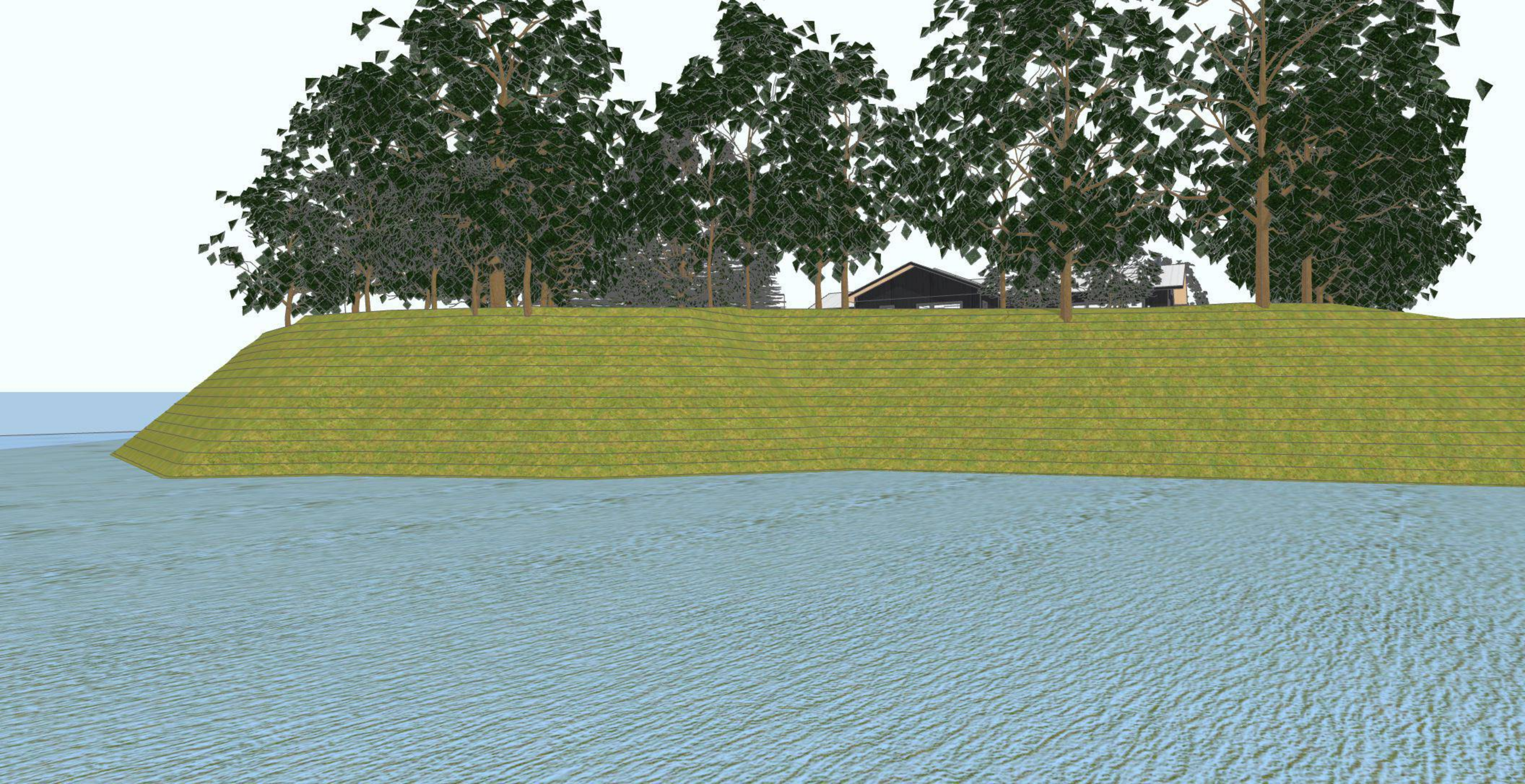
STANDARD GENDAI 1X8 SQUARE EDGE DIMENSIONS

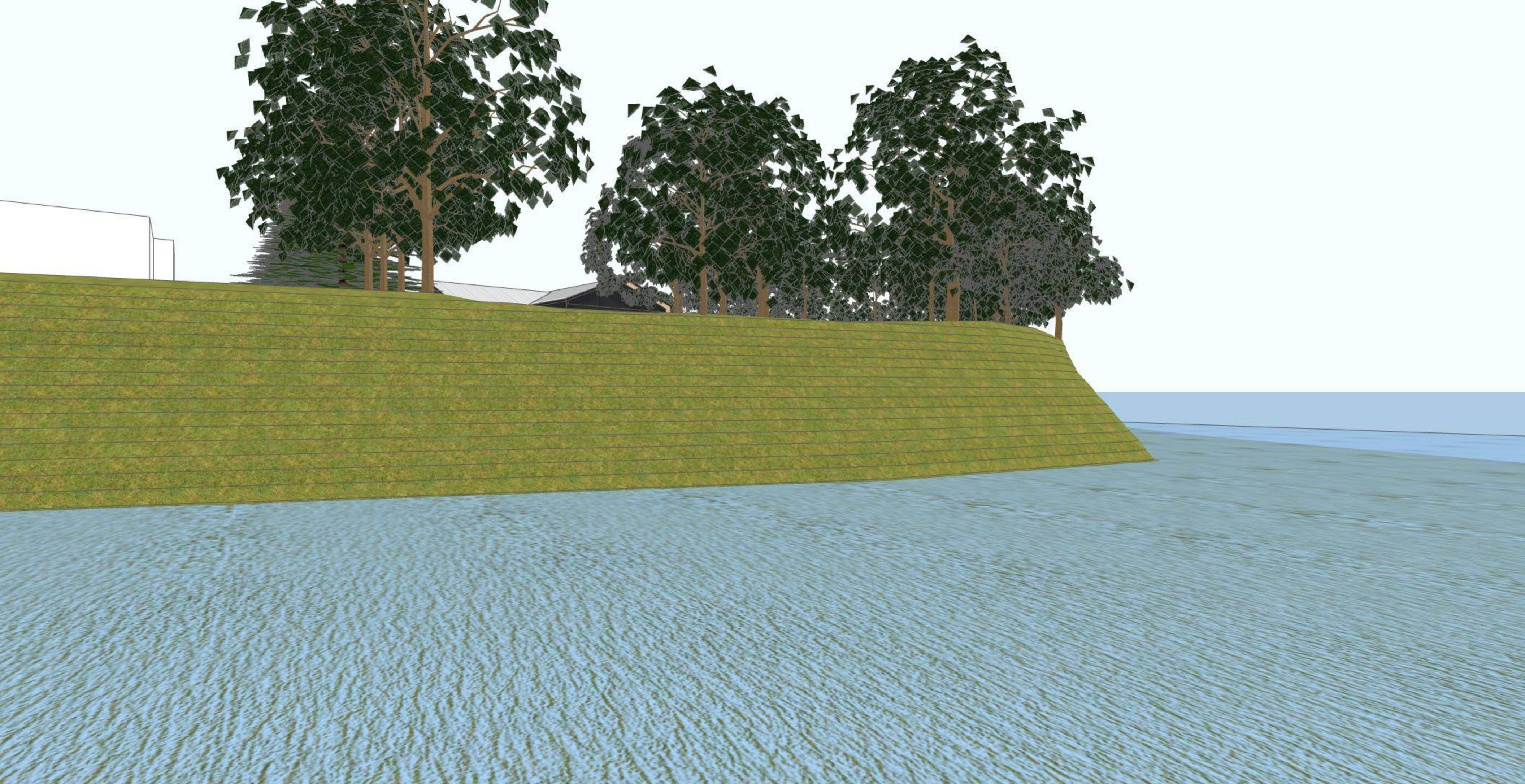


*Dimensional shrinkage after manufacture is possible due to being a solid-sawn wood product.

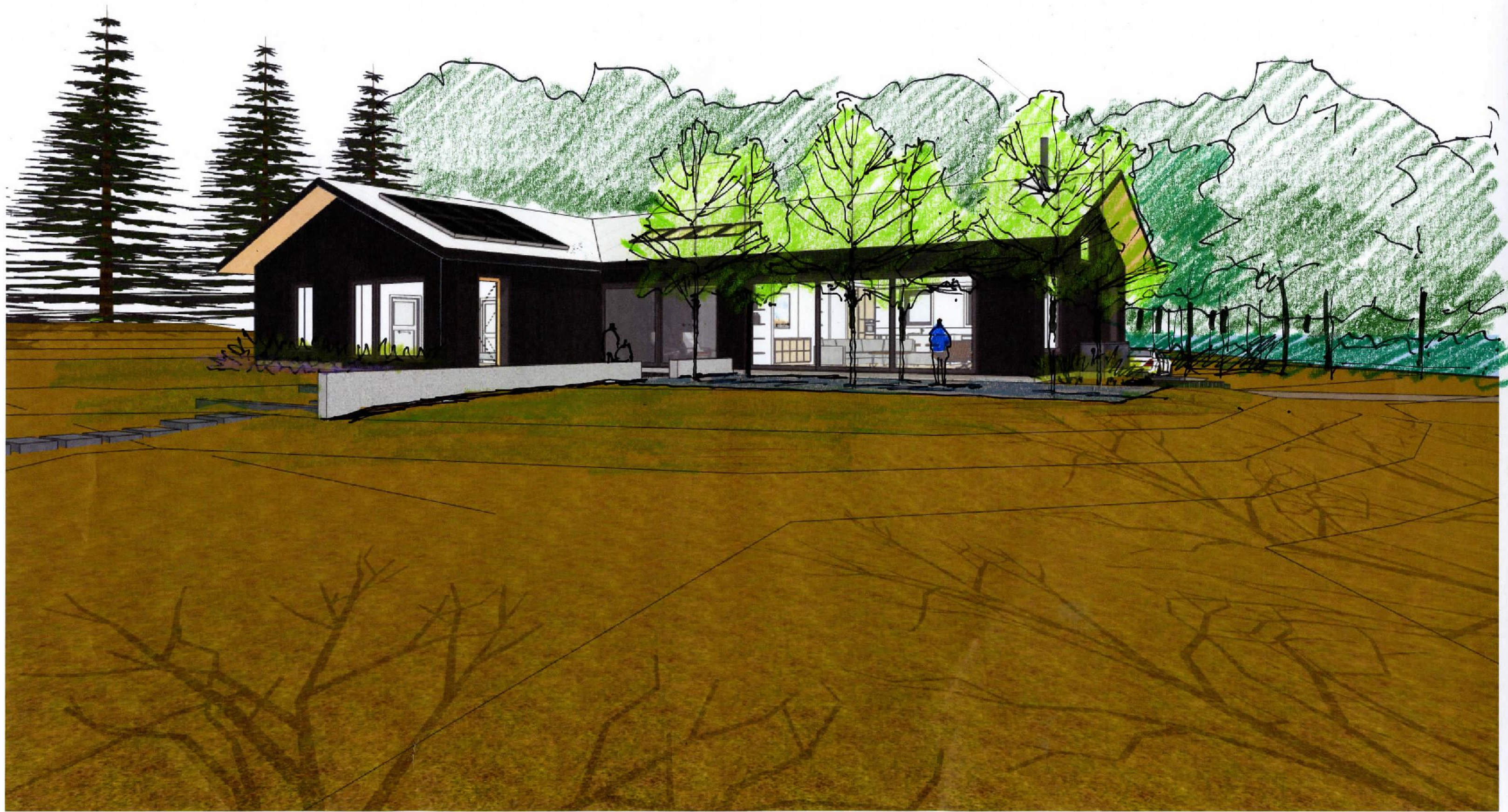














From the Desk of:

WILLIAM DE VOS, ASCA

- ISA Board Certified Master Arborist #NE-0187B
- Registered Consulting Arborist #359
- NJ Licensed Tree Expert #197
- Vt. Certified Horticulturist
- bill@treeworks.com

August 16, 2021

Rem Kielman
'WagnerHodgson
Landscape Architecture
7 Marble Avenue
Burlington, Vt 05401
rkielman@wagnerhodgson.com

Re: Laura McCurdy Property

Dear Rem:

I have finally had the to spend at the McCurdy property and assess the trees.



I followed the Federal system for lakeshore assessment (Grid and Point Method) and as preparing it, received an updated set of regulations for Zoning

and Development in Burlington that does not require G & P assessment.

Recipient of the *National Award for Excellence in Arboriculture*

from the desk of

WILLIAM DE VOS, ASCA

- Registered Consulting Arborist #359
- Certified Horticulturist

Having said that the information gathered with the Federal system shows a total suggested removal of 17 points on a site with 152 points within 50 feet of the shoreline. That equates to a removal percentage of 0.112.

There are a few dead or dying trees for removal but that is about it. Any desired view enhancement can be accomplished with some judicious pruning, due in part by the client's desire to maintain the health of the trees along the lake¹.

I have used red and white checked flagging to mark the trees I believe should be removed. I have flagged with blue and white flagging, two Hornbeams on the North West side of the house. This designation is for either removal or pruning due to the specific condition and relationship of the 5 Hornbeams and one large Cedar.



¹ Email from Laura McCordy-June 11, 2021

from the desk of

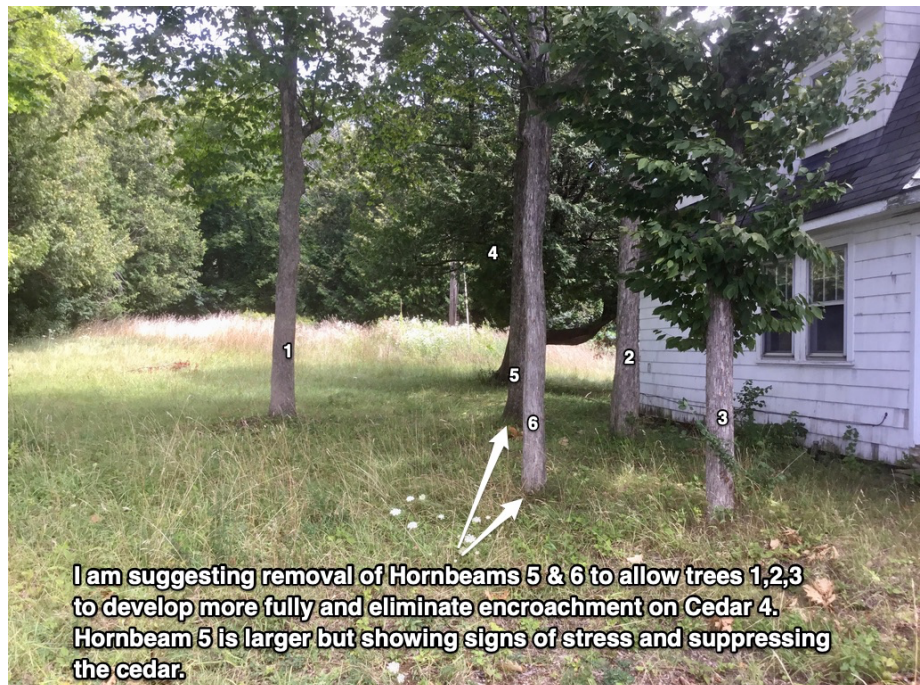
WILLIAM DE VOS, ASCA

- Registered Consulting Arborist #359
- Certified Horticulturist

The largest Hornbeam is showing signs of decline and is beginning to suppress the growth of a significant Thuja, itself the most significant tree in the yard. We could develop a maintenance plan for the larger Ostrya, prune it back to healthy tissue and away from the Cedar or remove it. Either action would be acceptable as that stand is overstocked.

The smaller Hornbeam that is ribboned blue and white is growing very misshapen and is codependent with a better formed Hornbeam. I would remove this tree to allow the remaining tree(s) to develop more fully.

My preference would be to remove both blue and white ribboned hornbeams, thereby releasing the large Cedar from future



encroachment, and eliminating stressed and structurally compromised trees at the same time.

from the desk of

WILLIAM DE VOS, ASCA

- Registered Consulting Arborist #359
- Certified Horticulturist

This will leave the 3 Hornbeams that are spaced well to develop an attractive coalescing crown in time; more conducive to becoming



amenity trees, or grouping. The reduced competition will likely result in better health and longevity.

The trees along the shore are basically self-sustaining. I have marked 4 small trees that are alive but have either no future or are inhibiting neighboring trees from a future, 4 trees that are completely dead

and 3 trees that have declined beyond the point of salvage.

I have checked the Vermont Natural Heritage Program for any inclusion of trees from this site and have found none.

All of the suggestions in this report, assuming dead, diseased or declining trees are not counted, meet or exceed the requirements in the Citywide General Regulations; Sec. 5.5.4 (a)1.

Generally speaking there is not a substantial amount of work necessary to improve the lakefront trees. Removal of dead and

from the desk of

WILLIAM DE VOS, ASCA

- Registered Consulting Arborist #359
- Certified Horticulturist

declining trees along with some judicious pruning will improve site health and provide poignant enhancement to the lake view.

The only truly elective work is on the north west side of the house where some negative space will afford a healthier, more attractive setting.

Please contact me with any questions or concerns.

Sincerely,

Bill

Department of Permitting and Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
<http://www.burlingtonvt.gov/PZ/>
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Theodore Miles, Code Compliance Officer
Charlene Orton, Permitting and Inspections Administrator
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Vacant, Planning Technician
Celeste Crowley, Permit Administrator



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: December 21, 2021
RE: ZP 21-759, 77-79 Pine Street

Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

File Number: ZP21-759

Zone: FD6 **Ward:** 3C

Date application accepted: October 29, 2021

Applicant/ Owner: Grace Ciffo, Nedde Pine LLC

Request: Reconsideration of condition #22 "***Rooftop mechanicals shall be screened***", for ZP21-118OG, previously known as ZP21-0927CA.

Background:

(Address is sometimes recorded as 2 Burlington Square. Parcel is 77 Pine Street.)

- **Zoning Permit 21-0728SN;** install 1 wall sign, illumination included. April 2021.
- **Zoning Permit 21-0722SN;** install replacement signs for People's United Bank. March 2021.
- **Zoning Permit 21-0082CA;** adding rooftop terrace adjacent to existing mechanical penthouse. Solar panels, mechanical equipment and sun shades included. July 2020.
- **Zoning Permit 20-0681CA;** site changes relative to reestablishing greenspace and removal of access from 1 Burlington Square into 2 Burlington Square. February 13 2020.
- **Zoning Permit 20-0453CA;** consolidation of bank use; drive through reduce from 3 to 2 lanes, creation of 50 residential units; reorganization of circulation/parking; stormwater infiltration, revised landscaping and lighting, replacement windows, stained brick, metal clad canopy. November 2019.
- **Zoning Permit 18-0336CA;** removal of existing masonry façade and windows. Replacement with insulated wall assembly with rain screen ceramic façade system and new windows. October 2017. Permit expired.
- **Non-applicability of Zoning Permit Requirements 17-0502NA;** remove and replace same in kind concrete sidewalk, concrete step and landing with same handrail. October 2016.

- **Non-applicability of Zoning Permit Requirements 17-0328NA**; change out existing ATMs to newer models and set to ADA compliance. September 2016.
- **Zoning Permit 13-0538CA**; replace existing entry door with larger handicapped accessible doorway. November 2012.
- **Zoning Permit 11-0111SN**; replace two existing nonconforming parallel signs with new nonconforming parallel signs. September 2010.
- **Zoning Permit 10-0972SN**; replace two nonconforming parallel signs with two new nonconforming parallel signs. July 2010.
- **Zoning Permit 10-0971SN**; change face of three existing signs (two freestanding and one parallel). No change in dimensions or placement. No illumination for the freestanding signs. Internal illumination for the parallel sign. May 2010.
- **Non-applicability of Zoning Permit Requirements 09-036NA**; removal and replacement of concrete walls, stair and sidewalks replaced to match existing design. July 2008.
- **Zoning Permit 07-398SN**; replace face of existing parallel sign for Chittenden Bank. December 2006. Superseded by 10-0971SN.
- **Zoning Permit 09-034CA**; install new railings. July 2008.
- **Zoning Permit 99-606**; construction of an emergency generator enclosure adjacent to the existing drive up teller station. June 1999.
- **Non-applicability of Zoning Permit Requirements**, antennae placed on the rooftop. March 1995.
- **Zoning Permit 92-171**; installation of internally illuminated parallel sign above drive up ATM. November 1991.
- **Zoning Permit 92-172**; removal of teller operated drive-up bank window with drive-thru ATM unit. No change to circulation or overall use. November 1991.
- **Zoning Permit 81-255**; construct two vestibules on entrance ways for energy efficiency purposes. November 1980.
- **Zoning Permit 81-232**; enclose presently elevated loading dock area and extend out the platform being enclosed. October 1980.

Overview: ZP21-0927CA (Amanda database) or 21-118 (Open Gov) was approved June 2, 2021 with conditions. Condition #22 states “Rooftop mechanicals shall be screened.” The applicant requests to have that condition removed, citing the greater visibility of the required screening, and the observation of unscreened rooftop equipment in the vicinity of this project.

Recommended motion: Certificate of Appropriateness Denial, based on the following findings:

I. Findings

Article 5: Citywide General Regulations

Part 2: Dimensional Requirements

Section 5.2.6 Building Height Limits

(b) Exceptions to Height Limits

4. *Exposed mechanical equipment shall be allowed to encroach beyond the maximum building height by no more than 15-feet provided that portion exceeding the height limit does not exceed 20% of the roof area.*

Exposed mechanical equipment shall be fully screened on all sides to the full height of the equipment, and positioned on the roof to be unseen from view at the street level. Screening may consist of parapets, screens, latticework, louvered panels, and/or other similar methods. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the Building. Where mechanical equipment is incorporated into and hidden within the roof structure, or a mechanical penthouse setback a minimum of 10-ft from the roof edge, no such area limit shall apply and the structure shall be considered pursuant with 4 above.

Article 14 (below) directs review to the standards of Section 5.2.6, where exposed mechanical equipment is required to be fully screened on all sides. While the applicant asserts the equipment will not be seen from the street level, this regulation is two-part (“**and positioned on the roof to be unseen from view at the street level**”). The requirement for screening is prefaced with “shall”.

Adverse finding for eliminating screening required by this standard.

Article 14: Plan BTV Downtown Code

Section 14.1.3 Applicability

The Form Code (Article 14) direct us to the applicability of the following standards:

To the extent applicable, and not otherwise in conflict with this Article 14-planBTV Downtown Code, the following sections of the Burlington Comprehensive Development Ordinance (CDO) shall also continue to apply:

- a) Article 1 - General Provisions*
- b) Article 2 - Administrative Mechanisms;*
- c) Article 3 - Applications, Permits and Project Reviews, Parts, 1, 2, 3, 5 and 6;*
- d) Article 4 - Zoning Maps and Districts, Parts 1, 2, 3, and Part 5 Sec. 4.5.4;*
- e) Article 5 - Citywide General Regulations, Parts 1, 2, 3, Sec. 5.4.7, Sec. 5.4.8, and 5;*
- f) Article 7 - Signs*
- g) Article 9 - Inclusionary and Replacement Housing;*
- h) Article 10 - Subdivision Review;*
- i) Article 12 - Variances and Appeals; and,*
- j) Article 13 - Definitions.*

In each case, the standards and requirements applicable to the Downtown and Waterfront District Regulating Plan and this Article 14 shall take precedence without limitation over any duplicative or conflicting provisions of the other Articles of the Burlington Comprehensive Development Ordinance (BCDO).

If there is any conflict between the provisions of this Article 14 and any provisions of any other existing City codes, ordinances, regulations or standards (the “Existing Local Codes”), the provisions of this Article 14 shall take precedence over such conflicting provisions except for City and state Building, Fire, Health and Safety Codes.

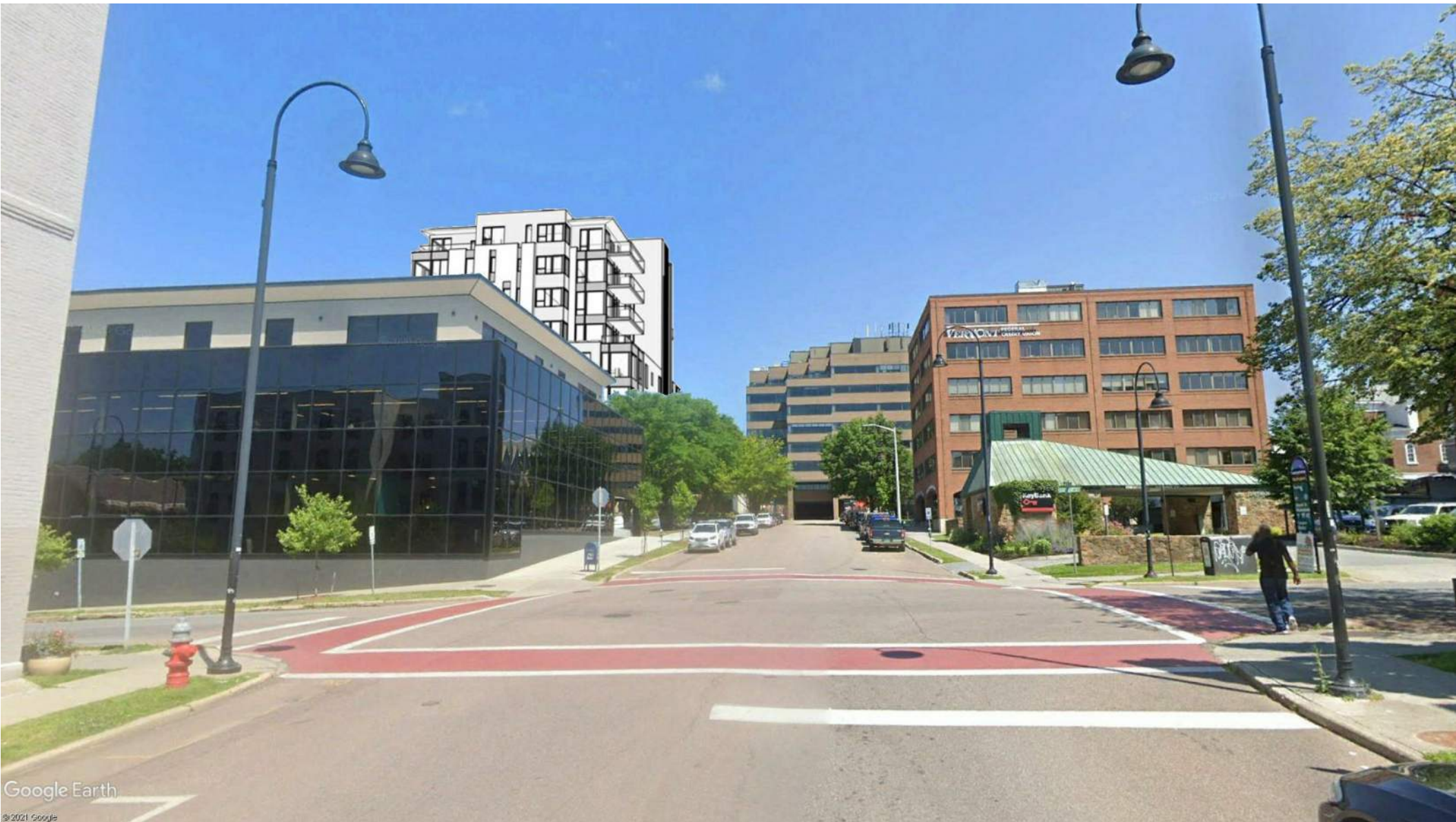
Section 14.1.3 (e) guides the review to include Part 2 of Article 5, relative to building height limits. See that standard and requirements, above.

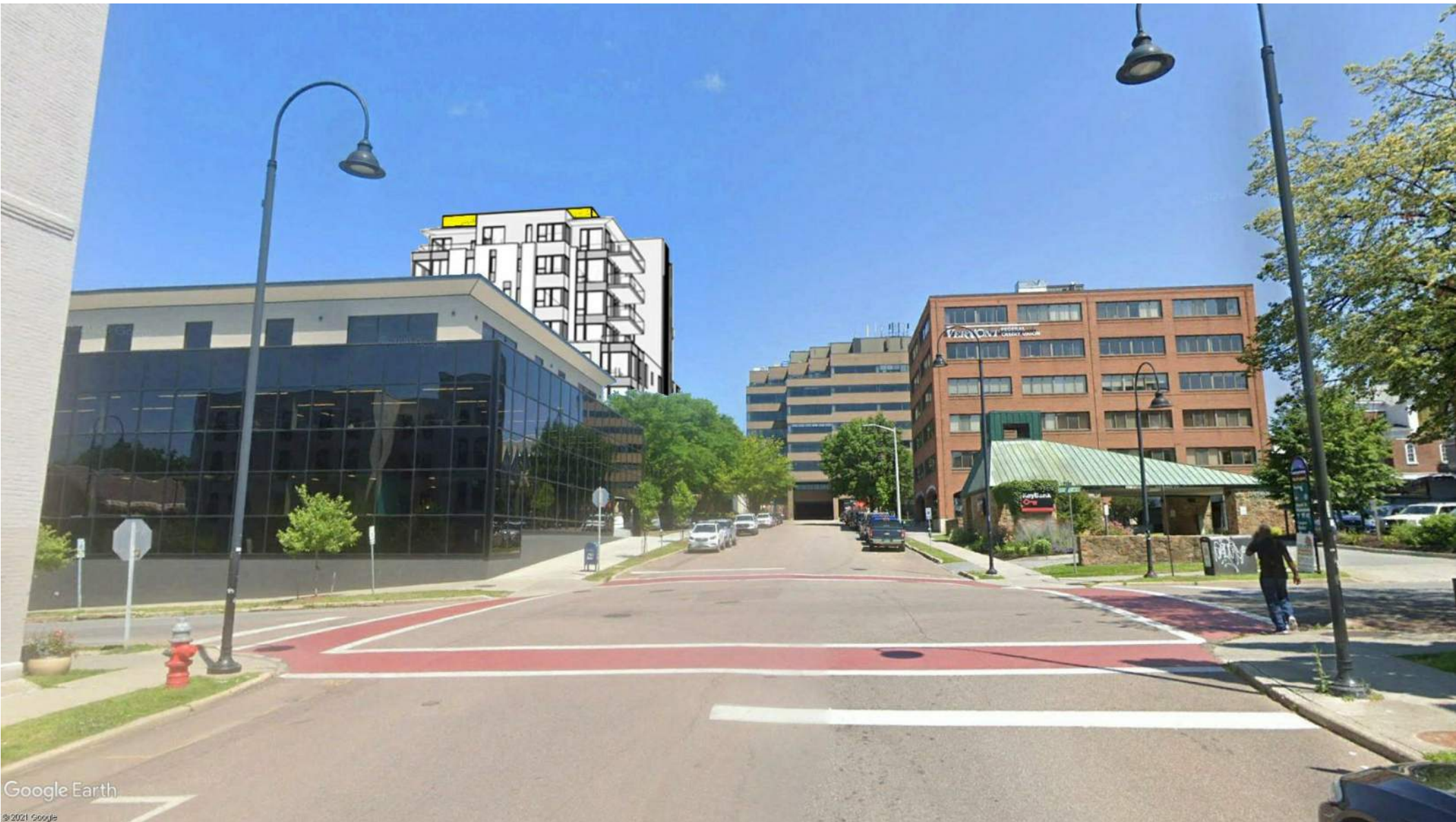
The examples of unscreened rooftop equipment provided by the applicant are buildings that were permitted under different regulations.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.











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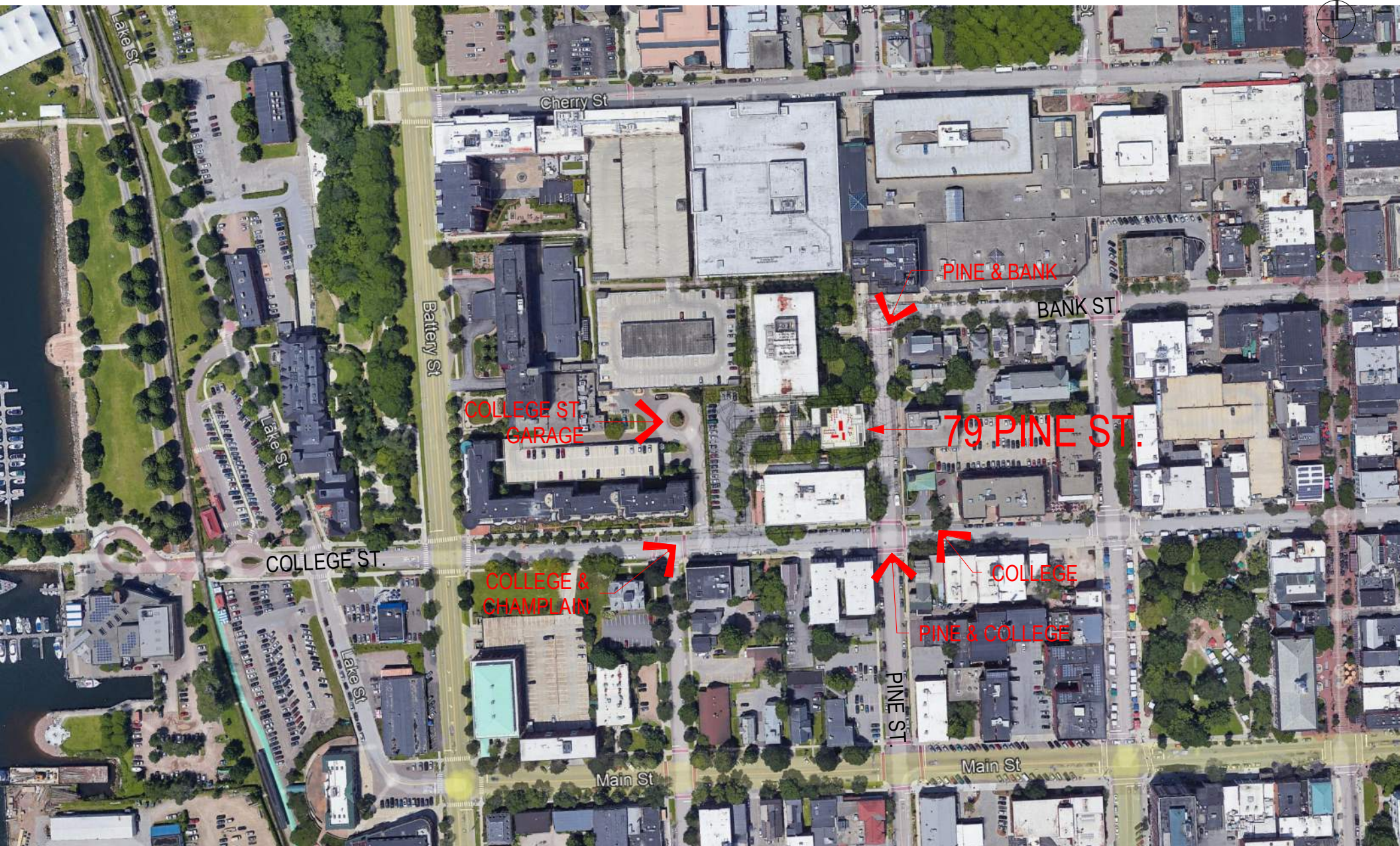


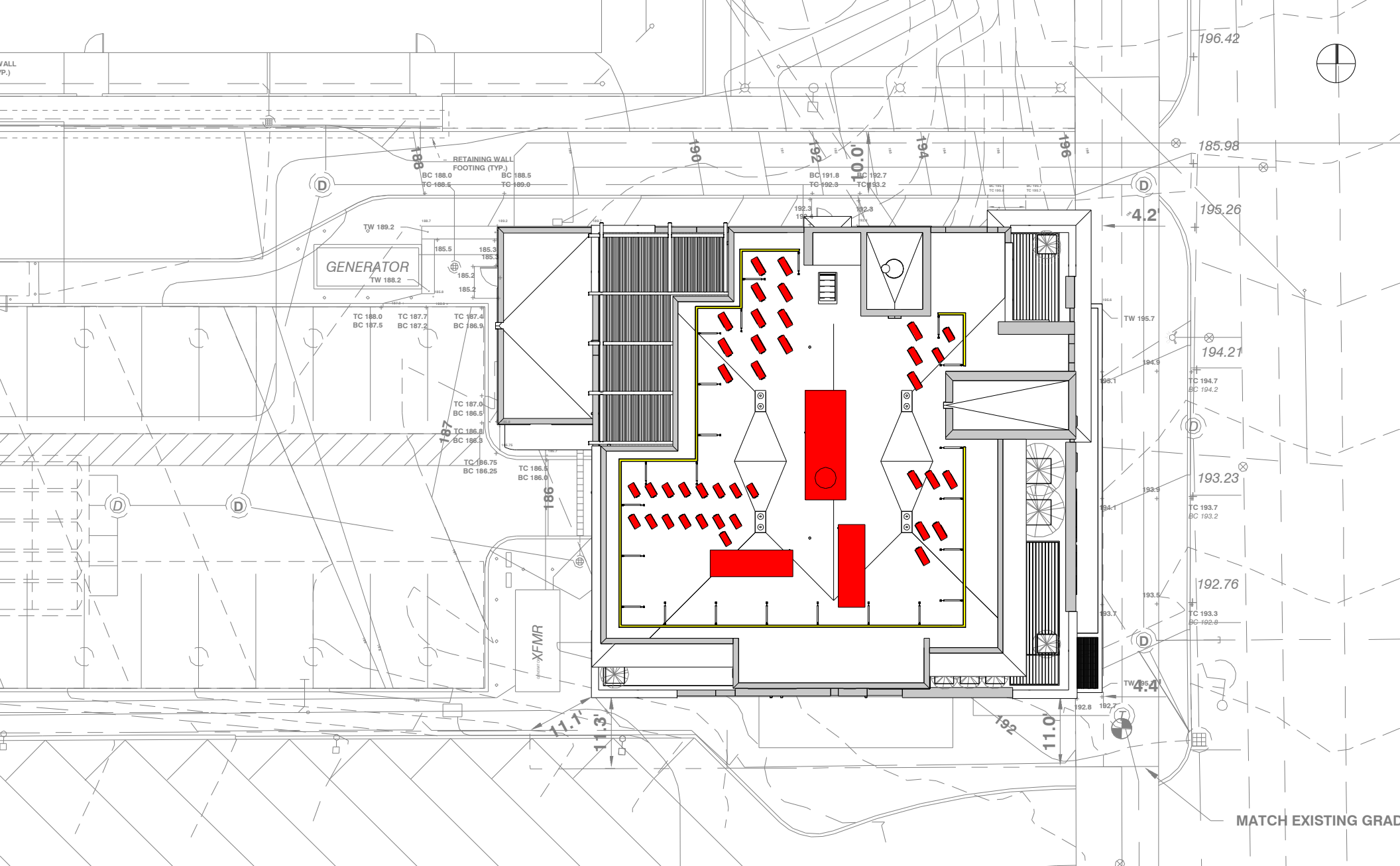
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ROOF SCREEN VISIBLE (YELLOW)











Department of Permitting and Inspections

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Ryan Morrison, Associate Planner
Vacant, Planning Technician
Celeste Crowley, Permit Administrator



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: December 21, 2021
RE: ZP21-509, 72-76 Elmwood Avenue

Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

File: 21-509

Location: 72-76 Elmwood Avenue

Zone: RM **Ward:** 2C

Parking District: Neighborhood

Date application accepted: June 24, 2021

Request to defer for redesign and survey: July 23, 2021

Revised plans received: October 26, 2021, November 15, 2021.

DAB Review: November 9, 2021 and November 23, 2021

Applicant/ Owner: Michael Alvanos / PBGC LLC (Bill Bissonette)

Request: Build three unit detached residential structure on the site of the former Free Methodist Church. One existing single family residence remains on site. (Planned Unit Development)



Background:

- **Zoning Permit 20-0702CA;** Demolition of remaining foundation from fire totaled building. February 21, 2020; permit relinquished without action.
- **Non-Applicability of Zoning Permit Requirements;** rebuilding wheelchair ramp on east side of church (rear entrance); temporary ramp. August 2014.
- **Zoning Permit 85-263;** erect a picket fence, 4' high along the west and south boundaries. Construct storage shed on the east end of the property. June 1985.
- **Zoning Permit 81-596;** demolish a storage shed and rebuild 8' x12' which will replace existing storage shed. July 1981.
- **Zoning Permit 78-730;** Erect a steel storage shed in the rear of the church. May 1978.
- **Zoning Permit 76-419;** Replace front stairs and the sill in the rear of the building, erect a new floor for the porch. October 1975.
- **Zoning Permit n.n.;** erect a 6' x 45' chain link fence on the east and west property lines of 76 Elmwood Avenue and 16 Grant Street. July 1974.

Overview:

Burlington's Free Methodist Church was largely lost to a fire January 15, 2015. The rectory, a single family home on the same site, survived. The parcel has changed hands a number of times, and is now proposed for redevelopment; retaining the existing home, and added a detached three unit residential building.

At the DAB meeting 11.9.2021, the application review was tabled with a request for the following:

1. Provide screening for the parking area from the street;
2. Introduce barriers to prevent parking creep onto green space;
3. Introduce some design element to prevent rain and snow slide on north and south elevations;
4. Differentiate the first floor with a change of material, color or plane; and
5. Recommendations included in the staff report.

Revised plans were submitted 11.15.2021.

At the subsequent 11.23.2021 review, the DAB voted unanimously to recommend approval.

Recommended motion: Certificate of Appropriateness approval, per the following Findings and Conditions:

I. Findings

Article 3: Applications, Permits and Project Reviews

Part 3: Impact Fees



Section 3.3.2 Applicability

Any new development or additions to existing buildings which result in new dwelling units or in any new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact according to Section 3.3.4.

Section 3.3.8 Time and Place of Payment

(a) New Buildings

Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.

By the Assessor's Property Database, the former Free Methodist Church had a gross area of 2,000 sf, which will be credited against Impact Fees. The following are Impact Fees as calculated from submitted plans:

Prior gross area, Free Methodist Church
(Taken from Assessor's Property database)

SF of Project

2,000

FY 22: July 1, 2021 - June 30, 2022

Department	Offices & Other Rate	Fee
Traffic	0.717	1,434.00
Fire	0.211	422.00
Police	0.372	744.00
Parks	0.445	890.00
Library	0.000	0.00
Schools	0.000	0.00
Total	1.745	\$ 3,490.00

Proposed new gross area

Based on three floors, each 27'4" x 54' (1475.82 sf per floor)

SF of Project

4,427

Department	Residential Rate	Fee
Traffic	0.208	920.91
Fire	0.235	1,040.45
Police	0.047	208.09
Parks	0.789	3,493.27
Library	0.488	2,160.60

Schools	1.019	4,511.58
Total	2.786	\$ 12,334.90

Difference: \$ 8,844.90

Allocation by
department:
Enter Total
Fee:

\$8,844.90

Department	Residential Rate	Fee
Traffic	0.208	660.35
Fire	0.235	746.07
Police	0.047	149.21
Parks	0.789	2504.89
Library	0.488	1549.29
Schools	1.019	3235.07
Total	2.786	\$ 8,844.90

Affirmative finding as conditioned.

Part 4: Site Plan and Design Review

Section 3.4.2 Applicability

(a) Site Plan Review

Site Plan review shall be required for the approval of all development subject to the provisions of this ordinance with the exception of single-family dwellings not otherwise subject to the requirements of Design Review.

(b) Design Review

Design Review shall be required for the approval of all development subject to the provisions of this ordinance within the Design Review Overlay District as defined in Article 4, Section 4.5.1 and any of the following:

6. Any development subject to the provisions of Article 11 – Planned Development
See Articles 6 and 11, below.

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

(a) Purpose

The Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment. They are also intended to create an inviting streetscape for residents and visitors. Development that places emphasis on architectural details and form is encouraged, where primary buildings and entrances are oriented to the sidewalk, and historic development patterns are reinforced. Parking shall be placed either behind, within, or to the side of structures

as is consistent with the district and/or the neighborhood. Building facades designed for parking shall be secondary to the residential aspect of a structure.

3. The Residential Medium Density (RM) district is intended primarily for medium density residential development in the form of single-family detached dwellings and attached multi-family apartments.

The new triplex is consistent with the purpose of the zoning district; with entrances oriented to the street and parking (in the existing condition) to the side of the structure.

Affirmative finding.

(b) Dimensional Standards and Density

Table 4.4.5-2 Base Residential Density

Medium Density (RM)	20 units/acre
72-76 Elmwood Avenue	$9718 \text{ sf lot size} / 43560 = .223 \text{ A} \times 20 = 4 \text{ dwelling units permissible.}$

Affirmative finding.

Table 4.4.5-3 Residential District Dimensional Standards

RM Zoning District	Max Lot Coverage 40%	Setbacks				Height 35' max.
		Front: Ave of 2 adjacent lots on both sides +/- 5'	Side: 10% of lot width or average of side yard setback of 2 adjacent lots on both sides	Rear: 25% of lot depth; in not event less than 20'	Waterfront: N/A	
72-76 Elmwood Avenue	Existing 71.5%; Proposed 63.5%	8.6'; within 5' of neighboring property at 65 Elmwood Avenue (6')	Average of setback on north side based on 68 Elmwood Avenue, 1.5'. 5' proposed. No change to southerly setback.	N/A	N/A	Less than 35'. See plan 4-400.

Affirmative finding.

(c) Permitted and Conditional Uses

Attached dwellings / multi-family 3 or more is a permitted use in the RM Zoning district.

Affirmative finding.

(d) District Specific Regulations

1. Setbacks

A. Encroachment for Residential Driveways Not applicable

B. Encroachment into the Waterfront Setback Not applicable

2. *Lot Coverage*

A. *Exceptions for Accessory Residential Features*

The site has been non-conforming to lot coverage (>71%). No particular itemization of site features associated with the bonus allowance have been included. The application proposes to reduce the level of non-conformity to lot coverage to 63.5%. **Affirmative finding.**

3. *Accessory Residential Structures, Buildings and Uses*

There is an existing, permitted shed on the east (rear) of the lot. The application proposes an additional structure in which to store bicycles. Both are incidental and subordinate to the principal structures on the site. **Affirmative finding.**

4. *Residential Density*

A. *Additional unit to Multi-family* Not applicable

B. *Additions to Existing Residential Structures* Not applicable.

C. *Residential Occupancy Limits*

In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.

Affirmative finding as conditioned.

5. *Uses*

A. *Exception for existing Neighborhood Commercial Uses*
Not applicable.

6. *Residential Development Bonuses*

No bonuses are sought. Not applicable.

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots.

72-76 Elmwood Avenue is an existing, developed site. **Affirmative finding.**

Section 5.2.2 Required Frontage or Access

72-76 Elmwood Avenue has an existing access from a public road. **Affirmative finding.**

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.5-3, above.

Section 5.2.4 Buildable Area Calculation

The site does not exceed 2 acres. Not applicable.

Section 5.2.5 Setbacks

See Table 4.4.5-3, above.

Section 5.2.6 Building Height Limits

See Table 4.4.5-3, above.

Section 5.2.7 Density and Intensity of Development Calculations

See Table 4.4.5-2, above.

Part 3: Non Conformities

The site is currently non-conforming to setback (north and east) and lot coverage. The application will propose construction meeting the required setbacks on the front (west) and north. Lot coverage will diminish from the existing 71.5% to 63.5%. **Affirmative finding.**

Section 5.4.8 Historic Buildings and Sites

Although the former Methodist Church was listed on the Vermont State Register of Historic Resources, its loss due to fire has eliminated any review for historic sensitivity. Not applicable.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Not applicable.

Part 2: Site Plan Design Standards

Sec. 6.2.2 Review Standards

(a) Protection of Important Natural Features:

This site remains unchanged since the 2015 fire. The foundation, which was permitted to be removed has remained and that permit relinquished without exercise. Lot coverage is existing/non-conforming at 71.5%. **Affirmative finding.**

(b) Topographical Alterations:

No topographical alterations are noted in the plans. Any retaining wall over 3' in height will require review by the City Engineer. **Affirmative finding as conditioned.**

(c) Protection of Important Public Views:

There are no identified important public views from or through this site. **Affirmative finding.**

(d) Protection of Important Cultural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Archeological sites likely to yield information important to the city's or the region's pre-history or history shall be evaluated, documented, and avoided whenever feasible. Where the proposed development involves sites listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8(b).

The 1917 Free Methodist Church was listed on the Vermont State Register of Historic Resources; however since it has been lost, the historic designation no longer applies. The rear structure was not identified in that listing. Not applicable.

(e) Supporting the Use of Renewable Energy Resources:

No part of this application precludes the use of wind, water, solar, geothermal or other renewable energy resource. A solar-ready installation would be encouraged. **Affirmative finding.**

(f) Brownfield Sites:

This is not an identified Brownfield site on Vermont's Department of Environmental Conservation website. **Affirmative finding.**

(g) Provide for nature's events:

Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.

Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.

All entries are now placed within a modest overhang, assuring a modicum of shelter for residents. An Erosion Prevention and Sediment Control Plan will be required for the site disturbance.

There is room for snow storage either north or east of the parking area.

Affirmative finding as conditioned.

(h) Building Location and Orientation:

The new building will shoulder-up to Elmwood Avenue; filling the emptiness left by the loss of the Church. In placement it fills the hole in the streetscape and maintains the development pattern and rhythm of structures along the street. A principal entrance fronting onto Elmwood Avenue has been introduced consistent with these regulations:

Principal buildings shall have their main entrance facing and clearly identifiable from the public street. **Affirmative finding.**

(i) Vehicular Access:

Vehicular access will continue as pre-existing, from Elmwood Avenue. The site plan calls for an expanded curb cut. Any change to the existing access will require a curb cut permit from the Department of Public Works. **Affirmative finding as conditioned.**

(j) Pedestrian Access:

There is a public sidewalk immediately in front of this parcel. The site plan illustrates a walkway to the entrance areas, under the roof overhang. **Affirmative finding.**

(k) Accessibility for the Handicapped:

There is no elevator included in the plan. A single handicap parking space with an access aisle is illustrated. This space is located furthest from entrances to the new building; however if intended for the existing single family home is appropriately sited. Conformance to ADA standards is under the jurisdiction of the building inspector. **Affirmative finding.**

(l) Parking and Circulation:

The site plan illustrates 8 on site parking spaces, meeting the minimum parking requirement for the Neighborhood Parking District. There is sufficient room for cars to back out and re-enter Elmwood Avenue from the parking area.

In the Neighborhood Parking District, 1 long-term bicycle parking space is required for every two bedrooms. For this three unit building with 12 bedrooms, 6 long term bike parking spaces will be needed. A bicycle shed has been included in this revision. **Affirmative finding as conditioned.**

(m) Landscaping and Fences:

Existing trees and fencing are shown on the site plan. New arborvitae have been illustrated west of the parking area, which will successfully screen it from public view. Other than grass and an existing fence, no other landscaping is proposed. The Design Advisory Board supported the proposed additional plantings. An existing tree remains on the east of the parcel.

A small feature wall is designed for the building entrance, with the street address visible.

Section 7.1.3 of the Comprehensive Development Ordinance exempts street identification from the sign regulations, providing the numerals are a minimum of 3" and maximum of 10" in height, and the area of the numerals does not exceed two square feet. Walls in excess of 3' in height require review by the City engineer. (Section 6.2.2. (b)). **Affirmative finding.**

(n) Public Plazas and Open Space:

A Planned Unit Development requires that there be identified some open space for tenants to enjoy. **(11.1.5 Approval Requirements), (g) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the DRB.**

The site plan defines several areas of green space which may be programmed for seating, light recreation, or gardening by the residents; although the placement of the mechanical pad may hinder the larger of these. **Affirmative finding as conditioned.**

(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

Recessed can lighting is evident under the entrance overhang. Specification sheets and illumination levels have been provided, and are consistent with the residential nature of the project. **Affirmative finding.**

(p) Integrate infrastructure into the design:

Exterior storage areas, machinery and equipment installations, service and loading areas, utility meters and structures, mailboxes, and similar accessory structures shall utilize setbacks, plantings, enclosures and other mitigation or screening methods to minimize their auditory and visual impact on the public street and neighboring properties to the extent practicable.

The site plan does reveal mechanical equipment placed on a pad east of the new building. Any condensing units, mini-splits, or other external mechanical equipment must be illustrated on the site plan/building elevations and screened as appropriate.

Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be placed underground whenever practicable. Trash and recycling bins and dumpsters shall be

located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.

The applicant has defined the existing shed as the intended location of trash/recycling facilities.

Any development involving the installation of machinery or equipment which emits heat, vapor, fumes, vibration, or noise shall minimize, insofar as practicable, any adverse impact on neighboring properties and the environment pursuant to the requirements of Article 5, Part 4 Performance Standards.

With identification of a mechanical pad, HVAC equipment is anticipated. The applicant must reveal the type and size so any adverse impacts may be assessed. **Affirmative finding as conditioned.**

Part 3: Architectural Design Standards

Sec. 6.3.2 Review Standards

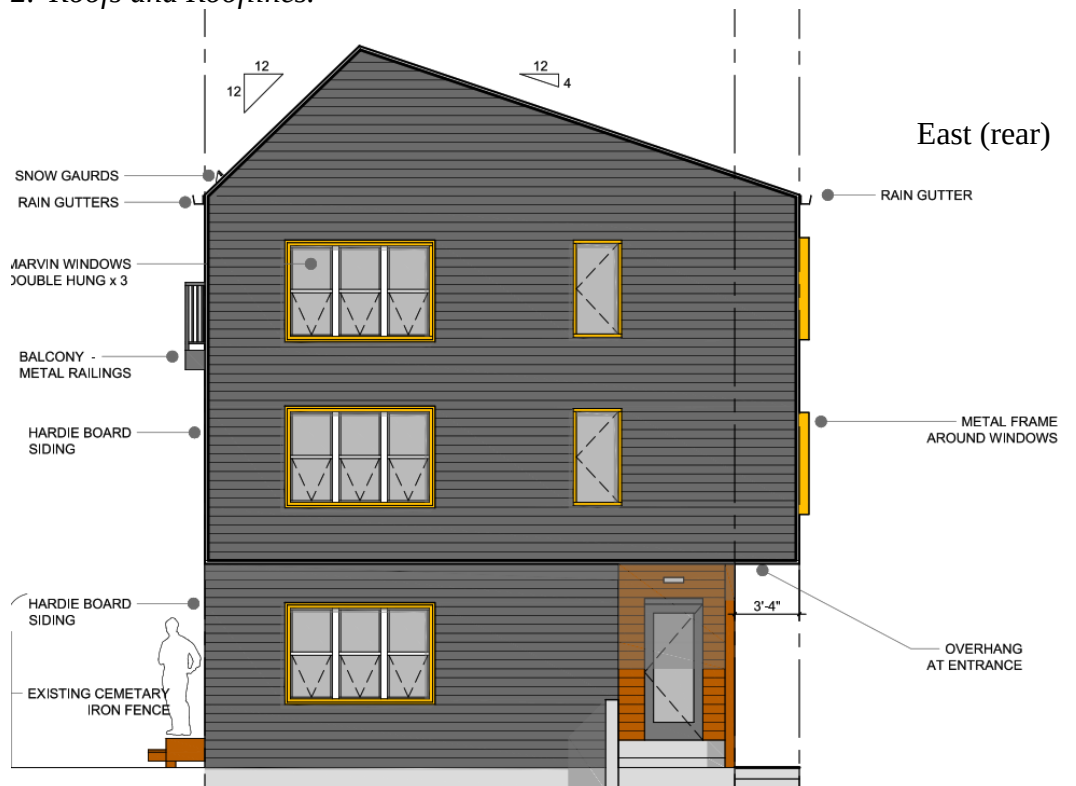
(a) Relate development to its environment:

1. Massing, Height and Scale:

72-76 Elmwood Avenue has only one abutting neighbor; 68 Elmwood Avenue. It is a gable-and-eaves front 2 ½ story residential building. Across the street on the corner of Peru Street is a modified Dutch Colonial, and the much grander St. Joseph's rectory.

Although presenting eaves-front to the street, the height and massing of the proposed building is consistent with other structures in the immediate area. **Affirmative finding.**

2. Roofs and Rooflines.



The proposed building has a modified cat-slide roof with dual pitch and minimal eave extrusion. Responding to DAB comments, snow guards and rain gutters have been added on the north and south elevations. In style it reads as a modern infill. **Affirmative finding.**

3. Building Openings

Fenestration is a mix of triple and double ganged windows and single casements. Sliding doors are noted on the north elevation first floor and third floors.



(b) Protection of Important Architectural Resources:

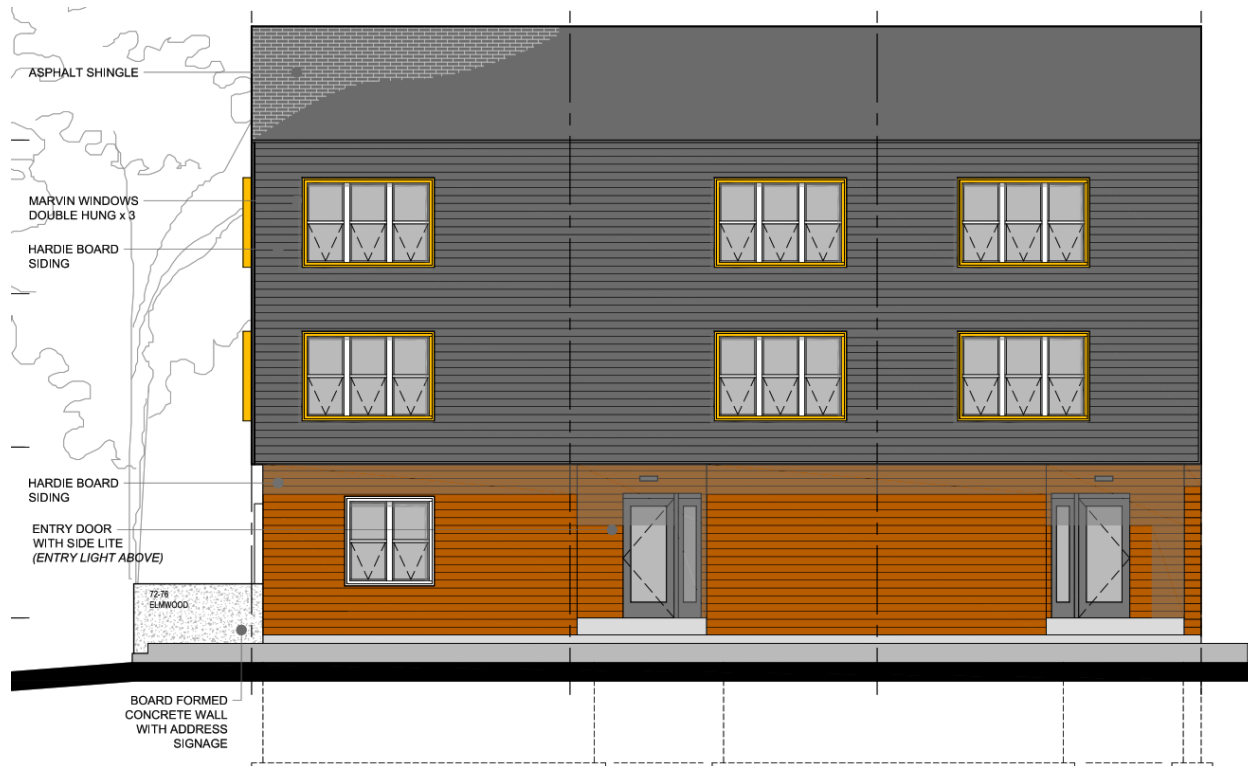
Not applicable.

(c) Protection of Important Public Views:

See Section 6.2.2 (c), above.

(d) Provide an active and inviting street edge:

As designed, the building lacks typical façade articulation such as bays, horizontal and vertical façade articulation, porches, patios, articulated bases, step-backs or other street level details. Upon the recommendation of the DAB, a change in plane and color has been introduced between the first and second floor. Windows are stacked, providing a measure of arrangement. The plan is modernistic with a simplified form and measured detailing. The most prominent design component is the angular and asymmetrical roof line, and “framed” window surrounds. Revisions include a differentiated first floor south and west entry, as requested by the Design Advisory Board. **Affirmative finding.**



(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

Plans include fiber cement siding, with metal frame surrounds on windows and an asphalt shingle roof. All are considered acceptable for new construction. **Affirmative finding.**

(f) Reduce energy utilization:

All new construction must meet the *Guidelines for Energy Efficient Construction* pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances. **Affirmative finding as conditioned.**

(g) Make advertising features complementary to the site:

Not applicable.

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p), above.

(i) Make spaces secure and safe:

Development shall observe all applicable building and life safety code as defined by the building inspector and/or fire marshal. Building entrances shall be visible and adequately lit, and intercom

systems for multi-family housing should be incorporated where possible to maximize personal safety. **Affirmative finding as conditioned.**

Article 8: Parking

72-76 Elmwood Avenue is within the Neighborhood Parking District. The site plan provides for 8 parking spaces in the existing location; sufficient for meeting the 2 parking space/unit minimum requirement.

Affirmative finding.

Article 11: Planned Development

Section 11.1.3 General Requirements and Applicability (As adopted by City Council 8.10.2015.)

*Any development involving multiple lots, tracts or parcels of land to be developed as a single entity, or **seeking to place multiple structures and/or uses on a single lot** where not otherwise permitted, may be permitted as a PUD subject to the provisions of this Article.*

A Planned Unit Development may be permitted subject to minimum project size as follows in the following districts:

Medium Density – no minimum project size.

Affirmative finding.

Section 11.1.4 Modification of Regulations

With the approval of the DRB after a public hearing, the following modifications the requirements of the underlying zoning may be altered within a planned unit development:

- *Density, frontage, lot coverage and setback requirements may be met as calculated across the entire project rather than on an individual lot-by-lot basis.*
- *Required setbacks may apply only to the periphery of the project rather than on an individual lot-by-lot basis;*
- *More than one principal use and **more than one principal structure may be permitted on a single lot**, and*
- ***Buildings may be of varied types including single detached, attached, duplex or apartment construction.***

Any proposed modifications of regulations shall be listed in a statement accompanying the application submission and such modifications shall be subject to the provisions of Section 11.1.5 and Section 11.1.6.

Calculations for lot area, intensity of use and setbacks have been provided. See Tables 4.4.5-2 and 4.4.5-3. Parking has been calculated for all the units on the single lot. More than one principal structure is proposed within the PUD. Buildings are of varied types, including an existing single family home and apartment construction (triplex). **Affirmative finding.**

Section 11.1.5 Approval Requirements

(a) The minimum project size requirements of Section 11.1.3 shall be met;

There is no minimum project size for a PUD within the Medium Density (RM) zoning district.

(b) The minimum setbacks required for the district have been met at the periphery of the project; See table 4.4.5-3, above.

(c) The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Article 6.

See Articles 3 and 6, above.

(d) The project shall meet the requirements of Article 10 for subdivision review where applicable;

Not applicable. The boundary line adjustments between 80 Colchester Avenue, 27 and 49 Fletcher Place have been finalized. No subdivision will occur as part of this application.

(e) Density, frontage, and lot coverage requirements of the underlying zoning district have been met as calculated across the entire project;

See Table 4.4.5-3 (above.) **Affirmative finding.**

(f) All other requirements of the underlying zoning district have been met as calculated across the entire project;

See Section 4.4.5, above. **Affirmative finding.**

(g) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the DRB

There remain at least two areas of green space that may be utilized for common residential space, i.e. gardens, seating, or other modest recreational use. **Affirmative finding.**

(h) The development plan shall specify reasonable periods within which development of each phase of the planned unit development may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be provided for in other sections of the planned unit development.

The project is not expected to deviate from the standard three year zoning permit period.

Affirmative finding as conditioned.

(i) The intent as defined in Sec. 11.1.1 is met in a way not detrimental to the city's interests; Sec. 11.1.1, Intent

(a) Promote the most appropriate use of land through flexibility of design and development of land;

The project is street infill post catastrophic fire. The redevelopment of this parcel will provide much needed housing in the downtown, while filling a gap in the street wall. **Affirmative finding.**

(b) Facilitate the adequate and economical provision of streets and utilities;

The proposed new structure will be served by existing public utilities and established access to a public way. **Affirmative finding.**

(c) Preserve the natural and scenic qualities of open space;

The site is adjacent to a large public cemetery, which provides a park-like expanse of green space. **Affirmative finding.**

(d) Provide for a variety of housing types;

The proposed triplex will accompany the existing single family residence on site.

Affirmative finding.

(e) Provide a method of development for existing parcels which because of physical, topographical, or geological conditions could not otherwise be developed;

There are no physical, topographical or geological conditions that hinder redevelopment on this existing parcel. **Affirmative finding.**

And;

(f) Achieve a high level of design qualities and amenities.

As proposed, the building design proposes intensifying the density with construction of a single three unit residential building. The building is articulated with differentiated building planes; welcoming building entrances, articulated window trim and Juliet balconies. Customary residential appurtenances like gardens, play areas, or clotheslines are recommended for inclusion, as typical and welcome amenities for attractive residential complexes, particularly within established neighborhoods. **Affirmative finding.**

(j) The proposed development shall be consistent with the Municipal Development Plan

From plan BTV, Comprehensive Plan:

Section 8.1: Remove barriers and disincentives to housing production, and encourage infill/redevelopment of underutilized sites.

Section 1.3: Expand stormwater management measures in new and existing development.

Affirmative finding.

(k) Any proposed accessory uses and facilities shall meet the requirements of Section 11.1.6 below.

Section 11.1.6 Accessory Facilities

(a) A planned unit development may contain a building or buildings intended for non-residential uses, such as but not limited to a community center, recreation facility, and child care center and/or business office if the DRB determines that such use or uses are compatible with the intended principle residential use.

No accessory facilities or communities stores are proposed within the PUD. Not applicable.

II. Conditions of Approval

1. Impact fees shall be paid at least seven days prior to occupancy of the new building or any portion thereof. The following fees, based on the submission materials, are due:

Prior gross area, Free Methodist Church
(Taken from Assessor's Property
database)

SF of Project **2,000**

FY 22: July 1, 2021 - June 30, 2022

Department	Offices & Other Rate	Fee
Traffic	0.717	1,434.00
Fire	0.211	422.00
Police	0.372	744.00
Parks	0.445	890.00
Library	0.000	0.00
Schools	0.000	0.00
Total	1.745	\$ 3,490.00

Proposed new gross area

Based on three floors, each 27'4" x 54' (1475.82 sf per floor)

SF of Project **4,427**

Department	Residential Rate	Fee
Traffic	0.208	920.91
Fire	0.235	1,040.45
Police	0.047	208.09
Parks	0.789	3,493.27
Library	0.488	2,160.60
Schools	1.019	4,511.58
Total	2.786	\$ 12,334.90

Difference: \$
8,844.90

Allocation by
department:

Enter Total
Fee: **\$8,844.90**

Department	Residential Rate	Fee
Traffic	0.208	660.35
Fire	0.235	746.07
Police	0.047	149.21

Parks	0.789	2504.89
Library	0.488	1549.29
Schools	1.019	3235.07
Total	2.786	\$ 8,844.90

2. The occupancy of any dwelling unit is limited to members of a family as defined in Article 13. Not more than four unrelated adults may occupy any unit.
3. Any retaining wall over 3' in height will require review by the City Engineer.
4. **Prior to release of the zoning permit**, an Erosion Prevention and Sediment Control Plan shall be submitted, reviewed, and approved by the Stormwater program.
5. Any change to the existing access will require a curb cut permit from the Department of Public Works.
6. The Parking area shall have appropriate barriers to prevent vehicular trespass onto greenspace and parking lot creep. Such barriers may be curb stops, landscaping, fencing or similar feature and be anchored to prevent relocation.
7. In the Neighborhood Parking District, 1 long-term bicycle parking space is required for every two bedrooms. For this three unit building with 12 bedrooms, 6 long term bike parking spaces are required. The application proposes a bicycle shed for this purpose.
8. Open space or common land shall be assured and maintained as a condition of approval, per Section 11.1.5 (g).
9. While street number identification does not require a sign permit, numerals are restricted to a minimum of 3" and maximum of 10" in height, and the area of the numerals may not exceed two square feet.
10. **Prior to release of the zoning permit**, the applicant shall provide additional information about the size/type of HVAC equipment proposed for the pad to assess any potential adverse impacts, and to assure appropriate screening as required.
11. Development shall observe all applicable building and life safety code as defined by the building inspector and/or fire marshal. Building entrances shall be visible and adequately lit, and intercom systems for multi-family housing are encouraged where possible to maximize personal safety.
12. All new construction is required to meet the *Guidelines for Energy Efficient Construction* pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
13. Unless altered by the DRB, hours of construction are limited to M-F 7:00 am to 5:30 pm, with Saturday hours restricted to interior work. No work shall occur on Sundays.
14. A State of Vermont Wastewater Permit is required. It will be the applicant's responsibility to secure said permit.
15. **Prior to release of the zoning permit**, a letter of adequate sewer/water capacity shall be secured from Burlington Water Division.
16. Standard Permit Conditions 1-15.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.

ELMWOOD TOWNHOUSES

OWNER
PBGC LLC
100 NORTH STREET
BURLINGTON VERMONT

CIVIL / SURVEYOR
RICHARD W. BELL
LAND SURVEYING, INC.
297 SOUTH MAIN STREET
BARRE, VERMONT 05641

GENERAL NOTES:

ZONING INFORMATION		
SPACE	EXISTING AREAS	PROPOSED AREAS
EXISTING RESIDENCE	820 SQ. FT.	820 SQ. FT.
CHURCH AND RESIDENCE I	2,215 SQ. FT.	2,215 SQ. FT.
SHEEDS SHED / MECH PAD	90 SQ. FT.	232 SQ. FT.
DRIVEWAY AND PARKING	3,259 SQ. FT.	3,268 SQ. FT.
NEW BUILDING		1,476 SQ. FT.
SIDEWALKS AND DECKS	589 SQ. FT.	331 SQ. FT.
GREEN SPACE	2,769 SQ. FT.	3,591 SQ. FT.
TOTAL LOT, BUILDINGS, AND HARDCAPE	6,949 SQ. FT.	6,127 SQ. FT.
PROPERTY	9,718 SQ. FT.	9,718 SQ. FT.
TOTAL LOT COVERAGE	71.5%	63.5%

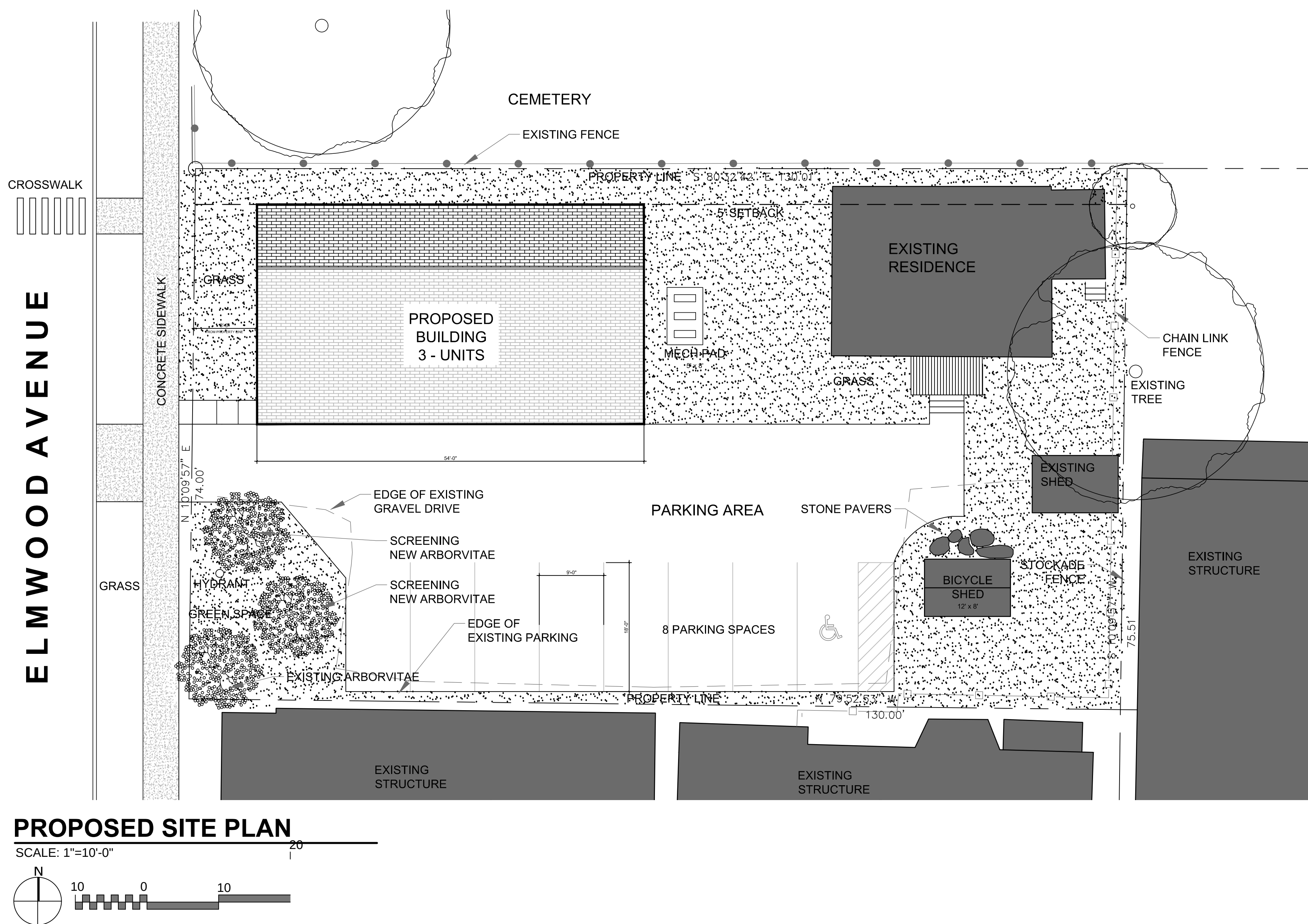
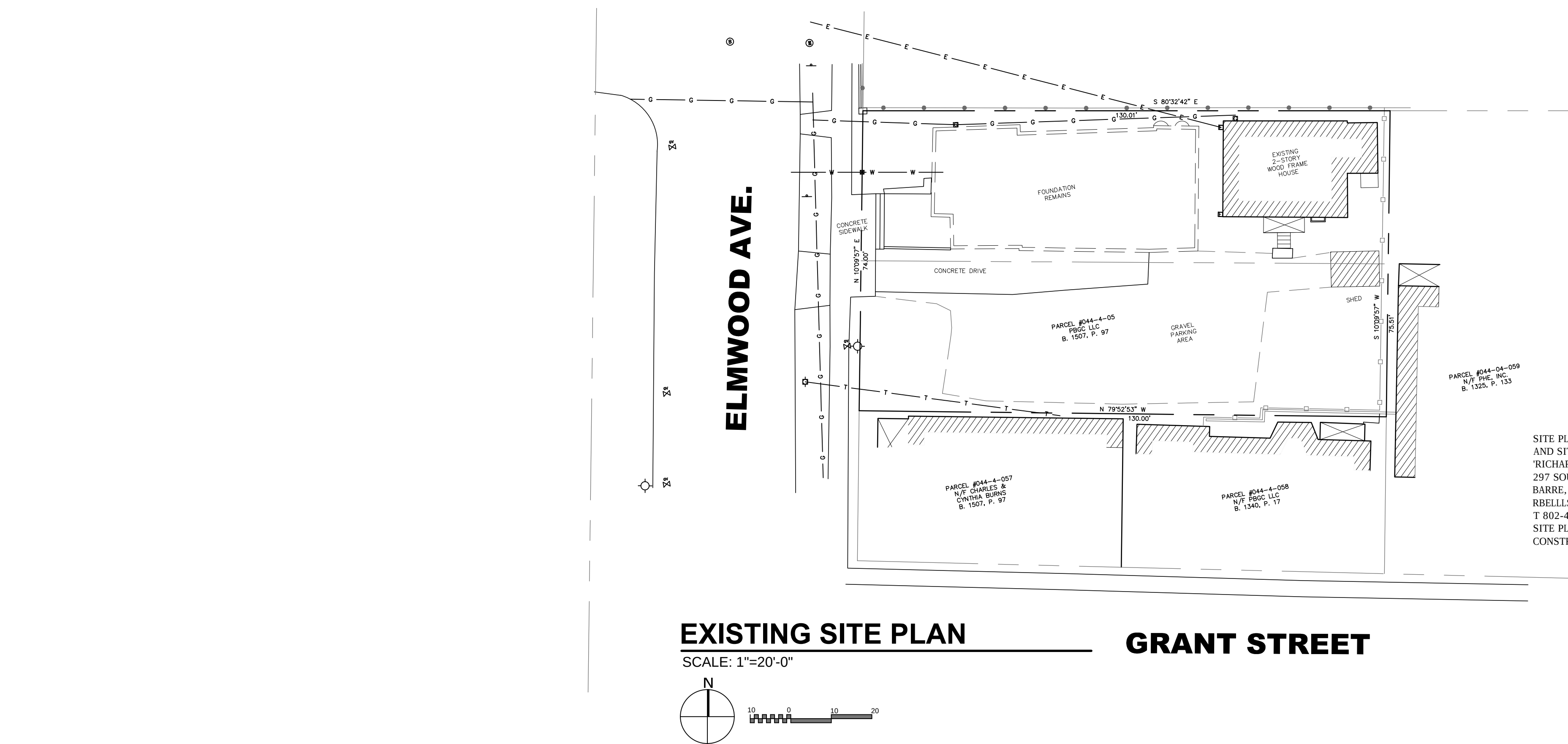
PROFESSIONAL STAMP

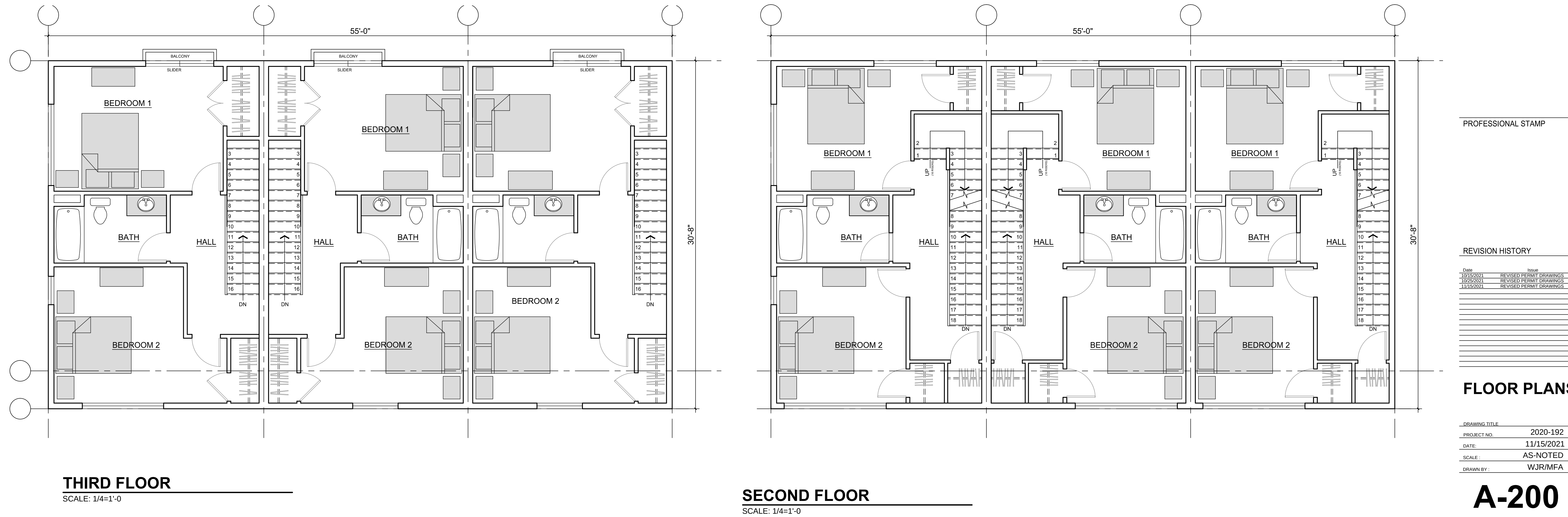
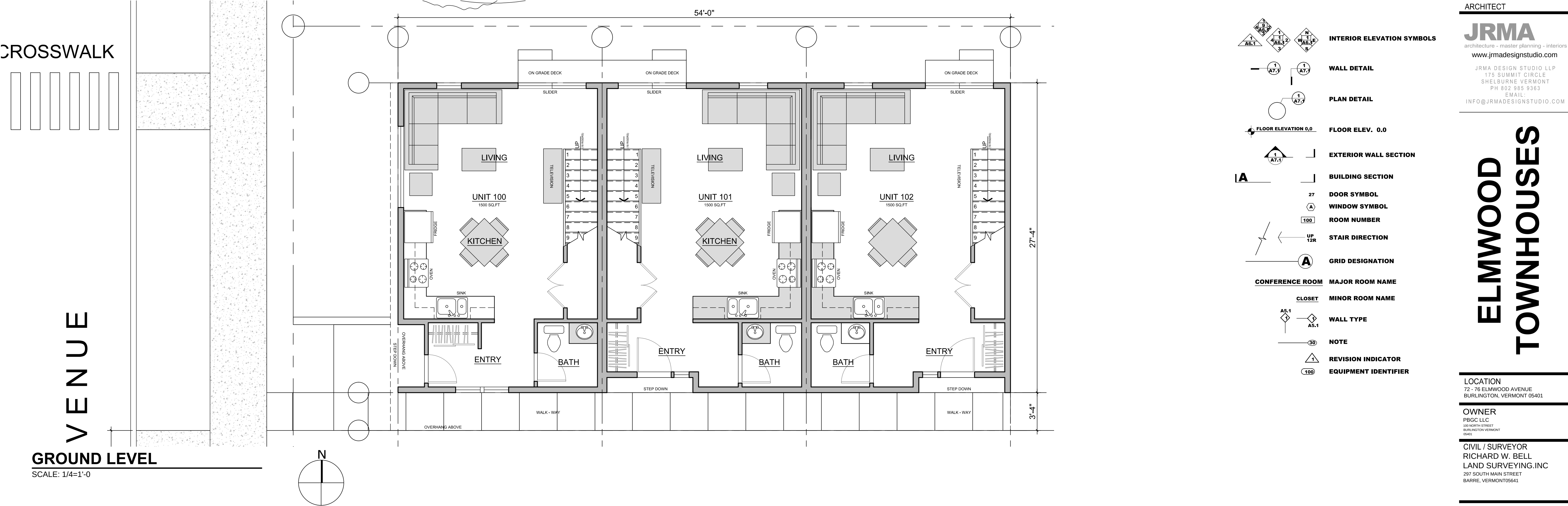
REVISION HISTORY

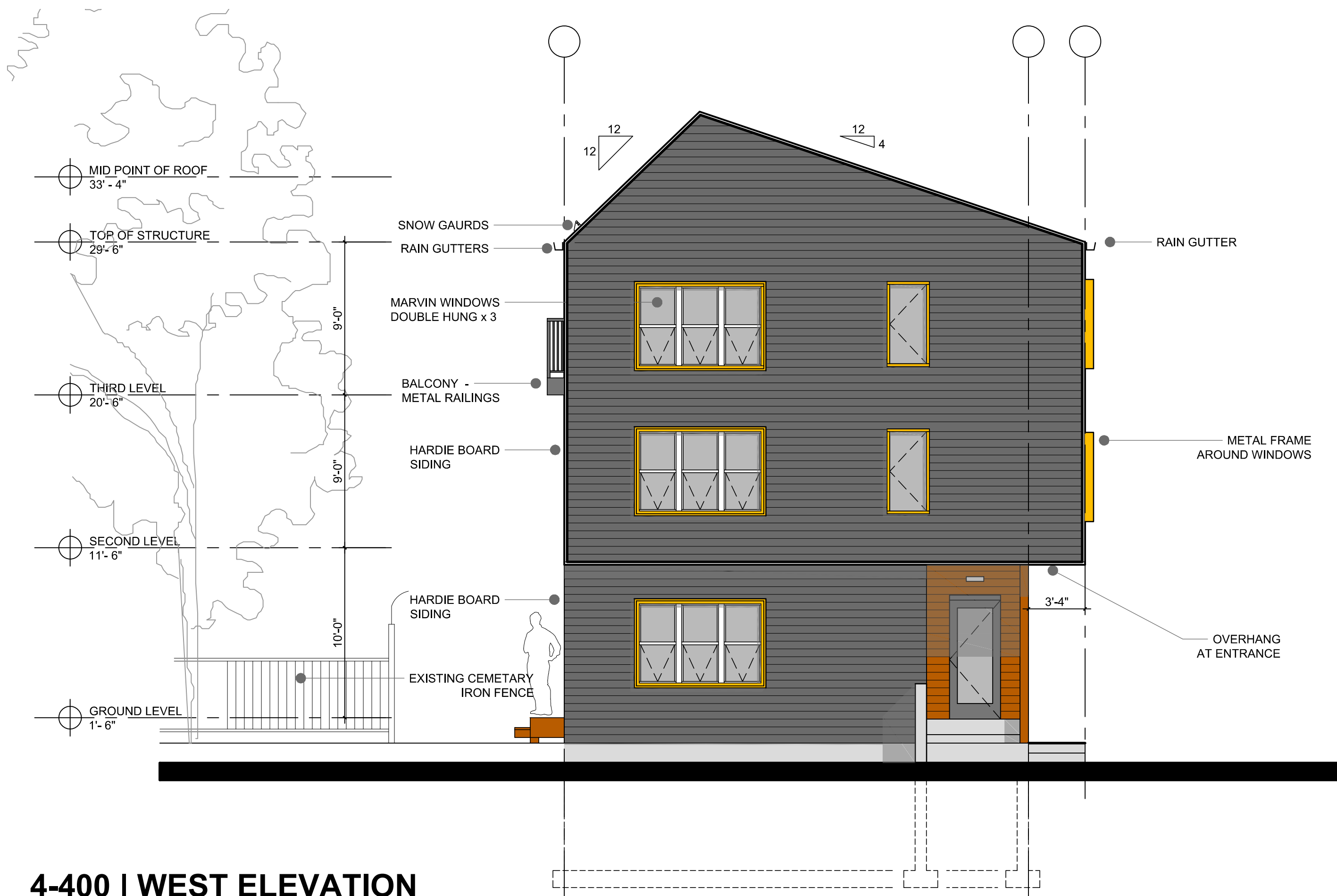
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SITE PLANS

DRAWING TITLE	
PROJECT NO.	2020-1
DATE:	11/15/20
SCALE :	AS-NOTED
DRAWN BY :	WJR/M

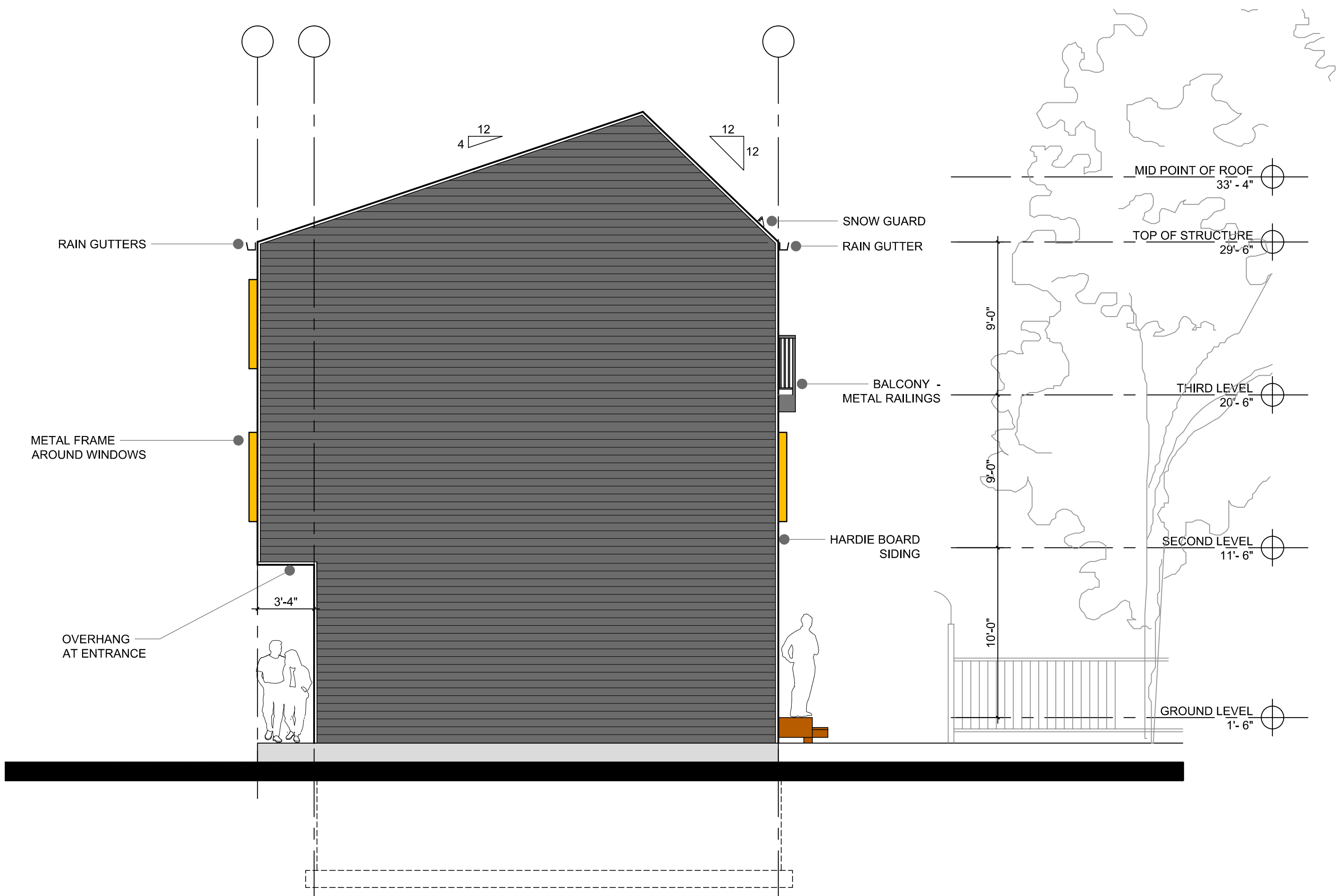






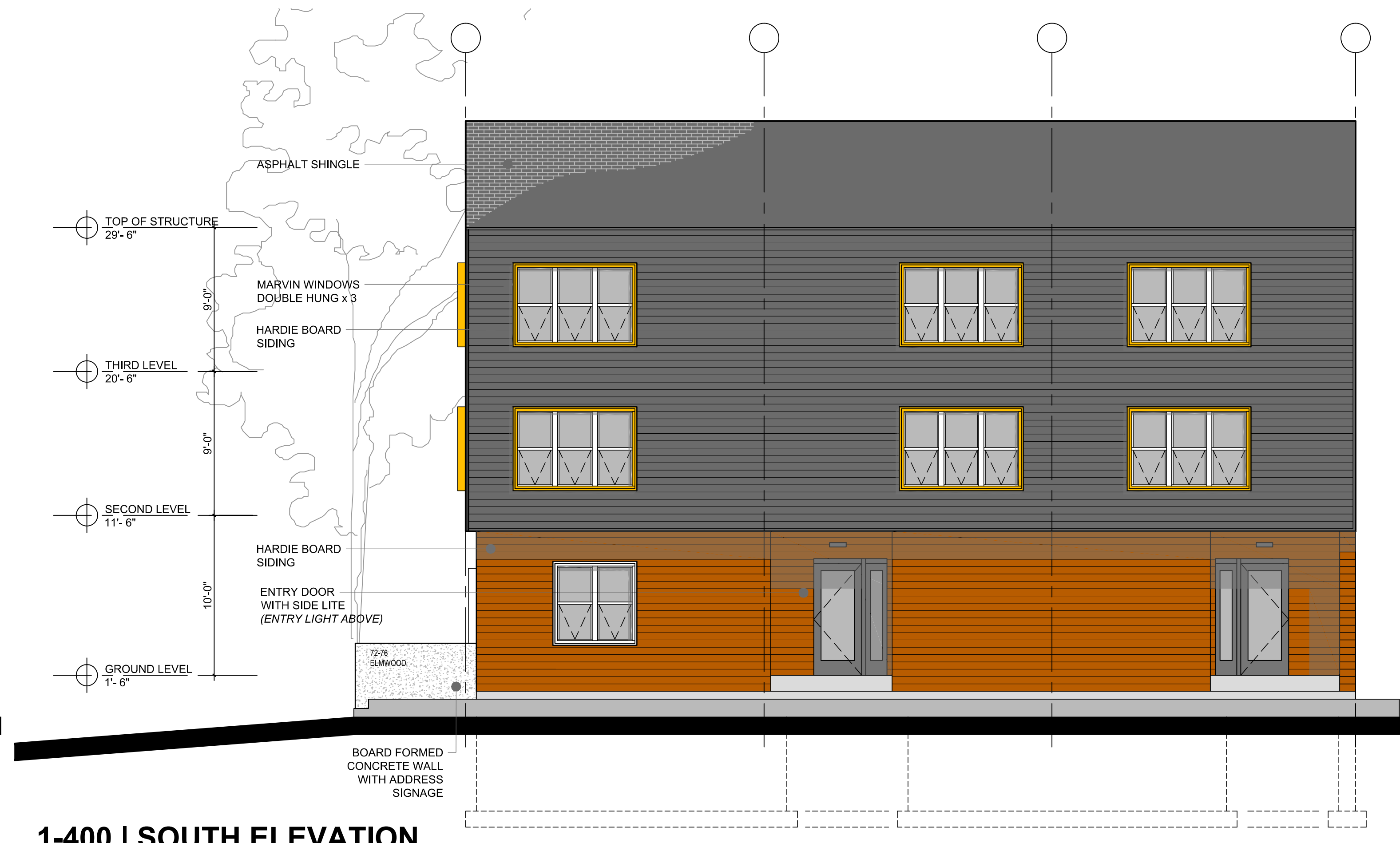
4-400 | WEST ELEVATION

SCALE: 3/16" = 1'-0



2-400 | EAST ELEVATION

SCALE: 3/16" = 1'-0



1-400 | SOUTH ELEVATION

SCALE: 3/16" = 1'-0



3-400 | NORTH ELEVATION

SCALE: 3/16" = 1'-0

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architecture - master planning - interiors

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JRMA DESIGN STUDIO LLP

175 SUMMIT CIRCLE

SHELBURNE VERMONT

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INFO@JRMADESIGNSTUDIO.COM

ELMWOOD TOWNHOUSES

LOCATION

72 - 76 ELMWOOD AVENUE

BURLINGTON, VERMONT 05401

OWNER

PBGC LLC

100 NORTH STREET

BURLINGTON VERMONT

05401

CIVIL / SURVEYOR

RICHARD W. BELL

LAND SURVEYING, INC

297 SOUTH MAIN STREET

BARRE, VERMONT 05641

GENERAL NOTES:

PROFESSIONAL STAMP

REVISION HISTORY

Date	Issue
10/15/2021	REVISED PERMIT DRAWINGS
10/25/2021	REVISED PERMIT DRAWINGS
11/15/2021	REVISED PERMIT DRAWINGS

ELEVATIONS

DRAWING TITLE	2020-192
PROJECT NO.	10/15/2021
DATE:	AS-NOTED
SCALE:	WJR/MFA
DRAWN BY:	

A-400

DESCRIPTION

The HLB6 is a 6-inch ultra-thin LED lens downlight with remote driver / junction box suitable for new construction and remodel applications. Field selectable color temperature and high color rendering provide excellent color performance. Simplified installation in drywall or suspended ceilings eliminates recessed cans saving time and money. Installed from below the ceiling in as little as 2" plenum height, can be used in direct contact with insulation and is airtight. Use for general area lighting in low to medium height ceilings where energy savings, long life and economy are required.

SPECIFICATION FEATURES

HOUSING

- Die cast aluminum mounting frame with integral flange provides passive thermal cooling achieving L70 at 50,000 hours in IC and non-IC applications
- High impact diffuse lens provides shielding to the light guide minimizing spillage.

GASKET

- Closed cell gasket achieves restrictive airflow and wet location listing without additional gaskets or caulking

OPTICS

- Precision acrylic light guide organizes source flux into wide distribution with 1.32 spacing criteria, useful for general area illumination

LED ARRAY

- Plurality of mid power LED's provides a uniform source with high efficiency and long life
- Available in 90 CRI minimum, R9 greater than 50 and color accuracy within 4 SDCM providing color uniformity
- Field selectable color temperature, select 2700, 3000, 3500, 4000 or 5000 K CCT
- Meets ENERGY STAR® color angular uniformity requirements, deviation is less than 0.005 u' v'

REMOTE DRIVER / JUNCTION BOX

- Aluminum driver / junction box with captive hinged junction box cover
- Listed for (6) #12 AWG 90° C splice conductors, 2-in, 2-out plus (2) ground
- (2) 1/2" conduit pry-outs
- (2) Slide-N-Side™ non-metallic (NM) wire traps allows wiring outside the box

HALO

Catalog #	Type
Project	
Comments	Date
Prepared by	

HLB6

6-inch Ultra-thin LED Lens Downlight with Remote Driver / Junction Box

Up to 1100 Lumens Field Selectable CCT

5 selectable colors

2700K • 3000K • 3500K 4000K • 5000K

ENERGY DATA

Lumens	900 Series
Input Voltage	120V
Input Current	132 (mA)
Input Power	16.0 (W)
Efficiency	66 (LPW)
Inrush (A)	2.1 A @ 14mS
THD	≤ 20%
PF	≥ 0.90
T Ambient	-30° ~ +40°C
Sound Rating	≤ 25dBA

COMPLIANCE

- cULus certified type IC suitable for direct contact with air permeable insulation
- Not recommended for use in direct contact with spray foam insulation, reference NEMA L5D02-2013
- Wet location listed
- Airtight per ASTM-E283-04
- Suitable for use in clothes closets when installed in accordance with the NEC 410.16 spacing requirements
- EMVRF emissions per FCC 47CFR Part 15 consumer limits
- Contains no mercury or lead and RoHS compliant
- Photometric testing in accordance with IES LM-79-08
- Lumen maintenance projections in accordance with IES LM-80-08 and TM-21-11
- Can be used for State of California Title 24 high efficacy LED compliance under JAB, reference Modernized Appliance Efficiency Database System (MAEDSS) for 2016 JAB High Efficacy Lighting
- ENERGY STAR® certified, reference "Certified Light Fixtures" database

WARRANTY

- Five year limited warranty, consult website for details. www.eaton.com/lighting/legal

OPTIONAL MOUNTING FRAME

- Pre-galvanized steel mounting frame locates fixture fittings during electrical rough in and provides cutout guidance for drywall contractor
- Provides tool-less attachment of remote driver / junction box

TD518318EN

August 25, 2018 3:28 PM

ELMWOOD TOWNHOUSES

LOCATION
72 - 76 ELMWOOD AVENUE
BURLINGTON, VERMONT 05401

OWNER
PBGCC LLC
300 NORTH STREET
BURLINGTON VERMONT 05401

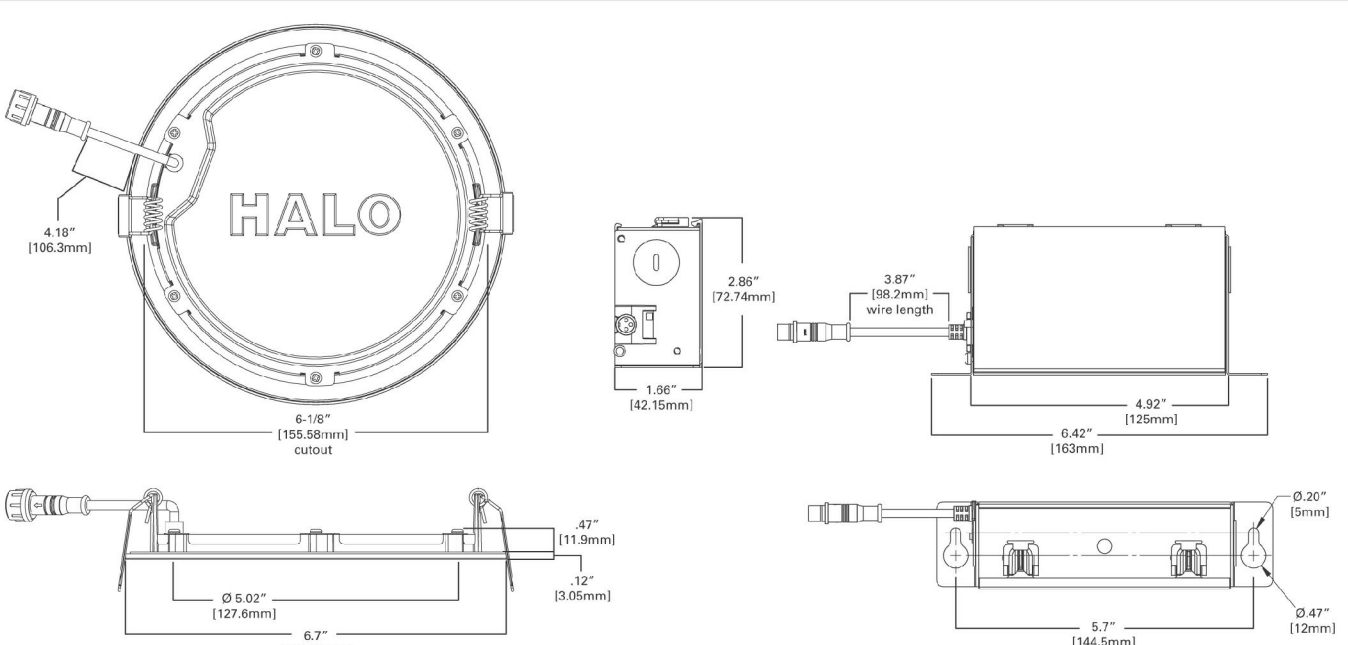
CIVIL / SURVEYOR
RICHARD W. BELL
LAND SURVEYING, INC
297 SOUTH MAIN STREET
BARRE, VERMONT 05641

GENERAL NOTES:

HALO

DIMENSIONS

HLB6 Series



ORDERING INFORMATION

Product	Lumens	CRI / CCT	Driver	Finish	Packaging	Accessories
HLB6	6-inch ultra-thin LED lens downlight with remote driver / junction box	90-900 lumen (nominal)	SPS-90 CRI minimum, field selectable 2700, 3000, 3500, 4000 or 5000 K CCT	1E ~ 120V 60Hz, LE & TE phase cut 5% dimming	WW ~ matte white flange	Re: recyclable 4-color unit carton suitable for point of purchase merchandising display

PHOTOMETRIC DATA

HLB6099FS1EMWR-3000K

Luminaires lumens	1061
Input watts	16
LER (LPW)	66.3
Spacing Criteria	0-180 1.31 90-270 1.31 Diagonal 1.41
Beam angle (degrees)	112.2
Field angle (degrees)	161.3
Zonal lumen	Lumens % Lumens
0-30	294 27.7
0-40	486 45.8
0-60	851 80.2
0-90	1061 100

Color Metric Summary - 3000K

TM-30-15	R1 = 90.9 R2 = 106.7
CR/ICE	Ra = 94.1 R9 = 68.4

CCT - Range of 2700K - 5000K

110°

Product Specifications

PRODUCT SPECIFICATIONS

Lumens	1061
Watts	16
Lumens Per Watt (Efficacy)	66.3
Color Accuracy (CRI)	92
Light Color (CCT)	3000K

Color Temperature (CCT)

2700K 3000K 4000K 5000K

6in HLB

CCT	Lumens	Power (W)	LPW
2700K	1037.3	16	64.8
3000K	1061	16	66.3
3500K	1078.9	16	67.4
4000K	1094.9	16	68.4
5000K	1103.4	16	69

Notes

1-21 Highway 76 South
Pawtucket, RI 02861
P: 732-885-4300
www.eaton.com/lighting

Specifications and dimensions subject to change without notice.

RENDERING FROM ELMWOOD
NOT TO SCALE

ARCHITECT

JRMA

architecture - master planning - interiors

www.jrma-design-studio.com

JRMA DESIGN STUDIO LLP
175 SUMMIT CIRCLE
SHELBURNE VERMONT
PH 802 985 9363
EMAIL:
INFO@JRMADESIGNSTUDIO.COM

ELMWOOD TOWNHOUSES

LOCATION
72 - 76 ELMWOOD AVENUE
BURLINGTON, VERMONT 05401

OWNER
PBGCC LLC
300 NORTH STREET
BURLINGTON VERMONT 05401

CIVIL / SURVEYOR
RICHARD W. BELL
LAND SURVEYING, INC
297 SOUTH MAIN STREET
BARRE, VERMONT 05641

GENERAL NOTES:

PROFESSIONAL STAMP

REVISION HISTORY

Date	Issue
10/15/2021	REVISED PERMIT DRAWINGS
10/25/2021	REVISED PERMIT DRAWINGS
11/15/2021	REVISED PERMIT DRAWINGS

RENDERING & SPECS

DRAWING TITLE	
PROJECT NO.	2020-192
DATE	11/15/2021
SCALE	AS-NOTED
DRAWN BY	WJR/MFA

A-900

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
vacant, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: December 21, 2021
RE: ZAP-21-11; 164 North Willard Street

=====

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of administrative zoning denial of zoning application 21-0749FC to install a fence and related gates. Also, consideration as to whether subsequent appeal of administrative determination was properly filed.

Overview:

The appellant is seeking approval to install a fence. The zoning application for the requested fence was denied and has been appealed.

This appeal has been pending since June 4, 2021 and was initially scheduled for DRB hearing July 20, 2021. In an effort to resolve the underlying matter as to the permit denial, the appellant requested deferral of the hearing in order to obtain an administrative determination as to the pre-existing nonconforming status of the gravel strip along the southern edge of the paved driveway. Much of the time since the July deferral has been spent working on the determination, which was administratively issued November 12, 2021.

At this point, the appeal will time out (expire) unless an extension is granted by the DRB. The appellant is seeking an extension.

A second matter for DRB consideration is whether the appellant's appeal of the administrative determination was properly filed. No consideration of the merits is requested at this time – just whether the appeal has been filed properly.

Recommendation: Grant the time extension for the fence appeal and dismiss the appeal of the administrative determination based on the following findings:

I. Findings:

Time extension for fence appeal:

Sec. 3.2.5, Completeness of Submission, Administrator's Action:

This section allows deferral of action on complete applications for up to six months. For items subject to DRB review, the six month time limit may be extended up to two times. Each extension is limited to three months. As noted above the fence appeal was completed June 4, 2021. The appellant requested extension in November, 2021. If extended, and the determination appeal is found to be proper, the two matters will be combined into one appeal with a hearing on the merits likely in early 2022. An initial three-month extension is warranted.

Appeal of administrative determination:

Sec. 12.2.2, Appeals of Administrative Officer Decisions:

An appeal of an administrative decision must be filed with the administrative officer within 15 days of the decision. This criterion (Notice of Appeal) specifies what must be included in an appeal.

An appeal must be taken within fifteen (15) days after the date of decision or act appealed from, and is taken by filing a written notice of appeal with the administrative officer and the DRB. Such notice of appeal shall include:

1. the name and address of the appellant;
2. a brief description of the property with respect to which the appeal is taken;
3. a reference to the regulatory provisions applicable to that appeal;
4. the relief requested by the appellant; and,
5. the alleged grounds why such requested relief is believed proper under the circumstances.

A notice of appeal shall be considered filed with the administrative officer and the DRB when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff; and,

Whenever an appeal is filed, the administrative officer shall forthwith transmit to the DRB all the papers constituting the record relating to the action appeal from.

The administrative determination request was made complete in July 2021. Following months of review and correspondence with the applicant, an adverse administrative decision was issued October 8, 2021. This determination was mailed via certified mail to the applicant and posted in the online permit system along with notice of the 15-day appeal period. The applicant sought reconsideration of that decision but also filed a written notice of appeal and payment within 15-days of the decision. The request for reconsideration was granted, and the applicant was notified of that October 27, 2021. The appeal of the initial determination became moot, and the appeal was mailed back to the applicant.

Following consideration of additional evidence provided by the applicant, a new adverse administrative determination was issued November 12, 2021. It was mailed to the applicant via certified mail and posted in the online permit system along with notice of the 15-day appeal period.

Through the comments field in the online permit system, the applicant commented November 29, 2021 “Ps. Make sure this is appealable.” Staff commented back the same day “This administrative determination is appealable. Today is the last day of the appeal period.” Day 15 of the appeal period fell on Saturday the 27th, so an appeal could be filed through Monday the 29th. The applicant commented again on November 29 after the close of business “... Please confirm I will be able to appeal. I sent an email about this as well.” The applicant’s email, dated November 26, 2021 reads “Please make sure I’m able to have a DRB hearing on this decision.” Staff commented back on November 30, 2021 “As I mentioned yesterday, the admin decision is appealable. Yesterday was the last day to file an appeal.”

In light of the pending fence appeal and its relationship to the determination, staff had offered to combine an appeal of the determination with that of the fence. The appellant did not state whether he would like to do that or not. In any event, no part of the foregoing correspondence is an appeal. It can reasonably be understood as inquires by the applicant as to whether or not the decision could be appealed to DRB. The question was asked by the applicant and answered by staff.

II. Recommended Motion:

Grant the requested extension for the fence denial appeal and dismiss the administrative determination appeal.

• Oct 8, 2021 at 3:39 pm

Scott Gustin

Determination issued and within 15-day appeal period.

Remove Comment • Oct 27, 2021 at 5:04 pm

Scott Gustin

Granted reconsideration request. Please provide any additional info for this determination in the next 10 days. I'll follow up with the city attorneys office as to the effect of so-called DRB 1 decision.

Remove Comment • Nov 12, 2021 at 7:50 pm

Scott Gustin

Reconsideration findings posted and within 15-day appeal period.

• Nov 29, 2021 at 8:15 am

Luke Purvis

Ps. Make sure this is appealable. It is really upsetting that you will not respect me enough to explain To me how no violation = on going violation

• Nov 29, 2021 at 9:36 am

Scott Gustin

Good morning Luke. This administrative determination is appealable. Today is the last day of the appeal period.

In all of our correspondence about this matter, I have never said that no zoning violation equals a zoning violation. This seems to be your take on the city's position; however, it does not line up with the explanations I've provided.

• Nov 29, 2021 at 5:41 pm

Luke Purvis

Scott, please confirm I will be able to appeal.I sent an email about this as well. The decision was no violation...Jeanne's decision letter was a notice of non violation....so you are going to have to explain your logic. Would you mind doing that? I have asked a bunch of times. How does no violation equal on going violation to you? If Jeanne has

found a violation or provided evidence that the structure was discontinued or increased, then sure this would be a difference in opinion about whether the DRB decision to omit the language to restore to green space was purposeful. But this all started with a notice of non violation. So it was improper for Jeanne to include any mandate to remove a structure without identifying a violation of the structure. The drb recognized this error and removed the enforcement related to her flawed logic regarding the structure. Would you also provide me the section of the ordinance that allows the city to remove a structure without issuing a notice of violation?

• Nov 30, 2021 at 2:20 pm

Scott Gustin

Hi Luke. As I mentioned yesterday, the admin decision is appealable. Yesterday was the last day to file an appeal. I've requested copies of the in Limine documents from Attorney Sturtevant.

• Nov 30, 2021 at 2:50 pm

Luke Purvis

Scott, I requested the appeal yesterday via this channel and via email over the weekend. So are you able to explain the city position now? I asked very clearly to explain how no violation = on going violation which is part of your fence permit denial decision. Can you please explain what is going on? I believe that decision represents the city's position, so it would be really helpful if you could explain this contradiction. If the city has a new and different position can you explain it? Why is it so difficult to get these simple answer out of you? I don't need the entire motion. I need the the parts that you are referencing in your decision....You should have that readily available since you used it to make your decision. Please try and answer questions with substance and honesty. This is really ridiculous to have you dance around the substance and change the English language to suit your intentions. Come on man. Pick it up. Treat people with respect by answering their questions. To be clear, just because you responded today does mean you addressed my questions.

• Dec 1, 2021 at 5:37 pm

Scott Gustin

Hi Luke. You requested that I confirm the administrative determination is appealable and I did confirm that. I don't see anything in your comment or in your separate email

stating that you are actually appealing the determination.

Clearly, you think I'm avoiding answering your question, yet, as far as I can tell, I have answered. Nowhere have I stated that no violation equals a violation. The problem has been and remains the southern strip of gravel alongside your paved driveway. Lot coverage and setback noncompliance. Yes, I understand that you feel it is legitimate. You've been afforded due process rights and months of time to build your case that its legitimate.

• Dec 1, 2021 at 6:10 pm

Luke Purvis

Scott, my comments were to appeal this decision and to ensure I was able to appeal this decision.stop playing games with the English language. Thank you. They were clear. I say clearly make sure this decision is appealable. That fence permit says on going violation . No where is there a decision that says I have a violation related to a structure determination. That is what I am asking for clarification on, why are you not able to explain this in English? Clearly Jeanne did not possess evidence the structure was discontinued, she took picture of structure to document no parking....so her methodology and evidence does not support your decision.

• Dec 2, 2021 at 3:39 pm

Scott Gustin

Hi Luke. I've addressed your questions and points a number of times. You clearly think that I have it wrong. Due process involves appeal rights to argue your case to the Development Review Board and then to the courts. You did not actually file an appeal. I have offered to combine an appeal of this determination with your pending fence appeal. You did not tell me that you wish to do that. I have read and re-read your correspondence. I recall you were hesitant with doing that and may want to pursue this separately. Remember that all of this could be remedied by simply converting the subject gravel area to green space.

• Dec 2, 2021 at 5:33 pm

Luke Purvis

Scott, asked on Monday to preserve my right to appeal. That was the last day of the appeal period. That was to ensure I could appeal this with the fence permit. Are you telling me I didn't use the magic words to appeal? What are those magic words? I asked

to appeal this decision via email and comments on Monday the 29th and again on Tuesday the 30th.

- Dec 2, 2021 at 5:36 pm

Luke Purvis

Scott, I sent money in on this appeal during the original decision. That made it clear I intended to appeal this decision as well. Please acknowledge my right to appeal this decision based on the paper work and check I submitted and the email and multiple posts on his decision on that ask to preserve my right to appeal Thank you

- Dec 2, 2021 at 5:44 pm

Luke Purvis

Scott, I'm very confused about the status. This decision will be appealed at the same time as the fence permit. I asked to preserve my rights to appeal this, I sent in money and filed an appeal form during the original decision. It appears you have closed this for some reason despite my request to preserve my ability to appeal this decision

- Dec 2, 2021 at 5:52 pm

Luke Purvis

Scott, it was my understanding this was being rolled into the fence permit appeal...I had no need to resend the check I had already sent because my fees for the fence permit appeal would cover this, that is why I asked to preserve my right to appeal this decision. It was my understanding that was sufficient to ensure to appeal this decision. I don't believe the current permit status honors my request to preserve my right to appeal

- Dec 2, 2021 at 7:13 pm

Luke Purvis

Scott, please attach the formal appeal I submitted including 250\$ check to this record. That should clear up your confusion. My formal appeal was well timely as it was submitted on 10/22/2021. Thank you

• Dec 3, 2021 at 2:08 pm

Scott Gustin

Hi Luke. You've got a pending appeal as to the fence application denial. I will include your correspondence as to appealing this matter for the DRB's consideration as to whether your appeal is timely and complete. I agree that you sent in an appeal of the original determination. That; however, became moot when I agreed to reconsider the decision, review additional evidence, and then issued a subsequent determination.

• Dec 3, 2021 at 2:16 pm

Luke Purvis

Hi Scott, was any communication sent to me that the appeal became moot? That was most certainly not my understanding. I communicated to you my desire to appeal this decision based on my understanding that my appeal was legitimately in place. Please confirm if any communication occurred indicating my appeal rights had been lost. Thank you.

• Dec 5, 2021 at 10:21 pm

Luke Purvis

Scott, I'm posting this in the administrative appeal period section because I would like to document on the record the events which have transpired that have lead you to conclude my appeal to this permit to be untimely. I submitted an appeal with fee on 10/22 related to this permit so that I could preserve my rights to a DRB hearing and allow neighbors to testify against administrative decisions that place the gravel inception of the 2' strip at 1983. Per your recommendation, I asked for reconsideration of the initial decision as a way to allow you and Kim to connect given some upcoming time off by one of you and while I investigated the feasibility of carbon dating the gravel/strata layers like you suggested. Within the reconsideration appeal period, I then requested that the Fence Permit be extended for another 3 months so that those neighbors who intend to testify about the gravel predating 1883 for the 2' strip determination wouldn't be inconvenienced by joining in with the fence permit DRB timeline (like we had discussed multiple times over phone), smack dab in the middle of Holiday traditions. This was a request you required to administratively link the two permits to the same DRB appeal and not run out of time for the fence permit appeal. I contacted you via email and via online portal multiple times to preserve my appeal to the DRB even during the reconsideration timeline. You did not tell me, that my request to appeal the

reconsideration did not include the magic phrase that actually allows the appeal to occur. Actually, you did not respond in that permit from 11/26, the first time I asked via email to preserve my appeal, until after 5pm, 11/29 - after business hours of the last day to appeal. -Even at that point you did not tell me that I had not re-formalized my appeal correctly. A couple days after 11/29 you informed me that I missed my timely appeal. My 10/22 appeal and check was returned to me via unmarked mail while my family was away during the week of Thanksgiving. I did not request that my appeal be returned or that my guarantee for a DRB hearing on this matter be relinquished. The city staff did not inform me my appeal was being returned and was no longer valid. I did not learn this until 12/2 - after the reconsideration appeal period had expired. On a personal level, I'm mostly saddened that you, as my project manager of this permit, did not inform me until too late that I did not say the words exactly as required to avoid this state of 'untimely'. I can't for the life of understand why you would return my appeal during Thanksgiving week after I informed you I would be out of town for the entire Thanksgiving week - directly after a week of time off by you. By placing me in the status of 'untimely' I believe you did not act in good faith as my project manager on this permit, and that you allowed me to believe my appeal would be rolled into the fence permit, only to say I actually missed a deadline. As a resident, I can see how these types of administrative oversights can occur. I don't want to believe there is bad faith behind them. But, if you insist that my appeal is untimely, I must turn to the facts above to protect me from unwarranted administrative tactics employed against my appeal rights and a project manager who seems to have guided my project into a state of an untimely appeal to my detriment. Thanks, Luke

-----Original Message-----

From: Luke Purvis <lpurvis78@yahoo.com>

Sent: Friday, November 26, 2021 4:05 PM

To: Scott Gustin <SGustin@burlingtonvt.gov>

Subject: 164 north willard. 2' strip determination

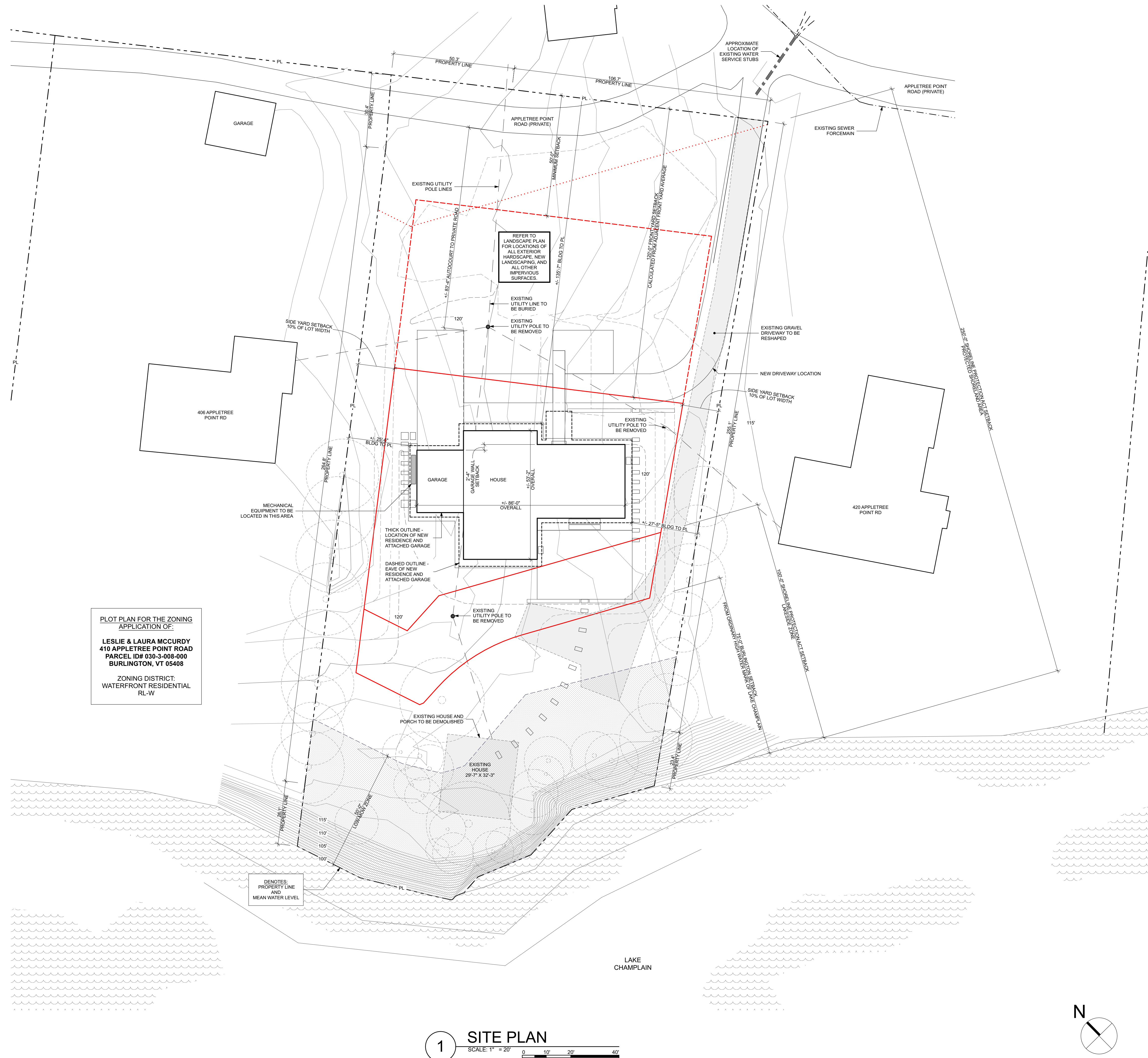
[WARNING]: This email was sent from someone outside of the City of Burlington.

Please make sure I'm able to have a drb hearing on this decision Thanks Luke

Sent from my iPad



COVERAGE CALCULATION	
EXISTING:	
HOUSE	953 SF
APPLETREE POINT RD	1,122 SF
DRIVE	2,797 SF
TOTAL	5,163 SF
LOT SIZE	46,946 SF
EXISTING COVERAGE =	11 %
PROPOSED:	
HOUSE (ROOF AREA)	4,016 SF
APPLETREE POINT RD	1,122 SF
DRIVE / AUTOCOURT	2,797 SF
HARDSCAPING	1,236 SF
CONCRETE WALLS	
BLUESTONE RISERS	
BLUESTONE PAVERS	
STONE DUST	
SLAB STONE PAVERS	
DRIP STONE	
TOTAL	10,331 SF
LOT SIZE	46,946 SF
PROPOSED COVERAGE =	22 %



ELIZABETH HERRMANN
ARCHITECTURE + DESIGN

29 NORTH ST
BRISTOL VT 05443
EHARCHITECT.COM
INFO@EHARCHITECT.COM
802 453 6401

**MCCURDY
RESIDENCE**

410 APPLETREE PT
BURLINGTON, VT

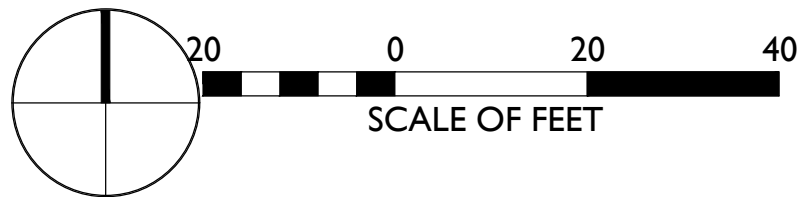
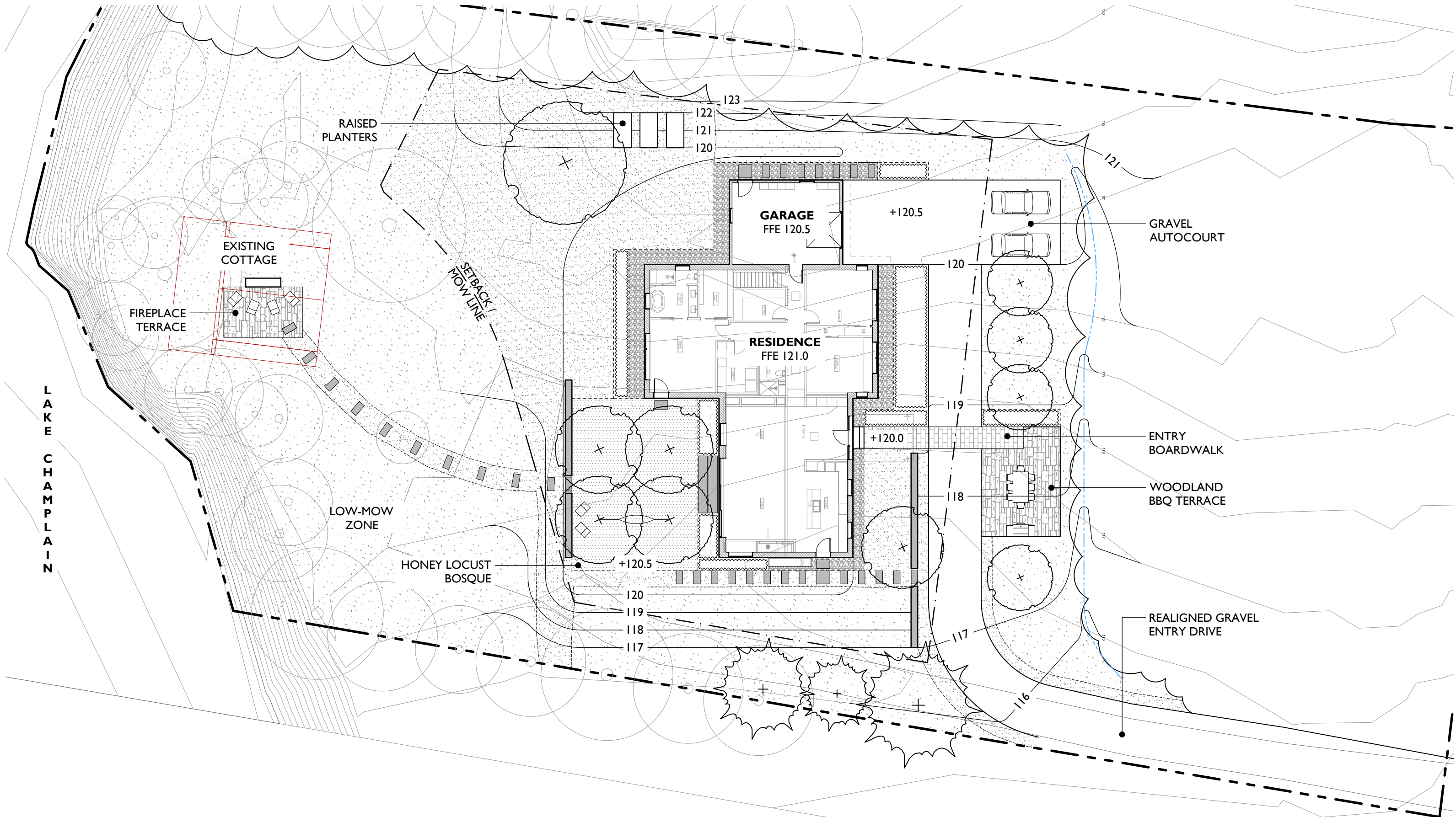
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[illegible]

SITE PLAN

A-001



MCCURDY RESIDENCE

CONCEPTUAL SITE PLAN

JOB NO. 21-020

SCALE 1"=20'

DATE 12.14.2021

© WHLA ALL RIGHTS RESERVED 2020

From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Monday, December 20, 2021 12:45 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: Joseph Obuchowski <jobuchowski@btvlaw.com>; Christina <page38@hotmail.com>
Subject: Re: DRB- 12_21_21 submission

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Scott,
Would you also post this email thread to illustrate definitions between inquiries and directives/requests.
Thanks Luke

Sent from my iPad

On Dec 20, 2021, at 12:34 PM, Scott Gustin <SGustin@burlingtonvt.gov> wrote:

Got it. I'll post shortly.

Scott Gustin, AICP, CFM
Principal Planner & Asst. Administrative Officer
Dept. of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
(802) 865-7189

From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Monday, December 20, 2021 8:47 AM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: Joseph Obuchowski <jobuchowski@btvlaw.com>; Christina <page38@hotmail.com>
Subject: Fwd: DRB- 12_21_21 submission

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Scott,
Are you able to attach these documents?
Thanks,
Luke

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

Dear DRB,

Thank you for your time and consideration this evening.

Requests:

1. Please extend ZAP-21-11 for 3 months so that I may include the appeal to ZP-21-560 in an upcoming combined DRB deliberative hearing.
2. Please consider the appeal to ZP-21-560 timely, so that it may be included in a combined hearing for ZAP-21-11.

Introduction:

I believe my appeal for ZP-21-560 – Determination for Non-Conforming Status of a Gravel Structure has been improperly dealt with. I hope to demonstrate that my appeal is timely today.

If you agree with me, then long term neighbors will have an opportunity to testify to history at my property during the 1960s and 1970s at the combined hearing for both appeals in early 2022. This history has the potential to clear up a long standing zoning dispute, by demonstrating a legally preexisting non conformity.

Background:

My family recently concluded 7 years of litigation with the city. Upon conclusion, we believed our zoning woes were behind us and we were very much looking forward to peace after the back loaded and cascading litigation we had experienced. But, we need to install a fence and submitted ZAP-21-11.

The extension request for ZAP-21-11, and timely appeal question for ZP-21-560 in front of you today represent a burgeoning zoning process to install a fence that will enclose our yard. We have a toddler, an energetic dog, and our family will grow in spring of 2022. The fence will provide important protections and peace of mind from the busy streets on either side of our property.

The appeal to the administrative denial to ZAP-21-11 questions why there is a DRB decision from April 2015¹ that states there is “no violation” and further states “the complaint is unsubstantiated” about a complaint that indicated, in part, a parking area was created. This is the same area that Mr. Gustin describes as an ‘ongoing violation’ in the DRB staff report² for ZAP-21-11 from July 2021. Later, in the same report Mr. Gustin again glosses over the discordance, that a DRB decision without a violation for lot coverage is being used as basis to remove lot coverage. He states “Very simply, the fence application cannot be approved until such time as an acceptable site plan is provided. That acceptable site plan is predicated on removal of the unpermitted southern parking area.” I very simply don’t understand why I would need to remove a structure when the DRB has already issued a decision on the area based on the evidence they were presented.

ZP-21-560 is a determination that documents preexisting non-conforming history of the gravel structure on the same strip of land³ cited by staff to deny ZAP-21-11. If ZP-21-560 is approved, the approval would

¹ DRB 2015 Decision – Background, Findings and Motion Section Excerpts. Full report also provided.

² DRP Staff report Excerpts - 7/20/21 for Appeal of Administrative denial to ZP-21-11 Fence Permit. Full report also attached

³ Screenshot of a Timeline history of the structure in question

resolve ZAP-21-11 and allow fence installation for my family's security. The approval would bring closure to a 7 year dispute with the city and provide peace to my family from never ending litigation.

The DRB may be surprised to hear that in the past 7 years of working with the city on zoning issues, that most of the time and energy expended by the city has been litigating to prevent legally preexisting non-conforming history from being heard. That legal history to this area that I had found, has never been considered for merit. Time and time again Attorney Sturtevant has submitted successful motions to exclude the legal history. So today, it is not surprise to again experience city staff employing tactics to exclude the full story, this time by calling my appeal untimely.

Timeliness Argument:

I submitted my appeal and fee for ZP-21-560 on 10/22/21. The reason for the appeal was to request a deliberative hearing to allow DRB members to see and hear firsthand from neighbors that observed the structure prior to the date the city acknowledges. Some of those neighbors will testify the structure existed prior to 1973, which according to Mr. Gustin gives the structure legal non-conforming status.

Early in the administrative decision portion of ZP-21-560, Mr. Gustin, identified 'evidence to the contrary' by cherry picking a single sentence from an affidavit written for other purposes; to respond to the complaints a neighbor had been threatening to submit for a year unless I gave him private land rights. At that time, the Mr. Cleary, the complaining neighbor, had indicated the gravel in question was not an issue for him⁴. This affidavit could not address code enforcement findings as they had not been issued yet. The BCE investigation was in its infancy. When the city investigation raised zoning allegations outside of the scope of original neighbor's complaint, that affidavit became insufficient to respond to city allegations. The health of the elderly previous owner significantly declined during this same time period and so could the affidavit was not updated. That is why long term neighbors now fill in the gap.

Mr. Gustin has indicated by City Policy⁵, he is required to administratively deny the permit if he finds there is "evidence to the contrary". We have discussed how the implementation of the policy conflicts with the burden of proof for "a preponderance of the evidence". I have understood the appeal would be necessary without a magic bullet solution because of this policy. I submitted the appeal because of this policy.

A few days before submitting the appeal for this permit, I also requested a reconsideration for the decision per a suggestion from City Attorney Sturtevant and Mr. Gustin to finesse more time into the decision. Mr. Gustin had asked about a potential magic bullet solution to date when the lowest gravel strata layer of the structure was laid using technology like carbon dating. With a reconsideration I could investigate if this technique was possible. The reconsideration also would allow time for City Attorney Sturtevant to clarify the city's position on the fence permit appeal. There seemed to be no downside to the reconsideration. I agreed to it and it was granted.

When I learned it was not possible to date the gravel strata⁶, Mr. Gustin and I began discussing logistics related to combining the appeal for ZP-21-560 and ZAP-21-11 into a single deliberative hearing. I needed time to coordinate participation to ZP-21-560. We agreed that I would request a 3 month extension to

⁴ Cleary Email: - The Gravel Structure is not an issue

⁵ City Policy on Non Conformity. –See point 4.

⁶ Knight Consulting Engineers Inc. and Geo Design were the two companies I consulted to date the gravel structure.

ZAP-21-11. Mr. Gustin knows that the only reason I requested an extension to ZAP-21-11 was to provide time to coordinate the participants in the appeal for ZP-21-560. I submitted the 3 month extension request in the ZP-21-560 permit the same day I was instructed, on 11/12/21.⁷

The reconsideration request was so that I could investigate a long shot magic bullet solution that was unlikely to pan out. I wanted to demonstrate that I would pursue all leads to contribute additional information into this determination. The reconsideration was not supposed to undermine my appeal. It simply allowed investigation into a novel, not used before method. The reconsideration did not address the underlying reason for my appeal. Mr. Gustin was not provided any new evidence during reconsideration. Although, it was discovered he had overlooked evidence previously submitted.

While my family and I were away for the Thanksgiving week, my appeal to ZP-21-560 was returned via *NON Certified* mail.⁸ I did not request that my appeal be returned, rescinded or nullified. Neither my project manager nor the city permitting system informed me that my appeal was being returned or had been nullified. I didn't receive my returned appeal in the mail until after 11/29, the last day of my appeal period. ***Invalidating or nullifying an appeal should be an administrative action that is documented in the permitting system to avoid unanticipated consequences!***

On 11/26⁹ and 11/29¹⁰, I communicated to appeal ZP-21-560. From all the context Mr. Gustin possesses, the conversations, the passion, the substantial research, the appeal, the reconsideration, the extension request, it is truly dis-ingenuous that Mr. Gustin would now represent these requests to be inquiries only. These were not requests out of the blue, without context. They were requests, within the appeal we had been working for 3 months and within an appeal period. As the project manager, he should be guiding me in the process, not stonewalling my requests to appeal.

Conclusion:

I have spent most evenings this week writing this statement, missing out on Holiday time with my family. My family does not desire never ending zoning litigation. Our intention today is to allow truthful and historical testimony to be heard that will contribute to the efficient resolution of the two appeals in front of you today.

I believe the summary of events shows I submitted an appeal for permit ZP-21-560 on 10/22/21. I took action to combine the two appeals like Mr. Gustin instructed by requesting the extension. The undocumented administrative action to return and nullify my appeal while I was away is something I could not anticipate or prevent or take timely action to correct. Mr. Gustin diminishes his own and city credibility by casting my appeal requests as mere inquiries and attempting to prevent this evidence from being considered. Please consider my appeal timely to ZP-21-560 so that I may present it alongside the ZAP-21-11 appeal.

With Respect,

Luke Purvis and Christina Lauterbach
164 North Willard St.

⁷ 11/12/21 extension request for ZAP-21-11 submitted within ZP-21-560 permit per instructions.

⁸ Request for a copy of my appeal to ZP-21-560.

⁹ 11/26 Email to appeal ZP-21-560

¹⁰ 11/29 City Permit System Communications to appeal ZP-21-560

RECEIVED

APR 24 2015

COLCHESTER

Burlington Development Review Board
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Telephone: (802) 865-7188
(802) 865-7195 (FAX)

Austin Hart, Chair
Missa Aloisi
Alexander J. LaRosa
Michael Long
Brad Rabinowitz
Israel Smith
Jonathan Stevens
Alexandra Zipparo, (alternate)
Jim Drummond, (alternate)



Burlington Development Review Board
Findings of Fact
Deliberative Hearing Monday, April 13, 2015

Board Members Present: Jonathan Stevens (Vice Chair), Brad Rabinowitz, Michael Long, Israel Smith, Missa Aliosi

Staff members present: Ken Lerner

File: ZP15-0797AP
Location: 164 North Willard
Zone: RL **Ward:** 3

Date appeal accepted: February 13, 2015

Appellant/Owner: Nicole Killoran, Esq. /Luke Purvis

Request: Appeal of Code Enforcement Officer's January 29, 2015 "Unsubstantiated Complaint" determination that parking, along the southern boundary of Property, has been expanded.

For clarification, decision issued to Appellant on January 29, 2015 only pertains to the Property at 164 North Willard. The "easement" referred to frequently in documents is located on part of the adjacent property at 158 North Willard Street. Thus, the expansion of parking referred to in the Appellant's decision refers to a strip of land, approximately 2' (w) x 60' (l) on the south side of the driveway and north of the easement on the adjacent property(see attached drawing).

APPLICABLE REGULATIONS:

Sections 2.7.11, 12.2.2, and 5.3.2 of the Comprehensive Development Ordinance (CDO); appeal indicates Appellant will argue 24 V.S.A. § 4454 (a).

RELIEF REQUESTED BY APPELLANT:

That the board reverse Code Enforcement Office's decision and find that the parking area constitutes an unenforceable violation pursuant to 24 V.S.A. § 4454 (a).

GROUND FOR RELIEF BY APPELLANT:

Appellant provided documents of Property history and parking use arguing 15 years statute of limitations for enforcement.

APPELLANT'S SUBMITTALS:

- February 27, 2015 Summary of Appeal
- January 29, 2015 Decision – Exhibit 1
- 2000 Property Lines – Exhibit 2

- Statement of Historical Usage for 164 North Willard St. – Exhibit 3
- 1988 Ortho Photo – Exhibit 4

CITY's SUBMITTALS:

- Appeal
- January 29, 2015 Decision
- February 4, 2015 Decision
- Affidavits submitted by Property Owner Cleary (158 North Willard St)
- Affidavits submitted by Property Owner Purvis (164 North Willard St)
- Aerial Photos of Property (164 North Willard St)
- Drawing of the two Properties indicating approximate location of easement
- Photos dated September, October, November and January.
- Complaint

Background:

A written complaint was submitted to the Code Enforcement Office on June 30, 2014; "North and south sides of driveway in rear has new parking constructed March 2013, parking on lawn ongoing especially since April/May 2014 (also visible from Dan's Ct.)".

Code Enforcement Office staff followed up with numerous meetings and correspondence with the parties. A number of site visits and monitoring were conducted at the Property, as well as, research of City records, review of aerial photos and supporting documentation from Appellant and neighbor. Between September 10, 2014 and January 2015 Code Enforcement staff did not observe any parking south of driveway at 164 North Willard.

In response to the complaint the previous owner of 164 North Willard, Hector LeClair, wrote that he purchased the Property in 1966. He stated two of the three dwelling units of Property were rentals while the third acted as an office (see attached affidavit – although there are no permits on record for an office use at 164 North Willard). According to the affidavit, parking was never assigned (still isn't), tenants, clients, and Mr. LeClair (who lived in Essex) parked wherever there was a space available.

There are no City records on file indicating location or number of parking spaces at 164 North Willard.

In 1983 Mr. LeClair, as supported by testimony, obtained easement rights from "property to the south" (158 North Willard) to be used for "ingress and egress and for all other lawful purposes". LeClair indicated that parking had occurred within the easement for a period of 15+ years, until 2013.

Since Appellant's purchase of 164 North Willard in 2013, he states there has been parking within the easement.

This contention is refuted by neighbor Cleary, who purchased 158 North Willard in 2012. Mr. Cleary denies Appellant's statements and states that "... between July, 2012 and April of 2014, a period of approximately 19 months, or ONE year and 7 months, the easement was never used for parking vehicles. In addition, I [as owner of 158 North Willard] never gave consent for cars to be parked on this [easement] area". See attached drawing indicating approximate location of easement.

A review of City records revealed no zoning permits were on file for Property.

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. Minutes

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

II. Motion by Israel Smith: In the matter of ZP15-0797AP, 164 North Willard, I move we uphold the determination of no violation by the Code Enforcement Office per the following findings, and highly recommend that the owner of 164 North Willard submit a parking plan with lot coverage as it appears an expansion of parking has occurred on the north side of the driveway:

III. Findings

DETERMINATION:

Based on the research conducted, information provided, including but not limited to statements by the owner of 158 North Willard and on-site observations by Code Enforcement it was determined that the violation complaint was unfounded as parking in the area at issue had ceased. Further, as the parking had ceased for a period in excess of 60 days, Appellant lost any potential claim to reestablishment or the 15 year statute of limitation. See CDO Sec. 5.3.2 below. This determination was issued on January 29, 2015 and is the subject of the appeal. Note that this determination only addresses parking south of the driveway.

CDO Sec. 5.3.2. "Bianchi" controlled uses, structures, and lots.

Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the Bianchi decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.

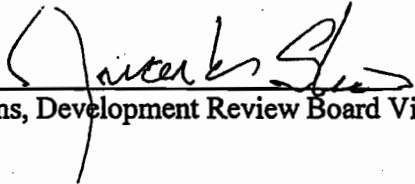
Second: Missa Aliosi

Vote: 5-0-0

Vote: motion carried

Dated at Burlington, Vermont, this 21 day of April, 2015.

Respectfully Submitted,



Jonathan Stevens, Development Review Board Vice Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court, Environmental Division. (Comprehensive Development Ordinance Article 12, Section 12.2.3 Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court within 30 days of the date of the written decision as follows:

(a) Notice of Appeal: The appeal shall be taken in such a manner as the Supreme Court or the environmental court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3, Vermont Statutes Annotated. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the DRB, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.)

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: July 20, 2021
RE: ZAP-21-11; 164 North Willard Street

=====

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of administrative zoning denial of zoning application 21-0749FC to install a fence and related gates.

Overview:

The appellant is seeking approval to install a fence. The zoning application for the requested fence was denied and has been appealed.

This property has an extensive history of litigation focused on unpermitted parking areas to the north and south of the paved driveway and on the use of the residence. The most recent litigation, an appeal of an adverse determination seeking recognition as a pre-existing nonconformity or as an unenforceable zoning violation for both parking areas and the triplex use, resulted in permission for a duplex use and a requirement to remove and re-grass the northern unpermitted parking area. Prior litigation had found that the southern unpermitted parking area was not an unenforceable zoning violation. Neither unpermitted parking area has been recognized as a pre-existing nonconformity or an unenforceable zoning violation. No litigation remains pending.

The appellant recently (July 12, 2021) requested deferral of the appeal hearing. Staff does not support that request.

Recommendation: **Uphold administrative zoning denial** based on the following findings:

I. Findings:

The subject property is located within a residential neighborhood along North Willard Street. The home is historic and most recently recognized as a duplex. The appellant is seeking approval to install a wooden fence in sections of various heights between 4' and 6' along the northern and eastern property boundaries.

The zoning application for the requested fence was filed March 9, 2021 and was deemed complete March 17, 2021. Following review of the application and prior zoning history and litigation

records, zoning staff followed up with the applicant via email on March 29, 2021 to point out the following:

- The unpermitted “south” parking space remains in place and in use. Sec. 2.7.8, Withhold Permit, of the Comprehensive Development Ordinance precludes issuance of a zoning permit for properties that have ongoing violations – unless the permit is to remedy the violation. Such is not the case here.
- The site plan notes a few “nonconformities” that are not legitimately nonconforming. The site plan cannot be approved.

A follow up conversation occurred between zoning staff and the applicant on or about March 30, 2021 as to how the application could be modified to be acceptable.

A revised site plan was submitted April 2, 2021. The revised site plan removed the specific “nonconforming” labels in the prior site plan, but removal of the gravel southern parking area was not specific. It was shown as a green box, the same as other structural features on the property (the driveway, house, barn, etc). Correspondence continued in an effort to arrive at an acceptable site plan, and the application review period was extended by mutual agreement for 30 days.

Continued correspondence proved unsuccessful in producing an acceptable site plan, and the application was denied May 6, 2021 for the following reason:

1. Per Sec. 2.7.8, Withhold Permit, of the Comprehensive Development Ordinance, existence of a continuing zoning violation on the property precludes approval of this zoning application. Specifically, the gravel parking area to the south of the paved driveway was found to be an enforceable zoning violation by the Development Review Board and in related court decisions relative to 15-0797AP and 19-0474DT. Lacking remedy of this continuing zoning violation, the application cannot be approved.

Essentially, Sec. 2.7.8, enables the zoning administrative officer to withhold issuance of a new zoning permit for properties in violation of the zoning ordinance. This section, adopted February 1, 2017, achieves a long held city policy objective to preclude new development on a property until outstanding code violations are remedied.

The unpermitted southern parking area remains in place and in use. Photographic evidence from March, May, and June 2021 show a pickup truck parked there.

An appeal of the zoning denial was submitted May 17, 2021; however, the appeal fee was not paid until June 2, 2021 and the basis for the appeal not provided until June 2 & 3, 2021. Sec. 12.2.2 (a) specifies:

An appeal must be taken within fifteen (15) days after the date of decision or act appealed from, and is taken by filing a written notice of appeal with the administrative officer and the DRB. Such notice of appeal shall include:

1. the name and address of the appellant;
2. a brief description of the property with respect to which the appeal is taken;

3. a reference to the regulatory provisions applicable to that appeal;
4. the relief requested by the appellant; and,
5. the alleged grounds why such requested relief is believed proper under the circumstances.

A notice of appeal shall be considered filed with the administrative officer and the DRB when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff; and,

Whenever an appeal is filed, the administrative officer shall forthwith transmit to the DRB all the papers constituting the record relating to the action appeal from.

The appeal was not made complete until well after the 15-day appeal period, despite the initial notice of intent to appeal being within it. Dismissal as untimely may be warranted.

The appeal is centered on an assertion by the appellant that the unpermitted gravel parking area alongside the south of the driveway is somehow legitimate. The appeal mixes references to the 15-year statute of limitations for zoning violation enforcement with pre-existing nonconformity, but it appears the appellant is trying to assert status as a pre-existing nonconformity for this parking area.

In December 2018, the appellant sought a determination recognizing, among other things, the southern parking area as a pre-existing nonconformity. The recognition was not granted. Appeals to DRB and then to the courts followed, and recognition as a pre-existing nonconformity was not granted at any level. Status as an enforceable violation was determined in prior DRB action and associated court decisions. This appeal of the fence application denial cannot collaterally attack prior final decisions. Nor can it turn into a new determination request.

Very simply, the fence application cannot be approved until such time as an acceptable site plan is provided. That acceptable site plan is predicated on removal of the unpermitted southern parking area.

II. Recommended Motion:

Uphold the zoning application denial of 21-0749FC.

This submittal is intended to be the companion for the footnotes to the 12/21 DRB position paper submitted by 164 North Willard St.

Footnote 1: 2015 DRB Decision

Below contains excerpts. The entire document can be found as separate attachment "Footnote1 Entire Document - 20150421 DRB Decision.pdf"

Description of Relevance:

Background, Motion and Findings Excerpt from DRB Decision to ZP15-0797AP from a Hearing on 4/13/21. A complaint was submitted about a newly created gravel structure and a use of parking on that structure per the background section. The DRB hearing only focused on the South of the driveway. Code Enforcement did not find parking during 3 consecutive visits and testified that parking could not continue. Code Enforcement did not dispute the reason for my appeal that the structure had existed for more than 15 years. Please notice "No Violation per the following findings" in the Motion Section and "the violation Complaint was unfounded" in the Findings

Background:

A written complaint was submitted to the Code Enforcement Office on June 30, 2014; "North and south sides of driveway in rear has new parking constructed March 2013, parking on lawn ongoing especially since April/May 2014 (also visible from Dan's Ct.)".

II. **Motion by Israel Smith:** In the matter of ZP15-0797AP, 164 North Willard, I move we uphold the determination of no violation by the Code Enforcement Office per the following findings, and highly recommend that the owner of 164 North Willard submit a parking plan with lot coverage as it appears an expansion of parking has occurred on the north side of the driveway:

III. **Findings**

DETERMINATION:

Based on the research conducted, information provided, including but not limited to statements by the owner of 158 North Willard and on-site observations by Code Enforcement it was determined that the violation complaint was unfounded as parking in the area at issue had ceased. Further, as the parking had ceased for a period in excess of 60 days, Appellant lost any potential claim to reestablishment or the 15 year statute of limitation. See CDO Sec. 5.3.2 below. This determination was issued on January 29, 2015 and is the subject of the appeal. Note that this determination only addresses parking south of the driveway.

Footnote 2: 2021 Staff Report to ZAP-21-11

Below contains excerpts. The entire document can be found as separate attachment "Footnote2 Entire Document_Staff Comments for ZAP-21-11 Appeal.pdf"

Description of Relevance:

Please notice in the staff report to the DRB for the appeal of ZAP-21-11 that an 'ongoing violation' related to a parking space is cited for the reason to deny the fence permit. Please see the '[approval is] predicated on the removal of the southern parking area' sentences by Mr. Gusting below and consider that statement's concordance to the decision provided by the DRB back in April 2015 stating 'Unsubstantiated Complaint' and 'no violation'

I. Findings:

The subject property is located within a residential neighborhood along North Willard Street. The home is historic and most recently recognized as a duplex. The appellant is seeking approval to install a wooden fence in sections of various heights between 4' and 6' along the northern and eastern property boundaries.

The zoning application for the requested fence was filed March 9, 2021 and was deemed complete March 17, 2021. Following review of the application and prior zoning history and litigation

records, zoning staff followed up with the applicant via email on March 29, 2021 to point out the following:

- The unpermitted "south" parking space remains in place and in use. Sec. 2.7.8, Withhold Permit, of the Comprehensive Development Ordinance precludes issuance of a zoning permit for properties that have ongoing violations – unless the permit is to remedy the violation. Such is not the case here.

.....

Very simply, the fence application cannot be approved until such time as an acceptable site plan is provided. That acceptable site plan is predicated on removal of the unpermitted southern parking area.

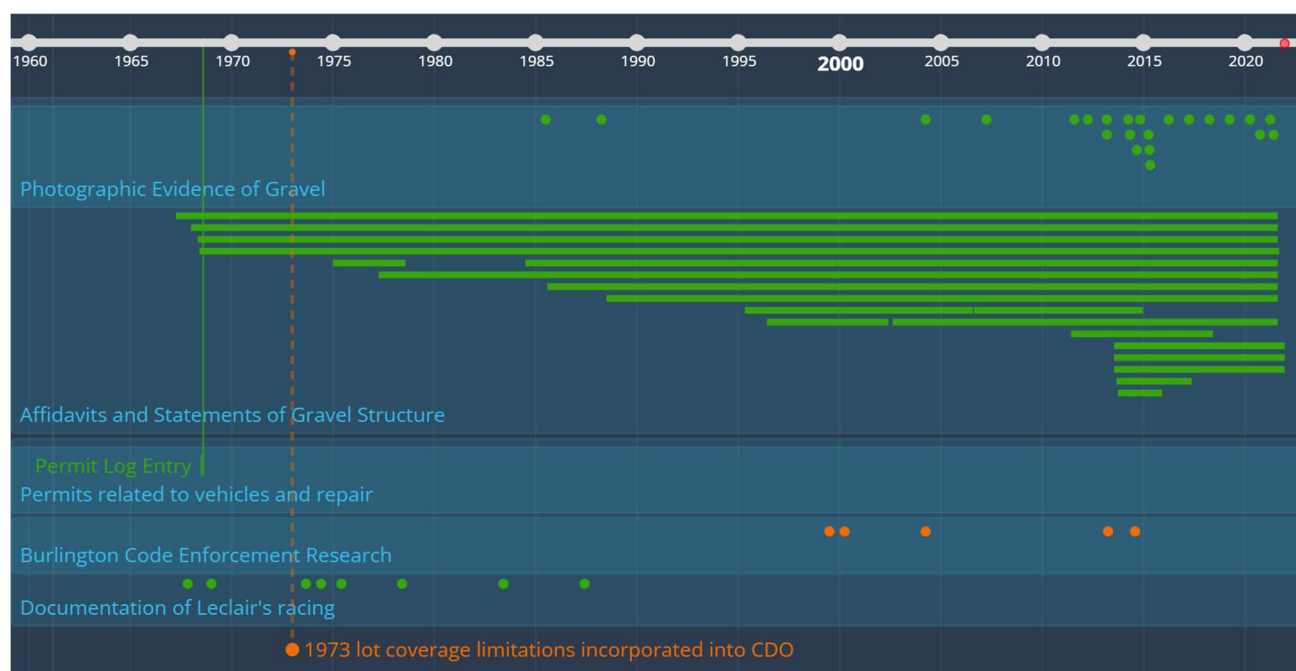
II. Recommended Motion:

Uphold the zoning application denial of 21-0749FC.

Footnote 3: Timeline with substantial research

Description of Relevance:

Below is a timeline image of the substantial evidence collected to document the non-conforming status of the structure under dispute in ZAP-21-11, ZP-21-560. This is the area where the use of parking was found to be discontinued in ZP15-0797AP back in 2015 under a 60 day standard. Mr. Gustin believes the gravel structure began in 1983. Six neighbors have stated in sworn affidavits the structure began prior to 1983 and four of those neighbors testify to the structure beginning prior to 1973 when it would be legally pre-existing nonconforming. Each horizontal bar in the screenshot below shows an affidavit from a unique individual testifying to this structure's persistence. Although the below is just an image, If you visit the associated website, each object in the below screenshot is clickable and linked to the underlying document or photo. I have been intending to submit this website as part of work effort in the appeal to ZP-21-560 as an easy way for the DRB committee to consume the substantial amount of evidence and history collected in this permit. The second screen shot shows the functionality to see the underlying affidavit, and relevant bullet points of the affidavit when one clicks on a horizontal bar. The dots will show a photo when clicked.



Cont. Footnote 3: Timeline



Footnote 4: Mr. Cleary is ok with Gravel

Description of Relevance:

Mr. Clearly consistently stated he did not have a problem with the gravel to the south of the driveway prior to complaining. This is an email from Mr. Cleary after his surveyor created a report. Please see yellow arrow in the "PS." section for a written sentence that Cleary was ok with the gravel. Because Mr. Cleary did not have a problem with this gravel, the affidavit Mr. Leclair constructed and signed on 8/25/14 did not explore an early history of this area that predated the primary concern, the easement for which I possess the dominant exclusive rights.

5/7/2016

Print

Subject: Re: survey followup

From: Joseph Campanella Cleary (jcc@campanellastrings.com)

To: lpurvis78@yahoo.com;

Date: Monday, May 19, 2014 3:55 PM

Luke,

As neighbors we both have the rights to enjoy our land. It feels really weird to be in one's own yard, and not to have full access—can you imagine that?

We are NOT asking you to give up your rights, but to consider fairness, and come to an agreement which represents compromise for both sides.

We are narrowly focused on gaining some use of the ROW for our family, while preserving your needs for access. That's the bottom line.

The iron pipes which the surveyors found on our shared boundary clarify where that line is located. They are consistent with the measurements of our property and yours, and clearly define the boundary of the western portion of the properties (where it is not encumbered by the ROW)—our "side-yard", which I've been recently clearing of stumps.

We are also ready to settle the question of the "path", a ~3' wide strip shown on the tax maps which seem to link our property to Dan's Ct. It may not actually be a path, but an artifact of inaccurate or mistaken measurements in deeds which were magnified by time. It was an unusual anomaly on the tax map, but not really something we are interested in pursuing.

The ROW also seems to have some problems with dimensions, when compared with the reality on the ground—it is poorly defined. Tim Cowan, the lead surveyor, calls it "geometrically impossible", and theorizes that it was estimated rather than measured. It was granted to Hector by a relative (his daughter), an attempt to gain land without purchasing it. Who else would agree to such an imposition?

The errors are sufficient for us both to have legitimate arguments as to the dimensions of the ROW, ensuring future conflict. This is not our goal. We would like to reach a peaceful and neighborly solution, and move on with our lives.

It is for this reason that we think re-defining the ROW makes the most sense, extracting our properties from each other, and entering a post-Hector era. In any case, we will be removing part of the fence to work on taking out some box elders.

Besides time and effort, we have invested a fair amount of money into the report and research. We are also willing to pay the costs associated with drawing up a new ROW, and we'd like to do it in a timely manner, so we can go into the summer with a clean slate.

Cont. Footnote 4: Mr. Cleary is ok with Gravel

Important Sentence: “Still, I don’t really have a problem with the current triangle of gravel which is partially on the ROW...” from Mr Cleary

Besides time and effort, we have invested a fair amount of money into the report and research. We are also willing to pay the costs associated with drawing up a new ROW, and we'd like to do it in a timely manner, so we can go into the summer with a clean slate.

Can you meet this evening to look over the ROW/report and have a neighborly discussion?
thanks,
Joe

about:blank

1/2

5/7/2016

Print

P.S.

Parking is really a separate issue, which is specifically regulated by the city, particularly as it affects stormwater and runoff (contributing to wet basements and flooded streets).

There is no evidence that Hector followed any sort of code or ordinance when he constructed new parking in his yard on 3/7/2013—dumping 4 truckloads of gravel. Still, I don't really have a problem with the current triangle of gravel which is partially on the ROW, but if you wanted to expand this or construct new parking, I'd expect you to ask for P&Z approval at that time.

Footnote 5: City Policy on Non Conformities

Description of Relevance:

This shows the policy document that Scott and I had discussed regarding the decision to ZP-21-560. Based on this document, I understood an appeal to the DRB would be necessary if Scott determined "Evidence to the Contrary" existed and therefore must deny the permit.

8:47 PM Fri Aug 13

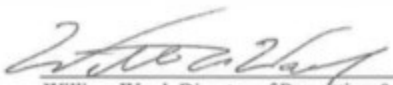
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Burlington, VT 05401
Telephone: (802) 865-7188

Layne Duffer, Planning Technician
Alison Davis, Planning & Zoning Clerk
Ted Miles, Zoning Specialist
Charlene Orson, Permitting & Inspections Administrator

PERMITTING & INSPECTIONS


William Ward, Director of Permitting & Inspections

Footnote 6: Geo Technical Analysis

Neither Geo Technical Company (Knight Consulting Engineers Inc. or Geo Design) were willing to go on record for this appeal. There was no method specific enough to date when the gravel was deposited within a 15 year interval. Has any other property in Burlington been asked to conduct technical analysis on its gravel?!

Footnote 7: 11/12 Request for extension so ZP-21-560 Appeal could be heard in January 2022.

Description of Relevance:

This is the communication I submitted on 11/12 in the online permitting system for ZP-21-560 directly after a phone conversation with Mr. Gustin. During that conversation, I was told if I requested the 3 month extension on ZP-21-560, Mr. Gustin would combine my appeals in a hearing in 2022. This extension request clearly shows my belief that this permit appeal for ZP21-560 would be heard at a DRB in 2022.



Luke Purvis

Nov 12, 2021 at 6:50 pm

Scott, i still am unable to effectively manage my permit.
I request 3 months extension so I can have a drb after Christmas in January.

I would like you to acknowledge in a response here that we spoke on the phone and you agreed the Leclair affidavit was ambiguous and did not preclude the 2' strip from existing with gravel prior to the easement. Your decision letter said the Leclair affidavit precludes the 2k' strip from existing prior to 1983. That decision letter is absolutely contradicts what you verbally stated to Christina and I. I would like you to take a moment to explain this discrepancy.

Thanks
Luke

Footnote 8: 12/2 Communication Request to attach appeal

Description of Relevance:

I have requested the scan of the permit appeal from Mr. Gustin. To date, he has not provided this scan. I have unfortunately misplaced this document, so I am unable to attach it.



Luke Purvis

Dec 2, 2021 at 7:13 pm

Scott, please attach the formal appeal I submitted including 250\$ check to this record. That should clear up your confusion. My formal appeal was well timely as it was submitted on 10/22/2021.

Thank you

Footnote 9: 11/26 Request for DRB Hearing

Description of Relevance:

This shows that I communicated with Mr. Gustin on 11/26 to ensure I would be able to have a DRB hearing on the reconsideration decision. This was the Friday following Thanksgiving.

-----Original Message-----

From: Luke Purvis <lpurvis78@yahoo.com>

Sent: Friday, November 26, 2021 4:05 PM

To: Scott Gustin <SGustin@burlingtonvt.gov>

Subject: 164 north willard. 2' strip determination

[WARNING]: This email was sent from someone outside of the City of Burlington.

Please make sure I'm able to have a drb hearing on this decision Thanks Luke

Sent from my iPad

Footnote 10: 11/29 Requests to appeal

Description of Relevance:

This shows that I communicated with Mr. Gustin on 11/29 twice to ensure I would be able to have a DRB hearing on the permit. You can see that by Mr. Gustin's response on 11/29, he did not inform as to additional documentation that I needed to take to actually appeal. He took the time to give an answer that did not clearly inform an action I would need to take to ensure appeal compliance. He stonewalled this appeal when he could have informed on a short coming.

4:21 PM Fri Dec 17

burlington.vzw.pointcloud.com

11%

City of Burlington, VT

My Account

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Luke

LP

Luke Purvis

Nov 29, 2021 at 5:41 pm

Scott, please confirm I will be able to appeal. I sent an email about this as well.

The decision was no violation...Jeanne's decision letter was a notice of non violation....so you are going to have to explain your logic. Would you mind doing that? I have asked a bunch of times. How does no violation equal on going violation to you?

If Jeanne has found a violation or provided evidence that the structure was discontinued or increased, then sure this would be a difference in opinion about whether the DRB decision to omit the language to restore to green space was purposeful. But this all started with a notice of non violation. So it was improper for Jeanne to include any mandate to remove a structure without identifying a violation of the structure. The drb recognized this error and removed the enforcement related to her flawed logic regarding the structure.

Would you also provide me the section of the ordinance that allows the city to remove a structure without issuing a notice of violation?

SG

Scott Gustin

Nov 29, 2021 at 9:36 am

Good morning Luke. This administrative determination is appealable. Today is the last day of the appeal period. In all of our correspondence about this matter, I have never said that no zoning violation equals a zoning violation. This seems to be your take on the city's position; however, it does not line up with the explanations I've provided.

LP

Luke Purvis

Nov 29, 2021 at 8:15 am

Ps. Make sure this is appealable. It is really upsetting that you will not respect me enough to explain To me how no violation = on going violation

Joseph and Teresa Cleary
158 N Willard St.
Burlington, VT

12/21/21

Members of the Development Review Board,

In his recent letter to the board, Mr. Purvis has taken great pains to attempt to litigate the merits of his case, rather than the legitimacy of the appeal. While the case could be denied on both merit and precedent, he has also failed to make a proper appeal, and should not be given extra time or another chance. For those reasons, and after 7 years of involvement with this case, we strongly support Zoning Staff's recommendation that **Mr. Purvis' appeal on the Reconsideration of Determination should be dismissed**, since no such appeal was properly filed.

Mr. Purvis claims to need more time to litigate an issue that has already been settled by the Board and Judicial Precedent. We believe that Mr. Purvis should not be given a deferral or continuance for the Fence Permit. Simply put: If he cannot commit to modifying his use to comply with City Code (RETURN TO GREEN SPACE), then **the adverse decision on the Fence Permit should become final tonight**.

Today Mr. Purvis states he is willing to take "extraordinary" measures to preserve a supposed structure that now provides parking for a single broken-down truck. The vehicle hasn't moved in many months. Mr. Purvis would have you believe that this abandoned vehicle is a "Historic" use of the property. Previously, Mr. Purvis parked up to 4 cars in this area, in violation of City Code. I would ask the City to continue to deny Mr. Purvis' efforts, and to use the tools of enforcement to bring the property into compliance.

Mr. Purvis has broken contractual settlements with the City and with his neighbors, and he has lost his cases at the Vermont Superior *and* Supreme Courts. Mr. Purvis should *not be offered relief* today based on claims of good-faith communication or negotiation. He complains about duress—Mr. Purvis would have you believe that his violation amounts to a hardship, when the means to alleviate that hardship is right in front of him (RETURN TO GREEN SPACE). He complains about Process—yet he can't be bothered to honor contractual Settlements, follow Administrative guidelines or understand Judicial Precedent.

The City Attorneys and Staff have compiled evidence against Mr. Purvis' claims since 2014. Some members of this Board will recall that this is (at least) the fourth time Mr. Purvis has appeared before them on a different flavor of the same issue. We have attempted to highlight some of the main points below, including the most recent rulings by the Vermont Judiciary. Attorney Sturtevant can clarify these rulings from the City's perspective:

- 1) This issue has previously been heard at the DRB, Superior Court and at the Vermont Supreme Court. Mr. Purvis' has lost at all levels. The Court opinions already address both of Mr. Purvis' current claims of a "structure" and of the "1968 permit", and should therefore take precedent over any new DRB hearing. Any reference to evidence or decisions from previous hearings were included in these opinions, and Mr. Purvis cannot re-try that decision or evidence in this lower venue. We would ask that the board ignore his attempts to do so. The Board should consider the Vermont Supreme Court's decision ([Vermont Supreme Court op19-051.pdf](#) attached) which clearly affirmed the 2015 DRB decision: "RETURN TO GREEN SPACE", as **final**; and dismiss the application for appeal. The Supreme Court's opinion specifically addresses the "structure" and "1968 permit" claims. In 2019 Mr. Purvis sought another determination of this structure which he dubbed the (sic.) "SOUTHERN PARKING AREA" along with the TRIPLEX and "NORTHERN PARKING AREA ". He received an ADVERSE determination for all three. Even though the area South of the driveway was not "properly" part of the DRB appeal, Mr. Purvis attempted to bring it into his Environmental Court appeal with a Motion In Limine in December 2020. This Motion was DENIED by the Court and is attached below. Due to the finality of the opinion of the VT Supreme Court, Mr. Purvis has (already) been barred by the Superior Court from offering this same evidence and argument. The "Decision on Motion in Limine" adds to the argument that the appeal cannot continue. It cites the FINALITY of the Supreme Court decision, that Mr. Purvis has already exhausted his avenue for appeal on "returning to green space" the area South of the driveway. See attached: [164 N. Willard E. Div. Decision on Limine 2020.pdf](#).
- 2) On a basic, administrative level, Mr. Purvis failed to submit a proper appeal to the City and should not be offered relief by the DRB. The law does not provide relief for a "ill-advised tactical decision". The City cannot make an appeal on behalf of an applicant. I do not believe that that the Development Review Board should allow such an appeal against staff recommendations and the precedent/finality of preceding judicial opinions.
- 3) If Mr. Purvis really wanted a fence for his family as he claims, he could correct the violation on his property (RETURN TO GREEN SPACE) and submit a clean application. An appeal to the sympathy of the board is completely inappropriate, especially given his refusal to correct this violation (since 2014) and his history of breaking signed settlements with the City. The fence permit as submitted contains a "Trojan Horse"—designed to launder his Zoning Violation into legality. He has chosen to use the Fence Permit as a means to resurrect his grievances and loss of previous litigation. There is no reason for this Board to help him do so. In fact, this would continue the delay he says he would like to avoid, and the waste of resources by Zoning staff and City Attorneys. Furthermore he has demonstrated his belief that there is no vehicular limit or physical setback to use of the claimed structure, which gives him the right to threaten our family and property with his cars. See attached: [3-27-16PoliceReport.pdf](#) Mr. Purvis has taken frustration out on our family in various reckless ways. In the attached document: "Purvis

Snowblower.pdf”, a grinning Luke Purvis is clearly visible using his snowblower to hurl ice, gravel and debris at myself and our children.

- 4) Mr. Purvis has plainly stated that, if given the chance, he would have (former owner) Hector LeClair change his testimony to support his current application. Rather than strengthening his position, this clearly shows that Mr. Purvis has and intends to deceive the City by changing an affidavit that was previously claimed to be factual and accurate. He is telling you plainly that he will do whatever it takes to get the facts in line with his theory. No recollections by neighbors offer evidence stronger than that of the former owner. Additionally, many of these recollections can be shown to have inconsistencies when compared to factual records, such as Rental Applications submitted by both Mr. Purvis and Mr. LeClair.
- 5) The change in terminology: substituting “gravel structure” for “Southern Parking Area” is a Red Herring. The Board must understand that any claimed structure in this area is synonymous with parking, with vehicular use. The claimed structure and uses are in a clear conflict with decisions from this Board, the Superior Court, and the Vermont Supreme Court (RETURN TO GREEN SPACE). Any subsequent Fence Permit approval from the Zoning staff or the DRB should take into account Mr. Purvis’ past intransigence and should include specific stipulations regarding setback and positioning of the proposed fence relative to property lines and neighbors’ previously-approved structures.

To conclude, Mr. Purvis is asking you to ignore the affidavit of the previous owner, interpret blobs on decades-old aerial photos, trust the memories of uninvolved neighbors who have presented no real evidence, and overlook the fact that he has not followed the administrative requirements of the Zoning Department.

If you do these things, Mr. Purvis will *then* present to you a re-trial of a case which has already been decided by the highest court in the state of Vermont; so that the Development Review Board of the City of Burlington can review the opinion of the Vermont Supreme Court. It shows a deep lack of understanding of the role of the Board and Judicial Precedent. For this reason, and those stated above, we ask the Board to DISMISS the Appeal, and DENY the request for deferral/continuance.

We thank the board for their volunteer service and consideration of this important matter.

Joseph and Teresa Cleary
158 N Willard
Burlington, V

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions by email at: JUD.Reporter@vermont.gov or by mail at: Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801, of any errors in order that corrections may be made before this opinion goes to press.

2019 VT 60

No. 2019-051

In re Purvis Nonconforming Use
(Luke Purvis, Appellant)

Supreme Court

On Appeal from
Superior Court,
Environmental Division

June Term, 2019

Thomas S. Durkin, J.

Hans G. Huessy of MSK Attorneys, Burlington, for Appellant.

Kimberlee J. Sturtevant and Nicholas J. Lopez, City Attorneys, Burlington, for Appellee
City of Burlington.

PRESENT: Reiber, C.J., Skoglund, Robinson, Eaton and Carroll, JJ.

¶ 1. **ROBINSON, J.** Luke Purvis appeals the Environmental Division’s denial of his motion for relief under Vermont Rule of Civil Procedure 60(b)(1) and (2). He argues that his motion is not time-barred because the order from which he seeks relief was not actually a final judgment entered more than a year before he filed his motion. We affirm.

¶ 2. In September 2014, the City of Burlington Code Enforcement Office notified Purvis that it had received a complaint regarding unpermitted expansion of the parking area on his property. It ordered Purvis to restore the area to green space.

¶ 3. Purvis appealed to the Development Review Board, arguing that the expansion of the parking area was an unenforceable permit violation under 24 V.S.A. § 4454, as the expansion first occurred over fifteen years ago. After reviewing various affidavits, drawings, photos, and

other exhibits submitted by the City and Purvis, the Board found no violation because it concluded that parking in the area had stopped. Because it found that parking in the area had ceased for a period in excess of sixty days, it held that Purvis had lost the benefit of the fifteen-year limitation on enforcement actions under § 4454 and any potential claim to reestablish the right to expanded parking.

¶ 4. Purvis appealed that determination to the Environmental Division in May of 2015. In August 2016, the parties entered into a settlement agreement.¹ That agreement provided that the parties would “dismiss the Lawsuit WITHOUT prejudice; all arguments and contentions of the Parties are preserved in the event of subsequent litigation concerning permits for and/or alleged violations or non-conformance of the Purvis property.” It also provided that “[t]he City and Purvis will meet in another mediation no later than January 15, 2017, to attempt to resolve all disputes related to the compliance of the Purvis property with the City’s zoning ordinance.”

¶ 5. The parties also filed a Stipulated Order, which the court entered on September 26, 2016, dismissing the matter “WITHOUT PREJUDICE to the rights of either [Purvis] or the City to request that the Court reopen [it], pursuant to the terms of the Agreement.” The Order said that if either party moved to reopen the matter, “the Court shall grant such motion with no need to file a new appeal or pay a new appeal filing fee; the Docket Number shall remain the same and the legal issues to be addressed shall be controlled by the Statement of Questions filed in this matter.” Finally, the Order gave the parties “until August 1, 2017 to file a Motion to Re-open, or a Motion to extend the period for filing such a Motion. If no such filing is made, the underlying Burlington Development Review Board decision shall become enforceable and the appeal period for said decision shall be deemed to have expired.”

¹ The settlement agreement involved two sets of issues—issues between Purvis and the City involving zoning restrictions and issues between Purvis and an adjoining neighbor concerning a related land dispute. The latter set of issues are not part of this case.

¶ 6. The parties never engaged in the mediation contemplated in the settlement agreement. No party filed a motion to reopen or extend before August 1, 2017.

¶ 7. In March of 2018, Purvis moved for relief from the Stipulated Order pursuant to Vermont Rule of Civil Procedure 60(b)(6), arguing that he should be granted relief because he had been represented by conflicted counsel at the time he entered into the Settlement Agreement and submitted the Stipulated Order, and because he had relied on the City's expressed willingness to mediate after the August 2017 deadline. He requested "that the Court exercise its equitable powers and extend the August 1, 2017 deadline [for filing a motion to extend the time to reopen the matter] to August 1, 2018." On June 8, 2018, he filed a response to the City's opposition to his motion in which he argued that the discovery of new evidence provided further grounds for extending the August deadline. He claimed that the City had negligently failed to produce a 1968 zoning permit obtained by his predecessor-in-interest to do work on cars on the property. He said the City's failure to produce this permit had led the Development Review Board to conclude there were no zoning permits for the property. He "concede[d] that the existence of this permit does not conclusively establish that the parking on the . . . lot is a permitted use," but argued "it does provide a basis on which one could reasonably conclude that it was."

¶ 8. The Environmental Division held that the motion for relief was unwarranted because Purvis did not file a motion to reopen or extend the time for such a motion before the August 1, 2017 deadline contemplated in the Stipulated Order. The court ruled that Purvis's Rule 60(b)(6) motion was not filed within a reasonable time, and to the extent that he was making a Rule 60(b)(2) or (3) motion based on newly discovered evidence and negligence by the City, it was untimely because it was filed over a year after the court entered the Stipulated Order in September 2016.

¶ 9. Purvis moved to reconsider, arguing that because the Stipulated Order allowed the parties to reopen the case until August 1, 2017, the Order did not become final until that date, and

he should be granted relief under Rule 60(b)(1) and (2).² The Environmental Division also denied that motion, holding that Purvis’s Rule 60(b)(1) and (2) motion was untimely because the August 2017 deadline in the Stipulated Order was “not conditional” and was a “settled term[] from the day this Court entered the Order” in September 2016.

¶ 10. Purvis appeals, arguing that the Environmental Division erred in determining that its September 2016 Order was final for purposes of calculating the one-year period for filing a Rule 60(b)(1) and (2) motion, when the Order remained subject to a motion to reopen until August 2017. He contends that his motion for relief should be granted because the late-disclosed 1968 permit supports an inference that the parking area should be treated as a grandfathered structure rather than as a noncompliant structure that has remained in place for fifteen years.³ Purvis does not challenge on appeal the Environmental Division’s ruling on the Rule 60(b)(6) motion.

¶ 11. We conclude that the Stipulated Order was a final judgment when issued, and the time to file a motion for relief under Rule 60(b) began to run when it was entered on September 26, 2016. The Environmental Division thus correctly determined that no relief was available to Purvis under Rule 60(b)(1) or (2), as he did not move for such relief within the one-year period allowed by the Rule.

¶ 12. When the Stipulated Order became final is a question of law that we review without deference to the Environmental Division. TBF Fin., LLC v. Gregoire, 2015 VT 36, ¶ 19, 198 Vt. 607, 118 A.3d 511 (finality of judgment is question of law reviewed without deference);

² Rule 60(b)(1) authorizes relief from judgment for “mistake, inadvertence, surprise, or excusable neglect,” and 60(b)(2) allows relief from judgment on account of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial.” A motion under Rule 60(b)(1) or Rule 60(b)(2) must be filed “not more than one year after the judgment, order, or proceeding was entered or taken.” V.R.C.P. 60(b).

³ He argues that this distinction is important because as a grandfathered use, it would not be considered abandoned if not used for only sixty days; it would only be considered abandoned after one or two years of non-use.

Youngbluth v. Youngbluth, 2010 VT 40, ¶ 8, 188 Vt. 53, 6 A.3d 677 (“[T]he proper interpretation of a previous court order is strictly a question of law that we must determine independently.” (quotation omitted)).

¶ 13. In determining whether an order is final, “our test [is] that a judgment is final when it makes a final disposition of the subject matter” such that there are no “outstanding issues to be decided.” Russell v. Russell, 157 Vt. 295, 301, 597 A.2d 798, 802 (1991); see also Gregoire, 2015 VT 36, ¶ 19 (“A final order is one that ends litigation on the merits or conclusively determines the rights of the parties, leaving nothing further for the court to do but execute the judgment.” (quotation and alteration omitted)). The Stipulated Order disposed of the issues in the case, leaving none outstanding to be decided. While it left the parties a window of time in which they could move to reopen, it left nothing for the court to do. Indeed, it explicitly dismissed the action. Accordingly, we conclude the Stipulated Order was a final order when entered on September 26, 2016.

¶ 14. We agree with Purvis that some of the provisions in the Stipulated Order are in logical tension with the Order’s dismissal of the action—including the provisions allowing the parties to move to reopen the matter before August 1, 2017 with no apparent threshold showing and no filing fee, and providing that if no such motion to reopen or extend was made, the Burlington Development Review Board decision would then “become enforceable and the appeal period for said decision shall be deemed to have expired.” Purvis is not wrong in arguing that functionally the September 2016 Order operated as a time-limited stay of litigation to permit mediation to occur, with an automatic dismissal of the appeal at the end of the period. But the parties expressly structured the Stipulated Order as a final order effective in September 2016 in the event that no party sought to reopen it by August 1, 2017. The Stipulated Order was procedurally unorthodox, and litigants and courts would be well advised not to follow its model. Nonetheless, we are called upon to determine when for the purposes of a motion pursuant to Rule

60(b) the Order was deemed final. We are persuaded that the better course in the face of this somewhat internally inconsistent Order is to hold the parties to their stipulation, as approved by the court, that if no filing was made by August 1, 2017—seeking to reopen or to extend the time for filing a motion to reopen—“the underlying Burlington Development Review Board decision shall become enforceable and the appeal period for said decision shall be deemed to have expired.” (Emphasis added). This provision clearly signifies the parties’ intent, reflected in the court’s Order, that in the absence of a filing by August 1, 2017—and there is no dispute that no party filed any motion by this date—the Order should be deemed final as of September 26, 2016.

¶ 15. Given this conclusion, the Environmental Division was correct in holding that Purvis’s motions under Rule 60(b)(1) and (2) (to the extent he made them) were untimely because they fell outside of the one-year deadline, and the court did not err in denying Purvis’s motion to reconsider.

Affirmed.

FOR THE COURT:

Associate Justice

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 88-7-19 Vtec

Purvis North Willard Street

ENTRY REGARDING MOTION

Title: Motion in Limine Motion in Limine (Motion: 2)

Filer: Hans G. Huessy, attorney for Appellant Luke Purvis

Filed Date: November 19, 2020

Response in Opposition to Appellant's Motion in Limine filed on November 30, 2020, by
Kimberlee J. Sturtevant, attorney for the City of Burlington.

Reply in Support of Appellant's Motion in Limine filed on December 1, 2020, by Hans G. Huessy,
attorney for Appellant Luke Purvis.

The motion is **DENIED**.

Appellant Luke Purvis ("Applicant") appeals a June 28, 2019 decision of the City of Burlington Development Review Board ("DRB") determining that a three-unit dwelling and associated parking areas¹ on Applicant's property could not be recognized as lawful preexisting nonconforming uses or unenforceable zoning violations.² Presently before the Court is Applicant's motion in limine to address the scope of the issues for trial and establish whether the Court will hear evidence as to Appellant's right to use the "south parking area" or "easement area" ("Disputed Area" or "DA") to the south of Appellant's driveway. The City of Burlington ("City") contends that Appellant is precluded from introducing evidence regarding the use of the DA.

¹ The associated parking areas include one north and one to the south of the driveway.

² Applicant owns property located at 164 North Willard Street in Burlington, Vermont and appeals the DRB decision for the purpose of identifying an unpermitted triplex and two unpermitted parking areas on his property as lawful preexisting nonconformities, or, in the alternative, as zoning violations which cannot be prosecuted due to the 15-year statute of limitations set forth in 24 V.S.A. § 4454(a).

Applicant is represented by Hans G. Huessy, Esq. The City of Burlington is participating as an interested person in this matter and is represented by Kimberlee J. Sturtevant, Esq.

Discussion

Currently before the Court is Applicant's motion in limine to include evidence addressing Applicant's right to use the DA and that Applicant's use was not discontinued. Applicant seeks to present evidence that the DA is a preexisting nonconforming use, or, in the alternative, that the use was approved in the prior owner's 1968 permit. These issues are raised in Question 3 of Applicant's Statement of Questions, which asks: "Did the [DRB] err in determining that Appellant's property does not have a parking area located to the south of the paved driveway?" See Appellants Statement of Questions at 1, filed Aug. 12, 2019.

Applicant argues that claim preclusion does not bar discussion of whether the DA was a preexisting nonconforming use because the August 23, 2016 settlement agreement³ preserves all "arguments and contentions . . . in the event of subsequent litigation concerning permits and/or violations of nonconformance." See Purvis Nonconforming Use, No. 45-5-15 Vtec. slip op. at 1–2 (Vt. Super. Ct. Envtl. Div. Sept. 26, 2016) (Durkin, J.) (addressing the settlement agreement). Applicant also contends that because the 2015 DRB decision in Purvis Nonconforming Use did not disclose the 1968 permit until after the DRB's decision and 2016 settlement agreement was executed, claim preclusion should not apply. As a final point, Applicants assert that the City is barred from asserting the defense of collateral estoppel or res judicata at trial as the City failed to raise the issue in a responsive pleading or move to strike or dismiss Applicant's Questions addressing the DA.

The City counters that issues concerning the DA have already been addressed through prior litigation and final permit decisions including a 2011 zoning permit identifying the DA areas as green space, the final 2015 DRB decision, and the Vermont Supreme Court decision in the prior litigation. In re Purvis Nonconforming Use, 2019 VT 60. The City also argues that they are not precluded from raising issues regarding Applicant's Statement of Questions prior to or during a *de novo* hearing.

I. Whether the City is barred from asserting claim preclusion when the City did not move to strike or dismiss Question 3 of Applicant's Statement of Questions.

Applicant argues that, pursuant to V.R.C.P. 8(c), the City waived the affirmative defense of *res judicata* or claim preclusion.⁴ Merrilees v. Treasurer, 159 Vt. 623, 623 (1992) (mem.)

³ A settlement agreement was reached and the Court issued a stipulated order in Purvis Nonconforming Use, Docket No. 45-5-15 Vtec. dismissing the matter without prejudice and noting that the underlying Burlington Development Review Board decision shall become enforceable. See Purvis Nonconforming Use, No. 45-5-15 Vtec. slip op. at 1 (Vt. Super. Ct. Envtl. Div. Sept. 26, 2016) (Durkin, J.); see also In re Purvis Nonconforming Use No. ZP1 5-0797AP, Findings of Fact at 1–3 (Burlington Dev. Rev. Bd. Apr. 24, 2015).

⁴ The waiver rule is premised on the necessity to provide notice to all parties regarding the issues on appeal. Merrilees v. Treasurer, 159 Vt. 623, 623 (1992) (mem.). In accordance with this, the Vermont Supreme Court has accordingly permitted exceptions to this general rule where "notice considerations are not implicated." *Id.*

(noting that *res judicata* is an affirmative defense). The City argues V.R.E.C.P. 5(f) requires that “[n]o response to the statement of questions shall be filed” and therefore the City did not waive claim preclusion. We agree.

The Vermont Supreme Court has held that claim preclusion, a principal barring the relitigation of claims already determined between parties, “operates with more flexibility when applied to municipal zoning decisions than to civil decisions.” In re Ferro & Pomeroy Demo/Const. Permit, No. 197-10-09 Vtec, slip op. at 5 (Vt. Super. Ct. Env’tl. Div. Nov. 22, 2011) (Durkin, J.) (citing In re Dunkin Donuts Site Plan Amendment Application, 2004 VT 123, ¶¶ 10-11); see generally Faulkner v. Caledonia County Fair Assoc., 2004 VT 123, ¶¶ 8–10, 178 Vt. 51. Indeed, within the Environmental Division claim preclusion “does not apply to administrative proceedings as an inflexible rule of law.” In re Carrier, 155 Vt. 152, 157 (1990). Although the principles of claim preclusion “generally apply in zoning cases as in other areas of the law,” the doctrine of finality under 24 V.S.A. § 4472(d) is a distinct set of preclusive rules developed specifically for zoning proceedings of this nature. In re Application of Lathrop Ltd Partnership, 2015 VT 49, ¶ 59; In re Wells Accessory Bldg. Application, No. 177-12-14 Vtec, slip op. at 3 (Vt. Super. Ct. Env’tl. Div. Aug. 11, 2015) (Durkin, J.).

Finality provides an exclusive remedy for contesting a zoning act or decision which requires that “all interested parties be bound by [the act or decision] . . . and shall not thereafter contest, either directly or indirectly the decision or act” in any subsequent proceeding. 24 V.S.A. § 4472(d); In re Ashline, 2003 VT 30, ¶¶ 8–11, 175 Vt. 203. Given the flexibility of claim preclusion, the role of § 4472 in barring collateral attack on the 2015 DRB and subsequent 2019 Supreme Court decisions, and the plain language of V.R.C.P. 5(f), which requires that “no response be filed,” we see no basis for barring the City from asserting claim preclusion. Therefore, the City is not barred from asserting these defenses at trial.

II. Whether Applicant is precluded by the 2011 Zoning Permit No. 12-0277CA from asserting that the south parking lot was included as part of the 1968 permit.

The City contends that use of the DA for parking constitutes a collateral attack, pursuant to 24 V.S.A. § 4472(d), on a final 2011 zoning permit issued to owners of an adjacent property at 158 North Willard Street, which identifies the DA, or easement area, as “green space.” See Appellee City of Burlington’s Exhibit 1, filed Nov. 20, 2020 (including Zoning Permit 12-0277CA, which sought the addition of a wooden deck). Applicant counters that neither Applicant nor his predecessor in interest sought interested person status as a party to that permit application, received notice, or sought to challenge the permit’s purpose to add a deck.

Generally, a failure to timely appeal decisions such as the cited the zoning permit approval here “binds all interested parties to the determinations made therein.” 24 V.S.A. § 4472(d); In re Banyai Variance, No. 53-5-18 Vtec, slip op at 6 (Vt. Super. Ct. Env’tl. Div. Jan. 04, 2019) (Walsh, J.). The Vermont Supreme Court, however, has shown a clear reluctance to apply § 4472(d) broadly in circumstances involving neighbors’ failure to appeal a zoning decision where there is little or inadequate notice or participation. In re Burns Two-Unit Residential Bldg., 2016 VT 63, ¶ 14, 202 Vt. 234 (2016) (noting that a neighbor’s failure to appeal where neighbors had little or no means

of gaining notice raises due process concerns); see also In re Fairchild, 159 Vt. 125, 131 (1992). This case mirrors the concerns expressed in Burns Two-Unit Residential Bldg. Namely, where there exist few means of receiving adequate notice and neither Applicant nor his predecessor in interest entered an appearance or were joined as an interested party to participate. See Alpine Haven Prop. Owners Ass'n, Inc. v. Deptula, 2003 VT 51, ¶ 14, 175 Vt. 559 (2003) (noting that a homeowner was a “party in a prior action; thus the privity requirement [of collateral estoppel] is satisfied”).

Moreover, the City has made no showing that Applicant constituted an interested party, pursuant to 24 V.S.A. § 4465(b)(3), or that proper notice given. Pursuant to 24 V.S.A. § 4465(b)(3), an interested party is an individual that owns or occupies property in the immediate neighborhood of the subject property and “who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.” While Applicant is a neighbor who currently owns adjacent property, the City has made no showing that Applicant’s interests were impacted. For these reasons, we conclude that Applicant is not collaterally estopped from arguing that the portion of the DA that is located on the neighboring property is a preexisting nonconforming use due to the issuance of a 2011 zoning permit No. 12-0277CA that refers to the DA as a “green space.”

III. Whether Applicant is precluded by the 2019 Vermont Supreme Court decision from asserting that south parking lot was a preexisting nonconforming use.

Applicant further argues that neither the 2015 DRB decision nor the 2019 Supreme Court decision addressed whether the DA was a (1) pre-existing non-conforming use or (2) was part of the ‘68 Permit that allowed the prior owner to work on cars and junk cars on the property. Applicant claims that the sole argument presented to the DRB in the prior litigation was that the DA was a *Bianchi* violation, and therefore the issues of whether the DA is a preexisting nonconforming use or as an implied component of the 1968 permit are not barred. In addition, Applicant argues he and the City expressly agreed in the settlement agreement that claim preclusion would not bar future litigation of any issue not resolved by the 2015 DRB decision. The City counters that the 2019 Decision precludes this subsequent, collateral review of the DA.

Here, the 1968 permit was not disclosed until after the settlement agreement and the 2015 DRB decision. While this issue could not be litigated in the 2015 DRB proceeding, it was raised before the Environmental Division and the Vermont Supreme Court in the subsequent litigation. Applicant identified the 1968 permit and moved for relief from the September 26, 2016 Stipulated Order over one year later in March of 2018. See In re Purvis, No. 45-5-15 Vtec, slip op. at 1–4 (Vt. Super. Ct. Envtl. Div. Sept. 25, 2018) (Durkin, J.); see also In re Purvis, No. 45-5-15 Vtec, slip op. at 1–3 (Vt. Super. Ct. Envtl. Div. Jan. 15, 2018) (Durkin, J.) (addressing Applicant’s motion to reconsider). In the motion Applicant argued that new evidence provided further grounds for extending the August deadline recorded in the Stipulated Order. *Id.* at 3–4 (discussing newly discovered evidence and denying Applicant’s motion for relief as untimely); see also In re Purvis Nonconforming Use, 2019 VT 60, ¶¶ 5–11 (upholding the Environmental Division’s decision). In both the Environmental Division’s Entry Order and Supreme Court

Decision concerning the motion for relief, the settlement agreement and newly discovered evidence, the 1968 permit, were before the Court.

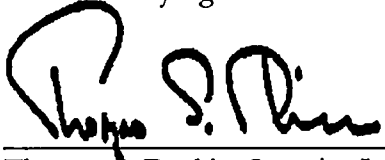
The Supreme Court addressed the new evidence, stating that “[Applicant argues that] the late disclosed 1968 permit supports an inference that the parking area should be treated as a grandfathered structure rather than as a noncompliant structure that has remained in place for fifteen years.” In re Purvis Nonconforming Use, 2019 VT ¶¶ 10–13 (noting that the Applicant contends “this distinction is important because as a grandfathered use, it would not be considered abandoned if not used for only sixty days; it would only be considered abandoned after one or two years of non-use”). Upon consideration of this evidence, the Supreme Court concluded that the Stipulated Order was a final judgement such that there were no “outstanding issues to be decided” and the new evidence was untimely under V.R.C.P. 60(b). Id. (citing Russell v. Russell, 157 Vt. 295, 301 (1991)). The scope of the 2019 Decision and this Court’s Entry Order both considered whether the new evidence justifies reopening that litigation and concluded that it did not. See In re Purvis, No. 45-5-15 Vtec, slip op. at 3 (Jan. 25, 2019); In re Purvis Nonconforming Use, 2019 VT ¶¶ 10–13. Given this ruling, this Court is bound by precedent, which precludes Applicant from raising issues and introducing evidence denied as untimely by the 2019 Supreme Court Decision.

Conclusion

For the reasons stated above, we **DENY** Applicant’s motion in limine. Therefore, this Court concludes that Applicant is precluded from introducing evidence regarding the prior use and permitting of the DA.

So Ordered.

Electronically signed on December 8, 2020 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Superior Judge
Environmental Division



BURLINGTON POLICE DEPARTMENT
Antonio B. Pomerleau Building
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Burlington, Vermont 05401

Brandon del Pozo
Chief of Police

Phone (802) 658-2704
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Public Records Request

Pursuant to 1 V.S.A. § 310-320, I, Joseph Cleary am requesting the following records from the Burlington Police Department:

1060007985 - involving wife (Teresa), daughter (Juniper),
and Luke Purvis

Request Date: 8/17/2016

Please clarify or explain your request if necessary:

Signature

You have the right to appeal a determination that a record is exempt to the agency head, pursuant to 1 V.S.A. § 318. Such an appeal will be decided within 5 business days of the receipt of your appeal. If you are aggrieved by a denial by the agency head, you may then appeal to the superior court pursuant to 1 V.S.A. § 319.

RECORDS USE ONLY

This request is redacted by NRB on 8/17/2016

The reasons for redaction, narrowing, or denial are that releasing these records:

- ☐ Could reasonably be expected to interfere with enforcement proceedings
- ☐ Would deprive a person of a right to a fair trial or an impartial adjudication
- ☒ Could reasonably be expected to constitute an unwarranted invasion of personal privacy
- ☐ Could reasonably be expected to disclose the identity of a confidential source
- ☐ Would disclose police techniques and procedures, risking circumvention of the law
- ☐ Could reasonably be expected to endanger the life or physical safety of any individual
- ☐ Other

~~Respect Honor Remember~~

Officer James P. McGrath, end of watch May 12, 1904; Officer J. Albert Fisher, end of watch December 15, 1947;
Officer Robert W. Provost, end of watch January 13, 1954

Incident Detail - : 284: Cousins, Jennifer

Incident Number: 16BU007985
Call Time: Sun Mar 27 09:13:35 -0400 2016
Call Type: Assist - Public
Primary Ofc.: 284: Cousins, Jennifer

Occurred From	Occurred To	Invest./Primary Officer
03/27/2016 09:13	03/27/2016 09:13	284: Cousins, Jennifer
Attachment	Description	Uploaded at
Image/Photo	Photos	03/27/2016 10:25 Image.jpeg 284: Cousins, J ☐ Confidential
Attachment	Description	Uploaded at
Image/Photo	Photos	03/27/2016 10:25 Image.jpeg 284: Cousins, J ☐ Confidential
☐ TRO/FRO	☐ Alcohol	☐ 911 Call
☐ Medical	☐ Audio	☐ DCF Notified
☐ Crisis Svc	☐ Swabbings	☐ SIU
☐ SVU Contact	☐ Exists	☐ Involved
☐ Contacted	☐ Photos Taken	☐ Prints Lifted
☐ Diagrams	☐ Clothing	☐ K9
☐ Miranda	☐ Other	☐ Crime Scene
☐ Lpr Used	☐ Video	☐ Recordings
☐ Evidence	☐ Warning	☐ Evidence
☐ Processed	☐ Opiate blocker	
Evid. Search Conducted	Physical Evidence	Media/Press Summary

Category	Sub category	Violation	Counts	#Premises
Comm/Att	IBR Scene/Loc Typ	IBR Crim Act Typ	IBR Gang Affil	IBR Agg.Aslt/Hom.
Point Of Entry	Force/No Force	Point of Exit	Campus Code	Justifiable Homicide
				NIBRS Override
				Significant Event

Narrative Type Officer
Report 284: Cousins, J

Narrative

On above date and time, I responded to a Public Assist at 158 No. Willard St. On arrival, I met with complainant John Cleary who advised he has ongoing issues with his neighbor, Luke Purvis, at 164 No. Willard St.

Cleary walked out to the base of the driveway at 164 No. Willard St. while speaking with me. He pointed toward a male in the driveway and advised that was Purvis.

He advised they have an ongoing dispute over land rights. He advised his property extends north almost to the southern edge of Purvis' driveway, but there is an "easement" just south of Purvis' driveway that Purvis is allowed to park on.

Cleary has been unable to get the courts to rule that he can possess his entire land parcel and make it so Purvis can't use that easement for parking, but they are going to a hearing in May in Superior Court about this issue.

Cleary advised he called police this morning because Purvis had parked a car (latter determined to be his sister, vehicle, bearing VT registration) on the easement and the front bumper bumped his fence, causing it to move. He said he is concerned Purvis will damage his fence doing this over time. I told him I would document this incident and I took photos of the bumper touching the fence. I inspected that area and did not observe any damage.

I met with Purvis, who was very angry and shaking when we spoke. He said he would not move the car, even if asked, and that Cleary had the fence put up in the two day period he was out of town at Christmas time. In his opinion, Cleary is in violation by constructing a fence several feet onto the easement where Purvis can, by contract, park on the easement.

I advised Purvis I would document this incident and that, if he continues to park against the fence, and this causes damage to the fence, I would likely write up a report and forward it to the State's Attorney's Office for review for prosecution for Unlawful Mischief. Purvis advised he would deal with that at

the-time if that should happen and he believes he is in the right because he believes Cleary is in violation for building a fence several feet into easement land that Purvis is authorized to park on.

Just prior to me leaving, I met with Cleary and his wife at their front porch area. Cleary's daughter, Juniper Cleary, then said she had just seen Purvis back his other car (not the one that was touching the fence initially) up and drive it forward into the fence, causing it to move "a lot". I then observed Purvis pull out of the driveway in his black Subaru wagon (registration not attached) smiling and he and Cleary argued a bit back and forth in front of me before he drove away. I inspected the fence in that new area and did not see any damage.

Cleary said he is concerned Purvis will continue to hit he fence now that he knows it angers Cleary and his wife and he fears it will damage the fence. Further, he said he had the fence put up as a safety measure because his kids play in the backyard.

Also, just FYI, Purvis installed surveillance cameras that I believe face the driveway and easement area because he said Purvis screams at him from the back yard and spits over the fence onto his vehicles.

I emailed our community liaison, Lacey Smith, and asked her to reach out to these parties. I notified Sgt. Nadeau of this incident.

Narrative Type *Officer*
Report 1055: Smith, L:

Narrative

I received an email from Crpl. Cousins in regard to this incident. I agreed to follow up with both tenants. I did express a limit to how much I would be able to mediate the situation as it appears as if neither man is willing to find a common ground, given of their dispute. I will offer to both gentlemen, the potential for mediation, as they have a court case in May that has the potential to settle the dispute.

<i>Offense Suspect</i>	<i>Offense Victim</i>	<i>IBR Victim-Offender</i>	<i>Bias/Motivation (anti)</i>
<i>V was LEO</i>	<i>V was LEO Assignment</i>	<i>Other ORI</i>	<i>LEOKA Narrative</i>



Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street Burlington, VT
05401

www.burlingtonvt.gov/DPI/DRB

Telephone: (802) 865-7188

Fax (802) 863-0466

*Brad Rabinowitz
AJ LaRosa
Geoff Hand
Brooks McArthur
Caitlin Halpert
Chase Taylor
Leo Sprinzen
Sean McKenzie, (Alte*



DRAFT

BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, December 21, 2021, 5:00 PM

Minutes

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401

Board Members Present: Brooks McArthur (remote), Caitlin Halpert (remote), Chase Taylor (remote), Leo Sprinzen, and Geoff Hand, A.J. LaRosa (remote)

Board Members Absent: Sean McKenzie (Alt)

Staff Members: Mary O'Neil, Scott Gustin

I. Agenda

II. Communications

III. Minutes

The draft minutes for the December 7, 2021 DRB hearing are posted on the website.

IV. Consent

1. ZP-19-567; 15 Conger Avenue (RL-W, Ward 5S) Patricia Stratmann

Time extension for approval to demolish existing structure and construct new single family home and related site improvements. (Project Manager, Scott Gustin)

Patricia Stratman. AL – swears them in. Geoff recused.

AJ – After a brief review, motion to approve adopted staff recommendation. Caitlin motioned, Chase 2nd. All in favor.

AJ – closes public hearing.

V. Public Hearing

1. ZAP-21-11; 164 North Willard Street Appeal (RL, Ward 1E) Luke Purvis

Appeal of zoning application denial for installation of fence and related gates. Continuance requested by appellant. (Project Manager, Scott Gustin)

Luke Purvis and Christina Lauterbach - are sworn in.

Scott – Gave an overview of the current statuses; pending fence denial, requesting an extension which the staff supports. Gravel strip determination; applicant said it was appealed, staff says it was not. The question tonight is; was the appeal filed properly.

Geoff – could you walk through the timing of when it was made and when did it run

Scott – October, adverse admin determination. Applicant did file timely but also requested reconsideration

November, different adverse determination issued. Posted packet to applicant. Luke asked if it could be appealed, staff answered yes and noted appeal period ended the day before.

No correspondence from applicant saying he would be appealing, process not followed but is it close enough?

Caitlin – was original appeal followed clearly?

Scott – yes it was

AJ – Luke to comment and share your position.

Luke: Christina; We agree with Scott's timeline. We were confused about the timeline of reconsideration nullifying appeal. Scott said to combine the two to streamline, but no conversation to tell us how to combine two appeals.

Luke: We knew we need to appeal when we took reconsideration but didn't know it would lose our appeal period. When I wrote, on 11/26, no idea the appeal period nullified in system. We just want the fence for family protection.

AJ – Caitlin asked if they followed the process the first time why didn't you follow for this appeal.

Christina – No information on how to combine two appeals.

Joe Cleary, neighbor – sworn in. Luke is very familiar with the appeal process after having been in litigation over this for the last seven years. He is not new to making appeals as many were made to the DRB. A conversation typically does not count as filing an appeal. It would be a bad precedent to set if a conversation takes the place of filing appeal paperwork properly.

AJ – Does the Board have any more questions – No.

Luke: We are asking for clarification of 2015 decision. If appeal was entered into the system we would have known it was returned/mailed back to us.

AJ – Thank you all – closes public hearing.

2. **ZP-21-509; 72-76 Elmwood Avenue (RH, Ward 2C) Michael Alvanos / PBGC LLC**
Construct three-unit detached residential building on site of former Methodist Church. One single family dwelling remains. (Project Manager, Mary O'Neil)

Applicant not present.

AJ – motioned to continue to January 4th meeting, Brooks 2nd.

3. ZP-21-759; 77 Pine Street (FD6, Ward 3C) Grace Ciffo / Nedde Pine LLC

This Request is for the specific reconsideration of condition #22 “Rooftop mechanicals shall be screened”, for ZP21-118OG, also related to ZP21-0927CA. (Project Manager, Mary O’Neil)

AJ recused.

All participants – Sworn in.

Doug, Grace - The requirement for screening normally adds value but the building is so high that screening doesn’t make a difference. It takes away from the architectural value. Architect did a study to show the screening when viewed from different sides.

Curtis – used google earth to show how much screening would be visible from the different sides of the building and how one side it showed enough to take away the visual value of the building, loses architectural lines of building. (various simulations were shown)

Leo – did you include curbs in equipment, in the roof plan? yes

Geoff – question for staff; other adjacent buildings don’t have screening.

Staff – they were approved before the ordinance changed.

Geoff – Are there any exceptions to form based code?

Mary – Article 14 shows what ordinances are required to be reviewed.

Doug – we have proved the screening takes away from the architecture of the building and doesn’t do anything since the equipment can’t be seen that high.

Jay White, neighbor – what about those of us in other buildings that are higher, we would be able to see the equipment and have to look at that from our buildings. On behalf of the other building owners we would like to request that they equipment get screened. Neighbors are as tall as your building will be.

Geoff – Code is for street level not from surrounding buildings. Closed public hearing.

DRAFT

V. Certificate of Appropriateness

- 1. ZP-21-541; 410 Appletree Point Road (RL-W, Ward 4N) Charles Schmidt /**
Demolition of existing camp and construction of new single family home. (Project Manager, Scott Gustin)

All participants sworn in.

Scott; applicant resubmitted site plan. Tear down small home. New home further away. Conservation Board and DAB approved with removal of parking spaces. They did remove spaces.

AJ – No board questions.

Elizabeth Harman; There are no outstanding issues on the project. Finalizing details to bring power to the site. Board requested the power lines be buried. There was discussion of moving a pole but it is proving to be too expensive.

Burying part of the line is possible but may not be possible to bury all of it. Can we commit to bury partial then continue to work out the remaining pole?

Seth – we are setting up a meeting with BED.

AJ – when is is BED meeting?

Seth – we have no meeting confirmation yet.

AJ – closed public hearing.

VII. Adjournment 6:26 pm.

A.J. LaRosa, Interim Chair of Development Review Board

Date

Celeste Crowley, Administrative Staff

Date

The City of Burlington will not tolerate unlawful harassment or discrimination based on political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.