

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

www.burlingtonvt.gov/pz/DRB

Telephone: (802) 865-7188

Fax (802) 865-7195

Austin Hart
Brad Rabinowitz
Israel Smith
AJ LaRosa
Geoff Hand
Alexandra Zipparo
Samantha Tilton
Jim Drummond, (Alternate)
Robert Purvee, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday December 5th, 2017, 5:00 PM PUBLIC HEARING NOTICE

The Burlington Development Review Board will hold a meeting on
Tuesday December 5th, 2017 at 5:00pm in Contois Auditorium, City Hall.

- 1. 18-0463AP; 327 South Winooski Ave (RM, Ward 6S) John and Maria O'Brien**
Appeal Notice of Violation # 335339 relative to unpermitted site and building alterations.
(Project Manager: Jeanne Francis)

Plans may be viewed in the Planning and Zoning Office, (City Hall, 149 Church Street, Burlington), 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 Planning and 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/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

The programs and services of the City of Burlington are accessible to people with disabilities. Individuals who require special arrangements to participate are encouraged to contact the Department of Planning & Zoning at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).

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Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday December 5th, 2017, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT AGENDA

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Consent**

- 1. 17-1150CA; 3163 North Ave (RLW, Ward 7N) Elizabeth and John Shappy**
Concrete pad, deck, and seawall.
(Project Manager: Scott Gustin)

V. Public Hearing

- 1. 18-0463AP; 327 South Winooski Ave (RM, Ward 6S) John and Mario O'Brien**
Appeal Notice of Violation # 335339 relative to unpermitted site and building alterations.
(Project Manager: Jeanne Francis)

VI. Other Business

- 1. Form Based Code Presentation**

VII. Adjournment

Plans may be viewed in the Planning and Zoning Office, (City Hall, 149 Church Street, Burlington), between the hours of 8:00 a.m. and 4:30 p.m.

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Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Anita Wade, Zoning Clerk
Layne Darfler, Planning Technician



TO: Development Review Board
FROM: Scott Gustin
DATE: December 5, 2017
RE: 17-1150CA; 3163 North Avenue (amendment)

=====

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: 7N

Owner/Applicant: John Shappy

Request: Amend permit approval for concrete pad and deck within lakeshore and wetland buffer to include an existing seawall.

Applicable Regulations:

Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines)

Background Information:

The applicant is seeking to amend a recent zoning permit approval for an existing concrete pad and deck along the lakeshore to also include an existing seawall. The applicant mistakenly did not include the seawall in the prior application materials. No new construction is proposed. The only change incurred in this amendment is inclusion of the seawall in the site plan.

The Conservation Board reviewed this amendment at their November 6, 2017 meeting and recommended approval as is. The Board considered impacts to the lakeshore buffer and wetland buffer affecting this parcel and determined little in the way of impacts. The applicant has also reviewed the proposal with the State Wetlands Office. As the seawall extends below the 102' elevation into the Special Flood Hazard Area, review under Sec. 4.5.4 (f) *Special Flood Hazard Area* is necessary. A copy of the amendment was forwarded to the state's River Corridor and Floodplain Protection Program as required on October 24, 2017. No comments from this state office were received within the 30-day comment period.

Previous zoning actions for this property are noted below:

- 9/19/17, Approval for concrete pad and deck within lakeshore and wetland buffer

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

I. Findings

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Residential Low Density – Waterfront (RL-W)

The Residential Low Density –Waterfront (RL-W) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhood's development history. The use of the property, for seasonal lakeshore access, is effectively accessory to the property owner's nearby single family dwelling. **(Affirmative finding)**

(b) Dimensional Standards and Density

Inclusion of the seawall with the concrete pad and deck increases lot coverage to 13.6%, well below the 35% maximum permissible.

The concrete pad is 55' from the 100' elevation along the lakeshore. The 55' setback is acceptable under Sec. 4.4.5 (d) 1 B (ii) which allows averaging the waterfront setback of existing principal structures within 150' of the subject property. In this case, the existing primary structure to the north is also setback 55' from the 100' elevation. The seawall is allowed to encroach into the lakeshore setback.

At 10% of the lot width, a ~3' side yard setback applies. The structures are set back 6' or more from the nearest side property line. The front yard setback is based on the average of neighboring properties +/- 5.' In this case, there is just one neighboring property with a building on it. That building is setback 21' from the front property line. The pad included in this application is set back 35' from the front property line. Insofar as no building is included in this proposal, and the pad is set behind the front yard setback so as to avoid conflicts with front yard parking restrictions, its location is acceptable.

The deck appears to be about 5' tall and is well under the 15' accessory structure height limit. The seawall is up to 4' tall and is also well under the 15' accessory structure height limit. **(Affirmative finding)**

(c) Permitted and Conditional Uses

As noted before, the site features are effectively accessory to the property owner's nearby residence. **(Affirmative finding)**

(d) District Specific Regulations

See Sec. 4.4.5 (b) above.

Sec. 4.5.4, Natural Resource Protection Overlay District

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

This application entails no tree clearing or new stormwater discharges. The Conservation Board reviewed this application August 7, 2017 and as amended November 6, 2017 and recommended approval as is. **(Affirmative finding)**

(d) District Specific Regulations: Wetland Conservation Zone

This application pertains to site improvements within the city's 100' wide wetland buffer zone. The minimal site improvements are located within existing cleared lawn area. The Conservation Board found wetland impacts to be minimal and recommended approval of the application as is. **(Affirmative finding)**

Sec. 4.5.4, Natural Resource Protection Overlay District:

(a) District Specific Regulations: Special Flood Hazard Area

(7) Special Review Criteria

A. The danger to life and property...

The seawall has no perceptible impact on flood heights or velocities. **(Affirmative finding)**

B. The danger that material may be swept onto other lands...

The seawall consists of large concrete slabs (from former sidewalks) set into the ground. Flood velocities are typically not problematic along the lakeshore. Flood waters rise and then fall. Velocity is a danger within the floodway that follows the river corridor. There is little danger that the concrete will be swept away. **(Affirmative finding)**

C. The proposed water supply and sanitation systems...

There are no existing or proposed water or sanitation systems. **(Not applicable)**

D. The susceptibility of the proposed facility and its contents to flood damage...

The seawall is a protective measure against flood damage to the property. The potential for flooding damage to the seawall itself is minimal. **(Affirmative finding)**

E. The importance of the services provided...

The seawall is of little importance to the Burlington community; however, it provides substantial protection to the private property that it is located on. **(Affirmative finding)**

F. The availability of alternative locations...

The point of the seawall is to protect the property from flood damage. Its placement within the flood zone is key to this function. It's location within the floodplain is acceptable. **(Affirmative finding)**

G. The compatibility of the proposed use with existing development...

Seawalls are commonplace along Burlington's lakeshore. **(Affirmative finding)**

H. The relationship of the proposed use to the Municipal Development Plan...

The Municipal Development Plan does not address seawalls. It does speak to the development pattern of single family homes and duplexes in the RL and WRL zones. The subject property contains improvements accessory to the owner's nearby single family home. Insofar as properties along the lakeshore commonly have seawalls, the proposal can be found in compliance with the MDP. **(Affirmative finding)**

I. The safety of access to the property...

The seawall has no effect on the safety of access to the property during times of flood. **(Affirmative finding)**

J. The expected heights, velocity, duration, rate of rise...

The maximum regulatory flood elevation along the lakeshore is 102' above sea level. The seawall has no impact on flood heights, velocity, duration, rate of rise, or sediment transport. **(Affirmative finding)**

K. Conformance with all other applicable requirements...

See Articles 4, 5, and 6 of these findings.

Sec. 4.5.6, Mouth of the River Overlay District

While the subject property is included within this overlay district, none of the provisions pertain to the application. **(Not applicable)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable to the subject property.

Sec. 5.2.5, Setbacks

See Article 4 above.

Sec. 5.2.6, Building Height Limits

See Article 4 above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Article 4 above.

Sec. 5.5.1, Nuisance Regulations

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

Sec. 5.5.2, Outdoor Lighting

(Not applicable)

Sec. 5.5.3, Stormwater and Erosion Control

(Not applicable)

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Sec. 6.1.2, Review Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

Most of the criteria under this section do not pertain to the permit request. The site improvements are minimal, involve no buildings, and serve to provide seasonal lakeshore access to the property owner and to protect the lakeshore from erosion. As noted in Article 4 above, the site improvements are dimensionally compliant. The most significant considerations as to natural resource impacts have been considered by the Conservation Board and have been found to be

acceptable. No earthwork, new construction, or utility work is included in this application.
(Affirmative finding)

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(Not applicable)

II. Conditions of Approval

1. Standard Conditions 1-15.
2. Per Sec. 4.5.4, (f) 8, construction within the Special Flood Hazard Area is subject to the following conditions:
 - C. All development:
 - (i) New construction and/or substantial improvements to structures shall be reasonably safe from flooding and be:
 1. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
 2. Constructed of materials resistant to flood damage;
 3. Constructed by methods and practices that minimize flood damage; and
 4. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - (ii) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
 - (iii) All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
 - (iv) All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall:
 1. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
 2. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings of two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
 - (v) All necessary permits shall be obtained from those governmental agencies from which approval is required by federal or state law.
 - D. Residential Development:
 - (i) Not applicable.
 - E. Non-Residential Development:
 - (i) All new construction and substantial improvements for nonresidential purposes shall have the lowest floor, including basement, elevated one foot

or more above the base flood elevation. Existing non-residential structures may be flood proofed where designed to be watertight to one foot or more above the base flood elevation, with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a proposed building to be flood proofed shall not be issued until a registered architect or engineer has reviewed the structural design, specifications and plans and has certified that the design and methods of construction are in accordance with meeting the provisions of this subsection.

- F. Water Supply Systems:
Not applicable;
- G. On-Site Waste Disposal Systems:
Not applicable;
- H. Recreational Vehicles:
 - (i) Not applicable.







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MAY 16 2017

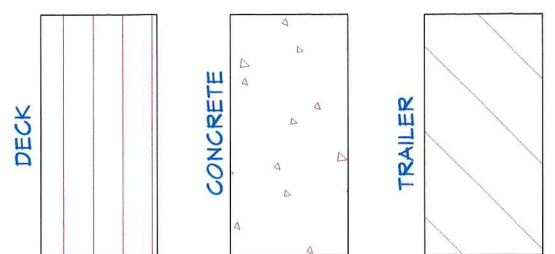
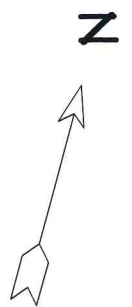
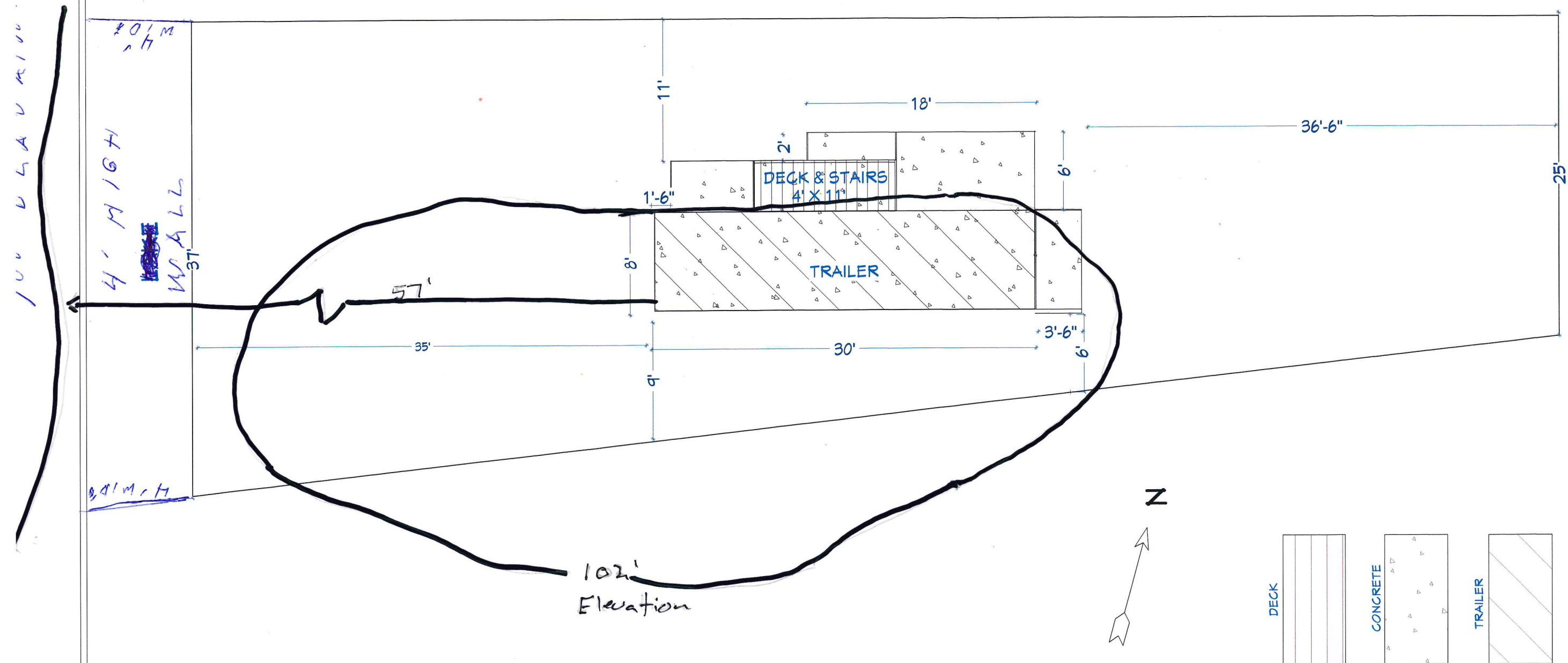
DEPARTMENT OF
PLANNING & ZONING

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OCT 18 2017

DEPARTMENT OF
PLANNING & ZONING

NORTH AVE



102'
Elevation

3163 North Avenue



**CODE ENFORCEMENT OFFICE**

645A Pine St, PO Box 849
Burlington, VT 05402-0849
VOICE (802) 863-0442
FAX: (802) 652-4221

NOTICE OF ZONING VIOLATION (NOV 335339)

October 20, 2017

JOHN A. AND MARIA O'BRIEN
327 SOUTH WINOOSKI AVENUE
BURLINGTON, VT 05401

Mailed Certified Mail 9590 9402 2772 6351 9996 68
And FIRST CLASS MAIL

NOTICE OF VIOLATION AT:
327 SOUTH WINOOSKI AVENUE,
TAX LOT #049-4-173-000

Dear JOHN A. AND MARIA O'BRIEN

It has come to the attention of this office that a zoning violation exists at 327 South Winooski Avenue.

Description of Violation: Alterations to the single family home in a RM zone that is listed on the State Register of Historic Structures, without Zoning Approval (constructing a roof top deck and replacing an existing window with a door). Fence approved under ZP 99-430 approved on April 12, 1999, does not comply. Fence and rear and along south side of property (with gate) does not have zoning approval. See attached photo

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 5, 12, and 24 VSA §4451.

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars (\$200.00) for each day that a violation continues. You may submit an application to attempt correction of the violation, however, be advised application and filing fees are subject to a fee increase for permits required to correct a violation.

This correspondence serves as a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violation. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violation is not cured or remedied as provided for in this notice, the City will pursue enforcement of the violation as provided for by law.

This Notice of Violation (NOV) may be appealed to the Burlington Development Review Board in accordance with the provisions of CDO Sections 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV September 26, 2017, and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Appeal fee and complete application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by **4 pm on November 4, 2017**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call Jeanne Francis at (802) 864-8518 or email at jfrancis@burlingtonvt.gov.

Sincerely,

David E. White
Zoning Administrative Officer

Sincerely,

Jeanne Francis
Asst. Zoning Administrative Officer/
Code Compliance and Enforcement

Enclosures: Violation Details

Cc: Land Records for Tax Lot # 049-4-173-000

VIOLATION DETAILS

LOCATION: 327 SOUTH WINOOSKI AVENUE

DECISION DATE: October 20, 2017

VIOLATION DESCRIPTION: Alterations to the single family home in a RM zone that is listed on the State Register of Historic Structures, without Zoning Approval (constructing a roof top deck and replacing an existing window with a door). Fence approved under ZP 99-430 approved on April 12, 1999, does not comply. Fence and rear and along south side of property (with gate) does not have zoning approval. See attached photo.

- FINDINGS:**
- 1) On May 8, 2017 it came to the attention of the Code Enforcement that a roof top deck had been constructed, window replaced with an access door to the deck, on the south elevation of an historic house.
 - 2) On May 19, 2017 a notification letter was mailed to Owners informing them of a potential zoning violation (ie. new deck, removing window and replacing with door).
 - 3) On June 5, 2017 Owner responded to the May letter and stated he would apply for a zoning permit.
 - 4) On June 8, 2017 Owner submitted an incomplete zoning application. Upon completion of the application it was denied on September 6, 2017 as the application represents a change to a distinctive feature that characterizes the property; decision was not appealed.
 - 5) June 28, 2012 our office received a complaint regarding a 6 ft. high fence in the front yard; owner agreed to reduce fence to 3 ft. high as approved in ZP 99-430. Current fence does not comply with approvals. Photos from the Assessor's 1994 reval show a picket fence in the rear yard and side yard which has since been replaced with a solid fence, which requires a zoning permit.
 - 6) To date, deck and access door have not been removed. Original windows has not been replaced.

REMEDY OPTIONS: Within seven (7) days from receipt of this notice, you may cure the violation by:

- 1) Removing the roof top deck on the southwest elevation of the house, remove the door accessing the deck that replaced a window, return the original window to its original opening, and remove fence surrounding the front yard or restore the original 3' high fence; removal includes **restoring the Premises to its prior state. Upon completion you must inform the Code Enforcement Office so our office may verify compliance; or**
- 2) Obtaining zoning approval for the fences, as built.

- 3) Entering into an Agreement with the City of Burlington to bring property into compliance with the CDO if you cannot meet #1 above within 7 days (administrative fees required). Agreement must be executed by **November 4, 2017.**

APPEAL RIGHTS: You have the right to appeal this decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice. The deadline for filing an appeal is 4 pm on November 4, 2017.** Submit a complete application with ZV#335339 and appropriate fee to the Department of Planning and Zoning, accompanied by a memo noting the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

REGULATION CITATION: CDO Article(s): 2, 3, 5, 12 and 24 VSA §4451



Deck and door were denied under ZP 17-1255CA on September 6. This fence style, solid fence, has replaced a picket fence.



Fence does not comply with its approved style and height.



Fence does not comply with ZP 99-430



Roof top deck with access door on southwest corner of house were denied zoning approval on September 6, 2017.



2nd Story Deck and accessor door still in place. Request for deck and accessor door were denied on September 6. This solid fence along south property line has replaced a picket fence.



Fence permit was for front only, not entire property. This solid fence along the southern boundary of property replaced a picket fence.



Front yard fence higher does not comply with permit.



Photo from the Assessor's Records of their 1994 Reval. Photo shows a window (over porch roof) which has recently been changed to a door, pitched roof on the bottom porch, no deck on top of the porch roof, and a picket fence in the rear and along the southern property line.



Department of Planning and Zoning

149 Church Street, City Hall
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www.burlingtonvt.gov/pz

Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

SUBJECT LOCATION ADDRESS: 327 S. Winooski Ave

Subject Property Owner: MR John A O'Brien Maria D O'Brien

Appellant: John O'Brien

Agent/Representative: "

Mailing Address: 327 S. Winooski Ave -

City, St, Zip: Burlington VT 05401

Day Phone: 802-881-6735 Email: Jack.bil@me a Ht mail .com

Appellant Signature: [Signature] Date: Nov 3/2017

In order for your request to be considered complete, **ALL** of the following information **must** be provided, as applicable:

- ☒ The Appeal **fee of \$250**;
- ☐ Description of the decision under appeal; See Attached
- ☐ Description of the property subject to the appeal;
- ☐ Reference to the regulatory provisions applicable to the appeal;
- ☐ Relief requested by the appellant;
- ☒ Alleged grounds why such requested relief is believed proper under the circumstances.

The fence in question was approved when replaced
Door for window is well within code

Office Use Only:

Check No. 893 Amount Paid 250 Zoning Permit # 18-0463 AP



City of
Burlington, Vermont
149 Church Street

Appeal of Administrative Officer's Decision Code Enforcement Office's Report

Appeal #: 18-0463AP

Tax ID: 049-4-173-000

Application Date: November 3, 2017

Property Address: **327 SOUTH WINOOSKI AVENUE**

Description: Appeal Notice of Violation # 335339 relative to unpermitted site and building alterations at 327 South Winooski Ave. (hereinafter referred to as Property).

Note: Although filed in a timely manner, Appellant's appeal is incomplete; the submittal does not comply with Sec. 12.2.2 of the CDO. On behalf of the Zoning Administrator, we ask that the DRB deny the Appellant's appeal due to an incomplete submission. In light of the incomplete appeal, should the DRB opt to consider the appeal, below is staff's report.

Appeal: Sec. 12.2.2 Appeals of Administrative Officer Decisions

Appellant filed the attached form to Planning/Zoning office on November 3, 2017 with no attachment. As you will see, the form was filled in sporadically and does not provide all the information required under Sec. 12.2.2.

Name and address of appellant:

John and Maria O'Brien
327 So. Winooski Ave.
Burlington, VT 05401

Brief description of Property with respect to which the appeal is taken

Appellant left this section blank and provided no attachment.

Reference to the regulatory provisions applicable to that appeal

Appellant left this section blank and provided no attachment.

Relief requested by the appellant

Appellant left this section blank and provided no attachment.

Alleged grounds why such requested relief is believed proper under the circumstances

Appellant states in his appeal "the fence in question was approved when he replaced the door for window is well within code". [Appellant Submittals](#)

Appellant did not include any submittals with the appeal.

Code Enforcement Report

327 South Winooski Avenue: Appeal of Administrative Decision

December 5, 2017

Zoning Enforcement Submittals

- Notification of an alleged violation dated May 19, 2017
- Appellant's response letter to the May 19th Notification dated June 5, 2017
- Notice of Violation dated October 20, 2017
- Photos of Violations at Property

Description of the Property:

Property is an Owner-occupied 2-bath, 4-bedroom single family home located in the RM zone. Lot is 3,757 sf, finished area of home is 1,734 sf. Home constructed circa 1899 and is listed on the State Register of Historic Structures.

Property Background Information:

- No building permits on file to construct the deck or replace a window with a door.
- On May 5, 2017 it came to the attention of the Code Enforcement Office that a roof-top deck had been constructed at the Property without zoning approval. An egress door to access the unapproved deck replaced a window on the south elevation of this Historic structure, without zoning approval.
- On May 19, 2017 a notification letter was mailed to Appellants informing them of a potential zoning violation (ie. Construction of a new deck, removing a window and replacing the window with an egress door).
- On June 5, 2017 Appellants responded to the May 19th letter stating they didn't realize a permit was required and would apply for a zoning permit.
- On June 8, 2017 Appellants submitted an incomplete zoning application to the Planning/Zoning Office to cure the alleged violations. Discussions ensued between Appellant and Planning/Zoning staff between June 8 and August 22, 2017 regarding the incomplete application. On July 26 Planning/Zoning staff noted to Appellant that the fence shown in photos does not correspond with previously approved zoning permit.
- On September 6, 2017, Appellant's request to cure alleged violations (ZP 17-1255CA) was denied for reasons below:

The residence, constructed c. 1882, is listed on the State Register of Historic Places, and is subject to the regulations of Sec. 5.4.8 CDO – Historic Buildings and Sites. Specifically, the following subsection applies to the property:

Sec. 5.4.8 (b) (2) – The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

The 2/2 double-hung window was removed and replaced with a door to access a recently constructed deck atop the existing southwest corner porch. Both the window replacement and the porch-top deck were done without a zoning permit. The State Historic Register listing notes that the structure's fenestration is 2/2 sash double-hung windows. Because the property is located at the corner of South Winooski Avenue and Spruce Street, it has two frontages. The subject window was located on the SW side of the residence, and visible from Spruce Street.

The application to replace the second story, 2/2 double-hung window with a door, on the Spruce Street side of the residence, represents a change to a distinctive feature that characterized the property and cannot be approved.

Permit denial was not appealed.

- On October 20, 2017 a formal notice of violation was mailed to Appellants citing: *Alterations to the single family home in a RM zone that is listed on the State Register of Historic Structures, without Zoning Approval (constructing a roof top deck and replacing an existing window with a door). Fence approved under ZP 99-430 approved on April 12, 1999, does not comply. Fence and rear and along south side of property (with gate) does not have zoning approval. To date, deck and access door have not been removed. Original windows has not been replaced; notice of violation appealed on November 3, 2017.*

Comprehensive Development Ordinance (CDO)

Appellant is not arguing any specific ordinance sections. City cited Articles 2, 3, 5, 12 and 24 V.S.A §4451 in the notice of violation.

Article 2: Administrative Mechanisms
Part 7: Enforcement

Article 3: Applications, Permits, and Project Reviews
Part 2: Applications and Permits

Article 5: Citywide General Standards
Part 1: Uses and Structures
Part 2: Dimensional Requirements
Part 3: Non-conformities

Article 12. Appeals, Conditional Uses, Variances

Sec. 12.2.2 (a).

1. Name and Address of Appellant:
 - a. Name and address have been completed in Appeal.
2. Brief description of Property with respect to which the appeal is taken.
 - a. Appellant left this section blank.
3. Reference to the regulatory provisions applicable to that appeal.
 - a. Appellant left this section blank.
4. Relief requested by the appellant.
 - a. Appellant left this section blank.
5. Alleged grounds why such requested is believed property under the circumstances.
 - a. Appellant states in his appeal “the fence in question was approved when he replaced the door for window is well within code”.

When an appeal is taken to the DRB in accordance with this section, the administrative officer has the initial burden of presenting sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

As noted above, Appellant has submitted an incomplete appeal and it is unclear as to his arguments. A notification alerting Appellant of a potential violations (ie. Construction of a deck, changing window to an egress door, constructing a fence, and failure to comply with previous fence permit conditions) was not refuted but instead Appellant filed a Zoning Permit application. The request was denied, was not appealed, and the alleged violation continued without zoning approval, thus a formal Notice of Violation was mailed to Owner/appellant in accordance with 24 V.S.A. §4451: Enforcement; penalties.

24 V.S.A. §4451: Enforcement; penalties

Owner may, under this bylaw, be subject to fines of up to \$200.00 a day for each offense.

Summary

Code Enforcement Office received a complaint on May 5, 2017. Appellant was notified of the complaint and given 10 days from date of notification letter (ie. May 19) in which to refute the complaint. On June 5th Appellant phoned and stated they (he) would remedy the alleged violation by requesting a zoning permit; an incomplete permit application was submitted on June 8th. From June 8th until August 22nd Planning/Zoning staff worked with the Appellant and encouraged them to submit a complete application. When a complete application was not submitted, on September 6, 2017, the zoning permit request was denied, for various reasons; permit decision was not appealed.

After the appeal period and verifying the alleged violations had not been cured, on October 20 a formal notice of violation was mailed to Appellants according to State Statutes; Appellants appealed the notice on November 3rd.

Appellant stated in his appeal under Appeal Form Category: Alleged grounds why such requested relief is believed proper under the circumstances, Appellant replied: *The fence in question was approved when replaced door for window is well under code (writing is not quite legible but it appears this is what the Appellant was saying). Appellant did not address the Category above this one, Relief requested by Appellant*, he left it blank. It is unclear as to what the Appellant is referring to in this statement—as indicated above, the zoning permit application for the door was denied.

As of this writing, the alleged violations have not been cured.

CONCLUSION:

Under the auspices of the Zoning Administrator, we ask that the DRB to uphold Notice of Violation #335339 and order the following:

1. Within 30-days from date of DRB decision, remove the roof-top deck on the 2nd story southwest corner of house.
2. Within 30-days from date of DRB decision, remove the egress door and replace it with the original window that was removed.
3. Restore roof and siding to its original state should damage occur from the removal.
4. Within 30-days from date of DRB decision, remove the fence along the southern and western sides of property or obtain zoning approval.
5. Within 30-days from date of DRB decision, obtain a Unified Certificate of Occupancy for ZP 99-430.
6. If items 1-5 above cannot be obtained within the noted deadline, Appellant MUST request and execute an Agreement with the City within 35 days to remedy the alleged violations; an Agreement fee will be required.

Burlington Development Review Board

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Burlington, VT 05401
www.burlingtonvt.gov/pz/DRB
Telephone: (802) 865-7188
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Austin Hart
Brad Rabinowitz
Israel Smith
AJ LaRosa
Geoff Hand
Alexandra Zipparo
Samantha Tilton
Jim Drummond, (Alternate)
Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday December 5th, 2017, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT Minutes

Board Members Present: A. Hart, B. Rabinowitz, I. Smith, A. LaRosa, G. Hand, A. Zipparo, S. Tilton

Board Members Absent: J. Drummond

Staff Present: Scott Gustin, Ryan Morrison, Layne Darfler, David White

I. Agenda

No changes

II. Communications

None

III. Minutes

A.Hart: Will act upon at end of meeting

IV. Consent

1. **17-1150CA; 3163 North Ave (RLW, Ward 7N) Elizabeth and John Shappy**
Concrete pad, deck, and seawall.
(Project Manager: Scott Gustin)

A. Hart: Has the applicant received and reviewed the staff report and conditions?
Confirmed

A.Hart: Does the applicant have any questions or comments regarding that report?
None

A.Hart: Do any member of the Board object to this item remaining as consent?
None

A.Hart: Are there any members of the public who wish to speak on behalf of this project?
None

A.Hart: We have already approved the pad and deck, tonight we are approving just the seawall?

S.Gustin: You are approving the entire project/application

G. Hand: Motion to approve and adopt staff findings

B.Rabinowitz: Seconds the motion

7-0-0

V. Public Hearing

1. 18-0463AP; 327 South Winooski Ave (RM, Ward 6S) John and Maria O'Brien
Appeal Notice of Violation # 335339 relative to unpermitted site and building alterations.
(Project Manager: Jeanne Francis) (Bill Ward in place)

B.Ward: Director of Code Enforcement, stepping in for Jeanne Francis who is out on leave. Was witness in initial investigation and has been heavily involved in projects regarding this property. This particular property and process is peculiar because of its timeline. In April 2017 we received an anonymous complaint of a new door replacing a window on the second floor. City records state the building is over 100 years old, a 2 story single family home, built in 1899; Code Enforcement investigators witnessed the change, took photos of the issues and changes, a warning letter was sent in May of 2017. June 5th the property owner responded by applying for a zoning permit, owner submitted an incomplete application and there were six documented communications made by the Planning and Zoning office to the property owner to complete the permit application for the change to the second story window converted to a door and the addition of a deck on the second story. Ultimately the permit was denied. Denial information was in Jeanne's report but actual denial is important to consider. September 6th, 2017 denial was sent to the property owners, there was no appeal made regarding the denial. Code Enforcement waited another month to decide how they wanted to act, allowing the property owner time to act. Code Enforcement issued the Notice of Violation on October 20th. The appeal was received, the property owner appealed the Notice of Violation. That Notice of Violation pointed out the work done without permits as well as fence issues that were discovered during the investigation. A 1999 fence permit allowed for a 3' high picket fence around perimeter of property. Zoning permit approved was for picket fence, the existing fence is different than what was originally approved.

A.Hart: The existing fence is different than what was approved in the 1999 permit?

B.Ward: Correct. The new fence is not what was approved under the 1999 permit. A simple permit application could remedy this issue. Procedurally the property owner should have appealed the permit denial. Unless a permit is issued to accept the changes as is, the property owner needs to correct the violation. Jeanne Francis's conclusion in notice was to uphold the violation and ask the property owner to either return the property to its original condition, or get approval for the modifications to make it meet current standards. Work on the roof, second floor window changed to a door, and deck should not be there unless approved permit is on file which currently there is none. We are asking the DRB to uphold the violation.

A.Hart: Does the Board have any questions?

None

A.Hart: Part of the City's request is to dismiss the appeal as part of the appeal was incomplete. The submitted appeal told them next to nothing regarding what the appeal was, concerns and issues, or your argument for the changes. Part of this appeal and issue could have been avoided with cooperation and information sharing on the appellant's behalf.

J. O'Brien: Process was/is not easy, if it was known that there was more information needed it would have been provided. Was not aware the information was missing. Regarding the fence: would have never changed the fence but it was ripped down by sidewalk snowplow three years in a row and when we asked the City we were told the fence was too close to the sidewalk and suggested it be moved back. Admits the fence was changed and moved without permit. Emailed with zoning as he was informed the fence was too tall, then he received word that the fence was actually illegal and he would have to remove the entire thing.

A.Hart: The City's position was that you had a couple of options, take down the fence or apply for a permit for the changes to the fence.

J.O'Brien: Nowhere in paperwork stated that he had any options; Window to door change was mistake, but never received a denial for the submitted application. Denied because property is considered historical, but the surrounding neighbors made massive changes to homes that totally altered them. Why can they do that and my simple changes are a problem?

A.Hart: It is true if you do almost anything to the exterior of historical homes there is the Design Advisory Board that they have to go through. The City's goal is to preserve the historic character.

J.O'Brien: Wasn't aware of the process, victim of own ignorance. Just a home owner.

A.Hart: I think the easiest solution is for you to file a new zoning permit application with substantial changes made to show us the context about how you can do what you want to while preserving the historic character. A violation process is not the best way to deal with this issue. There are several chances for you to obtain process guidance during the process of permitting. Will accept that appellant was not aware but there are people in planning and zoning there to help guide through the process.

B.Rabinowitz: The fence issue is pretty straight forward. The fence isn't illegal or an issue, currently, it's just unpermitted. Denial was for what was built and changed on the home, chances are if he re-applies he will get denied again.

J.O'Brien: I would have the opportunity to get it approved if I could work with somebody.

G.Hand: If the denial was resubmitted, he wouldn't get approved

J.O'Brien: Believes he was denied due to lack of information

A.LaRosa: The application would have to show substantial changes to the nature of the application for the Board to reconsider a non-appeal denial.

J.O'Brien: I don't want to have to talk to attorney about this, this isn't a legal matter is it?

A.Hart: Unfortunately the procedural part is a legal matter

J.O'Brien: Thought this was the appeal

A.Hart: This is the appeal of the Notice of Violation, not the permit denial.

B.Rabinowitz: We see a lot of people who change something historic, denial was based on the historic character that is how this is perceived. The substance of the design is what would have to be different.

R.Morrison: Acted as project manager for the zoning permit application. Consulted with colleague who deals heavily with historic properties. Looked at application from standpoint of if it hadn't happened already. The conclusion was to deny because it was part of the historic structure and could be seen from public view. Colleague and he did not feel it was worth bringing to the Design Advisory Board. Had multiple communications with appellants wife, listed on zoning permit application as point of contact, about historic elements and that the neighboring addresses that were provided either had permits or that the changes the appellants questioned were recorded historically as having those features.

J.O'Brien: All neighbors have done huge changes to homes, removed doors and windows, added second floors, etc. so I don't understand. Was told that due to the historic value of the home that he can't do anything to it. That's what he just said, based on historical factor it was denied.

A.LaRosa: Our concern is that you're asking us to judge this based on merits. You asked Planning and Zoning to approve the permit in September, they denied it and you could have appealed that decision but chose not to. Chairman recommended that you reapply, but generally you cannot ask for the same thing twice. Therefore you must make a significant change to it to get another review or opportunity for approval.

J.O'Brien: Can I present it to you with a change?

A.Hart: If there is a substantial change to an application that has been denied it is possible, if it is the same thing then no.

J.O'Brien: Plans to alter the porch on the back of the house to expand kitchen to absorb the project in question.

A.Hart: In consultation with Planning and Zoning and Code Enforcement you may get through with an approval.

J.O'Brien: If you say I have to put it back then I will

A.Hart: Well you do have the right to file an application and then we will have to review it.

J.O'Brien: I wanted to tell you that I didn't want to review this as an adversary thing but received a letter stating that I would receive fines, didn't see any issue with what we did. Came here tonight to figure out what was going on.

A.Hart: There are people available to help you through the process. It is a complicated process but there are resources to help you.

I.Smith: That person is not going to be City staff; you need to confer with a design professional

J.O'Brien: Why?

I.Smith: City staff can interpret the ordinance and code but cannot guide your design choices as you are asking them to do

J.O'Brien: I can design myself but need assistance with nuances

A.Hart: Planning and Zoning has materials and guidelines on how to go through the process, but staff will not sit down with you and design it for you.

B.Rabinowitz: If you started with something and brought it to staff they can give feedback, if you disagree with what staff tells you.....

J.O'Brien: I wouldn't

A.Hart: Pending before us is an appeal of notice of violation. We don't want that hanging out there for a long period of time. From our point of view we need this resolved.

J.O'Brien: Will act upon immediately

A.Hart: Will B.Ward address the City's next steps

B.Ward: Think it is clear that it is a violation. Ask the DRB to uphold the violation, allow time for appellant to submit new application or provide a timeline for removal. Timeline to put back or bring in a substantially changed permit application. Page 2 in the Notice of Violation always provides a remedy. Remedy for the fence is written there and it is straightforward.

B.Ward: Really important with Zoning Permits is that there would have been a building permit following the approved zoning permit. The building permit would prove that the structure was built safe. There is no proof that the roof can handle the extra load.

B.Rabinowitz: So if we approve upholding the Notice of Violation and give language that within 30 days the appellant get the fence permit and file an application to address the removal or substantial changes that fits?

B.Ward: Obviously he will have his procedural time limits to appeal or address the decision, but 30 days is more than reasonable.

A.Hart: Closed the public hearing

VI. Other Business

1. Form Based Code Presentation

Presentation by David White, Director of Planning and Zoning

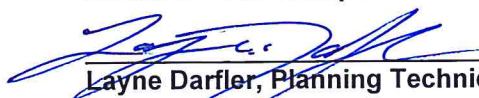
VII. Adjournment

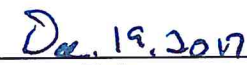
Meeting adjourned for deliberation at 5:45 PM

Reconvened at 5:47 PM

Meeting adjourned at 6:27 PM


Austin D. Hart Chairperson of Development Review Board


Layne Darfler, Planning Technician


Date

12/19/2017
Date

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and 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/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.