

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 **Wednesday November 8th, 2017, 5:00 PM** **Contois Auditorium, City Hall, 149 Church St, Burlington, VT** **AMENDED AGENDA**

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Consent**
- V. Public Hearing**

- 1. 17-1267AP; 43 Starr Farm Road (RL, Ward 4N) Ventas Realty L P**
Appeal of zoning violation notice #334328..
(Project Manager: Jeanne Francis)

VI. Other Business

- 1. 18-0325CA; 181 Battery St (DW, Ward 5S) Burlington Waterfront South LLC**
Request to reopen: 500 sqft addition to building; 1500 sqft exterior deck addition
(Project Manager: Mary O'Neil)
- 2. Training with VLCT: Ethics, Conflicts of Interest, and Exparte**

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.

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.



City of
Burlington, Vermont
149 Church Street

Miscellaneous Appeal - Enforcement – DRB Staff Comments

ZP #: 17-1267AP

Tax ID: 023-4-026-001

Application Date: June 9, 2017

Property Address: 43 STARR FARM ROAD

Note: These are staff comments only; decisions on appeals are made by the Development Review Board, which may uphold or overturn Administrator's decision. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Description of Violation #334328: Expansion of parking area (lawn parking) without Zoning Approval. Placement of storage containers, and increasing lot coverage without Zoning Approval. Also, failure to obtain a Certificate of Occupancy for ZP 93-147, 93-084, 97-488, 01-227, 03-495, and 13-0177.



Appeal of ZV # 334328: Sec 12.2.2 Appeals of Administrative Officer Decisions

Name and address of appellant:

Kindred Transitional Care and Rehabilitation d/b/a Birchwood Terrace
43 Starr Farm Road
Burlington, VT 05408

Brief Description of the property with respect to which the appeal is taken:

144-bed skilled nursing facility, located on the corner of North Avenue and Starr Farm Road. The facility comprises of 40,570.5 square feet and sits on parcel ID #023-4-026-001. The facility has residential properties directly to the South and West. The Flynn School directly across the street to the North, and North Avenue is adjacent to the property lines to the East.

Reference to the regulatory provisions applicable to that appeal:

According to the Notice of Violation, regulatory citations include CDO Articles 2, 3, 5, 12, and 24 V.S.A. §§ 4451-4452.

Relief requested by the appellant:

The appellant states that, as a preliminary issue, the Notice of Violation ("Notice") is procedurally defective in that it imposes deadlines for the submission of proposals for curing the alleged violations, including zoning approval, which are practically impossible to meet.

According to the Notice, Appellant was given (7) days from the date of receipt to “cure the violation”. The Notice was not received by Appellant until Thursday, June 1, 2017, because it was inadvertently mailed or delivered to a different facility, Starr Farm Nursing Center, which as a separate address and management. By that time, the opportunity for bringing the property into compliance with the CDO and obtaining approval from the City in the form of a “Stipulated Agreement” – as indicated in the Notice – had essentially expired. Moreover, the Notice states that Appellant’s deadline for submitting a proposal and timeline for bringing the property into compliance was May 25, 2017 – however, that is the same as the “Decision Date” set forth on page 2 of the notice. Birchwood Terrace, therefore, had no reasonable opportunity for submitting a timely proposal or timeline and has been deprived due process.

At present, Appellant is in contact with Jeanne Francis and Scott Gustin regarding a possible plan for compliance and stipulated agreement. However, Appellant has been informed by Mr. Gustin that he will not conclude his review of issues concerning compliance until after the June 9 deadline for filing a notice of appeal has expired.

Appellant is hopeful that a stipulation can be approved by the City, but to preserve its rights under the CEDO, respectfully submits this appeal. Because of defects in the method of service of the Notice and time for appeal, Appellant has been denied due process.

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

The appellant asserts that, due to the above-stated reasons, Appellant has been denied due process and is not prepared to contest the merits of the City’s allegations.

As a practical matter, Appellant agrees that additional, approved parking spaces are needed at the facility to accommodate patient, staff, and visitors. Appellant believed – albeit mistakenly based on communications with the Department of Public Works – that the overflow parking was not a violation of City regulations. Appellant is also aware that some of the alleged parking violations are due to overflow from the neighboring Flynn Elementary School, and Appellant is working to address this issue.

Appellant is also working on a proposal for the alleged storage container violations. These containers house important medical supplies used by patients of the facility. Appellant is exploring the possibility of relocating the supplies and removing the containers. Given Appellant’s ongoing communication with the City and attempt to reach a Stipulated Agreement, and considering the due process concerns raised by the defective Notice, this matter is not yet ripe for consideration by the DRB.

Appellant’s Submittals:

- Appeal

City’s Rebuttal:

Attorney MacIlwaine argues his Clients were not given ample time to cure the violation due to the lateness in receipt of the Notice Dated May 18, 2017. City rebuts 24 V.S.A. §4451. *Enforcement; penalties allows the alleged offender at least seven days’ warning notice by certified mail.; certified mail*

was received at Corporate Headquarters on May 31, 2017 and the Burlington Office received the first class mail on May 25, 2017, thus giving Owner until June 2, 2017 to appeal the decision or until June 7, 2017 to rectify the violation. As required by Statute the notice was mailed to Owner of record at address provided for in land records (ie. Phoenix, AZ) and included language outlined in in24 V.S.A. §4451 and repeated in CDO Sec. 2.7.7 (b). Director Demario of Starr Farm Nursing Home, Burlington Office, responded to the Notice on June 1, 2, 5 and left voice messages. On June 6 Code Enforcement staff spoke with Ms. Demario and reminded her of the deadline to file an appeal; Ms. Demario said her facility was interested in entering into an Agreement with a proposal in which to cure the violation within a time certain; Attorney MacIlwaine submitted an Appeal to the Planning/Zoning Office on June 7, 2017 to reserve their appeal rights.

Owner, through their attorney, has worked with the City on an Agreement in which to bring the Property into compliance with the CDO. That agreement; however, has not been finalized. As a result, the appeal is moving ahead.

INVESTIGATION:

Planning/Zoning Records:

- 08/24/1992: Basic Permit: Removal of 380 feet of chain link fencing. Replacing with 380 feet of 3.5' high scalloped picket fence. Permit Indeterminate
- 10/08/1992: Basic Permit: Installation of an 8'x10' storage shed and fencing (210 feet total length) behind the daycare building. Permit Indeterminate
- 05/20/1997: Basic: Installation of one non-illuminated parallel sign measuring 107x20 with an additional 23x17 logo for the existing nursing home. Permit Indeterminate
- 11/14/2000: Basic: Replace the existing glass canopy with a larger (longer to cover the existing sidewalks to both parking lots). Canvas canopy for the existing nursing home. Canvas canopy to be attached to the main structure and supported with columns. Permit Indeterminate
- 04/03/2002: Basic: Construct 19'x19' Pavilion for the Alzheimer's unit at Birchwood Nursing Home. Permit Indeterminate.
- 06/17/2003: Zoning Permit COA Level II: Install one 40kw emergency generator with sheet metal weather enclosure in the loading dock area on northwest corner of building. Install one 80 kw emergency generator with sound attenuated weather enclosure on south side of building. Permit Indeterminate.
- 08/13/2010: Zoning Permit COA Level II: Create two courtyards, walkway, storage shed, gazebo, fence and landing. FCO Issued
- 10/19/2010: Zoning Permit COA Level I: Install four wall mounted LED light fixtures on side and rear of building.
- 04/23/2012: Zoning Permit Signs and Awnings: replace existing non-conforming parallel sign with new sign face for Kindred Transitional Care and Rehabilitation. FCO Issued
- 08/13/2012: Zoning Permit Signs and Awnings: Replace panel on existing freestanding sign with new sign for Kindred: Permit Indeterminate
- 09/15/2014: Zoning Permit COA Level II: Replace existing access ramp with new larger ramp. Ramp is enclosed at connection to building. FCO issued.

Department of Public Works Records:

- August 3, 1982: Alter existing roof by replacing existing flat roof with a pitched roof toward center. Closed.
- July 9, 1985: Remodel interior, alter exterior entrance. Closed.
- December 1, 2000: Replace glass canopy with new canvas canopy. Closed.
- April 23, 2002: 19 ft. by 19 ft. outdoor pavilion. Issued.
- May 3, 2005: Install roof curbs and minor carpentry and dry wall in patient rooms for PTAC installation. Pending review and approval of building inspector. Closed.
- July 28, 2010: Create two courtyards, 10x16 storage shed (sits directly on grade), 12x12 gazebo (4 inch pad supported by 8 inch saunas at each corner), 100 ft. of vinyl stockade fence, physical therapy training platform and new exterior door with automatic closer. Closed.
- August 31, 2010: Interior remodel of existing kitchen, office and therapy area to include new cabinets floor covering, patch and paint. No change in use of the existing structure and no increase of living space. Closed.
- April 9, 2014: Install half wall w/half door (4 ft. metal stud w/sheetrock) for security purposes. Closed.
- October 22, 2014: Respective to IBC and NFPA 101, remove existing exterior ramp and vestibule and install new concrete ramp, embedded handrails and enclosed vestibule. New windows and automatic doors. All to be ADA compliant. Closed.

Assessor's Records:

Owners:

Ventas Realty LD; c/o Altus Group US Inc #559
21001 N Tatum Blvd Suites 1630-630
Phoenix, AZ 85050

- Zoning District – Residential Low Density (RL)
- Taxed as Commercial
- Parcel ID: 023-4-027-001
- Built in 1965
- Gross Floor area 96,196 sf
- Finished Floor Area: 47,822 sf
- Unfinished basement: 16,463 sf
- Gross Area: 96,196 sf
- Finished Area: 47,822 sf
- Enclosed porch: 108 sf
- #Units: 160
- Bedrooms: 320
- Baths: 80 full and 4 half

OVERVIEW:

- As of June 9, 2017, Appellant believes they have been denied due process and is not prepared to contest the merits of the City's allegations.
- Appellant agrees that additional, approved parking spaces are needed at the facility to accommodate patient, staff, and visitors.
- Appellant also believes some of the alleged parking violations are due to an over flow of parking at the school located across the street.
- City believes the notice was issued timely and in accordance to State Statutes.
- City believes additional approved parking is needed at the facility.
- City counters Appellant is responsible for their own property and if overflow parking from the school is occurring, they need to take their own enforcement.

FINDINGS:

Currently the Property does not comply with the Site Plan approved on July 17, 2003, which includes parking spaces and location. To date, Appellant has not requested a Certificate of Occupancy for permits noted in the Notice of Violation.

Appellant has attempted to cure the violations with an Agreement, however, to date, an Agreement has not been executed.

To date, City continues to receive parking complaints at the Property.

CONCLUSION:

Code Enforcement Office asks the Board to recognize zoning violations at Property and instruct Appellant to execute an Agreement with the City to resolve the violations by November 30, 2017.



West

A = Parking along the southern boundary of property

B = Parking on the lawn on eastern side of property – adjacent to North Avenue and adjacent to south edge of approved parking lot

C = Parking on the lawn first entrance off Starr Farm coming off North Avenue

D = Parking on the lawn close proximity to building – behind parking lot

E = Expanded parking, storage containers, shed, and dumpsters all without zoning approval

Site Plan approved on June 17, 2003 as part of ZP 03-495

South

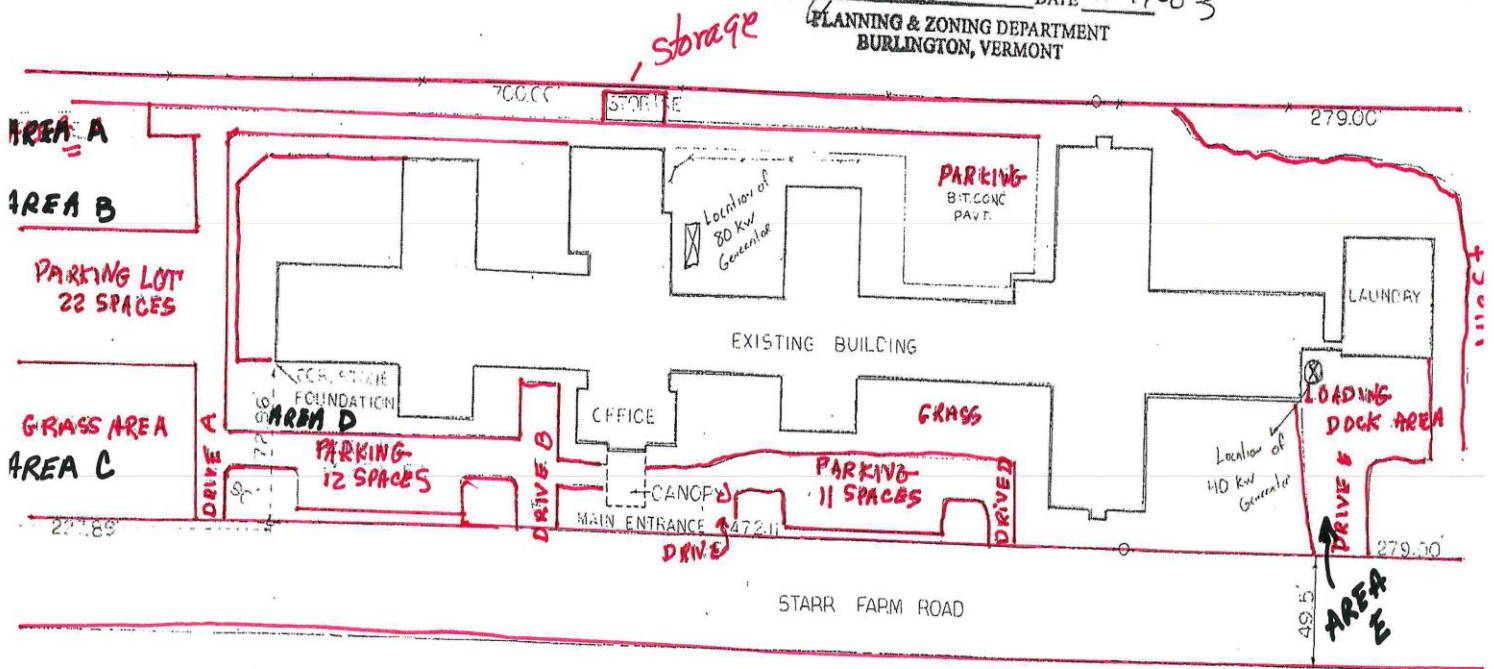
-- NOTE --

ANY MODIFICATIONS OR DEVIATIONS FROM THESE PLANS
REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION.
ALL ERRORS IN DIMENSIONS, PLANS OR DETAILING ARE
FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.

FINAL APPROVAL

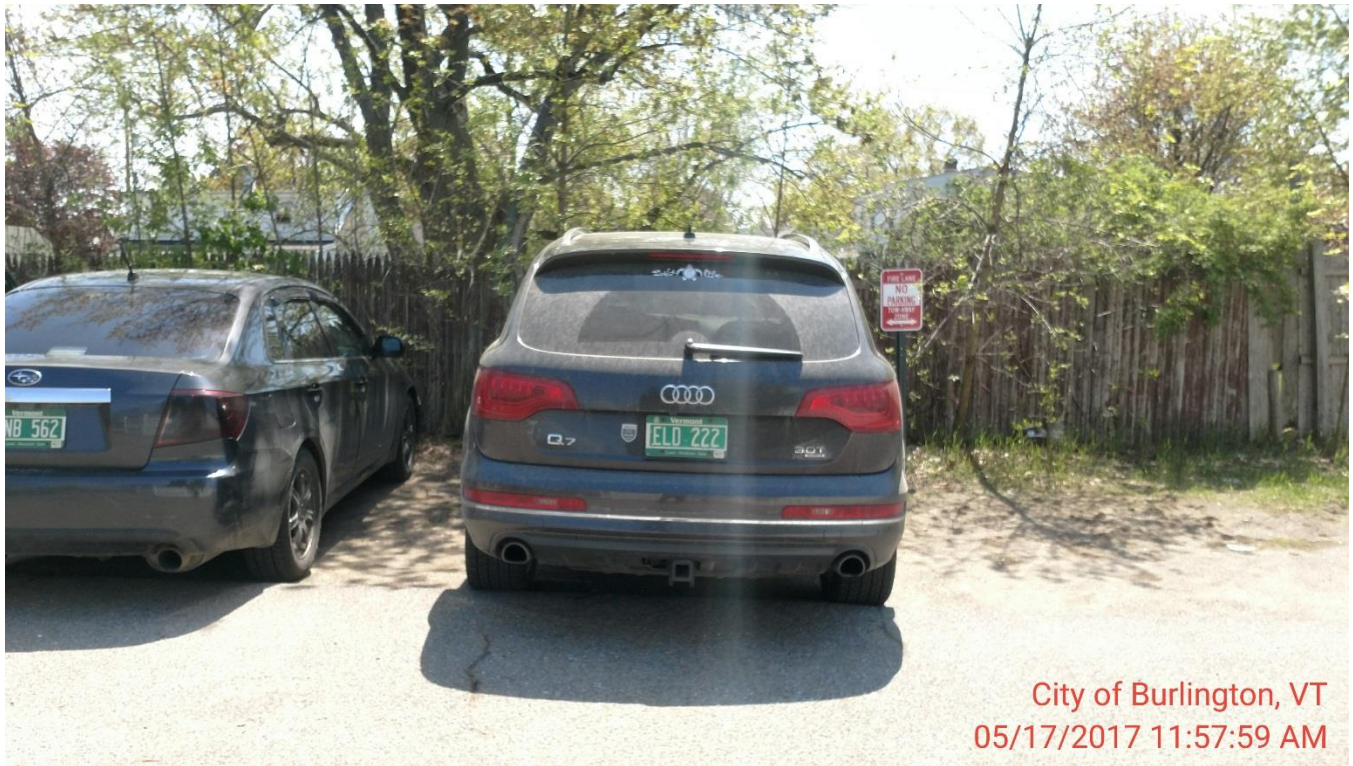
SIGNED [Signature] DATE 6-17-03
PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

N
M
MATRAW
VOLUME PG



North

NOTE:
1. BOUNDARIES SURVEYED BY W. ROBERTS



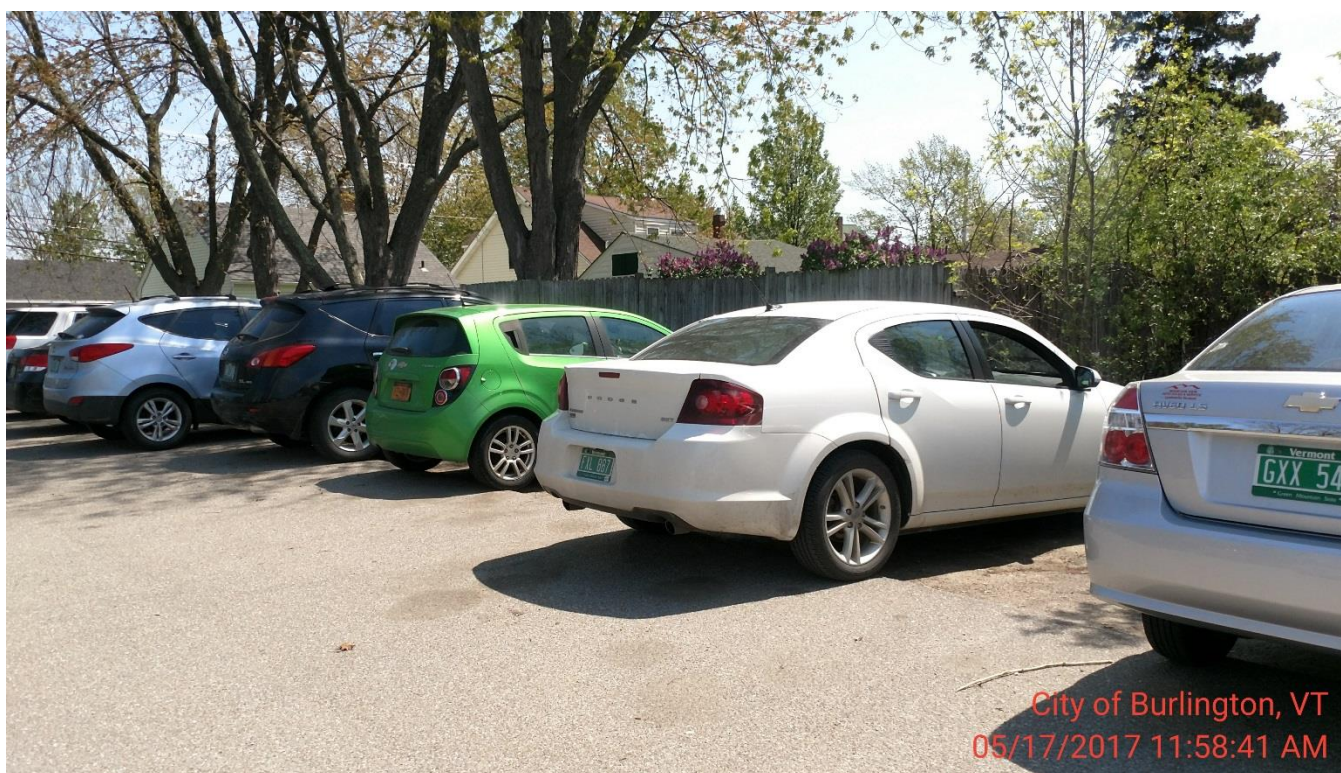
Area A: West end of southern boundary



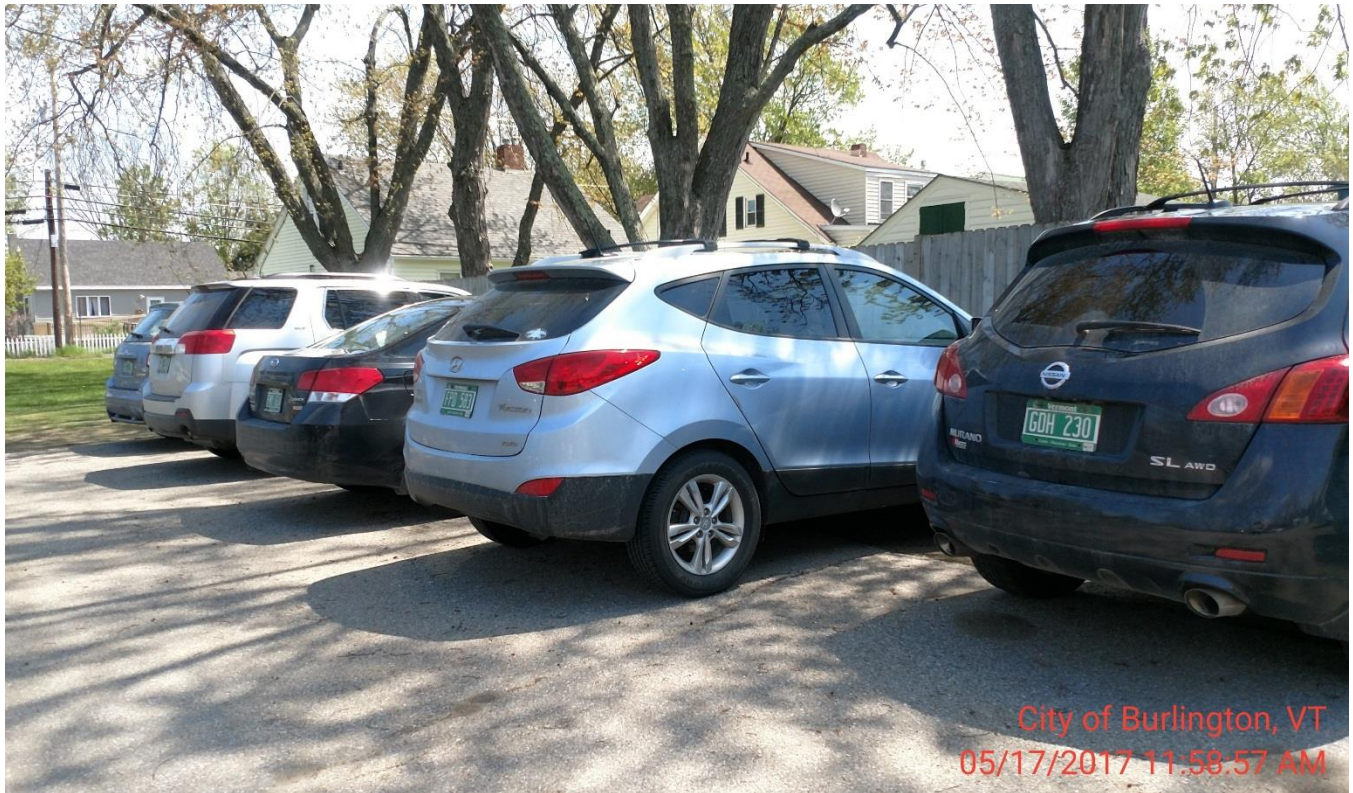
Area A: Starting with Q7 grey car, west going east to red car. Southern boundary.



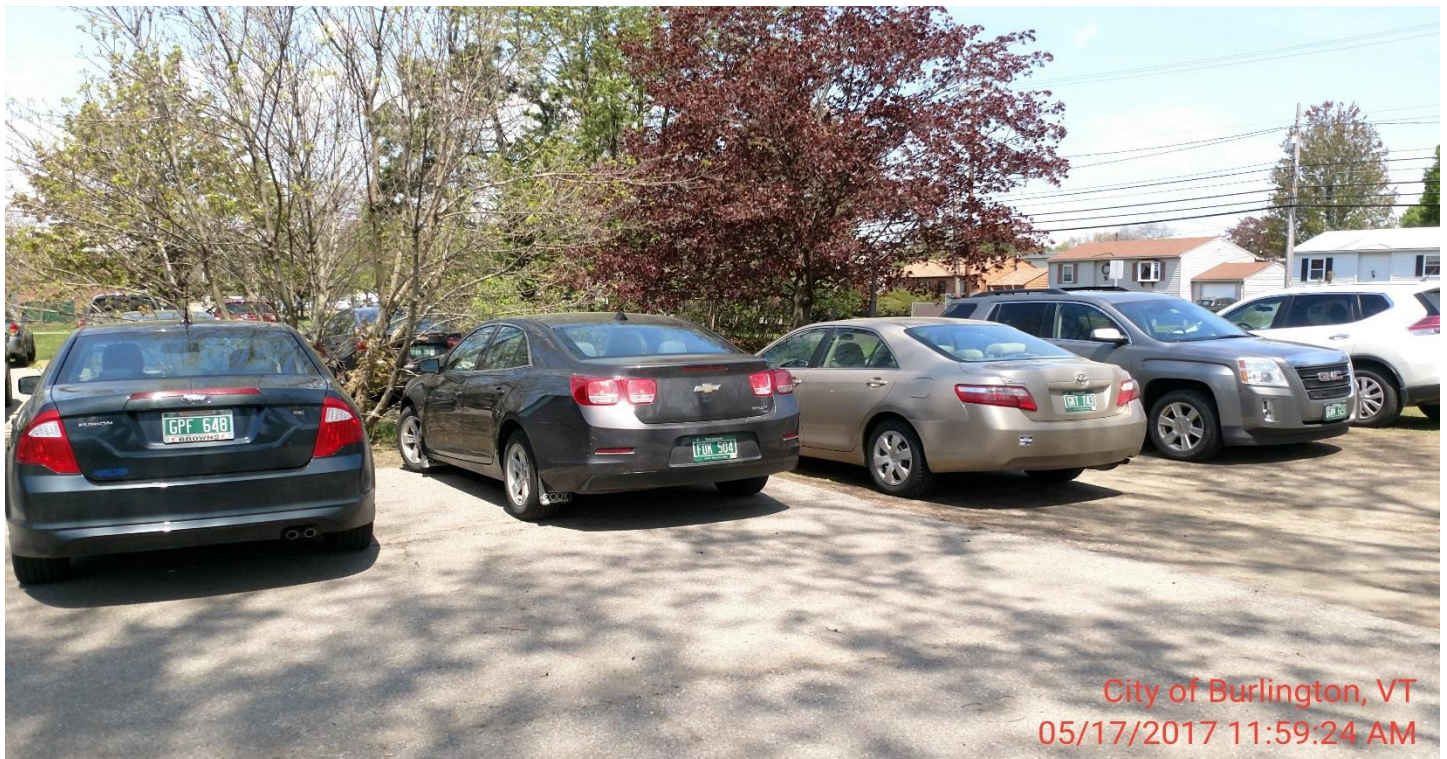
Area A: heading east



Area A: heading east



Area A: 14 cars along the southern boundary. No approvals for parking in this area. Lawn has been damaged.



Area B: This area is north of Area A and abuts (to the south) the approved 22 space parking lot (beyond the trees); unapproved parking has caused damage to the lawn which shall be restored.



Looking west from North Avenue



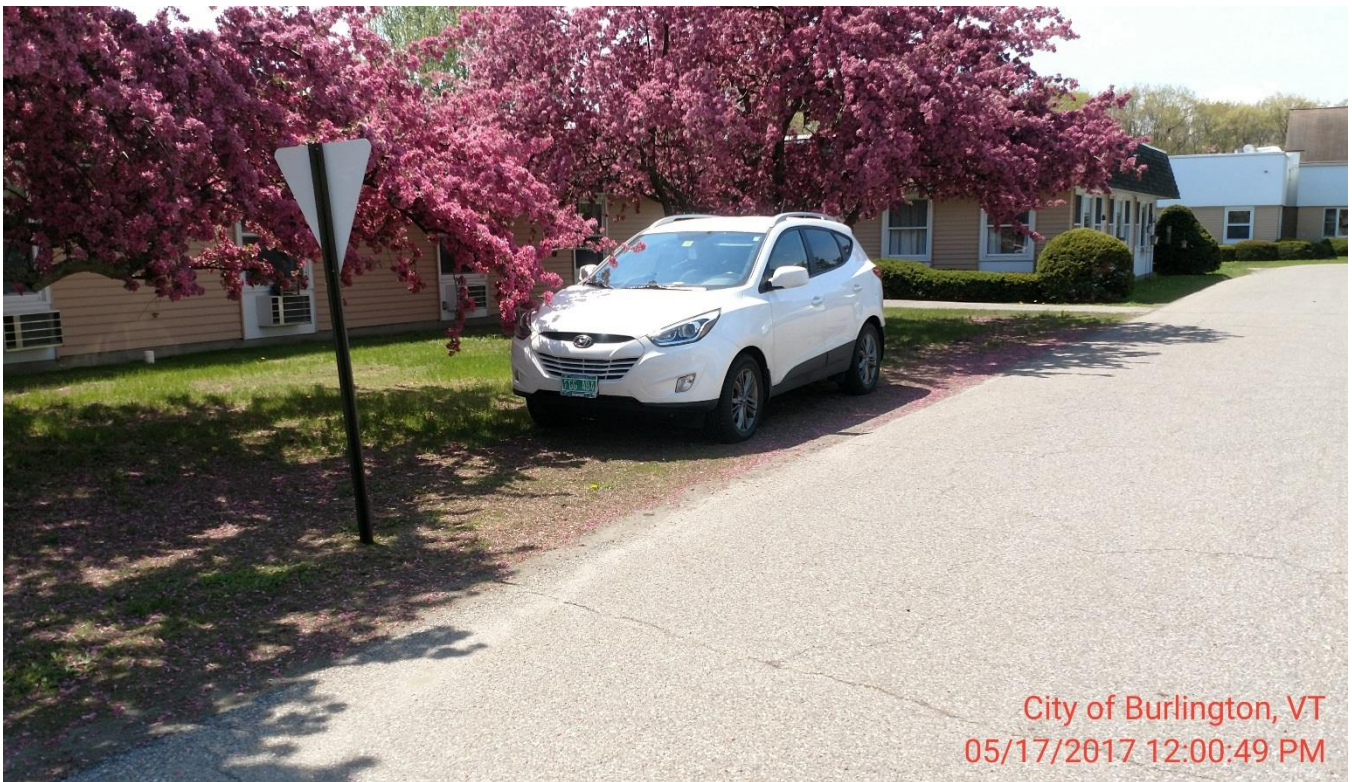
Area C: Looking south from Starr Farm Road, Driveway A: cars parked facing North Avenue are in violation. In the Background, cars facing Starr Farm Road, are cars parked in the approved parking lot.



Area C: School is in the background. Houses are on North Avenue. Stop sign is exit onto Starr Farm Road. This silver car in the bottom right corner of photo, is included in the 22 space approved parking lot.



Area C: Starr Farm Road would be to the left of the photo. The row of houses shown in the back of the photo, is North Avenue.



Area D: Unapproved parking behind the 12 space parking lot facing Starr Farm Road (right side of photo)



Area E: West of Loading dock area, laundry. Sheds, dumpster, storage containers do not have zoning approval. North of silver container has been used for parking and damaged lawn are shall be restored along with all "compacted gravel" area off the pavement. See approved site plan.



Area E: Shown is the 40 kw generator approved under ZP 03-495. Parking and dumpster are not shown on the approved plan.



Area E: At the corner of Driveway E. Unpermitted parking has damaged the lawn and must be restored.



East of first entranceway. Follow-up visit



East of first entranceway – follow up visit

Following Photos taken November 12, 2017 around 11:43 AM



East of first entrance







Southeast corner



East – North Avenue in background



West, storage units removed – replaced with more unapproved parking

**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 # 334328)

May 18, 2017

Mailed Certified Mail # [REDACTED]
And FIRST CLASS MAIL

VENTAS REALTY L P
C/O ALTUS GROUP US INC. #559
21001 N TATUM BLVD SUITE 1630-630
PHOENIX AZ 85050

NOTICE OF VIOLATION AT:
43 STARR FARM ROAD, BURLINGTON, VT
TAX LOT #023-4-026-001

Dear Owners,

It has come to the attention of this office that a zoning violation exists at 43 Starr Farm Road.

Description of Violation: Expansion of parking area (lawn parking) without Zoning Approval. Placement of storage containers, increasing lot coverage without Zoning Approval. See attached photo.

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 5, 12, and 24 VSA §4451 and §4452.

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 (see attached Violation Details, Remedy Options #2, and CDO Section 2.7.8).

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 NOV is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, may be appealed to the 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 May 18, 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 June 2, 2017**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call me at (802) 864-8518.

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 # 023-4-026-001

VIOLATION DETAILS

LOCATION: 43 STARR FARM ROAD

DECISION DATE: May 18, 2017

VIOLATION DESCRIPTION: Expansion of parking area (lawn parking) without Zoning Approval. Placement of storage containers, increasing lot coverage without Zoning Approval.

- FINDINGS:**
- ZP 93-147: Installation of an 8'X 10' Storage shed and fencing (210 feet total length) Behind the daycare building. Not a corner lot. Project has been completed. No zoning Certificate of Occupancy on file. Permit has expired.
 - ZP 93-084: Removal of 380 feet of chain link fencing and replacing with 380 feet of 3.5' high scalloped picket fence. Project has been completed. No zoning Certificate of Occupancy on file. Permit has expired.
 - ZP 97-488: Installation of one non-illuminated parallel sign, Measuring 107x 20, With an additional 23x 17 logo, For the existing nursing home. Project has been completed. No zoning Certificate of Occupancy on file. Permit has expired.
 - ZP 01-227: Replace the existing glass canopy with a larger canvas canopy for the existing nursing home (longer, to cover the existing sidewalks to both parking lots). Canvas canopy to be attached to the main structure and supported with columns. Project has been completed. No zoning Certificate of Occupancy on file. Permit has expired.
 - ZP 03-495: Install one 40kw emergency generator with sheet metal weather enclosure in the loading dock area on northwest corner of building. Install one 80kw emergency generator with sound attenuated weather enclosure on south side of building. Project has been completed. No zoning Certificate of Occupancy on file. Permit has expired.
 - ZP 11-0051CA: Create two courtyards, walkway, storage shed, gazebo, fence and landing. Final Zoning Certificate of Occupancy issued July 12, 2012.
 - ZP 11-0333CA: Install four wall mounted LED light fixtures on side and rear of building. Final Zoning Certificate of Occupancy issued on October 19, 2012.
 - ZP 12-0890SN: Replace existing non-conforming parallel sign with new sign face for Kindred Transitional Care and Rehabilitation. Final Zoning Certificate of Occupancy issued on July 30, 2012.
 - ZP 13-0177SN: Replace panel on existing freestanding sign with new sign for Kindred. Project completed. No Zoning Certificate of Occupancy on file. Permit has expired.
 - ZP 15-0319CA: Replace existing access ramp with new larger ramp. Ramp is enclosed at connection to building. Project completed. Final Zoning Certificate of Occupancy issued November 20, 2015.
 - Project approved under ZP 03-495CA included an approved site plan (approved July 17, 2003) that illustrates the parking for the Nursing Home; current parking configuration is inconsistent with this approved plan and location of generator. Storage containers and sheds north of the loading dock are not included on the approved plan. No zoning permit on file to construct the sheds or for placement of the storage containers.
 - Complaint received April 10, 2017: Expansion of parking and placement of large storage units.

- Complaint Notification letter mailed April 12, 2017; to date, no response from Owner.
- Property located in the RL Zone
- **Nursing Home Use has Conditional Use Approval under ZP 85-_____**
- Existing coverage is at 43.5% (figure obtained from ZP 11-0051CA).

REMEDY OPTIONS:

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

- 1) Removing/correcting the violations noted above by complying with site plan approved on June 17, 2003. All lawn/grass areas damaged shall be restored in the following manner:
 - Subsoils below new topsoil layer (i.e. – existing compacted soils) scarified/tilled at least 4”, with incorporation of upper material (so total depth of final uncompacted material = 8”. The entire surface should be scarified/loosened EXCEPT within drip line of trees (to protect roots).
 - Minimum 4” topsoil except where tree roots limit amendment incorporation
 - Topsoil shall have minimum 5% organic matter by dry weight (may need to add compost to achieve).
 - Soil portion must be sand or sandy loam
 - Water or roll to 85% compaction
 - Rake to level
 - Seed and protect with erosion control matting (staked according to manufacturers’ specifications).
 - and obtaining a Certificate of Occupancy for all permits list above in “Findings” without a certificate; or
- 2) Obtaining after-the-fact zoning approval for the expansion of parking, construction of two sheds, and placement of storage containers ((ie. amend June 17, 2003 approved site plan to include the expanded parking, approval to construct two sheds north of the loading dock, and placement of two shorage containers north of the sheds (permit application **fee is doubled** if complete application is submitted within seven days from receipt of the NOV, tripled if a complete application is submitted 7-15 days from receipt of the NOV, or triple plus \$75 per hour of Code Enforcement staff time (up to \$500) if a completed application is submitted after 15 days from date of NOV receipt). See CDO Section 2.7.8. **PLEASE NOTE:** If the zoning permit request is denied, the violation is **NOT** cured. Owner shall be required to remove the violation as noted in #1 above or request an agreement as noted in #3 below within five (5) business days from date of the permit denial to remedy the violation; or
- 3) Propose options and a timeline in which to bring the Property into compliance with the CDO by May 25, 20017. If the City accepts the proposal, it will be in the form of a Stipulated Agreement, to be executed by June 2, 20017 (**administrative fees required**).

APPEAL RIGHTS: You have the right to appeal the 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; ie. 4 pm on June 2, 2017.** Submit a complete application with ZV# and appropriate fee to the Department of Planning and Zoning, accompanied by a memo stating 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 and §4452



Starr Farm Road. First driveway from North Avenue. As indicated on the approved site plan (June 17, 2003), this area is a grass area, these vehicles violate the approved site plan.



Photo taken April 11, 2017. Looking from North Avenue. As indicated on the approved site plan (June 17, 2003), this area is a grass area, these vehicles violate the approved site plan. The line of vehicles along the south edge of property is not approved for parking (see first arrow left of picture)



Starr Farm Road. First driveway. As indicated on the approved site plan (June 17, 2003), this area is a grass area, these four vehicles violate the approved site plan.



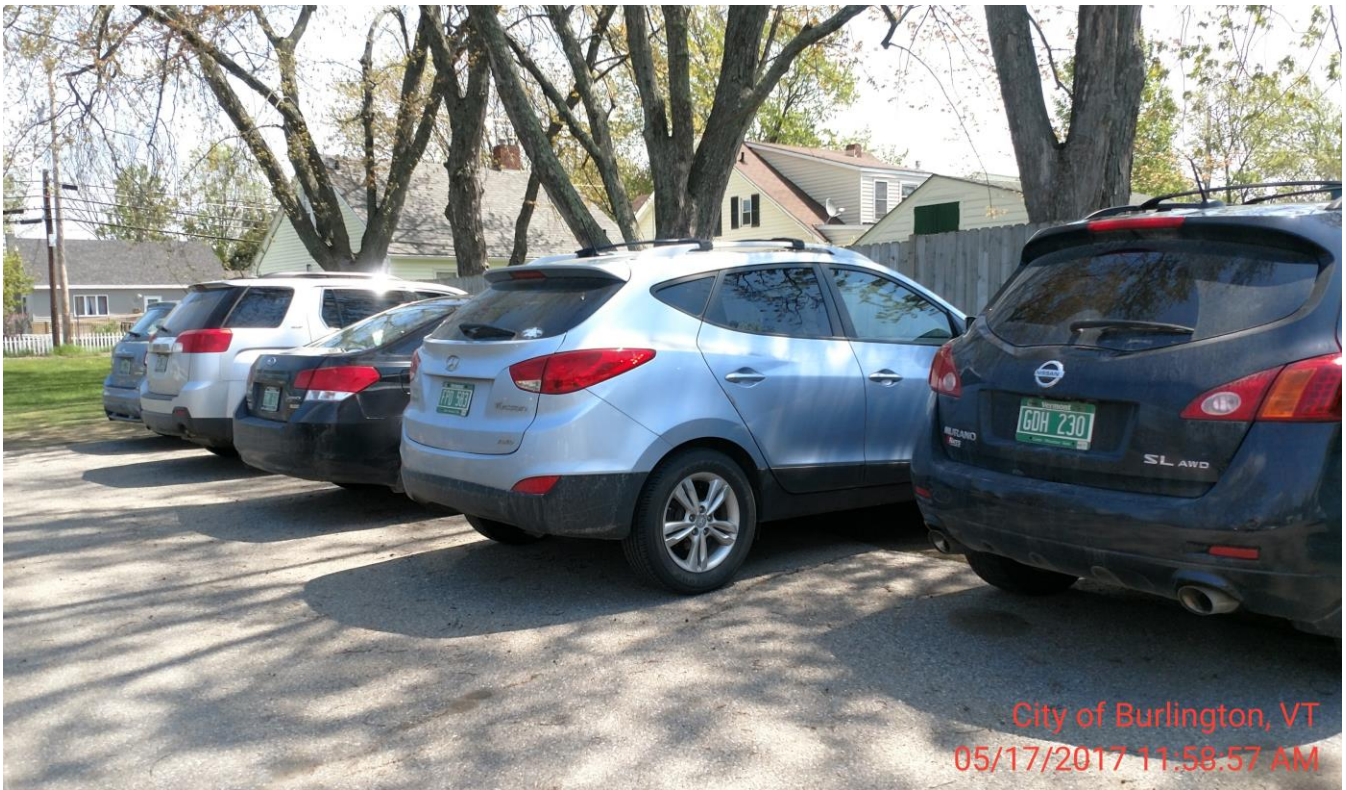
Looking south from Starr Farm Road. This vehicle is not within an approved parking space.



South approved 22 space parking lot shown on approved 2003 site plan. These two vehicles are parked outside the approved parking area. Notice sign that says "No Parking Fire Lane".







A total of 15 cars parked south of the approved 22-space parking lot on May 17, 2017



Looking east from 22-space parking lot (ie. North Avenue). Grass area has been damaged.



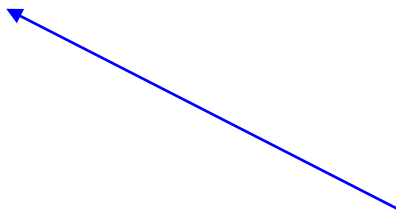
Houses in the photo are along North Avenue. These three vehicles are parked east of the 22 space approved parking lot – north of the photo above.



This photo is taken from the 22 Space parking lot, looking towards the 43 Starr Farm Road.



North of loading dock. Two sheds (one with hazardous waste) and two storage containers do not have zoning approval.





Burlington, Vermont Plattsburgh, New York

Wm. Andrew MacIlwaine, Esq.
E-mail: amacilwaine@dinse.com

June 9, 2017

RECEIVED
JUN 09 2017

VIA HAND DELIVERY:

Burlington Development Review Board
City Hall
149 Church Street
Burlington, VT 05401

DEPARTMENT OF
PLANNING & ZONING

Re: Notice of Zoning Violation (NOV # 334328)

Dear Burlington Development Review Board:

Please consider the following a formal notice of Kindred Transitional Care and Rehabilitation d/b/a Birchwood Terrace's appeal under CDO 2.7.11 and 12.2.2, regarding alleged zoning violations concerning property that Birchwood Terrace operates as a patient rehabilitative care facility under a lease with property owner, Ventas Realty LP.

1. Name and Address of the Appellant

Kindred Transitional Care and Rehabilitation d/b/a Birchwood Terrace
43 Starr Farm Road
Burlington, VT 05408

This appeal is filed by Birchwood Terrace on behalf of the property owner, Ventas Realty LP.

2. Description of the Property

144-bed skilled nursing facility, residing on the corner of North Avenue and Starr Farm Road. The facility comprises of 40,570.5 square feet and sits on a parcel ID #023-4-026-001. The facility has residential properties directly to the South and West, The Flynn School directly across the street to the North, and North Avenue is adjacent to property lines to the East.

3. Applicable Regulatory Provisions

According to the Notice of Zoning Violation, regulatory citations include CDO Articles 2, 3, 5, 12, and 24 V.S.A. §§ 4451-4452.

RECEIVED
JUN 09 2017

DEPARTMENT OF
PLANNING & ZONING

4. Requested Relief by Appellant

As a preliminary issue, the Notice of Zoning Violation (“Notice”) is procedurally defective in that it imposes deadlines for the submission of proposals for curing the alleged violations, including zoning approval, which are practically impossible to meet. According to the Notice, Appellant was given (7) days from the date of receipt to “cure the violation.” The Notice was not received by Appellant until Thursday, June 1, 2017, because it was inadvertently mailed or delivered to a different facility, Starr Farm Nursing Center, which has a separate address and management. By that time, the opportunity for bringing the property into compliance with the CDO and obtaining approval from the City in the form of a “Stipulated Agreement”—as indicated in the Notice—had essentially expired. Moreover, the Notice states that Appellant’s deadline for submitting a proposal and timeline for bringing the property into compliance was May 25, 2017—however, that is the same as the “Decision Date” set forth on page 2 of the notice. Birchwood Terrace therefore had no reasonable opportunity for submitting a timely proposal or timeline and has been deprived due process.

At present, Appellant is in contact with Jeanne Francis and Scott Gustin regarding a possible plan for compliance and stipulated agreement. However, Appellant has been informed by Mr. Gustin that he will not conclude his review of issues concerning compliance until after the June 9 deadline for filing a notice of appeal has expired.

Appellant is hopeful that a stipulation can be approved by the City, but, to preserve its rights under the CDO, respectfully submits this appeal. Because of defects in the method of service of the Notice and time for appeal, Appellant has been denied due process.

5. Grounds Why Requested Relief is Proper

Due to the above-stated reasons, Appellant has been denied due process and is not prepared to contest the merits of the City’s allegations.

As a practical matter, Appellant agrees that additional, approved parking spaces are needed at the facility to accommodate patient, staff, and visitors. Appellant believed—albeit mistakenly based on communications with the Department of Public Works—that the overflow parking was not a violation of City regulations. Appellant is also aware that some of the alleged parking violations are due to overflow from the neighboring Flynn Elementary School, and Appellant is working to address this issue.

Appellant is also working on a proposal for the alleged storage container violations. These containers house important medical supplies used by patients of the facility. Appellant is exploring the possibility of relocating the supplies and removing the containers. Given Appellant’s ongoing communication with the City and attempt to reach a Stipulated Agreement,

LAW OFFICES OF
DINSE, KNAPP & MCANDREW, P.C.

Burlington Development Review Board
June 9, 2017
Page 3

RECEIVED
JUN 09 2017

DEPARTMENT OF
PLANNING & ZONING

and considering the due process concerns raised by the defective Notice, this matter is not yet ripe for consideration by the DRB.

Sincerely,

DINSE, KNAPP & McANDREW, P.C.

A handwritten signature in dark ink, appearing to read 'Wm. Andrew MacIlwaine', with a long horizontal line extending to the right.

Wm. Andrew MacIlwaine, Esq.

WAM/cap

Enclosure

Scott Gustin

From: Lynne Silva <lynnesilva@burlingtontelecom.net>
Sent: Tuesday, October 17, 2017 5:05 PM
To: Scott Gustin
Subject: RE: 43 Starr Farm Road

Follow Up Flag: Follow up
Flag Status: Completed

Hi Scott,

I understand my neighbor Gary Widrick has just been in communication with you; he shared a summary of your conversation.

I should mention that it never occurred to me when we received the initial notice that the "solution" for Birchwood would degrade our quality of life and neighborhood, given that there are other viable alternatives that would be more considerate of neighbors.

This is becoming a very disruptive and time-consuming situation for those of us most impacted now by the excessive parking, 6 am noise and headlights and heavy traffic right in front of our homes. We would really appreciate an end to week to our street being used for an institution's parking.

We are being treated like pawns, caught in the middle of this dispute between the City and Birchwood.

We would appreciate notice of any future meetings regarding the Birchwood situation. We will be there.

Thank you,

Lynne Silva

From: Scott Gustin [mailto:SGustin@burlingtonvt.gov]
Sent: Friday, June 30, 2017 1:45 PM
To: lynnesilva@burlingtontelecom.net
Subject: RE: 43 Starr Farm Road

Hi Lynne,

The appeal is of a notice of zoning violation issued by the Code Enforcement Office. The violation notice alleges expanded parking without zoning permit approval, including parking on lawn areas. There are some other miscellaneous unpermitted site changes too, but excessive parking is the most significant.

Scott

Scott Gustin, AICP, CFM
Principal Planner & Asst. Administrative Officer
Dept. of Planning & Zoning
149 Church Street
Burlington, VT 05401
(802) 865-7189

Scott Gustin

From: Gary Widrick <garywidrick@gmail.com>
Sent: Tuesday, October 17, 2017 1:56 PM
To: Scott Gustin
Subject: Birchwood Nursing parking issue

I am a representative of the Grey Meadow Homeowners Association. It has come to our attention that the city is working with Birchwood nursing home to enforce some type of zoning infraction. At present, many Birchwood employees are parking in the Grey Meadow development off of Starr Farm Road. Many of the residents and members of our Association are not pleased about this action, which we were not consulted about beforehand, and such parking raises many concerns about snow plowing, use of parking on street for residents or their guests, congestion of the street for Fed Ex and other vendors, safety of the many bikers/walkers, as well as complications for trash and recycling pick ups, mail delivery etc. Often actions made without consulting those most affected have untoward and unexpected consequences.

We understand that this settlement will be discussed at a Development Review Board meeting on Nov. 8 in the Contois Auditorium. First we, as an Association believe that we should be a party to any settlement that may affect our quiet neighborhood. Second, we would like to reserve the right to submit documentation about any settlement and testify at the Nov. 8 hearing. We will need the settlement and any other documentation ahead of time of course to prepare our response and future actions. Please advise us where such documents may be found prior to the hearing.

Should you or other members of your committee wish to meet with members of our Association and gain our input into a decision prior to the meeting please let me know.

Thank you for your assistance.

Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

<http://www.burlingtonvt.gov/PZ/>

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

*David E. White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, Senior GIS/IT Programmer/Analyst
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, CFM, Associate Planner
Layne Darfler, Planning Technician
Anita Wade, Zoning Clerk*



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: November 8, 2017
RE: ZP18-0325CA, 181 Battery 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.

Zoning Permit Number: ZP18- 0325CA

Location: 181 Battery Street (Shanty on the Shore)

Zone: DW/DW-PT (This property is within the newly designated Form District 5 of the Form Based Code; but the application preceded the warning for the City Council Public Hearing and therefore is vested in the Comprehensive Development Ordinance prior to action to adopt Article 14.)

Ward: 5S

Date application accepted: September 25, 2017

Date of DRB Approval: October 17, 2017

Request to re-open received: October 27, 2017

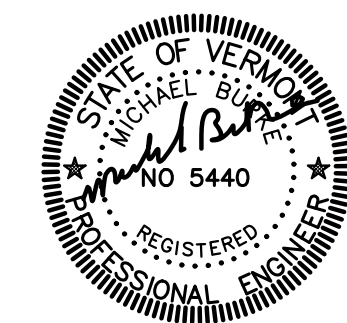
Applicant/ Owner: SAS Architects, Bren Alvarez / Kim and Al Gobeille

Original Request: 500 sf addition to provide handicap accessible bathrooms and kitchen expansion; 1500 sf. deck addition.

Request: Reopen the hearing as there is new evidence that is relevant to DRB review.

Overview:

Subsequent to DRB review and approval of alterations to Shanty On the Shore, the applicant team completed a **boundary survey** of the property. The new survey firmly establishes defined boundary lines of the parcel and the area of Right-of Way; illustrating error in site plan facts that were presented during the original DRB review. The Department of Public Works has requested re-opening the hearing to admit the new information to correct and clarify the boundaries, and to establish veracity of property boundaries relative to ROW agreements.



For Permit Review

SMITH
ALVAREZ
SIENKIEWYCZ
ARCHITECTS

117 St. Paul Street
3rd Floor
Burlington, VT
05401

P: 802-863-2222
F: 802-863-0090

CONSULTANTS

STRUCTURAL
ARTISAN ENGINEERING
120 GRAHAM WAY, SUITE 124
SHELburne, VT 05482
P: 802-497-3531

CIVIL
KREBS & LANSING
164 MAIN ST
COLCHESTER, VT 05446
P: 802-878-0375
F: 802-878-9618

K&L PROJECT NO. 17168

PROJECT

THE SHANTY ON
THE SHORE
HINESBURG, VERMONT
181 BATTERY STREET,
BURLINGTON, VERMONT

DATE: October 3, 2017
SCALE: 1" = 10'
CHECKED: MJB
DRAWN: TJB

REVISIONS

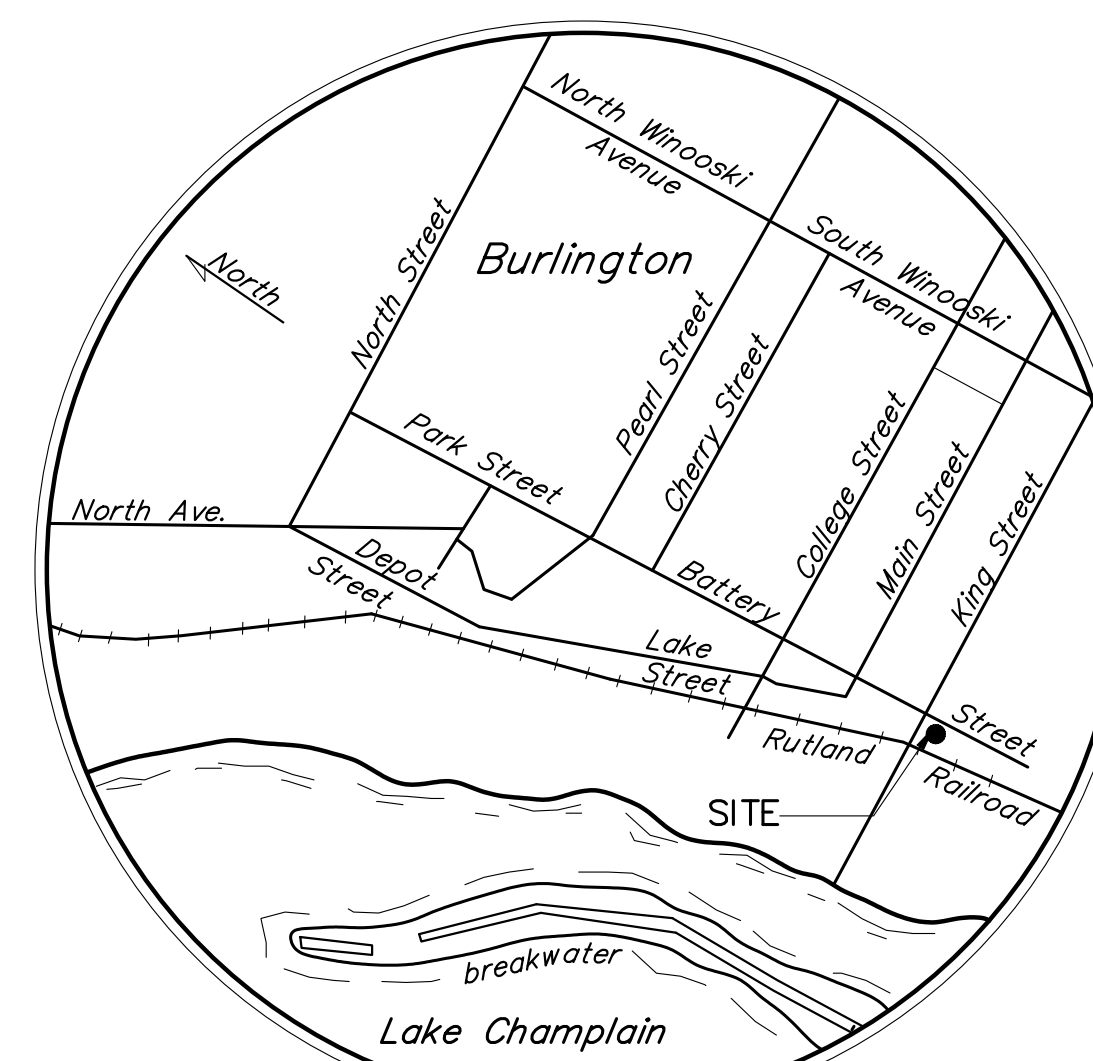
October 17, 2017 - lot dimensions
October 20, 2017 - boundary info
October 24, 2017 - new curb/sidewalk added

SITE PLAN

FOR REVIEW ONLY

C-1

17168/SHANTY BASE.dwg



Location Map

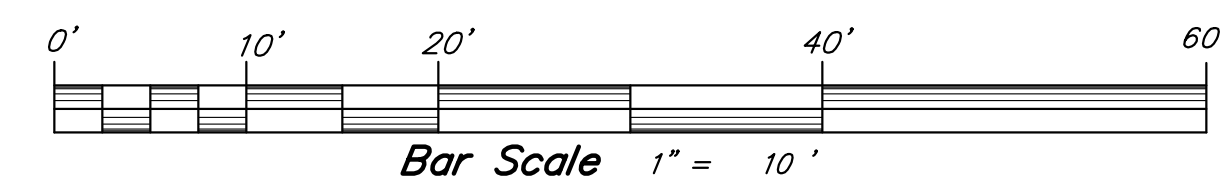
N.T.S.

Legend

	Survey Control Point
	Existing Sign
	Existing Light Pole
	Existing Deciduous Tree
	Existing Spot Grade Elevation
	Existing Contour
	Existing Gas Line/Valve
	Existing Sewer Line/Manhole
	Existing Sewer Force Main
	Existing Storm Line/Manhole/Basin
	Existing Overhead Electric Line/Power Pole
	Existing Overhead Utility
	Existing Communications Line
	Existing Underground Power
	Existing Underground Electric & Telephone Line
	Existing Site Lite Line
	Existing Guardrail
	Existing Tree Line
	Existing Chain Link Fence
	Existing Stockade Fence
	Existing Water Line/Hydrant/Valve/Shutoff
	Approximate Property Line
	Existing Setback
	Existing Easement - Lease Limits
	Existing wood deck
	Existing stones
	New concrete walk/stairway
	New stone surface with Landscape Plantings
	New building addition
	New crushed stone
	New asphalt
	New underdrain system
	New roof drain collection system
	New footing drain system
	Finish Grade Spot Grade Elevation
	Finish Grade 1-foot Contour Interval
	Silt fence erosion control
	Existing curb / recessed
	Proposed curb / recessed

Notes:

- This plan is not a boundary survey. The property lines shown are based on Burlington tax mapping, a lease limit plan by State of Vermont Agency of Transportation, dated 4/21/92 and evidence found in the field.
- The underground utilities shown on this plan are based on visible utilities located during a topographic survey performed by Krebs & Lansing in April 2017. Underground utilities are approximate and not warranted to be exact or complete. Dig Safe shall be contacted prior to any excavation.
- Elevations are based on the NAVD 88 (Geoid 12A) vertical datum.
- Project Horizontal Coordinates derived from GPS observation using reference frame NAD83 (2011) 2010.00 epoch.



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 Wednesday November 8th, 2017, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT MINUTES

Board Members Present: Austin Hart, Brad Rabinowitz, Israel Smith, AJ LaRosa, Geoff Hand, Alexandra Zipparo, Samantha Tilton, Jim Drummond (Alt), Robert Purvee (Alt.)

Staff Members Present: Scott Gustin, Mary O'Neil, Ryan Morrison, Layne Darfler

I. Agenda

Public Hearing item number 1: 17-1267AP ; 43 Starr Farm Road "Appeal of Zoning Violation Notice #334328" has been withdrawn by the appellant.

II. Communications

M.O'Neil: 181 battery request reopening due to boundary line issue, request to reopen to correct information

III. Minutes

B.Rabinowitz: Minutes from October 17th 2017, any discussion?
None

IV. Consent

V. Public Hearing

1. 17-1267AP; 43 Starr Farm Road (RL, Ward 4N) Ventas Realty L P

Appeal of zoning violation notice #334328.

(Project Manager: Jeanne Francis)

S.Gustin: Withdrawn by appellant

VI. Other Business

1. 18-0325CA; 181 Battery St (DW, Ward 5S) Burlington Waterfront South LLC

Request to reopen: 500 sqft addition to building; 1500 sqft exterior deck addition

(Project Manager: Mary O'Neil)

B.Rabinowitz: There is a request to reopen 18-0325CA 181 Battery St do any members of the Board have any questions or wish to discuss?

A.Zipparo: This recently came before us?

Confirmed

A.LaRosa: What is the need to reopen, just new plans submitted or the same ones just new information?

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).

Printed on 100% Recycled Paper

M.O'Neil: The applicants provided a site survey but not a boundary survey, they had a boundary survey done which provided new information regarding the right of way. Department of Public Works wants clarity regarding the right of way, so there are other departments needing this information reviewed.

G.Hand: Motion to reopen 18-0325CA 181 Battery St Burlington Waterfront South to review new materials.

S.Tilton: Seconds the motion

7-0-0

2. Training with VLCT: Ethics, Conflicts of Interest, and Exparte

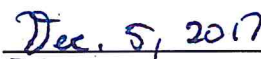
Training provided by Garrett Baxter, Senior Staff Attorney with the Vermont League of Cities and Towns Municipal Assistance Center.

Garret Baxter senior staff attorney

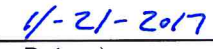
VII. Adjournment

The meeting was adjourned at 6:28 PM


Austin D. Hart Chairperson of Development Review Board


Date


L. Darfler, Planning Technician


Date

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.