

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

www.burlingtonvt.gov/pz/DRB

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Geoff Hand
Alexandra Zipparo
Samantha Tilton
Jim Drummond, (Alternate)
Robert Purvee, (Alternate)



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

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

1. **17-1267AP; 43 STARR FARM ROAD (RL, Ward 4N) Ventas Realty LP**
Appeal of zoning violation notice #334328.
(Project Manager: Jeanne Francis)
2. **18-0072AP; 204 NORTH AVENUE (RM, Ward 3C) Pierre Gingue**
Appeal of NOV #335900 as it relates to usage as a three dwelling unit.
(Project Manager: Scott Gustin)
3. **14-0747SD; 1891-1893 North Avenue (RL, Ward 4N) Thomas P. Mitchell**
Request for Time Extension; Subdivide two lots into three lots, remove existing single family house, construct two duplexes and one single family house.
(Project Manager: Scott Gustin)
4. **18-0098CA/CU; 91 HENRY STREET (RL, Ward 1E) Paulo Matos**
Replace garage on existing footprint with vertical expansion within non-conforming setback.
Associated approval ZP17-1342CA.
(Project Manager: Mary O'Neil)

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/drbb/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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Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

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

Telephone: (802) 865-7188

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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: September 5, 2017
RE: ZP18-0098CA/CU; 91 Henry Street

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

File: ZP19-0098CA/CU

Location: 91 Henry Street

Zone: RL **Ward:** 1E

Date application accepted: July 28, 2017

Applicant/ Owner: Trillium Remodeling (John Bixby) / Paul Matos

Request: Rebuild garage on existing footprint; vertical expansion of accessory structure within existing non-conforming setback.

Background:

- **Zoning Permit 17-1342CA;** Replacement of accessory structure (garage) meeting minimum required setbacks. Approved June 30, 2017.
- **Zoning Permit 11-0191CA;** extend half dormer across full length of roof. Convert three season porch to mudroom. September 2010.
- **Zoning Permit 82-470;** construct dormer window along rear (south) elevation of building. October 1982.
- **Zoning Permit 79-649;** replace flat roof with pitched roof on detached garage. November 1979.

Overview: The applicant originally came in with plans to remove and replace the garage (which encroaches into setbacks) meeting minimum required setbacks when reconstructed. That permit was approved in June 2017. The owner has subsequently decided to replace the garage in the same location as existing, which is non-conforming to setbacks. The replacement structure will be higher than the original garage demolished, but remain within the 15' maximum height for accessory structures. **Section 5.3.5, Nonconforming Structures**, allows for vertical expansion



of non-conforming structures in certain circumstances subject to DRB review. This application is the result of that request.

Recommendation: Consent approval per the following findings:

I. Findings

Article 3: Applications, Permits and Project Reviews

Part 4: Site Plan and Design Review

(a) Site Plan Review

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

(b) Design Review:

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

- 1. Any development subject to the provisions of Article 3, Part 5 – Conditional Use and Major Impact Review;**
- 2. Any development subject to the provisions of Article 5, Part 3 – Non-Conformities;**

91 Henry Street is subject to Design Review per **Section 5.3.5 Nonconforming Structures** and **Article 3, Part 4, Special Use Regulations**.

Part 5: Conditional Use

Sec. 3.5.3 Exemptions

Neither Conditional Use nor Major Impact Review shall be required for applications involving one or more of the following:

- (a) Temporary structures that do not otherwise involve a conditional use;*
- (b) Substantial rehabilitation that does not expand the floor area of an existing building or the structural capacity of existing development;*
- (c) Projects that do not result in a change of use or increased parking demand;**
- (d) Subsurface site improvements including but not limited to underground utility lines.*

The replacement garage is not intended for any other use but storage, and will not increase parking demand. Therefore, the project is exempt from Conditional Use Review.

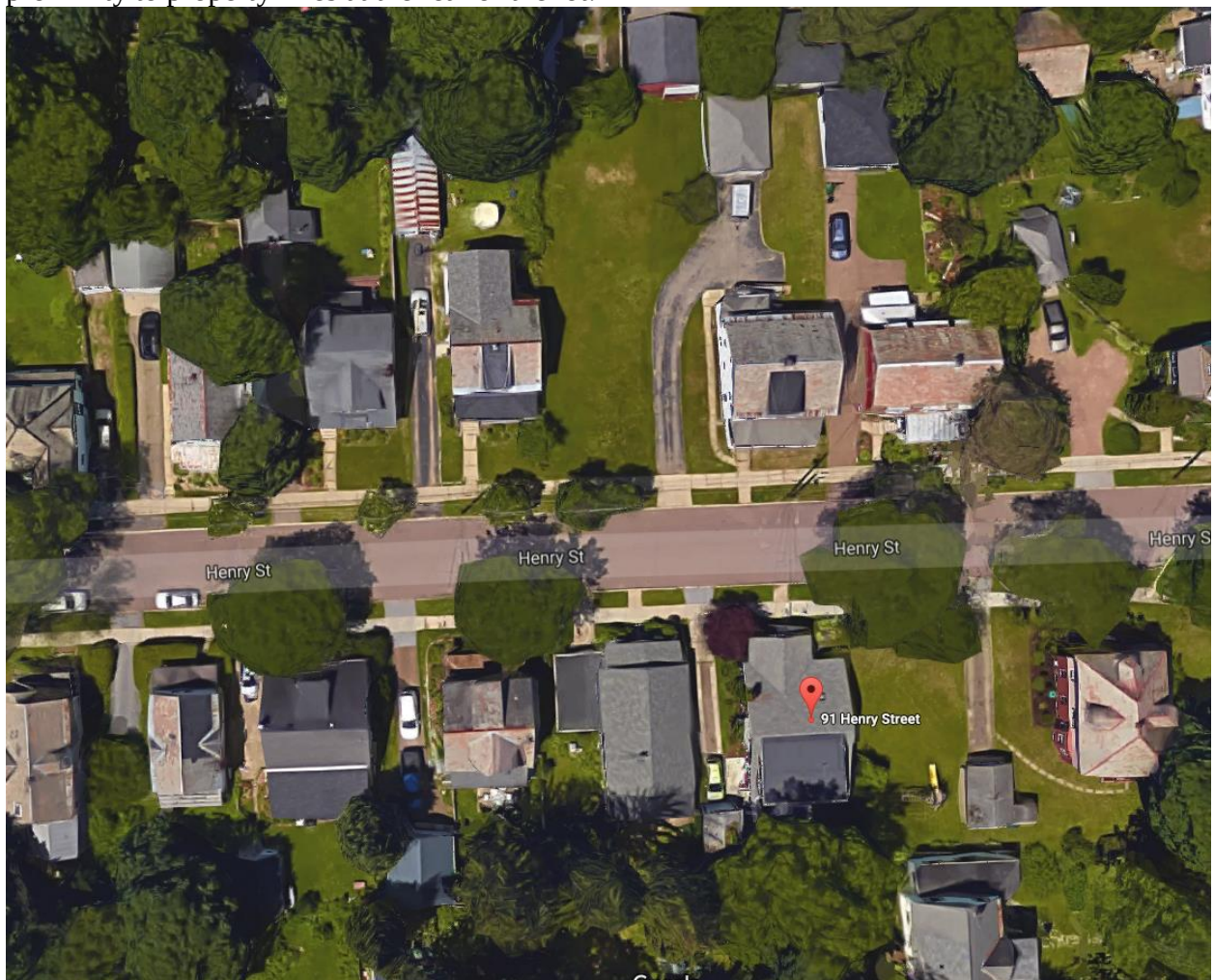
Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

- 1. The Residential Low Density (RL) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history.*

Replacement of the small accessory structure on the same footprint will retain the characteristic pattern of development within this cohesive neighborhood, where garages and sheds are in close

proximity to property lines at the rear of the lot.



Google Satellite image of Henry Street. Note common pattern of accessory buildings at the rear of lots, abutting property lines.

Table 4.4.5-3 Residential District Dimensional Standards

RL Zoning District	Max coverage 35%	Setbacks			Max Height 35'
		Front	Side 10% lot width or average of side yard setback of 2 adjacent lots on both sides.	Rear Minimum 25% of lot depth but in no event less than 20'	

			*5' for accessory structure		
91 Henry St.	No change. Building proposed on existing garage footprint.	No change	Existing approx.. 1'	Existing approx.. 4'	Not to exceed 15' limitation for accessory structures.

*See Article 5, **Section 5.2.5 Setbacks, (b) Exceptions to Setbacks, 4.** Below.

The application proposes to rebuild on the existing footprint, retaining the non-conformity to setbacks. Per Section 5.3.5 (a) 1, vertical expansion may be considered if *existing accessory buildings of 15' in height or less shall not exceed 15 feet tall as expanded.* **Affirmative finding.**

Article 5: Citywide General Regulations **Section 5.3.5 Nonconforming Structures**

(a) Changes and Modifications:

Nothing in this Part shall be deemed to prevent normal maintenance and repair or structural repair, or moving of a non-complying structure pursuant to any applicable provisions of this Ordinance.

Any change or modification to a nonconforming structure, other than to full conformity under this Ordinance, shall only be allowed subject to the following:

1. *Such a change or modification may reduce the degree of nonconformity and shall not increase the nonconformity except as provided below.*

The application proposes replacement of the garage on the existing footprint, with no increase in the encroachment into the side yard setback. The expansion vertically requires DRB review under these standards. **Affirmative finding.**

*Within the residential districts, and subject to Development Review Board approval, existing nonconforming single family homes and community centers (existing enclosed spaces only) that project into side and/or rear yard setbacks **may be vertically expanded** so long as the expansion does not encroach further into the setback than the existing structure. Such expansion shall be of the existing nonconformity (i.e. setback) and shall:*

- i) *Be subject to conformance with all other dimensional requirements (i.e. height, lot coverage, density and intensity of development);*

There is no proposed change to lot coverage, density and intensity of development. The building height is proposed to be increased, but not beyond the 15' limitation noted for accessory structures. **Affirmative finding.**

- ii) *Not have an undue adverse impact on adjoining properties or any public interest that would be protected by maintaining the existing setbacks;*

The existing setback will be maintained. The applicant has consulted with the building inspector to assure compliance with building and life safety code. Exterior finishes will be non-combustible; openings limited per code. **Affirmative finding.**

and,

- iii) *Be compatible with the character and scale of surrounding structures.*

The replacement accessory structure will be located in a lot position consistent with the original and other accessory structures within the neighborhood. Although proposed with a higher pitched roof, detailing and finishes refer to the principal structure. **Affirmative finding.**

Existing accessory buildings of 15 feet in height or less shall not exceed 15 feet tall as expanded.

The proposed replacement structure will be higher than the original garage, but will not exceed 15' in height as measured to the mid-line of the ridge of the roof, as directed in Article 5, Section 5.2.6 (a). See plans approved with ZP17-1342CA. **Affirmative finding.**

- 2. *Such a change or modification shall not create any new nonconformity;*

As proposed on the existing garage footprint, no further encroachment into the side or rear setback is proposed. The expansion is vertical yet remains within the 15' height limit defined in this standard. **Affirmative finding.**

and,

- 3. *Such a change or modification shall be subject to review and approval under the Design Review provisions of Article 3, Part 4.*

The replacement structure was approved under ZP17-1342CA. See attached plans.

When any portion of a nonconforming structure has been made conforming, it shall not be made nonconforming again except as provided for historic building features pursuant to Sec. 5.2.6(b)(3).

A non-conforming residential structure may be enlarged up to the dimensional standards of the underlying zoning district, subject to review and approval by the DRB pursuant to Art. 3, Part 4 Design Review and Art. 3, Part 5 Conditional Use Review. Adaptive reuse or residential conversion bonuses may allow a greater expansion than the underlying zoning district allows approved per the provisions of Article 4.

Although a zoning permit has been issued in June 2017 for the replacement structure to be erected meeting minimum setbacks, the work has not commenced. This application seeks approval to supercede that permit and allow construction on the existing footprint, which is non-conforming to setbacks. **Affirmative finding.**

(b) Demolition

*A nonconforming structure may be replaced by a new structure retaining the same degree of nonconformity as the original structure. This provision is limited to the existing dimensional nonconformity (i.e. setback, lot coverage, or height), and shall not expand the degree of nonconformity **except as provided for in (a) above**. The new structure shall be subject to conformance with all other dimensional requirements (i.e. setback, lot coverage, and height). Zoning permit application for the replacement structure shall be completed within 1 year of demolition of the nonconformity structure; failure to do so shall result in the loss of the ability to retain the nonconformity.*

The replacement structure proposes to retain the same degree of non-conformity to setback as the existing garage. Vertical expansion is allowed per Section 5.3.5 (a), above, as noted. The replacement structure will be conditioned for completion within one year of demolition as required. **Affirmative finding as conditioned.**

Article 6: Development Review Standards

Part 1: Land Division Standards

Not applicable.

Part 2: Site Plan Design Standards

Sec. 6.2.2 Review Standards

(a) Protection of Important Natural Features:

Not applicable.

(b) Topographical Alterations:

Not applicable.

(c) Protection of Important Public Views:

Not applicable.

(d) Protection of Important Cultural Resources:

Not applicable.

(d) Supporting the Use of Renewable Energy Resources:

No part of the application prevents the use of wind, solar, water, geothermal, or other renewable energy resource.

(e) Brownfield Sites:

Not applicable.

(g) Provide for nature's events:

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

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

At a mere 240 sf, the project will not trigger an Erosion Prevention and Sediment Control Plan.

The building is intended to be a storage building, and therefore will not require typical consideration for weather protected building entrance (although the easterly door is located under an eave.) **Affirmative finding.**

(h) Building Location and Orientation:

No change from the existing configuration or orientation. **Affirmative finding.**

(i) Vehicular Access:

Same as existing. The accessory structure will be located at the terminus of the driveway.
Affirmative finding.

(j) Pedestrian Access:

A pedestrian door is offered on the easterly side of the building, facing the principal structure.
Affirmative finding.

(k) Accessibility for the Handicapped:

Not required. Not applicable.

(l) Parking and Circulation:

Same as existing. **Affirmative finding.**

(m) Landscaping and Fences:

Not applicable.

(n) Public Plazas and Open Space:

Not applicable.

(o) Outdoor Lighting:

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

One downshielded light is proposed over the easterly pedestrian entrance. It is fully cut off and residential in scale. **Affirmative finding.**

(p) Integrate infrastructure into the design:

No additional equipment or infrastructure is proposed. The building is intended to continue its storage use. **Affirmative finding.**

Part 3: Architectural Design Standards

Sec. 6.3.2 Review Standards

(a) Relate development to its environment:

1. *Massing, Height and Scale:*

The replacement building will have the same massing, albeit in a taller structure. It is not proposed to exceed the defined height limitation in Section 5.3.5. **Affirmative finding.**

2. *Roofs and Rooflines.*

A gable roof with full dormers is proposed. The existing accessory structure has a gable roof (installed in 1979.) The house has been modified to include a full dormer. Although the pitch is different, the replacement roof is proposed to be similar to the existing on house and garage.

Affirmative finding.

3. *Building Openings*

An overhead garage door is proposed for the north elevation, a pedestrian door on the east, and wall dormer windows on the east and in the south gable end.

The placement is consistent with function, and observes limitations of code requirements relative to proximity to boundary lines per direction of the building inspector. **Affirmative finding.**

(b) Protection of Important Architectural Resources:

Not applicable.

(c) Protection of Important Public Views:

Not applicable.

(d) Provide an active and inviting street edge:

The replacement building will reflect design elements from the principal structure, and retain the common element of structural location. **Affirmative finding.**

(e) Quality of materials:

The submission narrative defines a frame of hemlock; cedar shakes, with composite (Boral) trim. Roofing material will be flat locked and soldered copper. Windows are wood, the exterior doors fiber thermatru. All are of acceptable durability for new construction.

Affirmative finding.

(f) Reduce energy utilization:

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

(f) Make advertising features complementary to the site:

(g) Not applicable.

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p) above.

(i) Make spaces secure and safe:

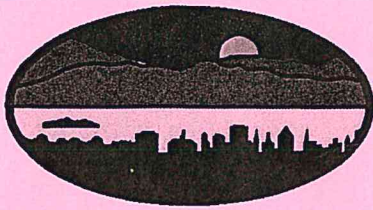
The applicant has sought the guidance of the building inspector for reconstruction within setbacks, resulting in a façade without windows and doors and sheathed in non-combustible material. **Affirmative finding.**

II. Conditions of Approval

1. Per **Section 2.7.8, Withhold Permit**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit.
2. Replacement building must be constructed within one year of building demolition. Failure to do so will result in loss of the ability to retain the nonconformity.
3. Building shall not exceed 15' in height as measured per **Section 5.2.6 Building Height Limits.**

4. All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
5. Standard Permit Conditions 1-15.

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



ZONING PERMIT
CERTIFICATE OF APPROPRIATENESS

City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 06/28/2017

Appeal Expiration Date: 07/15/2017

Project Location: 91 HENRY STREET

District: RL

Owner: PAULO MATOS

Ward: 1E

Address: 14 TANBARK RD
SUDBURY MA 01776
USA

Tax ID: 045-3-016-000

Project Type: Residential - Demolition and New Construction

Project Description: Replacement accessory structure meeting minimum setbacks.

Construction Cost:	\$40,000.00	Lot Size (Sq Ft):	3,905
Net New Habitable Sq Ft:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	36.38	Existing # of Parking Spaces:	2
Proposed % Lot Coverage:	36.38	Proposed # of Parking Spaces:	2
Net New % Lot Coverage:	0.00	Required # of Parking Spaces:	2

Zoning Permit #: 17-1342CA

Decision By: Administrative

Level of Review: 2

Decision: Approved

See Conditions of Approval

Decision Date: June 30, 2017

Project File: NA

Zoning Administrative Officer

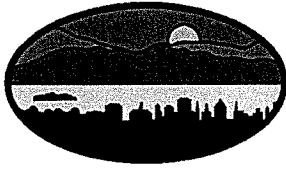
An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on July 15, 2017.

Fee Type	Amount	Paid in Full	Balance Due: \$180.00
Application Fee:	\$190.00	Yes	Date Paid: 7/21/17
Development Review Fee:	\$180.00	No	Check # Charge
Impact Fee:	Not Applicable		

Building Permit Required: Yes

Permit Received by:

Date: 7/21/17



City of
Burlington, Vermont
149 Church Street

Zoning Permit - COA Level II – Conditions of Approval

ZP #: 17-1342CA

Tax ID: 045-3-016-000

Issue Date: June 30, 2017

Decision: Approved

Property Address: 91 HENRY STREET

Description: Replacement accessory structure meeting minimum setbacks.

Project Permit Conditions:

1. Replacement structure is intended for storage and is **not** approved for additional habitable area or another dwelling unit. The property remains a single family residence. Any request for additional living space or a change in the number of residential units will require separate application and zoning review.

Standard Permit Conditions:

1. **Other City, State or Federal Permits.** The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions.

Note: All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from Department of Public Works-Inspection Services Division (DPW-ISD). All construction permits must be closed out by way of approved inspections by DPW-ISD before issuance of a Unified Certificate of Occupancy (UCO) by the Code Enforcement Office as per Condition 3, below.

2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced by **June 30, 2018**. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) by **June 30, 2019**, or be subject to enforcement actions.

These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).

3. **Unified Certificate of Occupancy (UCO):** It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a UCO.

If the project is partially completed, meets “prior to issuance of a UCO” conditions of approval,

meets all health and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. **Upon completion of the project**, applicant shall request and obtain a Final UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. **Failure to obtain a certificate of occupancy** places the property in violation of the CDO and is subject to enforcement.

In addition, **Failure to obtain a UCO within the time limits above is subject to** “after the fact” fees ranging from \$75 - \$1500 (in addition to the UCO fee).

4. **Project Modifications.** The project shall be completed as shown on the plans, which have been stamped “approved” and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.
5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final UCO.
6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.
7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.
8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.
9. **Transfer of Ownership. All zoning permits run with the land.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.
10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to two hundred dollars (\$200) per day, municipal tickets, and/or additional permitting fees.
11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City. If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including

removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.

13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.
14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

TRILLIUM- Remodel- Design & Build

Proposed project description:

To: DRB

The Trillium team looks to demolish and reconstruct the detached garage at #91 Henry St. The proposed new structure will have a full IBC code compliant foundation with adequate drainage. It will be framed out of actual dimensional rough cut hemlock. The siding will be select grade cedar shakes. The windows will be all wood, Anderson 400 series. The trim details will be specific to the existing residence with supportive shaped corbels on the gable ends and exposed rafters on the eaves. The trim material will be Boral true exterior 5/4 trim. The roof sheathing will be tongue and groove Douglas fir where it is exposed and visible. The roofing material will be flat locked and soldered 16oz copper. The exterior door will be a fiber classic thermatru. The garage door will be supplied by The Over head door company, proposed 4 glass lites. The floor plan will be open and the above space for the garage will be unoccupied and utilized for sports storage.

Thanks for your time and consideration,

Johny Bixby,

Trillium LLC

751 mail St. Colchester VT

05446 – 802-353-2434

john@trilliumcustoms.com

RECEIVED
JUN 28 2017

DEPARTMENT OF
PLANNING & ZONING

CURTIS



SIGNED:

LUMBER

Scott Griswold Business Development Representative
 Ph: 802-863-1283 Cell: 802-288-0683 Fax: 802-860-6633
 sggrisw@curtislumber.com

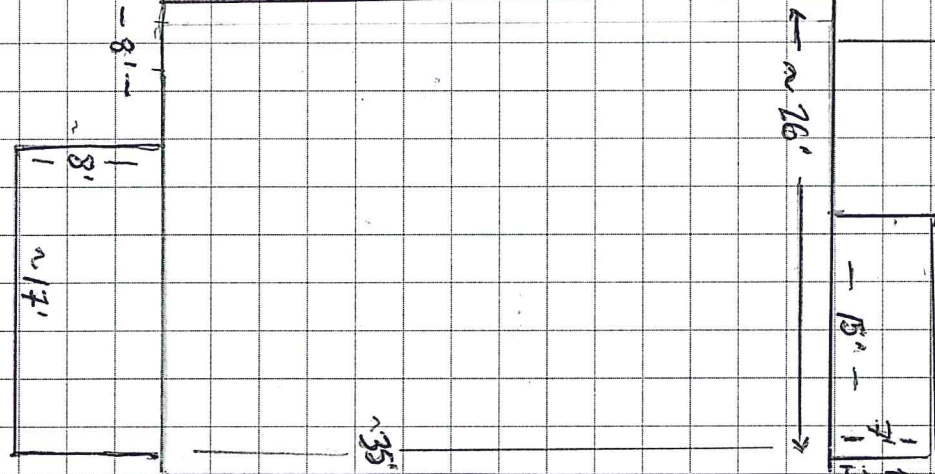
Building Department
 Burlington, Vermont

DATE: 6/30/17

2017-1342CA

NOTE -
 ANY MODIFICATIONS OR DEVIATIONS FROM THESE PLANS
 REQUIRE ZONING AND DEPARTMENTAL APPROVAL PRIOR TO CONSTRUCTION.
 ALL ERRORS AND OMISSIONS, PLANS, OR DETAILING ARE
 THE RESPONSIBILITY OF THE APPLICANT/OWNER.

FINAL APPROVAL



* Meeting
 5' side and
 Rear Set-Back
 Minimum
 Requirement.

Proposed
 Garage
 Design: Build

COVERAGE

House - 1015
 GARAGE - 240 #1421 SqF
 Drive Way - Grass/Stone ~ 36.38%
 front stoop - 136
 Front Walk - 30 3905 SqF #91 Henry lot #16

Date: June 5 - 2017
 Project Name: P. Matos - Trillium
 Project Location: #91 Henry St. Burlington
 Salesperson: John Bixby
 Due Date: NA

www.CurtisLumber.com

JUN 28 2017

DEPARTMENT OF
 PLANNING & ZONING



Andersen AW
 WINDOWS & DOORS

Remodel- Design & Build

GARAGE

A photograph of a two-story house with a red roof and a chimney, partially obscured by bare trees. A white car is parked in the foreground on the right side of the image.

JUN 28 2017

DEPARTMENT OF
PLANNING & ZONING

NOTES ALL DIMENSIONS AND INFORMATION FOR ORDERING AND PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION CONTRACTOR TO VERIFY ALL DIMENSIONS ALL INFORMATION SHOWN HAS BEEN PREPARED EXCLUSIVELY FOR:	TRILLIUM REMODELING 751 MAIN ST. COLCHESTER, VT. 05446 802-353-5451	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>#</th> <th>REVISION</th> <th>DATE</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	#	REVISION	DATE																						<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">SCALE</td> </tr> <tr> <td style="text-align: center;">NTS</td> </tr> </table>	SCALE	NTS	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; padding: 10px;"> TRILLIUM <i>Remodel • Design & Build</i> </td> </tr> </table>	TRILLIUM <i>Remodel • Design & Build</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">PROJECT</td> </tr> <tr> <td style="text-align: center; padding: 10px;"> 81 Henry Street Garage </td> </tr> </table>	PROJECT	81 Henry Street Garage	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">ATTENTION</td> </tr> <tr> <td style="text-align: center; padding: 10px;"> DRB </td> </tr> </table>	ATTENTION	DRB	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">DRAWN BY</td> <td style="text-align: center;">DATE</td> </tr> <tr> <td style="text-align: center; padding: 10px;"> MC </td> <td style="text-align: center; padding: 10px;"> 04/16/17 </td> </tr> </table>	DRAWN BY	DATE	MC	04/16/17	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; padding: 10px; font-size: 2em;"> COVER </td> </tr> </table>	COVER
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COLCHESTER, VT. 05448
802-932-2434

*OPEN LOFT FLOOR PLAN

#	REVISION	DATE

SCALE

NTS

TRILLIUM
Remodel- Design & Build

PROJECT

81 Henry Street
Garage

ATTENTION

DRB

DRAWN BY	DATE
MC	04/16/17

1

A101

NORTH ELEVATION

FINAL APPROVAL

SIGNED: *[Signature]* **DATE:** 6/30/17

Planning & Zoning Department
Burlington, Vermont

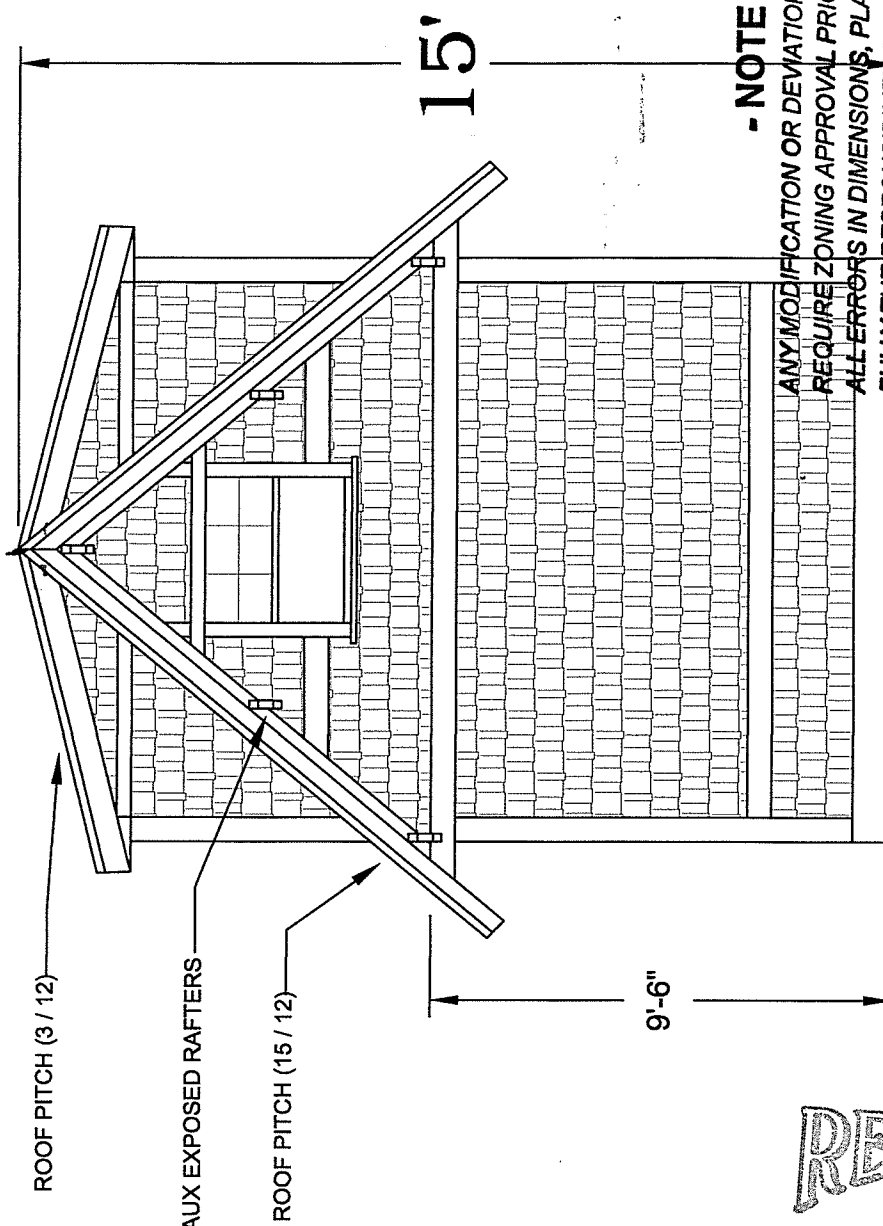
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75 HENRY STREET
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802-553-2434

*OPEN LOT FLOOR PLAN

#	REVISION	DATE

SCALE

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81 Henry Street
Garage

ATTENTION

DRB

DRAWN BY

MC

DATE

04/16/17

A102

SOUTH ELEVATION

FINAL APPROVAL

SIGNED: *[Signature]* NO DATE: 6/30/17

Planning & Zoning Department
Burlington, Vermont

SOUTH ELEVATION

1
A102

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2P 17-1342 GA

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21 HENRY STREET
COLCHESTER, VT. 05448
802-353-2434

*OPEN LOFT FLOOR PLAN

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TRILLIUM
Remodel - Design & Build

PROJECT

21 Henry Street
Garage

ATTENTION

DRB

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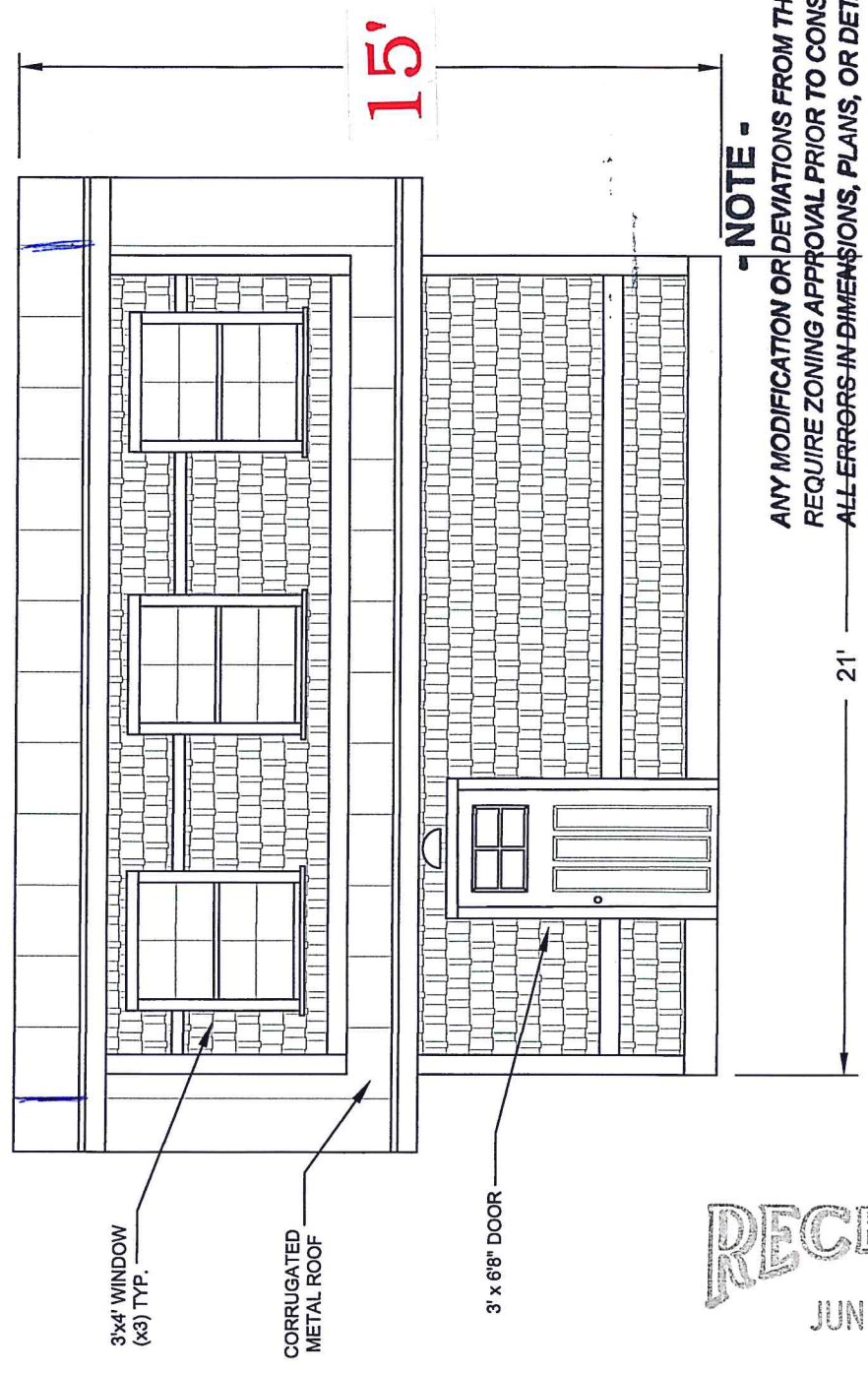
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EAST ELEVATION



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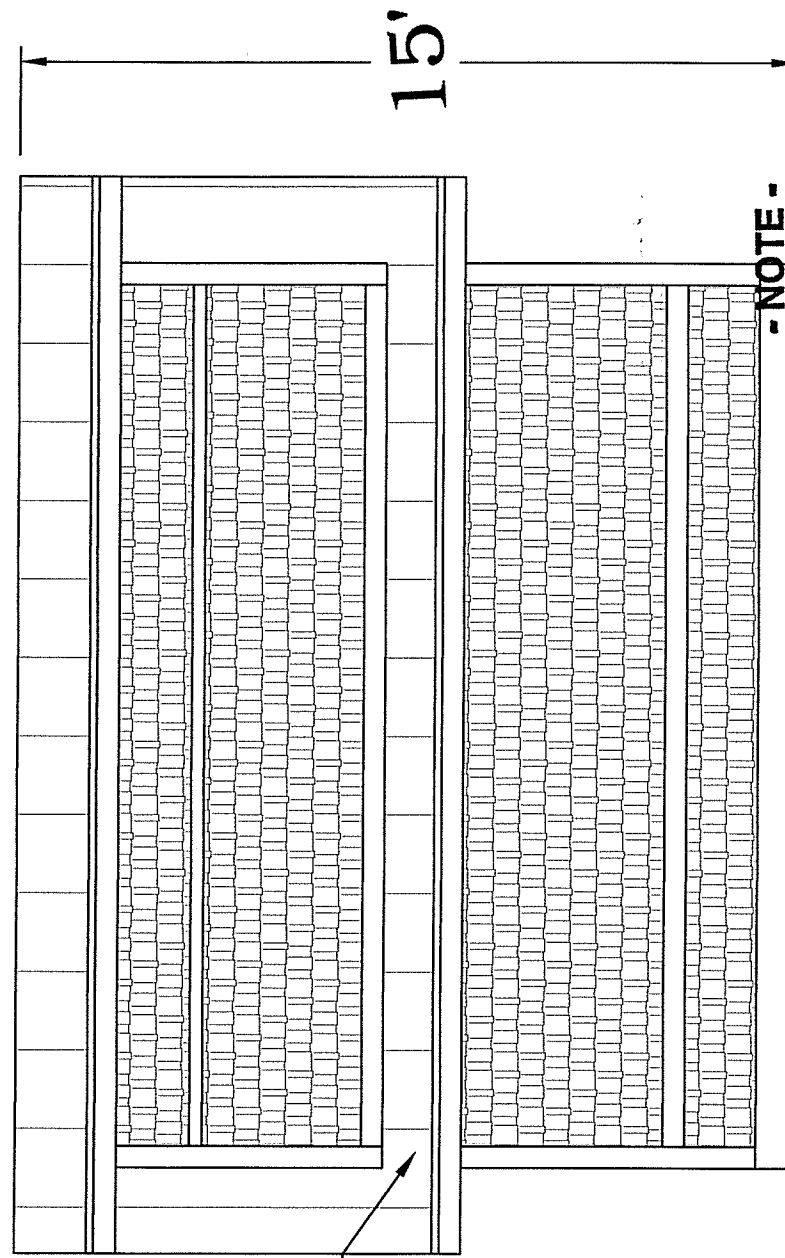
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SIGNED: *[Signature]* DATE: 6/30/17

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FINAL APPROVAL

WEST ELEVATION

SIGNED: *[Signature]* DATE: 6/30/17

Planning & Zoning Department
Burlington, Vermont

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FOR
TRILLIUM REMODELING
71 HENRY STREET
COLCHESTER, VT. 05448
802-333-2434

*OPEN LOFT FLOOR PLAN

#	REVISION	DATE

SCALE
NTS

TRILLIUM
Remodel- Design & Build

PROJECT
81 Henry Street
Gauge

ATTENTION
DRB

DRAWN BY
MC
DATE
04/16/17

A104
WEST ELEVATION

1
A104



#91 Henry St. - existing Detached Garage

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JUN 28 2017

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PLANNING & ZONING

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 September 5th, 2017, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT AGENDA

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

- 1. 14-0747SD; 1891-1893 NORTH AVENUE (RL, Ward 4N) Thomas P. Mitchell**
Request for Time Extension; Subdivide two lots into three lots, remove existing single family house, construct two duplexes and one single family house.
(Project Manager: Scott Gustin)
- 2. 18-0098CA/CU; 91 HENRY STREET (RL, Ward 1E) Paulo Matos**
Replace garage on existing footprint with vertical expansion within non-conforming setback. Associated approval ZP17-1342CA.
(Project Manager: Mary O'Neil)

V. Public Hearing

- 1. 17-1267AP; 43 STARR FARM ROAD (RL, Ward 4N) Ventas Realty LP**
Appeal of zoning violation notice #334328.
(Project Manager: Jeanne Francis)
- 2. 18-0072AP; 204 NORTH AVENUE (RM, Ward 3C) Pierre Gingue**
Appeal of NOV #335900 as it relates to usage as a three dwelling unit.
(Project Manager: Scott Gustin)
- 3. 18-0003CA; 135 HAYWARD STREET (RL, Ward 5S) Andrew Rowan/ Daniel Rowan**
Construct triplex and related site improvements. Utilize existing driveway and parking.
(Project Manager: Scott Gustin)

VI. Other Business

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/dr/ 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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- **RL ZONING DISTRICT / NEIGHBORHOOD DISTRICT**
 - **MINIMUM OFF-STREET PARKING** Table 8.1.1-1 Multi-Unit attached Dwelling Unit, Studio, or 1-Bedroom: 2 spaces / D.U.
 - **MINIMUM PARKING DIMENSIONS** Table 8.1.11-1: Standard Space 96 deg 0' x 20' with 24" min back up space.
 Compact Space 90 deg 8' x 18' with 30" min back up space.
 - **PARKING 8.1.12 (h):** Number of compact spaces allowed to be 15% of total number provided in parking garages.
 - **PARKING 8.1.14 (b):** Tandem parking allowed only for Single Family and Duplex property.
 - **USE Table Appendix A: RL ZONING Allowed Residential Uses include:** Single Family and Duplex (Triplex is not an allowed use)
 - **DIMENSIONAL CRITERIA Table Appendix B: RL ZONING**
 Max. Density: 7 DUs / acre
 Max Height: 35'
 Front Setback: Average of 2 adjacent properties on site
 Exig: 20 DUs/acre
 Exig: 27' +/-
 Exig: 7.8' Average A=(5'x4'+75.8'+18.8')/4 = 26.4'-26"
 Average B=(24'x9'+18.8')/3 = 12.9'-13"
 Side Setback: 15% of lot width / min 5'
 Rear Setback: 25% of lot depth / min 20'
 Min Lot Size: Single Family 6,600sf / Duplex 11,600sf
 Min Street Frontage: 60'
 Exig: 14' +/- 4'-6" (bldg) / 8'-4'-6" (parking)
 Exig: 5' (bldg) / 0' (parking)
 Exig: 4,542 sf / 11.61 acre
 Exig: 4.15'

PROPERTY DIMENSIONS ARE FROM CITY TAX MAP 053-3
OTHER EXISTING SITE FEATURE DATA FROM SITE MEASUREMENT AND OBSERVATION.
ALL DIMENSIONS ARE APPROXIMATE.

29 AUG
NOTE: BICYCLE PARKING FOR END UNITS IS
AVAILABLE ON THEIR ENTRY PORCHES, AND
ON WALL BRACKET TO THE EAST OF THE
MIDDLE UNIT ENTRY FOR THAT UNIT.

TAX MAP 052-3, LOT #168

TAX MAP 653-3, LOT #260

TAX MAP 053-3, LOT #167
PROPERTY DATA BASE PARCEL 053-3-167-000
RL ZONING / NEIGHBORHOOD DISTRICT

OWNER: ANDREW & DANIEL BOWMAN

EXTERIOR LIGHTING: 1 RECESSED LED CEILING
FIXTURE ABOVE EACH ENTRY DOOR (3).

TAX MAP 053-3, LOT #165

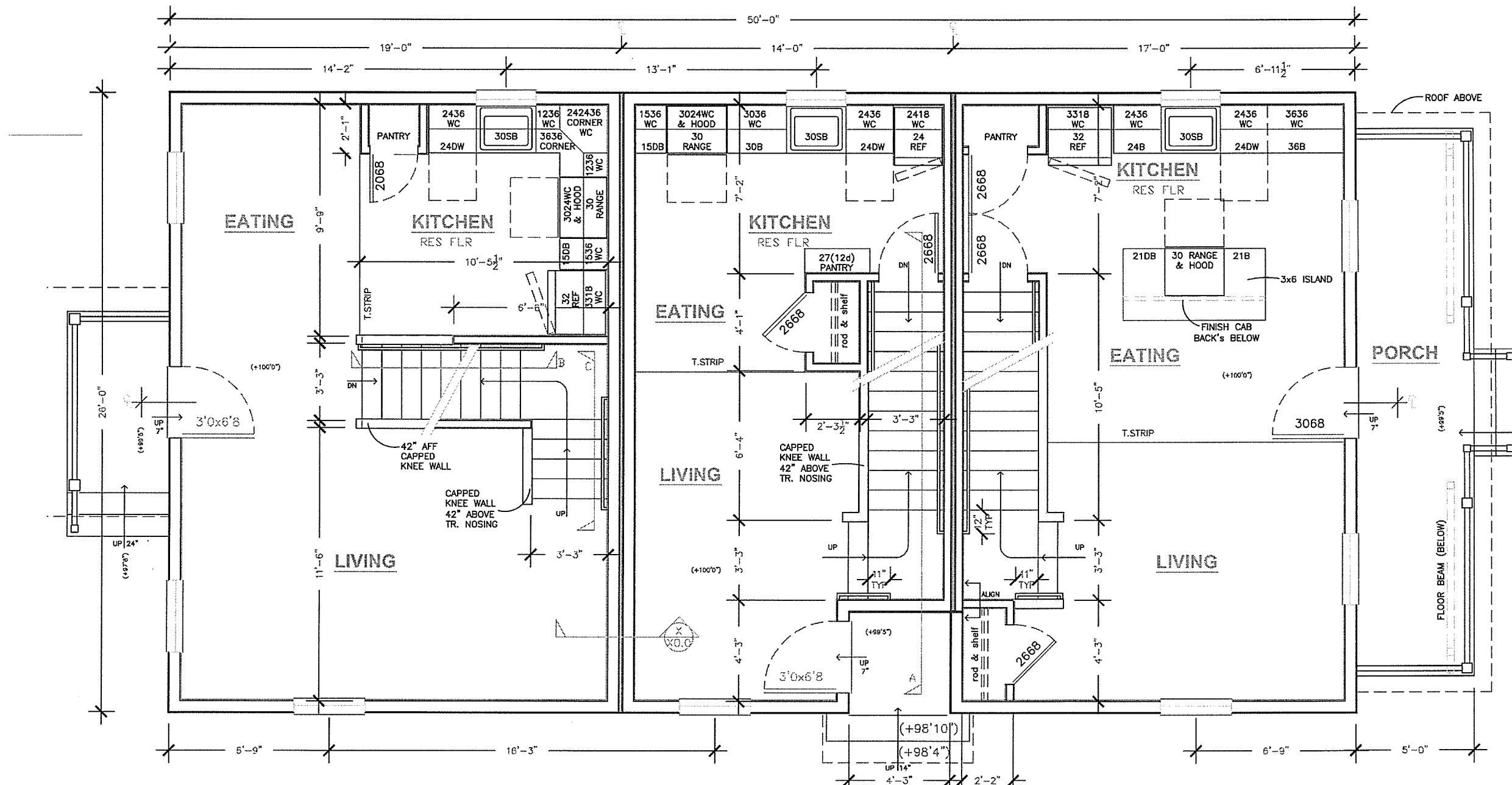
Site Plan

rev'd: 24 JULY 17
rev'd: 29 AUG 17

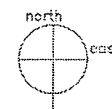
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AUG 29 2017

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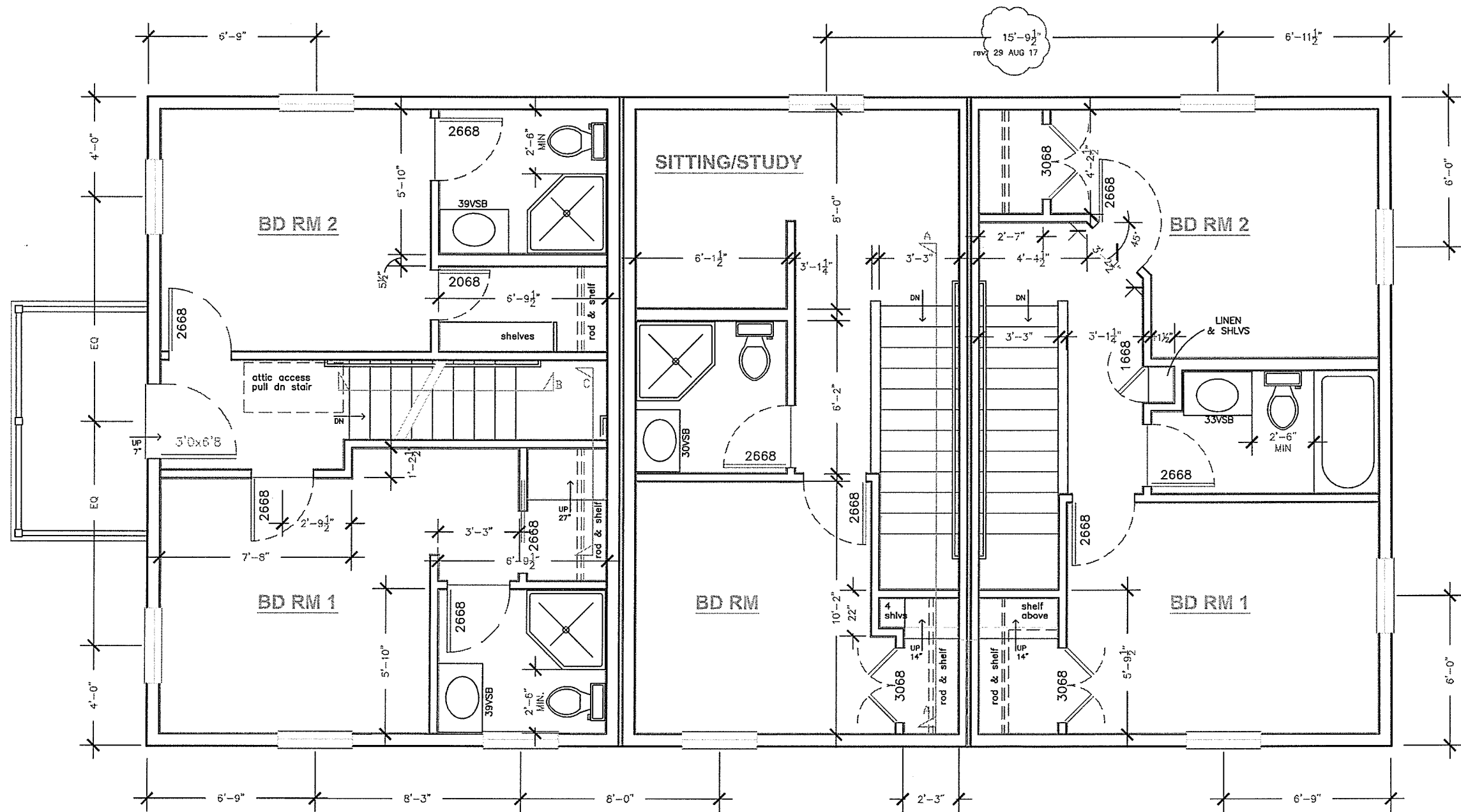
NOTE: DIMENSIONS ARE FROM/TO FRAMING COMPONENTS & CENTER LINE OF WINDOW ROUGH OPENINGS



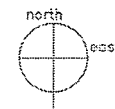
DATE: 27 JUN 17
SCALE: 1/4"=1'-0"
MAIN FLOOR PLAN

3-Unit Residential Building
135 Hayward St. Burlington, VT
BY: VVA CONSULTING, INC. DATE: 06/27/2017

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AUG 29 2017
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NOTE: DIMENSIONS ARE FROM/TO FRAMING COMPONENTS & CENTER LINE OF WINDOW ROUGH OPENINGS

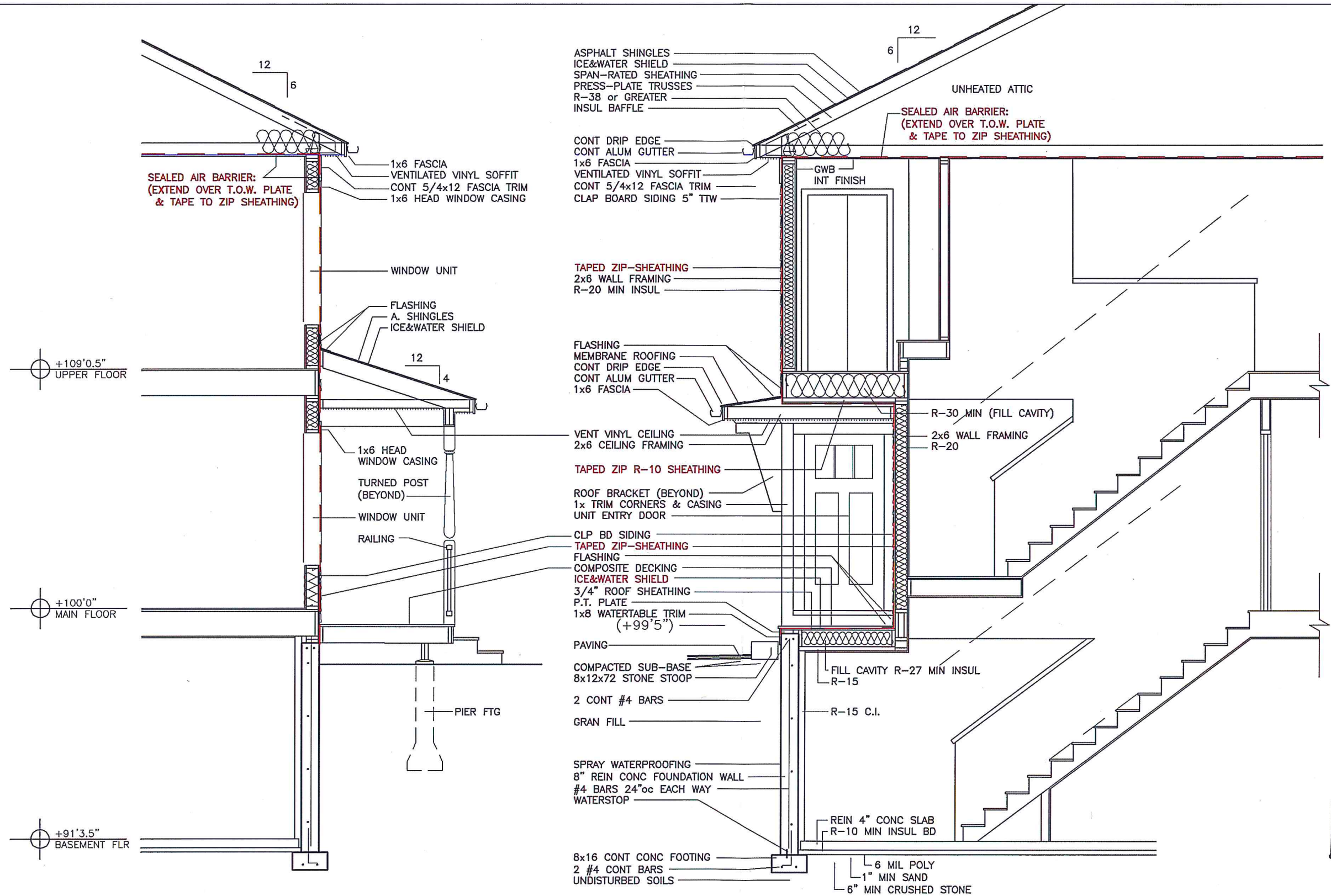


DATE: 16 JUN 17
 SCALE: 1/4"=1'-0"
 REV: 29 AUG 17
 UPPER FLOOR PLAN

3-Unit Residential Building
 135 Hayward St. Burlington, VT
 2 VV & Co Inc. Burlington, VT 05401 TEL: 264-1101

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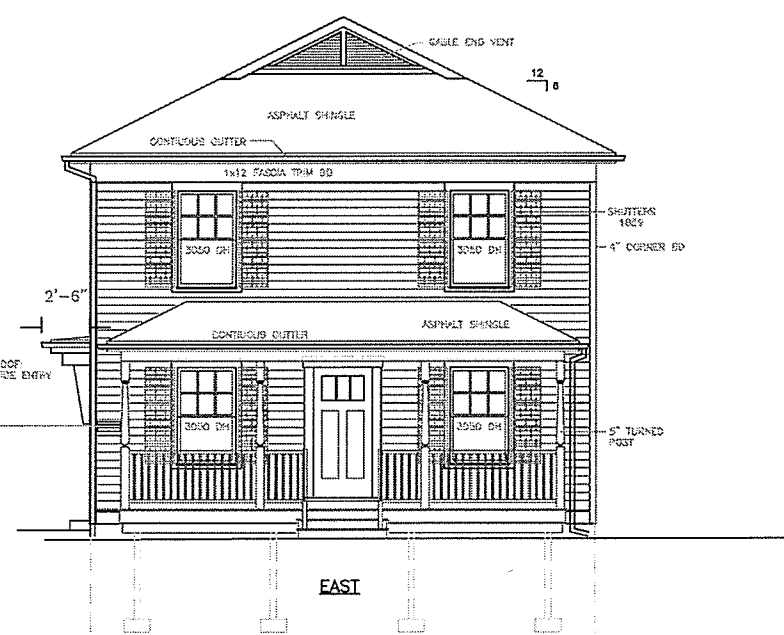
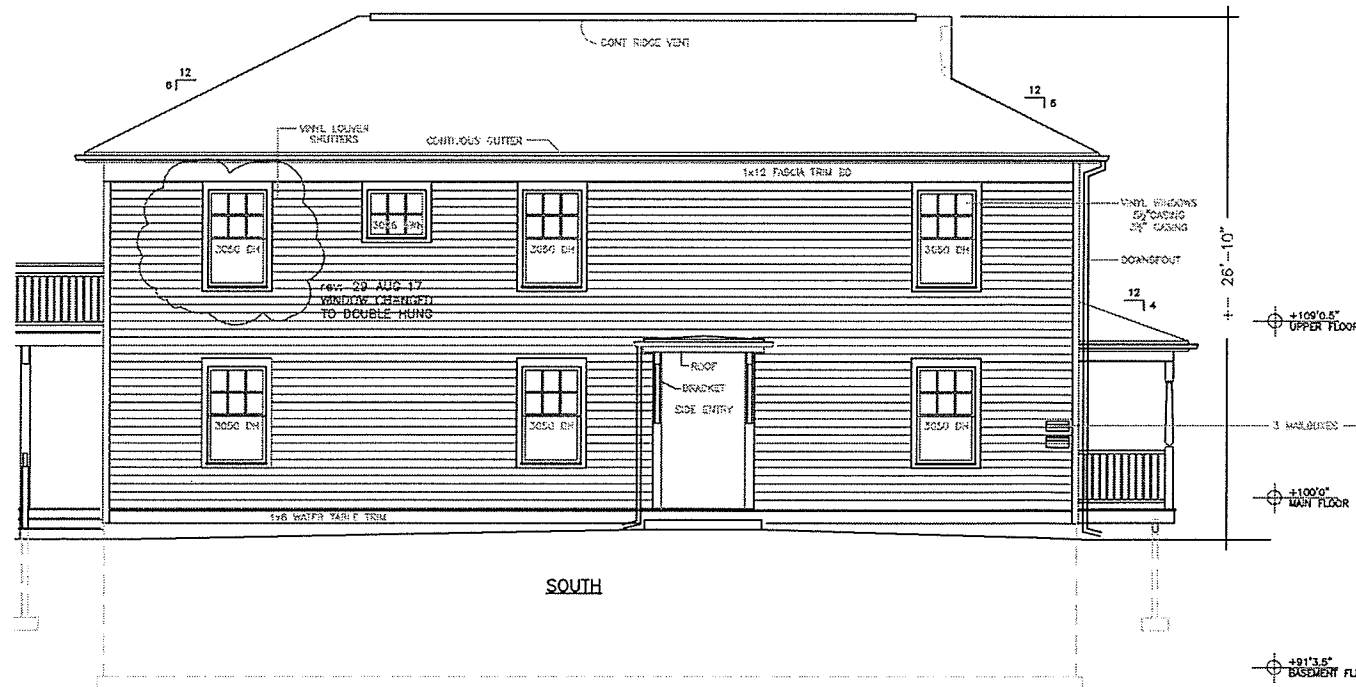
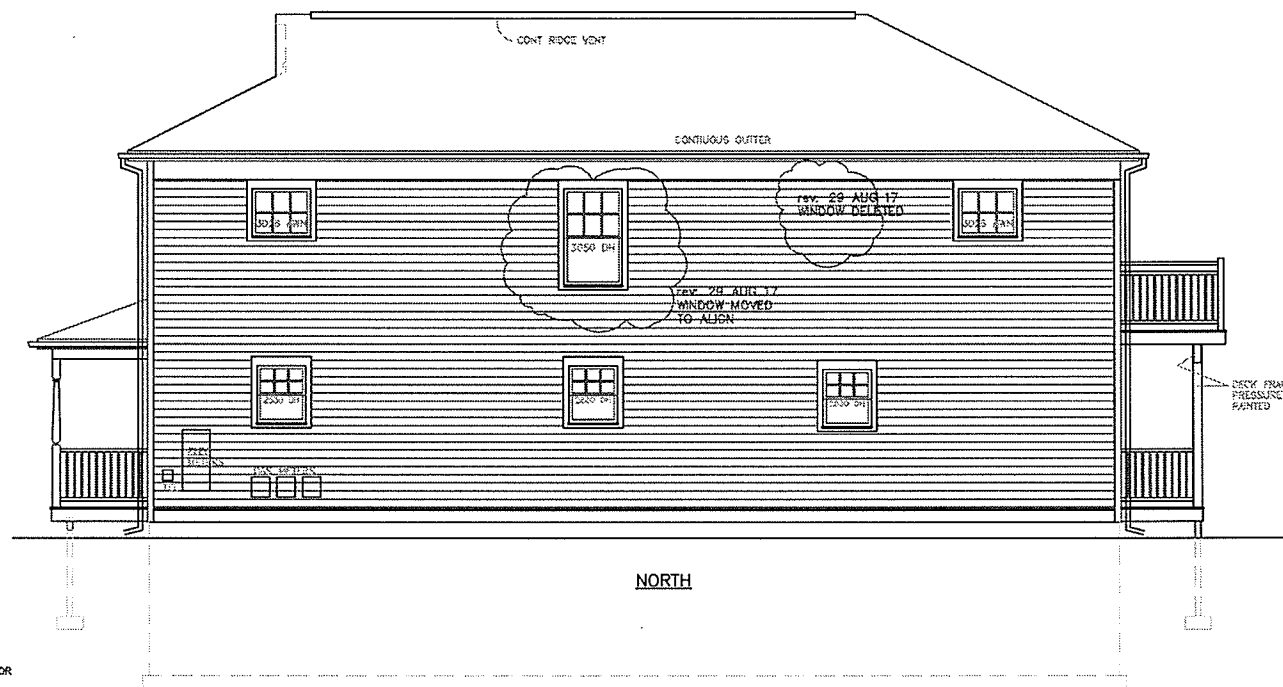
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JUL 05 2017

DEPARTMENT OF
PLANNING & ZONING

DATE: 27 JUN 17
SCALE: 1/4"=1'-0"
SECTIONS

3-Unit Residential Building
135 Hayward St Burlington, VT
G V V Architects Inc. Burlington, Vermont 802-362-9631

A3.0



MATERIALS

- WINDOWS: - VINYL MIN U=0.25
- CLAPBOARD SIDING: - 5\"/>

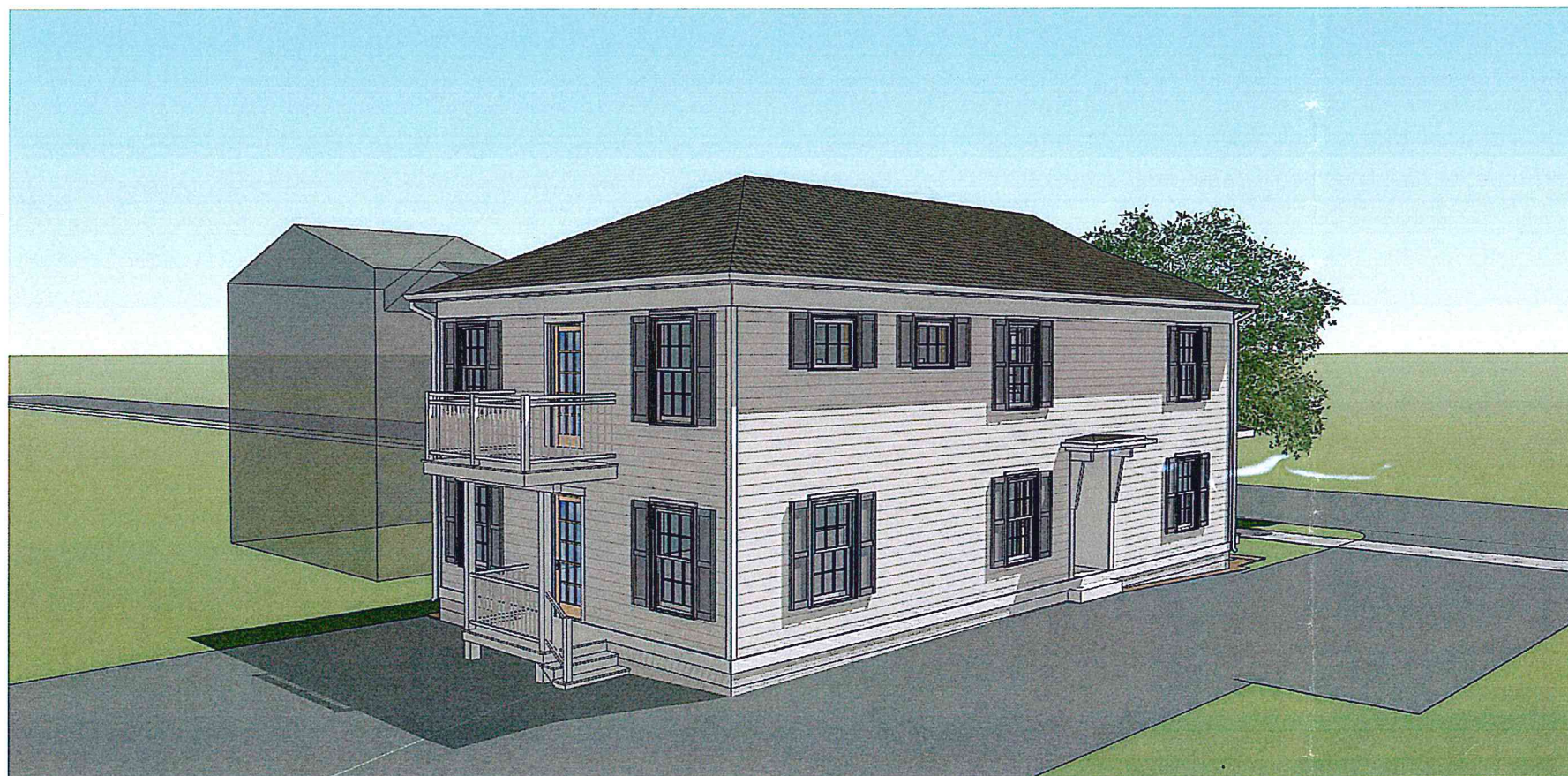
NOTES - rev. 23 AUG 17
 - DOUBLE HUNG WINDOW STYLE CHANGED TO 6/1
 - SHUTTERS AT STREET ELEVATION ONLY
 - EXTERIOR LIGHTING RECESSED IN CEILING AT EACH ENTRY

DATE: 27 JUN 17
 SCALE: 1/8\"/>

3-Unit Residential Building
 195 Hayward St. Burlington, VT
 2 V.V.A. CONSULTING SUBMITTED: 10/01/17 10/13/17

A2.0
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 AUG 29 2017

DEPARTMENT OF PLANNING & DEVELOPMENT



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DATE: 16 JUN 17
 SCALE: N.T.S.
 PERSPECTIVES

3-Unit Residential Building
 135 Hayward St Burlington, VT
 G V V Architects Inc. Burlington, Vermont 802-362-9631

AO.

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, CFM, Associate Planner
Anita Wade, Zoning Clerk
Layne Darfler, Planning Technician



TO: Development Review Board
FROM: Scott Gustin *SD*
DATE: September 5, 2017
RE: 18-0003CA; 135 Hayward Street

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

Zone: RL Ward: 5S

Owner/Applicant: Andrew & Daniel Rowan / Mike Rainville

Request: Construct a triplex and related site improvements. Utilize existing driveway and parking.

Applicable Regulations:

Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicant is seeking approval to construct a triplex to replace a triplex that burned in April 2016. While a triplex is a nonconforming use in the RL zone, wherein the subject property is located, the Development Review Board ruled that the nonconforming use may be retained.

The proposed construction is limited mostly to the new home. A new front walkway will also be installed. The existing parking area will be retained and utilized to serve the new residence.

The Design Advisory Board reviewed this application on July 25, 2017. The Board voted 5-0-0 to recommend approval of the plan with the following conditions:

1. The applicant shall provide a trash collection narrative for the DRB.
2. Recommendation for 6/1 window pattern rather than the 6/6 illustrated in elevations. Acknowledges that the applicant team wishes to do a little observation in the neighborhood to see existing window patterns.
3. One or two bollards shall be added to protect the HVAC condensing units from damage from adjacent parking.
4. The applicant is encouraged to consider bicycle storage where feasible.

Revised project plans have been provided to address most, but not all, of the DAB's recommendation.

Previous zoning actions for this property are as follows:

- 11/1/16, Uphold appeal recognizing pre-existing nonconforming triplex use

- 6/24/16, Approval to remove fire-damaged residence
- 11/22/10, Approval to remove shed and decks and to install new windows
- 4/26/99, Approval to install fence
- 6/26/98, Approval to change use from duplex to single family (relinquished)
- 3/31/97, Approval to install wooden clapboard siding
- 2/27/96, Approval to remove porch and install sunroom
- 6/27/95, Approval to install replacement front steps and windows and to install fence
- 10/5/92, Approval to convert duplex to triplex
- 11/7/90, Approval to reconstruct fire-damaged rear of duplex
- 7/11/87, Approval to reconstruct fire-damaged shed
- 9/25/82, Approval to reconstruct fire escape
- 11/19/79, Approval to install a window
- 6/21/74, Approval to enclose front porch with windows

Recommendation: Initial review, then continuation to address the outstanding items noted below.

I. Findings

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(1) Residential Low Density (RL)

The Residential Low Density (RL) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. The district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhood's development history. The triplex is inconsistent with this intent; however, the DRB recognized the prior use as that of a "grandfathered" triplex. The triplex use is retained in this application. **(Affirmative finding)**

(b) Dimensional Standards and Density

The subject parcel of land is 4,542 sf. Allowable residential density within the RL zone is 7 units/acre. In this case, the allowable density is just 1 dwelling unit. The triplex use; however, has been recognized as a pre-existing nonconformity and may be retained.

Lot frontage is just 40,' less than the standard requirement of 60.' Per Sec. 5.2.1, *Existing Small Lots*, the 40' frontage enables development per the underlying zoning.

Lot coverage will actually decrease from 93% to 89%. While lot coverage will remain nonconforming, the degree of nonconformity will lessen and is, therefore, acceptable.

The new triplex will be set in the same location as the prior residence. It will be set close to the front property line and oriented towards the street. Interestingly, the anomalous setback of the neighboring home at 143 Locust Terrace skews the front yard setback, pulling it back further from the street than all of the other homes along Hayward Street and Locust Terrace. In this case, the new triplex retains the nonconforming front yard setback of the prior structure that burned.

The 40' width of the lot results in a minimum 4' side yard setback. The proposed building complies with this minimum side yard setback. The 135.5' deep lot has a 28' minimum rear yard setback (25% of the depth). As proposed, the rear of the building will be 50' from the rear property line.

Proposed building height is 23' to the midpoint of the sloped roof. This height is under the 35' maximum height permissible. **(Affirmative finding)**

(c) Permitted and Conditional Uses

A triplex is a nonconforming use in the RL zone. The DRB found that the triplex use is a legitimate pre-existing nonconformity on this property. The DRB's 6-month extension of this nonconforming status was contingent on two conditions:

1. The nonconforming triplex status is extended contingent on the submission of a complete zoning permit application for reconstruction of a triplex within six (6) months of April 20, 2017, the expiration of the one-year re-establishment period, or October 20, 2017. No additional extensions will be granted.
2. In order to mitigate impacts on the neighborhood related to this extension, the extension is conditioned on the applicant maintaining the site outside of the snow fence in good and neat condition, including keeping grass and weeds trimmed and picking up trash and debris.

This zoning permit application was submitted July 5, 2017, within the required timeframe.

Written public comment has been submitted contesting compliance with condition 2. Photographs have been submitted that show the property with debris and extensive weed growth. The DRB must determine whether the conditions of extension have been complied with.

In any development scenario, the dwelling(s) may only be occupied by families as defined in Article 13 of the Comprehensive Development Ordinance. **(No finding possible)**

(d) District Specific Regulations

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 result in creating a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

New outdoor lighting is proposed and consists of building mounted fixtures to illuminate building entries. The fixtures are acceptable residential fixtures generating low levels of illumination. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

As more than 400 sf of earth disturbance is proposed, a “small project erosion control” form has been provided. The city’s stormwater program staff has reviewed and approved the plan. No post-construction stormwater management plan is needed as confirmed by stormwater program staff. **(Affirmative finding)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The subject property contains no important natural features as identified in the Open Space Protection Plan. In fact, most of the property is either pavement or building foundation. **(Affirmative finding)**

(b) Topographical alterations

The parcel is basically flat and will remain so. No significant topographical alterations are proposed. **(Affirmative finding)**

(c) Protection of important public views

The subject property is not affected by any identified public view corridor. **(Affirmative finding)**

(d) Protection of important cultural resources

The property contains no known archaeological resources. **(Affirmative finding)**

(e) Supporting the use of alternative energy

There is no indication that the proposed home will utilize alternative energy. Solar energy utilization is encouraged. In any event, the home will not adversely impact the actual or potential use of alternative energies by neighboring properties. **(Affirmative finding)**

(f) Brownfield sites

The subject property is not an identified brownfield. **(Affirmative finding)**

(g) Provide for nature’s events

Lot coverage will actually decrease somewhat. As noted before, no post-construction stormwater management plan is required for a project of this small scale. The site plan contains no notation of

snow storage. Provision for wintertime snow management must be made. **(Affirmative finding if conditioned)**

(h) Building location and orientation

The new triplex will be set in the same location as the prior residence. It will be set close to the front property line and oriented towards the street. As noted previously, the new triplex retains the nonconforming front yard setback of the prior structure that burned. The end result is consistent building placement along the street. **(Affirmative finding)**

(i) Vehicular access

An existing driveway will continue to serve the property. **(Affirmative finding)**

(j) Pedestrian access

A new front walkway will provide direct access from the front door to the public sidewalk. **(Affirmative finding)**

(k) Accessibility for the handicapped

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

(l) Parking and circulation

Onsite parking and circulation will remain unchanged. Five angled parking spaces are located behind the new triplex and are accessed by the private driveway. **(Affirmative finding)**

(m) Landscaping and fences

No new landscaping or fencing are proposed. The site plan depicts a small group of cedars alongside the rear parking area to be retained. This retention of some shrubs does not constitute a landscaping plan. At least a basic landscaping plan should be provided. Foundation plantings along the primary façade as well as additional new plantings to help screen the rear parking area from neighboring properties would be appropriate. **(No finding possible)**

(n) Public plazas and open space

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

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

The site plan notes existing overhead utility lines. Utility lines should be buried as part of this reconstruction, and the site plan acknowledges as much. The site plan notes utility meter locations acceptably placed on the side of the building. Ground mounted HVAC units are proposed behind the residence. A single pipe bollard is proposed next to the HVAC units as recommended by the Design Advisory Board. A second pipe bollard would strengthen protection of the units and is seemingly warranted here. A set of trash totes is noted at the end of parking space #1. Location of these totes here renders the parking space substandard. Either a parking waiver must be pursued and granted, or the totes need to be located elsewhere. No trash collection narrative has been provided as conditioned by the Design Advisory Board. **(No finding possible)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The massing, height, and scale of the proposed triplex are similar to the residence that it will replace. The two story home includes an open front porch that provides an inviting presence along the street. The structure has a basic singular mass. Fenestration as well as the front and rear porches provide some relief to the perceived mass of the structure. **(Affirmative finding)**

2. Roofs and Rooflines

The proposed triplex will have a hip roof similar to that on the structure that burned. There are a variety of roof forms in this residential neighborhood. The proposed roof fits well within this variety. **(Affirmative finding)**

3. Building Openings

The primary front entrance is clearly articulated and is sheltered by an open front porch. Fenestration is appropriately scaled and placed in consistent rhythm throughout the building. As recommended by the Design Advisory Board, windows have been changed to 6-over-1 double hung units. **(Affirmative finding)**

(b) Protection of important architectural resources

The site is vacant following demolition of the burned triplex. Other nearby homes are historically significant. Insofar as the proposed structure is appropriately scaled, no adverse impacts on the historic significance of neighborhood homes will result. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

As noted above, the front entry to the proposed residence is clearly articulated. There are no large blank walls or expanses of roof. Fenestration, roof variations, and architectural detailing work successfully to provide an active and inviting street elevation. **(Affirmative finding)**

(e) Quality of materials

The proposed triplex will be clad in wood/plastic composite clapboard siding and trim. Decking and associated railings will be PT wood. Vinyl windows will be installed throughout. The roofing material will be asphalt shingle. The materials proposed are of acceptable quality and durability for new construction. **(Affirmative finding)**

(f) Reduce energy utilization

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

(g) Make advertising features complimentary to the site

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

(h) Integrate infrastructure into the building design

As noted previously, utility meters and ground mounted HVAC equipment will be appropriately located to the sides and rear of the building. Provision is made for mailboxes for each one of the units. **(Affirmative finding)**

(i) Make spaces safe and secure

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

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the neighborhood parking district. As such, the triplex requires 6 parking spaces (2 per dwelling unit). The previous triplex, before burning, was served by 5 onsite parking spaces. The applicant proposes to use those same spaces for the new triplex. The applicant has confirmed that there is no net gain in the number of rooms in the new triplex (see Sec. 8.1.7, *Non-Conforming Residential Structure*). As a result, the 5 spaces may be used for the new triplex. The proposal to set a group of trash totes within one of the parking spaces results in just 4 compliant parking spaces. As noted before, the trash totes must be located elsewhere, or a parking waiver must be sought and granted. **(No finding possible)**

Sec. 8.2.5, Bicycle Parking Requirements

The proposed triplex requires 2 short term bike parking spaces and 1 long term bike parking space. As recommended by the Design Advisory Board, the site plan has been revised to note provision of bike parking, but details are lacking. Details as to what the short term spaces will be (i.e. such as a bike rack) and what the long term space will be (i.e. such as a locker) need to be provided. **(No finding possible)**

II. Conditions of Approval

1. None proposed at this time.

Scott Gustin

From: Brendan McNichols <brendan.mcnichols@gmail.com>
Sent: Tuesday, August 29, 2017 1:59 PM
To: Scott Gustin
Subject: Re: 135 Hayward St

Hi Scott,

Unfortunately, I will be out of town and not able to attend the meeting. Is this a decision that can be appealed? If so, what can I do to preserve my right to appeal since I cannot attend in person?

For the record, I have several objections to the zoning permit:

- 1) The idea that they can use the existing driveway/parking surface seems ridiculous to me. The existing driveway/parking surface is a (formerly) hard surface that has deteriorated so badly that it has large cracks with weeds growing through them.
- 2) The owners have not kept up with either the letter or the spirit of the condition that the DRB put on the extension of non-conforming use. There are huge 8-9' weeds growing outside the snow fence (some coming through the aforementioned parking surface) and there is still trash and debris on the site. Furthermore, the weeds inside the (still not demolished) foundation are also 8-9' tall and there is a significant amount of trash there as well.
- 3) Don't they need to re-establish the use of the property as a triplex by October 20, 2017? If so, does anyone actually believe that they can actually build a building and have tenants living in the property by that date? They haven't even completed the demolition of the old property yet, since the foundation still exists.

Brendan

On Wed, Aug 23, 2017 at 9:35 AM, Scott Gustin <SGustin@burlingtonvt.gov> wrote:

No, it simply means this item is not a conditional use, variance, subdivision, or appeal. It is just a regular zoning permit application going to the DRB. Public comment is as usual.

Scott

Scott Gustin, AICP, CFM

Principal Planner & Asst. Administrative Officer

Dept. of Planning & Zoning

149 Church Street

Burlington, VT 05401

(802) 865-7189



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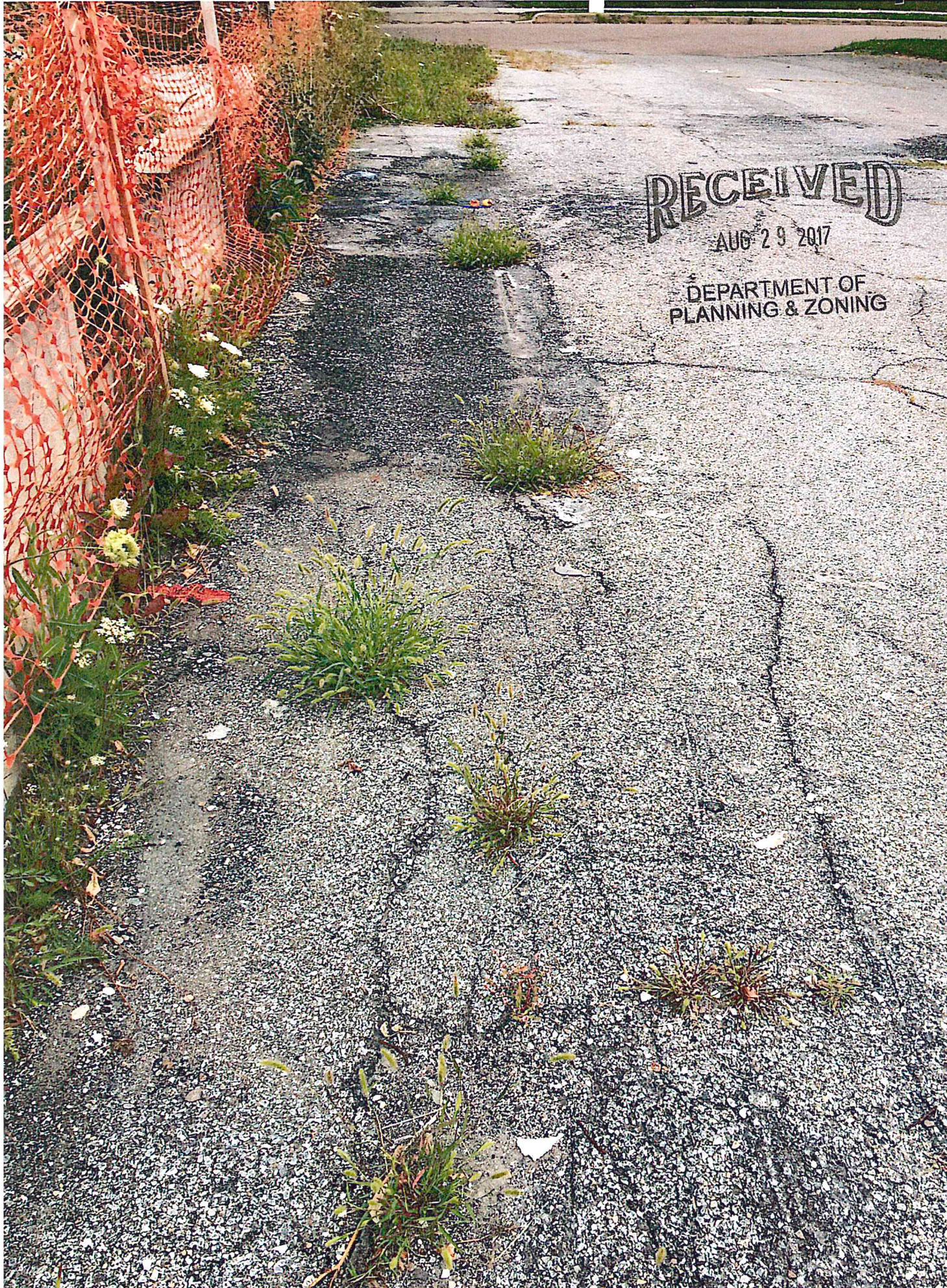


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Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

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Austin Hart
Brad Rabinowitz
Israel Smith
AJ LaRosa
Alexandra Zipparo
Geoffrey Hand
Wayne Senville
Jim Drummond (Alt.)
Robert Purvee (Alt.)



Burlington Development Review Board

Findings of Fact

Deliberative Hearing Monday, June 12, 2017

In RE: 17-1119CU; 135 Hayward St (Ward 5S, RL) (Tax Lot No. 053-3-167-000)

Owner/Applicant: Andrew & Daniel Rowan / Michael Rainville

Request: Extend retention of nonconforming use (residential triplex) after destruction by fire.

Members Present:

Austin Hart
Brad Rabinowitz
Geoff Hand
Jim Drummond
Alexandra Zipparo
Rob Purvee
Wayne Senville

Evidence Presented:

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

I. FINDINGS

Overview:

The applicant is seeking to extend retention of the nonconforming triplex use following loss of the structure to fire in April 2016. The Development Review Board determined in October 2016, by way of appeal, that the structure was used as a triplex at the time it burned. The triplex is a nonconforming use in this Residential Low Density zone. Retention of nonconformity is limited to one year unless an extension is sought and granted.

Article 5: Citywide General Regulations

Sec. 5.2.4, Nonconforming Uses

(b) Discontinuance

A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer. Provided, however, a period not in excess of two (2) years shall be the applicable standard for the re-establishment of discontinued uses in the Enterprise-Light Manufacturing (E-LM) district.

An extension to this time limit may be granted by the DRB after a public hearing and on the basis of documented evidence of a continuous good faith effort to re-establish the nonconforming

use. Such evidence shall include but not be limited to application(s) to the DRB, bid documents, records of expenditures, newspaper advertisements, and/or real estate listings. Any request for such an extension shall be submitted in writing prior to the expiration of the one (1) or two (2) year time limit as specified above.

Any extension approved by the DRB shall be made in writing and shall specify the date after which no nonconforming use will be permitted upon the subject property.

The subject nonconformity burned April 21, 2016. In July 2016, the applicants sought a determination as to the recognized use of the structure. In October 2016, the applicants prevailed in an appeal of an adverse administrative determination regarding the use of the structure at the time it burned. The Development Review Board determined that the structure was used as a triplex at the time of the fire. As noted previously, the triplex use in the RL zone is a nonconformity.

The applicants submitted their request to extend retention of the nonconformity April 20, 2017 – within one year of the fire as required.

The applicants have submitted documents relative to construction bids, building design, and insurance matters, primarily between June and December 2016. The single insurance document is dated May 25, 2017. The narrative provided by the applicants summarizes the request for extension and cites issues with their insurance settlement as the primary matter causing delay. The Board heard testimony at the public hearing regarding the condition of the property since the fire.

Insofar as the applicants have documented efforts to rebuild on the property in the year since the fire, and given that the request to extend was submitted within one year of the fire, an extension may be granted. The extension should be limited to six (6) months from the expiration of the one-year re-establishment period. **(Affirmative finding as conditioned)**

II. MINUTES

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

III. MOTION

Motion: Austin Hart

I move that the Board grant approval to extend retention of the nonconforming use (residential triplex) following destruction of the building by fire in accordance with Article 5. Approval is based on the findings in Section I above and is subject to the following conditions:

1. The nonconforming triplex status is extended contingent on the submission of a complete zoning permit application for reconstruction of a triplex within six (6) months of April 20, 2017, the expiration of the one-year re-establishment period, or October 20, 2017. No additional extensions will be granted.

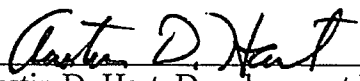
2. In order to mitigate impacts on the neighborhood related to this extension, the extension is conditioned on the applicant maintaining the site outside of the snow fence in good and neat condition, including keeping grass and weeds trimmed and picking up trash and debris.

Seconded: Brad Rabinowitz

Vote: 7-0-0, motion carried.

Dated at Burlington, Vermont, this 20th day of June, 2017

Respectfully Submitted,


Austin D. Hart, Development Review Board Chair

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

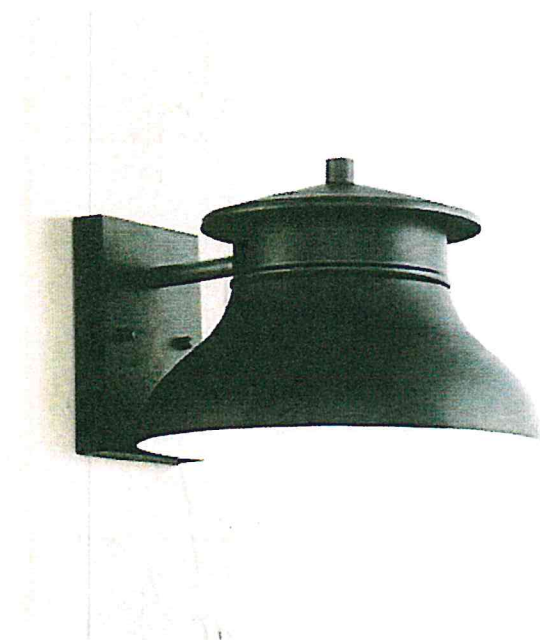
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- 8 3/4" wide x 7 1/2" high x extends 10 1/2" from the wall.
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- 10 watt built-in LED array. Not dimmable. Rated at: 3000K, 790 lumens, comparable to a 60 watt incandescent.
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- Dark sky compliant, inspired by modern industrial and barn light designs.
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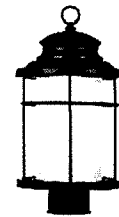
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Does this lamp have photo cell for turn on at night and off in the morning? I am not interested in a motion sensor lamp.

no name n on Jun 25, 2017

ANSWER:

No, this unit does not have the photocell. I have included the same exact light with the photocell version.

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Lyn

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Pros: Area Of Illumination, Attractive Design

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INTERIOR COLOR OPTIONS

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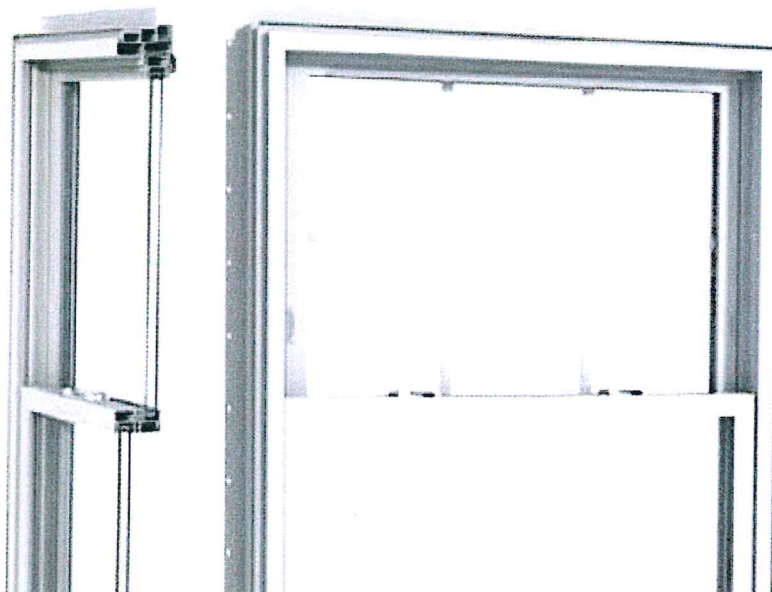


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HARDWARE

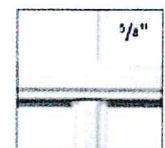


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Grid Configurations

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- Prairie
- Custom

SCREEN OPTIONS

• WEARS screen (standard) • Heavy

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INTERIOR COLOR OPTIONS

Extruded Vinyl

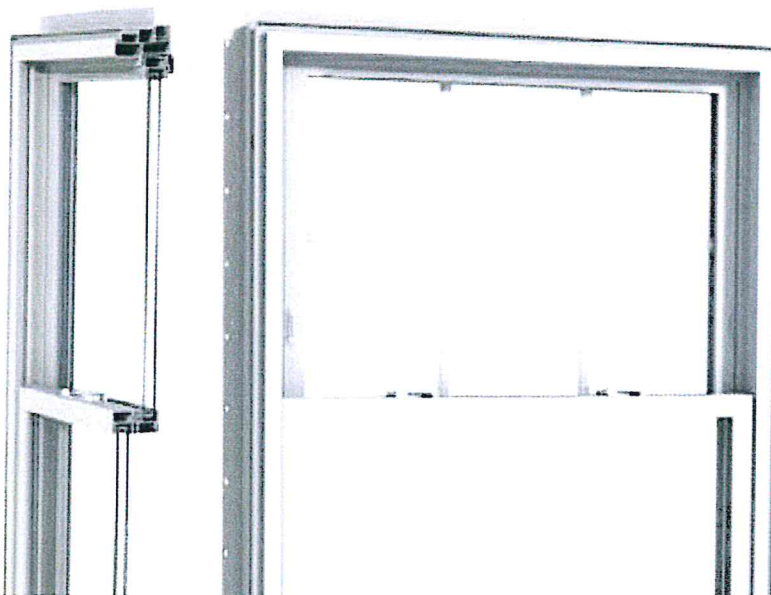


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HARDWARE

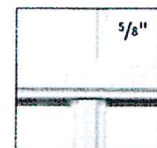


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GRIDS

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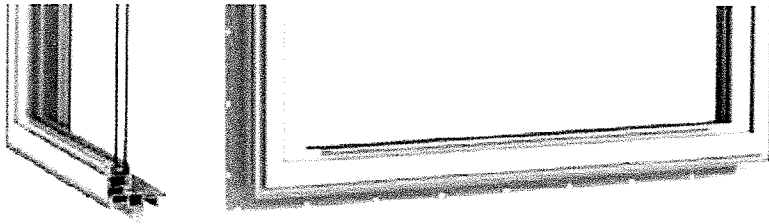


Grid Configurations

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- Custom

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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, CFM, Associate Planner
Anita Wade, Zoning Clerk
Layne Darfler, Planning Technician



TO: Development Review Board
FROM: Scott Gustin *AD*
DATE: September 5, 2017
RE: 14-0747SD; 1891 North Avenue

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

Zone: RL Ward: 4N

Owner/Applicant: Thomas P. Mitchell

Request: 2nd Time extension request to subdivide two lots into three lots, remove single family house, construct two duplexes and one single family home

Applicable Regulations:

Article 3 (Applications and Reviews)

Background Information:

The applicant is seeking approval for a second 1-year time extension for a minor subdivision and construction of five new dwelling units (two duplexes and one single family home). No project changes are included in this extension request.

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

I. Findings

Article 3: Applications and Reviews

Sec. 3.2.9, Zoning Permits

(d) Time Limit on Zoning Permits:

This project was approved August 26, 2014. Activity associated with the permit was commenced within 1 year of approval as required. Work remained incomplete at two years, the original time limit on the permit. The applicant sought, and was granted, a 1-year time extension in August 2016. The applicant is now seeking a 2nd time extension. The applicant submitted this extension request July 28, 2016 – before expiration of the 1-year extension. Insofar as permit activity has commenced, and the extension request has been filed prior to expiration of the initial permit extension, the requested 1-year extension may be approved. Construction must be complete by August 26, 2018. **(Affirmative finding as conditioned)**

II. Conditions of Approval

1. Except as specifically modified in this approval, all conditions of the original zoning permit (14-0747SD) shall remain in effect.
2. Standard permit conditions 1 -15 (including construction completion date no later than August 26, 2018).

Burlington Development Review Board

149 Church Street, City Hall

Burlington, VT 05401

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Phone: (802) 865-7188

Fax (802) 865-7195

Austin Hart
Michael Long
Jonathan Stevens
Brad Rabinowitz
Missa Aloisi
Israel Smith
AJ LaRosa
Alexandra Zipparo (Alt.)



Burlington Development Review Board

Minutes/Findings of Fact

August 28, 2014

In RE: 14-0747SD; 1891 North Ave. (Ward 4, RL) (Tax Lot Nos. 023-3-045-000 & 023-3-046-000)

Owner/Representative: Tom & Jill Mitchell

Request: Subdivide two lots into three lots, remove existing single family house, and construct two duplexes and one single family home

Members Present:

Austin Hart
Michael Long
Brad Rabinowitz
Israel Smith
AJ LaRosa
Alexandra Zipparo

Evidence Presented:

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

I. FINDINGS

Background Information:

The applicant is seeking approval of a proposed 3-lot, 5-dwelling unit subdivision. Two existing adjacent lots would be subdivided and reconfigured into 3 lots. Two duplexes and one single family home would be constructed. An existing mobile home along North Avenue would be demolished and replaced with one of the two new duplexes. The end result is 4 net new dwelling units. This proposal amounts to a minor subdivision (i.e. less than 5 net new dwelling units or lots) and is reviewed as a combined preliminary/final plat application.

This application went through sketch plan review by the Development Review Board on July 17, 2012. The Design Advisory Board reviewed it February 25, 2014 DAB and, on a 4-1 vote, recommended approval subject to the following conditions:

1. Clarity of tree retention versus removal. What trees will be removed and what trees, if any, will remain? Are any of the existing trees "specimen trees?"
2. Front walkways that connect each new home to the public sidewalk or street network.
3. A more robust landscaping plan that defines spaces within the development and screens parking areas and utilities.

4. Outdoor lighting fixture locations, cut sheets, and illumination levels.
5. Window materials and cut sheets.
6. Utility meter locations and screening. Locations and screening of mechanical equipment, if any is proposed.

Revised application plans have been submitted to address the DAB's recommendation.

The Conservation Board reviewed the application March 10, 2014 and unanimously recommended approval subject to the standard stormwater management and erosion prevention and sediment control conditions.

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

1. The capacity of existing or planned community facilities;

The proposed development will be served by municipal water and sewer. Sufficient capacity is likely available; however, written confirmation from the Department of Public Works will be required. Any new lines to service the development will have to be installed by the applicant/owner. A state wastewater permit will also be needed prior to construction. Impact fees will be assessed based on the net new residential square footage to help offset what impacts there may be to other municipal services. **(Affirmative finding as conditioned)**

2. The character of the area affected;

The proposed subdivision is located in the Residential Low Density zone. This zone is primarily intended for detached single family homes and duplexes. The surrounding neighborhood reflects this intent, consisting largely of detached single family homes to the south and east. The Northgate apartment complex includes a different development pattern and is located to the north and west. The proposed density and development pattern is similar to that along neighboring residential streets and reflects the intent of the RL zone. **(Affirmative finding)**

3. Traffic on roads and highways in the vicinity;

No traffic analysis has been provided nor is required for a project of this small scope. Additional traffic generation associated with the new dwelling units can reasonably be expected to be minor. **(Affirmative finding)**

4. Bylaws then in effect;

As conditioned, this subdivision proposal is consistent with all applicable bylaws. **(Affirmative finding)**

5. Utilization of renewable energy resources;

Utilization of renewable energy resources is not included in this application. As proposed, the development will not preclude such utilization on the subject property or on neighboring properties in the future. **(Affirmative finding)**

6. Cumulative impacts of the proposed use;

This criterion requires that cumulative impacts associated with residential development where it is permitted be deemed negligible. Single family homes and duplexes are allowed residential uses in the RL zone. **(Affirmative finding)**

7. Functional family;

Not applicable. The application contains no request to inhabit the new dwelling units with anything other than families.

8. Vehicular access points;

See Sec. 6.2.2 (i).

9. Signs;

No signage is included in this proposal.

10. Mitigation measures;

The proposed small scale residential development will not generate offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

11. Time limits for construction;

The application contains no request for extended construction. As a result, the standard 2-year time frame will apply. The applicant is advised to consider phasing construction of the dwelling units to that they may be occupied as they are completed one-by-one. Otherwise, occupancy would not be allowed until the entire development is complete. If phasing is sought, a phasing plan must be provided prior to review by the Development Review Board. **(Affirmative finding)**

12. Hours of operation and construction;

Hours of operation need not be specified for this residential development. No days or hours of construction have been proposed in a construction schedule. Consistency with other construction projects in the RL and WRL zones yields days and hours of construction of Monday – Saturday, 7:00 AM – 6:00 PM. **(Affirmative finding as conditioned)**

13. Future enlargement or alterations;

In the event of future enlargement or alteration, permits would be required and reviewed under the regulations then in effect.

14. Performance standards;

Performance standards relating to outdoor lighting and erosion control are addressed under Article 5 of these findings.

15. Conditions and safeguards;

Conditions of approval will ensure compliance with the standards of the Comprehensive Development Ordinance.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The subject property is located in the RL zone, which is intended primarily for single family homes and duplexes. The proposed development consists exactly of that – two duplexes and a single family home. **(Affirmative finding as conditioned)**

(b) Dimensional Standards & Density

The two duplex lots exceed the minimum duplex lot size of 10,000 sf, and the proposed single family home lot exceeds the minimum single family home lot size of 6,000 sf.

Proposed lot coverage will be 23.6%, 23.6%, and 20% on lots 1, 2, and 3, respectively. These coverages are below the 35% limit in the RL zone.

Front yard setbacks on lots 1 and 3 are based on the average front yard setback of neighboring properties. They are compliant with the applicable averages. Lot 2 is effectively an interior lot and may establish its own front yard setback. As proposed, the 22' front yard setback is similar to that of neighboring properties. Side and rear yard setbacks as 10% of lot width and 25% of lot depth, respectively, are compliant as well.

The two duplexes are about 21' tall to the midpoint of their roofs' rise. The single family home is shorter at just 14' to the midpoint of its roof rise. The height limit in this zone is 35'. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The subdivision is subject to conditional use review. Duplexes are allowed on existing lots in the RL zone, also subject to conditional use review. Insofar as the two proposed duplexes will be constructed on the existing lots with the single family home to be constructed on the newly created third lot, this requirement has been met. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

No setback encroachments are sought.

2. Height

No height exceptions are sought.

3. Lot Coverage

No lot coverage exceptions are sought.

4. Accessory Residential Structures and Uses

No accessory structures are included in this proposal.

5. Residential Density

The proposed residential units are subject to the functional family provisions of the Comprehensive Development Ordinance. **(Affirmative finding as conditioned)**

6. Uses

Not applicable.

7. Residential Development Bonuses

No development bonuses are being sought.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (d) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.5.5 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

Five types of outdoor lighting fixtures are proposed as options for the new homes (3 lantern type fixtures and 2 spotlight fixtures). All of them use low-wattage bulbs and are likely acceptable. No lumens information has been provided and must be in order to confirm their acceptability. Lumens may not exceed 2,000 to qualify as acceptable low-output lamps. Fixture locations are noted on the site plan but are not depicted on the building elevation drawings and must be. (Affirmative finding as conditioned)

Sec. 5.5.3, Stormwater and Erosion Control

The stormwater management plan has been reviewed and approved by the Stormwater Administrator. Proposed management is simple given the ample green space and very pervious soils. Rooftop runoff will be collected by gutters and dispersed by way of downspouts onto surrounding green space for infiltration into the ground. Driveways will be graded to direct runoff onto adjacent green space for infiltration. No stormwater runoff will be directed into the city system. The construction site erosion prevention and sediment control plan has also been reviewed and approved by the Stormwater Administrator.

The Conservation Board reviewed the proposed stormwater management plan and erosion prevention and sediment control plan on March 10, 2014 and recommended approval of them

subject to the standard stormwater and erosion control conditions. (Affirmative finding as conditioned)

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Sec. 6.1.2, Review Standards

(a) Protection of important natural features

The property contains no significant natural areas as defined in the Open Space Protection Plan or as depicted in any of the Natural Resource Protection Overlay District maps. A number of trees are present. The applicant has revised the site plan to better indicate which existing trees will be retained versus removed and which trees are to be newly planted. None of the trees qualify as specimen trees (i.e. 30" + caliper and/or more than 100 years old as determined by a certified arborist). (Affirmative finding)

(b) Block size and arrangement

Not applicable. No new blocks are proposed.

(c) Arrangement of Lots

Lot 3 will be regularly shaped. Lot 1 will be somewhat irregular to allow for an irregular lot 2. The irregular shape of lot 2 is proposed in order to meet the minimum lot frontage requirement of 60' along a public roadway. Such lots are discouraged and shall be allowed only where topography and existing block and lot arrangement allow no suitable alternative. If lot 2 is to be created, there is no other alternative for public road frontage. The Development Review Board reviewed this configuration at sketch plan and did not find it objectionable. The grading and utility plan depicts utility easements for lots 1 and 2 across lot 3 for services stemming from North Avenue. An access easement will be required for lot 2's driveway across lot 3.

(Affirmative finding as conditioned)

(d) Connectivity of streets within the city street grid

No new streets are proposed. New private driveways will access the existing street network.

(Affirmative finding)

(e) Connectivity of sidewalks, trails, and natural systems

The existing public sidewalk system will be unaffected by the proposed development. There are no nearby trail networks or contiguous lengths of green space. (Affirmative finding)

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

See Sec. 6.1.2 (a) above.

(b) Topographical alterations

The property is essentially flat and will remain so. Some limited grading is proposed to direct stormwater runoff into surrounding green spaces. (Affirmative finding)

(c) Protection of important public views

There are no important public views from or through the property. **(Affirmative finding)**

(d) Protection of important cultural resources

The site has no known archaeological resources. **(Affirmative finding)**

(e) Supporting the use of alternative energy

No alternative energy resources are included in the project plans. Use of alternative energies on the subject, or neighboring properties, in the future is not precluded by this development.

(Affirmative finding)

(f) Brownfield sites

The property is not included on the Vermont DEC's Hazardous Sites List. **(Affirmative finding)**

(g) Provide for nature's events

See Sec. 5.5.3 for stormwater management.

There is ample room onsite for seasonal snow storage. Building entries are sheltered with overhangs to provide protection during inclement weather. **(Affirmative finding)**

(h) Building location and orientation

The two duplexes will be located along existing public streets and will be aligned with neighboring homes. Garage and driveway parking space will be provided for both duplexes. Both duplex structures appear to be identical. Each building is 59' wide, and each has a 22' wide garage. Per this criterion, garages facing the street shall not exceed 24' width or 50% of the entire structure width, whichever is less. As proposed, the 22' wide garages are under this limit at 37% of the structure width. The garage faces of both duplexes are recessed and are 25' set back from the front property lines as required. The new single family home will sit between the two duplexes and will have no discernible impact on the North Avenue or Northgate Road streetscapes. The single family home will have an attached garage, but it does not face the street. As a result the garage width limitations of this criterion do not apply. **(Affirmative finding)**

(i) Vehicular access

The existing curb cut along North Avenue will be used for the new single family home on lot 2. Two new curb cuts on North Avenue will serve the two driveways into the new duplex on Lot 3. A new curb cut will be established along Northgate Road. Department of Public Works approval will be required for the new curb cuts. The duplexes will have two 10' wide driveways for each unit, and the single family home will have a 10' wide driveway. These widths are within the acceptable range of 7' – 18' for residential driveways. **(Affirmative finding)**

(j) Pedestrian access

The revised site plan depicts walkways connecting the homes on lots 2 and 3 to the North Avenue sidewalk. Walkways will connect the duplex on lot 1 to Northgate Road. The walkways parallel the driveways and consist of stamped and painted asphalt. The walkway along the driveway for lot 2 also provides the 14' wide (10' driveway + 4' walkway) access required by the Fire Marshal to this center lot. **(Affirmative finding)**

(k) Accessibility for the handicapped

There is no indication that any of the dwelling units will be handicap accessible or that they need to be. **(Affirmative finding)**

(l) Parking and circulation

All of the proposed dwelling units will have associated parking. Both required spaces will be provided within the attached garage for the single family home. Each duplex unit will have one garage space and one driveway space. The parking and driveway arrangement for the single family home allows vehicles to enter and leave without backing out onto a city street. Both duplexes include short, straight driveways that require driving in forward and backing out. There was considerable discussion at the Design Advisory Board about this arrangement for lot 3 (on North Avenue) and whether it was acceptable. The Board ultimately approved it as is, primarily due to the prevalence of other such driveways in the neighborhood and the "collector street" designation of this northern section of North Avenue. **(Affirmative finding)**

(m) Landscaping and fences

As recommended by the DAB, some additional landscaping information has been provided. Tree retention and removal has been clarified. New plantings have been identified on the site plan and consist of new deciduous and coniferous trees and new shrubs. The new trees are proposed along property lines to help delineate the interior boundaries. A cluster of arborvitae are proposed to help screen a portion of the driveway serving the new single family home. While the proposed landscaping remains basic, it is adequate for a project of this small scope. **(Affirmative finding)**

(n) Public plazas and open space

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

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

All utility lines must be buried. Utility vaults for each home are depicted on the grading and utility plan; however, no screening is evident. While the vaults are located by the sides of the structures, screening, in the form of landscaping, is needed. There are no communal recycling or trash facilities. These items will be handled separately by each homeowner. **(Affirmative finding as conditioned)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The subject property is sited between single family homes along Dewey Drive and the very large Northgate Apartments complex. The homes along Dewey Drive are relatively small as compared to the Northgate Apartments; however, the apartment buildings are sectionalized in components roughly approximate to the scale of the Dewey Drive homes. The new homes included in this proposal retain this consistent scale. The two duplexes (which are mirror

images of each other) read as individual dwelling units connected by way of a shared garage. This arrangement lessens perceived building bulk and provides a degree of separation of the living quarters. The proposed single family home is smaller than the duplexes and is comprised of several distinct components. Its massing and scale are consistent with neighboring single family homes. All three of the proposed buildings are well under the 35' height limit. The single family home is just a single story. The two duplexes are two stories. The proposed building heights are consistent with nearby homes. **(Affirmative finding)**

2. Roofs and Rooflines

Pitched gable roofs with varying orientations are proposed. This roof form is common amongst neighborhood homes. **(Affirmative finding)**

3. Building Openings

Fenestration amongst all of the proposed buildings is similar. It is evenly placed throughout each structure and consists of fairly basic one-over-one double-hung windows with some smaller awing windows interspersed on the side elevations. The double-hung units are more vertical than horizontal as required. Building entries are sheltered with entry porches. **(Affirmative finding)**

(b) Protection of important architectural resources

An existing mobile home will be demolished as part of this proposal. It is not historically significant, nor are any neighboring structures historically significant. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The proposed duplexes reinforce the existing street edge created by existing homes along North Avenue and Northgate Road. Both clearly face the street and have readily identifiable front entries within open porches. Walkways connect them to the public street. The single family home is situated between the two duplexes and, as such, does not have a street presence. **(Affirmative finding)**

(e) Quality of materials

All of the homes will be clad in vinyl siding ("clapboards" and "shakes"). Fiber cement trim will be installed throughout. Asphalt shingles will be installed on the roofs. The single family home will utilize wooden railings for its porch. Vinyl windows are proposed. The proposed materials palate is one common to new construction and is of acceptable quality and durability. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed construction must comply with the city's current energy efficiency requirements. Nothing above and beyond the minimum requirements is noted in the project plans. **(Affirmative finding)**

(g) Make advertising features complimentary to the site

Not applicable.

(h) Integrate infrastructure into the building design

Utility line locations are noted on the plans, but meter locations are not. They must be depicted and screened. No exterior mechanical equipment is included in the project plans. Trash should be stored inside the garages until curb side pick-up days. **(Affirmative finding as conditioned)**

(i) Make spaces safe and secure

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

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the neighborhood parking district. As a result, each one of the dwelling units requires a minimum of 2 parking spaces. The site plan depicts sufficient parking, including garage and surface spaces, for each of the units. **(Affirmative finding)**

Sec. 8.2.5, Bicycle Parking Requirements

No bicycle parking is required for the proposed single family and duplex dwelling units. **(Affirmative finding)**

Article 10: Subdivision

See Articles 3, 4, 5, and 6 of these findings.

II. MINUTES

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

III. MOTION

Motion: Brad Rabinowitz

I move that the Board grant combined preliminary and final plat approval to subdivide two lots into three lots, remove existing single family house, and construct two duplexes and one single family home for the properties at 1891 North Avenue in the RL zone in accordance with Articles 3, 4, 5, 6, 8, and 10. Approval is subject to the following conditions:

1. Within 180 days of the date of final approval, the subdivision plat mylar, with all applicable endorsement signatures, shall be filed with the City Clerk per Sec. 10.1.11 of the Comprehensive Development Ordinance. Failure to do so shall render void the final plat approval.
2. **Prior to release of the zoning permit**, revised plans shall be submitted subject to staff review and approval. Revised plans shall include:
 - a. Outdoor lighting fixture locations on building elevation drawings;
 - b. Lumens information for each proposed outdoor lighting fixture;
 - c. Access easement for lot 2 across lot 3;

- d. Screening for utility vaults; and,
- e. Locations and screening for utility meters.
- 3. This approval incorporates the July 17, 2014 approval by the Stormwater Administrator of the Erosion Prevention & Sediment Control Plan.
- 4. Days and hours of construction shall be limited to Monday – Saturday, 7:00 AM – 6:00 PM.
- 5. At least 7 days prior to the issuance of a certificate of occupancy, the applicant shall pay to the Treasurer's Office the impact fee as calculated by staff based on the net new square footage of the proposed development.
- 6. Each new residence included in this approval is subject to the functional family provisions of the Comprehensive Development Ordinance.
- 7. A State of Vermont wastewater permit is required. Written confirmation from the Department of Public Works as to adequate municipal sewer capacity is also required.
- 8. The proposed construction shall comply with Burlington's current energy efficiency standards and with Burlington's current egress requirements as established by Burlington Electric Department and Burlington Public Works, respectively.
- 9. Standard permit conditions 1 -15.

Seconded: AJ LaRosa

Vote: 6-0-0, motion carried

Dated at Burlington, Vermont, this 28th day of August 2014

Respectfully Submitted,


Austin D. Hart, Development Review Board Chair

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

✓

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DEPARTMENT OF
PLANNING & ZONING

TOM MITCHELL
1891 NORTH AVENUE
RESIDENTIAL SUBDIVISION

CITY OF BURLINGTON

LIST OF DRAWINGS

C-1EXISTING CONDITIONS
C-2SITE PLAN
C-3GRADING & UTILITY PLAN
C-4DETAILS
C-5DETAILS
C-6SPECIFICATIONS
C-7SPECIFICATIONS

EC-1.....EPSC/STORMWATER PLAN

OWNER

TOM MITCHELL
27 REVERE COURT
BURLINGTON, VERMONT 05405
(802) 355-4222

PROJECT
ENGINEER

CHAMPLAIN CONSULTING ENGINEERS
85 PRIM ROAD, P.O. BOX 453
COLCHESTER, VERMONT 05446
CONTACT: MARTIN E. COURCELLE, P.E.
(802) 863-8060
(802) 864-1878 FAX

-- 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

DATE

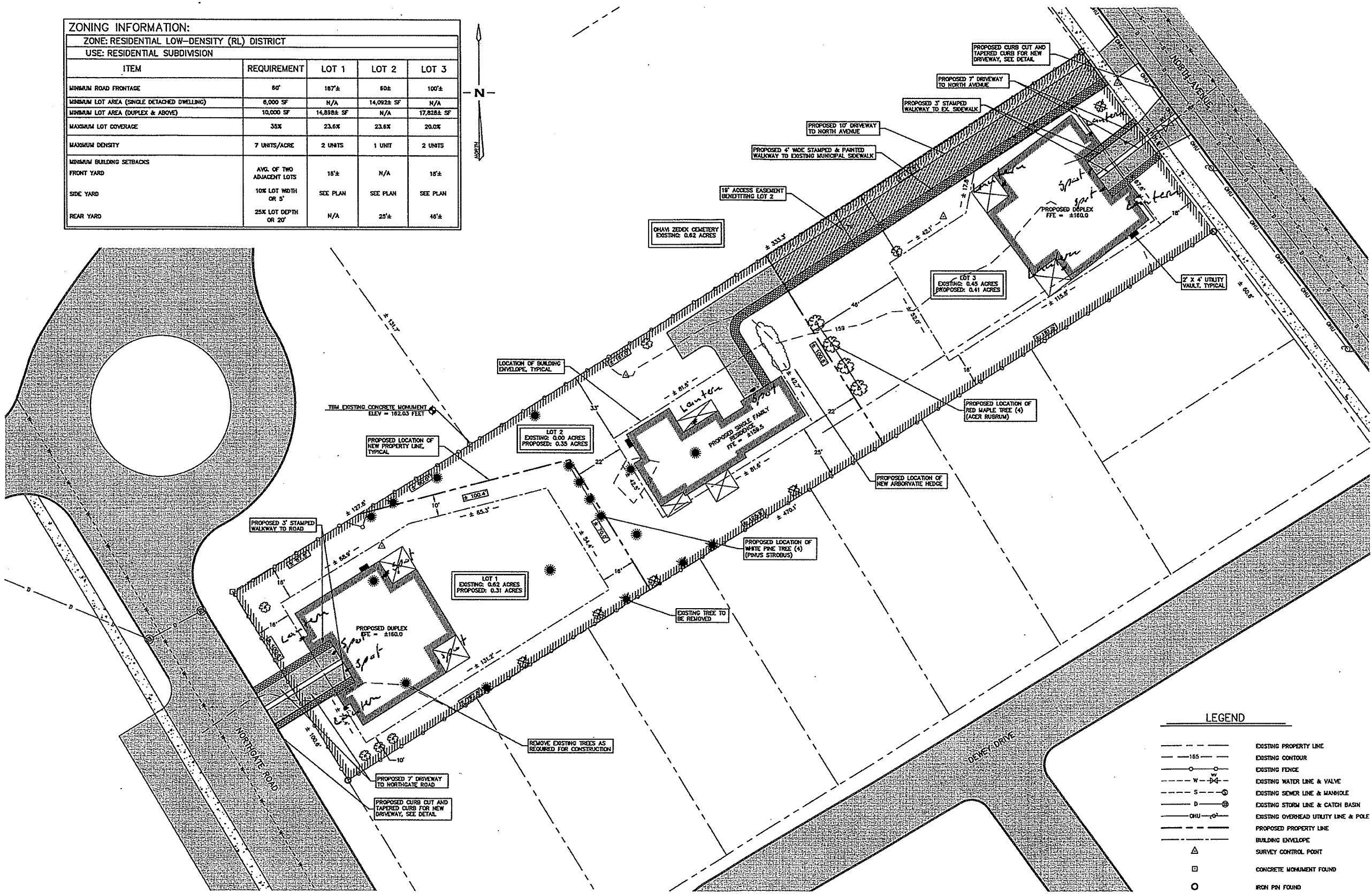
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PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

For entire 11-page plan set.

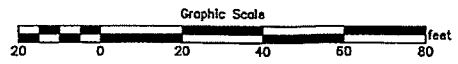
PERMIT SET

ZONING INFORMATION:				
ZONE: RESIDENTIAL LOW-DENSITY (RL) DISTRICT				
USE: RESIDENTIAL SUBDIVISION				
ITEM	REQUIREMENT	LOT 1	LOT 2	LOT 3
MINIMUM ROAD FRONTAGE	60'	187±	60±	100±
MINIMUM LOT AREA (SINGLE DETACHED DWELLING)	6,000 SF	N/A	14,092± SF	N/A
MINIMUM LOT AREA (DUPLEX & ABOVE)	10,000 SF	14,898± SF	N/A	17,828± SF
MAXIMUM LOT COVERAGE	35%	23.6%	23.6%	20.0%
MAXIMUM DENSITY	7 UNITS/ACRE	2 UNITS	1 UNIT	2 UNITS
MINIMUM BUILDING SETBACKS				
FRONT YARD	AVG. OF TWO ADJACENT LOTS	18±	N/A	18±
SIDE YARD	10% LOT WIDTH OR 5'	SEE PLAN	SEE PLAN	SEE PLAN
REAR YARD	25% LOT DEPTH OR 20'	N/A	25±	40±



PLANTING SCHEDULE:			
DECIDUOUS TREES			
QUANTITY	SCIENTIFIC NAME	COMMON NAME	SIZE/SPEC.
4	ACER RUBRUM	RED MAPLE	2.5 IN., B&B
EVERGREEN TREES			
4	PINUS STROBUS	WHITE PINE	5-6 FT., B&B

SITE PLAN
SCALE 1" = 20'

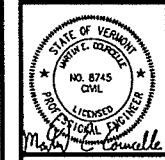


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LEGEND	
---	EXISTING PROPERTY LINE
---	EXISTING CONTOUR
---	EXISTING FENCE
---	EXISTING WATER LINE & VALVE
---	EXISTING SEWER LINE & MANHOLE
---	EXISTING STORM LINE & CATCH BASIN
---	EXISTING OVERHEAD UTILITY LINE & POLE
---	PROPOSED PROPERTY LINE
---	BUILDING ENVELOPE
△	SURVEY CONTROL POINT
□	CONCRETE MONUMENT FOUND
○	IRON PIN FOUND
●	EXISTING TREE
●	PROPOSED TREE
± 470.1'	EXISTING PROPERTY LINE DIMENSION
± 158.0'	PROPOSED PROPERTY LINE DIMENSION
± 50.0'	BUILDING ENVELOPE DIMENSION

REVISION DATE & DESCRIPTION	BY
03/13/11 - REVISED FOR CITY	MEC
03/23/11 - REVISED FOR CITY	MEC
04/21/11 - ADDED TREES	MEC
AND UTILITY CLOSET	MEC
03/04/13 - ADDED LOT 2	MEC
ACCESS EASEMENT ACROSS LOT 3	MEC

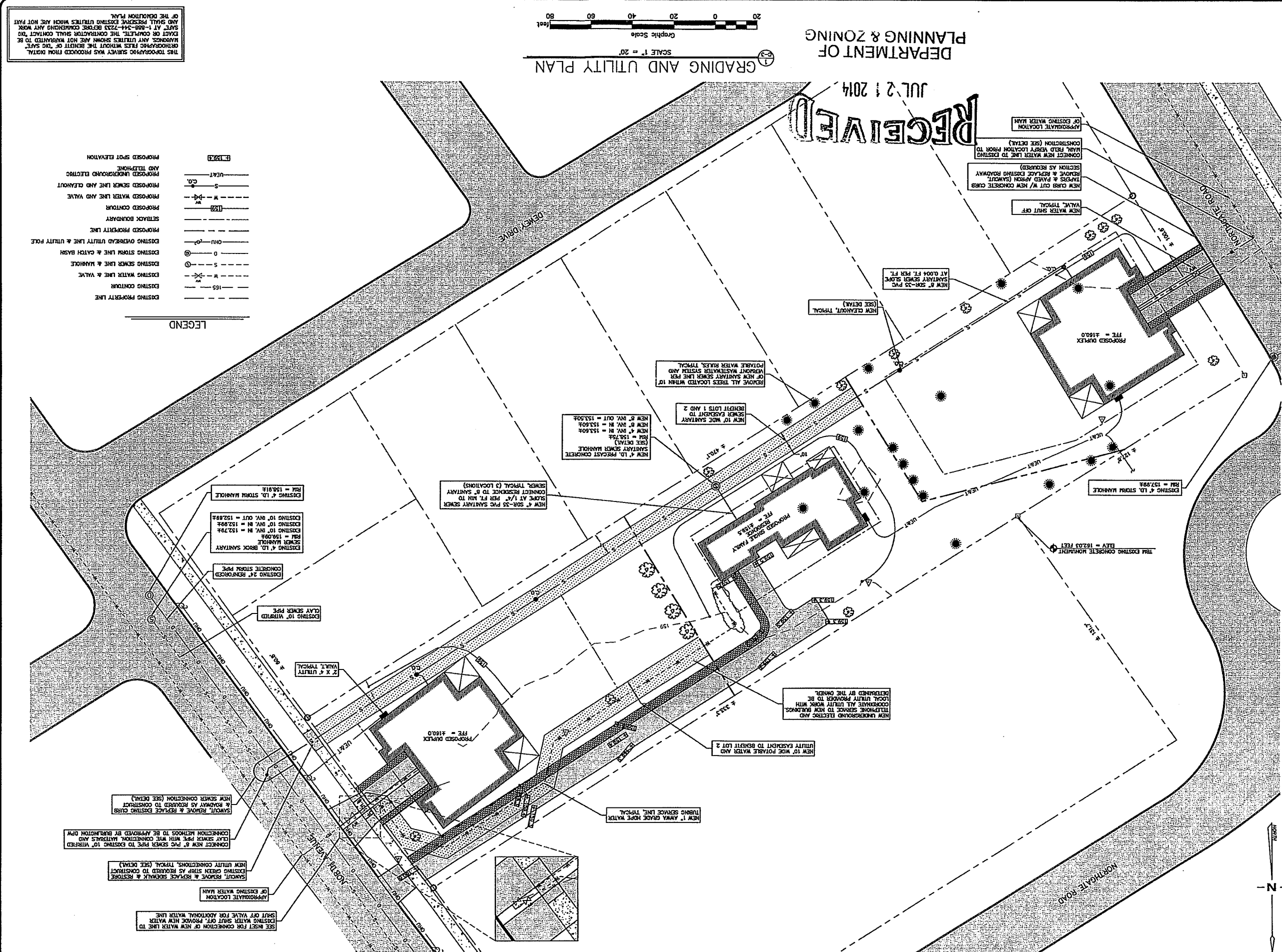
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RESIDENTIAL SUBDIVISION
1891 NORTH AVENUE
SITE PLAN
BURLINGTON VERMONT

DRAWN	OCF
CHECKED	MEC
SCALE	1" = 20'
DATE	10/31/13
JOB NO.	29104
SHEET	

C-2



C-3

OF 7 SHEETS

29104

10/31/13

DATE

1" = 20'

SCALE

MEC

CHECKED

COC

DRAWN

TOM MITCHELL

RESIDENTIAL SUBDIVISION

1891 NORTH AVENUE

GRADING AND UTILITY PLAN

BURLINGTON



Champlain Consulting

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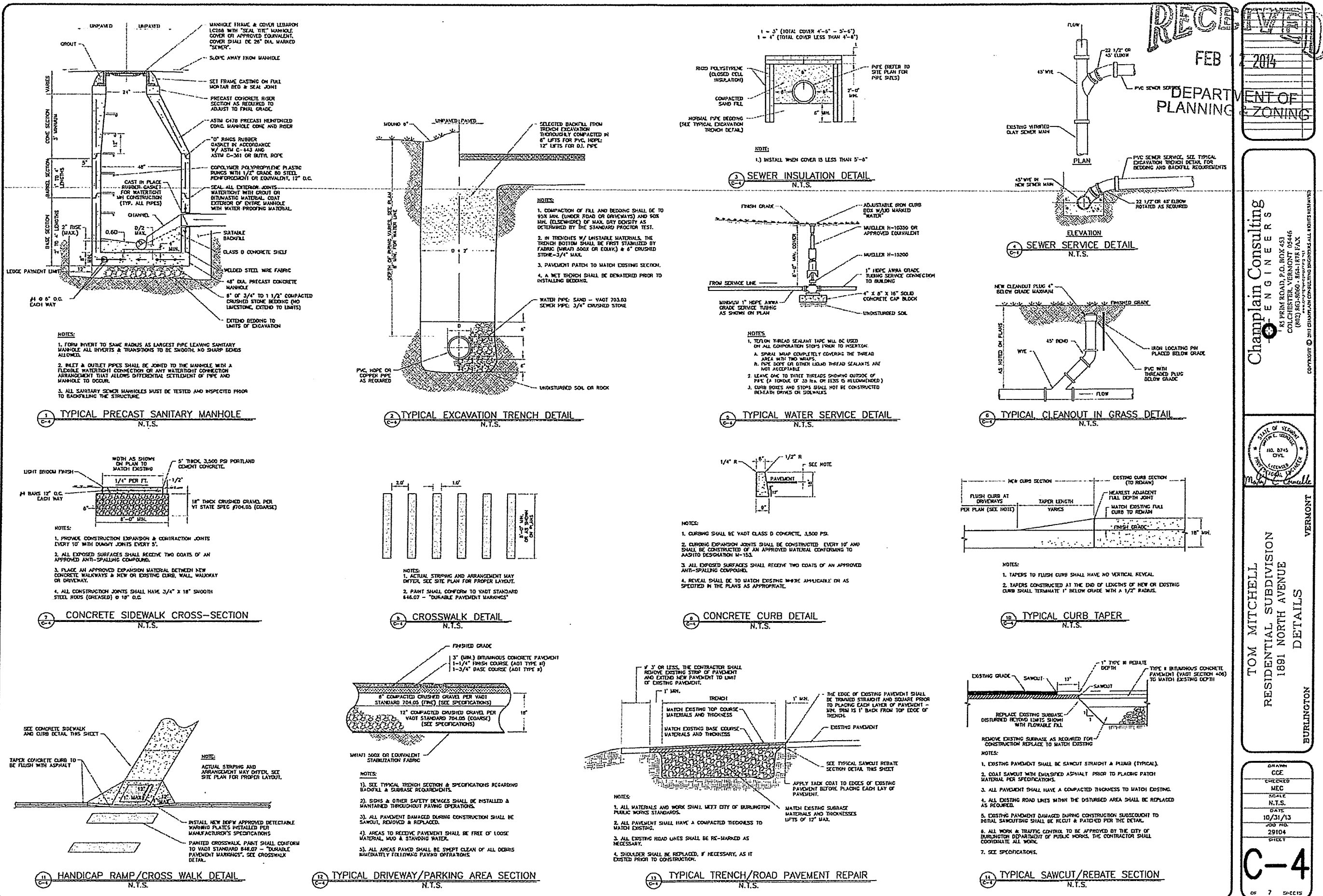
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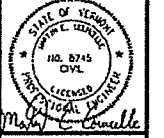
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REVISION DATE & DESCRIPTION	BY	CHKD
03/17/11 - REVISED PER CITY	MEC	
03/23/11 - REVISED PER CITY	MEC	
06/27/11 - ADDED TREES	MEC	
AND UTILITY OUTLET	MEC	



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TOM MITCHELL
RESIDENTIAL SUBDIVISION
1891 NORTH AVENUE
BURLINGTON, VERMONT 05401

DATE: 10/31/13
JOB NO.: 29104
SHEET: 1

C-4



1 TREE PROTECTION DETAIL (C-5) N.T.S.



2 (C-3) TYPICAL TREE PLANTING DETAIL N.T.S.



SHROD PLANNING DETAIL (C-2) N.T.S.



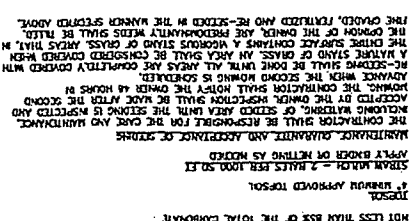
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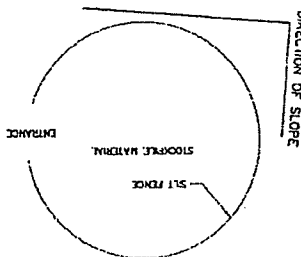
UNDERGROUND ELECTRIC
& TELEPHONE CONDUIT TRENCH DETAIL

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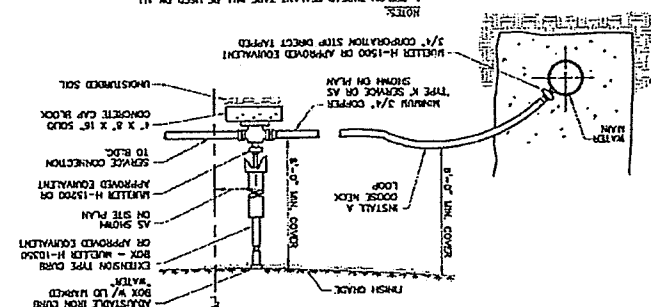
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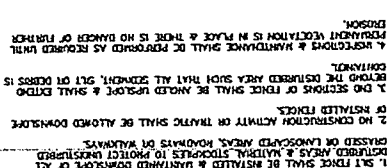
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5-2



N.T.S.



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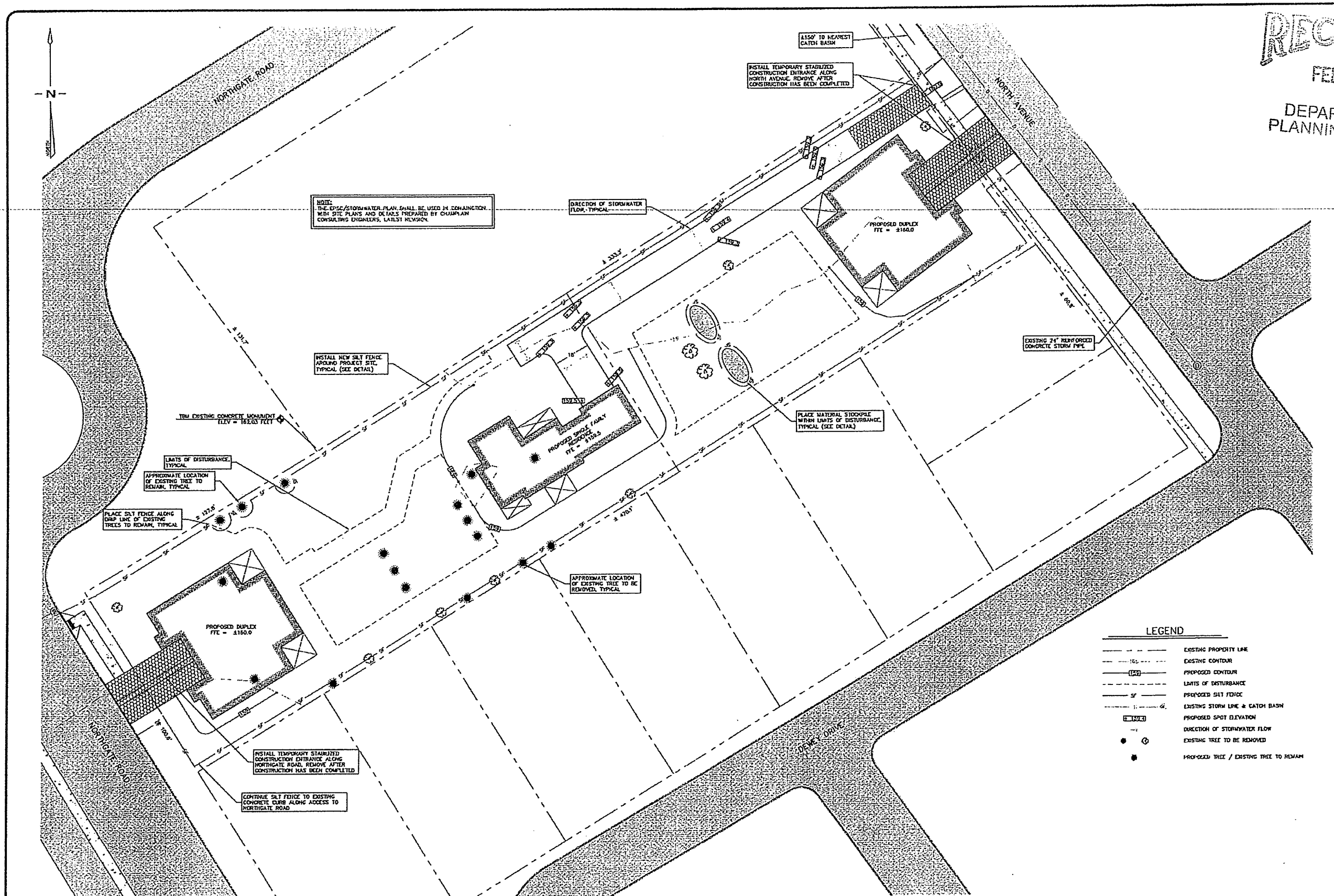
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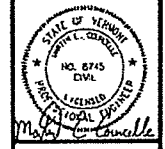
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STORMWATER/EPSC PLAN
BURLINGTON VERMONT

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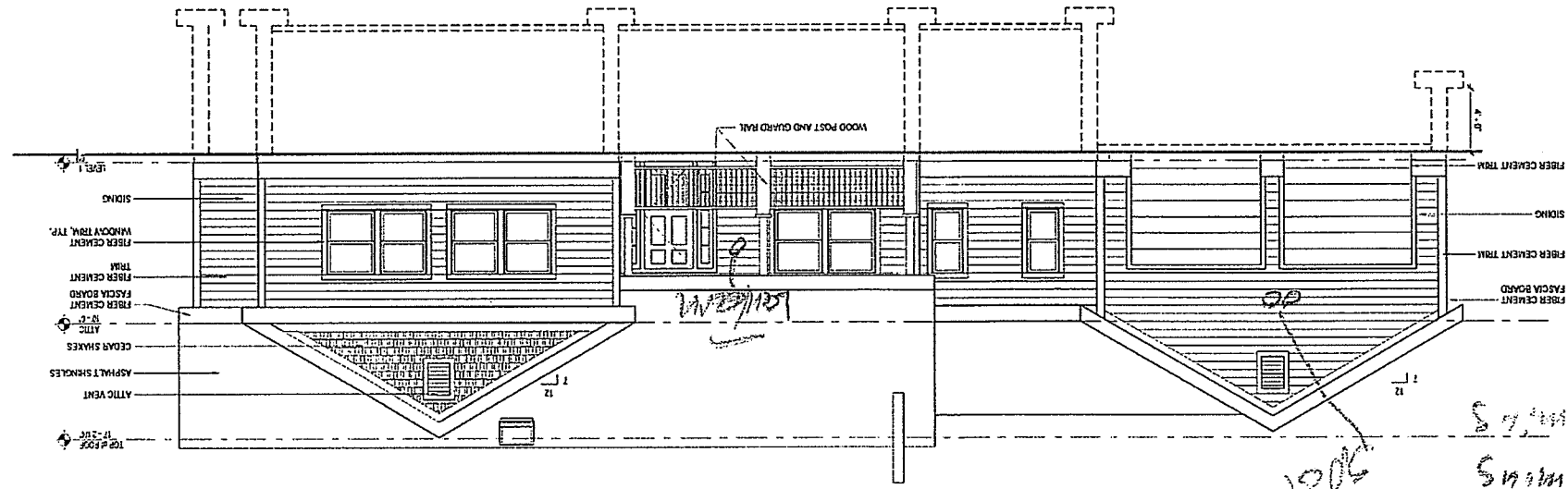
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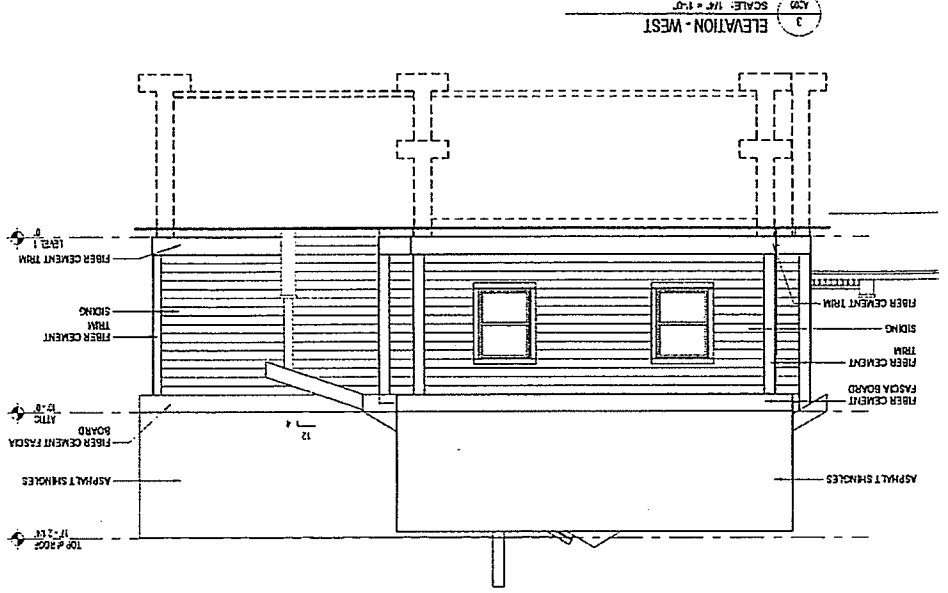
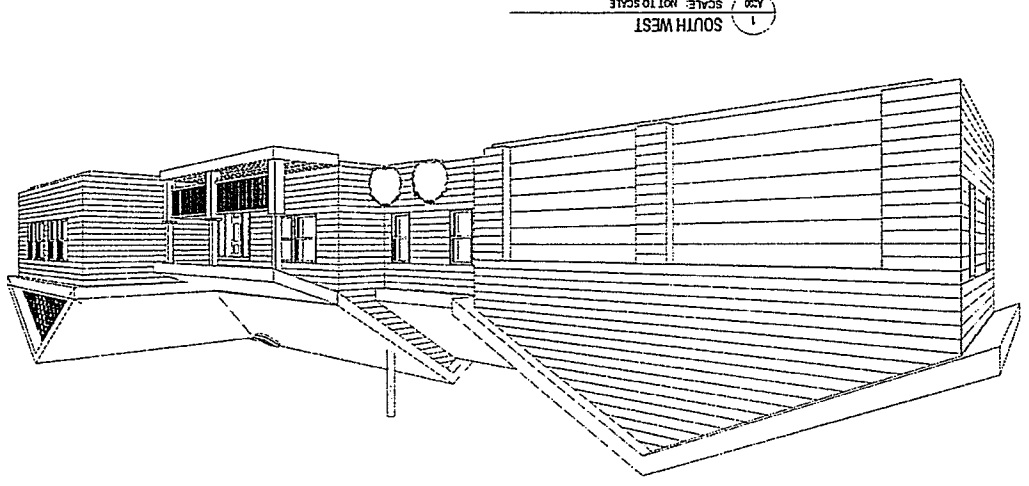
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Lower 850 lumens
spot 1000 lumens



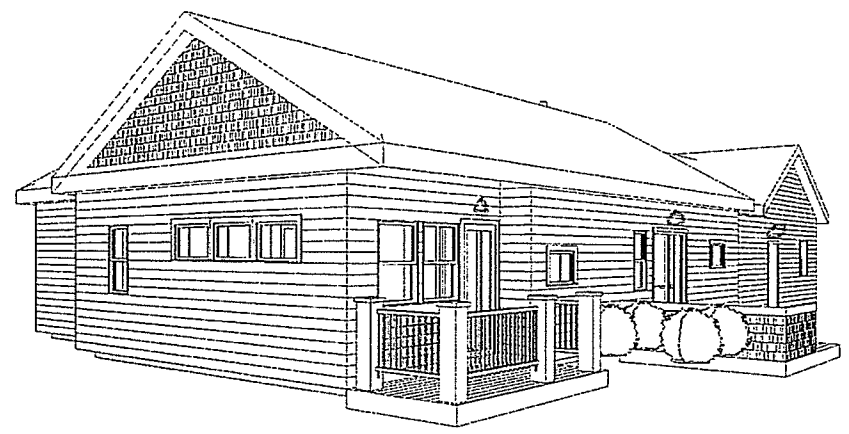
ELEVATIONS
A200

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BURLINGTON, VT
05.18.13

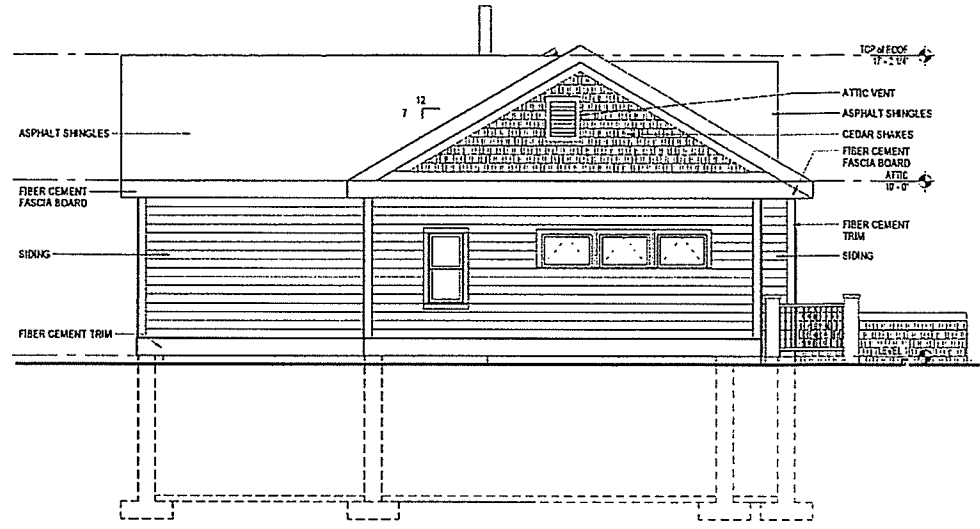
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AUG 25 2014

DEPARTMENT OF
PLANNING & ZONING

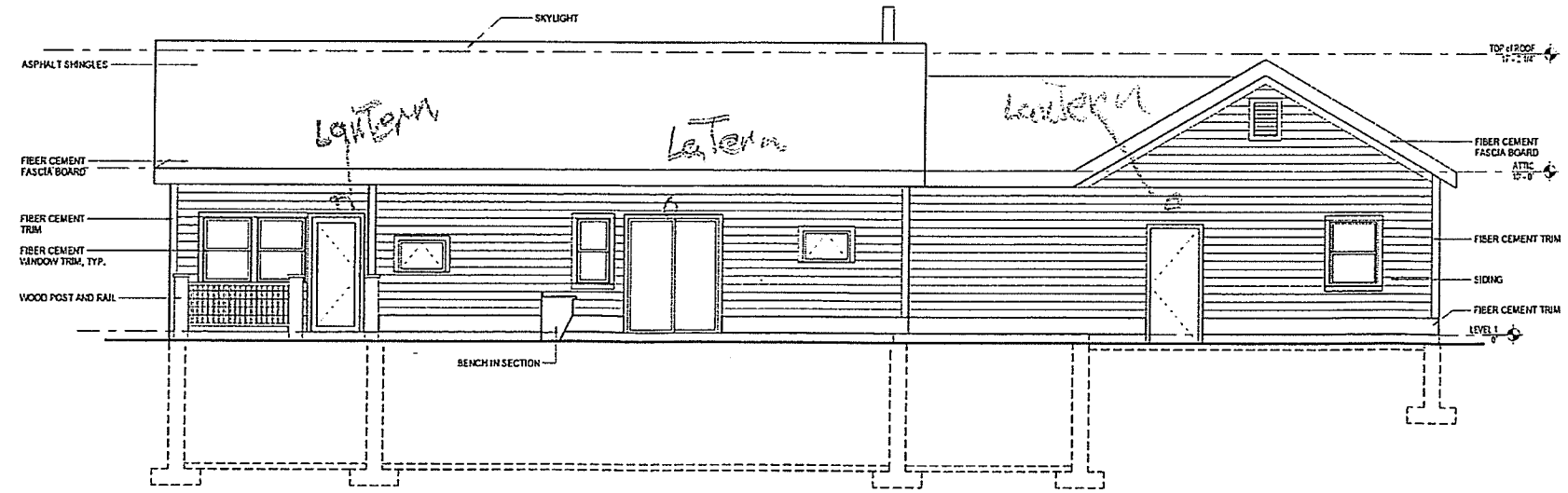
© 2013 miss alciol
The design and construction of this building are the property of miss alciol. The use of this design and plan is prohibited without the written permission of miss alciol.



3 NORTH EAST
SCALE: 1/4" = 1'-0"



2 ELEVATION - EAST
SCALE: 1/4" = 1'-0"



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

MITCHELL PROJECT
SINGLE FAMILY
NORTH AVENUE
BURLINGTON, VT

09.16.13

ELEVATIONS

A201



CODE ENFORCEMENT OFFICE

645A Pine St, PO Box 849

Burlington, VT 05402-0849

VOICE (802) 863-0442

FAX: (802) 652-4221

January 20, 2010

Mailed Certified Mail 7008 1300 0000 7240 1618
And FIRST CLASS MAIL

PIERRE GINGUE
345 GREYSTONE DRIVE
RICHMOND, VT 05477-7752

NOTICE OF VIOLATION AT:
204 NORTH AV, BURLINGTON, VT
TAX LOT #038-4-113-000

ZV # 191179

Dear PIERRE GINGUE,

It has come to the attention of this office that a zoning violation exists at the above address.

Description of Violation (NOV): Change of use from a single family dwelling to a triplex without an approved zoning permit. .

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

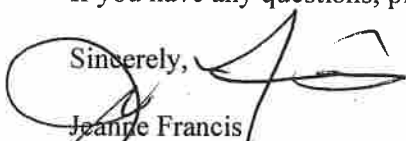
Please be advised that persons who violate the CDO may be subject to fines of up to one hundred dollars (\$100.00) for each day that a violation continues. You may submit an application to correct the violation, however, be advised application and filing fees are increased for zoning permits required to correct a zoning violation (see Violation Details Remedy Options #2 and CDO Section 2.7.8).

This correspondence is 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/remedied as provided for in this notice, the City shall 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, and 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 (as indicated above), and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Fee and complete application for the appeal shall be filed with the City's Department of Planning and Zoning (City Hall, 149 Church Street) by **4 pm on February 4, 2010**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call me at 802-863-0442.

Sincerely,



Jeanne Francis
Zoning Specialist

Enclosures: Violation Details

Cc: Land Records for Tax Lot # 038-4-113-000



CODE ENFORCEMENT OFFICE

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

January 20, 2010

Mailed Certified Mail 7008 1300 0000 7240 1601
And FIRST CLASS MAIL

PIERRE GINGUE
345 GREYSTONE DRIVE
RICHMOND, VT 05477-7752

NOTICE OF VIOLATION AT:
204 NORTH AV, BURLINGTON, VT
TAX LOT #038-4-113-000

ZV # 190162

Dear PIERRE GINGUE,

It has come to the attention of this office that a zoning violation exists at the above address.

Description of Violation (NOV): Alterations to building elevations/appearances including, but not limited to, re-siding or window replacement (or addition) or other changes that alter trim details or otherwise change the exterior appearance (replacement of 16 windows) without an approved zoning permit.

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

Please be advised that persons who violate the CDO may be subject to fines of up to one hundred dollars (\$100.00) for each day that a violation continues. You may submit an application to correct the violation, however, be advised application and filing fees are increased for zoning permits required to correct a zoning violation (see Violation Details Remedy Options #2 and CDO Section 2.7.8).

This correspondence is 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/remedied as provided for in this notice, the City shall 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, and 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 (as indicated above), and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Fee and complete application for the appeal shall be filed with the City's Department of Planning and Zoning (City Hall, 149 Church Street) by **4 pm on February 4, 2010**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call me at 802-863-0442.

Sincerely,

Jeanne Francis
Zoning Specialist

Enclosures: Violation Details

Cc: Land Records for Tax Lot # 038-4-113-000

VIOLATION DETAILS

LOCATION: 204 NORTH AV

DECISION DATE: January 20, 2010

VIOLATION DESCRIPTION: Alterations to building elevations/appearances including, but not limited to, re-siding or window replacement (or addition) or other changes that alter trim details or otherwise change the exterior appearance (replacement of 16 windows) without an approved zoning permit.

FINDINGS:

- Building permit # 2022753 issued on December 17, 2002 for vinyl replacement of 16 windows. Building permit closed out June 10, 2004.
- No zoning permit on file approving replacement of 16 windows.

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

1) –Restoring the windows to their prior state, and informing the Code Enforcement Office that the violation has been removed so our office may verify compliance; or

2) - Obtaining approval of a zoning permit from the City's Department of Planning and Zoning for After The Fact Work – window replacement without an approved zoning permit (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) - Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance (administrative fees required).

APPEAL RIGHTS: You have the right to appeal the enforcement officer's 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 February 4, 2010.** 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, 12 and 24 VSA §4451



CODE ENFORCEMENT OFFICE

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

January 20, 2010

Mailed Certified Mail 7008 1300 0000 7240 1618
And FIRST CLASS MAIL

PIERRE GINGUE
345 GREYSTONE DRIVE
RICHMOND, VT 05477-7752

NOTICE OF VIOLATION AT:
204 NORTH AV, BURLINGTON, VT
TAX LOT #038-4-113-000

ZV # 191179

Dear PIERRE GINGUE,

It has come to the attention of this office that a zoning violation exists at the above address.

Description of Violation (NOV): Change of use from a single family dwelling to a triplex without an approved zoning permit. .

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

Please be advised that persons who violate the CDO may be subject to fines of up to one hundred dollars (\$100.00) for each day that a violation continues. You may submit an application to correct the violation, however, be advised application and filing fees are increased for zoning permits required to correct a zoning violation (see Violation Details Remedy Options #2 and CDO Section 2.7.8).

This correspondence is 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/remedied as provided for in this notice, the City shall 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, and 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 (as indicated above), and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Fee and complete application for the appeal shall be filed with the City's Department of Planning and Zoning (City Hall, 149 Church Street) by **4 pm on February 4, 2010**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call me at 802-863-0442.

Sincerely,

Jeanne Francis
Zoning Specialist

Enclosures: Violation Details

Cc: Land Records for Tax Lot # 038-4-113-000

VIOLATION DETAILS

LOCATION: 204 NORTH AV

DECISION DATE: January 20, 2010

VIOLATION DESCRIPTION: Change of use from a single family dwelling to a triplex without an approved zoning permit.

FINDINGS:

- August 19, 1992 Building Permit identifies use as a single family house.
- Assessor's Records identify the use as a duplex.
- Note on Assessor's records that the use was 2 and changed to 3 units on 10/21/1993.

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

1) - Restoring use to a single family use (remove 2 dwelling/living units) and informing the Code Enforcement Office that the violation has been removed so our office may verify compliance; or

2) - Obtaining approval of a zoning permit from the City's Department of Planning and Zoning for After the Fact change of use from a single family use to a triplex without an approved zoning permit (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) - Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance (administrative fees required).

APPEAL RIGHTS: You have the right to appeal the enforcement officer's 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 February 4, 2010.** 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

VERMONT **GENERAL ASSEMBLY****The Vermont Statutes Online****Title 24 : Municipal And County Government****Chapter 117 : Municipal And Regional Planning And Development****Subchapter 009 : Adoption, Administration, And Enforcement**

(Cite as: 24 V.S.A. § 4454)

§ 4454. Enforcement; limitations

(a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

(b) No action, injunction, or other enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit that received final approval from the applicable board, commissioner, or officer of the municipality after July 1, 1998, unless the municipal land use permit or a notice of the permit generally in the form provided for in subsection 1154(c) of this title was recorded in the land records of the municipality as required by subsection 4449(c) of this title.

(c) Nothing in this section shall prevent any action, injunction, or other enforcement proceeding by a municipality under any other authority it may have, including a municipality's authority under Title 18, relating to the authority to abate or remove public health risks or hazards.

(d)(1) As used in this section, "person" means any of the following:

(A) An individual, partnership, corporation, association, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership.

(B) A municipality or State agency.

(C) Individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from real estate.

(2) The following individuals and entities shall be presumed not to be affiliated with a person for the purpose of profit, consideration, or other beneficial interest within the meaning of this section, unless there is substantial evidence of an intent to evade the purposes of this section:

(A) A stockholder in a corporation shall be presumed not to be affiliated with a person solely on the basis of being a stockholder if the stockholder owns, controls, or has a beneficial interest in less than five percent of the outstanding shares in the corporation.

(B) An individual shall be presumed not to be affiliated with a person solely for actions taken as an agent of another within the normal scope of duties of a court-appointed guardian, licensed attorney, real estate broker or salesperson, engineer, or land surveyor, unless the compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship.

(C) A seller or chartered lending institution shall be presumed not to be affiliated with a person solely for financing all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community.

(Added 2003, No. 115 (Adj. Sess.), § 101; amended 2009, No. 93 (Adj. Sess.), § 3a.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 011 : Appeals

(Cite as: 24 V.S.A. § 4470)

§ 4470. Successive appeals; requests for reconsideration to an appropriate municipal panel

(a) An appropriate municipal panel may reject an appeal or request for reconsideration without hearing and render a decision, which shall include findings of fact, within 10 days of the date of filing of the notice of appeal, if the appropriate municipal panel considers the issues raised by the appellant in the appeal have been decided in an earlier appeal or involve substantially or materially the same facts by or on behalf of that appellant. The decision shall be rendered, on notice given, as in the case of a decision under subdivision 4464(b) (3) of this title, and shall constitute a decision of the appropriate municipal panel for the purpose of section 4471 of this title.

(b) A municipality shall enforce all decisions of its appropriate municipal panels, and further, the Superior Court's Civil or Environmental Division shall enforce such decisions upon petition, complaint or appeal or other means in accordance with the laws of this State by such municipality or any interested person by means of mandamus, injunction, process of contempt, or otherwise. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 20, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 107; 2009, No. 154 (Adj. Sess.), § 236.)



City of
Burlington, Vermont
149 Church Street

CODE ENFORCEMENT REPORT

ZP #: 18-0072AP

Tax ID: 038-4-113-000

Application Date: July 21, 2017

Property Address: 204 North Ave

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.

Appeal of NOV #335900-- **Notice of Violation issued for** Change of use from a duplex (2 units) to a triplex (3 units) without zoning approval.

Sec. 12.2.2 Appeals of Administrative Officer Decisions

Appeal of ZV #334211; **information and argument received from Appellant:**

Name and address of appellant:

Pierre Gingue
PO Box 105
Hinesburg, VT 05461

Represented by: Cynthia Broadfoot, Esq.

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

204 North Avenue is permitted as a 2-unit residential structure in the RM Zone.

Reference to the regulatory provisions applicable to that appeal

(a) Burlington Comprehensive Development Ordinance Articles 2, 3, 5, and 12.

Relief requested by the appellant

Applicant is requesting the City of Burlington Code Enforcement Office withdraw its Notice of Violation against Mr. Gingue and the property at 204 North Road [Avenue] as it relates to its usage as a three dwelling unit structure.

Appellant also asks that the City of Burlington should issue an after-the-fact permit for conversion from a two-unit structure to a three-unit structure.

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

Applicant acquired the subject property on or about December 19, 2002. It is undisputed that the structure had three (3) dwelling units at that time.

When the previous owner bought the property in 1979, it was a duplex.

According to the Appellant's testimony in appeal, in 1992, the prior owner moved out of the property, retaining it as an investment. He states that at that time, he converted the property from 2 units to 3 units. Accordingly, the property has been a 3-unit residence since 1992.

The prior owner obtained building permits for the work but appears not to have obtained a zoning permit.

The subject property is located in Zone RM. Multi-family dwellings (3 or more) are a permitted use in Zone RM. We maintain that the usage as such began in 1992 and has continued to the present.

Pursuant to the City's Assessor's records, this property has been recognized as a 3-unit structure since at least the 1994 re-evaluation. Additionally, the Code Enforcement Office has been aware that the subject property is a three unit dwelling since at least December 17, 2002, when it issued a routine inspection letter to the prior owner, Samuel Conant.

As set forth in the City's letter dated July 7, 2017, the City previously initiated an enforcement against Mr. Gingue in January 2010.

To the extent that the property is in violation of City of Burlington regulations, the City has failed to timely enforce its owner regulations and enforcement should be barred.

Appellant's Submittals

No submittals attached to the appeal from Appellant

City's Rebuttal:

As illustrated in the Appeal, Appellant does not deny that the property has changed its use from a duplex to a triplex. However, the change required zoning approval and Appellant (or previous owner) failed to request zoning approval for the additional use (triplex) change. Appellant does not refute this fact, instead, Appellant states that the City failed to timely enforce the violation. Pursuant to caselaw, enforcement of a use violation--the type of violation at issue here--is not barred from enforcement by the statute of limitations on zoning violations as use violations are considered to be "continuing" violations, that is, to recur with each day of violation, therefore the statute of limitations wouldn't apply.

City's Submittals

- Notice of Violation Dated July 6, 2017
- Notice of Violation Dated January 20, 2010
- DRB March 3, 2010 Appeal minutes
- Copy of 24 V.S.A. § 4454(a) and
- Copy of 24 V.S.A. §4470 (b)

INVESTIGATION:

Planning/Zoning Records:

- Property is zoned as RM
- March 20, 2009: ZP 09-626CA approved to convert three season porch to finished living area; certificate of occupancy approved July 26, 2017.
- January 20, 2010: Notice of violation for the change of a single family dwelling unit to a triplex without zoning permit; NOV withdrawn June 5, 2017 due to lack of action in a timely manner.
- January 29, 2010: ZP 10-0602CA approved to install sixteen replacement windows; certificate of occupancy approved July 26, 2017.
- July 7, 2017 Notice of Violation for "Change of use from duplex (2 units) to triplex (3 units) without zoning approval.

Department Public Works Records:

- 1983 General Repairs with plumbing
- 1983 Building Permit – general repairs on exterior.
- 1992 Building Permit – Repair/remodel single family house
- 2002 Building Permit – siding repair, porch column repair and rebuild rear egress to comply with building code requirements.
- 2002 Building Permit – 16 vinyl replacement windows
- 2003 Mechanical Permit – install (2) new Rinnai space heaters in existing living units.
- 2003 Mechanical Permit – replace old hot air furnace with new gas fired hot air furnace and 3 hot water heaters.
- 2005 – Electrical permit – install new wiring for newly installed ac/dc interconnected smoke detectors per city ordinance in 3 units.
- 2008 – Building permit – repair damaged Gyp board walls and ceilings in three apartments.
- 2009 – Electrical permit – install new 100 am panel to Apt. 2, split the existing circuits which currently are both feeding from Apt. 1.
- 2010 – Building Permit – convert porch into a den.

Code Enforcement Minimum Housing Records:

- 1990 Property listed as a 2-unit rental.

- 2000 at the Property but does not identify number of units.
- 2002 note in the file that Property is not listed as a rental.
- December 17, 2012 property registered as a 3 unit rental.

Assessor Records:

- 1985 Assessor's Card identifies Property as a 2-unit structure with 10 rooms (4 of which are bedrooms).
- Notation on 1994 Assessor's Card indicates the use changed from 2 units to 3 units October 21, 1993, verified by inspection.
- Lot size: 3,244 sf

FINDINGS

- Structure was originally built as a duplex circa 1899 and taxed as such until 1994.
- In 1930 204 ½ North Avenue was built as a single family home and is separately owned.
- On January 20, 2010, a notice of violation (ZV 191179) was issued to Owner for a *change of use from single family home to a triplex without zoning approval*; Appeal included a statement from Appellant that *"prior owner purchased the property as a duplex. In 1992 he [previous owner] converted the property from 2 units to 3 units, moved out of the property and retained it as an investment property. Accordingly, the property has been a 3-unit residence since 1992"*. Owner's attorney, Cynthia Broadfoot, argued ZV #191179 was not enforceable. At that January 20, 2010 public hearing there was confusion in City records between 204 North Avenue and 204 ½ North Avenue; City asked the Board for a continuance and later withdrew ZV 191179 (over the years City records showed 204 ½ North Avenue as one unit [single family home] and 204 North Avenue as one unit, two units, and three units and now believe the confusion has been remedied – 204 North Avenue is a recognized duplex).
- Found no municipal permit on record to change the use from duplex to triplex.

ARGUMENT

It appears undisputed by Appellant and the evidence that a zoning violation exists. The property was converted from a duplex to a triplex without zoning approval, a use of the property that does not meet the standards of the current zoning regulations. The only question raised is whether the City may enforce against this violation. As use violations are exempt from the zoning statute of limitations, the violation is enforceable.

Conclusion:

The property is located in the RM zone on a 3,244 sf lot; the CDO would not permit a triplex on such a small lot. At an allowable density of 20 units per acre, the 0.07 acre property could support 1 unit under today's zoning standards. Therefore, the Zoning Administrative Officer asks the Board to uphold ZV #334211, and, as allowed for in Section 2.7.10 of the CDO, include the following requirements to remedy the violation:

1. The 3rd unit shall be removed and the use converted to that of a duplex by October 10, 2017, Appellant shall request an Agreement from the City with a plan in which to remove the illegal unit and how the (third unit) space will be integrated into the existing duplex; Agreement will require a fee and will need to be executed by November 10, 2017.



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JUL 21 2017

DEPARTMENT OF
PLANNING & ZONING

July 21, 2017

Development Review Board
Burlington Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

David White, Zoning Administrative Officer
Jeanne Francis, Asst. Zoning Admin Officer
Zoning Enforcement Officer
Code Enforcement Office
P.O. Box 849
Burlington, VT 05402

Dear Mr. White and Ms. Francis and Members of the Burlington Development Review Board:

Please be advised that I represent Pierre Gingue, and we are providing the following information in support of Mr. Gingue's appeal of Zoning Violation #335900, dated July 7, 2017 and received by Mr. Gingue on or about July 19, 2017. We are submitting this appeal in accordance with the terms of Sections 2.7.11 and 12.2.2 of the Burlington Comprehensive Development Ordinance.

Enclosed are the following:

1. Appeal of an Administrative Decision Request form;
2. Check in the amount of \$250;
3. Memo supplying additional required information.

We thank you for your attention and look forward to your response.

Very truly yours,

BROADFOOT, ATTORNEYS AT LAW

A handwritten signature in blue ink, reading "Cynthia L. Broadfoot".

Cynthia L. Broadfoot, Esq.
cbroadfoot@broadfootlaw.com

CLB/jk

Enclosures

cc: Pierre Gingue



Department of Planning and Zoning

149 Church Street, City Hall

Burlington, VT 05401-8415

Phone: (802) 865-7188

Fax: (802) 865-7195

www.burlingtonvt.gov/pz

RECEIVED
JUL 21 2017

DEPARTMENT OF
PLANNING & ZONING

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: 204 North Avenue

Subject Property Owner: Pierre Gingue

Appellant: Pierre Gingue

Agent/Representative: Broadfoot, Attorneys at Law

Mailing Address: 30 Main Street, Suite 322

City, St, Zip: Burlington, VT 05401

Day Phone: 802-863-7020

Email: cbroadfoot@broadfootlaw.com

Appellant Signature: Pierre Gingue

Date: 7/21/17

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;
- ☐ 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.

Office Use Only:

Check No. 1113 Amount Paid \$250. Zoning Permit # 18-0072 AP

Addendum to Appeal of an Administrative Decision Request
ZV# 335900

RECEIVED

JUL 21 2017

DEPARTMENT OF
PLANNING & ZONING

Appellant:

Pierre Gingue
PO Box 105
Hinesburg VT 05461

Relevant Property:

Address:	204 North Avenue
City of Burlington parcel ID:	038-4-113-000
Description:	3-unit residence

Regulatory References:

Burlington Comprehensive Development Ordinance
Articles: 2, 3, 5, 12

Relief Requested:

We request that the City of Burlington Code Enforcement Office withdraw its Notice of Violation against Mr. Gingue and the property at 204 North Road as it relates to its usage as a three dwelling unit structure.

In the alternative, the City of Burlington should issue an after-the-fact permit for the conversion from a two unit structure to a three unit structure.

Grounds for Requested Relief:

Pierre Gingue acquired the subject property on or about December 19, 2002. It is undisputed that the structure had 3 dwelling units at that time.

The prior owner had owned the property since 1979. When he bought the property, it was a duplex.

Addendum to Appeal of an Administrative Decision Request
ZV# 335900

In 1992, the prior owner moved out of the property, retaining it as an investment. He states that at that time, he converted the property from 2 units to 3 units. Accordingly, the property has been a 3-unit residence since 1992.

The prior owner obtaining building permits for the work but appears not to have obtained a zoning permit.

The subject property is located in Zone RM. Multi-family dwellings (3 or more) are a permitted use in Zone RM. We maintain that the usage as such began in 1992 and has continued to the present.

Pursuant to the City's assessor's records, this property has been recognized as a 3-unit structure since AT LEAST the 1994 revaluation. Additionally, the Code Enforcement Office has been aware that the subject property is a three unit dwelling since AT LEAST December 17, 2002 when it issued a routine inspection letter to the prior owner, Samuel Conant.

As set forth in the City's letter dated July 7, 2017, the City previously initiated an enforcement action against Mr. Gingue in January 2010.

To the extent that the property is in violation of City of Burlington regulations, the City has failed to timely enforce its own regulations and enforcement should be barred.

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broadfoot
ATTORNEYS AT LAW

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DEPARTMENT OF
PLANNING & ZONING

September 1, 2017

Development Review Board
Burlington Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

RE: Pierre Gingue
18-0072AP; 204 North Avenue (RM, Ward 3C)

Dear Members of the Burlington Development Review Board:

Please be advised that I represent Pierre Gingue in the above pending appeal. Mr. Gingue's developmental review board proceeding has been scheduled for September 5 at 5pm. I have a scheduling conflict at this time and am not able to attend. I am writing to request that Mr. Gingue's case be continued to the next available DRB meeting.

Please contact me if you have any questions. Thank you.

Very truly yours,

BROADFOOT, ATTORNEYS AT LAW

Deborah M Ryan

Cynthia L. Broadfoot, Esq.
cbroadfoot@broadfootlaw.com

cc: Pierre Gingue

Layne Darfler

From: Andy MacIlwaine <amacilwaine@DINSE.COM>
Sent: Friday, September 01, 2017 4:36 PM
To: Layne Darfler
Cc: Kimberlee Sturtevant; Jeanne Francis; Scott Gustin; William Ward; Krista Grady; Cynthia Proulx
Subject: RE: DRB Meeting Materials 9-5-17 Available

Follow Up Flag: FollowUp
Flag Status: Flagged

Hello,

I am counsel for Kindred Healthcare, which is the principal party in interest regarding the Ventas Realty LP Appeal of zoning violation notice #334328. I have contacted Kimberlee Sturtevant, copied on this email, and she has kindly informed me that the City is agreeable to postponing the hearing of this appeal (scheduled for Tuesday 9/5) while we work on a stipulated process for complying with the notice of violation letter. Would you kindly bring our joint request for postponement to the attention of the DRB? If you need a formal letter, I can have something hand delivered on Tuesday morning.

Please advise and have a nice weekend.

Andy



Wm. Andrew MacIlwaine, Esq.
Director

Dinse, Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT 05402
W: 802-864-5751 | F: 802-859-8786
amacilwaine@dinse.com | [Bio](#)



From: Layne Darfler [mailto:ldarfler@burlingtonvt.gov]
Sent: Wednesday, August 30, 2017 2:07 PM
To: michaelrainville@gmavt.net; vtrowan@gmail.com; tmichbuild@gmail.com; PMATOS62@GMAIL.COM; JOHN@TRILLIUMCUSTOMS.COM; Andy MacIlwaine; cbroadfoot@broadfootlaw.com; Alexander Larosa; Alexandra Zipparo; Alexandra Zipparo; Austin Hart; Austin Hart; Brad Rabinowitz; Bradford Rabinowitz; Geoff Hand; Geoffrey Hobart Hand; Israel David Smith; James Drummond; larosaajl@gmail.com; Robert Purvee; stilton@gmail.com
Cc: Planning
Subject: DRB Meeting Materials 9-5-17 Available

All:

Please note the meeting materials for the Development Review Board's meeting on September 5th, 2017 are posted [online](#). There are a couple of agenda items that are not currently available online, another notice will go out as soon as those become available.

Thank you.

Layne

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

Disclaimer

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City of
Burlington, Vermont
149 Church Street

CODE ENFORCEMENT REPORT

ZP #: 18-0072AP

Tax ID: 038-4-113-000

Application Date: July 21, 2017

Property Address: 204 North Ave

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.

Appeal of NOV #335900-- **Notice of Violation issued for** Change of use from a duplex (2 units) to a triplex (3 units) without zoning approval.

Sec. 12.2.2 Appeals of Administrative Officer Decisions

Appeal of ZV #334211; **information and argument received from Appellant:**

Name and address of appellant:

Pierre Gingue
PO Box 105
Hinesburg, VT 05461

Represented by: Cynthia Broadfoot, Esq.

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

204 North Avenue is permitted as a 2-unit residential structure in the RM Zone.

Reference to the regulatory provisions applicable to that appeal

(a) Burlington Comprehensive Development Ordinance Articles 2, 3, 5, and 12.

Relief requested by the appellant

Applicant is requesting the City of Burlington Code Enforcement Office withdraw its Notice of Violation against Mr. Gingue and the property at 204 North Road [Avenue] as it relates to its usage as a three dwelling unit structure.

Appellant also asks that the City of Burlington should issue an after-the-fact permit for conversion from a two-unit structure to a three-unit structure.

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

Applicant acquired the subject property on or about December 19, 2002. It is undisputed that the structure had three (3) dwelling units at that time.

When the previous owner bought the property in 1979, it was a duplex.

According to the Appellant's testimony in appeal, in 1992, the prior owner moved out of the property, retaining it as an investment. He states that at that time, he converted the property from 2 units to 3 units. Accordingly, the property has been a 3-unit residence since 1992.

The prior owner obtained building permits for the work but appears not to have obtained a zoning permit.

The subject property is located in Zone RM. Multi-family dwellings (3 or more) are a permitted use in Zone RM. We maintain that the usage as such began in 1992 and has continued to the present.

Pursuant to the City's Assessor's records, this property has been recognized as a 3-unit structure since at least the 1994 re-evaluation. Additionally, the Code Enforcement Office has been aware that the subject property is a three unit dwelling since at least December 17, 2002, when it issued a routine inspection letter to the prior owner, Samuel Conant.

As set forth in the City's letter dated July 7, 2017, the City previously initiated an enforcement against Mr. Gingue in January 2010.

To the extent that the property is in violation of City of Burlington regulations, the City has failed to timely enforce its owner regulations and enforcement should be barred.

Appellant's Submittals

No submittals attached to the appeal from Appellant

City's Rebuttal:

As illustrated in the Appeal, Appellant does not deny that the property has changed its use from a duplex to a triplex. However, the change required zoning approval and Appellant (or previous owner) failed to request zoning approval for the additional use (triplex) change. Appellant does not refute this fact, instead, Appellant states that the City failed to timely enforce the violation. Pursuant to caselaw, enforcement of a use violation--the type of violation at issue here--is not barred from enforcement by the statute of limitations on zoning violations as use violations are considered to be "continuing" violations, that is, to recur with each day of violation, therefore the statute of limitations wouldn't apply.

City's Submittals

- Notice of Violation Dated July 6, 2017
- Notice of Violation Dated January 20, 2010
- DRB March 3, 2010 Appeal minutes
- Copy of 24 V.S.A. § 4454(a) and
- Copy of 24 V.S.A. §4470 (b)

INVESTIGATION:

Planning/Zoning Records:

- Property is zoned as RM
- March 20, 2009: ZP 09-626CA approved to convert three season porch to finished living area; certificate of occupancy approved July 26, 2017.
- January 20, 2010: Notice of violation for the change of a single family dwelling unit to a triplex without zoning permit; NOV withdrawn June 5, 2017 due to lack of action in a timely manner.
- January 29, 2010: ZP 10-0602CA approved to install sixteen replacement windows; certificate of occupancy approved July 26, 2017.
- July 7, 2017 Notice of Violation for "Change of use from duplex (2 units) to triplex (3 units) without zoning approval.

Department Public Works Records:

- 1983 General Repairs with plumbing
- 1983 Building Permit – general repairs on exterior.
- 1992 Building Permit – Repair/remodel single family house
- 2002 Building Permit – siding repair, porch column repair and rebuild rear egress to comply with building code requirements.
- 2002 Building Permit – 16 vinyl replacement windows
- 2003 Mechanical Permit – install (2) new Rinnai space heaters in existing living units.
- 2003 Mechanical Permit – replace old hot air furnace with new gas fired hot air furnace and 3 hot water heaters.
- 2005 – Electrical permit – install new wiring for newly installed ac/dc interconnected smoke detectors per city ordinance in 3 units.
- 2008 – Building permit – repair damaged Gyp board walls and ceilings in three apartments.
- 2009 – Electrical permit – install new 100 am panel to Apt. 2, split the existing circuits which currently are both feeding from Apt. 1.
- 2010 – Building Permit – convert porch into a den.

Code Enforcement Minimum Housing Records:

- 1990 Property listed as a 2-unit rental.

- 2000 at the Property but does not identify number of units.
- 2002 note in the file that Property is not listed as a rental.
- December 17, 2012 property registered as a 3 unit rental.

Assessor Records:

- 1985 Assessor's Card identifies Property as a 2-unit structure with 10 rooms (4 of which are bedrooms).
- Notation on 1994 Assessor's Card indicates the use changed from 2 units to 3 units October 21, 1993, verified by inspection.
- Lot size: 3,244 sf

FINDINGS

- Structure was originally built as a duplex circa 1899 and taxed as such until 1994.
- In 1930 204 ½ North Avenue was built as a single family home and is separately owned.
- On January 20, 2010, a notice of violation (ZV 191179) was issued to Owner for a *change of use from single family home to a triplex without zoning approval*; Appeal included a statement from Appellant that *"prior owner purchased the property as a duplex. In 1992 he [previous owner] converted the property from 2 units to 3 units, moved out of the property and retained it as an investment property. Accordingly, the property has been a 3-unit residence since 1992"*. Owner's attorney, Cynthia Broadfoot, argued ZV #191179 was not enforceable. At that January 20, 2010 public hearing there was confusion in City records between 204 North Avenue and 204 ½ North Avenue; City asked the Board for a continuance and later withdrew ZV 191179 (over the years City records showed 204 ½ North Avenue as one unit [single family home] and 204 North Avenue as one unit, two units, and three units and now believe the confusion has been remedied – 204 North Avenue is a recognized duplex).
- Found no municipal permit on record to change the use from duplex to triplex.

ARGUMENT

It appears undisputed by Appellant and the evidence that a zoning violation exists. The property was converted from a duplex to a triplex without zoning approval, a use of the property that does not meet the standards of the current zoning regulations. The only question raised is whether the City may enforce against this violation. As use violations are exempt from the zoning statute of limitations, the violation is enforceable.

Conclusion:

The property is located in the RM zone on a 3,244 sf lot; the CDO would not permit a triplex on such a small lot. At an allowable density of 20 units per acre, the 0.07 acre property could support 1 unit under today's zoning standards. Therefore, the Zoning Administrative Officer asks the Board to uphold ZV #334211, and, as allowed for in Section 2.7.10 of the CDO, include the following requirements to remedy the violation:

1. The 3rd unit shall be removed and the use converted to that of a duplex by October 10, 2017, Appellant shall request an Agreement from the City with a plan in which to remove the illegal unit and how the (third unit) space will be integrated into the existing duplex; Agreement will require a fee and will need to be executed by November 10, 2017.

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 September 5th, 2017, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT AGENDA

Board Members Present: Austin Hart, Brad Rabinowitz, Israel Smith, A.J. LaRosa, Geoff Hand
(Arrived during Public Hearing), Alexandra Zipparo, Samantha Tilton, , Robert Purvee (Alt)

Board Members Absent: Jim Drummond (Alt)

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

I. Agenda

Items 1 and 2 under Public Hearing have requested Deferral

II. Communications

1. **18-0098CA/CU: 91 Henry Street (RL, Ward 1E) Paulo Matos**
Warranty Deed
2. **17-1267AP; 43 Starr Farm Road (RL, Ward 4N) Ventas Realty LP**
Request for Deferral
3. **18-0072AP; 204 North Avenue (RM, Ward 3C) Pierre Gingue**
Request for Deferral

III. Minutes

Minutes from August 15th, 2017. Will consider at deliberative

IV. Consent

1. **14-0747SD; 1891-1893 NORTH AVENUE (RL, Ward 4N) Thomas P. Mitchell**
Request for Time Extension; Subdivide two lots into three lots, remove existing single family house, construct two duplexes and one single family house.
(Project Manager: Scott Gustin)

A.Hart- Does the applicant have any questions or concerns about conditions or staff findings as presented?
None
A.Hart- Do any Board member object to this project remaining consent or have any further questions?
A.Hart- Is there any reason why this is taking so long?
T.Mitchell- Family illness and financial hurdles; but have confidence they will begin to move forward soon.
A.Hart- Are there any members of the public that wish to comment or have questions regarding the project?
B.Rabinowitz- Motion to approve and adopt staff findings and recommendations

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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A.LaRosa- Seconds the Motion
6-0-0

2. 18-0098CA/CU; 91 HENRY STREET (RL, Ward 1E) Paulo Matos

Replace garage on existing footprint with vertical expansion within non-conforming setback.
Associated approval ZP17-1342CA.
(Project Manager: Mary O'Neil)

A.Hart- Does the applicant have any questions or concerns about conditions or staff findings as presented?

None

A.Hart- Do any Board member object to this project remaining consent or have any further questions?

None

A.Hart- Are there any members of the public that wish to comment or have questions regarding the project?

None

I.Smith- Motion to approve and adopt staff findings and recommendations

B.Rabinowitz- Seconds the Motion

6-0-0

V. Public Hearing

1. 17-1267AP; 43 STARR FARM ROAD (RL, Ward 4N) Ventas Realty LP

Appeal of zoning violation notice #334328.

(Project Manager: Jeanne Francis)

A.Hart- Recuses himself

B.Rabinowitz- There has been a request for deferral, are the appellants here or any members of the public who may wish to speak?

None

A.LaRosa- Motion to Defer 17-1267AP to the October 3rd, 2017 DRB Meeting

S.Tilton- Seconds the Motion

5-0-0

2. 18-0072AP; 204 NORTH AVENUE (RM, Ward 3C) Pierre Gingue

Appeal of NOV #335900 as it relates to usage as a three dwelling unit.

(Project Manager: Scott Gustin)

A.Hart- There has been a request to defer this project, are the appellants here or any members of the public who may wish to speak?

None

B.Rabinowitz- Motion to Defer 18-0072AP to the October 3rd, 2017 DRB Meeting

A.LaRosa- Seconds the Motion

6-0-0

3. 18-0003CA; 135 HAYWARD STREET (RL, Ward 5S) Andrew Rowan/ Daniel Rowan

Construct triplex and related site improvements. Utilize existing driveway and parking.

(Project Manager: Scott Gustin)

A.LaRosa- Recused himself

G.Hand Arrived

M.Rainville- Fairbanks Construction; One of the issues was the unsightliness of the lawn. We mow every other week or so and the only weeds that are not taken care of are in the middle of the foundation and the rear of the lot to help with storm water absorption.

A.Hart- It was a concern that was expressed and made a condition of approval that the weeds be taken care of. Weeds 2 inches high absorb as much water as weeds 6 feet high. Making it a bit less unsightly for neighbors is ideal.

Applicant- Once we build all of these issues will go away.

B.Rabinowitz- Concern is that the issues that are present before the tri-plex is built will remain after the construction.

M. Rainville- We took the fence down to allow mowing of the green belt.

Applicant- Neighbors never had an issues while we were living there, we are working on cleaning up the property as best we can.

D.Rowan- Currently not safe to go into the foundation so it is difficult to take care of those areas.

Applicant- The outside of the fence is what was focused on.

M.Rainville- Design Advisory Board recommended power be put underground; that creates a hardship on the homeowner as the utility pole in on the other side of the street. Would like to stress that it is a financial burden to require that as it is a \$12,000-\$15,000 additional cost that is not covered under insurance.

A.Hart- This is not a B.E.D issue this is a Planning and Zoning matter.

Applicant- Paying for snow removal; added garbage and recycling on site plan; bike parking will be on porch or on hooks.

M.Rainville- Design Advisory Board suggested bollards to block HVAC unit which have been added to the site plan.

Applicant- Discussed installing conforming windows which would be 6/1

A.Hart- Do any Board member have any questions?

B.Rabinowitz- On the site plan is the neighbor sharing the driveway?

M.Rainville- Not shared but it is paved through and there is a fence on the neighbor's property that splits up the driveway. Big picture is that this configuration is easier to manage for renters and there will probably be 2 to 4 less people in the building compared to the original configuration.

B.Rabinowitz- Suggests bollards around the steps to the units for snow plow visuals

S.Gustin- Where are the totes located? They may nullify a parking space which would be a major issue

M.Rainville- They are in front of the parking space on the greenbelt; shown on most up to date plan.

Applicant- Design Advisory Board brought up that they did not like the shutters on every window, we have updated the elevation to show the shutters will only go on the front elevation.

A.Hart- Are there any members of the public that wish to comment or have questions regarding the project?

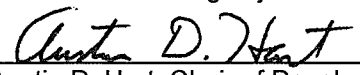
None

A.Hart Closes the Public Hearing

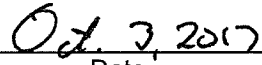
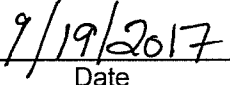
VI. Other Business

VII. Adjournment

The meeting adjourned at 5:27 PM


Austin D. Hart, Chair of Development Review Board


L. Darfler, Planning Technician


Date

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.