

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax: (802) 863-0466

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
vacant
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, August 4, 2020, 5:00 PM

PUBLIC HEARING NOTICE

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/81648212473?pwd=V2NxNTk3N1Y0aDBiUmh2cGJQUS9HUT09>

Webinar ID: 816 4821 2473

Password: 842557

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

- 1. 20-0914CA/AP; 4-8 Strong Street (RM, Ward 3C) Melissa J. Aloisi**
Appeal of zoning permit #20-0914CA. Restore gravel driveways to same dimension; modify entry stairs to 8 Strong Street. No change to coverage.
- 2. 20-0971CA/CU; 362 South Union Street (RL, Ward 6S) William Fellows and Tshen Shue**
Demolish detached garage. Construct garage with attached accessory dwelling unit.

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

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

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 Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).
Printed on 100% Recycled Paper

RECEIVED

JUL 14 2020

BURLINGTON
PERMITTING & INSPECTIONS



ZONING INFORMATION		
SPACE	EXISTING AREAS	PROPOSED AREAS
PROPERTY: LOTS 260, 264, 272, AND 280	30,851 SQ. FT.	30,851 SQ. FT.
EXISTING STRUCTURES	3484 SQ. FT.	3484 SQ. FT.
NEW UNITS - LOT COVERAGE INCLUDING DECKS AND STAIRS	—	2550 SQ. FT.
WALKWAYS	320 SQ. FT.	321 SQ. FT.
DRIVEWAY	4323 SQ. FT.	6625 SQ. FT.
TOTAL	8127 SQ. FT.	12980 SQ. FT.
TOTAL LOT COVERAGE	26.3%	42%

NOTES:
SITE PLAN BASED ON INFORMATION PROVIDED BY
'CIVIL ENGINEERING ASSOCIATES'
DRAWING C1.0 - 'EXISTING CONDITIONS SITE PLAN'
C1.0 BISONETTE PROPERTIES. THIS PLAN IS NOT A BOUNDARY
SURVEY AND IS NOT INTENDED TO BE USED AS ONE

SITE PLAN

ZONING PERMIT 2020 06 24

JRMA
DESIGN STUDIO
175 SUMMIT CIRCLE
SHELBURNE VERMONT 05482
802-985-9363

2010-141

WJR

JUNE-24-2020

1"=30'-0"

MANHATTAN DRIVE TOWNHOUSES

BURLINGTON, VERMONT

SITE PLAN

L-1

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BURLINGTON
PERMITTING & INSPECTIONS



VIEW FROM MANHATTAN DRIVE LOOKING NORTHWEST



VIEW FROM MANHATTAN DRIVE LOOKING NORTHEAST

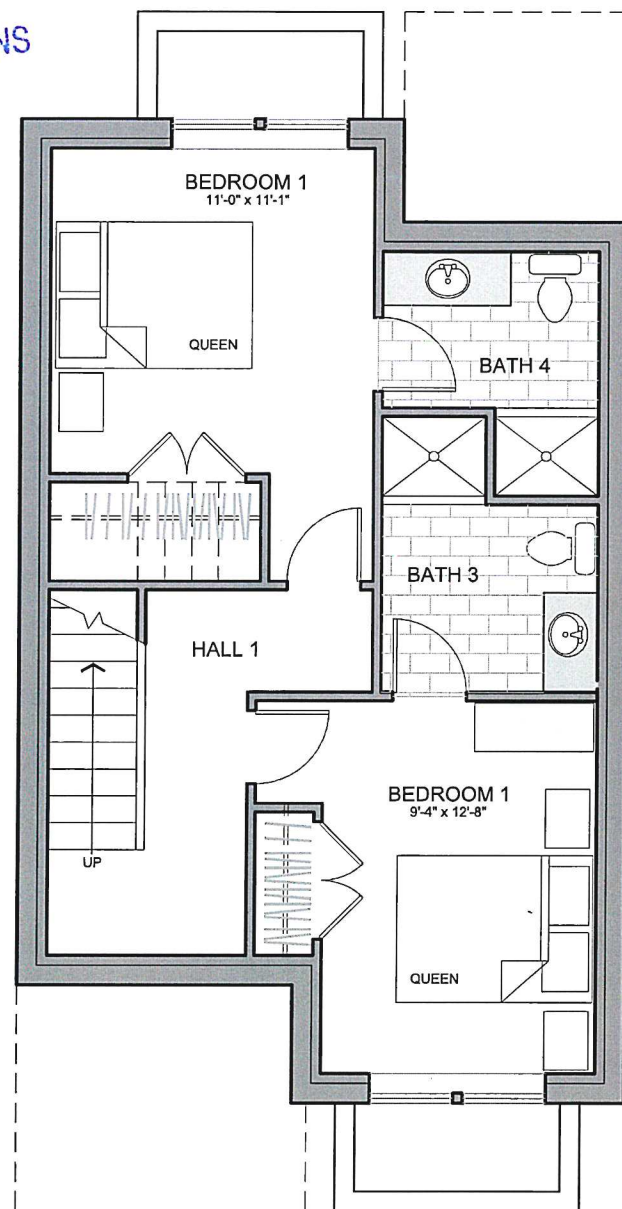
PRELIMINARY - 2020 06 24

JOB_NO.	2010-141
DRAWN_BY	WJR
DATE	JUNE-24-2020
SCALE	N/A

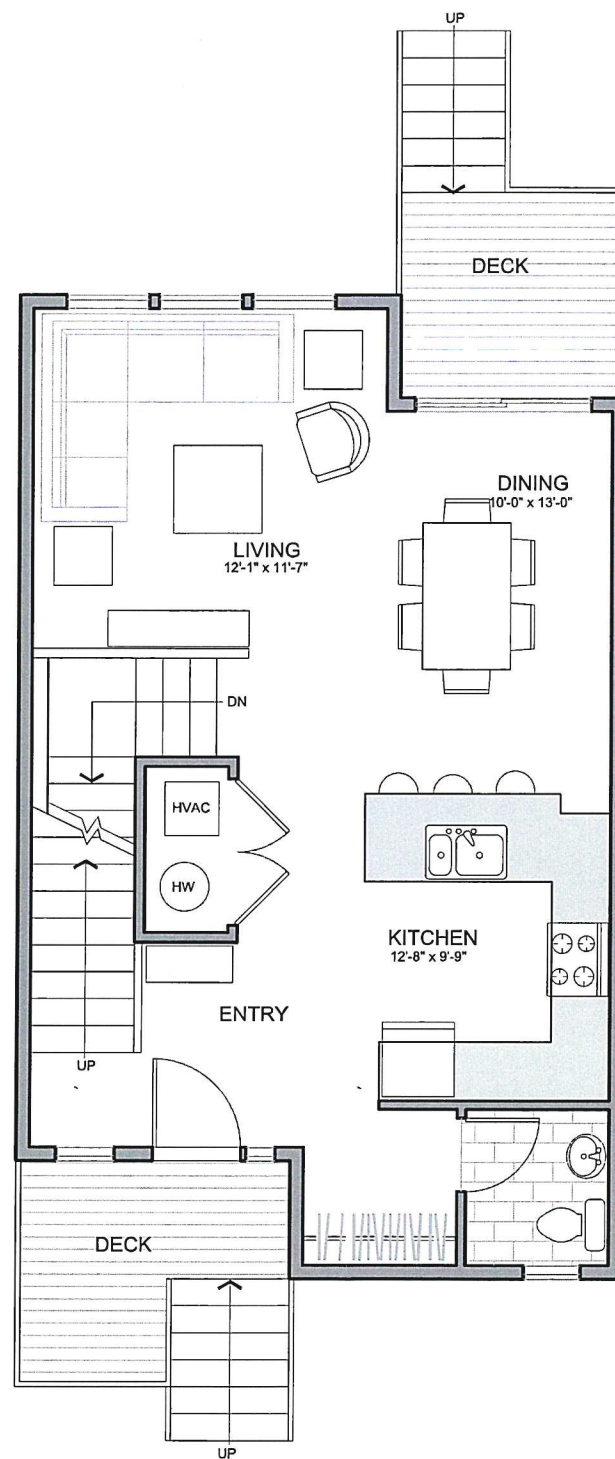
MANHATTAN DRIVE TOWNHOUSES
BURLINGTON, VERMONT
EXISTING SITE PHOTOGRAPHS

EX-1

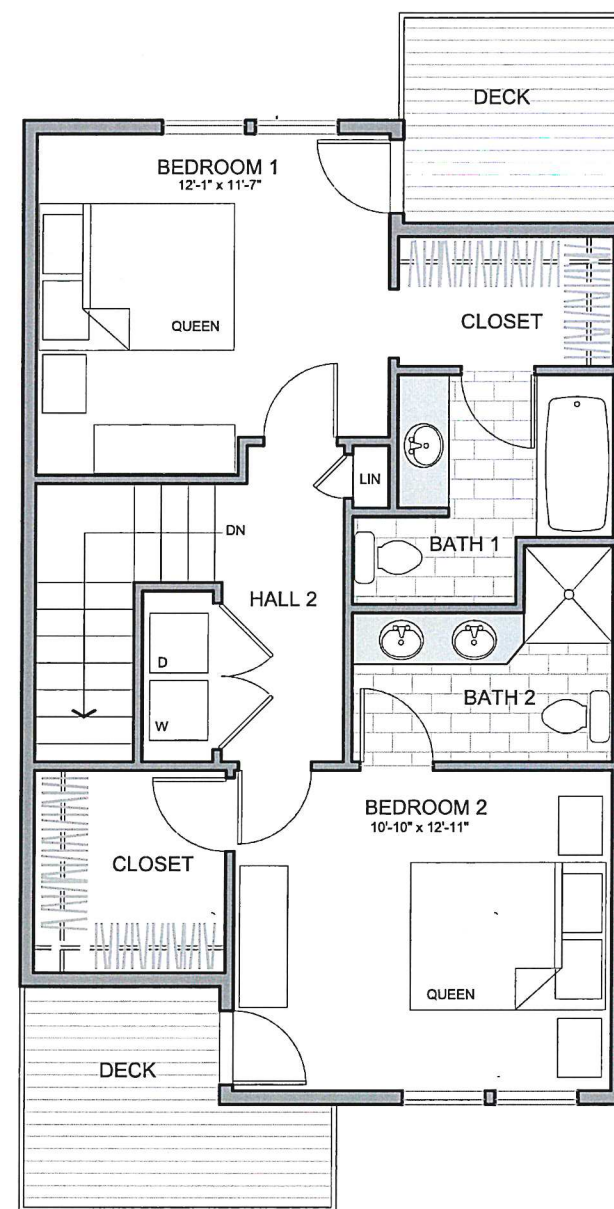
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PERMITTING & INSPECTIONS



lower level floor plan
3/16" = 1'-0"



first floor plan
3/16" = 1'-0"



second floor plan
3/16" = 1'-0"
UNIT SIZE: 1884 SQ. FT.
DECKS: 297 SQ. FT.

PRELIMINARY - 2020 06 24

MANHATTAN DRIVE TOWNHOUSES BURLINGTON, VERMONT FLOOR PLANS			
JOB_NO.	2010-141	DRAWN_BY	WJR
DATE	JUNE-24-2020	SCALE	3/16"=1'-0"

A-1

RECEIVED

JUL 14 2020

BURLINGTON
PERMITTING & INSPECTIONS

Manhattan Drive Townhouses

BURLINGTON, VERMONT

ZONING PRESENTATION APRIL 14 2020

BILL BISSONETTE PROPERTIES



perspective
overview from southeast

CONCEPTUAL DESIGN | APRIL 14 2020

MANHATTAN DRIVE TOWNHOUSES - BURLINGTON VERMONT

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PERMITTING & INSPECTIONS



south elevation

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BURLINGTON
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west elevation



east elevation

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north elevation

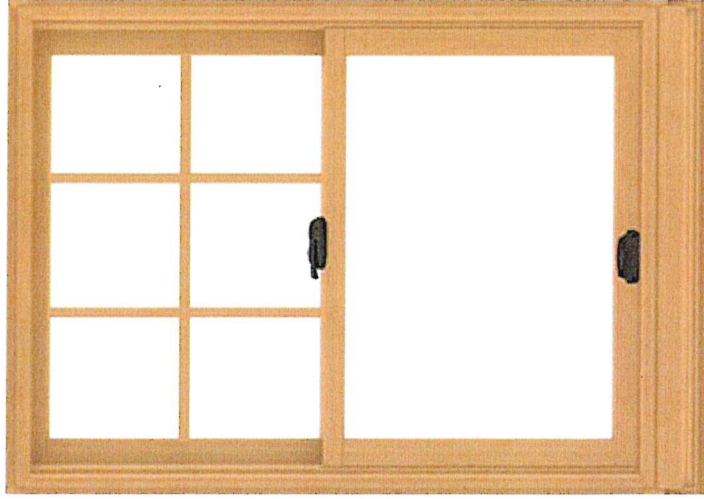
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JUL 14 2020
BURLINGTON
PERMITTING & INSPECTIONS

24 Alexis – Main Exterior Elements

Inventory of Exterior Elements: 24 Alexis Drive

	Elevation	Quantity	Manufacturer	Model	Description	Preferred Supplier
front	all	36	Andersen	Series 400	All windows of this series, various sizes and grills per drawings	Rice Lumber
garage man door	front	2	Andersen	Straightline 181	ea 3'0" x 6'8" Black, open in, 4 panel grill per door	Rice Lumber
room family room	right	1	Andersen	Arts and Crafts 402	3'0" x 6'8" Black	Rice Lumber
room rear hall	rear	1	Andersen	Straightline 102	ea 3'0" x 6'8" Black, open in, 4 panel grill per door	Rice Lumber
room MBR	rear	1	Andersen	Series 400 Frenchwood	gliding patio door	Rice Lumber
doors - Vehicle	left	1	Andersen	Series 400 Frenchwood	gliding patio door	Rice Lumber
fit, fascia	front	2	Haas	American Tradition 921 series	Ash finish, three pane windows at top of each door	Overhead Door
and downspout	all	1	James Hardie	HardiePlank	Select Cedarmill finish, cement fiber lap siding	Rice Lumber
main	all	1	Harvey	seamless aluminum	3105 alloy, charcoal gray accent to HardiePlank	Architectural Metal Supply
orch	all	1	Harvey	seamless aluminum	3105 alloy, charcoal gray accent to HardiePlank	Architectural Metal Supply
	all	1	Owens Corning	Duration Flex	Estate Gray	Rice Lumber
	front	1	Harvey	Standing Seam	aluminum, 21" flat x 1" rib, charcoal gray / black	Architectural Metal Supply
garage man door shelter	right	1	Harvey	Standing Seam	aluminum, 21" flat x 1" rib, charcoal gray / black	Architectural Metal Supply
rear covered porch	rear	1	Harvey	Standing Seam	aluminum, 21" flat x 1" rib, charcoal gray / black	Architectural Metal Supply
- front sconces	front	2	Millenium	2931-PBK	One light outdoor wall bracket, 10" dia x 16" h x 11" ext, black	Walsh Electric
- garage man door	right	1	Millenium	2921-PBK	One light outdoor wall bracket, 9" dia x 14" h x 10" ext, black	Walsh Electric
- rear covered porch	rear	2	Millenium	2697-PBK	Three light outdoor hanging lantern 11" dia x 18" high, black	Walsh Electric
- rear open porch	rear	2	Millenium	2921-PBK	One light outdoor wall bracket, 9" dia x 14" h x 10" ext, black	Walsh Electric

Windows – opening 400 Series



400 SERIES

DOUBLE-HUNG WINDOW

★★★★★ 4.5 (40)

400 Series double-hung windows have two operating sash that move up and down allowing for ventilation on the top, bottom or both. The sash tilt in for easy cleaning from the inside of your home. Made of wood protected by a vinyl exterior, it's our best-selling double-hung window.

- Our best-selling double-hung
- Wood protected by vinyl exterior
- Durable and time-tested
- Standard sizes up to 3'10 1/8" wide and 7'8 7/8" high. Custom sizes available.

Need help with installation? Find an [Andersen Certified Contractor](#) in your area.



Windows – fixed 400 Series (at rear)

400 SERIES

PICTURE WINDOW

★★★★ 4.4 (8)

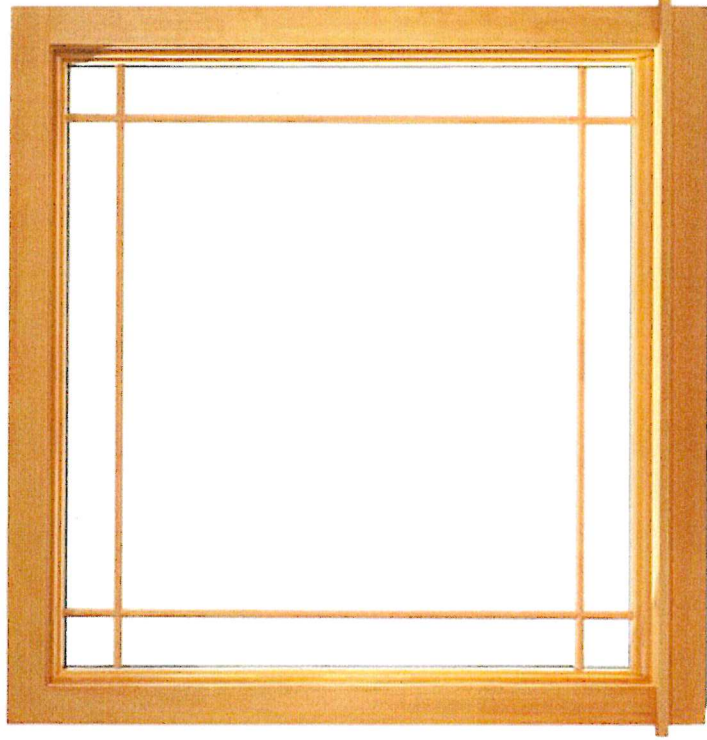
400 Series picture windows are stationary and designed to be used alone to maximize a view or combined with venting windows to create large combinations. Made of wood protected by a vinyl exterior, it's our best-selling picture window.

- Our best-selling picture window
- Wood protected by vinyl exterior
- Durable and time-tested
- Standard sizes up to 5' wide and 6' high. Custom sizes available.

Need help with installation? Find an [Andersen Certified Contractor](#) in your area.

[DESIGN THIS WINDOW](#)

[REQUEST A QUOTE](#)



Door – front



RESIDENTIAL

ENTRY DOORS

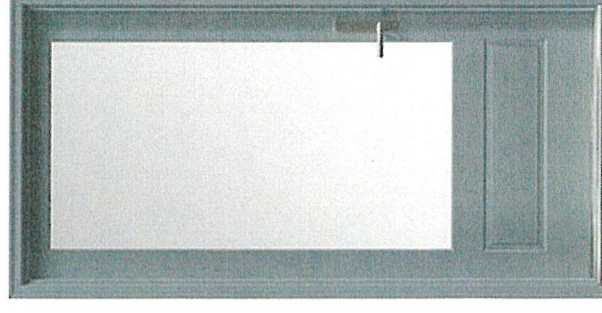
★★★★★ 4.4 (5)

Andersen® residential entrances are handcrafted from the finest wood available and introduce your home with uncommon elegance. They showcase artistry, intricacy and exceptional beauty to complement the character of your home and those who live inside.

- Available for both inswing or outswing operation
- Low-profile sill option available
- Wood can be left natural, stained or protected by aluminum exteriors

Need help with installation? Find an [Andersen Certified Contractor](#) in your area.

[REQUEST A QUOTE](#)



Straightline (181)

Door – garage man door

RESIDENTIAL

ENTRY DOORS

★★★★★ 4.4 (5)

Andersen® residential entranceways are handcrafted from the finest wood available and introduce your home with uncommon elegance. They showcase artistry, intricacy and exceptional beauty to complement the character of your home and those who live inside.

- Available for both inswing or outswing operation
- Low-profile sill option available
- Wood can be left natural, stained or protected by aluminum exteriors

Need help with installation? Find an [Andersen Certified Contractor](#) in your area.

[REQUEST A QUOTE](#)



Arts & Crafts (402)

Door – from family room to patio

RESIDENTIAL

ENTRY DOORS

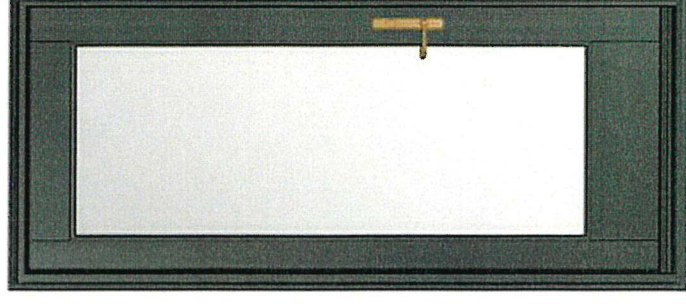
★★★★★ 4.4 (5)

Andersen® residential entranceways are handcrafted from the finest wood available and introduce your home with uncommon elegance. They showcase artistry, intricacy and exceptional beauty to complement the character of your home and those who live inside.

- Available for both inswing or outswing operation
- Low-profile sill option available
- Wood can be left natural, stained or protected by aluminum exteriors

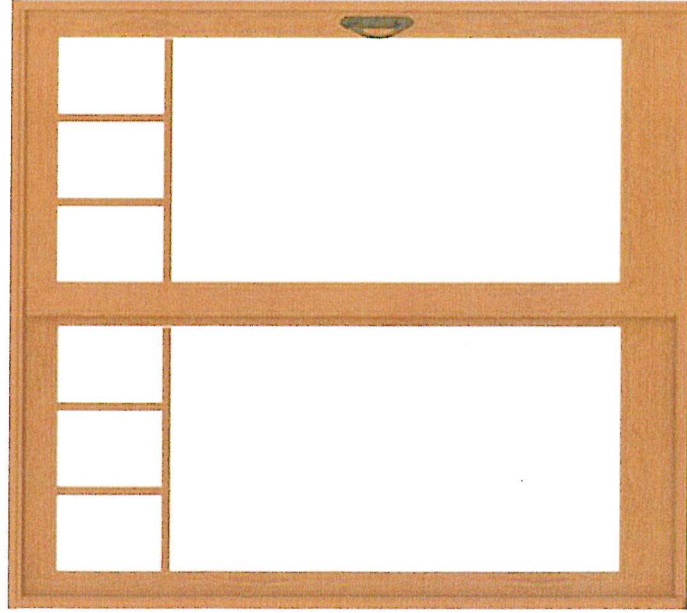
Need help with installation? Find an [Andersen Certified Contractor](#) in your area.

[REQUEST A QUOTE](#)



Straightline (102)

Doors – gliding patio: rear hall, MBR



400 SERIES

FRENCHWOOD® GLIDING PATIO DOOR

With their wide wood profiles, Frenchwood® gliding patio doors have the old-world character of traditional French doors, but also offer the convenience and space savings no hinged door can provide. Available with an extensive array of options and accessories in two- and four-panel configurations to fit virtually any size requirement.

- Our best-selling gliding patio door
- Wood protected by vinyl exterior
- Durable and time-tested
- Blinds-between-the-glass option
- Available in standard sizes as single panel, 2-panel and 4-panel configurations. Custom sizes also available.

Need help with installation? Find an **Andersen Certified Contractor** in your area.

Doors – Garage vehicle (2)

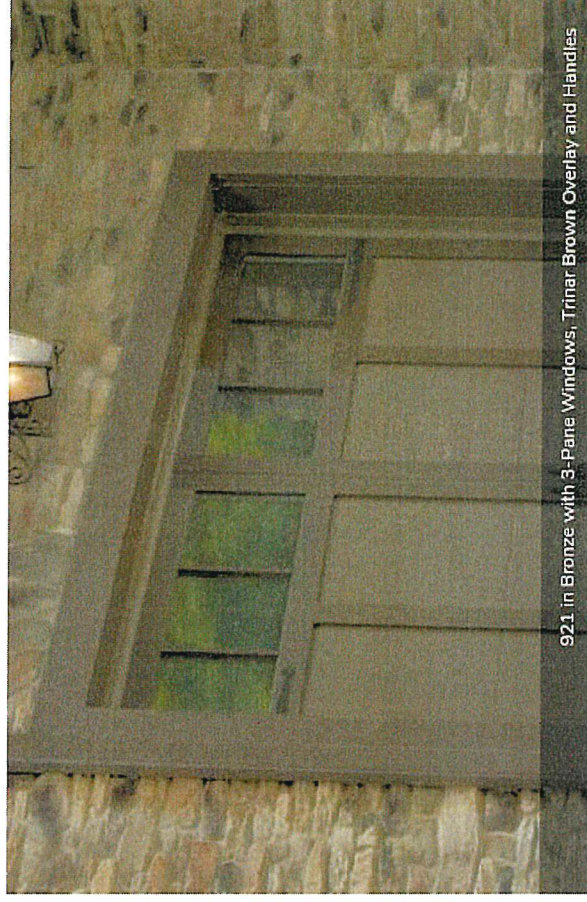
AMERICAN TRADITION™ SERIES

We've taken the elegance of the original handcrafted wooden carriage house doors and the detail of the wrought iron hardware to produce a classic style made with modern technology and materials. Backed by a Lifetime Limited Warranty, American Tradition™ doors are the ideal choice to add the classic look to a genuine carriage house door.

- 2" Thick with Full Thermal Break
- 13.45 Calculated R-Value
- CFC-Free Polyurethane Insulation
- 26-Gauge Galvanized Steel
- Polyurethane Overlay Boards
- 17 Base & 16 Overlay Colors
- 12 Door Designs
- 10 Window Options
- 4 Impact Polycarbonate Glazing Options

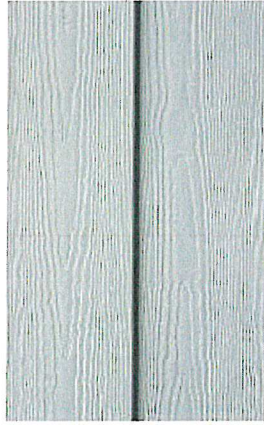
- 15 Insulated Glass Options
- 9 Non-Insulated Glass Options
- Available with Wind Load
- Industry Leading Warranty
- Lifetime Rust & Delamination
- 6-Year Hardware
- 5-Year Overlay Delamination
- 3-Year Spring

CREATE YOUR DOOR
Haas Online



921 in Bronze with 3-Pane Windows, Trinar Brown Overlay and Handles

Siding



HARDIEPLANK® LAP SIDING SELECT CEDARMILL®

Our natural cedar look has a soft texture that mimics wood.

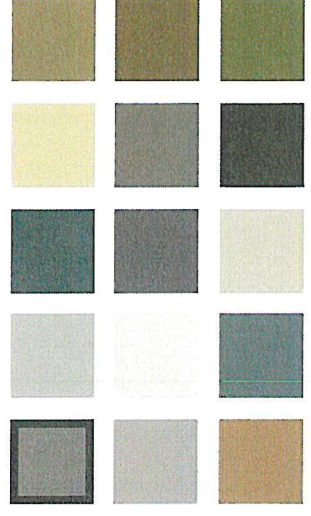
THE STATEMENT COLLECTION™

Classic shades—engineered with long-lasting ColorPlus® Technology—will make a statement that resonates for generations. The tried and true colors of James Hardie's Statement Collection™ products were designed for every home. They're our most popular hues. And they are readily available in your region.



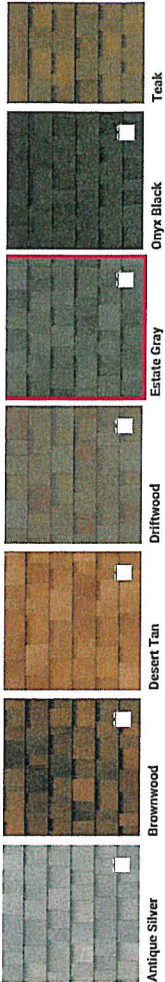
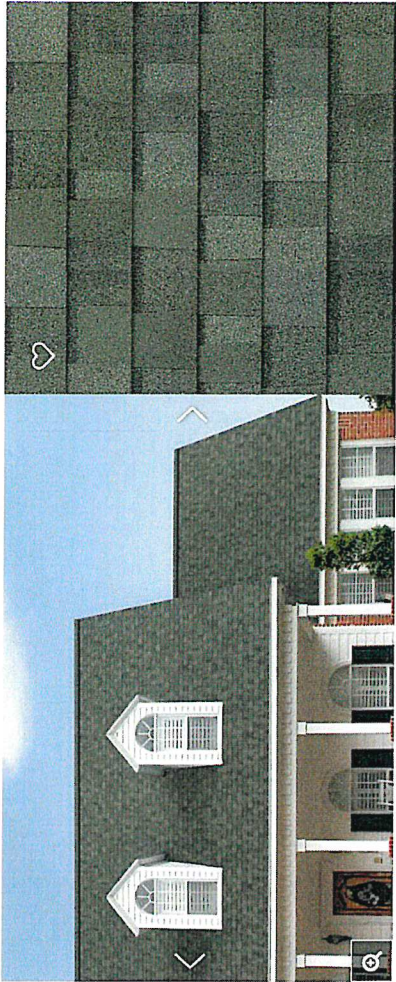
SIDING COLORS

Gray Slate



Roof

COLORS



TECHNICAL INFORMATION

Technical Characteristics (nominal values)

PROPERTY (UNIT)	VALUE
Warranty	Limited Lifetime
Wind Resistance	130 MPH (1209 KMH)
Algae Resistance	10 Years
Nominal Size	13 1/4" x 39 3/8"
Exposure	5 5/8"
Shingles Per Square	64
Bundles Per Square	3
Coverage Per Square	98.4 sq. ft.

Technical Documents

- Data Sheet PDF (39.7 MB)
- Install Instructions
- PRI Evaluation Report PDF (0.5 MB)
- LEED Certification - Roofing Shingles PDF (0.3 MB)
- 3-part spec (pdf)
- 3-part spec (word)

Applicable Standards

- CSA A123.5
- ASTM D228
- ASTM D3018 (Type 1)
- ASTM D3462
- ASTM D3163 (Class F Wind Resistance)
- ASTM D7158 (Class H Wind Resistance)
- ASTM E108 (Class A Fire Resistance)
- UL 2218 (Class 4 Impact Resistance)
- UL 790 (Class A Fire Resistance)
- PRI EN 1378E01



TruDefinition®
DURATION FLEX®
SHINGLES

FAVORITES (0)

FIND A CONTRACTOR

Colors Inspiration Gallery Features Technical Information Related Items

Accent roofing – porch,
garage overhang, screen
porch

Harvey Standing Seam Metal Roofing

Inventory

We stock a full inventory of metal roofing colors and accessories, along with tools you need to complete your project, available for rent and/or purchase.

Training

We will provide you with hands-on training at your jobsite. We also hold regular product installation demonstrations; check your local branch for details.

Service

Our truck will roll out, cut, and drop panels at your jobsite so there's no crating or long lead times.

Estimating

A Harvey sales rep can visit your jobsite and address any questions before your job begins.

Profiles



Panels are available in steel, aluminum, copper and lead coated copper.

Stock Colors



Slate
Gray



Charcoal
Gray



Matte
Black



Burgundy



Colonial
Red



Forest
Green



Hartford
Green



Mansard
Brown



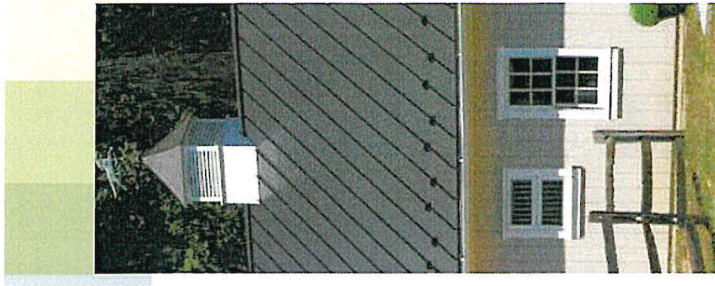
Medium
Bronze



Dark
Bronze

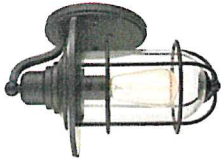


Drexelume



Lighting

Front
Sconces (2)



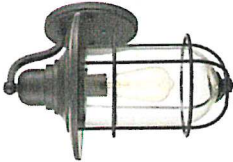
\$99.90

One Light Outdoor Wall Bracket

In Powder Coat Black by Millennium from the Nene collection.

- [Print Spec Sheet](#)
- [Email Product](#)
- [Ask a Question](#)
- SKU: 3630339
- Millennium#: 2931-PBK

Side door
sconce (1)



\$85.90

One Light Outdoor Wall Bracket

In Powder Coat Black by Millennium from the Nene collection.

- [Print Spec Sheet](#)
- [Email Product](#)
- [Ask a Question](#)
- SKU: 3630332
- Millennium#: 2921-PBK

Patio
hanging
lights (2)



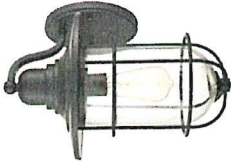
\$139.90

Three Light Outdoor Hanging Lantern

In Powder Coat Black by Millennium from the Belvoir collection.

- [Print Spec Sheet](#)
- [Email Product](#)
- [Ask a Question](#)
- SKU: 3630362
- Millennium#: 2697-PBK

Rear patio
Sconces (2)



\$85.90

One Light Outdoor Wall Bracket

In Powder Coat Black by Millennium from the Nene collection.

- [Print Spec Sheet](#)
- [Email Product](#)
- [Ask a Question](#)
- SKU: 3630332
- Millennium#: 2921-PBK

United States Department of the Interior
National Park Service

National Register of Historic Places
Continuation Sheet

Section number 7 Page 39

44. House (362 South Union Street); c.1900.

Built c.1900, this slate hip roofed, two and one-half story, three bay wide, Colonial Revival residence sits on a stone foundation and is fairly regular and formal in appearance. The 6/1 sash windows with molded jambs and shutters are arranged as singles, in pairs and in triples. The centrally positioned six panel front door which is surrounded by a leaded transom and sidelights to dado height is accentuated by a one story, gabled portico consisting of single Doric corner columns supporting a full entablature with modillions which in turn carries a pediment (also with modillions) and side balustrades consisting of shaped handrails and square balusters. The shallow hip roof of the main block projects slightly over the cornice with modillions and has small gable dormers on the north and east hips and a large pedimented wall dormer, bisected by an exterior chimney, on the south hip.

The south facade is dominated by a two story, two bay deep porch which also has Doric columns and a full entablature and is open on the first floor and accessible through French doors; a balustrade wraps the open front bay deck of the second story while the rear bay is enclosed by banks of 4/4 windows forming a sunroom. A small, one story entrance porch is located off-center on the east (rear) side. The entire structure is surfaced with clapboards and framed by corner boards.

44A. Garage (362 South Union Street); c.1925.

A square, clapboard sided, one story, two bay garage with a hip roof, two shuttered windows on the west and east facades and a small brick exterior chimney on the north facade, is located northeast of the main house. The roof is wood shingled, and has a broad gable above the garage doors on the south elevation. Each bay has a pair of hinged wooden doors.

44B. Garden House (362 South Union Street); c.1935.

Further east and up a rise from the garage is a small, one story, gable roofed, clapboard sided outbuilding with a doorway on the gabled west facade and three large windows facing the south.

Burlington Design Advisory Board

Department of Permitting and Inspections

645 Pine Street

Burlington, VT 05401

<http://www.burlingtonvt.gov/DPI/Boards/Design-Advisory-Board/>

Telephone: (802) 865-7188

Eric Morrow, Chair
Matt Bushey, Vice Chair
Tom Cullins
Ron Wanamaker
Karyn Norwood
Vacant, Alternate
Vacant, Alternate



DESIGN ADVISORY BOARD

Tuesday July 14, 2020

Remote Meeting via Zoom

Present: Eric Morrow, Matt Bushey, Ron Wanamaker, Karyn Norwood

Absent: Tom Cullins.

Staff present: Mary O'Neil, Ryan Morrison

Applicants and guests present: Greg Doremus, Bruce Baker, Willam Fellows, Tshen Shue

Session I – 3:00 PM – 3:15 PM

DAB Reorganizational Meeting for 2021

Appointments:

Chair: Eric Morrow

Vice Chair: Matthew Bushey

Representative to the PCOC: Matthew Bushey

Historic Preservation Review Committee: Karyn Norwood, Ron Wanamaker, Matthew Bushey.

Session II – 3:15 PM – 4:15 PM

20-0717CA/MA; 273 Pearl Street (RH, Ward 8E) Triple Tree Group, LLC (Bruce Baker, Greg Doremus)

Planned Unit Development involving 273 Pearl St, 11 Hungerford Terrace, 15 Hungerford Terrace, and 21 Hungerford Terrace. Demolish porch and move garage at 21 Hungerford; demolish garage at 11 Hungerford. Construct 12-unit residential building with related parking and supporting infrastructure.

Motion by Ron Wanamaker: I move we table the application to give the applicants an opportunity to identify design solutions.

2nd – Matthew Bushey

Vote 3-0 (Karyn Norwood not participating as she has not yet taken her oath of office.)

Motion carries.

Session III – 4:15-5:00 PM

3. 20-0971CA/CU; 362 South Union Street (RL, Ward 6S) William Fellows

Demolish garage and construct attached garage and second dwelling unit.

Motion by Matt Bushey: I move that we approve the demolition of the existing garage based on the applicant's sufficient reasons that warrant the demolition, including the additional documentation (photos); and that we approve the project as submitted. Further, with the applicant being an architect, he is qualified to make the determination that the garage is not structurally sound.

2nd: Ron Wanamaker

Vote: 3-0

Motion carries.

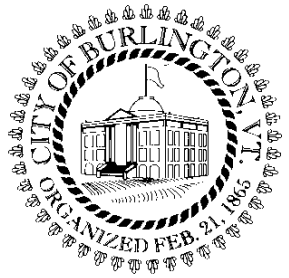
Session IV – 5:00-5:15 PM

Discussion of making motions, Roberts Rules relative to Zoom meetings.

Department of Permitting and Inspections

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

William Ward, Director
Theodore Miles, Interim Code Compliance Officer
Charlene Orton, Permitting and Inspections Administrator
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Alison Davis, Zoning Clerk

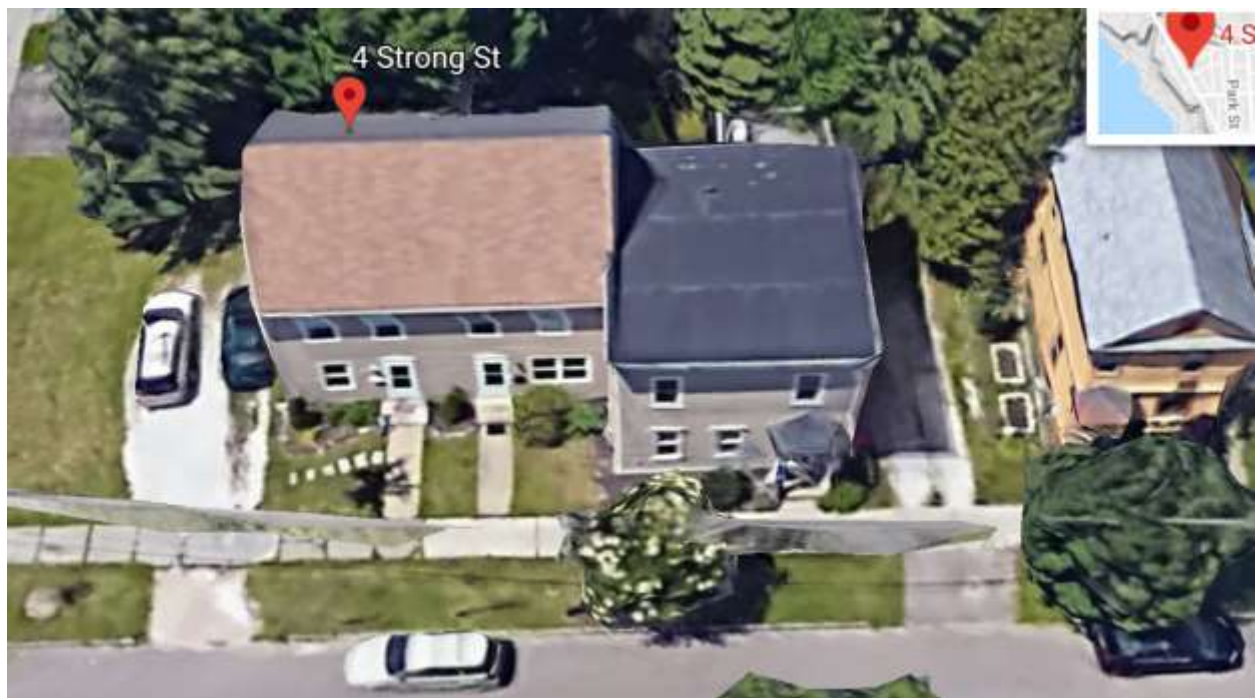


MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: August 4, 2020
RE: ZP20-0914CA / AP 4-8 Strong Street

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

File Number: ZP20-0914CA (Appeal)
Zone: RM **Ward:** 3C
Date application accepted: May 22, 2020
Date of Decision: May 29, 2020
End of Appeal Period: Saturday, June 13 2020
Date of Appeal submission: Tuesday, June 16 2020
Applicant/ Owner: Alan Bjerke
Appellant: Missa Aloisi
Request: Restore gravel driveways to same dimension, modify entry stairs to 8 Strong Street to meet code. No change to coverage. (4-8 Strong Street is a four-unit condominium complex.)



Background:

- **Zoning Permit 20-0506CA** (8 Strong Street Unit B), Replacement windows, replace exterior deck door with sliding glass door, install mini-split heat pump system. December 2019.
- **Zoning Permit 16-1328CA** (6 Strong Street), replace patio door. May 2016.
- **Zoning Permit 14-0131CA** (6 Strong Street), replace seven existing windows in non-historic ell of building. August 2013.
- **Zoning Permit 13-0449CA (Units 4 and 8A)**, replace thirteen windows on condominium building with new windows. October 2012.
- **Non-Applicability of Zoning Permit Requirements 11-0144NA**; replacement of deck with identical design, location and size. August 2010.
- **Zoning Permit 82-398 / COA 82-77**; Convert existing vacant structure to four residential units. Front setback decreases existing noncompliance. August 1982.
- **Request for variance of the required front yard setback (Public hearing 9/2/82)**, variance granted. Application withdrawn. Reference made to the plans of COA 82-77.

Overview: Property owner Alan Bjerke (and President of the Champlain Heights Condominium Association) submitted an application May 22, 2020 to *place a new garden shed, refresh driveways, modify entry stairs to 8 Strong Street for code compliance*. Upon staff review of the original application, concern was raised about inconsistency of the site plan with previously approved 20-0506CA, and the addition of a shed (ultimately removed from the request) which would unacceptably increase lot coverage.

A revised site plan, eliminating the shed and acknowledging previously approved driveway dimensions and setbacks on a scaled plan approved under 82-398 / COA 82-77 resulted in administrative approval May 29, 2020.

The appellant Missa Aloisi left a voicemail at the department general voicemail box on June 4, 2020 (within the appeal period). Due to limited and rotational staffing at the Department of Permitting and Inspections, the voicemail was not retrieved until after the appeal period had expired.

The 15 day appeal period ran through June 13, which was a Saturday.

The Planning Technician released the zoning permit electronically to the applicant Monday, June 15 2020.

The appellant contacted P&I staff Monday, June 15, 2020, and electronically filed an appeal June 16, 2020 (10:47 pm). Revisions to that appeal were submitted June 17, 2020.

The DRB must first ascertain whether the appeal is timely; that is, filed within the allotted 15-day appeal period. The DRB, upon an affirmative decision, may then review the substance of the appeal.

Recommended motion:

(On timeliness of appeal) The appellant's request to recognize a timely appeal fails if the scope is limited to factual submission of appeal documents. The unusual circumstances of scheduled rotation and limited staffing during the pandemic, however, beg an allowance for a phone inquiry made during the appeal period. Staff recommends **acknowledging the timeliness** of the appeal based on the most unusual context of limited staffing.

(On substance of appeal) The applicant and appellant's conflict is based largely on differing surveys. The appellant relies upon a land survey submitted for the purposes of fence installation (on the opposing property line of her parcel) the fence permit issued April 1996 (ZP96-479). The applicant has utilized the parcel survey recorded in the land records for the purpose of rehabilitating the structures for 4 units; certified and recorded in 1983. (ZP82-398 / COA 82-77.) Staff recommends **upholding the Certificate of Appropriateness approval**, based on a previously approved and scaled site plan for the rehabilitation and reuse of the property.

I. Findings

Article 3: Applications, Permits and Project Reviews

Section 3.1.2 Zoning Permit Required

(a) Exterior work

1. Additions to existing buildings, garages, accessory buildings, or other structures.

5. Alterations, changes, or modifications to building lots or sites related to site improvements including, but not limited to, increased lot coverage.

The original submission application requested a shed placed just off the driveway, which would have increased the existing level of non-conformity to lot coverage. Upon further review and examination of alternatives, this portion of the application was withdrawn by the applicant.

For purposes of "refreshing driveways", staff needed to confirm the existing and approved dimensions of the driveways so as not to increase lot coverage, change approved setbacks or diminish parking. Although the applicant has provided an annotation intending a 5' setback for the easterly driveway, the proposed setback was inconsistent given the approved and scaled site plan of ZP82-398 / COA 82-77. Such a setback would also diminish the previously approved parking, which acknowledged 8 parking spaces for the 4 unit use. Upon confirmation of those dimensions, and in consultation with the property owner, staff annotated the submitted site plan with driveway dimensions to be consistent with the 1983 site and parking approval. **Affirmative finding.**

Sec. 3.2.2 Application Types and Submission Requirements

(c) Certificate of Appropriateness (COA) Level I Application:

The application included a site plan (reduced from original size), annotated with the desired changes. Submission documents included photographs of the subject site. For purposes of a zoning permit application, the application was complete. **Affirmative finding.**

Section 3.2.4 Application, Forms and Fees

(b) Posting of Property:

Any applicant requesting a zoning permit shall display on the subject premises an application notice provided by the department of planning and zoning. The notice shall be clearly visible from a public way, shall be displayed at the time of application, and shall not be removed until after the expiration date of the appeal period. To the extent feasible, the public should be able to read the application notice from the public way.

The applicant was provided a red “Z” card, which was posted on the ground floor of the subject property. The applicant references the required posting in his appeal documents. **Affirmative finding.**

Section 3.2.9 Zoning Permits

(b) Permit Appeal Period:

No zoning permit granted by action of the administrative officer under this ordinance shall be released until a fifteen (15) day appeal period has passed. No zoning permit granted in association with a decision of the Development Review Board shall be released until a thirty (30) day appeal period has passed. In the event that a notice of appeal pursuant to the requirements of Article 12 is properly filed, the provisions of 24 V.S.A § 4449 (a) (3) shall control the effective date of the permit.

The application was administratively approved May 29, 2020. The 15-day appeal period expired Saturday, June 13, 2020. The zoning permit was electronically released by the Planning Technician June 15, 2020.

Permitting and Inspections staff was uninformed about the appellant’s concerns until after the permit had been released. **Affirmative finding** for permit release after the end of the appeal period.

Article 5: Citywide General Regulations

Part 3: Non-conformities

Section. 5.3.1 Purpose

These regulations are enacted for the purpose of governing all aspects of nonconformity, regardless of whether it is a use, a structure or a lot. As defined under Article 13, nonconformity means a use, structure or lot that was legal at the time it was constructed or laid out, but would not be lawful under the requirements of this ordinance. ...

In combination, these standards are intended to establish the property rights of individuals and organizations in a manner consistent with the overall goals of zoning and to promote the City's general health, safety, and welfare.

Section 5.3.3 Continuation

Except as otherwise specified in this Article, any nonconformity which lawfully existed at the time of passage of the applicable provisions of this or any prior ordinance or any amendment thereto may be continued subject to the provisions of this Part.

The applicant requests applying new surface material to existing driveways to the same dimension that was approved under ZP 82-398 / COA 82-77. As approved by the ZBA in 1983, setbacks differ from those required of the current ordinance. By this standard, the applicant may continue the same level of non-conformity. **Affirmative finding.**

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.

The application proposes the maintenance of the driveways by resurfacing with new gravel to the same dimensions approved under ZP82-398 / COA 82-77. **Affirmative finding.**

Article 8: Parking

Zoning Permit 82-398 / COA 82-77 established 8 parking spaces in two driveways for the 4 unit building. This application proposes “refreshing” the driveways with new gravel. Staff confirmed appropriate measurements from the original scaled plan to determine actual parking dimensions, and annotated the approved plan with those dimensions. To minimize the parking area by introducing a 5’ side yard setback (as suggested by the appellant) would render the parking deficient for the use and introduce new non-conformity to the lot. **Affirmative finding.**

Article 12: Variances and Appeals

Part 2: Appeals

Sec. 12.2.2 Appeals of Administrative Officer Decisions

Any interested person may take an appeal from any final order or decision of the administrative officer to the DRB within fifteen (15) days after the date of decision or act appealed from as follows:

(a) Notice of Appeal:

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

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

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

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

The appellant left a voice mail in the general mailbox of the Department of Permitting and Inspections June 4, 2020, within the 15-day appeal period. Due to limited and rotational staffing during the pandemic, that voice mail was not retrieved until after the appeal period had expired. The appellant then called Planning staff Monday, June 15, 2020 to request further information about the project. She was informed that the appeal period had expired 2 days prior, although on a weekend. The appellant then electronically submitted a notice of appeal June 16, 2020, with revisions submitted electronically June 17, 2020. Within her appeal documents, the appellant has provided supporting information relative to the timeliness of her appeal for DRB review.

Adverse finding for filing appeal within the 15-day window.

The survey to which the appellant refers was completed by Gordon G. Harlow in 1986. The validity of information on the plan is challenged by annotations made by an unknown party that include component identifications (“driveway”), measurements (insertions made freehand, not in the script of the surveyor), property owner name changes, and for whom the survey was completed. Such alterations, if lawful, would require a revised survey to embrace all changes. Without a formal revision, the accuracy of the survey is unsound.

II. Conditions of Approval

1. The specific condition of ZP20-0914CA required driveway dimensions to remain consistent with the previously approved plan.

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



Department of Permitting and Inspections

645 Pine Street
Burlington, VT 05401-8415
Phone: (802) 865-7188
Fax: (802) 865-7195

www.burlingtonvt.gov/dpi

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS: 4-6-8 Strong St

PROPERTY

OWNER*: Champlain Heights Condo Assoc

*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS: Strong St

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE:

EMAIL: AlanB72@aol.com

SIGNATURE:

I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this zoning permit application.

APPLICANT: Alan Bjerke, President

POSTAL ADDRESS: 145 Lakeview Ter

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE: 802 373-4199

EMAIL: AlanB72@aol.com

SIGNATURE:

Description of Proposed Project: Install new garden shed, refresh driveways, modify entry stairs to 8 Strong Street for compliance with NFPA 101

Existing Use of Property: ☐ Single Family ☐ Multi Family: # ___ Units ☒ Other: Condominium

Proposed Use of Property: ☐ Single Family ☐ Multi Family: # ___ Units ☒ Other: Condominium

- Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes ☐ No ☒

(If yes, the Vermont Residential/Commercial Building Energy Standards (VRBES/VCBES) apply. Please visit the following links for more information: http://publicservice.vermont.gov/energy_efficiency/rbes or http://publicservice.vermont.gov/energy_efficiency/cbes)

- Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes ☐ No ☒
(If yes, you will need to submit the 'Erosion Prevention and Sediment Control Plan' questionnaire, with a site plan)
- For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes ☐ No ☐
(If yes, you will need to submit the 'Stormwater Management Plan' questionnaire, with a site plan)
- Are you proposing any work within, below, or above the public right of way? Yes ☐ No ☒
(If yes, you will need to receive prior approval from the Department of Public Works)
- Are you proposing any onsite food or beverage production/manufacturing? Yes ☐ No ☒
(If yes, you will need to consult with Water Resources Division at the Department of Public Works: 863-4501)

Estimated Construction Cost (value)*: \$1,000

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Zoning Division at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only Zone: RM Eligible for Design Review? Y Age of House: Lot Size: 6296
Type: SN AW FC BA COA 1 COA 2 COA 3 GU MA VR HO SP DT MP
Check No: Amount Paid: Zoning Permit #:

20-0914CA July 20

PERMITTING
BURLINGTON
MAY 22 2020

RECEIVED

North Arrow

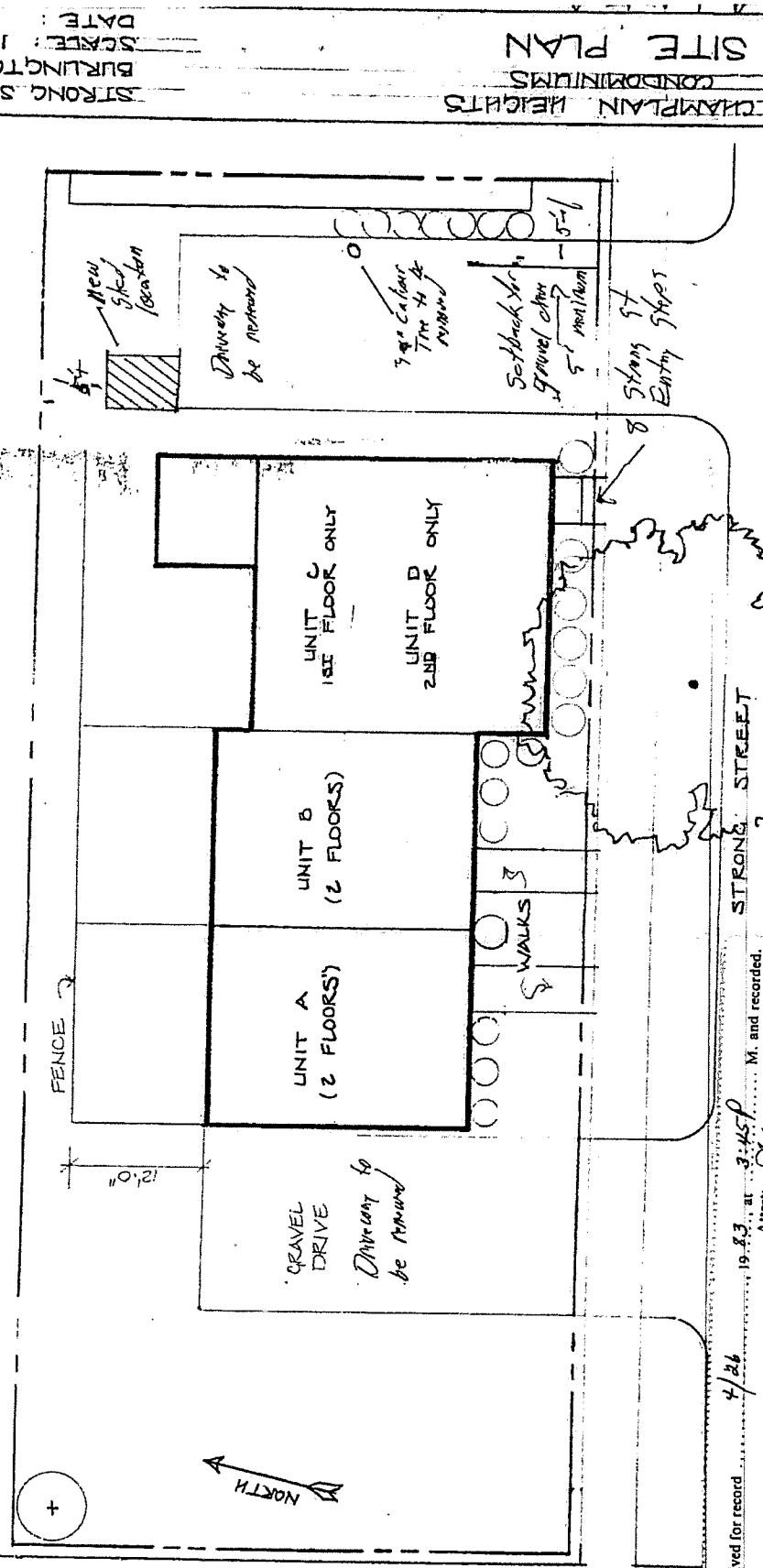
Champlain Heights
Condominium Assoc
at plan

THIS BUILDING IS CALLED
CHAMPLAIN HEIGHTS
CONDOMINIUMS

I CERTIFY THAT THIS SITE PLAN IS AN ACCURATE COPY OF THE SITE PLAN AS FILED AND APPROVED BY THE MUNICIPALITY OR OTHER GOVERNMENTAL SUBDIVISION HAVING JURISDICTION OVER THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF BUILDINGS TO THE EXTENT THAT SUCH FILINGS AND APPROVALS ARE REQUIRED BY LAW AND THAT THIS PLAN FULLY AND ACCURATELY DEPICTS THE LAYOUT OF THIS SITE.

THIS CERTIFICATE WAS
VERIFIED BEFORE ME ON THIS 26 DAY OF April, 1983,
Lucille B. Dumas
REG. ARCHITECT
NOTARY PUBLIC

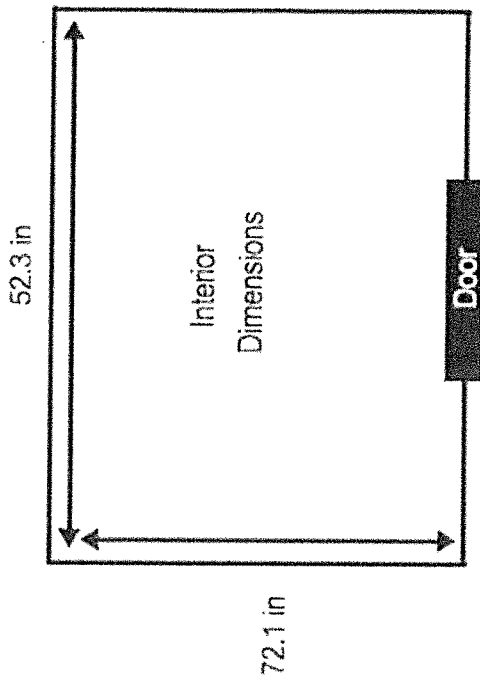
NOTE: ALL DIMENSIONS TO BE ± 1' 0"



CHAMPLAIN HEIGHTS
CONDOMINIUMS
SITE PLAN

STRONG ST. + NORTH AVE.
BURLINGTON, VERMONT
SCALE: 1" = 10' 0"
DATE: 10.10.83

Received for record 4/26 1983 at 3:45 P
Attest: John City Clerk
M. and recorded.



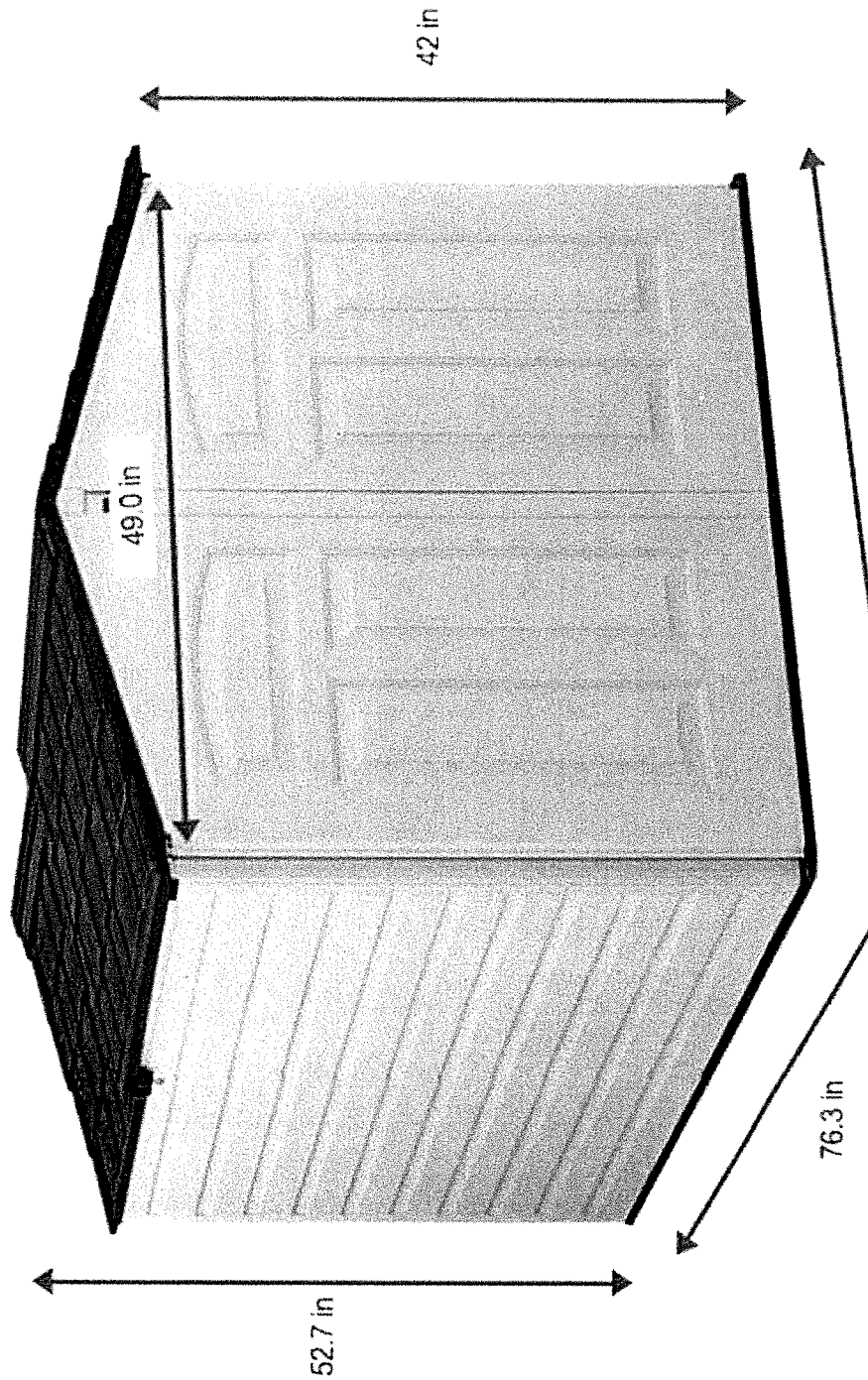
RECEIVED

MAY 22 2020

BURLINGTON
PERMITTING & INSPECTIONS

*Champlain Heights
Condominium Assoc
Proposed Shed*

Exterior
Dimensions





RECEIVED

MAY 22 2020

DURLINGTON
PETTING & INC. LATIONS

Champlain Heights Condo Assoc
Existing Entrance to 8 Strong St
101 E. 6



Champlain Heights Condo Assoc
Western parking area
Alan Berke

RECEIVED
MAY 22 2020
BURLINGTON
PERMITTING & INSPECTIONS



RECEIVED

MAY 22 2020

BURLINGTON
PERMITTING & INSPECTIONS

Champlain Heights Condo Assoc
Eastern Parking area
Alan Byrne

Alan Bjerke

May 20, 2020

Burlington Permitting & Inspections
645 Pine Street
Burlington, VT 05401

Re: Zoning Permit Application
Champlain Heights Condominium Assoc
4-8 Strong St

RECEIVED

MAY 22 2020

BURLINGTON
PERMITTING & INSPECTIONS

Dear Friends,

Enclosed please find a zoning permit application for the Champlain Heights Condominium Association on Strong St.

Champlain Heights Condominium Association project encompasses 3 projects:

1. Install a new outdoor storage shed
2. Renew the gravel parking areas
3. Modify the entry stairs

The first proposal is to install a new outdoor storage shed and any other property maintenance items. The shed will be installed in the back easterly driveway, at least 5' from the rear and more than 10' from any sideline of the property. The proposed shed is approximately 5' wide, 6' deep and 4.5' high. The shed is manufactured by Rubbermaid, made of poly and very similar in color to the existing condominium building.

*Garage
- 8 ps?
- set back
- "refresh"
emailed 5/27/20*

in compliance with fire codes.

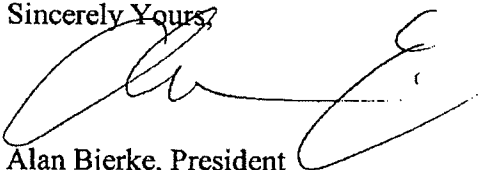
storage of a lawn mower, snowblower, etc. As shown on the lot plan enclosed, the shed will be installed in the back easterly driveway, at least 5' from the rear and more than 10' from any sideline of the property. The proposed shed is approximately 5' wide, 6' deep and 4.5' high. The shed is manufactured by Rubbermaid, made of poly and very similar in color to the existing condominium building.

The second proposal is to renew the 2 gravel parking areas on the east and west side of the building. The eastern parking area was originally permitted to be as close as 3' to the neighboring house to the east. The renewed parking area will add new gravel, but maintain a distance of at least 5' from the property sideline. One small tree (3" caliper) would be removed. The western parking area will be refreshed with new gravel in its existing location.

The third proposal is to modify the entry stairs into the two units served by the entryway at 8 Strong St. Presently the stair riser heights vary from 5" to 12". This proposal would be to add concrete as well as possibly a surface stone (such as blue stone) to make each stair riser a consistent 8" each and in all other ways in compliance with NFPA 101 7.2.2.2.1.

If I can be of any further assistance to you, please do not hesitate to contact me.

Sincerely Yours,



Alan Bjerke, President
Champlain Heights Condominium Association

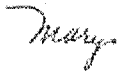
Mary O'Neil

From: Mary O'Neil
Sent: Thursday, May 28, 2020 2:24 PM
To: alanb72@aol.com
Subject: RE: zoning permit application

Alan,

You get the setbacks there were approved on the earlier permits – no less. Parking areas, by this ordinance must be from property lines, and your approved plan shows something less than that.

Your driveways have to accommodate 8 parking spaces. That is 2 sets of tandem spaces in each driveway. No narrow. A compliant driveway for tandem spaces has to be at least 38' in length (20' regular car and 18' compact.) If the provided scale on your plan is correct, the easterly driveway is 38' long; compliant length for 2 parking spaces. There doesn't appear to be room at the end for your shed. Unless you remove some other feature, you are out of coverage.



*** Please note that this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act*

From: alanb72@aol.com <alanb72@aol.com>
Sent: Thursday, May 28, 2020 9:50 AM
To: Mary O'Neil <MCOneil@burlingtonvt.gov>
Subject: Re: zoning permit application

[WARNING: External Message]

Hello Mary,

Thanks for your note and the follow up. Below please find my responses to your questions, as well as a couple questions of my own:

1. What does "refresh driveways" mean? New gravel?

So the existing driveways are quite worn and lumpy. There are depressions where car tires have been driven for years making the ruts lower than the sidewalk and mounds which are higher than the sidewalk in between. The hope is to be able to level the parking areas and bring in fresh gravel to give it a uniform look and level surface for parking, snowblowing, etc.

2. You have indicated a 5' setback on the driveway, which changes the driveway size already been approved under 20-0506CA. This may eliminate some of the required 8 parking spaces required of the use and originally permitted. (It would be helpful to have dimensions on the plan.) If you can still provide the required spaces, the narrowed driveway need to be reflected in the coverage calculation.

The original permit is quite "thin," so I was not aware of the provision for 8 parking spaces. What I was trying to do was to comply with 5.3.2 as I believe that the actual eastern driveway size has shrunk to less than 2 vehicles wide for well over 60 days. Bringing it to 5' of the eastern neighbor's property line would give us a 14' wide driveway, which is not ideal for side by side parking. If I can expand the driveway to 16', that would be preferred and in keeping with the original plan and permit requirements.

So here's my question: The table at 4.4.5-3 has a note 6 which states:

6. Where there are fewer than 2 adjacent lots on both sides within the same block having the same street frontage, the average side yard setback shall be calculated from the fewer number of lots. Where there are no adjacent lots, the setback shall be 10% of the lot width.

This lot is on the northern corner of Strong St & North Ave. There is no lot on the western side, as it is bounded by North Ave. There are two other lots on that side of Strong St on the block: No. 14 has less than 2' of side setback on each side. No. 18 is on the corner with Drew St. Does Note 6 mean that instead of the 5' minimum side setback, I can have the same 2' side setback as the neighbor at No. 14?

Is the 3' setback originally permitted allowed to continue as mandated by the 8 space parking requirement?

3. Your narrative states the shed will meet the required 5' boundary line setback, but the site plan has 4' noted. It is to be 5' minimum.

I intended to write 5'+ on the site plan but I confess my writing is not particularly legible. I think what you think is a 4' plus sign to the right of the "5."

4. You have not included a coverage calculation with your plan. This should include the new shed and narrowed driveway.

My Apologies, I should have included a coverage calculation.

The lot size per ZP82-398 is 6,250 sq. ft.

The existing building is 1,695 sq. ft.

The pre-approved/proposed driveways are 16 x 30 ea for a total of 960 sq. ft.

Total existing coverage is 2,655 sq. ft.

Walkways & porches total 150 sq. ft. which is less than 10% of the lot per 4(d)3A

RM coverage max is 40% or 2500 sq. ft.

Total building & driveway coverage is 2,655 sq. ft.

So I am already over coverage by 155 sq. ft.

The proposed garden shed is 30 sq. ft.

If I narrow each existing driveway by 1/2' or shorten them by 1 foot, I can get 30 sq. ft. Can I substitute the garden shed for shrinking the driveways because I am not expanding the non-conformity (ie. coverage)?

Any other brilliant ideas on how to solve this dilemma? The overall appearance of the property would be much improved if the lawnmower wasn't chained to the gas meters . . .

Thanks,

Alan Bjerke
802 373-4199

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

From: Mary O'Neil <MCOneil@burlingtonvt.gov>

To: alanb72@aol.com <alanb72@aol.com>

Sent: Thu, May 28, 2020 9:17 am

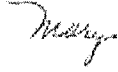
Subject: RE: zoning permit application

Hello Alan,

Attached is the full plan set for ZP20-0506CA, that approved site plan, and the original permit that approved the four residential units: ZP82-398. The latter indicates the 8 parking space requirement.

This is within the Neighborhood Parking District, which requires 2 parking spaces per unit. You can understand my concern about narrowing your driveway, as it will likely make you non-conforming to required parking.

The shed will increase your lot coverage, so a calculation will be required. This is the RM zoning district, limited to 40% lot coverage (with allowance for an additional 10% for open amenities like open porches, terraces, patios, decks and walkways.)



**** Please note** that this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act.

From: alanb72@aol.com <alanb72@aol.com>
Sent: Wednesday, May 27, 2020 9:11 PM
To: Mary O'Neil <MCOneil@burlingtonvt.gov>
Subject: Re: zoning permit application

WARNING: External Message

Hi Mary,
When I asked to look at the zoning files I did not see a permit under 20-0506CA.

Is it possible to come in and look at the file, get it scanned and sent to me or some other method for me to see the application and permit for the condo assoc? Once I can see that, I should have answers to all of your questions.

Thanks!

Alan Bjerke
802 373-4199

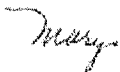
-----Original Message-----

From: Mary O'Neil <MCOneil@burlingtonvt.gov>
To: alanb72@aol.com <alanb72@aol.com>
Sent: Wed, May 27, 2020 12:54 pm
Subject: zoning permit application

Hello Alan,

I am the project manager assigned to your zoning permit request for 4-6-8 Strong Street. A couple of questions:

1. What does "refresh driveways" mean? New gravel?
2. You have indicated a 5' setback on the driveway, which changes the driveway size already been approved under 20-0506CA. This may eliminate some of the required 8 parking spaces required of the use and originally permitted. (It would be helpful to have dimensions on the plan.) If you can still provide the required spaces, the narrowed driveway will need to be reflected in the coverage calculation.
3. Your narrative states the shed will meet the required 5' boundary line setback, but the site plan has 4' noted. It has to be 5' minimum.
4. You have not included a coverage calculation with your plan. This should include the new shed and narrowed driveway.



Mary O'Neil, AICP
Principal Planner
Coordinator, Certified Local Government Program
645 Pine Street
Burlington, VT 05401
mconeil@burlingtonvt.gov
802.865.7188 office



THIS BUILDING IS CALLED
CHAMPLAIN HEIGHTS
CONDOMINIUMS

I CERTIFY THAT THIS SITE PLAN IS AN ACCURATE COPY OF THE SITE PLAN
AS FILED AND APPROVED BY THE MUNICIPALITY OR OTHER GOVERNMENTAL SUBDIVISION
HAVING JURISDICTION OVER THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF
BUILDINGS TO THE EXTENT THAT SUCH FILINGS AND APPROVALS ARE REQUIRED BY LAW
AND THAT THIS PLAN FULLY AND ACCURATELY DEPICTS THE LAYOUT OF THIS SITE.

THIS 26 DAY OF April 1983

Michael J. Brown
REG. ARCHITECT

THIS CERTIFICATE WAS
VERIFIED BEFORE ME ON THIS 26 DAY OF April 1983

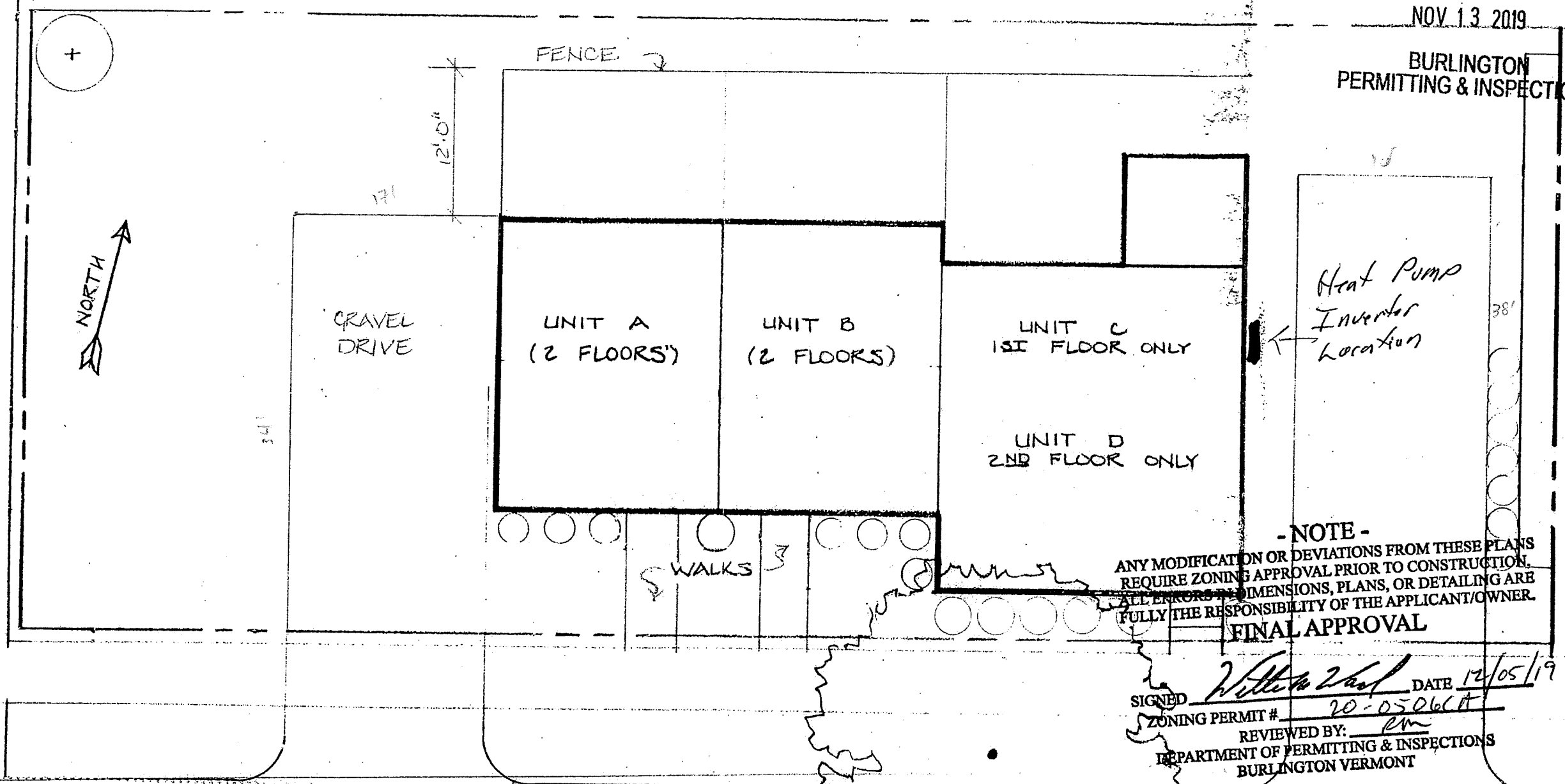
Lucille G. Amour
NOTARY PUBLIC

NOTE: ALL DIMENSIONS TO BE $\pm 1" 0"$

RECEIVED

NOV 13 2019

BURLINGTON
PERMITTING & INSPECTIONS



- NOTE -
ANY MODIFICATION 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 William A. Zuel DATE 12/05/19
ZONING PERMIT # 20-0506CA
REVIEWED BY: RM
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

7A

Received for record 4/26, 1983, at 3:45P M. and recorded.
Attest: [Signature]

STRONG STREET

ZP 20-0506CA

CHAMPLAIN HEIGHTS
CONDOMINIUMS
STRONG ST. & NORTH AVE.



ZONING PERMIT
CERTIFICATE OF APPROPRIATENESS

City of Burlington, Vermont
Department of Permitting and Inspections

Application Date: 05/22/2020

Appeal Expiration Date: 06/13/2020

Project Location: 4-8 STRONG STREET

District: R1

Owner: Champlain Heights Condominium Association

Ward: 3

Address: 8A STRONG ST
BURLINGTON VT 05401

Tax ID: 043-3-177-00

Project Type: Residential - Site Imp/Landscaping/Parking/Fence

Project Description: Restore gravel driveways to same dimension, modify entry stairs to 8 Strong St. No change to coverage.

Construction Cost:	\$1,000.00	Lot Size (Sq Ft):	6,270
Net New Habitable Sq Ft:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	0.00	Existing # of Parking Spaces:	8
Proposed % Lot Coverage:	0.00	Proposed # of Parking Spaces:	8
Net New % Lot Coverage:	0.00	Required # of Parking Spaces:	8

Zoning Permit #: 20-0914CA

Decision By: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Decision Date: May 29, 2020

Project File: NA

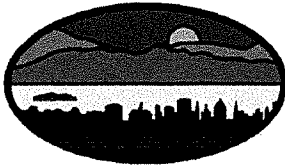
Zoning Administrative Officer

An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on June 13, 2020.

Fee Type	Amount	Paid in Full	Balance Due: \$0.00
Application Fee(s):	\$70.00	Y	Date Paid: _____
Development Review Fee:	\$0.00	NA	Check # _____
Land Records Filing Fee:	\$15.00	Y	
Impact Fees:	Not Applicable		Building Permit Required: Yes

Permit Received by: Mailed

Date: 6.15.20



City of
Burlington, Vermont
645 Pine Street

Zoning Permit - COA Level I – Conditions of Approval

ZP #: 20-0914CA

Tax ID: 043-3-177-000

Issue Date: May 29, 2020

Decision: Approved

Property Address: 4-8 STRONG STREET

Description: Restore gravel driveways to same dimension, modify entry stairs to 8 Strong St. No change to coverage.

Project Permit Conditions:

1. Driveway dimensions shall remain consistent with those approved under ZP20-0506CA.

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 **August 27, 2021**. 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 **August 27, 2023**, 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.

CHAMPLAIN HEIGHTS CONDOMINIUMS

THIS BUILDING IS CALLED

I CERTIFY THAT THIS SITE PLAN IS AN ACCURATE COPY OF THE SITE PLAN AS FILED AND APPROVED BY THE MUNICIPALITY OR OTHER HAVING JURISDICTION OVER THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF BUILDINGS TO THE EXTENT THAT SUCH FILINGS AND APPROVALS ARE REQUIRED BY LAW AND THAT THIS PLAN FULLY AND ACCURATELY DEPICTS THE LAYOUT OF HIS SITE

THIS 26 DAY OF APRIL, 1983

THIS CERTIFICATE WAS VERIFIED BEFORE ME ON THIS DAY 0

N 36 April 1983 Ruelle & Assoc

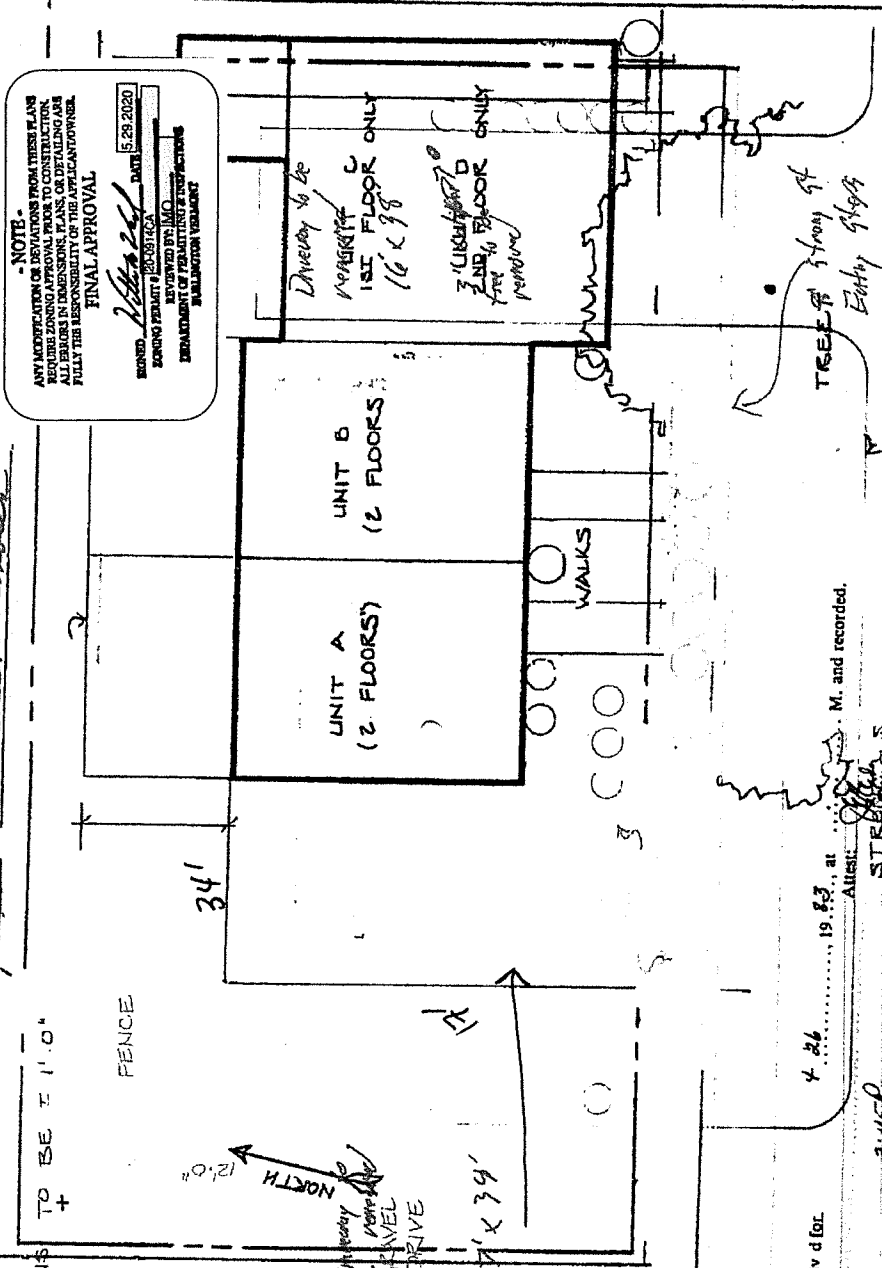
NOTARY PUBLIC

NOTE: ALL DIMENSIONS TO BE ± 1' 0"

NOTE: ANY MODIFICATION OR DEVIATION FROM THESE PLANS WITHOUT THE JUDICIAL APPROVAL OF THE NOTARY PUBLIC IS A VIOLATION OF THE BUILDING ACT AND THE APPLICANT WILL BE FULLY RESPONSIBLE FOR THE CONSEQUENCES OF SUCH VIOLATION.

SIGNED: Michael J. Ruelle DATE: 5-28-2020
 EXPIRING PERMIT: RECURRING
 DEPARTMENT OF PERMITTING AND INSPECTION
 BUILDING DEPARTMENT

FINAL APPROVAL



CHAMPLAIN HEIGHTS CONDOMINIUMS SITE PLAN

Received for: 1983 at 4:26 M. and recorded.

Alfred: 3:45P STREET CITY CLERK

Champlain Heights Condominium Assoc
 Attached Site Plan
 129/20

CHAMPLAIN HEIGHTS CONDOMINIUMS

THIS BUILDING IS CALLED

I CERTIFY THAT THIS SITE PLAN IS AN ACCURATE COPY OF THE SITE PLAN AS FILED AND APPROVED BY THE MUNICIPALITY OR OTHER GOVERNMENTAL SUBDIVISION HAVING JURISDICTION OVER THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF BUILDINGS TO THE EXTENT THAT SUCH FILINGS AND APPROVALS ARE REQUIRED BY LAW AND THAT THIS PLAN FULLY AND ACCURATELY DEPICTS THE LAYOUT OF THIS SITE.

THIS CERTIFICATE WAS
VERIFIED BEFORE ME ON THIS 26 DAY OF April, 1988,
THIS 26 DAY OF April, 1988,
REG. ARCHITECT
Richard B. Dumas
NOTARY PUBLIC

DIMENSIONS TO BE ± 1' 0"

- NOTE -

ANY MODIFICATION 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

ZONING PERMIT #

REVIEWED BY:

DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

DATE

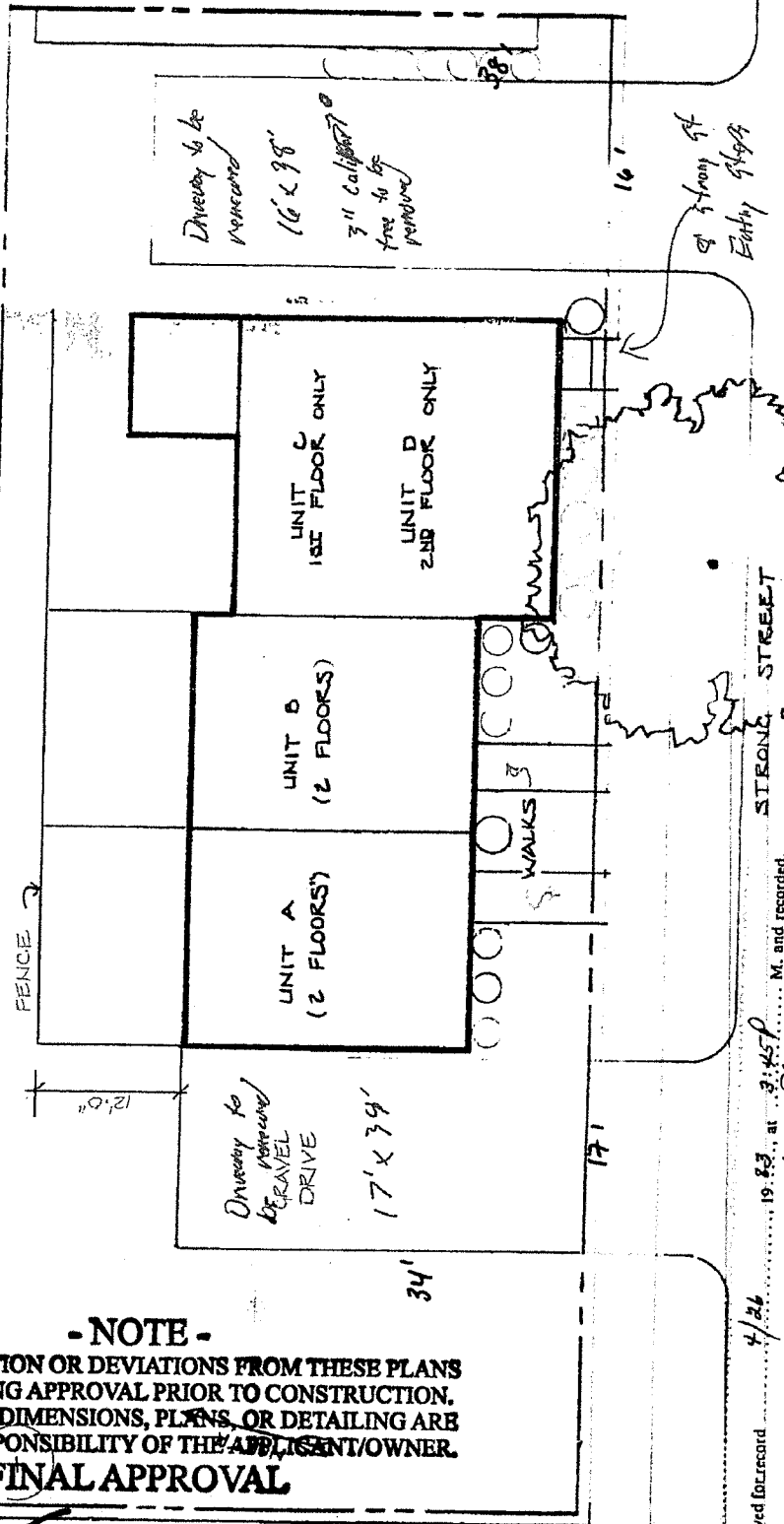
5/29/20

20-0914/CA

Champlain Heights
Condominium Assoc
Approved Site Plan
5/29/20

CHAMPLAIN HEIGHTS
CONDOMINIUMS
SITE PLAN

STRONG ST. + NORTH AVE.
BURLINGTON, VERMONT
SCALE: 1" = 10' 0"
DATE:



19 88, at 3:45P, M. and recorded.
Attest: *[Signature]*
City Clerk

Received Recorded

4/24



Department of Permitting and Inspections

645 Pine Street
Burlington, VT 05401-8415

Phone: (802) 865-7188

Fax: (802) 865-7195

www.burlingtonvt.gov/dpi

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: 8 Strong Street

Subject Property Owner: Alan Bjerke

Appellant: Missa Aloisi

Agent/Representative: _____

Mailing Address: 14 Strong Street

City, St, Zip: Burlington, VT 05401

Day Phone: 802-793-9840 **Email:** missa.aloisi@gmail.com

Appellant Signature: *Missa Aloisi* **Date:** 6/16/20

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. _____ Amount Paid _____ Zoning Permit # _____



Appeal

To: Mary O'Neal
Regarding: Zoning Permit #20-0914CA
Date: 06/16/20

Consideration for late appeal submittal description

I have questioned the location of the property line to the applicant and sent him the surveyed drawing in an email dated May 23, 2020 that showed a different property line location than the one on his drawing – even with this new drawing the applicant did not correct his site plan.

June 4, 2020 at 2:26PM I left a message in the main voicemail box of the City's Planning and Zoning department asking to speak with the planner assigned to 8 Strong street and stated my concerns regarding a disputed property line location. This phone call was never returned.

6/15/20 see email exchange attachments – Scott stated that there was no permit application for 8 Strong Street.

6/15/20 around 2:45 the applicant came by the property to mark out dig safe and stated to me that Mary had given permission to put the driveway within three feet of our home, 2' from the property line. This was different information he gave us stating that the driveway would be located 5' from the property line.

Spoke with Mary on the phone at 3:14PM she stated that the appeal period ended on 6/13/20

6/16/20 – I called the City's planning and zoning office to again see if there was any action I could take. I spoke with Alison Davis who attempted to look up the application and again stated that no permit had been filed for this as there is no record in the database. This is the same information Scott stated. Alison emailed Scott and Mary regarding this matter – see email attachment

6/16/20 see email exchange attachment – Scott stated that after communicating with the City attorney that technically I had until 6/15/20 to file for appeal. Had any planner mentioned that this was a possibility I would have filed an appeal immediately.

In summary:

I would like my late appeal to be accepted for review as I had reached out to the City while the permit was still in the appeal period 6/4/20 and no one returned my call and when I followed up with an email regarding this permit (still within the appeal period) I was told that it didn't exist and that no permit had been filed. Only after speaking with the applicant later that day had I learned that the appeal period had ended and that a new site plan, which still contained the dimensional discrepancies that were of concern had been approved.

Description of the decision under the appeal

Zoning permit #20-0914CA grants approval to renew driveways based on dimensional description on approved site plan. East driveway is approved at 16' wide and 38'-0" long and scaled location.

Description of the property

HINGE

8 Strong street is part of a 4 unit Condominium adjacent to 14 Strong street. See attached site plan for details.

Reference to the regulatory provisions applicable to the appeal

Article 6: Development Review Standards (i) Vehicular Access: In a residential district, driveways and parking areas shall be set back a minimum of 5' from side and rear property lines.

The site plan submitted by the applicant shows a dimension of 5'-6" from edge of driveway to the property line at 14 Strong street. Dimensional discrepancies exist on this site plan as depicted on my submitted site plan dated 06/16/20

Furthermore the applicant's description of the driveway location in his narrative submitted along with the application, dated May 18, 2020 describes the location of the driveway as follows "The eastern parking area was originally permitted to be as close as 3'-0" to the neighboring house to the east. The renewed parking area will add new gravel, but maintain a distance of at least 5'-0" from the side of the property sideline."

Relief requested by the appellant

We are requesting that the eastern side of the driveway at 8 Strong Street begins at least 5'-0" from the property line of 14 Strong Street, as is stated in the original narrative submitted by the applicant. The site plan attached provides accurate and corrected dimensions between the adjacent properties and should supersede the applicant's incorrect site plan. It shows the maximum allowable width which would accommodate 2 parked cars in tandem.

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

There are dimensional discrepancies on the applicant's submitted site plan. The applicant used a previously approved site plan that was incorrect. These dimensions are also in conflict with applicant's own description of driveway location.

END OF APPEAL

6/16/2020

Gmail - questions



missa aloisi <missa.aloisi@gmail.com>

questions

missa aloisi <missa.aloisi@gmail.com>

Mon, Jun 15, 2020 at 1:00 PM

To: Scott Gustin <SGustin@burlingtonvt.gov>

Scott,

I have 3 different questions that I am hoping you can answer/give guidance on.

8 strong street - my neighbor applied to redo his driveway - he is proposing expanding it based on what is currently there. We have had some disputes about where the property line exists. Is it possible to put into approval language that the driveway be no wider than the portion in the greenbelt? as his plan does not have dimensions but based on is arbitrary 5' from the property line this would be wider than that.

Thank you for your time,
Missa

6/16/2020

Gmail - questions



missa aloisi <missa.aloisi@gmail.com>

questions

Scott Gustin <SGustin@burlingtonvt.gov>
To: missa aloisi <missa.aloisi@gmail.com>

Mon, Jun 15, 2020 at 2:12 PM

Hi Missa,

There's no zoning application yet for driveway work (or anything else) at 8 Strong Street. Without seeing a site plan, there's not much I can offer. Driveways are limited to 18' width. Narrower could be required due to setback and/or lot coverage constraints. I'll keep an eye out, though.

Vinyl windows are generally acceptable per the design review standards of Part 3: Architectural Standards of Article 5. Materials as a specific consideration come into play under the historic preservation standards of Sec. 5.4.8 of Article 5. is included in the VT historic register, so wooden (or clad wooden) windows would need to be used.

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

From: missa aloisi [mailto:missa.aloisi@gmail.com]
Sent: Monday, June 15, 2020 1:12 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Subject: questions

[WARNING]: External Message

[Quoted text hidden]

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.

6/16/2020

Gmail - 8 strong street



missa aloisi <missa.aloisi@gmail.com>

8 strong street

12 messages

missa aloisi <missa@hingeincvt.com>

Mon, Jun 15, 2020 at 3:04 PM

To: Mary O'Neil <MCOneil@burlingtonvt.gov>

Cc: Scott Gustin <SGustin@burlingtonvt.gov>

I have a driveway dispute with my neighbor who you just approved a permit for? Is it possible to give me a call to discuss asap 802-793-9840

Thank you,
Missa

--

Missa Aloisi R.A., LEED AP BD+C, SEED member

.....
HINGE architecture & BLANK SLATE coworking
www.hingeincvt.com www.blankslatecoworking.com
(p) 802.923.3088 (e) missa@hingeincvt.com

.....
please note that I am not in the office on Fridays

Mary O'Neil <MCOneil@burlingtonvt.gov>

Mon, Jun 15, 2020 at 3:20 PM

To: missa aloisi <missa@hingeincvt.com>

Here you go~

**** Please note that this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act**

From: missa aloisi <missa@hingeincvt.com>

Sent: Monday, June 15, 2020 3:04 PM

To: Mary O'Neil <MCOneil@burlingtonvt.gov>

Cc: Scott Gustin <SGustin@burlingtonvt.gov>

Subject: 8 strong street

6/16/2020

Gmail - 8 strong street

[WARNING]: External Message

[Quoted text hidden]

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.



Strong.4-8.Approved.plan..pdf
209K

missa aloisi <missa@hingeincvt.com>
To: Mary O'Neil <MCOneil@burlingtonvt.gov>
Cc: missa aloisi <missa@hingeincvt.com>

Mon, Jun 15, 2020 at 4:3

Mary,

Attached is a Civil drawing for my property. It does not have a driveway on it but clearly shows dimensional differences from Alan's site plan (the property line) is a big one. Given that I left a message in the general mailbox last week - do I have any grounds to appeal given I never received a phone call back. asking to ask the question as we are really upset we missed the appeal timeline.

Thank you for your time,
Missa

[Quoted text hidden]



IMG_4560.JPG
2339K

missa aloisi <missa@hingeincvt.com>
To: Mary O'Neil <MCOneil@burlingtonvt.gov>

Mon, Jun 15, 2020 at 4:4

could you also send me your findings.

Thank you,
Missa

On Mon, Jun 15, 2020 at 3:21 PM Mary O'Neil <MCOneil@burlingtonvt.gov> wrote:

[Quoted text hidden]

[Quoted text hidden]

missa aloisi <missa@hingeincvt.com>
To: Mary O'Neil <MCOneil@burlingtonvt.gov>, Scott Gustin <SGustin@burlingtonvt.gov>

Mon, Jun 15, 2020 at 8:5

Hi Mary and Scott,

I've reviewed the new site plan for 8 Strong, it provides driveway dimensions, but not the specific location. Alan provide me a copy of the application in his letter dated May 18th describing the renewed driveway as follows "The eastern park area was originally permitted to be as close as 3' to the neighboring house to the East. The renewed parking area will a new gravel but maintain a distance of at least 5' from the property sideline." The site plan originally submitted also state that a 5'-0" setback to be maintained. We agree with this assessment of the start of the driveway in regards to location. gave a call and left a voicemail in the general mailbox last week (6/4/20) stating that I wished to speak with a planner regarding a disputed location of this setback and driveway placement. I never received a call back and the appeal per

6/16/2020

Gmail - 8 strong street

has now expired. Alan (the applicant) approached me this afternoon to inform me that he received approval to lay gravel from his property out 20' - this would place the start of the driveway within 2' of our property line. The site plan that was approved indicates a 16'-0" wide driveway. According to the surveyed site plan I sent you dated 4/30/96 there is 22' from the property line at 14 strong street to the face of building 8 strong street minus the setback of 5' and 2' for bollards at strong street. This puts the max width at 15' (see attached sketch). This width cannot accommodate 2 side by side parking spaces.

When scaled, the plan that was submitted begins 5'-0" from the property line which is correct even though the location of the property line is depicted incorrectly.

Mary, you mentioned on the phone a process for correcting dimensional discrepancies. Alan would like to begin construction this week so this is time sensitive. Could you please advise what those next steps would be? Also, there must be a record of my phone call to take note of as well.

Thank you very much for your time.

Best,
Missa

[Quoted text hidden]

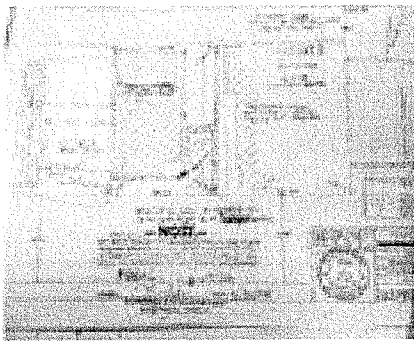


Image-1.jpg
674K

Mary O'Neil <MCOneil@burlingtonvt.gov>

Tue, Jun 16, 2020 at 8:2

To: missa aloisi <missa@hingeincvt.com>, Scott Gustin <SGustin@burlingtonvt.gov>

Missa,

The application was to "renew" the existing driveways. He provided a copy of an earlier approved site plan, which was scaled. We utilized that plan to scale the dimensions of the approved driveway dimensions, which were annotated on the new site plan.

If he is changing the location of the driveways, that may be an issue. But as we discussed the appeal period has passed and he has a valid approval in hand.

The approval stamp states that errors in dimensions or plans, the applicant/owner bears the responsibility. As Alan utilized the preexisting approved site plan, to challenge his new approval would require that you demonstrate the earlier plan was faulty as well.

[Quoted text hidden]

missa aloisi <missa@hingeincvt.com>

Tue, Jun 16, 2020 at 9:0

To: Mary O'Neil <MCOneil@burlingtonvt.gov>

Cc: missa aloisi <missa@hingeincvt.com>, Scott Gustin <SGustin@burlingtonvt.gov>

I do want to demonstrate the earlier plan was faulty. What are the next steps?

[Quoted text hidden]

missa aloisi <missa@hingeincvt.com>

Tue, Jun 16, 2020 at 9:1

To: Amy Escott <amyescott@elsvt.com>

6/16/2020

Gmail - 8 strong street

Can you provide me with any guidance to this....is there anything we can do?

[Quoted text hidden]

Mary O'Neil <MCOneil@burlingtonvt.gov>
To: missa aloisi <missa@hingeincvt.com>

Tue, Jun 16, 2020 at 10:31 AM

There are no findings. It was an administrative permit.

[Quoted text hidden]

Amy Escott <amyescott@elsvt.com>
To: missa aloisi <missa@hingeincvt.com>

Tue, Jun 16, 2020 at 2:31 PM

Hi Missa,

I am drinking from a fire hose right now so it might be later in the week before I can even think about looking into this!!

so sorry!

Just wanted you to know I am not ignoring you!

Amy Escott, Esq.
Escott Legal Services, PLC

20 Kimball Ave., Suite 201B
South Burlington, Vermont 05403
Tel: 802.495.0731
Fax: 802.495.0889
amyescott@elsvt.com
www.elsvt.com

!!!!!!BE AWARE!!!!!! WIRE AND ONLINE BANKING FRAUD IS ON THE RISE! If you receive an email that appears to be from our office containing wire transfer instructions, ALWAYS call the staff member or attorney you are working with immediately using our phone number to verify the information prior to sending funds.

The information contained in this e-mail is intended for the use of the named recipient only. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by using your reply option to advise us of such error. Thank you.

From: missa aloisi <missa@hingeincvt.com>
Sent: Tuesday, June 16, 2020 9:12 AM
To: Amy Escott <amyescott@elsvt.com>
Subject: Fwd: 8 strong street

[Quoted text hidden]

Scott Gustin <SGustin@burlingtonvt.gov>
To: Missa Aloisi <missa@hingeincvt.com>
Cc: Mary O'Neil <MCOneil@burlingtonvt.gov>

Tue, Jun 16, 2020 at 3:11 PM

Good afternoon Missa

6/16/2020

Gmail - 8 strong street

I've checked in with the city attorney as to this matter. Here's the upshot: The appeal period for the zoning permit question ran through June 13, which is a Saturday. An appeal of the zoning permit could, therefore, be submitted as late as Monday, June 15. That did not happen.

You may choose to file an appeal anyway; however, you will need to demonstrate to the DRB why the late appeal can be considered. The Board could dismiss the appeal as untimely, or they could consider it. I've attached the appeal form to this email. The appeal fee is \$250.

Some weeks ago, I had requested that our admin staff check the main line voicemails while working remotely. I'll follow up as to this particular matter.

Scott

Scott Gustin, AICP, CFM

Principal Planner & Asst. Administrative Officer

Dept. of Permitting & Inspections

645 Pine Street

Burlington, VT 05401

(802) 865-7189

[Quoted text hidden]

 **appealform 2019.pdf**
38K

missa aloisi <missa@hingeincvt.com>

To: Scott Gustin <SGustin@burlingtonvt.gov>

Cc: Missa Aloisi <missa@hingeincvt.com>, Mary O'Neil <MCOneil@burlingtonvt.gov>

Tue, Jun 16, 2020 at 4:1

I will be filing an appeal tomorrow. Thank you, Missa

[Quoted text hidden]

6/16/2020

Gmail - questions



missa aloisi <missa.aloisi@gmail.com>

questions

Missa Aloisi <missa.aloisi@gmail.com>

Mon, Jun 15, 2020 at 3:01 PM

To: Scott Gustin <SGustin@burlingtonvt.gov>

Scott,

Is there a permit filed for 8 strong st? He just came by and told me he has approval from Mary. And that he can go up to the property line?

Thank you,
Missa

Sent from my iPhone

On Jun 15, 2020, at 2:45 PM, Scott Gustin <SGustin@burlingtonvt.gov> wrote:

[Quoted text hidden]

6/17/2020

Gmail - 8 Strong St- Driveway Permit



missa aloisi <missa.aloisi@gmail.com>

8 Strong St- Driveway Permit

2 messages

Alison Davis <adavis@burlingtonvt.gov>

Tue, Jun 16, 2020 at 12:00 PM

To: Mary O'Neil <MCOneil@burlingtonvt.gov>, Scott Gustin <SGustin@burlingtonvt.gov>, Theodore Miles <TMiles@burlingtonvt.gov>

Cc: "missa.aloisi@gmail.com" <missa.aloisi@gmail.com>

Hi Mary and Scott,

I just got off the phone with Melissa Aloisi, who is concerned about a driveway project going on at 8 Strong Street. I was trying to look up the permit in Amanda, but there is no zoning permit for 8 Strong Street, both units A and B. She was told that they were approved, done with the appeal period, and are wanting to start construction soon. Was there a zoning permit issued for this property? Was there an appeal period?

Thanks,

Ali

Alison Davis

Zoning Clerk

Department of Permitting and Inspections

City of Burlington

645 Pine Street- Suite A

Burlington, VT 05401

802-865-7188 (main)

802-863-0466 (fax)

www.burlingtonvt.gov/PZ

Check on your permit's status here: <https://www.burlingtonvt.gov/PZ/Status>

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.

Mary O'Neil <MCOneil@burlingtonvt.gov>

Tue, Jun 16, 2020 at 1:00 PM

To: Alison Davis <adavis@burlingtonvt.gov>, Scott Gustin <SGustin@burlingtonvt.gov>, Theodore Miles <TMiles@burlingtonvt.gov>

Cc: "missa.aloisi@gmail.com" <missa.aloisi@gmail.com>

6/17/2020

Gmail - 8 Strong St- Driveway Permit

We are communicating with her.

The address is 4-8 Strong, and the appeal period ended Saturday.

A handwritten signature in cursive script, appearing to read "May".

**** Please note** that this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act.

[Quoted text hidden]

6/16/2020

Gmail - questions



missa aloisi <missa.aloisi@gmail.com>

questions

Scott Gustin <SGustin@burlingtonvt.gov>
To: Missa Aloisi <missa.aloisi@gmail.com>

Mon, Jun 15, 2020 at 3:00 PM

I'm in a zoom meeting at the moment. I'll give you a call later today. I misspoke about no zoning permits – there's one for window replacements and a heat pump. No site changes though.

Scott Gustin, AICP, CFM

Principal Planner & Asst. Administrative Officer

Dept. of Permitting & Inspections

645 Pine Street

Burlington, VT 05401

(802) 865-7189

[Quoted text hidden]

6/16/2020

Gmail - questions



missa aloisi <missa.aloisi@gmail.com>

questions

Scott Gustin <SGustin@burlingtonvt.gov>
To: Missa Aloisi <missa.aloisi@gmail.com>

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Principal Planner & Asst. Administrative Officer

Dept. of Permitting & Inspections

645 Pine Street

Burlington, VT 05401

(802) 865-7189

[Quoted text hidden]

THE SITE PLAN
ENVIRONMENTAL SUBDIVISION
CONSTRUCTION OF
REQUIRED BY LAW
OUT OF THIS SITE.

Signature
TECT

Signature
UBLIC

DREW STREET
D.H. & LORRAINE B. HOOD
VOLUME 164 PAGE 545

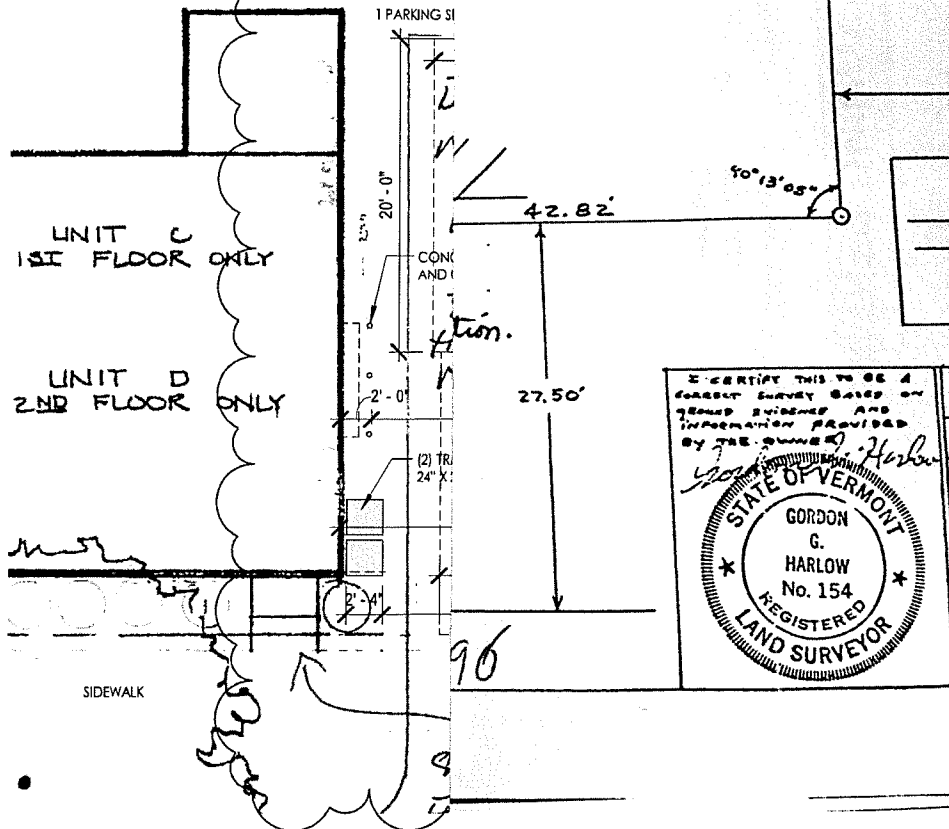
RECEIVED

APR 29 1996

DEPT. OF
PLANNING & ZONING

ANY MODIFICATION
REQUIRE ZONING
ALL ERRORS IN DIM
FULLY THE RESPON
FIN.

SIGNED *Signature* STRONG STREET
MARINA L. DUTRA
ZONING PERMIT # 217 Page 429
REV.
DEPARTMENT OF
BURN



PARTIAL SITE PLAN AT 8 STRONG SECURE DIMENSIONS TO PROPERTY LINES
1"=10'-0" SCALE
PLAN SUBMITTED FOR RENEWAL OF
ZONING PERMIT #20-0914CA

4/1/2008 2:10:00 PM

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4-8 STR
BURLINGTON V

DATE: 06/16/20
SCALE: 1" = 10'-0"
DRAWN BY: MA
CHECKED BY: MA
PHASE:

SITE PLAN- NEW

SHEET NO:

A.02

THE SITE PLAN
ENVIRONMENTAL SUBDIVISION
CONSTRUCTION OF
REQUIRED BY LAW
OUT OF THIS SITE.

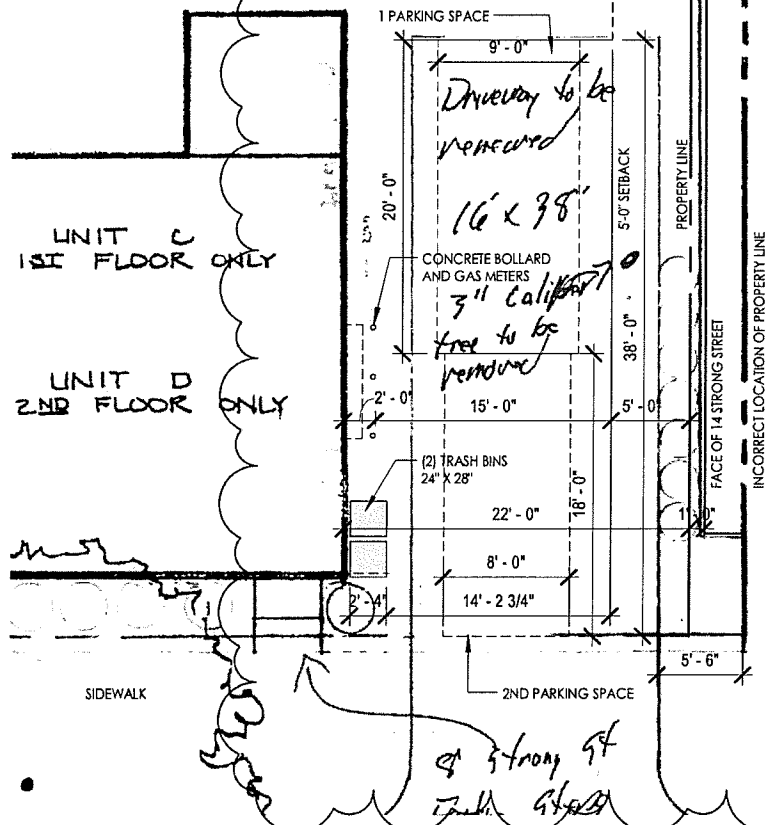
Signature
TECT

Signature
UBLIC

NOTE
ANY MODIFICATION 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 *Walter 261* DATE 5.29.2020
ZONING PERMIT # 20-0914CA
REVIEWED BY: JMO
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT



PARTIAL SITE PLAN AT 8 STRONG STREET
1"=10'-0" SCALE
PLAN SUBMITTED FOR RENEWAL OF DRIVEWAY
ZONING PERMIT #20-0914CA

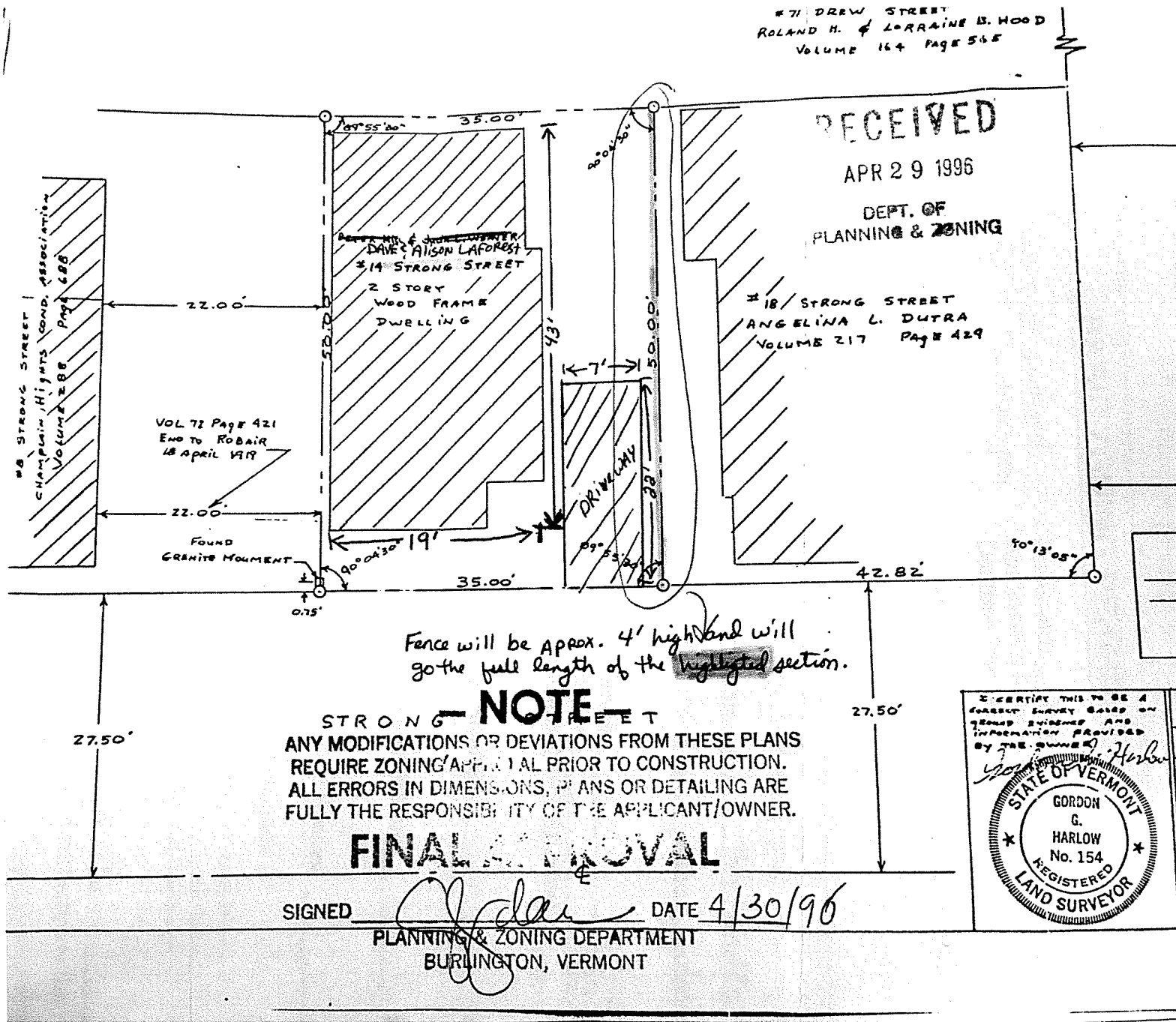
CORRECTIONS TO THE SITE PLAN WITH DIMENSIONAL DISCREPANCIES
TO THE SURVEYED DRAWING. CORRECTIONS DEPICTED IN RED.

4-8 STRONG STREET

BURLINGTON VT

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architecture
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802.793.9242

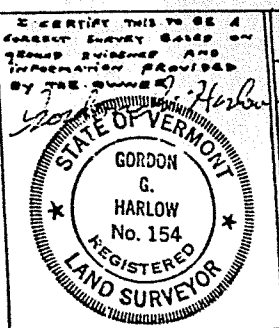


Fence will be approx. 4' high and will
go the full length of the highlighted section.

NOTE
STRONG STREET
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 *Gordon G. Harlow* DATE 4/30/96
PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT



SITE PLAN AT 14 STRONG STREET - DEPICTING ACCURATE DIMENSIONS TO PROPERTY LINES
NTS
PLAN SUBMITTED FOR FENCE PERMIT 4/30/96
COMPLETED BY REGISTERED LAND SURVYOR

DATE:	06/16/20	SITE PLAN-NEW
SCALE:	1"=10'-0"	
DRAWN BY:	MA	
CHECKED BY:	MA	
PHASE:		

A.02

MEMORANDUM

To: Burlington Development Review Board

From: Alan Bjerke, Esq.
President, Champlain Heights Condominium Association

Date: July 27, 2020

Re: 20-0914CA/AP 4-8 Strong St

APPLICANT’S OPPOSITION TO REQUEST TO FILE APPEAL OUT OF TIME

The Champlain Heights Condominium Association opposes the request by Melissa Aloisi to be permitted to file an appeal after the expiration of the appeal period and the final permit had been issued, all for the reason’s more particularly described below.

LEGAL STANDARD OF REVIEW

A request to file an appeal after the time for appeal has passed is a matter that has been addressed by the Vermont Courts. In order to obtain permission to file out of time, the person requesting permission must establish that the failure to file in time resulted from either “good cause” or “excusable neglect.” “Good cause refers to situations in which there is no fault on the movant's part-e.g., failure of the Postal Service to deliver the notice of appeal. Excusable neglect assumes fault on the part of the movant. In recent decisions, the Vermont Supreme Court has followed the lead of a number of federal courts of appeal in applying the excusable neglect standard very strictly . .” Vt. R. App. 4 (2006 Reporter’s Notes)

Many federal courts have taken what we think is an appropriately hard line when it comes to determining when neglect that stems from factors totally within the control of a party or its attorney is “excusable.” United States v. Hooper, 43 F.3d 26, 28–29 (2d Cir.1994) (per curiam) (affirming denial of Rule 4(b) extension where delay resulted from legal assistant's ignorance of the rules); see also Gibbons v. United States, 317 F.3d 852, 855 (8th Cir.2003) (affirming denial of extension where solo practitioner failed to timely file because of vacation followed by temporary illness); Graphic Communications, 270 F.3d at 8 (affirming **denial of extension because late filing was result of ignorance of the law and “inattention to detail”**); Canfield, 127 F.3d at 250 (affirming denial of extension when attorney's late filing was a result of his personal involvement in other business); Jin v. Metropolitan Life Ins. Co., 2003 WL 21436211 (S.D.N.Y. June 20, 2003) (denying extension because neglect occasioned by changes in attorney's office personnel and location was not “excusable”). Notwithstanding the flexibility of the “excusable neglect” concept, its application to cases like the instant one must remain strict lest there be a de facto enlargement of the

appeal-filing time to sixty days.

In re: Town of Killington, 2003 VT 87A, ¶ 17 (emphasis added)

The relevant portion of the Burlington Zoning Ordinance states as follows:

Sec. 12.2.5 Finality

Upon the failure of any interested person to appeal to the DRB or to the environmental court, all interested persons affected shall be bound by such decision or act of such administrative officer, such provisions or such decisions of the DRB, as the case may be, and shall not thereafter contest, either directly or indirectly, such decision or act, such provision, or such decision in any proceeding, including without limitation, any proceeding brought to enforce this ordinance.

FACTUAL BACKGROUND

The Champlain Heights Condominium Association is made up of four condominiums at 4 - 8 Strong St in Burlington. Melissa Aloisi and Erica Giannone own and reside in the single family residence abutting the Condominium to the east. They also “manage” the condominium unit at 4 Strong St, for the owners who reside out of state. In mid-December, 2019, the Association members exchanged a series of e-mail communications discussing the desire to refresh and re-establish the driveway between 8 and 14 Strong St. In response to those communications the owners of 14 Strong St spoke to me as the President of the Condominium Association to express their concerns about the proposal. I advised them that if and when a proposal was finalized, I would approach them to discuss it prior to filing for a permit.

Shortly after the Association voted to move forward with the permit application, on Monday morning, May 18, 2020, I dropped off the draft permit application to 14 Strong St. The owners were home and met me, but did not wish to go over the proposal at that time. I checked back with them over the next few days to inquire and follow up. Their response to me was that they had not even looked at the materials I dropped off to them. After a week had passed, the application was filed. Ms. Aloisi later spoke to me and indicated that she had no issue with the application, just that she wanted me to know her opinion of the location of the property line.

Once the permit application was filed, I followed its progress on the City of Burlington’s website, where under the Zoning Division’s webpage there is a street sorted list of pending and recently approved permits. The status listing includes the actual permit number and status. I checked the listing often and found that the information listed for our permit application was properly displayed.

The Permit was approved May 29, 2020. On Monday June 15, 2020, no appeal having been filed, I obtained the final approved permit and began laying out the markings for digsafe. Ms. Aloisi asked me about the markings and commented that she had meant to look at the approved permit but hadn’t.

As can be seen from the materials filled by Ms. Aloisi, from the date the permit application was filed, until after the final permit had been issued - - the only step taken by her, or anyone on her behalf to become informed about the permit that issued was to leave one voicemail in a general mailbox asking about a permit for an address that was not the same as the one listed on the application that had been given to her in advance, nor the same as was listed on the "Red Z" notice which was posted in a ground floor window facing her house. While the request for her appeal out of time goes into great detail about the communications she exchanged after the final permit had issued, those exchanges all occurred after the final permit had already been issued.

Ms. Aloisi is more familiar than most residents in the City with Burlington's Zoning Division and its permitting process. She is a licenced architect who practices regularly before the Development Review Board and is a former member of the DRB. In addition, I saw and spoke with her and Ms. Giannone nearly every day from the day the application was approved until it was final and issued, often several times a day. Had she asked me about the permit I would have told her what I understood to be the details of the approval - But neither Ms. Giannone, nor Ms. Aloisi ever inquired or expressed any difficulty reviewing the approved permit.

CONCLUSION

Ms. Aloisi does not claim that her failure to file an appeal on time resulted from good cause or anyone's fault but her own. Instead, she urges that she should be allowed to appeal out of time for excusable neglect. But her neglect is not excusable by Vermont's legal standards. Her basis for neglecting to file is clearly in line with the Graphic Communications, case cited by the Vermont Supreme Court in the *Killington* case above. She was not sufficiently diligent in investigating the matter and even if she was given some conflicting advice of the appeal deadline, ignorance of the law is no excuse. Her appeal was filed on Wednesday June 17, 2020 - days after even the later appeal deadline (4 PM Monday) which she now argues should have been the correct deadline.

Pursuant to Section 12.2.5 of the Burlington Zoning Ordinance, the Permit in this matter has become final when it was not appealed by the deadline and had been issued by the Administrative Officer. Ms Aloisi has not established facts that demonstrate that she acted diligently or paid sufficient attention to the details of the permit as issued to know whether she wanted to appeal it or not - - despite being provided an advance copy of the application, her personal and professional familiarity with the Burlington Zoning Division and its online resources which are available 24 hours a day, 7 days a week whether the office is open or closed. One telephone message left in a general mailbox asking about a permit at the wrong address is not sufficient diligence. As demonstrated by her several e-mail exchanges on June 15 and 16, the City responded promptly when contacted by e-mail addresses known to Ms. Aloisi. Champlain Heights had already commenced work as authorized by the permit before any request for an appeal was filed and would be unfairly prejudiced by allowing an appeal of the final permit after work had already commenced.

MEMORANDUM

To: Burlington Development Review Board

From: Alan Bjerke, Esq.
President, Champlain Heights Condominium Association

Date: July 24, 2020

Re: 20-0914CA/AP 4-8 Strong St

THE PROPERTY BOUNDARY SURVEY RELIED ON BY THE APPELLANT IS DEMONSTRABLY INCORRECT AND CANNOT BE RECONCILED WITH MORE CREDIBLE SURVEYS

This issue should only be addressed by the Burlington Development Review Board in the event it determines, after a vote, that Ms Aloisi has demonstrated excusable neglect to file an appeal of the applicant's final permit out of time. If, and only if it has granted the request to file an appeal out of time, does the matter addressed by this memorandum become relevant.

Ms. Aloisi contends that the parking area first permitted in 1982, which specified the coverage and dimensions of the four space parking area between 8 and 14 Strong Street, which was **required** to satisfy the minimum parking requirements and complied with setback requirements at the time, is out of compliance with today's setback requirements. Such spaces are clearly grandfathered and have been existence for nearly 40 years. Applicant will defer to the Zoning Administrator's memorandum for discussion of that topic. However, since Ms Aloisi's entire argument is based upon a claim that the property lines used in connection with the original permit are not accurate. And, based solely upon a limited information survey conducted by a deceased Land Surveyor, it is important to examine the efficacy of the purported survey relied on by the appellant.

FACTUAL TITLE HISTORY

L.S. Drew laid out the neighborhood now encompassing the Drew, Blodgett, Pitkin, Strong and Ward Street neighborhood in 1871. The two lots on the north side of Strong St from North Avenue to Drew St total 200 feet of frontage on Strong St. See Exhibit A attached. The two lots numbered 20 and 24 were conveyed to Marcellaise in 1889 and 1899. See Exhibit B attached. By 1913, the two lots were owned by Sarah Ena. In 1919, Ena conveyed a portion of the 200' by 50' lot she owned to Robair. The deed in that transaction describes the lot transferred to Robair as being 75' from Drew Street and 22' from the house at 8 Strong St. See Exhibit C attached. This description is the basis of the discrepancy in the property boundary. Robair later subdivided the 75' parcel property again in 1946 describing it as 35' to Labombard and the remaining 40' to

Thompson. Since 1946, the parcels on the north side of Strong Street have been described in deeds as being 125' of frontage on Strong St for 8 Strong St; 35 feet for 14 Strong St and 40 feet for 18 Strong St. I have personally examined each of the deeds of the subject properties from 1919 to the present. There is no reference in any deed which describes any monument in the ground between 8 & 14 Strong St.

HARLOW SURVEY

In 1986 Gordon Harlow (now deceased) authored a survey for the owners of 14 Strong St. This is the survey relied on by appellant Aloisi to contend that the property boundary between 8 & 14 Strong St is different than that used in the approvals for Champlain Heights by the Burlington Zoning division in 1982, 2019 and 2020. To the extent that this survey has any impact on the issue of the current property boundary or permissible setbacks, it should be at least viewed skeptically and most likely deemed unreliable. See 1986 Harlow Survey, Exhibit D.

Survey Basis

The surveyor for Ms. Aloisi's exhibit, Mr. Harlow, passed away over a decade ago. His records have not been located. But, Land Surveyor regulations have required for decades that each survey contain a statement of the basis for the survey. 26 V.S.A. §2596 Mr. Harlow's survey basis is stated on the 1986 survey as follows: "I certify this to be a current survey based upon ground evidence and information provided by the owner." What is notably absent from his basis statement is any reference to other surveys (Such as the original by L.S. Drew), Review of City deed records or any other historical records. A survey is only as good as the reference materials used to create it. In this instance, the basis for the survey is noticeably limited.

Ground Evidence

The Harlow survey identifies 3 items of ground evidence:

1. A "Found Granite Monument" located at the purported boundary he drew between 8 and 14 Strong St;
2. The eastern edge of the building at 8 Strong St as it existed in 1986; and
3. An iron pipe found on Drew Street, well north and east of the property line at issue.

The Granite Monument

The granite monument found by Gordon Harlow is not referenced in any deed to any of the neighboring properties. It also appears not to have been placed by any licenced land surveyor. Pursuant to Land Surveyor regulations and well established practice, monuments placed by surveyors must be identified by the Land Surveyor's licence number and most often include the date set. Ms. Aloisi approached the undersigned earlier this year and stated that she dug up the "monument" at issue and identified it sitting on the ground in her yard. According to Ms. Giannone it has since been discarded, but before it was, I personally examined the stone. It contained no identifying marks, no name, no license number and no dates. It was just a square topped stone that could have been placed by anyone. It is not likely to have been a monument set by a Land Surveyor. However, if it was, Ms Aloisi would be guilty of the crime of removing a Land Surveyor's Monument, See: 13 V.S.A. §3834.

The Eastern Edge of 8 Strong St

The Gordon Harlow survey includes a noted measurement showing the property line between 8 & 14 Strong Street to be precisely 22' from the eastern edge of the building at 8 Strong Street as it existed in 1986. This measurement created a discrepancy for the first time in the Ena to Robair deed that 75 feet from Drew Street was different from 22' from the building at 8 Strong St. The conclusion of the Harlow survey was that the frontage on Strong Street was no longer 125', 35' and 40' as described in decades of deeds, but 122', 35' and 43' as shown in the Harlow survey.

The Burlington 1919 Fire Insurance Maps

There is historical evidence, important in determining what building was being referred to in the Ena to Robair deed. The Burlington fire insurance maps of 1919, when the Ena to Robair transaction occurred shows that the building at 8 Strong St had a 1 story addition, not present in 1986 which protruded to the east from the building used by Harlow when determining a line 22' from the building at 8 Strong St. It is Harlow's faulty assumption that the eastern edge of the building he took his measurement from in 1986 was the same easterly portion of the building referred to in the 1919 deed. In fact, the only way to reconcile the measurements of 22' east of the building at 8 Strong St and 75' west of Drew St is to recognize that the building at 8 Strong Street had an addition which extended to the east of the 1986 building. The 1919 Insurance map shows the addition which explains the apparent discrepancy and Harlow's error. See Exhibits E1, E2, E3 & E4. While these insurance maps are not accurate to determine exact building placements, they are accurate to show the shapes of buildings surveyed in 1919 and the unmistakable result, is that there was an addition on the building located at 8 Strong St which extended easterly from the building used by Gordon Harlow to measure 22' from the building located at 8 Strong St.

CONCLUSION

A land survey is only as accurate as the information used to inform the survey. The information described above demonstrates that Gordon Harlow's 1986 survey of the boundary line between 8 & 14 Strong Street was limited, incomplete and highly likely to be incorrect. Because of his passing, we are unable to examine the complete records he relied upon in reaching his conclusion, but we do know that his findings cannot be reconciled with the L.S. Drew original survey, the deed descriptions found in the Land Records and the historical building structure records from insurance maps drawn at the time the land was first subdivided.

Land Surveyors may provide some evidence of property boundaries, but ultimately Courts decide where property boundaries lie. The City of Burlington has thrice relied on the boundary line applicant has submitted in applications used by the City to determine setbacks, as recently as 2019 and 2020. The Harlow survey is suspect because it states that is based upon limited evidence and that evidence upon which it principally relies (The location of the easterly edge of the building at 8 Strong St that existed in 1919) has been shown to be inaccurate. The burden is on the appellant to establish that the applicant's assertions are wrong and they have not met their burden of proof with Harlow's limited and unreconcilable survey.

EXHIBIT A

FRONT ST.

L. S. Drew's
City Lots.
Burlington Vt.

Scale 100 ft. to
One inch

NORTH ST.

NORTH AVENUE.

BLODGETT ST.

DREW ST.

STRONG ST.

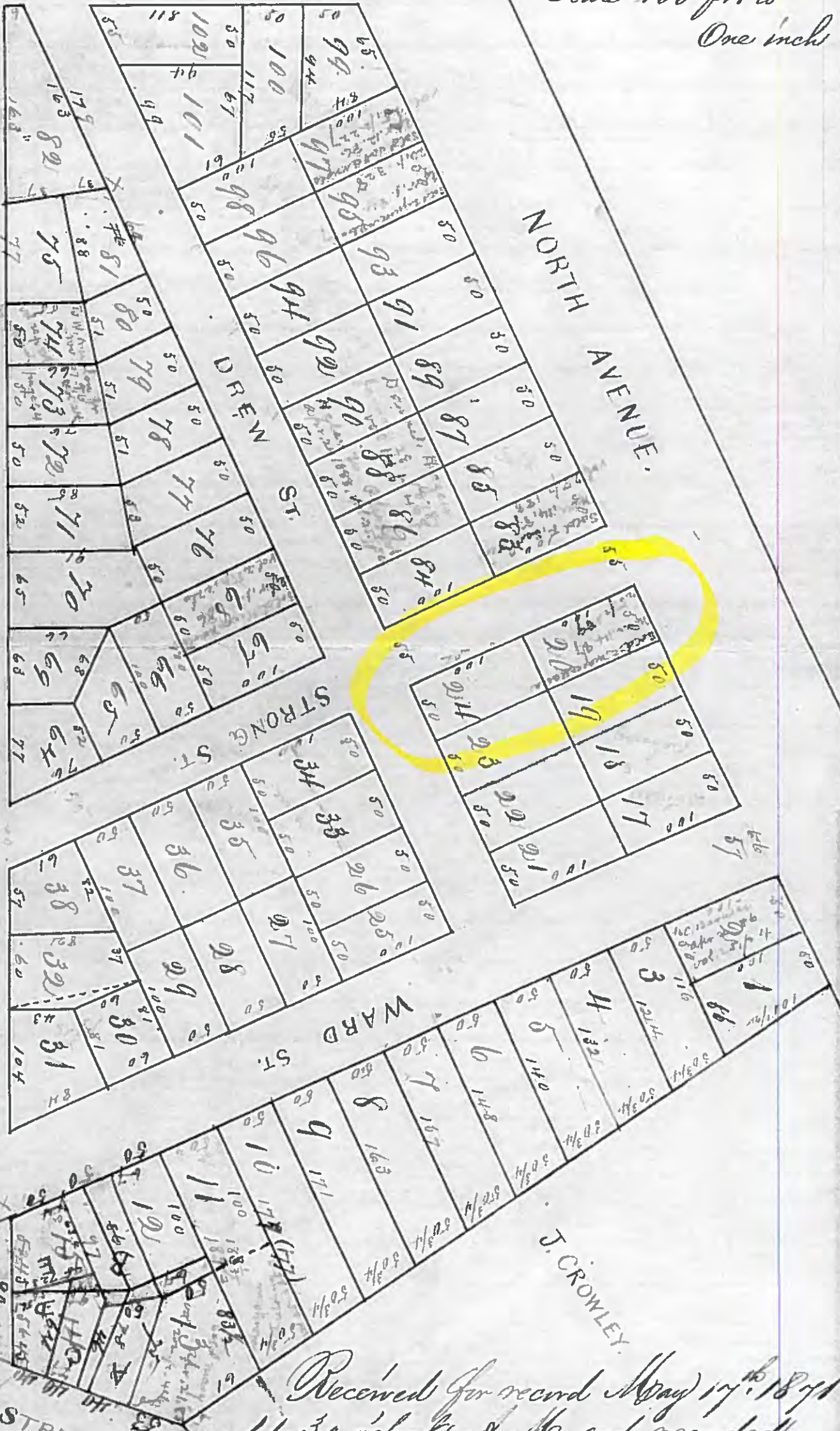
WARD ST.

NORTH BEND STREET.

Pitkin Street

59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2
63	62	61	60	59	58	57	56	55	54
59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2	59 1/2

58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2
45	44	43	42	41	40	39	38	37	36
58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2	58 1/2



J. CROWLEY

Received for record May 17th 1871 at
11.30 o'clock A. M. and recorded
Attest, Wm. B. Root
City Clerk

Know all Men by These Presents That

Wm. Curtis A. Enos, and Sarah M. Enos, husband & wife

EXHIBIT B

of Burlington in the County of Chittenden
and State of Vermont Grantor, in the consideration of
Ten Dollars

paid to said full satisfaction by Wallace J. Robair
of Burlington in the County of Chittenden
and State of Vermont Grantee, by these presents, do
freely Give, Grant, Sell, Convey and Confirm unto the said Grantee Wallace J. Robair
and his heirs and assigns forever, a

certain piece of land in the City of Burlington in the
County of Chittenden and State of Vermont, described as

follows, viz: Situated on the North West corner of Strong, and New Streets in the
City of Burlington, with a frontage of fifty feet, more or less, on New Street,
and seventy five feet, more or less, on Strong Street, and twenty two feet from
the East wall of the house on Strong Street now owned by the aforesaid
Curtis A. Enos, and Sarah M. Enos.

To Have and to Hold said granted premises, with all the privileges and appurtenances thereof, to the said Grantee Wallace J.
Robair his heirs and assigns, to their own use and behoof forever; and we the said Grantor Curtis A. Enos
and Sarah M. Enos for ourselves and our heirs, executors and administrators, do
covenant with the said Grantee Wallace J. Robair his

heirs and assigns, that until the ensealing of these presents we are the sole owner of the premises, and have
good right and title to convey the same in manner aforesaid, that they are Free from every encumbrance; except a certain

mortgage of twelve hundred dollars covering the tract of land hereby conveyed and land
immediately contiguous thereto upon which stand the dwelling houses referred to in the description
hereby engage to Warrant and Defend the same against all lawful claims whatever, by the said Curtis A. Enos and Sarah M. Enos and the said

In Witness Whereof, we hereunto set our hands and seal this 18th day of
April A. D. 1919

In Presence of

John H. Mims
Isabel M. Supsak

L. S.
Sarah M. Enos
Curtis A. Enos
L. S.

State of Vermont,
Chittenden County } ss.

At Burlington this eighteenth
day of April A. D. 1919

Sarah M. Enos, Curtis A. Enos
personally appeared, and they acknowledged this instrument, by them sealed and
subscribed, to be their free act and deed.

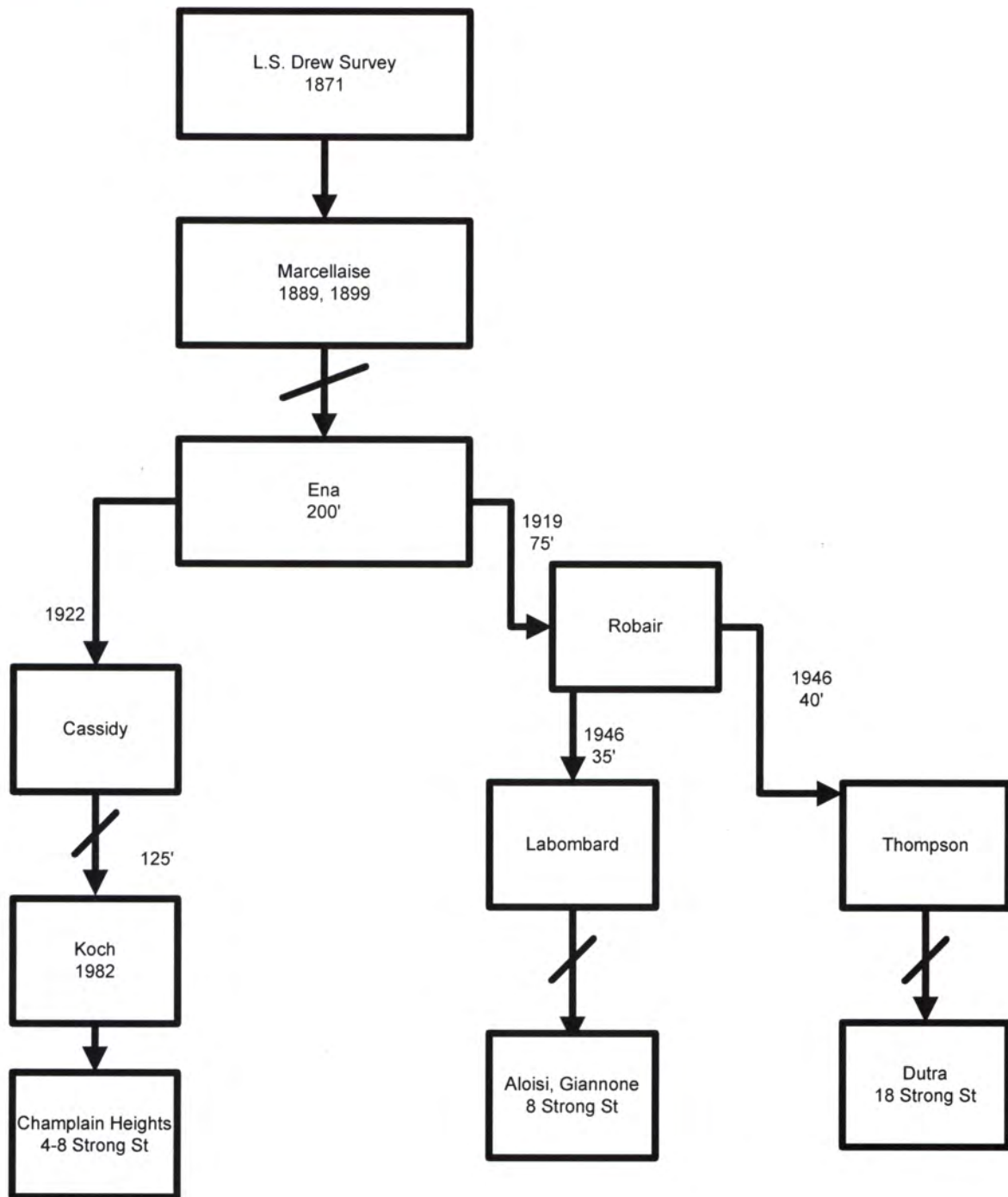
Before me John H. Mims, Notary Public

Graphic Chain of Title to property on the North side of Strong St

From North Avenue to Drew St

By: Alan Bjerke July, 2020

EXHIBIT C



Depicts intervening transfers not detailed

A diagram illustrating the relationship between True North and Magnetic North. It shows two lines originating from a common point. The upper line is labeled 'TRUE NORTH' and the lower line is labeled 'MAGNETIC NORTH'. An arc between the two lines indicates an angle of 15° .

#71 DREW STREET
ROLAND H. & LORRAINE B. WOOD
VOLUME 164 PAGE 515E

RECEIVED

APR 29 1996

DEPT. OF
PLANNING & ZONING

#18/STRONG STREET
ANGELINA L. DUTRA
/VOLUME 217 PAGE 429

DAVE & ALISON LAFOREST
14 STONE STREET

2 STORY /
WOOD FRAME
DWELLING

VOL 72 PAGE 421
ENO TO ROBAIR
18 APRIL 1979

FOUND
GRANITE MOUNTAIN

Fence will be approx. 4' high and will go the full length of the highlighted section.

NOTE

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

THE

SIGNED John DATE _____
PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

DATE 4/30/96

[illegible]

PROPERTY SURVEY

14 STRONG STREET

BURLINGTON, VERMONT

VOLUME 328 PAGE 642

14 MARCH 1986

SURVEYED BY: GCH
DRAWN BY: GCH
DATE: 5 April 1964
SCALE: 1"=10'



EXHIBIT E /

Home About Search

Burlington 1919, index

(/islandora/object/uvmcdi:2366/print?clip=identifier%3Dhttp%253A%252F%252Fcdi.uvm.edu%252Fiiif%252F2%252Fuvvmcdi%253A2366~JP2~26c24813600c9216c5a564fe262e7939abdbbc96c829cea54cbff80c05c03582~default%26region%3D1454%252C0%252C6939%252C4031%26size%3D6939%252C8102)



In collections



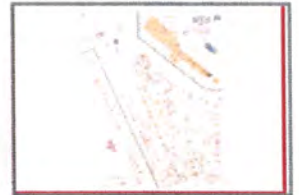
EXHIBIT E 2

[Home](#) [About](#) [Search](#)

Burlington 1919, sheet 29

([islandora/object/uvmcdi:86337/print?](#)

[clip=identifier%3Dhttp%253A%252F%252Fcdi.uvm.edu%252Fiiif%252F2%252Fuvvmcdi%253A86337~JP2~f42f43b25bfcfb047576f6d853ecb6e7818ea03ca01f139364599c1c5e0af2db~default%26region%3D0%252C1674%252C6939%252C4752%26size%3D6939%252C8102\)](#)



In collections



EXHIBIT E 3

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Burlington 1919, sheet 29

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In collections



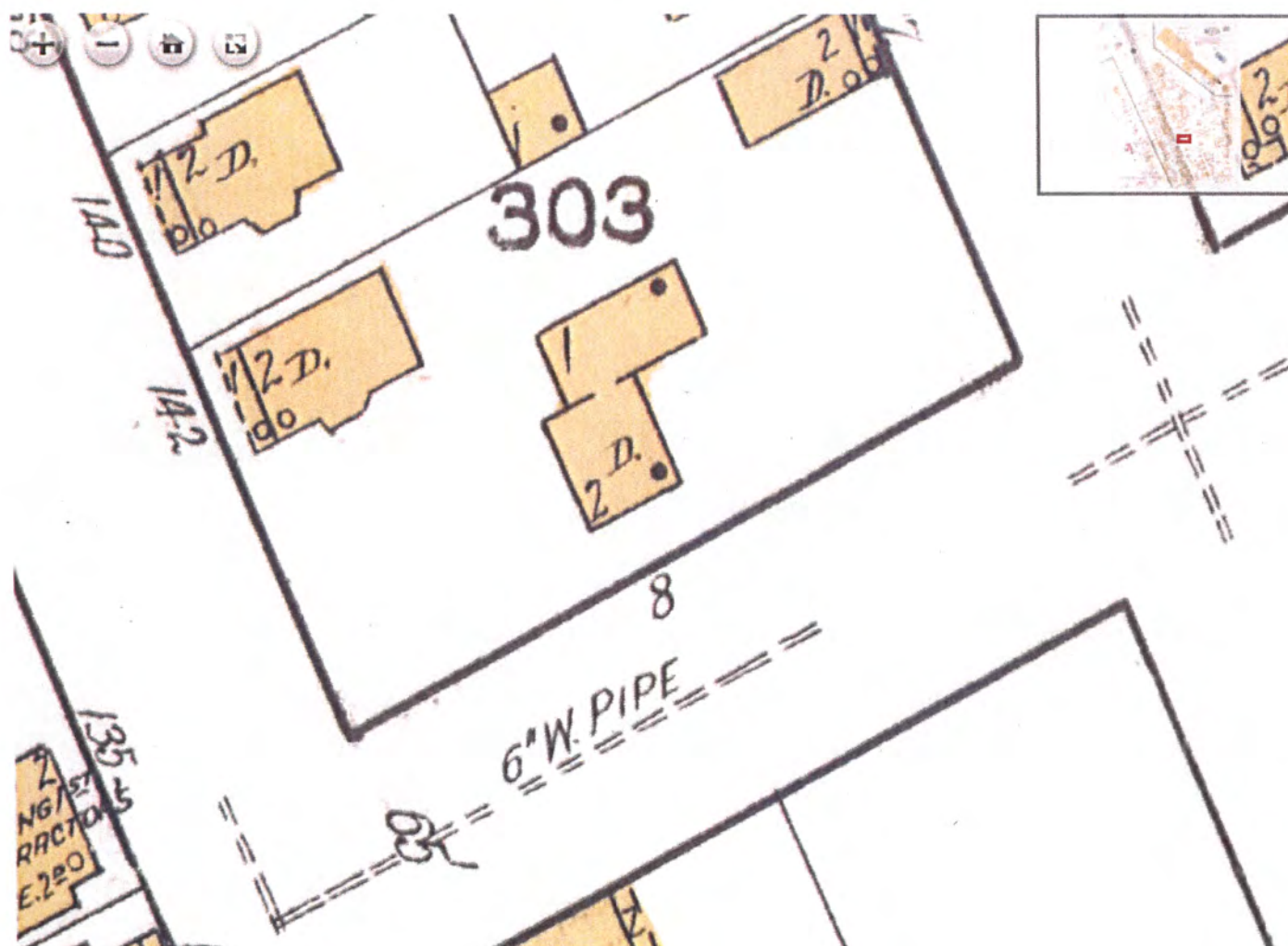
EXHIBIT E 7

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Burlington 1919, sheet 29

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In collections

ZONING PERMIT

Burlington, Vermont

Permit # _____

PROJECT LOCALE 8 Strong Street ZONE R-25

Applicant/owner William Koch

Address Hinesburg

Telephone No. 864-9347 Bob Bl

Existing use of property vacant residential

Estimated Cost \$70,000.00

DESCRIPTION To convert existing vacant structure to four residential units. Front setback decreases existing noncompliance.

TECHNICAL lot size 6250 sq. ft bldg. size _____ sq. ft _____ % lot coverage _____
parking and drive _____ sq. ft addition _____ sq. ft N/A _____

PARKING exist _____ proposed 8 required 8 N/A _____

YARDS front 10 side 5 rear 5 N/A _____

SIGNS type _____ height _____ area _____ N/A X
linear frontage _____ illuminated _____

DECISION approved _____ denied _____ referred to ZBA _____
denial reason _____

APPEALS An interested person may appeal the decision of the Zoning Administrator within 15 days of final

APPLICATION DATE 8/30/82 APPEAL EXP. DATE 9/14/82

SIGNATURES APPLICANT Robert G. B. [Signature]

ZONING ADMINISTRATOR _____

CERTIFICATE OF APPROPRIATENESS

COA # 82-77

LEVEL OF REVIEW I _____ II X III _____

TYPE OF REVIEW siteplan _____ design X subdivision _____

COMPLETE APPLICATION July 23, 1982 fee \$20.00

DISTRICT historic _____ innercity _____ regional core X waterfront _____

DECISION DATE August 30, 1982 DENIED _____ APPROVED _____

APPROVED WITH CONDITION that if doors are put on the carport, they must be compatible with the addition and the applicant must return to the DRB with plans.

APPEALS An interested person may appeal a decision of The Planning Commission to the Superior Court of the County in which is located the property at issue in the decision.

SIGNATURE Planning Director [Signature]

ZONING PERMIT
Burlington, Vermont

Application Date: 04/29/96
Appeal Exp. Date: 05/15/96

Project Location: 14 STRONG ST **Zone:** RM **Ward:**

Owner/Applicant Name: David and Alison LaForest

Address: 14 Strong Street
Burlington, VT 05401

Telephone: 802-660-2121

Project Description: Installation of a gothic style picket fence along the eastern property line of the single family home.

Estimated Cost of Construction: \$200.00

Lot Size: Net New Sq.Ft.:
Net New # of Housing Units:

Existing % Lot Coverage: Existing # of Parking Spaces: 2
Proposed % Lot Coverage: Proposed # of Parking Spaces: 2
Required # of Parking Spaces: 2

Zoning Permit #: 96-479

Application Fee: \$20.00

Zoning Administrator

An interested person may appeal a decision of the Zoning Administrator to the Zoning Board of Adjustment within 15 days of final action.

Decision: APP **Decision Date:** 04/30/96

V#: **ZBA #:** **ZBA Decision Date:**

Conditions: Approval subject to standard permit conditions

Applicant Signature:

RECEIVED

APR 29 1996

DEPT. OF
PLANNING & ZONING

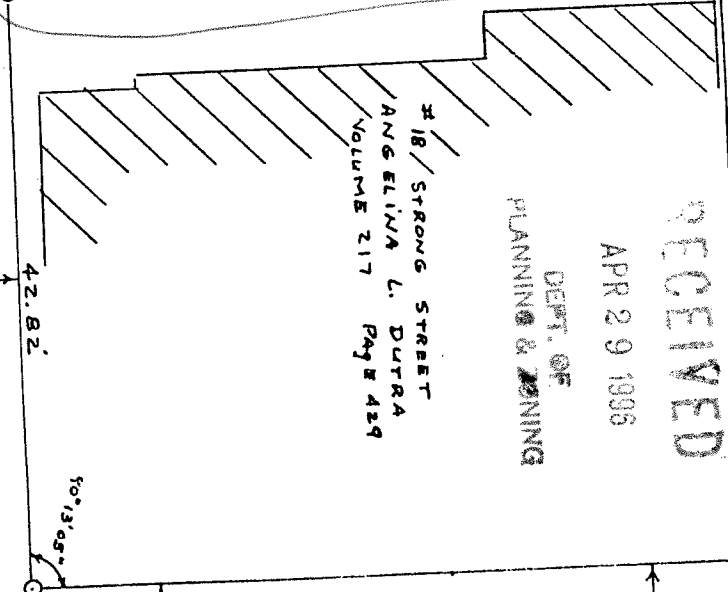
#18/ STRONG STREET
ANGELINA L. DUTRA
VOLUME 217 PAGE 429

#8 STRONG STREET
CHAMPLAIN HEIGHTS ASSOCIATION
VOLUME 288 PAGE 688

VOL 72 PAGE 421
END TO ROBIN
18 APRIL 1979

2 STORY
WOOD FRAME
Dwelling
DANE & JACQUELINE
LAFORGE
314 STRONG STREET

DRIVEWAY
22' 11"



Fence will be approx. 4' high and will
go the full length of the highlighted section.

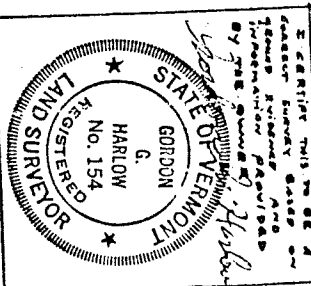
NOTE

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

FINAL APPROVAL

SIGNED

DATE 4/30/96
PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT



LEGEND

---	CENTER LINE OF STREET
---	PROPERTY LINE
---	CENTER LINE
○	IRON PIN-SET

PROPERTY SURVEY	DATE: 1986
14 STRONG STREET	SCALE
BURLINGTON, VERMONT	
VOLUME 828 PAGE 6	
14 MARCH 1986	
SURVEYED BY: GCH	
DRAWN BY: GCH	

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

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



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: August 4, 2020
RE: 20-0971CA/CU; 362 South Union 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: ZP20-0971CA/CU

Location: 362 South Union Street

Zone: RL **Ward:** 6N

Date application accepted: June 9, 2020

Owner / Applicant: William Fellows & Tshen Shue / William Fellows

Parking District: Neighborhood

Request: The applicant seeks approval to demolish a detached garage and replace it with a new structure containing a two car garage and an attached second unit (duplex).

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking)

Background:

- **Zoning Permit 14-0010LL;** lot line adjustment with 368 South Union Street. Approved 7/3/13
- **Non-Applicability of Zoning Permit 14-0656NA;** interior kitchen remodel. Approved 12/19/13.
- **Zoning Permit 19-0346CA;** replacement windows. Approved 10/23/18.

Overview:

The applicant proposes demolishing a damaged/structurally unsound garage and replacing it with a new 2-car, 2-story garage and an attached 2-story dwelling unit. The new structure will connect to the existing principle building (single family residence), making it all one structure and thus able to be considered a duplex. The existing garage is included in the property's listing in the South Union Street Historic District (national registry). The listing notes the garage as *'a square, clapboard sided, one story, two bay garage with a hip roof, two shuttered windows on the west and east facades and a small brick exterior chimney on the north façade, is located northeast of the main house. The roof is wood shingled, and has a broad gable above the garage doors on the south elevation. Each bay has a pair of hinged wooden doors.'* The principal structure on the property, a single family residence constructed c. 1900, will remain largely as-is – no changes are proposed except for the connection to the new garage and dwelling. Additionally, a garden house, c. 1935, also exists further back on the property.

The applicant has provided photos which show the deteriorated state of the garage. The applicant bought the property in June, 2018 and states that the garage was in its deteriorated state then.

The attached unit will be 2 stories, with a bedroom, dressing/study room and bathroom on the second floor, and a kitchen, bathroom and living space on the first floor. An attached patio and pool are proposed on the south side of the unit. And the new structure will connect to the rear of the existing single family home via an enclosed walkway to be considered a duplex.

The existing shared driveway will be repaved, and the footprint will be slightly altered to make vehicular access to the garage easier

The Design Advisory Board reviewed the proposal on July 14, 2020, and voted unanimously to approve the application as proposed with the following motion:

I move that we approve the demolition of the existing garage based on the applicant's sufficient reasons that warrant the demolition, including the additional documentation (photos); and that we approve the project as submitted. Further, with the applicant being an architect, he is qualified to make the determination that the garage is not structurally sound.

Recommendation: Certificate of Appropriateness and Conditional Use Approval, per the following findings and conditions:

I. Findings

Article 3: Applications, Permits and Project Reviews

Part 5: Conditional Use and Major Impact Review

Section 3.5.6 Review Criteria

(a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

- 1. Existing or planned public utilities, facilities, or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The proposal will have minimal impact on public utilities, facilities and services. The applicant will have to secure a letter from the Department of Public Works verifying that there is adequate water and sewer capacity for the new dwelling unit. A state wastewater permit will be needed.

Affirmative finding as conditioned.

- 2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the Municipal Development Plan;*

The property is within an established residential neighborhood and a residential zoning district. The Residential Low Density (RL) zoning 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 neighborhoods' development history. The proposal will result in an additional dwelling unit on the property, classified as a duplex. **Affirmative finding.**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

No greater impacts are anticipated than other residential uses in the area. **Affirmative finding.**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation, safety for all modes; and adequate transportation demand management strategies;*

This parcel is located along South Union Street, a fully developed residential street. The property shares a driveway with 368 South Union Street, and has room for the required number of parking spaces (4). There are transit stops within walking distance along South Union Street (approx. 150 ft away), and sidewalks exist on both sides of the street. The proposal is not expected to create adverse impacts on the existing transportation system. **Affirmative finding.**

5. *The utilization of renewable energy resources;*

Nothing within the application prevents the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**
and;

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.*

The addition will be subject to applicable life safety and building standards. **Affirmative finding as conditioned.**

(c) Conditions of Approval

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;*

The development will be located behind the primary single family home, and will be difficult to see from the street. The proposal will utilize existing and new landscaping to minimize the visual impact from surrounding properties. **Affirmative finding.**

2. *Time limits for construction.*

Standard time limits for construction are as follows: construction must commence within one year from the date of zoning permit issuance, and after that, an additional two years is available to finish the project. **Affirmative finding.**

3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*

Standard construction hours are 7:00 AM to 5:30 PM, Monday – Friday. Saturday construction hours may be allowed upon request to the Development Review Board. No work on Sunday.

Affirmative finding as conditioned.

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions,*

Should the applicant wish to alter the use, such alteration will require review and permitting under regulations in effect at that time. **Affirmative finding as conditioned.**
and

5. *Such additional reasonable performance standards, conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

None identified.

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

(a) Purpose

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

The property contains a single family residence and the proposal will result in its conversion to a duplex use, which is a conditional use in the RL zoning district. **Affirmative finding.**

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and the following standards:

Table 4.4.5-1 Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W.

Duplex, RL Minimum 60' frontage, RL Minimum 10,000 sq ft lot size.

362 South Union Street is a 16,468 sf lot, with 51 feet of frontage. The non-conforming frontage is considered existing and does not affect the property's eligibility for a duplex use. **Affirmative finding.**

Table 4.4.5-2 Base Residential Density

The base density allowance in the RL zoning district is 7 units per acre, and Table 4.4.5-1 CDO notes the minimum lot size required for a duplex use is 10,000 sf. The property is 16,468 sf in area.

$16,468 / 43,560 \text{ (acre)} = 0.378 \text{ acres}$

$2 \text{ units} / .378 = 5.3 \text{ units; less than the 7 unit/acre limitation}$

Affirmative finding.

Table 4.4.5-3 Residential District Dimensional Standards

Max. lot coverage: 35%; Max. height: 35 ft; Front yard setback min.: Ave. of 2 adjacent lots on both sides, +/- 5 ft; Side yard setback: 10% of lot width or average of side yard setback of 2 adjacent lots on both sides; Rear yard setback: 25% of lot depth, but in no event less than 20 ft.

The proposal will result in 33.8% lot coverage. Front yard setbacks are not an issue. Based on a lot width of 55.9 ft and depth of 281 ft, setbacks are 5.6 ft (side) and 70 ft (rear). Maximum height proposed is 24' 7". **Affirmative finding.**

(c) Permitted and Conditional Uses

Duplexes are a conditional use in the RL zoning district, per Appendix A. Article 13 defines duplex as “a single structure containing two (2) separate dwelling units, regardless of the type of construction...” It does not articulate the minimum degree of attachment. Commonly, garage space will connect two duplex units. In this case, an enclosed walkway is proposed. **Affirmative finding if the DRB concurs that the enclosed walkway constitutes an attachment.**

(d) District Specific Regulations

1. Setbacks

A. Encroachment for residential driveways

Not applicable.

B. Encroachment into the Waterfront Setback

Not applicable.

2. Height

Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features

Not applicable.

4. Accessory Residential Structures and Uses

Not applicable.

5. Residential Density

A. Additional Unit to multi-family

Not applicable.

B. Additions to Existing Residential Structures

Not applicable.

C. Residential Occupancy Limits

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

The residential occupancy provisions of the ordinance apply to home. **Affirmative finding.**

6. Uses

A. Exception for Existing Neighborhood Commercial Uses

Not applicable.

7. Residential Development Bonuses

Not applicable.

Article 5: Citywide General Regulations

Part 5: Performance Standards

Section 5.5.1 Nuisance Regulations

Nothing within the application suggests non-compliance with applicable nuisance regulations and performance standards per the requirement of the Burlington Code of Ordinances. **Affirmative finding.**

Section 5.4.8 Historic Buildings and Sites

The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:

- *To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;*
- *To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;*
- *To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,*
- *To promote the adaptive re-use of historic buildings and sites.*

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

As such, a building or site may be found to be eligible for listing on the state or national register of historic places and subject to the provisions of this section if all of the following conditions are present:

1. *The building is 50 years old or older;*
2. *The building or site is deemed to possess significance in illustrating or interpreting the heritage of the City, state or nation in history, architecture, archeology, technology and culture because one or more of the following conditions is present:*
 - A. *Association with events that have made a significant contribution to the broad patterns of history; or,*
 - B. *Association with the lives of persons significant in the past; or,*
 - C. *Embodiment of distinctive characteristics of a type, period, or method of construction, or representation of the work of a master, or possession of high artistic values, or representation of a significant or distinguishable entity whose components may lack individual distinction; or,*
 - D. *Maintenance of an exceptionally high degree of integrity, original site orientation and virtually all character defining elements intact; or,*
 - E. *Yielding, or may be likely to yield, information important to prehistory; and,*

3. *The building or site possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association*

The garage at 362 South Union Street is listed as historic on the South Union Street Historic District National Register. See attached listing sheet. Therefore, the standards of Section 5.4.8 apply to the garage. **Affirmative finding.**

(d) Demolition of Historic Buildings:

The purpose of this subsection is:

- *To discourage the demolition of a historic building, and allow full consideration of alternatives to demolition, including rehabilitation, adaptive reuse, resale, or relocation;*
- *Provide a procedure and criteria regarding the consideration of a proposal for the demolition of a historic building; and*
- *To ensure that the community is compensated for the permanent loss of a historic resource by a redevelopment of clear and substantial benefit to the community, region, or state.*

1. Application for Demolition

For demolition applications involving a historic building, the applicant shall submit the following materials in addition to the submission requirements specified in Art. 3:

- A. *A report from a licensed engineer or architect who is experienced in rehabilitation of historic structures regarding the soundness of the structure and its suitability for rehabilitation;*

No such report has been submitted, and the DAB agreed that it wouldn't be necessary since the documentation provided clearly shows extensive damage throughout, ruling out rehabilitation. Photos submitted clearly show rotten/damaged siding and trim, interior wall and ceiling damage, and a cracked foundation. The image of the foundation alone on the garage's south side appears quite significant.

Affirmative finding.

- B. *A statement addressing compliance with each applicable review standard for demolition;*

The application clearly intends for a complete reconstruction of the garage and additional living space for a second dwelling. While the applicant hasn't included in the application considerations for alternatives to demolition (rehabilitation, adaptive reuse, resale, or relocation), it appears that the most of the structure may not be salvageable due to rotten materials and a faulty foundation. **Affirmative finding.**

- C. *Where a case for economic hardship is claimed, an economic feasibility report prepared by an architect, developer, or appraiser, or other person experienced in the rehabilitation and adaptive reuse of historic structures that addressed:*

- (i) *the estimated market value of the property on which the structure lies, both before and after demolition or removal; and*
- (ii) *the feasibility of rehabilitation or reuse of the structure proposed for demolition or partial demolition;*

There is no claim for economic hardship. **Not applicable.**

- D. A redevelopment plan for the site, and a statement of the effect of the proposed redevelopment on the architectural and historical qualities of other structures and the character of the neighborhood around the sites; and*

The application includes a plan for the redevelopment of the garage, while not affecting the other two listed historical structures on the property – the primary home at the front and the garden house in the rear. **Affirmative finding.**

- E. Elevations, drawings, plans, statements, and other materials which satisfy the submission requirements specified in Art. 3, for any replacement structure or structures to be erected or constructed pursuant to a development plan.*

These materials are included in the application. **Affirmative finding.**

2. Standards for Review of Demolition

Demolition of a historic structure shall only be approved by the DRB pursuant to the provisions of Art. 3, Part 5 for Conditional Use Review and in accordance with the following standards:

- A. The structure proposed for demolition is structurally unsound despite ongoing efforts by the owner to properly maintain the structure; or*

Although there is no professional analysis provided that addresses the soundness of the garage, photos submitted indicate that it may be beyond simple maintenance efforts to maintain. Specifically, the foundation on the south wall appears to be significantly cracked, and much of the walls (exterior and interior) appear to be significantly damaged/rotten. Since the current owners purchased the property only two years ago, it seems that they ‘adopted’ a dilapidated historic garage.

Affirmative finding.

- B. The structure cannot be rehabilitated or reused on site as part of any economically beneficial use of the property in conformance with the intent and requirements of the underlying zoning district; and, the structure cannot be practicably moved to another site within the district; or*

Even short of a professional analysis from an engineer or architect, the majority of the garage materials appear to be damaged/rotten beyond the point of reuse.

Affirmative finding.

- C. The proposed redevelopment of the site will provide a substantial community-wide benefit that outweighs the historic or architectural significance of the building proposed for demolition.*

The redevelopment of the garage and additional dwelling unit portion won’t necessarily provide a community-wide benefit since it is for personal use and will be almost unseen from the street. The main point the applicants are trying to make is that the existing garage is damaged enough to warrant its demolition. **Affirmative finding.**

And all of the following:

- D. *The demolition and redevelopment proposal mitigates to the greatest extent practical any impact to the historical importance of other structures located on the property and adjacent properties;*

The other two historic structures on the property (the home and the rear garden house) will remain as-is. While the garage can be seen from adjacent properties, it, as well as the garden house, are difficult to see, if at all, from the public street.

Affirmative finding.

- E. *All historically and architecturally important design, features, construction techniques, examples of craftsmanship and materials have been properly documented using the applicable standards of the Historic American Building Survey (HABS) and made available to historians, architectural historians and others interested in Burlington's architectural history; and*

The existing garage is documented in the South Union Street Historic District (National Listing), and photos are included with this application. **Affirmative finding.**

- F. *The applicant has agreed to redevelop the site after demolition pursuant to an approved redevelopment plan which provides for a replacement structure(s).*

- (i) *Such a plan shall be compatible with the historic integrity and enhances the architectural character of the immediate area, neighborhood, and district;*

The proposed replacement structure varies from the previous appearance, and may likely vary from other accessory structures in the immediate area. One such exception to this would be the recently approved garage at 129 Spruce Street that is completely new, and unique to the architectural stylings of similar accessory structures in the neighborhood. **Affirmative finding.**

- (ii) *Such plans must include an acceptable timetable and guarantees which may include performance bonds/letters of credit for demolition and completion of the project; and*

The application includes a complete redevelopment; however no such timetable has been provided by the applicant. What is relevant here is that construction must commence within one year from the date of zoning permit issuance. Once that requirement has been met, the zoning permit is active for an additional 2 years (3 years total) in order to complete the project.

Affirmative finding.

- (iii) *The time between demolition and commencement of new construction generally shall not exceed six (6) months.*

See above. In order to keep the zoning permit effective, construction must start within a year of zoning permit approval. **Affirmative finding.**

This requirement may be waived if the applicant agrees to deed restrict the property to provide for open space or recreational uses where such a restriction constitutes a greater benefit to the community than the property's redevelopment.

The private property is in a developed residential neighborhood. This would not be likely. **Not applicable.**

3. Deconstruction: Salvage and Reuse of Historic Building Materials

The applicant shall be encouraged to sell or reclaim a structure and all historic building materials, or permit others to salvage them and to provide an opportunity for others to purchase or reclaim the building or its materials for future use. An applicant may be required to advertise the availability of the structure and materials for sale or salvage in a local newspaper on at least three (3) occasions prior to demolition.

The applicant should endeavor to salvage and reuse, or provide to others, whatever building materials can reasonably be salvaged. **Affirmative finding as conditioned.**

Section 5.5.2 Outdoor Lighting

Lighting fixtures are shown on an elevation drawing provided. Spec sheets will need to be submitted to staff for review and approval. **Affirmative finding as proposed.**

Section 5.5.3 Stormwater and Erosion Control

An Erosion Prevention and Sediment Control Plan has been submitted to the Stormwater Program Manager. Prior to the start of construction, this plan shall be approved. **Affirmative finding as conditioned.**

Section 5.5.4 Tree Removal

The existing conditions site plan shows one-two trees in the footprint of the new structure that will be removed. No other trees are proposed for removal. **Affirmative finding.**

Article 6: Development Review Standards

Part 1: Land Division Design Standards

No land division is proposed as part of this application. Not applicable.

Part 2: Site Plan Design Standards

Sec. 6.2.2 Review Standards

(a) Protection of Important Natural Features:

There are a few mature trees that line the north property line. The site plan indicates that there may be two (6" and 10" diameter) trees that will be removed to make way for the new structure. **Affirmative finding.**

(b) Topographical Alterations:

No topographical alterations are defined within the project application. **Not applicable.**

(c) Protection of Important Public Views:

There are no protected important views from or through this property. **Not applicable.**

(d) Protection of Important Cultural Resources:

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

See Section 5.4.8, above. **Affirmative finding.**

(e) Supporting the Use of Renewable Energy Resources:

No part of this application precludes the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**

(f) Brownfield Sites:

This address is not listed on the Vermont DEC website for identified Brownfields. **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.

The applicant has provided an Erosion Prevention and Sediment Control Plan for review by the Stormwater engineering program. Their review and written approval will be a condition of any permit.

The main entrance to the second dwelling unit is inset from the wall of the structure and will provide cover from the elements. **Affirmative finding.**

(h) Building Location and Orientation:

The replacement garage is in a pre-existing location on the site, and the second dwelling unit portion will extend to the east off the garage. Overall, the new/replacement structure will be located behind the principle structure and difficult to see from the street. **Affirmative finding.**

(i) Vehicular Access:

Access will remain as existing, from South Union Street via a driveway that is shared with 368 South Union St. Parking will be provided off-street. **Affirmative finding.**

(j) Pedestrian Access:

Pedestrian access between the primary structure and the South Union St. sidewalk will remain. The site plan indicates a new enclosed walkway between the replacement structure and the primary structure. **Affirmative finding.**

(k) Accessibility for the Handicapped:

The building inspector has jurisdiction over ADA requirements. By his direction and per Chapter 8 of the Burlington Code of Ordinances, 4 to 14 units must provide 1 accessible unit. This review is conducted during the building permit stage. **Affirmative finding as conditioned.**

(l) Parking and Circulation:

Within the Neighborhood Parking District, 2 parking spaces are required for each residential unit. The two spaces in the garage and the two spaces behind each garage door satisfy this requirement. The site will continue to utilize the shared driveway (with 368 South Union Street) for access. **Affirmative finding.**

(m) Landscaping and Fences:

The plans indicate new and existing landscaping around the new/replacement structure. New plantings include evergreen hedges, border plants (species yet to be identified), and one new tree. No new fencing is proposed. **Affirmative finding as conditioned.**

(n) Public Plazas and Open Space:

There are no public plazas required, but the site plan illustrates areas for resident outdoor enjoyment. **Affirmative finding.**

(o) Outdoor Lighting:

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

An elevation drawing shows the location for new light fixtures. Spec sheets for the fixtures proposed will need to be reviewed and approved by staff to ensure compliance with Sec. 5.5.2. **Affirmative finding as conditioned.**

(p) Integrate infrastructure into the design:

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

Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be placed underground whenever practicable. Trash and recycling bins and dumpsters shall be located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.

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

A mailbox is identified at the entrance to the second dwelling unit. Mechanical equipment and meters are not included and will need to be on a revised plan should they become part of the development. All electrical service to the new building will have to be underground. **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 existing garage is one story tall. The replacement garage is proposed at two stories, as well as the attached dwelling unit. While the massing, height and scale will increase substantially, the structure is located to the rear of the principle single family home and will not be easily seen from the street. It will be visible from adjacent properties. The proposal will not conflict with the massing, height, or scale of the existing principal dwelling. **Affirmative finding.**

2. *Roofs and Rooflines.*

The existing garage has a gable roof, and the applicant proposes a two-way slanted roof for the new structure. The roof will slant downward in a west-east manner over the garage, and then slant upward in the same west-east manner over the second dwelling unit. This roof type appears to be unique among those on other accessory buildings in the area, however, because it will be particularly difficult to see from the public street, it won't have a negative impact on the roofline appearance of the many existing homes along South Union Street. **Affirmative finding.**

3. *Building Openings*

There are a variety of building openings proposed on the new structure, with a mix of fixed, casement and awning windows. The garage portion of the structure will see a mix of fixed, awning and casement windows. On the rear façade (north), small awning windows will provide some natural sunlight into the garage and upper floor. On the west side, an awning and casement window is proposed, along with a row of fixed windows just below the roof line. This side also contains a man-door providing access to the garage. The 'front' of the garage portion (south) will have two garage doors at the ground level, and at the upper story level, there is one window proposed and a sliding door providing access to the balcony.

The enclosed walkway connector will be almost entirely glazed.

A mixture of fixed and casement windows are proposed on the second dwelling unit portion. Large picture windows are proposed and will provide ample sunlight into the living and sleeping areas on the first and second floors. Additionally, one door on the south side will be installed providing direct access to the patio. **Affirmative finding.**

(b) Protection of Important Architectural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.

See Section 5.4.8, above.

(c) Protection of Important Public Views:

There are no protected important views from this property. **Not applicable.**

(d) Provide an active and inviting street edge:

No changes are included for the principal building. **Not applicable.**

(e) Quality of materials:

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

The new building is proposed to with wood clapboard siding. Roofing will be formed metal. Windows will be aluminum clad wood windows. **Affirmative finding.**

(f) Reduce energy utilization:

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

(g) Make advertising features complementary to the site:

Not applicable. No signage is proposed.

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p), above.

(i) Make spaces secure and safe:

Redevelopment is subject to all applicable building and life safety codes as defined by the Burlington's Building Inspector and the Fire Marshal. **Affirmative finding as conditioned.**

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

Duplexes require 4 parking spaces (2 per unit) in the Neighborhood Parking District. The proposal includes a two car garage and two spaces behind each garage door for a total of four parking spaces. **Affirmative finding.**

Table 8.1.11-1 Minimum Parking Dimensions

The minimum back-up length for 90° angled parking spaces is 20 ft. Plan A-101 shows some back up space, but not enough to adequately back up within the confines of the shared driveway easement. Additionally, the two easternmost parking spaces will have a difficult time backing up and pulling forward without the other outdoor parking space (westernmost) being in the way.

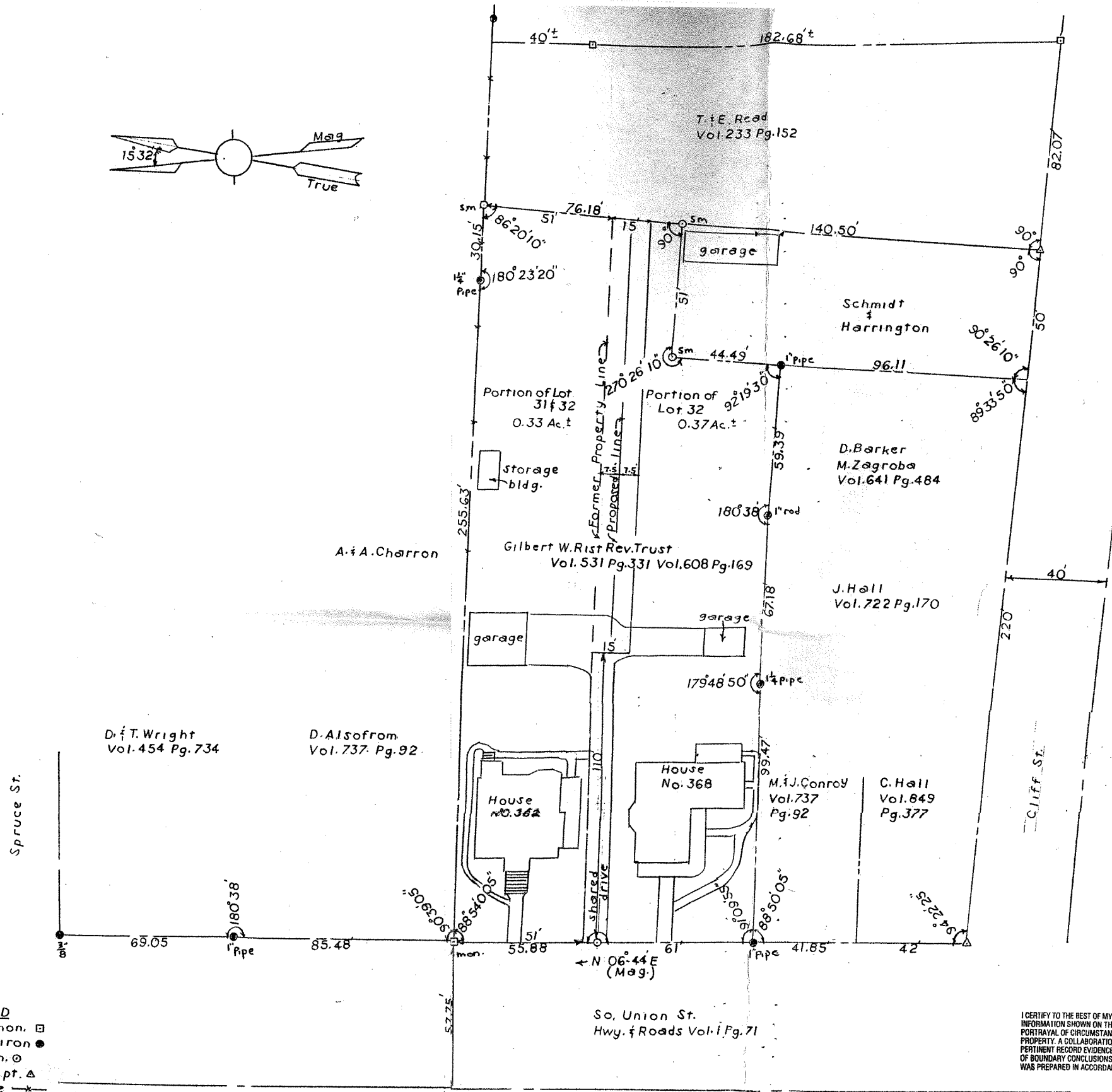
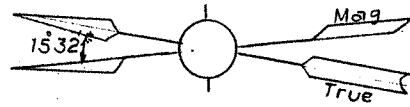
The neighbor's driveway extends off the shared driveway directly behind the parking for the subject property, making backing up and maneuvering forward simple. However, the width of the shared driveway easement does not extend far enough to satisfy a 20 ft back-up space. The applicant states that this practice (utilizing the neighbor's driveway beyond the extent of the easement) already occurs and suggests that it will continue with the new proposal.

The CDO allows shared driveways and parking to straddle property lines. The easement is a private agreement between the two properties. However, as stated above, the easement does not go into the neighboring property far enough to accommodate a 20 ft back-up space. The applicant will have to amend the easement to establish that extra area for the full 20-ft back-up space into the neighboring property. **Affirmative finding as conditioned.**

II. Conditions of Approval

1. **Prior to the release of the zoning permit**, the applicant shall secure a letter of confirmation from the Department of Public Works verifying that there is adequate water and sewer capacity for the second dwelling unit.
2. **Prior to the release of the zoning permit**, light fixture spec sheets shall be submitted to staff for review and approval.

3. **Prior to the release of the zoning permit**, specific landscape species shall be submitted to staff for review and approval.
4. **Prior to the release of the zoning permit**, the applicant shall amend the shared driveway easement to accommodate a full 20 ft back-up space for the required parking.
5. **Prior to the start of construction**, the associate Erosion Prevention and Sediment Control plan shall be reviewed and approved by the Stormwater Program Manager.
6. Standard construction hours are 7:00 AM to 5:30 PM, Monday – Friday. Saturday construction hours may be allowed upon request to the Development Review Board. No work on Sunday.
7. If applicable, mechanical equipment and meters shall be identified on a revised site plan, along with their associated specification sheets, **prior to the release of the zoning permit**, subject to staff review and approval.
8. All electrical service to the new building shall be underground.
9. Construction of the proposed replacement structure shall commence within one year from the time of the existing garage's removal.
10. A state wastewater permit is required.
11. Residential occupancy limits apply. The occupancy of any dwelling unit is limited to members of a family as defined in Article 13. Not more than four unrelated adults may occupy either dwelling unit.
12. The applicant shall be encouraged to sell or reclaim a structure and all historic building materials, or permit others to salvage them and to provide an opportunity for others to purchase or reclaim the building of its materials for future use. An applicant may be required to advertise the availability of the structure and materials for sale or salvage in a local newspaper on at least three (3) occasions prior to demolition.
13. The applicant/property owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
14. All new construction shall 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.
15. Standard Permit Conditions 1-15.



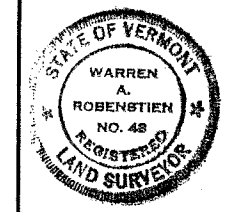
LEGEND
exist. mon. □
exist. iron ●
Set sm. ○
comp. pt. ▲
fence —
former prop. line - - -
revised prop. line —

City or Town Clerk's Office
Received For The Record
Date _____ AD _____
AT _____ o'clock min. _____ m
In map cabinet slide _____
Attest _____
Town Clerk

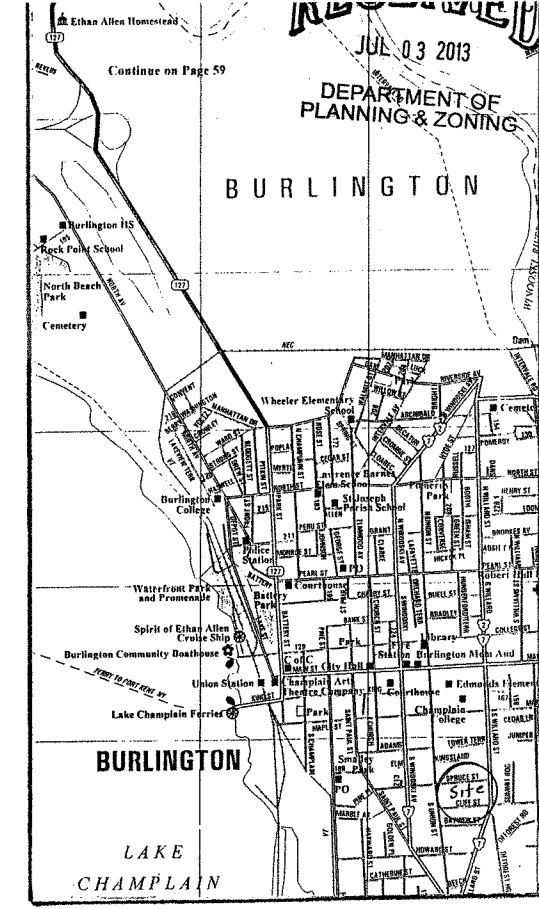


Map from 1/2 file
[Handwritten signature]

I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THE INFORMATION SHOWN ON THIS PLAT IS A FAITHFUL PORTRAYAL OF CIRCUMSTANCES PERTINENT TO SUBJECT PROPERTY. A COLLABORATION OF FIELD, PAROL AND PERTINENT RECORD EVIDENCE WAS USED IN THE ANALYSIS OF BOUNDARY CONCLUSIONS SHOWN HEREON. THIS PLAT WAS PREPARED IN ACCORDANCE WITH 27 VSA 1403.



PLAT OF SURVEY	
SHOWING BOUNDARY LINE ADJUSTMENT	
GILBERT W. RIST REVOCABLE TRUST PROPE	
NO. 362 & 368 So. Union St. Burlington, Vermo	
DATE: July 3, 2013	SCALE: 1"=30'
WARREN A. ROBENSTIEN, REG. VT & NH L.S.	
P.O. BOX 171	
WINDOOSKI, VT 05404	



Approval of this lot line adjustment plat does not constitute the creation of a new parcel or lot. It adjusts the physical location of the common boundary between parcels or lots. This lot line adjustment has been approved by:
[Signature]
City of Burlington Administrative Officer/ Assistant Administrative Officer
Date: 3 July 2013 Zoning Permit # 14-001011

NOTE:		Title Deeds	
See maps of record,		Vol. 608	Pg. 169
Vol. 46 Pg. 541		Vol. 531	Pg. 331
Vol. 46 Pg. 482		Vol. 256	Pg. 232
Vol. 17 Pg. 207 (old town records)		Vol. 242	Pg. 679
		Vol. 187	Pg. 397
		Vol. 72	Pg. 202, 177
Lot Coverage at no. 368 = 17%		Vol. 69	Pg. 380
" " " no. 362 = 23%		Vol. 49	Pg. 393
		Vol. 17	Pg. 208
		Vol. 2	Pg. 228

Slide 496

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax: (802) 863-0466

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
vacant
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday August 4, 2020, 5:00 PM

Remote Meeting

Zoom: <https://us02web.zoom.us/j/81648212473?pwd=V2NxNTk3N1Y0aDBiUmh2cGJQUS9HUT09>

Webinar ID: 816 4821 2473

Password: 842557

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

Agenda

I. Agenda

II. Communications

III. Minutes

IV. Public Hearing

1. 20-0914CA/AP; 4-8 Strong Street (RM, Ward 3C) Alan Bjerke

Appeal of zoning permit #20-0914CA. Restore gravel driveways to same dimension; modify entry stairs to 8 Strong Street. No change to coverage. Appellant: Missa Aloisi (Project Manager: Mary O'Neil)

2. 20-0971CA/CU; 362 South Union Street (RL, Ward 6S) William Fellows and Tshen Shue

Demolish detached garage. Construct garage with attached dwelling unit for conversion to duplex. (Project Manager: Ryan Morrison)

3. 20-0854CA/CU; 266 Queen City Park Rd (ELM, Ward 5S) Burton Corporation

Conditional use application to create 11,560 SF Performing Arts Center use within an existing 85,000+ SF structure; proposed façade improvements to existing building exterior. *Continued review.* (Project Manager: Scott Gustin)

V. Certificate of Appropriateness

1. 20-0522CU; 75 Cherry Street (FD6, Ward 3C) BTC Mall Associates, LLC

Amend ZP 17-0662CA/MA phasing schedule. *Applicant has requested 3-month time extension for application review.* (Project Manager: Scott Gustin)

VI. Adjournment

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

The programs and services of the City of Burlington are accessible to people with disabilities. Individuals who require special arrangements to participate are encouraged to contact the Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).
Printed on 100% Recycled Paper

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

Department of Permitting & Inspections

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

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



TO: Development Review Board
FROM: Scott Gustin
DATE: August 4, 2020
RE: 20-0522CA; 75 Cherry 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: FD6 Ward: 3C

Owner/Applicant: BTC Mall Associates, LLC / FFF, Inc.

Request: Amend zoning permit 17-0662CA/MA phasing schedule.

Applicable Regulations:

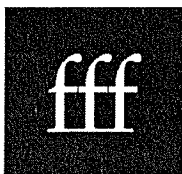
Article 3 (Applications, Permits, & Project Reviews)

Background Information:

This application has been pending since November 20, 2019. The applicants requested deferral of Development Review Board review in January, 2020. Since then, the COVID-19 pandemic and related state of emergency have taken place.

Per Sec. 3.2.5, *Completeness of Submission, Administrator's Action*, action may be deferred for up to 6 months. Up to two 3-month extensions may be granted by the Development Review Board. The Coronavirus pandemic led to a declared state of emergency that suspended permit timelines for 90-days. Between the original 6 months and the additional 3 months associated with the state of emergency, this application will expire August 20, 2020 unless a 3-month extension is granted by the Development Review Board.

A 3-month extension may be granted by the Development Review Board. If the application lies dormant for this 3-month extension, a second extension may not be granted.



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MEMORANDUM

Freeman French Freeman Inc. | Architecture · Planning · Interiors
81 Maple Street · Burlington Vermont 05401
802-864-6844 · www.fffinc.com

Project Name: **CityPlace**
Project Number: A1947.00
Date: **16 July 2020**

To: P&Z Department- Scott Gustin
From: Jesse Beck, FFF
Re: Construction Phasing/TCO Plan

RECEIVED
JUL 16 2020
BURLINGTON
PERMITTING & INSPECTIONS

Phased occupancy based on the following:
Construction Start – September 30, 2021
Completion (Phase 1, 27 months) – December 31, 2023

North Block- Phase1/TCO1 (27mos.)December31,2023

Basement level- Mech./Utilities/Storage/Parking
Garage Floors L1-L4 North of Hotel Garage Break line
Residential floors L1, 2, 3.
Retail – Cherry Street.

North Block- Phase2/TCO 2 (+6mos.)July1,2024

Residential Floors L4 to L8
Res. Amenities L9
Mechanical L9

South Block- Phase3/TCO3 (+3mos.) October1,2024

Retail on Bank and hotel lobby.
Parking Garage - South Section under Hotel.
Hotel Amenity L1

South Block- Phase4/TCO4 October31,2026

Construction start October 31, 2024
Completion (24 months) October 31, 2026
Hotel L2 to L7
Restaurant and Observation Deck on L8; Mechanical L9.
New St. Paul and NE Pine Ground Level Spaces.

CC

File A1947.00			

Scott Gustin

From: Jesse Beck <jbeck@ffinc.com>
Sent: Thursday, July 16, 2020 3:33 PM
To: Scott Gustin
Cc: Mary O'Neil
Subject: re: CPB P&Z extension
Attachments: CPBTimelV2.docx

[WARNING] External Message

Scott,

Consider this email our request to extend our deferral by 3 months. Please use the above timeline for the DRB hearing on July 4th. We will be present for the hearing to answer any questions the DRB may have.

If there is anything else you need please let us know.

Best,

Jesse

Jesse Beck

President, AIA, NCARB

Freeman French Freeman, Inc.

Architecture + Interior Design + Planning

81 Maple Street, Burlington, VT 05401

802-864-6844

www.fffinc.com *We have a new website!*

Scott Gustin

From: Scott Gustin
Sent: Monday, July 13, 2020 10:47 AM
To: Jesse Beck; Mary O'Neil
Subject: RE: DRB hearing date change

Good morning Jesse,

Application time limits prevent pushing this item further back. It needs to occur on August 4. Alternatively, you'd need to seek a 3-month extension from the DRB to keep the application pending. That request would need to occur on August 4 before the application expires. Let me know what you'd like to do ASAP. I'm in the office today if you'd like to chat.

Scott

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

From: Jesse Beck [mailto:jbeck@ffinc.com]
Sent: Friday, July 10, 2020 12:20 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>; Mary O'Neil <MCOneil@burlingtonvt.gov>
Subject: re: DRB hearing date change

WARNING: External Message

Scott & Mary,

This email follows my conversation with Mary regarding a request to change the August 4th DRB hearing regarding the City Place Burlington timeline/Phasing/TCO schedule extension.

BTC Mall Assoc. request that the scheduling for the August 4th DRB hearing be changed to September 15th. BTC Mall Assoc. believes it's in everyone's best interest to have the amended project application reflecting the new project direction submitted prior to the DRB hearing regarding the timeline extension. Due to the COVID pandemic we have been delayed on assembling and finishing project information and are striving for an early September submission.

Thank you,
Jesse

Jesse Beck
President, AIA, NCARB

Freeman French Freeman, Inc.
Architecture + Interior Design + Planning

81 Maple Street, Burlington, VT 05401
802-864-6844
www.ffinc.com *We have a new website!*

Scott Gustin

From: Jesse Beck <jbeck@fffinc.com>
Sent: Thursday, January 30, 2020 5:00 PM
To: Scott Gustin
Subject: RE: city place phasing app

External Message

Scott,
Sorry for the delay. Just got word back from our Client that they want to submit the Construction Phasing & TCO schedule with the new application. No need to have a separate hearing on the schedule alone and this pending application can be deferred.

Thank you for the reminder.
Best,
Jesse

From: Scott Gustin [mailto:SGustin@burlingtonvt.gov]
Sent: Thursday, January 30, 2020 4:35 PM
To: Jesse Beck
Subject: city place phasing app

EXTERNAL - Be aware of the source

Hi Jesse,
I've not seen a request from you to defer the pending City Place phasing application. Has there been a change in thinking as to this application?
Scott

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

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.

LAW OFFICES
OF
JOHN L. FRANCO, JR.

110 Main Street, Suite 208
Burlington, Vermont 05401-8451
Telephone (802) 864-7207 FAX (802) 859-1876
email: johnfrancolaw@aol.com

RECEIVED
DEC 23 2019
BURLINGTON
PERMITTING & ZONING

December 16, 2019

City of Burlington, Vermont
Development Review Board and
Department of Planning and Zoning
City Hall
149 Church Street
Burlington, VT. 05401

Re: *Permit Amendment Application #17-0662CA/MA*
Folder RSN378766, ZP Number20-0522CU
75 Cherry Street

To Whom It May Concern:

Barbara McGrew of 76 St. Paul Street, Apt. 8 NW, Burlington, Steven Goodkind of 260 Ethan Allen Parkway, Burlington, Michael Long of 55 Henry Street Burlington, and Lynn Martin of 101 College Street #211, Burlington hereby enter their appearances as interested persons in the proceedings before the Development Review Board in the above captioned matter. They had brought a series of legal challenges to the redevelopment being proposed for the former Burlington Square Mall at 75 Cherry Street.

- Barbara McGrew individually and Steven Goodkind on his own behalf and on behalf of a group of individuals had brought an appeal in *Devonwood Investors, LLC (75 Cherry Street)*, Vermont Superior Court, Environmental Division, Docket Number 39-4-17 Vtec regarding the local land use approval issued by the Burlington Development Review Board (DRB) on March 17, 2017 to Devonwood Investors, LLC on behalf of the property owner BTC Mall Associates, LLC.
- Barbara McGrew individually brought the appeal *Devonwood Investors, LLC JO 4-255*, Vermont Superior Court, Environmental Division, Docket Number 63-5-17 Vtec claiming that Act 250 had jurisdiction to also review the proposal.
- Steven Goodkind, Michael Long and Lynn Martin in Counts I, II, and III of *Long et. al. v. City of Burlington et. al.* Vermont Superior Court, Civil Division, Docket No. 996-11-16 Cncv brought a taxpayer challenge to \$22 million in Tax Increment Financing (TIF) provided by State and City property taxpayers to BTC Mall Associates to subsidize the project, and in Count IV of that action also as individual plaintiffs challenged a denial of a request for public records regarding that subsidy.

The claims were all settled and compromised in a global *Settlement Agreement* between the plaintiffs and the developer mediated by former Burlington Mayor Peter Clavelle. These actions were each dismissed by the plaintiffs with prejudice and/or they individually withdrew as per the *Settlement Agreement* in exchange for the conditions in that *Settlement Agreement*. Paragraph 3 of that *Settlement Agreement* incorporated by reference a *Stipulation for Final Judgment* along with a *Proposed Judgement Order*. The *Stipulated Findings of Fact Supporting Final Judgment* were approved and signed by the plaintiffs, the developer and the City. The *Proposed Judgment Order* was adopted by the Vermont Superior Court Environmental Division as a *Judgment Order* on July 17, 2017 in Docket 35-4-17 Vtec.

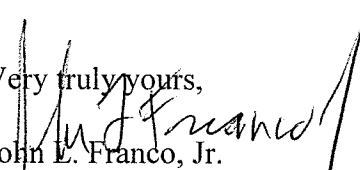
This gives them both contract rights and *res judicata* rights in any proposed changes to the project. They contend that the proposed project amendment(s) violate those rights.

- This is bait and switch permitting. The developer acted on this *Settlement Agreement* and the zoning permit issued by the Environmental Division thereunder to proceed with construction of the project in November of 2017. That construction commenced with demolition including of the former 567 space public parking garage. Now that that parking has been demolished and is a *fait accompli*, the amendments propose to make a 45% reduction in the gross floor area devoted to off-street parking, but only a 15% reduction in the floor area of the other elements. The developer is equitably estopped from doing this.
- The amendments are premature because according to ¶9 the *Settlement Agreement* “may not be amended, modified, or terminated except by written consent signed by all the parties hereto.” No such written consent has been obtained from my clients for these amendments.
- These amendments consequently violate the finality requirements of *res judicata* because they fail to qualify for a zoning permit amendment under Vermont case law which require a showing that the permit amendments are justified by either (a) changes in factual or regulatory circumstances beyond the control of the permittee; (b) changes in the construction or operation of the permittee’s project not reasonably foreseeable at the time the permit was issued; or (c) changes in technology. If approved the amendments will not be in accord with the applicable policies, purposes, or terms of the plan and/or bylaws of the City of Burlington.

Please provide us with actual notice of any and all actions taken on this application, including but not limited to advance notice of the dates and times of all hearings before the DRB.

Thank you for your attention to this matter.

Very truly yours,


John L. Franco, Jr.

Attorney for Barbara McGrew,
Michael Long, Lynn Martin, and
Steven Goodkind

RECEIVED

DEC 23 2019

BURLINGTON
PERMITTING & INSPECTIONS

Phased occupancy based on the following:

Construction Start – August 2020

Completion (30 months) – February 2023

Phase 1 /TCO 1 (18 mos.) February 2022

Basement level- Mech./Utilities/Storage/Parking
Garage Floors L1-L4 North of Hotel Garage Break line
Residential floors L1, 2, 3.

Phase 2 / TCO 2 (+6 mos.) August 2022

Residential Floors L4 to L8
Res. Amenities L9
Mechanical L9

Phase 3/TCO 3 (+3mos.) November 2022

Retail on Bank
Parking Garage - South section for Hotel.
Hotel Amenity L1

Phase 4/ TCO 4 (+3 mos.) February 2023

Hotel L2 to L7
Mechanical, Community, restaurant L8, L9.

RECEIVED

NOV 20 2019

BURLINGTON
PERMITTING & INSPECTION



Department of Permitting and Inspections

149 Church Street, City Hall

Burlington, VT 05401-8415

Phone: (802) 865-7188

Fax: (802) 865-7195

www.burlingtonvt.gov/pz

RECEIVE

NOV 20 2019

BURLINGTON
PERMITTING & INSPECTION

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS:

PROPERTY

OWNER*: BTC MAIL ASSOC LLC (DAN SINGER)

*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS: 101 CHERY ST, SUITE 440

CITY, ST, ZIP: BURLINGTON, VT 05401

DAY PHONE: 802 658-2545

EMAIL: dsinger@devonwoodinc.com

SIGNATURE:

[Signature]
I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this zoning permit application.

APPLICANT: FFF, INC. (JESSE BEZ)

POSTAL ADDRESS: 81 MAPLE ST.

CITY, ST, ZIP: BURLINGTON, VT. 05401

DAY PHONE: 802 864-6844

EMAIL: jbeck@fffinc.com

SIGNATURE:

[Signature]

Description of Proposed Project: THIS APPLICATION APPLIES TO BURLINGTON TOWN

CENTER DISTRICT ZONE 17-0662 CA/MA TO

AMEND D.R.B. APPROVED PHASING/TLO SCHEDULE ATTACHED

Existing Use of Property: ☐ Single Family ☐ Multi Family: # Units ☒ Other: RETAIL, PARKING

Proposed Use of Property: ☐ Single Family ☒ Multi Family: # 3 Units ☐ Other: RETAIL, COMMERCIAL, PARKING

• Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes ☒ No ☐

(If yes, the Vermont Residential/Commercial Building Energy Standards (VRBES/VCBES) apply. Please visit the following links for more information: http://publicservice.vermont.gov/energy_efficiency/rbes or http://publicservice.vermont.gov/energy_efficiency/cbes)

• Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes ☐ No ☐

(If yes, you will need to submit the 'Erosion Prevention and Sediment Control Plan' questionnaire, with a site plan)

• For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes ☐ No ☐

(If yes, you will need to submit the 'Stormwater Management Plan' questionnaire, with a site plan)

• Are you proposing any work within, below, or above the public right of way? Yes ☐ No ☐

(If yes, you will need to receive prior approval from the Department of Public Works)

• Are you proposing any onsite food or beverage production/manufacturing? Yes ☐ No ☐

(If yes, you will need to consult with Water Resources Division at the Department of Public Works: 863-4501)

Estimated Construction Cost (value)*: \$ NO CHANGE

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Zoning Division at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Zone: FD 6 Eligible for Design Review? Y Age of House 1976 Lot Size 5611

Type: SN AW FC BA COA 1 COA 2 COA 3 CU MA VR HO SP DT MP

Check No. 155 7235120

Burlington Development Review Board

645 Pine Street
Permitting & Inspections
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax (802) 863-0466

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
vacant

Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday May 19, 2020, 5:00 PM

Remote Meeting

Participate on Zoom: <https://us02web.zoom.us/j/86227982815>

Webinar ID: 862 2798 2815

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

Minutes

Board Members Present: Brad Rabinowitz, Springer Harris, Geoff Hand, AJ LaRosa, Sean McKenzie (Alt)

Board Members Absent: Brooks McArthur, Kienan Christianson, Ravi Venkataraman (Alt)

Staff Present: Scott Gustin, Mary O'Neil, Ryan Morrison, Alison Davis

I. Agenda

B. Rabinowitz: No changes to the agenda.

II. Communications

B. Rabinowitz: No additional communications.

III. Minutes

B. Rabinowitz: No minutes to review.

IV. Consent

1. **20-0802CA; 505 Lake Street (DW-PT, Ward 3C) Lake Champlain Com Sailing Ctr**
Construct a 10' X 15' concrete pad along the lakeshore within the flood zone. (Project Manager: Ryan Morrison)

Owen and Peter Gibbs appeared on behalf of application

B. Rabinowitz: Explains this item is recommended for consent

G. Hand: Motion to adopt staff findings and recommendations and to approve the request.

S. Harris: Seconds motion

5-0-0

2. **20-0749CA; 1 King Street (DW-PT, Ward 5S) Spot LLC**

Installation of shed to enclose commercial ice machine within the flood zone. (Project Manager: Ryan Morrison)

Geoff Hand recused from item.

Kyle B. appeared on behalf of application.

B. Rabinowitz: Explains recommendation for consent

S. Harris: Motion to adopt staff findings and recommendations and to approve the request.

AJ LaRosa: Seconds motion

4-0-0

3. 20-0737CA; 266 College Street (FD5, Ward 8E) Hotel Y Burlington, LLC

Amend condition #10 in zoning permit #20-0037CA/MA for revised construction hours. (Project Manager: Mary O'Neil)

Geoff Hand recused from item.

John appeared on behalf of the application.

John: Explains applicants have no issues with the staff findings and recommendations.

S. Harris: Motion to adopt staff findings and recommendations

S. McKenzie: Seconds motion

4-0-0

V. Public Hearing

1. 20-0658CU; 36-38 South Union Street (RH, Ward 8E) Paul & Karen Mayer

Change of use from duplex to hostel. No site or exterior building changes. *Continued public hearing.* (Project Manager: Scott Gustin)

Claudine Safar appeared on behalf of application.

B. Rabinowitz: Explains there is a recommendation to move item to June 2nd meeting.

C. Safar: Willing to present on other issues if needed

B. Rabinowitz: Recommends waiting to present all information at the same meeting

G. Hand: Motion to move item to June 2nd, 2020 meeting.

AJ LaRosa: Seconds motion

VI. Other Business

1. 441 Shelburne Street

Status update for 10-unit residential project and related site work.

Mitchel Richardson appeared on behalf of application

B. Rabinowitz: Explains this is not a public item, but just a project update

M. Richardson: Presents project photo updates. Explains recent progress and where project currently stands. Soon to be done with concrete work.

AJ LaRosa: Compliments the work facing Giovanni's neighboring property including the timeline of moving project along.

G. Hand: Asks about timeline for finishing

M. Richardson: Waiting on interior things, plumbing, electrical, delays due to coronavirus. Asks about changing planting and landscaping.

G. Hand: If similar could approve on as built change, but if it's a significant change, the

M. Richardson: Asks about planting trees, but with new trees there is concern with root damage to neighbor's fence.

B. Rabinowitz: Appreciates the progress on project. Another project update with Board scheduled for September 1st or if project is done, cancelling the scheduled item.

VII. Adjournment

Meeting adjourned at 5:30PM.

Bradford L. Rabinowitz, Chair of Development Review Board

Date


Alison Davis, Zoning Clerk

7/20/2020
Date

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Burlington Development Review Board

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Telephone: (802) 865-7188

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Brad Rabinowitz

AJ LaRosa

Springer Harris

Geoff Hand

Brooks McArthur

Kienan Christianson

vacant

Sean McKenzie, (Alternate)

Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday June 2, 2020, 5:00 PM

Remote Meeting

Minutes

Participate on Zoom: <https://us02web.zoom.us/j/88988703795>

Webinar ID: 889 8870 3795

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

Board Members Present: Brad Rabinowitz, Springer Harris, AJ LaRosa, Brooks McArthur, Kienan Christianson, Ravi Venkataraman (Alt)

Board Members Absent: Brooks McArthur, Kienan Christianson, Geoff Hand, Sean McKenzie (Alt)

Staff Present: Scott Gustin, Mary O'Neil, Ryan Morrison, Alison Davis

I. Agenda

B. Rabinowitz: No changes to the agenda

II. Communications

B. Rabinowitz: No additional communications

III. Minutes

IV. Consent

1. 20-0674CU; 50 Lakeside Ave (ELM, Ward 5S) Lakeside Ovens, LLC

Change of use of mixed office/assembly use space to trade school use. (Project Manager, Ryan Morrison)

John Caulo appeared on behalf of this project.

B. Rabinowitz: Project is recommended for approval on the consent agenda. Asks if there are any questions or concerns.

B. McArthur: Motion to approve and adopt staff findings and recommendations.

S. Harris: Seconds motion

6-0-0

2. 20-0677CU; 52 Appletree Point Road (RL/W, Ward 4N) William Kent Cassella

Change use to one bedroom bed and breakfast. (Project Manager, Ryan Morrison)

William Kent Cassella appeared on behalf of this project.

B. Rabinowitz: Staff is recommending approval, asks if there are any questions or concerns.

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 Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865 3100 (TTY users: 865 3140).

S. Harris: Motion to approve and adopt staff findings and recommendations.

R. Venkataraman: Seconds motion

6-0-0

3. 20-0687CA; 15 Rockland Street (RL, Ward 7N) James Daigle

Construct new duplex. Two-car garage under each unit. Each unit having own driveway, front porch and rear porch. (Project Manager, Ryan Morrison)

James Daigle and Missa Aloisi appeared on behalf of project.

B. Rabinowitz: Project is recommended for consent, asks if there are any questions or concerns.

B. McArthur: Motion to approve and adopt staff findings and recommendations

S. Harris: Seconds motion

6-0-0

V. Public Hearing

1. 20-0362DT; 86 North Union Union Street (RM, Ward 2C) Diemer Apartments, LLC

Appeal as to 15-year determination of occupancy of dwelling by six unrelated adults. (Project Manager, Scott Gustin)

Jill and Michael Diemer, and Dan O'Rourke appeared on behalf of appeal.

Kim Sturtevant provided testimony.

B. Rabinowitz: Continuation of a hearing from Jan 22nd, an appeal, the issue was that there were gaps in the documents that were presented.

S. Gustin: Recaps history of agenda item.

Board could not come to quorum for definition of discontinuance.

K. Sturtevant: Recognizes gaps in the 15 years for more than 60 days. Questions about discontinuance meaning and the intent to discontinue. For Burlington's ordinance, intent is not relevant.

K. Christianson: Asks how to determine the intent to discontinue

K. Sturtevant: Explains what ordinance states

There are gaps in documents for 90 days (3 months) during the summer months.

D. O'Rourke: Explains the City violation. The City relies on the rental registrations, but discontinuance is not defined. The intent to abandon does not apply for this situation because there was always an intent to replace the roommate.

S. Harris: Asks about the violation came about. Asks about the nominal amount of the violation.

J. Diemer: Explains they were notified in the mail. Required information about four unrelated adults and then changed to requiring for six unrelated adults. Then it changed to showing the leases or any changes during those times. There was full intent on filling the rooms.



S. Gustin: Hard to remember because it was from so long ago, almost certain it was a complaint that our Department responded to.

B. Rabinowitz: Records show periods in the summer when students are not here, there are not six people living in the apartments during the summer

J. Diemer: Tenants would want to secure the apartments, but because they sign early, we work with them for people who might fall through, finding someone compatible for them.

M. Diemer: If there is a group of girls, Jill is always diligent to not grab anyone and throw them in with a group that would not be a good working relationship. Jill will take her time and make sure the group is a good fit.

B. Rabinowitz: Asks if the documents are inaccurate and show gaps when there were not gaps

J. Diemer: Explains that the leases state the unit is a four people in a six-bedroom apartment and will add the other people later

B. Rabinowitz: Asks what is "later"

J. Diemer: As soon as we find a suitable replacement. If we have a group of six girls and two fall out, and we have an older man that wants to move in, the parents would not be very happy, so we wait until we have a suitable situation for them.

B. Rabinowitz: The vulnerability is that this is not in compliance with the zoning ordinance.

D. O'Rourke: There was never an intent to discontinue.

J. Diemer: We are taking the risk to do the right thing for our tenants.

AJ LaRosa: Asks Kim Sturtevant, in a situation like today, if people are sent home, apartments are empty, if that is discontinuance if it is longer than 60 days.

K. Sturtevant: Under the ordinance, discontinuance is discontinuance. You have an unenforceable violation, this was never legal. If it was a pre-existing legal nonconformity, the owners could put in a request to have it reestablished, while looking at the facts that they're looking for new tenants and advertising. I think our ordinance has that distinction.

K. Christianson: Asks why the property owners did not come to the Board and ask for Conditional Use approval which would have allowed them to exceed the four-person limit, and that did not happen. Instead of dancing around the definition of discontinuance question, maybe they can use this subsection. Referenced in the original staff report.

D. O'Rourke: When the Diemers received the notice of violation, they exercised the right that the City prescribed on the back of the notice. That was the route they elected to go because they believed the evidence more than adequately demonstrates that they meet these requirements that are presented on the notice of violation.

S. Gustin: Answers Kienan Christianson's question, and clarifies that the property was not big enough to qualify under those standards.

S. Harris: Asks Diemers if they were aware when they purchased the unit and during

J. Diemer: Believed that they were grandfathered and that the situation was fine.

B. Rabinowitz: Closes public hearing

2. 20-0658CU; 36-38 South Union Street (RH, Ward 8E) Paul and Karen Mayer

Continued public hearing for changing use from duplex to hostel. (Project Manager, Scott Gustin)

Jennifer Fabiano, Claudine Safar, and Kristen Shamis, appeared on behalf of application.

C. Safar: Attorney for applicant and property owner. Provided affidavit of Mayer, no occupants to building, no notice could have gone out. Request for a 50% reduction of the housing replacement cost and affidavit of Jennifer Fabiano, which supported the request for the 50% reduction. Without the reduction, this would be a financial hardship. Provides short-term affordable housing, lower cost housing option.

K. Christianson: Asks to clarify 9.2.9(c)

C. Safar: Clarifies that this section is regarding housing, not uses, like residential use. This hostel would still be providing housing. Not special relief if we meet requirements and criteria of the section. There is a hardship and is in the spirit and intent of the ordinance. Explains parking space location and parking plan.

S. Harris: Asks about timeline of violation notices.

C. Safar: Received notices, but originally did not know needed permit. Took steps when she was notified.

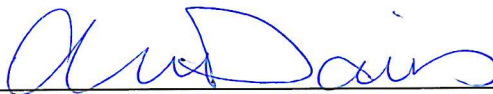
B. Rabinowitz: Closes public hearing

VI. Adjournment

Meeting adjourned at 6:20pm.

Bradford L. Rabinowitz, Chair of Development Review Board

Date



Alison Davis, Zoning Clerk

7/20/2020

Date

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BURLINGTON DEVELOPMENT REVIEW BOARD
Tuesday, June 16, 2020, 5:00 PM
Minutes

REMOTE MEETING

Zoom: <https://us02web.zoom.us/j/83924828851?pwd=UGgyYUplR0wwL25zeXdak3RFQnJxQT09>
Meeting Password: 045573
Telephone: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or
+1 253 215 8782 or +1 346 248 7799
Webinar ID: 839 2482 8851

Board Members Present: Brad Rabinowitz, Springer Harris, AJ LaRosa, Brooks McArthur, Kienan Christianson, Geoff Hand, Ravi Venkataraman (Alt)
Board Members Absent: Sean McKenzie (Alt)
Staff Present: Scott Gustin, Mary O'Neil, Ryan Morrison, Alison Davis

I. Agenda

B. Rabinowitz: Asks if there are changes to the agenda
S. Gustin: Request from 110 Riverside Ave applicants to defer, giving time to wrap-up the outstanding stormwater item

II. Communications

S. Gustin: No additional communications

III. Minutes

B. Rabinowitz: No minutes to review
S. Gustin: Will be including past minutes to review in future packets

IV. Consent

1. 20-0742CU; 51 Blodgett Street (RM, Ward 3C) Martha M. Dallas

One-bedroom bed and breakfast short-term rental.

Martha Dallas appeared on behalf of project

B. Rabinowitz: Board is recommending approval for item

M. Dallas: In support

K. Christianson: Motion to approve application and adopt staff findings

S. Harris: Seconds motion

7-0-0

V. Public Hearing

1. 20-0773CU; 10 Baird Street (RL, Ward 5S) Gretchen R. Kruesi
Requesting a one-bedroom bed and breakfast and 1 space parking waiver.

Gretchen Kruesi appeared on behalf of project
John Shenton and Carlene provided public testimony

B. Rabinowitz: Explains there is a one-parking space waiver requested
G. Kruesi: Explains they live in a three-bedroom townhouse condo, has two parking spaces, but they are stacked, which is why they are asking for the waiver. Explains the condo association allows guest parking, and since they are a one car family, and rents out one of the two vacant bedrooms
Discusses site plan
G. Kruesi: Explains there are some tenants that do not use a car and sometimes use the bus, walk, etc.

B. Rabinowitz: Asks if Condo Association Board is in favor of the application

Carlene: They are in favor
J. Shenton: Neighbor next door. Explains building has shared plumbing and is billed as a flat fee. Explains HOA Board did not properly warn meeting, so is using this platform to express thoughts about this application

K. Christianson: Asks about staff report, section 3.5.6 (a) 1. Regarding water and sewer service
M. O'Neill: Explains when was initially approved as a planned unit development, they must satisfy those requirements if they are able to provide utilities to the new units
S. Harris: Understands concerns about cost. Asks about concerns for the functioning of system

J. Shenton: No difference for the function besides no protection in place incase Kruesi was not there and something was to happen with renter

M. O'Neill: Explains there is a distinction between private agreements and requirements of this condo association, and separate the zoning review from that
B. Rabinowitz: Mentions there is an owner occupied requirement

G. Kruesi: Lives on property full time and has no other residents. 98% of time on site when there are tenants. Is one of few units that has single resident, so even with renting the room, her unit does not create as much waste as other units with more than one person living in them
Carlene: Has discussed the water issue in the past. Water usage has not been effected, unit is one of the low users. Is considerate with parking. Has separate insurance to take care of things if needed.
B. Rabinowitz: DRB does not address these issues. These should be internal association conservations. Closes public hearing

2. 19-0980CA/MA; 110 Riverside Ave (NAC-R, Ward 1E) Sisters & Brothers Investment Group, LLP

57-unit apartment building with underground parking. *Re-opened hearing.*

B. Rabinowitz: Requested deferral to future date. Asks if anyone from public rejects waiting for the future date

S. Harris: Motion to defer item

G. Hand: Seconds motion

7-0-0

VI.

Sketch Plan

1. 20-0803SP; 230 Main Street (FD5, Ward 8E) Mid-Town Associates, Inc.

Sketch Plan Review for demolition of building, install fence, retention of parking spaces (Project Manager: Scott Gustin)

Jeff (last name?) appeared on behalf of project

Sharon Bushor provided public testimony on this item

B. Rabinowitz: Form Based Code District. Review is landscaping, historic reservation

Jeff: Explains history of property. Ran motel up until 2004. Ceased operation of motel

due to financial circumstances. Maintained parking leases. Motel has deteriorated. They have maintained property, have security cameras, building manager that lives next door.

Goal to take motel down. Shouldn't be developed by itself, is narrow lot. Interest from developers. They are the property owners of building next door. Need to remove

asbestos properly, demo, and try to salvage material. Explains landscaping and fencing ideas. Increasing pervious surface on site. Can provide better details for lighting. In staff

notes, terms like "converting" parking should be considered as "retaining". No replacement structure plan

B. Rabinowitz: Asks if the kind of thing that falls under the one-year requirement that they come back and have a redevelopment plan

S. Gustin: Explains there needs to be replacement of historic buildings within one year. This building is listed as historic. Explains Form Code and Board's review of the project.

Could be turned into a park, but the sketch plan does not represent a park

S. Harris: Asks what limits the property owner would be able to place on the park and what the process would be for removing the park later for future development

S. Gustin: Explains what members would review about being a park. Parks department playing a role in determining park status

M. O'Neil: Explains the steps needed to address demolishing a historic building

B. Rabinowitz: Explains frustration with sketch plan

S. Harris: Asks about hazards for people who are currently using it for parking

B. Rabinowitz: Asks if this would be considered demolition by neglect

G. Hand: Asks if applicant has looked at other uses of property

Jeff: Has looked at using it for food trucks, but nothing has stuck. Has had a number of different plans

VII. **Adjournment** Meeting adjourned 6 PM

M. O'Neil: Explains sections in ordinance that will be necessary for review

B. Rabinowitz: Does not think what is on plan is preferable to what is there now

G. Hand: Agrees that

S. Harris: Would like to see anything other than what is there now

B. Rabinowitz: There is an obligation to not have a fallen down abandoned building

K. Christianson: Could be an opportunity for civic space, but plan is not there yet. Would rather see a welcoming green space for the city instead of a half park with parking garage

G. Hand: Best option that could be approved would be some type of civic space

S. Harris: Asks if there is an adverse effect for property owners who need to demolish due to neglect

S. Gustin: Yes, there is enforcement action

B. Rabinowitz: Two main issues are historic issues, and the fact that it's a significant property coming into town

S. Harris: Asks if building manager is because there have been instances of trespassing on property

Jeff: Yes, it has happened, but most people have understood there are cameras on property. Would be an advantage for everyone to have the building gone

S. Bushor: Explains her concern the City wouldn't know where to get the money to redevelop this site because of other projects going on in the City

B. Rabinowitz: Needs to look good from day one and need to be up to Code

S. Harris: Asks if the façade of the building is kept and the parking is maintained

M. O'Neil: Explains comparison of Bove's project to this project how they redeveloped

S. Harris: Asks Sharon Bushor if she would like to see the motel maintained or anything else

S. Bushor: Potential for block is great, so no, the Midtown Motel should no longer exist, and site could be so much more. Supportive of motel going away, but understands the dilemma for redevelopment

M. O'Neil: Lists references in Ordinance for alternate compliances

B. Rabinowitz: Closes public hearing

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

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<u>Bradford L. Rabinowitz, Chair of Development Review Board</u>	<u>Alison Davis, Zoning Clerk</u>
Date	Date
	7/20/2020

Burlington Development Review Board

645 Pine Street
Permitting & Inspections
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax: (802) 863-0466



Brad Rabinowitz
Aj LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
vacant
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)

BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday July 7, 2020, 5:00 PM Remote Meeting

Zoom: <https://us02web.zoom.us/j/85200949242?pwd=V1EZNhqgeiNOYjVhbnU5bFVzQTBhFQ109>
Webinar ID: 852 0094 9242
Password: 842557
Call in telephone: US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833

Minutes

Board Members Present: Brad Rabinowitz, Geoff Hand, Brooks McArthur, Kienan Christianson, Aj LaRosa, Ravi Venkataraman (Alt), Sean McKenzie (Alt)
Board Members Absent: Springer Harris
Staff Present: Scott Gustin, Ryan Morrison, and Alison Davis

I.

Agenda

B. Rabinowitz: No changes to the agenda

II.

Communications

B. Rabinowitz: Asks if anything came in today
S. Gustin: Have posted everything except for a few last minute emails
B. Rabinowitz: Asks if they will be part of the record
S. Gustin: Yes, they will be part of the record

III.

Consent

1. 20-0820CA; 44 Lakeside Ave (ELM, Ward 5S) Lakeside Ovens, LLC
Demolish existing office building and replace with new 4-story office building on existing foundation. Add five parking spaces to overall parking count (Project Manager: Mary O'Neil)

John Caulo appeared on behalf of applicant
No public provided testimony
Geoff Hand recused from item

M. O'Neil: The applicant revised the application to build a three-story building, which the staff report reflects
B. Rabinowitz: Asks applicant if they have read the staff recommendations for approval
J. Caulo: Yes, I have
B. McArthur: Motion to approve application and adopt staff findings and recommendations
R. Venkataraman: Seconds motion
6-0-0

2. 20-0858CA; 225 Elmwood Ave (RM, Ward 3C) Green Mountain Habitat for Humanity

Demolish existing single family home and build replacement single family home (Project Manager: Mary O'Neill)

David Mullin and Chris Lane appeared on behalf of project
John Smyrski provided public testimony
Geoff Hand recused from item

M. O'Neill: Requesting Saturday construction hours 8 am - 3 pm because they rely on volunteer help. Posted late on webpage.

B. Rabinowitz: Asks Board if anyone opposed to treating this as a consent item

AJ LaRosa: Asks when this change happened. Asks if it was before or after it was posted as consent, if public had notice of the change

M. O'Neill: Yes, was posted in the beginning

Moves item to public hearing for question from abutting neighbor who has questions about tree removal

C. Lane: On the property line along the sidewalk there is a large, 4' diameter, pine tree that has damage from storms, intruding power lines. Plan is to remove tree along Elmwood Avenue, another small 8" tree, not touching any trees along John's property lines. Nothing is growing straight, efforts to clean up property lines. Trying to create a property that a homeowner can maintain without a high cost.

J. Smyrski: Does not want the lot to be clear-cut

B. Rabinowitz: The one tree out front is the only large tree coming down. Closes public hearing.

IV.

Public Hearing

1. 20-0792CA; 291 Appletree Point Rd (RL-W, Ward 4N) Gordon M. Maher

Appeal of an administrative denial for an after-the-fact patio removal and replacement with deck on different footprint (Project Manager: Ryan Morrison)

Gordon Maher and Dave Chenette appeared on behalf of appeal

R. Morrison: Explains reasoning for denial. Application was for an after-the-fact deck, aerial images could make out a patio that ran along the lakeside of the house. Application was to replace that patio with the new deck. The new deck was on a different footprint. Application mentioned he had removed the patio in 2017-2018, which nonconforming structures renders it void as an existing use after 12 months of discontinued use that nonconforming use loses its existing status. The ability to replace that in that footprint goes away. Applicant is seeking an after-the-fact permit to allow for the already existing new deck. Deck does encroach into the lakefront setback more than the patio did.

B. Rabinowitz: Asks if stonework falls into the same criteria that a deck does

R. Morrison: It does

G. Maher: Clarifies that there was an existing patio along the backside of the house that were water pebbles that you could see in the aerial photos. Patio was overgrown when they moved in, had to dig up pebbles, and are left there. Built floating deck on top of that. Clarifies that he did not remove the existing patio, but did not get a permit when new deck was built over that. Deck that was built was larger in length than the patio. Appealing because this deck was needed.

B. Rabinowitz: Asks to clarify photo

G. Maher: Clarifies questions about photos of property, patio and deck

R. Morrison: Points to older photos that were submitted about patio existence

D. Chenette: Deck does go towards the lake more than the stone pebbles did, but they did go across the entire back of the house, so with those gone, the overall square footage would be less.

B. Rabinowitz: Asks if the deck encroaches towards the lake more than the patio did.

G. Maher: Yes, it does

G. Hand: Asks about solutions

R. Morrison: Since the older patio is existing nonconforming, then it would have to maintain the same footprint

K. Christianson: Mentions construction phases mentioned in denial letter and asks why appellant did not apply for a permit during that time

G. Maher: Just did not apply for the permit

B. Rabinowitz: Closes public hearing

2. 20-0794SN; 66 North Ave (RM, Ward 3C) Sarah M. Holbrook Community Center
Appeal of an administrative denial for a proposed new sign (Project Manager: Ryan Morrison)

Bob Duncan appeared on behalf of the item

R. Morrison: Sarah Holbrook remodel was approved by the Board in 2018, among that they showed a canopy sign on the front of the building, but there was a condition to get a sign permit because they are issued and reviewed separately. The sign ordinance has changed, specifically about canopy/awning signs in the RM zone district, they are strictly prohibited. There are other signs models that can be approved in the RM district.
G. Hand: Clarifies that Board has approved the architectural component of this sign as part of the building. Interprets that putting up signage would be installing the letters on the sign.
S. Gustin: Canopy was part of the design and included in approval, but Ryan points out that the actual signage, is always handled separately. Not saying that the awning is the problem, saying that the signage going on the awning is the problem.
R. Venkataraman: Asks if the original approval included anything about signage, in the staff report

R. Morrison: Yes, condition 18

B. Duncan: Yes, in RM district, originally showed sign that was allowable in this district, but then ordinance changed. Would have been allowed with the original submission. We knew a sign permit was required, but showed the sign plan from the beginning. Never knew the ordinance was changing. This property is in the RM zone, but it is next to RH and NMU districts. This sign plan makes sense with the location and use of property.

G. Hand: Asks if the concrete grey stripe along front of the building comes out from the facade of the building where the proposed lettering is going

B. Duncan: Where proposed sign location on face of entry canopy. Clarifies Geoff Hand's question about façade

B. Rabinowitz: Asks if there are any other questions for applicant of staff. Closes public hearing

3. 20-0854CA/CU; 266 Queen City Park Rd (ELM, Ward 5S) Burton Corporation
Conditional use application to create 11,560 SF Performing Arts Center use within an existing 85,000+ SF structure; proposed façade improvements to existing building exterior (Project Manager: Scott Gustin)

Justin Worthley, John Caulo, Mike Crother, Mark Balderston, Jenn Conley, Eddie Duncan, Brian Dunkiel appeared on behalf of the application

Geoff Hand recused from item

Laurie Smith, CRZ Group (15 people), provided public testimony

B. Rabinowitz: Likely to not finish project presentation tonight, does not want to go past 7:30 PM. Limiting time for each public comment to three minutes. Five minutes for representing a group of people. Issues on this item seem to center around traffic and noise, maybe start with overall presentation, but want to get to that focus at some point
J. Worthley: Introduces Burton and gives overview of the company and history with property. Explains details about Burton properties, both 180 and 266 Queen City Park Road. Shows where space of performing arts center will be located within building as well as offsite parking. Provides overall vision for Burton Hub.

AJ LaRosa: Clarifies that no food production is included in this application
J. Worthley: Correct. Explains more details about vision for the performing arts center and Higher Ground.

A. Crothers: Gives history and background details about Higher Ground as well as future visions for company.

M. Balderston: Gives details about operational plan and crowd and event management

plan.

J. Worthley: Explains impact analysis and conditional use criteria. Criteria 1- public utilities, facilities, and services. Criteria 2- character of the area. Criteria 3- renewable energy resources.

E. Duncan: Explains noise assessment, sound sources, and noise management plan. Sound management and mitigation.

B. Rabinowitz: Asks about person capacity of waiting area

J. Worthley: Explains queue timing and waiting of people.

A. Crothers: Explains queue, people come in waves, sprinkle in. Our goal is to get people in as quickly as possible

E. Duncan: Continues explaining sound movement and control. Explains concert sound level map. Explains details on background sound and community noise guidelines, noise standards and guidelines.

AJ LaRosa: Has questions about sound analyses. Asks about entrance of building and if the doors will be open or closed. Asks about the after-concert scenario and modeling instantaneous noises. Asks if they modeled car horns or door slamming.

E. Duncan: Responds to questions about sound analyses.

J. Conley: Explains details about Criteria 4- transportation systems. Evaluated with and

directing cars for after events, discouraging travel down residential side streets. Explains traffic controls in the operational management plan.

AJ LaRosa: Asks for clarification about traffic movement near Home Ave and Pine Street intersection.

J. Conley: Discusses traffic modeling and analyses.

K. Christianson: Asks about solutions for mitigating tailgating and socializing in parking lots.

M. Balderston: Explains method and process of mitigating scenarios like tailgating. Explains crowd control, pinpoints, and concentric circle methods during end of event to assess intoxication of event goers.

J. Worthley: Explains the importance of pre-event planning and coordination with the Police

J. Caulo: Responds to staff comments. Hours of operation, site plan, outdoor lighting, parking, waivers from parking requirements/parking management plans, bike parking. Responds to CRZ letter, major impact studies, public safety service, noise and vibration, transportation systems, wastewater

J. Worthley: Responds to South Burlington City Council letter about signage and signage for parking, enforcing no tailgating policy, directing traffic, committing to following through on monitoring plan for one-way bridge, and measuring exterior noise levels

L. Smith: Asks to present full presentation for CRZ Group at continued date.

AJ LaRosa: Motion to continue hearing until August 4th.

K. Christianson: Seconds motion

B. Rabinowitz: Closes public hearing

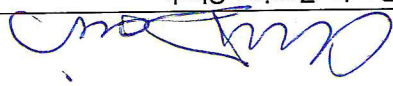
Adjournment

Meeting adjourned 7:30 PM

V.

Bradford L. Rabinowitz, Chair of Development Review Board

Date

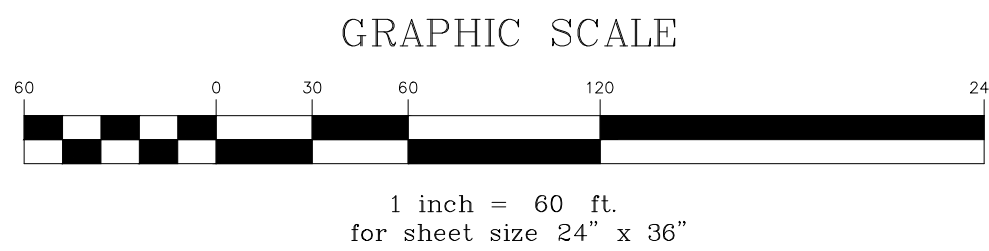
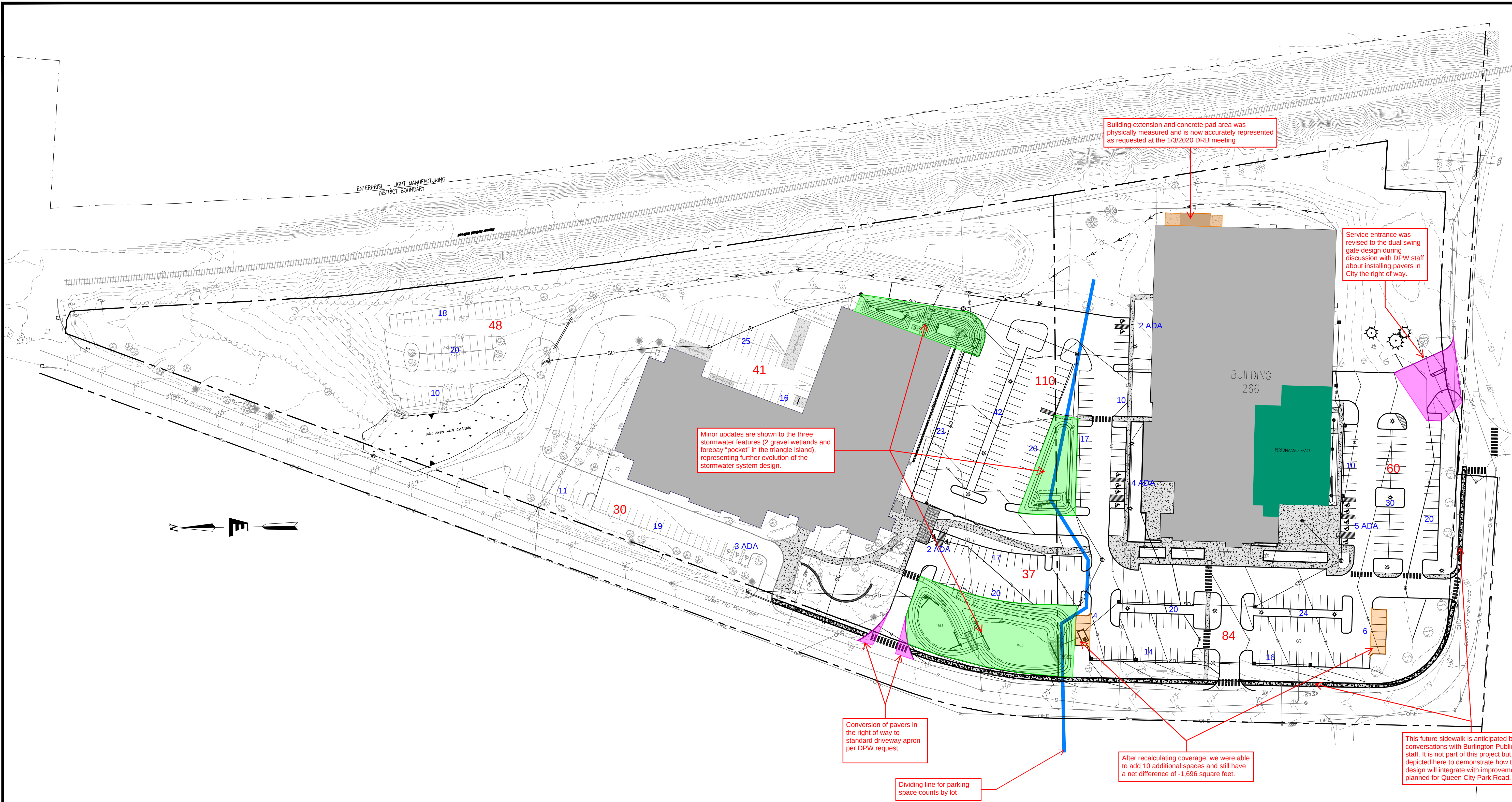

Allison Davis, Zoning Clerk

Date

7/20/2020

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

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternate formats please contact Human Resources Department at 700-1-840-3605



Existing Coverage	
180 Queen City Park (North)	
Lot Area	375,252 ft ²
Buildings	68,356 ft ²
Sidewalks	6,889 ft ²
Roads and Parking	122,472 ft ²
Total Lot Coverage	52.7%
Parking Count	236

Proposed Coverage	
180 Queen City Park (North)	
Lot Area	375,252 ft ²
Buildings	68,356 ft ²
Sidewalks	7,052 ft ²
Roads and Parking	110,359 ft ²
Total Lot Coverage	49.5%
Parking Count	244

Zoning District	
Enterprise - Light Manufacturing	
Setbacks	
Front	5 ft
Side	0 ft
Rear	10 %
Max Coverage	
80 %	

Existing Parking Total	416
Proposed Parking Total	416

Existing Parking Total
416 (7 ADA spaces included)
Proposed Parking Total
426 (16 ADA spaces included)
This total includes the
additional 10 spaces shaded
orange above

Total Existing Impervious Area	378,909 ft ²
Total Proposed Impervious Area	377,213 ft ²
Net Change	-1,696 ft ²

Will be 182 with the additional
10 spaces (shaded orange
above)

Stamp

Rev. No.

1

2

3

4

5

Description

REVISIONS TO PROPOSED PARKING LAYOUT

SIGHT LINES, REVISED WEST AND SOUTH ENTRANCES

REVISED SOUTH EAST ENTRANCE AND COVERAGE TABLE

REVISED COVERAGE TABLE

HIGHLIGHTED EVENT SPACE

Chkd.

PB

PB

PB

PB

PB

11-14-2019

12-6-2019

1-3-2020

1-31-2020

2-11-2020

ENGINEERING VENTURES PC

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www.EngineeringVentures.com

Client:

Burton Snowboards

180 Queen City Park Road
Burlington, Vermont

Sheet Title:

PROPOSED CONDITIONS PLAN

PROJECT TITLE:

PARKING LOT AND STORMWATER IMPROVEMENTS

Burlington, Vermont

Designed By:

Checked By:

Drawn By:

Scale:

Date:

PB

PB

TLB

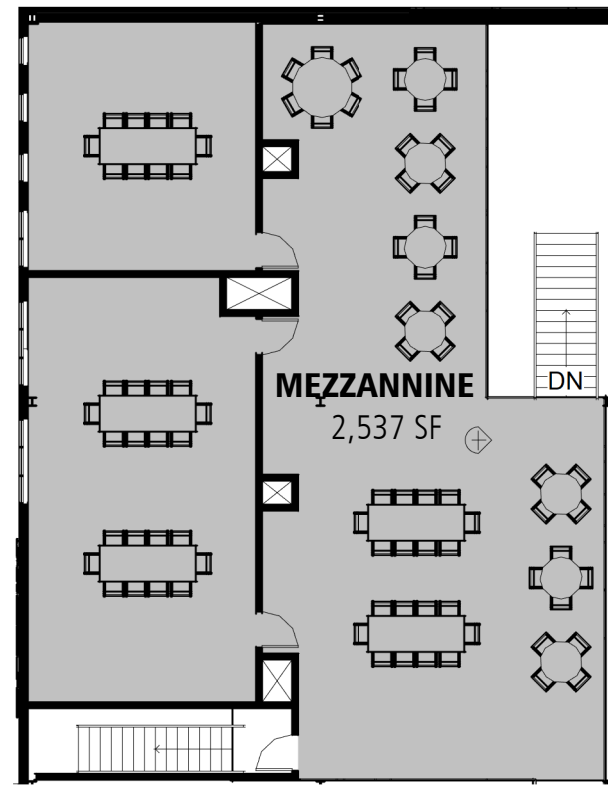
As Noted

Nov 4, 2019

C0.3

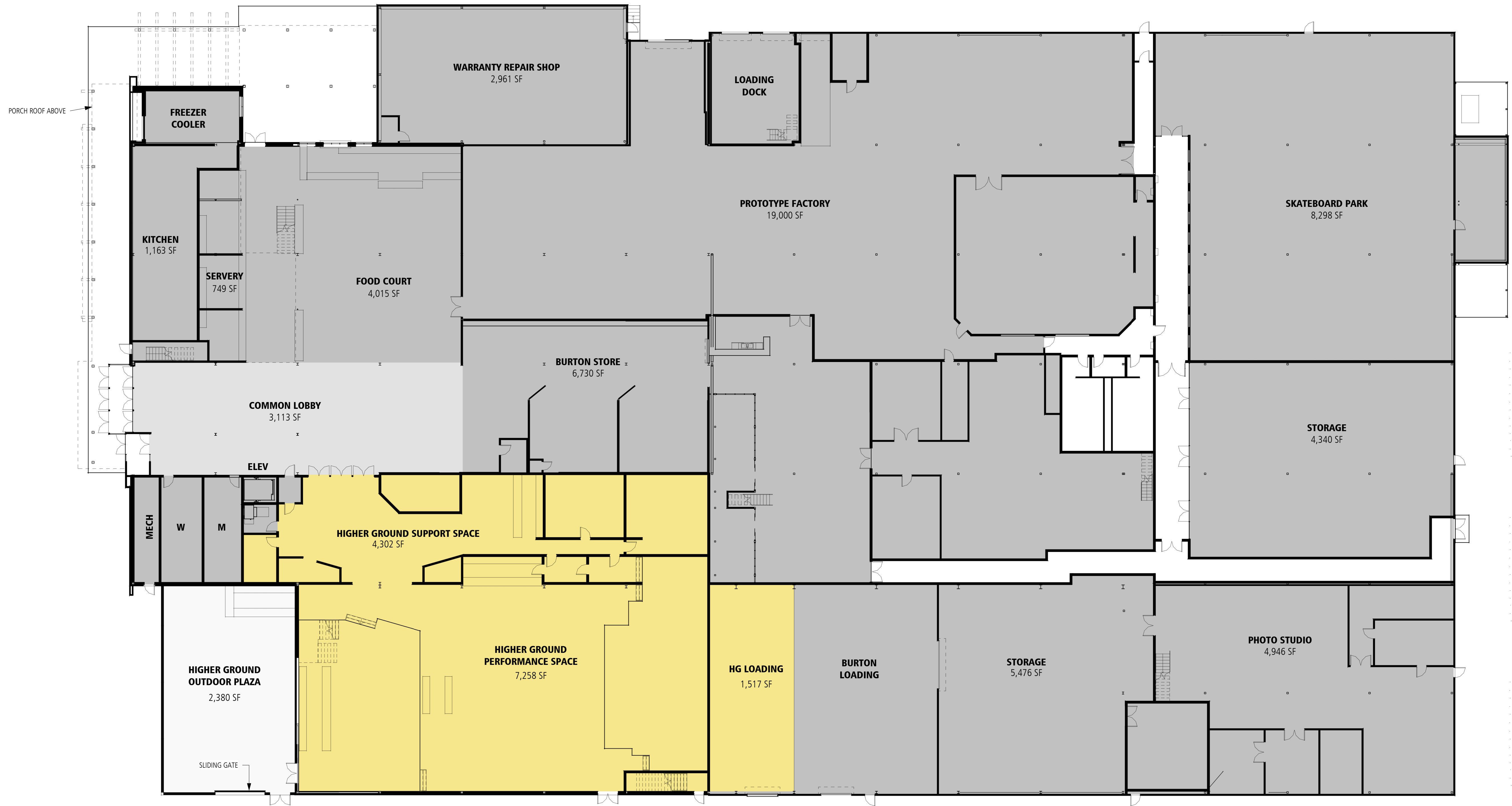
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2 MEZZANINE
1/16" = 1'-0"

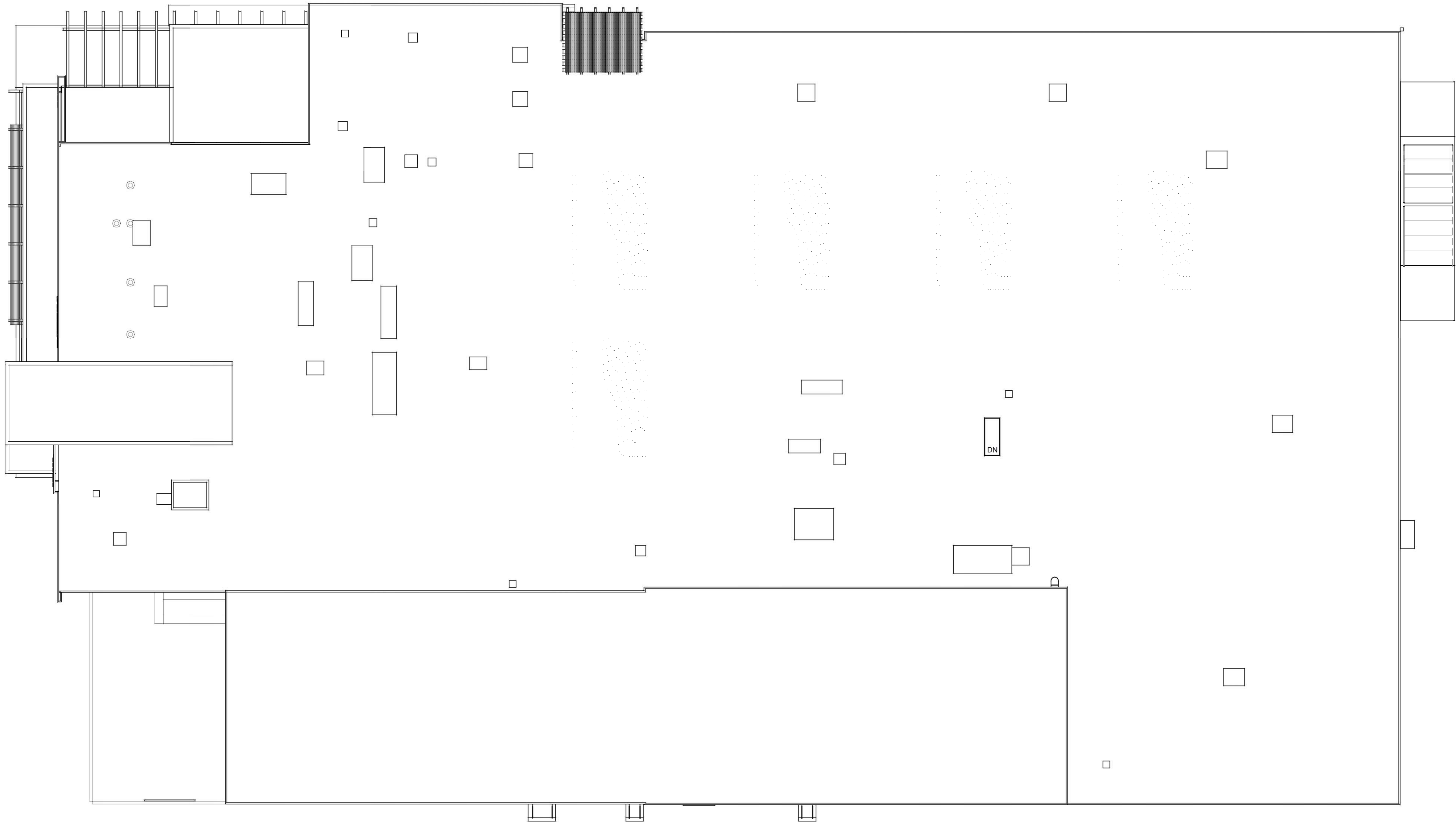
A-102 1



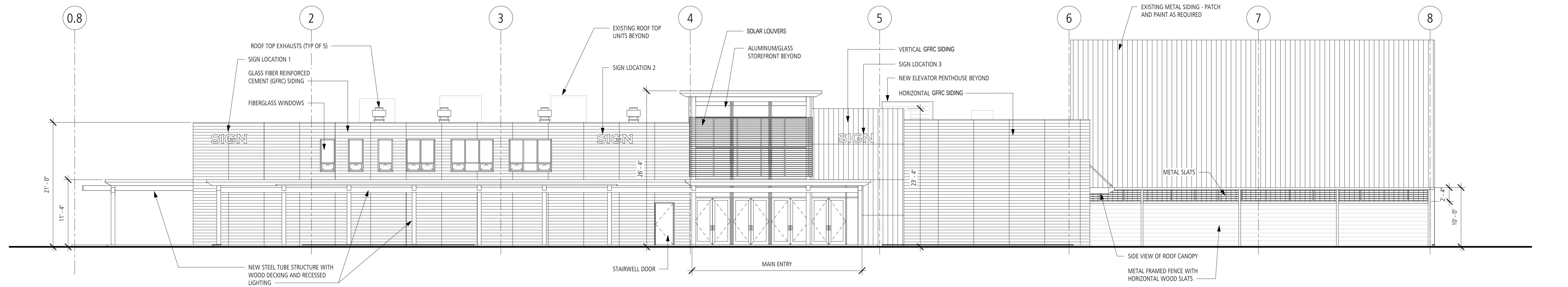
1 FIRST FLOOR PLAN
1/16" = 1'-0"

HIGHER GROUND AREA - 11,560 SF (13.6%)
TOTAL BUILDING AREA - 85,036 SF (100.0%)

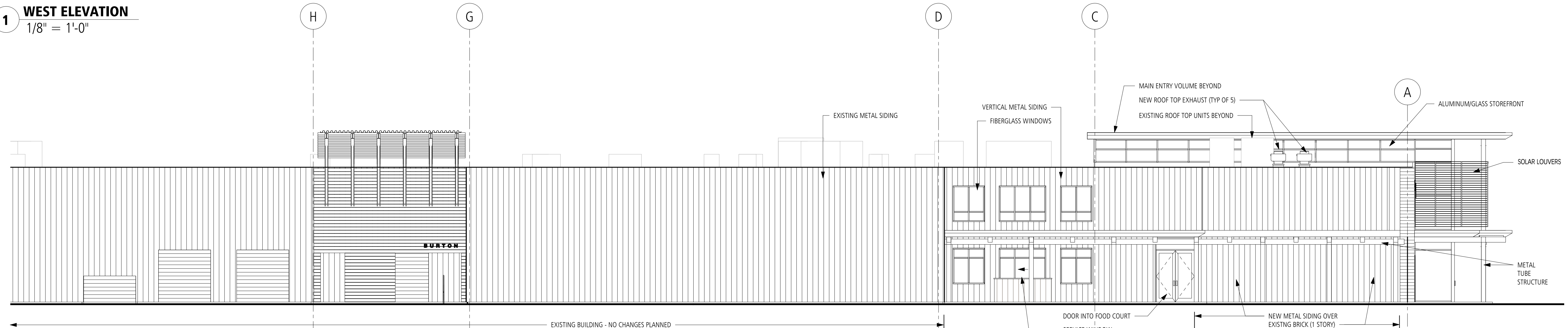
3
A-102



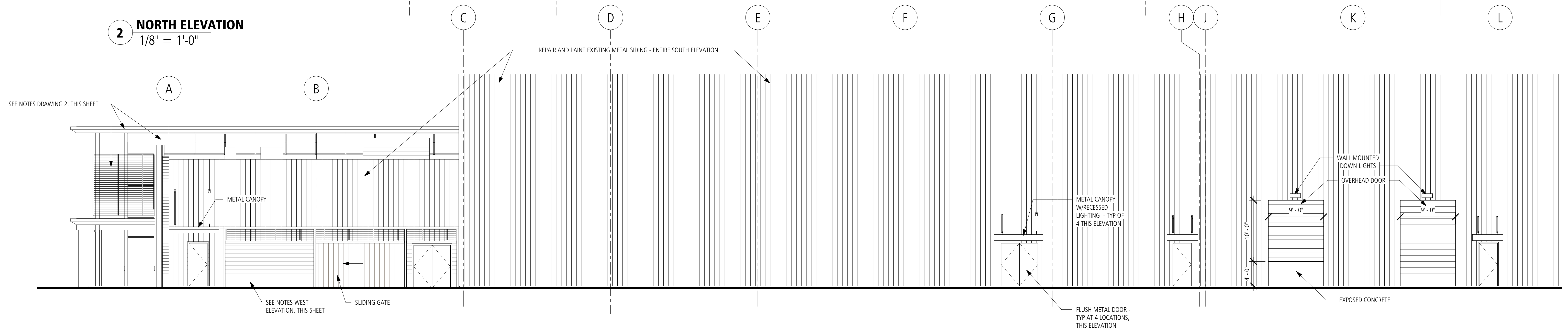
1 ROOF PLAN
1/16" = 1'-0"



1 WEST ELEVATION
1/8" = 1'-0"



2 NORTH ELEVATION
1/8" = 1'-0"



3 SOUTH ELEVATION
1/8" = 1'-0"



RENDERINGS COURTESY OF WAGNER HODGSON ASSOCIATES



FACADE SLATS MADE OF GLASSFIBRE REINFORCED CONCRETE

öko skin

With öko skin, Rieder offers concrete facades in a slatted design. The various surfaces create a lively interplay of colour. The slats can be mounted with little effort and are, unlike wood, maintenance free.

▼ SIZES ▼ COLOURS AND SURFACES ▼ ÖKO SKIN STRIPES

▼ ÖKO SKIN HIDDEN FIX

GLASS FIBER REINFORCED CONCRETE (GFRC) PLANK SIDING

Louver Materials & Finishes

SHADOTIMBER

Shadotimber are fixed or operable exterior solar shading louver systems that incorporate a unique, alternate solar shading solution. It consists of timber wood louvers, usually western red cedar which, if left untreated, ages to a silvery-grey tone. The louvers can be installed either horizontally or vertically on the building's façade.

Alternatively, a simulated wood appearance can be provided on shadometal louvers through a dye-sublimation process which will remain colorfast at the original appearance.

This type of system is generally intended for shorter spans without the need for additional supporting framework.

Features and benefits

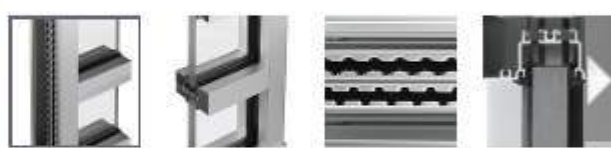
- Although normally western red cedar, other types of timber wood can be provided.
- Ideal for shorter spans and thinner louvers.
- All principal support components are manufactured from corrosion-resistant extruded aluminum alloy with stainless steel fixings.
- Fully operable or fixed.



SOLAR LOUVERS

Products ▶ Trifab™ 451UT Framing System

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PROJECT REPORTS
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Product Features

Trifab 451UT (Ultra Thermal) Framing System provides improved thermal performance to increase energy efficiency by employing a "dual" Isoloc(MC) thermal break.

Key Features Include:

- Trifab 451UT is 4-1/2" deep with a 2" sightline
- Center Plane glass application
- Flush glazed from either the inside or outside
- Screw Spline fabrication
- Dual Isoloc™ lanced and debridged thermal break
- Infill options up to 1-1/8" fineness
- Permanodic™ anodized finishes in 7 choices
- Painted finishes in standard and custom choices

Optional Features:

- High performance flashing
- Acoustical rating per AIAA 1901 and ASTM E 1425
- Project specific U-factors (See thermal charts in Architectural Detail Manual)

Product Applications:

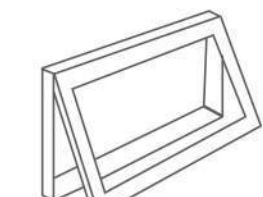
- Storefront, Ribbon Window or Punched Openings
- Single-span
- Integrated entrance framing allowing Kawneer standard entrances or other specialty entrances to be incorporated
- Kawneer windows or GLASSvent™ are easily incorporated

ALUMINUM STOREFRONT

Awning, Casement

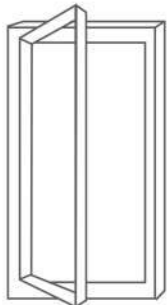
ADC 325 Series Standard Features

- Sealant: Low VOC (environmentally friendly).
- Standard 3 1/4" closed-back insulated frame. Standard insulated close-back sash.
- Available in standard white, custom, split-finish, and/or veneer wrap (oak, fir, others).
- Standard rollover operators with standard collapsible handles.
- Standard multi-point locks where applicable (19" nominal height).
- Standard concealed hinges – tamper resistant for added security.
- Sash unlooks for interior service if necessary.
- Paint & Finish: Advanced polyurethane baked on or electrostatically applied finish.
- Frame & Sash: Pultruded 0.090" nominal wall fiberglass (52-42% glass fibers + 35-45% resin + 7-13% filler).
- Insect Screen: Standard full screen. Removable stamped aluminum frame with black fiberglass mesh.
- Insulation: Expanded Poly Styrene (EPS) Type 1.
- Weatherseal: Santoprene Rubber Seals (main, secondary, spline), glazing tape, dust.
- Frame and corners are mechanically secured and joined at 45 angle.
- Exterior glazed window with aluminum stops.
- Please contact an Accurate Dorwin Window representative for sizing options.



Awning

Projected window hinged at the top is the only window style that keeps the rain out while allowing fresh air in.

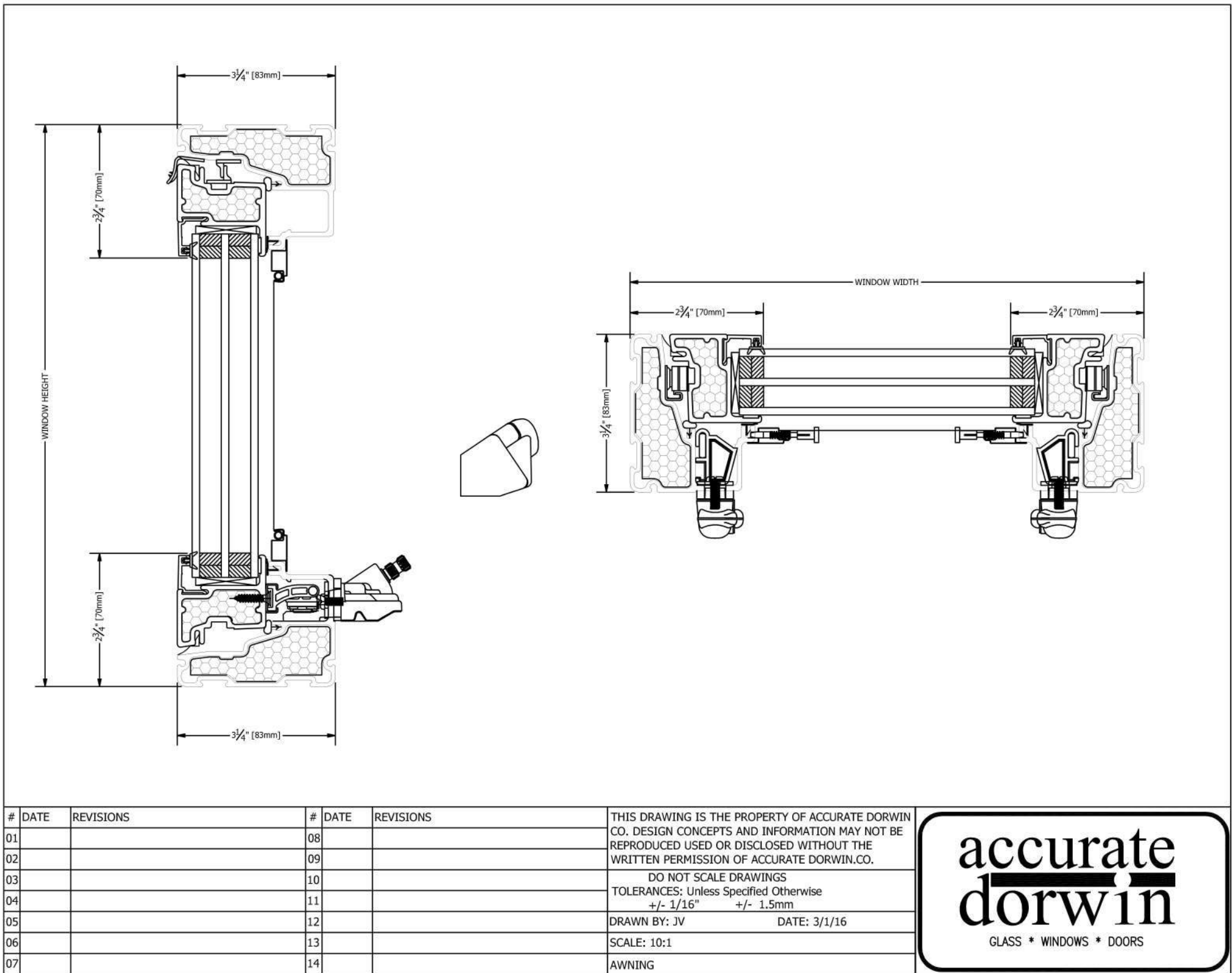


Casement

Projected window hinged at the jamb (opening up to 90 degrees) which provides the most optimal air ventilation.

10

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#	DATE	REVISIONS	#	DATE	REVISIONS
01			08		
02			09		
03			10		
04			11		
05			12		
06			13		
07			14		

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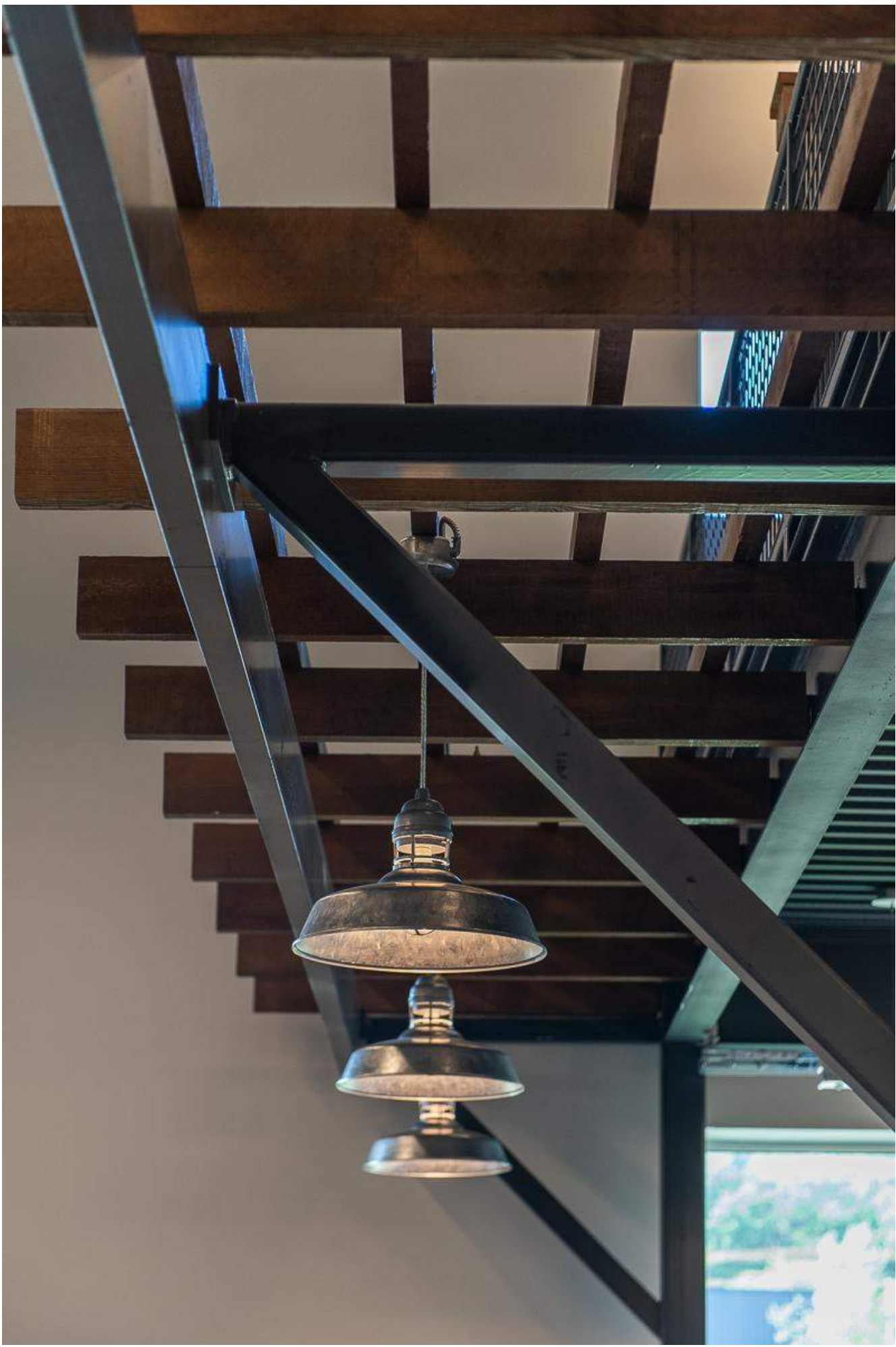
DO NOT SCALE DRAWINGS

TOLERANCES: Unless Specified Otherwise
+/- 1/2" ± 1.5mm

DRAWN BY: JV DATE: 3/1/16
SCALE: 10:1
AWNING



FIBERGLASS WINDOWS



METAL STRUCTURE WITH WOOD SLATS

LANDPLAN
61 Central Avenue
Burlington, Vermont 05401
802/233-6640 john.caulo@gmail.com

MEMORANDUM

TO: Scott Gustin
FROM: John Caulo
RE: BURTON – Parking Management Plan
DATE: 7 July 2020

This memorandum has been prepared in response to a request from City of Burlington *Permitting and Inspections* staff to provide additional supporting information related to Burton's parking waiver request. Specifically, this memorandum addresses the following items requested by Scott Gustin in his Staff Comments:

1. Summary of Existing Parking Requirements
2. Summary of Proposed Parking Requirements
3. Proposed Parking Layout and Daytime PAC Use
4. Request for Parking Waiver

Summary of Existing Parking Requirements

The provision of on-site parking is based on City of Burlington parking requirements as articulated in Article 8 of the Comprehensive Development Ordinance. Currently, the building at 266 Queen City Park Road (QCPR) is occupied by a variety of Burton-related uses that comprise more than 76,000 square feet of space. In addition, Talent Skatepark occupies about 8,300SF of space which operates as a "Health Club" use under the CDO. The existing parking requirement for 266 QCPR is summarized below:

<u>Use</u>	<u>Floor Area</u>	<u>Parking Required</u>
Burton-related Uses	76,080	81
Talent (Health Club)	<u>8,300</u>	<u>18</u>
TOTAL	84,380	99

Summary of Proposed Parking Requirements

The proposed Conditional Use application contemplates the conversion of the 11,560Sf of Burton related space summarized above into a Performing Arts Center (PAC). Under the CDO, the PAC use would generate a parking demand of 375 spaces, based on a maximum capacity of 1500 patrons which would be partially offset by a reduction of fifteen (15) parking spaces currently allocated to the space. Using the same Parking requirements found in Article 8, the proposed parking requirements would be:

<u>Use</u>	<u>Floor Area</u>	<u>Parking Required</u>
Burton-related Uses	64,520	66
Performing Arts Center	11,560	375
Talent (Health Club)	<u>8,300</u>	<u>18</u>
TOTAL	84,380	459

Proposed Parking Supply and Weekday Non-holiday Daytime PAC Use

The proposed site plan submitted with the application shows an on-site parking capacity of 426 spaces on the two adjoining parcels owned by Burton, including 182 spaces at 266QCPR and 244 spaces at 166QCPR.

As discussed elsewhere in this application, daytime uses at the PAC will be infrequent and limited to 300 patrons, which will require parking for 75 vehicles and can be accommodated. Total daytime parking demand with daytime PAC Use is 159 spaces which can be accommodated at 266QCPR. Details are summarized below; no parking waiver is required for daytime PAC use.

<u>Use</u>	<u>Parking Required</u>
Burton-related Uses	66
PAC Use (300 max)	75
Talent Skate Park	<u>18</u>
TOTAL	159

Request for Parking Waiver

For weekday non-holiday evening use of the PAC (at full 1,500 capacity), the applicant is requesting a parking waiver to allow sharing the parking spaces with the other approved uses. Due to the commitment to limit the start time of these non-holiday weekday event start times until after the end of the workday at Burton, there is no conflict among the multiple uses for the parking spaces.

The applicant will use the following additional strategies to reduce and/or manage the on-site demand for parking into the future including:

1. Shared Use: The parking demand of the Burton-related uses and Talent Skateboard will not overlap with the Proposed use times contemplated in the application. More specifically, on non-holiday weekdays, both Talent Skatepark and Burton related uses do not operate past 6PM, and therefore the parking for those uses will not be in conflict with this event aspect of the PAC use.

Given that Burton controls two adjoining parcels of land with 426 parking spaces, the Applicant shall, as part of its lease agreement with the PAC, provide the operators of the PAC with a parking easement granting permission to the PAC to park at both parcels for as long as the PAC is in use at the Property.

2. Education. As part of initial marketing of the PAC use, and continuing into its operational plan, the Applicant will both educate and encourage employees and patrons to use alternative transportation modes (i.e. carpool, walk, bike, bus) to the Project Site.
3. Car Pooling. The Applicant will allocate ten (10) parking spaces on-site to incentivize carpooling by employees and patrons. The Applicant will observe utilization and adjust the number of carpool spaces up or down accordingly to optimize use.
4. Bike Parking. The Applicant will provide bicycle parking for both short and long-term durations in quantities exceeding the amount of bicycle parking called for in Table 8.2.5-1 of City of Burlington *Comprehensive Development Ordinance*. The applicant will also reach out to *Local Motion*, a non-profit bicycle advocacy group to collaborate on managing bike parking for large events.

	<u>Required</u>	<u>Proposed</u>
Short Term	8	16
Long Term	<u>1</u>	<u>4</u>
Total Bike Parking:	9	20

Burton believes the shared use strategy, coupled with the educational outreach, carpooling and bike parking strategies outlined above, are a responsible use of a shared parking resource that will provide

adequate parking resources for the proposed PAC use, in a manner that satisfies the intent the parking regulations found in Article 8 of the CDO. The location of the Project site along the BTV Bikeway and adjacent to the CCTA headquarters provides convenient opportunities to reduce the reliance of single occupant vehicular modes of transportation.

July 28, 2020

TO: BURLINGTON DEVELOPMENT REVIEW BOARD

Re: Burton Hub: 266 Queen City Park Road

Ladies and Gentlemen:

On behalf of CRZ Group, at the suggestion of the Chair, I offer the following comments in anticipation of the presentation of CRZ Group at the August 4 session of the continued hearing in the captioned matter.

Introduction

The City's Comprehensive Development Ordinance ("CDO") was amended recently to include the possibility of a performing arts center as a conditional use in the location in question. However, if the City Council had intended to allow a performing arts center at all costs, it would have made it a permitted use. It did not. Instead, it charged the DRB with the responsibility of protecting competing values, including the impact on adjacent neighborhoods,¹ through the exercise of a more fine-grained, project-specific analysis.

As presented, this project cannot withstand analysis under the applicable criteria of the CDO because: (1) It depends on the completion of important motor vehicle, pedestrian, bicycle, and wastewater infrastructure that does not exist, for which the applicant takes no responsibility, and for which there is no realistic timetable; (2) it will demand increased policing resources just as City policies are calling for a 30% reduction in force; and (3) It will violate the City's Noise Ordinance late into the night, to the detriment of the surrounding residential neighborhoods. In short, it is too dangerous, too loud, and unreasonably

¹ The applicant claims the sanction of *Plan BTV: South End Master Plan*. (See page 7 of the applicant's narrative of April 30, 2020), but disregards an explicit qualifying statement set out in the City's overarching *Comprehensive Plan*: "Further, this plan anticipates the implementation of projects and policies that will **protect adjacent neighborhoods from impacts such as traffic, air quality, and noise from nearby uses, and that will improve pedestrian and bicycle safety...**" See *planBTV: Burlington's Comprehensive Plan*, "South End Enterprise Zone and Pine Street," page 99, attached. (Emphasis added.)

disruptive of the peace, quiet, and safety of its neighbors, all in violation of legislative intent and specific provisions of the CDO.

Further, as explained immediately below, the applicant has withheld critical data in its possession in disregard of a clear-cut holding of the Vermont Supreme Court, thus preventing the “complete analysis” of noise impacts required by law.

Legally mandated analysis of the project’s noise impact requires data that the applicant controls but has withheld despite explicit request.

In order to complete its review, CRZ Group has requested access to the raw data underlying RSG’s Noise Assessment report (the “Noise Assessment”), as well as the means to test RSG’s modeling exercise.² The DRB also needs substantially the same information in order to conduct a sufficient analysis of noise impacts under the applicable legal standard.

The applicant’s lawyer, Mr. Dunkiel, has refused voluntary access.³ In particular, his refusal to share RSG’s complete monitoring data from the existing Higher Ground facility in South Burlington, including (1) actual instantaneous sound readings as metered, and (2) the specific conditions obtaining at Higher Ground when the monitoring occurred, betrays the applicant’s anxiety on the point. This data is critical because RSG’s entire noise modeling exercise for the new concert venue rests on the reliability and usefulness of its Higher Ground findings.⁴

The foundational premise of the Noise Assessment is that the interior sound at the new venue will be the same as the *average* measured sound level inside Higher Ground, namely, 99 dBA (Leq). In the relevant technical jargon, the term “Leq” signifies an average measure – in this instance, a one-hour average. RSG grudgingly acknowledges that the monitored “interior sound” at Higher Ground exceeded 99 dBA “for brief periods,”⁵ but does not tell us by how much, for how long, or how frequently – exactly the information that is most pertinent in determining whether, to what degree, and how often unreasonably loud noises will penetrate the

² See “Critique of RSG Noise Assessment,” by Les Blomberg, Executive Director, Noise Pollution Clearinghouse, filed herewith.

³ See Dunkiel email to Kochman and Gustin of July 15, attached.

⁴ Importantly, RSG also relied on “background noise” data from old reports; it did no contemporaneous independent testing.

⁵ See footnote on page 11 of the Noise Assessment. The reference in Mr. Dunkiel’s email to the “summary” at page 11 of the Noise Assessment evades the issue. Page 11 provides none of the requested data, although the footnote offers a strong clue that it exists.

late-night air in the residential neighborhoods surrounding the new venue.

The same information is indispensable to the DRB as a matter of law. In technical sound measurement terms relied upon by the Vermont Supreme Court, the Noise Assessment is deficient for failure to disclose the relevant “LMax.” The Court has held:

... [T]he environmental court erred in not making findings on the Lmax instantaneous noise levels emitted by the project traffic and failing to consider the increase in frequency of high-decibel noise events during the project’s operational season... On remand, the court should assess the evidence with respect to high Lmax events and make findings with respect to the evidence... Based on those findings, it should determine whether the frequency and amount of these events and intensity complies with [the relevant criterion].

In Re Application of Lathrop, 2015 VT 49, ¶ 88. (Emphasis added.) Lathrop was an Act 250 case. In reaching its decision, however, the Court relied in part on an earlier zoning case to the same effect:

Our discussion of noise impacts in *John A. Russell Corp.*, 2003 VT 93, 176 Vt. 520, 838 A.2d 906, although in the context of a municipal permit, also points to a more complete analysis. There, the environmental court concluded that the noise emitted by the asphalt plant, which was added to an existing quarry, would not adversely affect the character of the area because it would be no louder than the noise limits under the quarry’s Act 250 permit. *Id.* ¶ 32. We held that the court failed to conduct a complete analysis because even though the court found the asphalt plant would not emit noise in excess of the decibel levels set by the preexisting permits, it “did not evaluate the neighbors’ complaint that the frequency of loud noise would increase and affect the use and enjoyment of nearby residences.”

Id. ¶ 87. (Emphasis added.) Among other matters of equal import,⁶ the neighbors’ complaint in John A. Russell is CRZ’s complaint here.

⁶ For example, the Noise Assessment does not discuss the most relevant aspect of the Burlington nuisance ordinance, which is that musical instruments, amplified sound, and other sounds must not be “plainly audible” beyond the property line, whether or not they reach people’s houses. See Burlington Code of Ordinances, section 21-13 (b) (2) and (b) (3), attached, made applicable to a Conditional Use application by reason of CDO sections 3.5.6 (a) (6) and 5.5.1. Even RSG’s “average noise” (Leq) measure shows that the project will violate the nuisance standard both during and after concerts. (See Noise Assessment diagrams at pages 16 and 17.) The “Lmax”, if disclosed, can be expected to be much worse. CRZ’s expert will discuss the applicable standard in more detail. The applicant’s narrative dated April 30, 2020, which purports to summarize the project’s compliance with Conditional Use Standards, completely omits discussion of criterion 6. This is a telltale omission, consistent with the failure of the Noise Assessment to discuss the most pertinent sections of the City’s nuisance ordinance and the applicant’s refusal to share the full Higher Ground monitoring data.

As CRZ's noise expert states in his critique, "no one has ever heard a one-hour average noise." Particularly in a case like this, it is the frequency, duration, and intensity of bursts of sound that matter. Average sound masks the real impact of a rock concert because the average is necessarily brought down by pauses between songs and intermissions.⁷ Similarly, the "one hour average sound" of a 400-500 car parking lot emptying out in the middle of the night is almost irrelevant to the instantaneous levels of disturbance it will inflict over the course of the time it will actually take, to say nothing of the instantaneous noise of motorcycles, loud trucks, and tractor trailers backing up, loading up and departing with heavy band equipment in the small hours of the morning.

Buried in the Noise Assessment, without commentary for its applicability, is a chart showing that the noise level of a "hard rock band" reaches more than 120 decibels – *four times louder* than the "average" sound level on which RSG relies, twice as loud as a chainsaw, and labelled in the chart as "deafening." (See decibel chart at Noise Assessment, page 21 and the relationship between metered sound and perceived loudness as explained at page 20.)

In order to comply with the applicable judicial standards for noise evaluation, *this Board needs* the data that disclose the actual sound levels during the "brief periods" the measured sound exceeded 99 dBA at the existing Higher Ground, as well as a more exact disclosure of the conditions that obtained at the time. In the absence of the actual data, the DRB would be justified in assuming that the Higher Ground "Lmax" reached at least the deafening level of 120 decibels, as shown on the chart at page 21 of the Noise Assessment, but it would still be wanting for information as to the frequency and duration of the louder sounds, as well as their rate of attenuation, in particular with respect to low frequency sounds,⁸ such as the bass vibrations so characteristic of a rock band. All of that information is necessary to assess the ultimate question of "undue adverse impact." Any shortfall in the evidence should weigh heavily against the applicant, which has the burden of proof.

The choice at this juncture is between (a) allowing the applicant a continuance in order to produce the requested raw data, and (b) a finding that the applicant has failed to satisfy criterion (6) of the Conditional Use Standards. (See footnote 6, above, for precise citations.)

⁷ And, perhaps, the occasional *a capella* vocal, unamplified glockenspiel solo, or piccolo duet.

⁸ See Blomberg critique, page _____. This document is undergoing final revisions. It is expected to be filed shortly.

In denying access to the necessary information, Mr. Dunkiel disparages CRZ's expert and makes much of his own expert's professional and forensic experience. Granting Mr. Duncan his credentials, in proceedings such as these, reputation cannot stand as a substitute for evidence, nor can Mr. Dunkiel's *ad hominem* attack on Mr. Blomberg. Reviewing the 49 page *Northeast Materials* case Mr. Dunkiel cites and purports to quote, it is evident that he oversteps in his use of quotation marks. It is true that the Court accepted Duncan's conclusions and rejected Blomberg's critique. However, the phrases Mr. Dunkiel purports to quote, to wit, "unreasonably altered" and "incorrect data," do not appear in the Court's opinion. Moreover, nowhere does the Court use the term "arbitrary," which is entirely Mr. Dunkiel's. The term suggests deception or dishonesty and is quite unwarranted. In fact, although not accepted by the Court in *Northeast Materials*, the reasons behind Mr. Blomberg's choices were all transparent and explained (including his substitution of hypotheticals in RSG's model). None of them were "arbitrary," and the Court does not say they were. Here, too, Mr. Blomberg will explain whatever conclusions he draws and it will be up to the DRB to weigh their persuasive value. But first he and the DRB need access to the information that the Supreme Court has labelled necessary to a "complete analysis," Lathrop, *supra*, and without which a decision in favor of the applicant would be untenable.

Finally, notwithstanding the applicant's attempt to disparage him, Mr. Blomberg enjoys excellent credentials for the task at hand. Most pertinently -- and ironically -- he was the expert for the neighbors in Lathrop. As shown above, in Lathrop the Vermont Supreme Court required the use of the Lmax standard, reversing the Environmental Court, which had mistakenly relied upon the Leq measurement put forward, as here, by RSG, the very same firm Mr. Duncan speaks for now. Beyond this, Mr. Blomberg has appeared in at least 28 Vermont judicial and quasi-judicial proceedings since 1999. His consulting clients have included, among others, the U.S. Environmental Protection Agency, *Consumer Reports*, and the Natural Resources Defense Council. (See his resume, filed herewith.)

The City will not be able to process the Lake-polluting Sewage the Project will produce.

To demonstrate compliance with Conditional Use standard 1, the applicant relies in part on a letter from Steve Roy, Project Engineer for DPW dated November 26, 2019, and a follow-

up “clarifying” email from Steve Roy dated July 2, 2020 (both attached). These brief documents speak for themselves. They demonstrate that in wet weather the Project is expected to generate 7,500 gallons of sewage per day that the City’s wastewater treatment plant will be unable to process. That sewage will be deposited, substantially untreated,⁹ into Lake Champlain. In lieu of adequate processing, the City is prepared to offer what amounts to a sewage pollution license for an indeterminate period for the one-time fee of \$13,800.00. It is clear that, for this reason alone, the applicant cannot demonstrate that “[e]xisting or planned¹⁰ public utilities, facilities, or services are capable of supporting the proposed use in addition to the existing uses in the area,” CDO section 3.5.6 (a)(1); nor can it demonstrate that the proposed development shall “not result in undue water...pollution.” C.D.O. Sec. 3.5.6 (b) (1), which is the Major Impact standard (see argument for applicability, *infra*.) The applicant appears to rest its case on the proposition that the 7500 gallons per day of sewage it proposes to discharge into the Lake will not be “undue” because pollution will only occur “in wet weather.” This presents an interesting question for the DRB: How much additional sewage pollution is “due” along the Lake Champlain shore line?

At its very best, the project is premature and should await the existence of the necessary infrastructure improvement.

Public Safety

A large-scale rock ‘n roll venue is a magnet for disorderly behavior, especially where, as here, the service of alcohol is included in the planned use. As noted by South Burlington Chief of Police Shawn Burke, regardless of the operator’s good faith efforts to control the behavior of its patrons, “it is what it is.” (See Burke email of June 19, 2019, attached.) The planned 30% reduction in the City’s police force will put undue pressure on its public safety resources and will inevitably lead to chronic late-night disturbance of the surrounding residential neighborhoods.

⁹ According to “Burlington’s Water Quality Journey,” an explanation currently published on DPW’s web site, before sewage is released into the Lake via the City’s Combined Sewer Overflow (“CSO”) outlets, it is chlorinated. Chlorination is only one of more than 30 processes necessary for the proper treatment of raw sewage. (See chart depicted in “Burlington’s Water Quality Journey.”)

¹⁰ The CDO standard allows for “planned” facilities, but the present-tense verb implies that any “plan” must be sufficiently definite and imminent so that it is likely to be available in time to serve the project. There is no such suggestion in Roy’s letter or his clarification. Although the City is making efforts to correct the problem of combined sewer overflow, “full implementation is likely to take upwards of 20 years.” See “Burlington’s Water Quality Journey,” *supra*, fifth paragraph from the end. In addition, the Major Impact standard leaves no room to infer anything other than the requirement of an *existing* ability to avoid undue water pollution.

The use of the premises as a more modest concert venue with a significantly reduced capacity, ceasing operation at 10:00 PM, would be consistent with the recent zoning amendments while respecting the neighborhood context. It is at least questionable whether the City Council contemplated the “kick-ass indoor/outdoor bar” advertised by the applicant as part of its Hub project. (See excerpt from “The Burton Hub Project – an update as of June, 2020,” attached.) There is a reason that the use is classified as ‘conditional’ rather than “permitted.” The neighbors’ presentation at the August 4 hearing will provide more detail on the point.

Traffic and Parking

The assumptions and conclusions of the applicant’s traffic impact study leave much to be desired and relevant questions unanswered. The neighbors’ presentation at the August 4 hearing will provide more detail on the issues of parking, congestion, and traffic safety for vehicles, pedestrians, and bicyclists.

It is worth noting here that Burton’s lead spokesman for the project, Justin Worthley, indicated to the Planning Commission in January of 2019 that failure to complete the Champlain Parkway project would be a “deal killer:”

“The Parkway is critical,” Worthley told members of the Planning Commission.

Without easy access via the Champlain Parkway, he added music, food and skateboard fans would have to thread their way through a residential neighborhood — or across a single-lane railroad bridge — to reach this corner of Burlington.

The status quo, in other words, is a deal-killer.

Burlington Free Press, January 16, 2019. (See article excerpt, attached.) The Parkway is no further along now than it was two and a half years ago, and the likelihood that it will be available within a reasonable period of time to alleviate the burden on the neighborhood is small. (See letter of Attorney Hill, attached.) All conclusions in the applicant’s traffic study that depend on completion of the Parkway are of doubtful relevance and cannot sustain the applicant’s burden of proof.

Major Impact

The Staff Comments of July 7, 2020, without discussion or explanation, excluded Major Impact Review Standards from consideration. (Staff Comments, page 4.) This was error.

Under the Comprehensive Development Ordinance, Major Impact review is required for

any project that involves a “development footprint of twenty thousand (20,000) s.f. or more.” CDO section 3.5.2 (b). (See Appendix I: Pertinent Code Sections, attached.) For this purpose, the term “development footprint” means “total area of impervious coverage – buildings and parking.” (*Id.*) In determining applicability, one must include all “projects undertaken by the same applicant or responsible party within any consecutive twelve (12) month period on the same or adjacent property that in the aggregate equal or exceed the above criteria.” (*Id.*)

Taking into account the total building and parking area involved in the current application and the applicant’s recently approved site plan project, the “development footprint” threshold for major impact review is easily met:

The “involved” building consists of more than 85,000 square feet;¹¹ the “involved” land includes almost ten acres of land, most of it impervious. Even if the portion of the land for which no work is scheduled were to be disregarded, the previously approved site plan included more than 25,000 square feet of entirely new paving (pervious and impervious), repaving of many more thousands of square feet of existing parking area, more than 11,000 square feet of new sidewalks, more than 3,000 square feet of new curbing, and concrete footings for new light standards. The site plan project also included the addition of a new enclosed front entrance area to the building consisting of hundreds of square feet. The current application *directly* involves more construction in more than 11,000 square feet of concert venue within the building. (See overall site plan and Floor Plan included with the application documents.)

The CDO does include a list of exemptions from major impact review. CDO section 3.5.3 (See Appendix I, attached, for complete list.). None of the exemptions apply: The project does not involve either temporary structures or governmental or quasi-governmental uses within the scope of 24 VSA § 4413 (negating exemptions (a) and (e)). It does involve a change of use and, as shown below, an “expansion of floor area” (negating exemptions (b) and (d)). Also, the exemption for applications involving “subsurface site improvements” cannot reasonably be interpreted to apply, especially in light of the rule that land use exemptions must be interpreted narrowly. *In Re Ochs*, 2006 VT 122, ¶12, 181 VT 541, 543. (See argument below.)

¹¹ Although the application is for a “change of use,” the plans submitted show extensive physical work on three sides of the building and the roof as well as in the proposed performance venue.

Expansion of “floor area.” A project is exempt from major impact review if it does not “expand the floor area” of an existing building. (CDO section 3.5.3 (b) (c), attached.) The current application includes the construction of a balcony seating area, an obvious expansion of floor area.¹²

The balcony is characterized by the applicant as a “mezzanine.” In presenting its case to the Administrator in 2019, the applicant argued that “mezzanines” should not be counted as part of the “floor area.” The CDO does not define “floor area” *per se*. It does include the following two definitions that plainly demonstrate legislative intention to include “mezzanines” in the term “floor area:”

Area, Gross Leasable Floor Area: The **total floor area** of a building **designed for tenant occupancy and exclusive use, including** basements, **mezzanines,**

Gross Floor Area: The sum of the areas of the several floors of a building, **including areas used for human occupancy** in basements, attics, and penthouses as measured from the exterior faces of the walls.... (Bold emphasis added.)¹³

(CDO, Article 13.) The broad definition of “Gross Floor Area” cannot reasonably be read to exclude mezzanines from the concept of “floor area” where the narrower definition of “Gross Leasable Floor Area” expressly includes them. The emphasis in both definitions is on human occupancy (as distinct from mere utility and equipment spaces). It is beyond doubt that the “mezzanine” at issue here is intended for human occupancy.

These definitions are sufficient to establish that the mezzanine constitutes “floor area” within the meaning of the CDO. Although its relevance is marginal at best, for additional guidance, if desired, the International Building Code, 2015 edition (“IBC”),¹⁴ includes the

¹² The elevations also show a new 2537 square foot “mezzanine” over the “Food Court,” but it is not clear whether the applicant is seeking to construct that mezzanine as part of the current application. This should be clarified.

¹³ The full text of all definitional sections of the CDO and IBC cited herein is included in Appendix 1, attached.

¹⁴ The CDO, which is the controlling law here, does not incorporate the IBC. Because it is incorporated into the Vermont Fire and Building Safety Code. The IBC has been indirectly adopted as part of the City’s building code. See Code of Ordinances, Chapter 8, and Vermont Fire and Building Safety Code, Section 2. Section 505 of the IBC provides construction standards for mezzanines in particular. *For that purpose*, while ‘expressly including mezzanines in “fire area,” it excludes them from “building area.” ... “as regulated by section 503.1” (which does not include zoning considerations). (See Appendix I.) The reason for the partial exclusion appears to be this: section 505 – as distinct from section 503.1 – specifically regulates building standards for mezzanines. The exclusion is necessary in order to avoid a conflict in the construction rules. Note that the 505 exclusion language

following general definitions:

FLOOR AREA, GROSS. ... **The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.** The gross floor area shall not include *shafts* with no openings or interior *courts*. (Bold emphasis added; italics in original)

FLOOR AREA, NET. The **actual occupied area** not including unoccupied accessory areas such as *corridors, stairways, ramps*, toilet rooms, mechanical rooms and closets. (Bold emphasis added; italics in original.)

FIRE AREA. The... *horizontal assemblies* of a building. Areas of the building not provided with surrounding walls shall be included in the fire area if such areas are included within the horizontal projection of the roof or floor next above.

Plain meaning, common sense, and the relevant definitions in the CDO and the IBC require the applicant's new "mezzanine" to be understood as an "expansion of floor area" for the purposes of major impact review.

Subsurface Site Improvements. The previous site plan approval which, in part, triggers major impact review now, included subsurface site improvements. Read broadly (but incorrectly), the "involvement" of any such improvements arguably creates an exemption from major impact review. (See CDO section 3.5.3 (d) in Appendix 1, attached.) However, "like all exemptions, [this exemption] is to be read narrowly and only applied when the facts clearly support the exemption's application." In Re Ochs, 2006 VT 122, ¶12, 181 VT 541, 543. In order to fairly reflect legislative intention, this exemption must be read to apply to projects that involve **only** subsurface site improvements. The reason is obvious: if the subsection is read literally, a developer could build a 100,000 square foot hotel with an acre of surface parking and escape major impact review if the project also "involved" some underground utility connections. That cannot have been the legislative intention; therefore, it cannot be the meaning of the subsection.

does not mention "floor area," and thus harmonizes with the IBC's general definitions of "gross floor area" and "net floor area," quoted above, which embrace mezzanines.

For the reasons stated, the DRB should require the applicant to satisfy the standards of major impact review.

Conclusion

As presented to date, the application for Conditional Use approval should be DENIED or, at a minimum, heavily conditioned to (a) reduce the capacity of the venue by at least half, (b) limit night-time operating hours to 10 PM, (c) completion of such other specific steps, yet to be determined, that will have the effect of assuring completion of necessary infrastructure, including but not limited to the Champlain Parkway, sidewalks, and bicycle lanes prior to the commencement of operation, and (d) the creation of specific enforcement agreements for compliance with Burlington and South Burlington performance standards and ordinances.

In the alternative, the hearing should be continued pending the applicant's production of (a) the requested raw noise assessment data and related materials, (b) information designed to address the CDO's Major Impact criteria, and (c) such other information for which the DRB may find a need, with sufficient time for review and analysis by staff and CRZ Group.

Respectfully submitted,

F.L. KOCHMAN, INC.

/s/Franklin L. Kochman

Franklin L. Kochman,
Attorney for CRZ Group

Attachments:

1. Appendix of selected sections of DCO and IBC (2 pages)
2. Excerpt from Burlington Comprehensive Development Plan (2 pages)
3. Email chain: Dunkiel to Kochman, July 15, 2020 (2 pages)
4. Burlington Noise Ordinance, excerpt (2 pages)
5. Letter: Steve Roy to John Caulo, November 26, 2019 and "clarifying" email chain (3 pages)
6. Email: Chief Burke to Kevin Dorn, June 19, 2020, with chart (2 pages)
7. "Burton Hub Project – update as of June, 2020," excerpt (1 page)
8. *Burlington Free Press*, January 16, 2019, excerpt (2 pages)
9. Letter: Attorney Hill to Kochman, July 27, 2020 (2 pages)

Appendix I: Pertinent Code Sections

FROM CDO:

Sec. 3.5.2 Applicability

...

(b) **Major Impact Review:** Major Impact Review shall be required for the approval of all development involving any one or more of the following: [within the Enterprise district] A development footprint¹ of twenty thousand (20,000) s.f. or more... [Full table omitted.]

¹ Development Footprint: total area of impervious coverage – buildings and parking.

In addition, Major Impact Review shall also be required for multiple projects undertaken by the same applicant or responsible party within any consecutive twelve (12) month period on the same or adjacent property that in the aggregate equal or exceed the above criteria.

Sec. 3.5.3 Major Impact Review shall not be required for applications involving one or more of the following:

- (a) Temporary structures that do not otherwise involve a conditional use;
- (b) 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 and subsurface drainage ways; and,
- (e) Projects where the scope and authority of municipal regulation is limited by statute pursuant to 24 VSA 4413.

Article 13: Definitions

Area, Gross Leasable Floor Area: The **total floor area** of a building **designed for tenant occupancy and exclusive use**, including basements, **mezzanines**, and upper floors, expressed in square feet as measured from the center line of joint partitions and from outside wall faces.

Gross Floor Area: The sum of the areas of the several floors of a building, **including areas used for human occupancy** in basements, attics, and penthouses as measured from the exterior faces of the walls. It does not include un-insulated porches if said

areas are not used for human occupancy. It shall include the horizontal area at each floor level devoted to stairwells and elevator shafts.

FIRE AREA. The aggregate floor area enclosed and bounded by *fire walls, fire barriers, exterior walls* or *horizontal assemblies* of a building. Areas of the building not provided with surrounding walls shall be included in the fire area if such areas are included within the horizontal projection of the roof or floor next above.

FROM INTERNATIONAL BUILDING CODE (2015 EDITION)

AREA, BUILDING. The area included within surrounding *exterior walls* (or *exterior walls* and *fire wall/s*) exclusive of vent *shafts* and *courts*. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

FIRE AREA. The aggregate floor area enclosed and bounded by *fire walls, fire barriers, exterior walls* or *horizontal assemblies* of a building. Areas of the building not provided with surrounding walls shall be included in the fire area if such areas are included within the horizontal projection of the roof or floor next above.

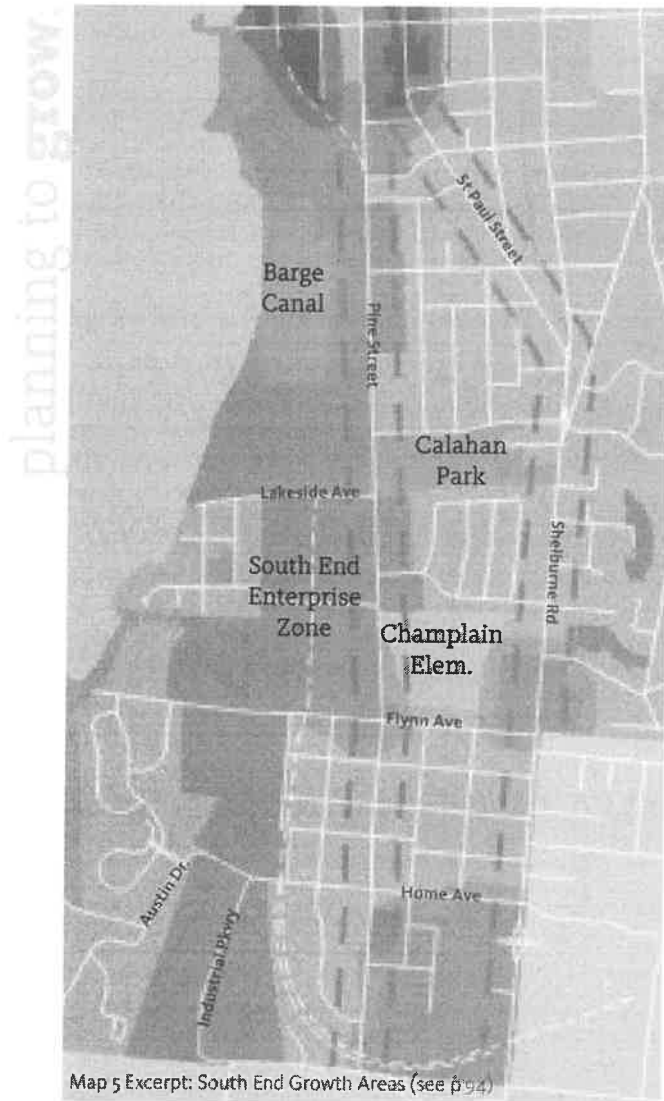
FLOOR AREA, GROSS. The floor area within the inside perimeter of the *exterior walls* of the building under consideration, exclusive of vent *shafts* and *courts*, without deduction for *corridors, stairways, ramps*, closets, the thickness of interior walls, columns or other features. **The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.** The gross floor area shall not include *shafts* with no openings or interior *courts*. (Emphasis added.)

FLOOR AREA, NET. The **actual occupied area** not including unoccupied accessory areas such as *corridors, stairways, ramps*, toilet rooms, mechanical rooms and closets. (Emphasis added.)

MEZZANINE. An intermediate level or levels between the floor and ceiling of any *story* and in accordance with Section 505.

505.2 Mezzanines. A *mezzanine* or *mezzanines* in compliance with Section 505.2 shall be considered a portion of the *story* below. Such *mezzanines* shall not contribute to either the *building area* or number of *stories* as regulated by Section 503.1. The area of the *mezzanine* shall be included in determining the *fire area*. The clear height above and below the *mezzanine* floor construction shall be not less than 7 feet (2134 mm). (Emphasis added.)

South End Enterprise Zone @ Pine Street



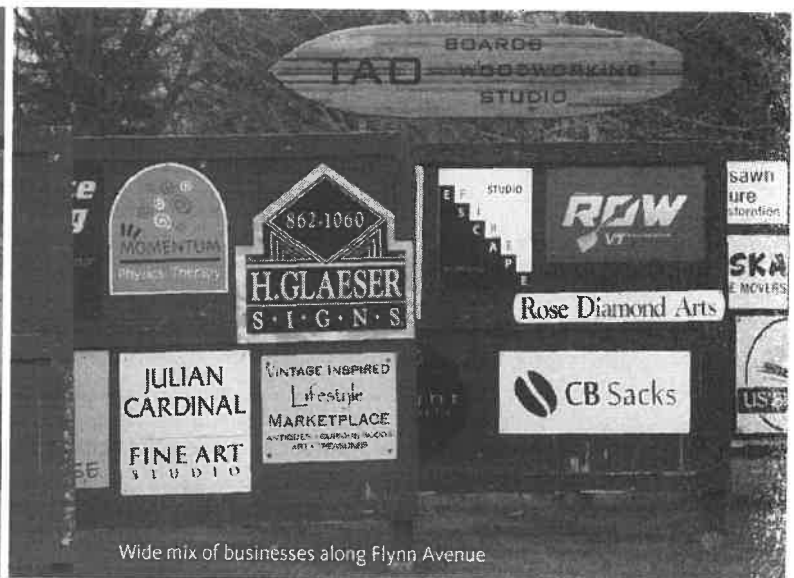
Map 5 Excerpt: South End Growth Areas (see p 94)

This area was historically a major industrial corridor. Today, it has an identity as an arts and entrepreneurial hub, and continues to be one of the only places in the city where many commercial-industrial uses are permitted. Over the years, this area has seen new and expanded industrial uses, significant changes to the city's manufacturing base, and the adaptive reuse of many old warehouses and factories. This area is also adjacent to several well-established residential neighborhoods that have become increasingly attractive places to live. With its favorable character, there has been increasing pressure to allow new uses within this area that are not in keeping with the historic commercial-industrial character and function, and the redevelopment and expansion of uses within this area has contributed to greater impacts on nearby residential areas.

This plan anticipates that this area will continue to be a major economic driver for the city and the region. With existing low-density commercial development, many undeveloped or underdeveloped brownfield sites, and the proposed expansion of the Champlain Parkway, this area has significant potential to support economic development efforts city-wide. Much of this area is expected to continue to evolve into more of mixed-use commercial, arts, and innovation district, while strategic locations within it will offer a viable place for commercial-industrial uses to be maintained and flourish. This will be achieved by protecting core industrial areas from the encroachment of uses that increase demand, raise rents, and increase the vulnerability of these businesses. Balancing these distinct economic characteristics must be guided by an economic development strategy and supported by more fine-grained land use policies.



Infill development on Pine Street



Wide mix of businesses along Flynn Avenue

Further, this plan anticipates the implementation of projects and policies that will protect adjacent neighborhoods from impacts such as traffic, air quality, and noise from nearby uses, and that will improve pedestrian and bicycle safety, expand neighborhood-serving businesses and amenities, and increase connectivity to nearby parks and the lake.

planBTV: South End Master Plan is the primary tool guiding private and public investment necessary to ensure the vitality of this part of the city—with an emphasis on preserving and enhancing the district's arts, innovation, and industrial uses and identities. Additionally, it specifies future development opportunities as well as infrastructure, greenspace, and circulation needs of this portion of the city. This plan serves as the foundation for many other plans, studies, and initiatives that will occur over the next generation.

How this district grows should be guided by the detailed analyses and recommendations contained in the following planBTV documents:

- **DRAFT planBTV: South End Master Plan**
- *Burlington Harbor Management Plan*
- **Burlington Transportation Plan**
- **planBTV: Walk/Bike**
- *Railyard Enterprise Project*

Relevant Policies & Actions

These action items from *Our Plan for Action* are particularly relevant to the South End Enterprise District.

Distinctive Theme:

- Action 2.1, 2.2, 2.3
- Action 4.1
- Actions 5.1, 5.4

Dynamic Theme:

- Action 8.7
- Action 9.4

Inclusive Theme

- Actions 14.1, 14.2

Connected Theme

- Actions 17.1, 17.3, 17.9, 17.10, 17.15
- Actions 19.2, 19.7

planning to grow



Rhino Food expansion on Industrial Parkway Photo courtesy of Caitlin Goss



Art Hop signage outside studios on Pine Street

Kochman Frank

From: Brian Dunkiel <bdunkiel@dunkielsaunders.com>
Sent: Wednesday, July 15, 2020 1:00 PM
To: Kochman Frank
Cc: Scott Gustin
Subject: RE: Burton Hub Conditional Use Application: Request for data underlying noise modeling

Frank,

I write to reply to your request for the production of various files and data used in RSG's noise report in the matter now before the Burlington DRB reviewing the Conditional Use Application for Burton Hub's proposed Performing Arts Center use.

The CRZ should have all the information it needs to evaluate the reliability of RSG work. Specific responses to your requests follow.

1. *All noise modeling files that produce the same results shown in the RSG report when opened in the appropriate noise modelling software.*

The information in the files requested can be found in the appendices to the noise study, which were provided to the CRZ by Dropbox on April 30, 2020.

2. *All noise monitoring data from Higher Ground, including raw data and monitoring notes so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured, including the number of patrons, type of music, number of vehicles, types of vehicles, etc.*

A summary of this work is contained in the RSG study at p.11. Many of the questions asked in #2 are answered in the report.

3. *All monitoring data used to determine the background noise levels in the neighborhood, including raw data and monitoring notes, so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured, number of vehicles, types of vehicles, etc.*

The background noise levels used in the RSG report are from public sources, as indicated in the report itself. The CRZ has the same access to this information as RSG.

The raw data files you request are unnecessary for the DRB to weigh the noise evidence submitted to it by Mr. Duncan. Eddie Duncan is a highly respected, Board Certified noise expert. Mr. Duncan's report and all the appendices on which it relies were furnished by Burton directly to the CRZ. Mr. Duncan's studies and models have been relied on by this DRB and Vermont courts in many matters. Additional "raw data" is unnecessary.

Moreover, I must also bring to your attention my client's concern about the potential for inappropriate use of its data files if those files are furnished in raw form. In a June 2018 decision, for example, the Vermont Superior Court, Environmental Division concluded that the consultant CRZ has retained in this matter – who we have been unable to verify as a Board-Certified Noise Control Engineer or hold an engineering degree – used "incorrect data," arbitrarily and inappropriately adjusted some of that data, and "unreasonabl[y] altered"

an RSG noise model in several ways, leading to results that were neither “credible” nor “persuasive.” See *NE Materials Group, LLC et al A250*, No. 75-6-17 Vtec., Slip op. at 22 (Vt. Super. Ct. Envtl. Div. June 20, 2018). To avoid the significant effort and expense that would be necessary to evaluate a second model by your consultant, the Applicant declines to furnish the raw data in digital form. I’m confident you can agree that avoiding the use of unreliable evidence like what occurred in the *NE Materials Group* case is in both our clients’ interest.

Finally, given the urgency you now seem to place on your request, it is surprising you did not bring it to my (or Scott Gustin’s) attention until July 6, after the initial public hearing. As I note above, the CRZ was given access to all the information related to the noise study on April 30th. As a sign of good faith and continued interest to engage in discussions with the CRZ, Burton elected to voluntarily provide to your client all the information when the application was submitted to the City. As such, your client has had access to this information for over 6 weeks. There is no basis for the DRB to continue the hearing on August 4th. You have had ample time to prepare.

Again, as per the DRB’s request during the last public hearing, please furnish the presentation the CRZ intends to make to the DRB.

Best regards,
Brian Dunkiel

From: Kochman Frank <frank@kochmanlaw.com>
Sent: Monday, July 13, 2020 5:58 PM
To: Brian Dunkiel <bdunkiel@dunkielsaunders.com>
Cc: Scott Gustin <SGustin@burlingtonvt.gov>
Subject: RE: Burton Hub Conditional Use Application: Request for data underlying noise modeling

Brian,

You misunderstand our position. What I am requesting of Scott is that he encourage you to provide voluntarily that which the DRB has the power to compel. If you decline, this will unfortunately become an issue at the next session of the hearing and may result in further delay. I cannot see any basis for the DRB’s refusal to grant the request, and I would think you would want to dispel the impression that the underlying data cannot bear inspection. But, at least at this point, that’s your call.

As to the two-way street, you are creating a false equivalence. If we decide to submit some material in advance of the next hearing, we will let you know when it is submitted -- provided that you have supplied the requested noise files and data in a timely way. This is logical. Whether and what we submit will be a function, in part, of what we learn from your raw data. Please consider the possibility that withholding the material or failing to provide it in time for us to work with it, will not operate to your advantage.

Thanks.

Frank

21-13 Noise control ordinance.

(a) *Purpose.* The purpose of this section is to preserve the public health, safety, and welfare by prohibiting excessive and disturbing noise and to prevent noise which is prolonged or unsuitable for the time and place and which is detrimental to the peace and good order of the community. It is the goal of this section to allow all residents of our city to peacefully coexist in a manner which is mutually respectful of the interests and rights of others.

(b) *Prohibited noise offenses:*

(1) *General prohibition.* It shall be unlawful for any person to make or cause to be made any loud or unreasonable noise. Noise shall be deemed to be unreasonable when it disturbs, injures or endangers the peace or health of another or when it endangers the health, safety or welfare of the community. Any such noise shall be considered to be a noise disturbance and a public nuisance.

(2) *Express prohibitions.* The following acts, which enumeration shall not be deemed to be exclusive, are declared to be noise disturbances:

a. *Radios, television sets, musical instruments, phonographs and similar devices.* The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.

b. *Motor vehicle sound equipment.* The operation or permitting the operation of any radio, stereo or other sound amplification equipment from a motor vehicle that is audible at twenty-five (25) feet from such vehicle. The term "motor vehicle" shall mean any car, truck or motorcycle.

c. *Parties and other social events.* Notwithstanding section (b)(1), it shall be unlawful for any person who is participating in a party or other social event to actively make unreasonably loud noise. A party or other social event is defined as a gathering upon the premises of one or more persons not residing at the premises. Unreasonably loud noise is noise that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of a premises to allow a party or other social event occurring in or

about the premises to produce unreasonably loud noise. There is a rebuttable presumption that all residents of the premises have allowed such party or other social event to occur in or about the premises. All residents of the premises are responsible for such unreasonable noise made, each having joint and several liability.

d. *Machinery.* The operation or permitting or directing the operation of any power equipment or machinery outdoors between the hours of 9:00 p.m. and 7:00 a.m. except in emergency situations.

e. *Construction noise.* The excavation, demolition, erection, construction, alteration or repair of any premises or structure between the hours of 9:00 p.m. and 7:00 a.m. except in emergency situations.

f. *Loudspeakers.* The use of loudspeakers or other sound amplification equipment upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or site.

(c) *Exemptions.* Noise from the following sources shall be exempt from the prohibitions specified herein:

(1) All safety signals and warning devices or any other device used to alert persons to any emergency or used during the conduct of emergency work, including, but not limited to, police, fire and rescue vehicle sirens.

(2) The repair and maintenance of municipal facilities, services or public utilities when such work must be accomplished outside daytime hours.

(3) Snow removal equipment operated within the manufacturer's specifications and in proper operating condition.

(4) Musical, recreational and athletic events conducted by and on the site of a school or educational institution.

(5) Events and activities conducted by or permitted by the city. Persons operating an event or activity under authority of an entertainment permit, parade/street event permit, solid waste license, or parks special use permit shall comply with all conditions of such permits or licenses with respect to noise control issues.

(6) Construction or repair work which must be done to address an emergency health or safety concern and that cannot be accomplished during daytime hours and which is not work which

Page 5-6
Reference

5
1



City of Burlington
Department of Public Works

Water Resources Division
234 Penny Lane
Burlington, VT 05401
802.863.4501 P
www.burlingtonvt.gov/DPW

Chapin Spencer
PUBLIC WORKS DEPARTMENT DIRECTOR

Megan Moir
WATER RESOURCES DIVISION DIRECTOR

November 26, 2019

John Caulo
LANDPLAN
61 Central Ave
Burlington, VT 05401

Re: Water and Wastewater Allocation Request for Change of Use at 266 Queen City Park Road (Burton Campus)

Dear John,

This letter is to inform you, your client, the State of Vermont Environmental District and other interested parties that the City of Burlington's water and wastewater facilities have sufficient capacity to handle flows associated with a Performing Arts Venue at the above address. We have reserved 7,500 gpd (gals/day) for both water and sewer. This is based on a maximum of 1500 persons at 5 gpd per person.

Wastewater flow from this area is treated at our Main Wastewater Plant on Lavalley Lane. It is important to note that this letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities. Our collection system serving this area is a combined sewer system (CSS) and our efforts over many years has been to remove stormwater input to the CSS. We are in draft stages of a combined sewer policy that eventually will require customers connected to our combined sewer to either remove stormwater input or offset increased wastewater baseflow. We reserve the right to contact you/your client regarding a potential offset project after a formal policy has been approved.

This letter is good for three (3) years from the date of writing. If this letter is not filed with the proper offices, or if the proper permits are not obtained within that year, you will need to reapply. Any changes in flow estimates or property usage also requires reapplication. Please feel free to call me at 343-0125 if you have any questions.

Sincerely,

Steve Roy, P.E.
Project Engineer
Burlington Public Works

queencity266_cap

Kochman Frank

From: Scott Gustin <SGustin@burlingtonvt.gov>
Sent: Monday, July 06, 2020 7:30 PM
To: Kochman Frank
Subject: FW: FW: Water & Wastewater Allocation Request for 266 Queen City Park Road
Attachments: queencity266_cap.pdf

FYI.

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

From: John Caulo [mailto:john.caulo@gmail.com]
Sent: Monday, July 06, 2020 6:00 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: Justin Worthley <JustinW@burton.com>
Subject: Fwd: FW: Water & Wastewater Allocation Request for 266 Queen City Park Road

[WARNING] External Message

Hey Scott:

Here is the email from Steve Roy clarifying his earlier letter about wastewater capacity. Please let me know if you have any questions. thanks! -john

----- Forwarded message -----

From: **Steve Roy** <SRoy@burlingtonvt.gov>
Date: Thu, Jul 2, 2020 at 4:00 PM
Subject: FW: Water & Wastewater Allocation Request for 266 Queen City Park Road
To: john.caulo@gmail.com <john.caulo@gmail.com>

Hey John,

Thanks for your call yesterday afternoon. I pulled up our 11/26/19 allocation letter to you and have answers to questions raised in the second paragraph of this letter.

Organic Loading: This boilerplate language is meant to address capacity requests from users that could discharge high organic loads to our wastewater plants. This will not be an issue for the proposed Performing Arts Venue with flow primarily from bathrooms.

Combined Sewer Policy: While this policy is still in draft form the intent is to have new users remove stormwater input to offset proposed new wastewater flows. This policy applies to new flows over 1000 gpd (like Higher Ground) and requires either removing 0.5 sqft impervious per wastewater gpd request or if not technically feasible on-site then payment of a Combined Sewer Offset Mitigation fee equal to \$1.84 per gpd request. These funds are placed in a special account to be used for public combined sewer mitigation projects.

I believe that no stormwater from the Burton campus enters our combined sewer system, however the wastewater flows does plus is also upstream from an active Combined Sewer Overflow (CSO) point, so most likely payment of \$13,800 will satisfy our requirements.

Steve

Steve Roy, PE

Senior Water Resources Engineer

Burlington Public Works

53 Lavalley Lane

Burlington, VT 05401

C: 802.343.0125

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.

--

John Caulo

61 Central Avenue
Burlington, VT 05401
Mobile: 802/233-6640

john.caulo@gmail.com

Page 6 - Reference

6

From: Shawn Burke <sburke@SouthBurlingtonPolice.org>
Sent: Wednesday, June 19, 2019 9:13 AM
To: Kevin Dorn <KDorn@sburl.com>; Tom Hubbard <thubbard@sburl.com>
Cc: Coralee Holm <cholm@sburl.com>
Subject: FW: Higher Ground Data

Subject: Higher Ground Data

Councilor Paul,

Councilor Riehle forwarded your data question to Kevin Dorn and I this morning. I had SBPD Sergeant Jon Namdar illustrate the quantitative data available for police / fire responses to 1214 Williston Road (Higher Ground) for the past year. Given that Higher Ground is a venue that operates in the late evening hours the response frequency for time of day is what one would expect, our combined call volume illustrates our responses concentrated between 8 PM and 2 AM. Also, the police call types are what I would expect and are fairly straight forward. I would offer some context around our incident type "Directed Patrol", which is our top incident count in the set. This incident type is used by Officers to document when they are proactively on the property and generally occur when the venue has a popular act. A directed patrol could be a motorized patrol through the parking area, a foot patrol of the front of the venue chatting with the door staff, or a more prolonged visit to the property as an event is wrapping up and patrons are leaving the venue, akin to what BPD calls "Bar Closing".

SBPD Staff would say that Higher Ground security is effective and do a good job at managing their venue. There are some acts that draw more alcohol, drug, disruptive crowds which need the help of City services to keep patrons safe, it is what it is. Other events at the venue are small and uneventful. I hope that this information finds you well and helps inform your constituents.

Best,
Shawn

Shawn P. Burke
Chief of Police
South Burlington, Vermont Police Department
19 Gregory Drive, Suite 1
South Burlington, Vermont 05403
D - (802) 846-4111
C - (802) 316-0469
sburke@southburlingtonpolice.org



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SBPD/SBFD Response, 06/01/2018-05/31/2019
Higher Ground, 1214 Williston Rd, South Burlington

CALLS FOR SERVICE	
South Burlington Fire Department	12
South Burlington Police Department	125
Grand Total	137

SBPD COUNT OF CALL TYPE	
Directed Patrol	53
Motor Vehicle Complaint	17
Intoxication	13
Disturbance	8
Assist - Agency	4
Welfare Check	4
Trespass	4
Assist - Public	3
Accident - late reported	2
Field Contact	2
Drugs	2
Suspicious Event	1
TRO / FRO / APO Violation	1
Found / Lost Property	1
Sex Offense	1
Accident - property damage only	1
Accident - injury	1
Assault	1

CALLS BY HOUR	SBPD	SBFD
00	15	0
01	5	0
02	3	0
06	1	0
07	1	0
08	1	0
09	1	0
11	1	0
12	1	0
13	1	0
14	2	0
15	2	1
16	1	0
18	2	0
19	4	0
20	9	1
21	12	2
22	38	3
23	25	5

BURTON

The Burton Hub project – an update as of June 2020

Over the past two years, we have been developing a vision and plan for fully activating our 266 Queen City Park Road facility as a vibrant multi-use marketplace. While COVID-19 had some short-term impacts in slowing down planning and design work, Burton and our key project partners remain committed to the project and we are keeping the plan moving forward. We will be entering another active permitting stage in early July.

What's the Hub Vision:

Our vision for the Hub is to anchor / surround / sustain core functions in the 266 building (Craig's Prototype Center, Rapid Prototyping lab, testing/development labs, walk-up warranty window) with a complement of mixed uses which will benefit a broad cross section of Burton's customer-base, and the community at large. The activities proposed at the Hub include a performing arts/concert venue, Burton's flagship retail store (relocated from the 180 building), food hall, expanded R&D facility tour and snowboarding museum, indoor skatepark (opened in 2019, operated by Talent), and a more visible/prominent global HQ for the Chill Foundation.

What are our goals:

- Like Burton Hubs in other locations, we want to create a year-round physical space that draws the Burton community together to experience our brand and culture. This Hub will be on a global HQ scale so we're packing more in vs. our other Hubs.
- The 266 building and site is in pretty rough shape, so this plan will also justify investment in getting the building and grounds in shape for the next 40+ years. We need to make significant upgrades to the stormwater collection/treatment system, parking lots, building infrastructure, energy efficiency, etc. We've been deferring these improvements, and no matter what happens in 266, these improvements need to happen. Given the scale of the investment to make these improvements, our financial objective is to break even on the capital investments through rental income from new uses over a 10 year period.

Who are our partners:

- **Talent Skatepark** is already up and running, having opened in early 2020. Of course this turned out to be a rough time to be starting an indoor skatepark, but they have been resilient and are now running camps and are reopening for limited hours. Talent, Burton and the Chill Foundation have a long history and we're super proud to have Talent 'back' in our community after closing last summer.
- **The Chill Foundation** will remain as a key part of the Hub, with increased visibility for visitors.
- **Higher Ground** will relocate from their current Williston Road location to our campus. They are designing a 1,500 person capacity performing arts theater with many amenities that aren't possible in their current location such as mezzanine viewing/seating, reservable seats/areas, improved backstage areas for performers, and more. Their plan is to host 100-120 events per year, with a mix of concerts and private events, and the new larger venue would allow them to bring bigger touring artists to the Burlington market (their large room on Williston Road has max capacity of ~750).
- **Mad Taco and Misery Loves Company** will team up to create an indoor food hall with 3-4 'stalls' serving different menu options, a kickass indoor/outdoor bar, and shared seating. The food hall will

Burton Snowboards names two possible deal-killers for a new Burlington concert venue

Joel Banner Baird, Burlington Free Press Published 7:36 a.m. ET Jan. 16, 2019 | Updated 11:37 a.m. ET Jan. 16, 2019

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Buy Photo

Burton Snowboards is negotiating to revitalize parts of this underused, 2-acre building in Burlington's South End. Room for a possible concert venue is seen here at 152 Industrial Parkway on Thursday, Jan. 10, 2019. (Photo: JOEL BANNER BAIRD/FREE PRESS)

Burton Snowboards sees a concert venue, skatepark, restaurant and taproom in its future in Burlington's South End — but the scenario is tied to the slow-moving Champlain Parkway project, as well as zoning changes.

Burton's compound on Industrial Parkway hasn't hosted large-scale manufacturing for decades.

Elsewhere in the South End, former factories have played host to a vibrant arts community. An underused, aircraft-hanger-sized building at Burton is likewise ripe for redevelopment, Justin Worthley, the company's vice president for human resources, told the city's Planning Commission last week.

Burton venue hurdle #1: Champlain Parkway

"The Parkway is critical," Worthley told members of the Planning Commission.

Without easy access via the Champlain Parkway, he added music, food and skateboard fans would have to thread their way through a residential neighborhood — or across a single-lane railroad bridge — to reach this corner of Burlington.

The status quo, in other words, is a deal-killer.

Yet Worthley and others remain hopeful: Construction of the 25-mph Champlain Parkway could begin this fall and is expected to take two years, according to updates from the Department of Public Works.

Until then, several residents cautioned the commission against venues that might attract hundreds more motorists to Home Avenue, many of whom would presumably be passing through late at night.

"Keep in mind this is a residential neighborhood," said Ben Traverse, who lives near Home Avenue and Pine Street. It would be "irresponsible," he added, to take Burton's plans seriously until the long-delayed Champlain Parkway takes shape.

Commissioner Emily Lee noted that the existing zoning rules could yield unpleasant surprises, too.

"Without changing a thing, you could have a metals smelter moving in next door, with noise and truck traffic going on all night."

Burton venue hurdle #2: Zoning

Burlington's zoning laws for the South End are designed to preserve the district's potential for manufacturing, and to limit housing.

In parts of the city's so-called "Enterprise" zone, that template has been flexible enough to allow many studios and businesses to occupy and transform historic factories.

Some prime examples:

- Dealer.com (Specialty Filaments)
- The Innovation Center on Lakeside Avenue (Queen City Cotton Mill)
- A co-working complex and surf club (at the former Blodgett Ovens plant)

Reference: Page 7



9
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Frank Kochman, Esq.
F.L. Kochman, Inc.
P.O. Box 8084
Burlington, VT 05402-8084
via email: frank@kochmanlaw.com

27 July 2020

Re: Status of Champlain Parkway Litigation

Dear Attorney Kochman,

As you know I represent the Pine Street Coalition in federal NEPA litigation regarding the proposed Champlain Parkway development. I am aware that you are representing clients in regard to the Higher Ground proposal for development at the Burton facility on Queen City Park Road in Burlington. One aspect of that proposal, as presented to the Burlington DRB, is a traffic plan proposing use of the to-be-constructed Champlain Parkway as a means of mitigating traffic impacts on adjoining neighborhoods.

To that end, you have requested that I inform you as to the status of the federal litigation and the anticipated timeline for the Champlain Parkway going forward.

The Pine Street Coalition filed its NEPA complaint in the federal district court in June 2019 (Docket No. 519-CV-00095-GWC). The lawsuit names FHWA, VTrans, and the City of Burlington, and asserts that the 2009 FSEIS is invalid due to the myriad of changes in law, regulation, policy, and in Burlington's South End since that time. We also asserted Environmental Justice claims pertaining to the disproportionate impact of the project on the primarily Black and immigrant Maple-King neighborhood.

In July 2019, prior to filing an answer, FHWA announced that it concurred with us that they had not followed appropriate processes related to Environmental Justice. They notified the court that they were taking a voluntary remand of the case. In October 2019, FHWA rescinded the Record of Decision from its 2009 FSEIS. In other words, there now is no federal decision regarding the project. In late January 2020, FHWA announced its intent to prepare a new limited-scope Supplemental Environmental Impact Statement. This has just been released for comment on July 10th. The comment period runs through August 24th.

At the close of this comment period, there will be a final version of the SEIS released, also with comment periods, and then a new Record of Decision. That may or may not be published prior to the end of this year.

While this Environmental Justice outreach and new SEIS process has been ongoing, the federal litigation has been stayed. Once the new SEIS process is complete, the federal NEPA litigation will finally be in earnest.

At that point, the Pine Street Coalition will be filing an amended complaint. The litigation process that follows -- an answer, producing the record, discovery, on through conclusion of the case at the District Court level -- will, in my experience in prior NEPA and other federal environmental litigation, take conservatively between 18 months and 2 years. Assuming the litigation process begins in January 2021, it will not be complete until between June 2022 and January 2023. An appeal to the First Circuit Court of Appeals by either side will take an additional one to two years, concluding between January 2024 and January 2025.

If my clients prevail in this litigation, the EIS process will be deemed invalid, and the FHWA, VTrans and the City will either commence a new EIS process, starting all timelines over, or will abandon or redesign the project.

In my opinion, even if my clients do not prevail in this litigation, the Champlain Parkway would not proceed to construction until, at the earliest most reasonable date, the summer of 2025.

Very truly yours,



Cindy Ellen Hill, Esq.



LES BLOMBERG

Box 1137, Montpelier, Vermont 05601
802-229-1659

PROFESSIONAL EXPERIENCE

EXECUTIVE DIRECTOR

Noise Pollution Clearinghouse, Montpelier, VT, 1996-present

- Founded a national non-profit clearinghouse dealing with noise pollution and hearing loss issues.
- Created and maintained an extensive noise pollution library.
- Conducted research into noise and its effects.
- Wrote articles and fact sheets for magazines, journals, and web sites.
- Advised consultants, communities, and individuals about noise pollution issues.

MEMBERSHIPS AND AFFILIATIONS

Member, American National Standards Accredited Standards Committee S12, Noise.

- Evaluated, revised, and approved national standards for noise measurement as a voting member of the S12 committee and as members of specific working groups
- Member, ANSI S12 Working Group 15, Measurement and Evaluation of Outdoor Community Noise
- Member ANSI S12 Working Group 38, Noise Labeling In Products
- Member ANSI S12 Working Group 41, Model Community Noise Ordinances
- Member ANSI S12 Working Group 50, Information Technology (IT) Equipment in Classrooms

Member, National Parks Overflights Advisory Group

- Member of a federal government sponsored advisory group to the National Parks Service and Federal Aviation Administration concerning overflights of National Parks.

Past Memberships

- Former Member, Acoustical Society of America (ASA)
- Former Member, Acoustical Society of America Technical Committee on Noise
- Former Member, National Hearing Conservation Association (NHCA)
- Former Member, Institute of Noise Control Engineering (INCE)

PAPERS AND PUBLICATIONS (partial list)

- "Penalties for Noise Violations in the United States." Institute of Noise Control Engineering, 2018.
- "Noise Ordinance Noise Level Limits, an Update of the EPA's 1975 Findings." Institute of Noise Control Engineering, 2018.
- "Types of Regulatory Tools and Their Advantages, Limitations, and Disadvantages in a Model Noise Ordinance Standard." Acoustical Society of America, 2018.
- "History of the Sound Level Meter in Standards," invited paper. Acoustical Society of America, 2018.

- “Enforcement of Local Community Noise Ordinances in the United States,” invited paper, Acoustical Society of America, 2017.
- “Noise Related Calls to Police Departments in the United States,” invited paper, Acoustical Society of America, 2017.
- “Lawn Mower Noise,” invited paper, Institute of Noise Control Engineering, 2017.
- “Analysis of 500 Noise Ordinances,” invited paper, Acoustical Society of America, 2016.
- “Preliminary Results of an Analysis of 491 Community Noise Ordinances,” invited paper, Institute of Noise Control Engineering, 2016.
- “The Last Remaining Places of Natural Quiet in the Continental United States,” *ESRI Map Book Vol. 30*, 2015.
- “Noise in the 21st Century,” Acoustical Society of America Lay Language Paper, 2014.
- “Update on Regulations Adding Noise to Electric and Hybrid Vehicles,” invited paper, Acoustical Society of America, 2014.
- “Noise in the 21st Century,” invited paper, Acoustical Society of America, 2014.
- “Regulatory Inertia and Community Noise,” invited paper, Acoustical Society of America, 2014.
- “Natural Quiet: Where to Find It, How to Increase It,” invited paper, Noise in Communities and Natural Areas Workshop, Institute of Noise Control Engineering, 2013.
- “Optimizing Detection of Masked Vehicles,” invited paper, Acoustical Society of America, 2013.
- “Validity of a Temporary Threshold Shift (TTS) Detector for Use in iPods and Other Portable Audio Devices,” National Hearing Conservation Association, 2010.
- “Five Ways to Quiet Your Neighborhood,” published in *One Square Inch of Silence*, 2009.
- “Noise Masking of Vehicles, A Comparison of Gasoline/Electric Hybrids and Conventional Vehicles,” Noise Pollution Clearinghouse, 2008.
- “Wind, Noise, and Energy,” Noise Pollution Clearinghouse for American Wind Energy Association, 2008.
- “What’s the Ear For?” Chapter 47 of *Handbook for Sound Engineers*, 2008.
- “Hearing Damage Related to In-Ear Music Devices and other Consumer Products, invited speaker, “International Consumer Product Health and Safety Organization Symposium, 2007.
- “10 Ways to Quiet Our National Parks,” Acoustical Society of America, 2007.
- “Criteria Levels for Non-Occupational Noise Exposure,” Acoustical Society of America, 2006.
- “Consumers, Products, and Noise: The Economic, Social, and Political Barriers to Reducing Noise in Consumer Products Sold in North America,” Acoustical Society of America, 2006.
- “Opportunities and Progress in Consumer Product Noise Testing and Labeling,” Institute of Noise Control Engineering, 2006.
- “Noise (is) Pollution,” Quiet Zone, 2006.
- “The Nature of Noise,” Quiet Zone, 2006.
- “The State of State Noise Regulations in New England,” Institute of Noise Control Engineering, 2005.
- “Consumer Oriented Measurement of Product Noise,” Institute of Noise Control Engineering, 2005.
- “Acoustical Advocacy,” National Hearing Conservation Association, 2005.
- “The Interest of the General Public for a national Noise Policy in the United States of America,” invited speaker, 8es Journées Annuelles de Santé Publique, 2004.

- “Barriers to Community Input to Noise Policy Decisions,” Institute of Noise Control Engineering, 2004.
- “The Nature of Noise in Society,” Acoustical Society of America, 2004.
- “24 Hours of Noise in a Large City; Problems and Solutions,” Acoustical Society of America, 2004.
- “Why Diesel Trucks Are Quieter than Boats,” Lakeline, 2004.
- “The Future of Peace and Quiet,” Quiet Zone, 2003.
- “The Interest of the Public in Noise Control,” Institute of Noise Control Engineering, 2002.
- “A Punch from Michael Tyson Averaged over an Hour is a Very Long Love Pat: The Problems of Averaging in Noise Measurement,” MIT Seminar, 2001.
- “Noise Ordinances: the Good, the Bad, and the Ugly; An overview of more than 200 existing noise ordinances,” Acoustical Society of America, 2001.
- “Soundscapes, Quiet Zoning, and a Noise Sabbath,” Wisconsin Lakes Partnerships Conference, 2001.
- “Amphitheater Noise, A Community Perspective,” Acoustical Society of America, 2000.
- “Educating the Public about the Effects of Noise Pollution,” Acoustical Society of America, 2000.
- “Noise in the News: What the Media Is and Is Not Covering,” Acoustical Society of America, 2000.
- “Sound Decisions,” New Rules, 1999.
- “Noise, Civility, and Sovereignty,” Noise Pollution Clearinghouse, 1999.

PATENTS

- Number 7,780,609, Temporary Threshold Shift Detector, Issued August 24, 2010, allows users of personal listening devices to determine if they have listened at levels that could damage their hearing.

AWARDS AND RECOGNITIONS

- Finalist, NIOSH, OSHA, and MSHA Hear and Now Challenge, 2016.
- “The Last Remaining Places of Natural Quiet in the Continental United States” was selected as one of the best maps of 2014 by the Environmental Systems Research Institute, *ESRI Map Book Vol. 30*.
- Acoustical Society of America Lay Language Paper, 2014.
- National Hearing Conservation Association Media Award, 2005.

CLIENTS AND CONSULTING

Assisted hundreds of communities, mayors, council members, zoning boards, and police chiefs to understand, interpret, rewrite, and enforce their noise regulations.

- Drafted modifications to noise ordinances.
- Drafted new or complete overhauls of noise regulations.
- Advised communities on appropriate monitoring equipment.

Assisted Vermont towns with understanding, enforcing, and revising noise regulations.

- St. Albans
- Montpelier
- Waitsfield

Developed noise measurement procedures, evaluated testing facilities, and tested consumer product noise levels.

- Consumer Reports
- Quiet Zone (Noise Pollution Clearinghouse publication)

Modeled noise levels from various noise sources.

- Transportation
- Electric power generation
- Resource extraction

Created online libraries of important noise-related documents and answered questions about noise from the general public.

- US EPA
- Noise Pollution Clearinghouse

Partial List of clients:

- US EPA
- Consumer Reports
- American Wind Energy Association
- East Hampton, NY Airport
- Rocky Hill, CT
- State of Vermont
- Sierra Club
- Natural Resources Defense Council

Partial list of proceedings in Vermont in which participated or testified:

- 2017, Vermont Environmental Court, Appeal of Application Number 5W0966-7
- 2016, Vermont Public Service Board Docket #8653
- 2016, Vermont Public Service Board Wind Turbine Noise Rulemaking
- 2015, Vermont State Environmental Court, Docket No. 208-9-07
- 2014, Vermont State Environmental Court, Docket No. 99-7-13 Vtec
- 2014, Vermont State Environmental Court, Docket No. 181-12-13 Vtec
- 2013, District 3 Environmental Commission, Act 250, Application #3W1049
- 2013, Vermont State Environmental Court, Docket No. 159-10-11 Vtec
- 2012, District 7 Environmental Commission, Application #7C1321
- 2012, Vermont Environmental Court, Docket Nos. 122-7-04, 210-9-08 and 136-8-10 Vtec
- 2011, Vermont Public Service Board Docket No. 7628
- 2010, Vermont Public Service Board Docket No. 7156
- 2009, Greensboro, Vermont Zoning Permit, Lakeview Inn

- 2008, Vermont Environmental Court, O'Neil Sand & Gravel, LLC Docket No. 48-2-07 Vtec, Act 250 Application #2S0214-6A
- 2008, Bristol Vermont Zoning Permit, Lathrop Gravel Pit
- 2007, Vermont Environmental Court, Wright Quarry Docket Nos. 156-7-06 Vtec and 190-8-06 Vtec
- 2007, East Calais, Vermont Zoning Permit, Gravel Pit
- 2007, District 5 Environmental Commission, Route 100 Bypass
- 2006, District 5 Environmental Commission, Application #5W1455
- 2005, State Environmental Court, Docket No. 203-11-03 Vtec
- 2005, District 3 Environmental Commission, Act 250 Application #3W0929
- 2004, Norwich, Vermont Zoning Permit, Verizon Wireless Tower
- 2004, Moretown, Vermont Zoning Permit, Quarry
- 2003, District 5 Environmental Commission, Barre Town Police Firing Range
- 2001, District Number 5 Environmental Commission, Bull's Eye Sporting Center and Case Number 5W0743-3
- 2001, Dummerston, Vermont Zoning Permit, Quarry
- 1999, Vermont State Environmental Board, OMYA, Inc. and Foster Brothers Farm, Inc., Land Use Permit #9A0107-2-EB.
- 1999, Vermont State Environmental Board, Barre Granite Quarries, LLC, Application #7C1079-EB

EDUCATION

SEMINAR CADNA A EXPERT (Noise Model)

SEMINAR CADNA A ADVANCED

SEMINAR CADNA A BASIC

Datakustic, 2013

INTEGRATED NOISE MODEL TRAINING COURSE (FAA Noise Model)

Harris, Miller, Miller, and Hanson, 2010

COMMUNITY NOISE ENFORCEMENT CERTIFICATION COURSE

Rutgers Noise Technical Assistance Center, 1997

MASTER OF ARTS in Environmental Philosophy, 1993

Colorado State University, Fort Collins, Colorado

BACHELOR OF SCIENCE in Applied Mathematics, minor in Physics, 1989

BACHELOR OF ARTS in Philosophy, with honors, 1989

University of Minnesota, Duluth, Minnesota

Scott Gustin

From: Kyle Smith <kylesm@burton.com>
Sent: Thursday, July 09, 2020 1:29 PM
To: Scott Gustin
Subject: Queen City Higher Ground Support

WARNING: External Message

I'm writing to share my support for Burton's conditional use application. This will be another great example of positive transformation throughout the South End, especially with the updates to the bike path that are underway this summer. This is an excellent opportunity to continue the cultural sprawl down Pine St, with much safer access to the largest music venue in Burlington.

Hoping for continued change as we must continue to change and evolve our community to remain relevant, thank you for your consideration and time!

Best,

kyle

Scott Gustin

From: Whitney Heingartner <whiteveh@gmail.com>
Sent: Thursday, July 09, 2020 1:24 PM
To: Scott Gustin
Subject: Support of Higher Ground x Burton

[WARNING] External Message

Hi there,

I'm writing to share my excitement and support of Burton's and Higher Ground's plans to create a concert venue.

I live in the South end, in Redrocks and the new location will be easy to get to – many will be able to ride bicycles or walk there. For those that drive, it is easy to access, and it will only get easier with the Champlain Parkway.

Burton and HG will team up to repurpose an aging industrial building for a new use that will enhance Burlington as a vibrant place to live. This will be another great example of a positive transformation through the South End, which really excites me as someone living in this community. What's better than taking a facility that used to make military equipment and converting it to a place to make music and art!

I am a full supporter and feel as though Burton and HG have done their homework to build a great plan and have full confidence that they will manage this venue very well, creating an experience and commitment to the community.

Thank you for our support!

Whitney

Scott Gustin

From: Ali Kenney <vtgrown@gmail.com>
Sent: Thursday, July 09, 2020 11:12 AM
To: Scott Gustin
Subject: Burton + Higher Ground Opportunity

WARNING: External Message

Hi Scott,

I'm writing in support of the exciting project on Queen City Park Road to bring arts, music, food and culture to our wonderful community! I live in the neighborhood on Scarff Ave, just a few blocks away from the proposed development and we have a young child (11 month old). I feel confident that the team at Burton and Higher Ground have a solid plan to address noise and traffic concerns enough that I am an advocate for this project. I am so excited that we can provide a world-class venue in a location that is easy to safely walk and bike to and does not require single occupancy vehicle traffic. I also love that this is a project that will turn an old military manufacturing space into something innovative and exciting for our community. I'm worried about losing our young people from Vermont and Burlington, and this is the type of project that we need to ensure that our community is vibrant.

As with all projects that represent change and evolution, we will hear from NIMBYs, but this is in my own backyard and I'm saying, heck yes!!! This project makes me grateful for the potential of our city and helps me want to stay in Burlington for the long haul.

Thanks for listening,

Ali Kenney, Anja Jokela and Cedar Kenney (11 months)

Scott Gustin

From: Melissa Doyle <melspur10@gmail.com>
Sent: Thursday, July 09, 2020 10:59 AM
To: Scott Gustin
Subject: Burton / HG Project

WARNING: External Message

Dear Scott Gustin-

I'm writing to share my support for Burton's conditional use application.

Burton and HG will team up to repurpose an aging industrial building for a new use that will enhance Burlington as a vibrant place to live. This will be another great example of a positive transformation throughout the South End!

What's better than taking a facility that used to make military equipment and converting it to a place to make music and art?!

This location has an opportunity to be the heart of Burlington's South End bringing community and business together as a hub for good.

Thank you-
Melissa

Scott Gustin

From: Ilana Miller <ilanam802@gmail.com>
Sent: Thursday, July 09, 2020 10:58 AM
To: Scott Gustin
Subject: Burlington Concert Venue Support

[WARNING] External Message

Hello,

I'm writing to share my support for Burton's conditional use application. Burton and HG will team up to repurpose an aging industrial building for a new use that will enhance Burlington as a vibrant place to live. This will be another great example of a positive transformation throughout the South End. What's better than taking a facility that used to store military equipment and converting it to a place to make music and art!

The new location will be easy to get to – many will be able to ride bicycles or walk there. For those that drive, it is easy to access, and it will only get easier with the Champlain Parkway. A concert venue is a perfect complimentary use for a building with easy access by foot, by bike, or by car with lots of existing parking. I can't wait to go to concerts there!

I would love to see this wonderful addition to our community come to life.

Thank you,

Ilana Miller

Scott Gustin

From: Carolyn Dwyer <dwyervt08@gmail.com>
Sent: Wednesday, July 08, 2020 7:05 PM
To: Scott Gustin
Subject: Higher Ground South End

WARNING: External Message

Hi,

Thank you for your work on the proposed Burton project with Higher Ground. I would like to register our support of the project. As residents of the South End, we are excited to have this addition to our neighborhood and are grateful to Burton and Higher Ground for their efforts to build this arts and entertainment space.

Please let us know if we can provide additional support for this project,

Sincerely,
Carolyn and Larry Dwyer
59 Linden Terrace, BTV

Scott Gustin

From: Christopher Thompson <christhompsonvt@gmail.com>
Sent: Wednesday, July 08, 2020 12:26 PM
To: Scott Gustin
Subject: In Support of Higher Ground Burlington

[WARNING]: External Message

Hi Scott,

If it is not too late I'd like to write in enthusiastic support of Burton's conditional use application. As a founding board member and former director of Burlington's Generator Makerspace and a former curator of Burlington City Arts as well as a 25 year resident of Burlington's south end, I believe strongly that Burton and HG repurposing their aging industrial building for a new use as a world class concert venue is an important addition to Burlington's vibrant south end creative district. Exciting amenities such as they are planning are crucial to attract the type of creative/innovator professions that are essential for the vital future of Burlington. I was sorry to see Arts Riot close after successfully becoming a cornerstone of our creative community and a great place (although limited in size) for seeing innovative young music. So I look forward to riding my bike down and seeing some great shows at the Burton space!

Please feel free to contact me if you wish to discuss this in more detail. Thanks so much for your time!

Sincerely,

- Chris Thompson
Generator - Board Member
17 Ledgemere St. Burlington

Scott Gustin

From: Kochman Frank <frank@kochmanlaw.com>
Sent: Wednesday, July 08, 2020 9:59 AM
To: Brian Dunkiel (bdunkiel@dunkielsaunders.com); Jonathan Rose; Malachi Brennan
Cc: Scott Gustin
Subject: Burton Hub Conditional Use Application

WARNING: External Message

Dear Colleagues:

Will you be kind enough to arrange for the prompt production of the material listed below to Les Blomberg of Noise Pollution Clearinghouse? He is the noise expert for my client, CRZ Group, which has appeared in the captioned matter.

1. All noise modeling files that produce the same results shown in the RSG report when opened in the appropriate noise modelling software.
2. All noise monitoring data from Higher Ground, including raw data and monitoring notes so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured, including the number of patrons, type of music, number of vehicles, types of vehicles, etc.
3. All monitoring data used to determine the background noise levels in the neighborhood, including raw data and monitoring notes, so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured, number of vehicles, types of vehicles, etc.

This request was routed first to Scott Gustin, but I got back an auto reply that says he's out of the office and off line through July 13. Moreover, I got no answer at the number supplied in the auto reply. I will try that number again. We would like to have this material in plenty of time for Les to analyze and be ready to discuss it when the continued DRB hearing resumes. So I'm reaching out to you directly.

Thanks for your help.

Best regards,

Frank

Frank Kochman, Esq.
F.L. Kochman, Inc.
P.O. Box 8084
Burlington, VT 05402-8084
T: (802) 863-2640
F: (802) 660-2477
frank@kochmanlaw.com

Request for modeling and monitoring data.

The conclusions of the RSG HUB Project Report dated April 20, 2020 are based on RSG's modelling of the project. To the DRB and the neighbors, the model is a black box. The results are unanalyzable. Even to those with knowledge of noise modeling, the results are unanalyzable, because the inputs are not clear. The DRB and the neighbors cannot understand the modeling results without examining the modeling and monitoring data.

To avoid this problem the modeling and monitoring files are typically shared with all parties to increase transparency and confidence in the results. Sharing these data are the only way for neighbors, and ultimately, the DRB, to "check the math" in the RSG report. Math teachers are constantly telling students to show all their work, and the DRB should be doing the same with applicants.

Assuming that the "math" is accurate, there is no reason for the HUB Project to not share the modeling and monitoring data. Consequently, we ask the **DRB to require that the modeling and monitoring be provided** to the neighbors, in a timely manner, with sufficient time for the modeling and monitoring to be analyzed and assessed before the next public hearing. Specifically, we request:

1. All noise modeling files that produce the same results shown in the RSG report when opened in the appropriate noise modelling software.
2. All noise monitoring data from Higher Ground, including raw data and monitoring notes so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured, including the number of patrons, type of music, number of vehicles, types of vehicles, etc.
3. All monitoring data used to determine the background noise levels in the neighborhood, including raw data and monitoring notes, so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured, number of vehicles, types of vehicles, etc.

If the modeling and monitoring data are not provided the DRB should not consider the modeling results reliable and conclusions based on the modeling or monitoring should not be used in the DRB process.

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JUL 08 2020
BURLINGTON
PERMITTING & INSPECTIONS

Scott Gustin

From: Ryan Nick <vermonter1992@gmail.com>
Sent: Tuesday, July 07, 2020 4:55 PM
To: Bradford Rabinowitz; Alexander Larosa; Springer Harris; Geoffrey Hobart Hand; Bro McArthur; Kienan Christianson
Cc: Scott Gustin
Subject: Support for the Burton/Higher Ground Conditional Use Permit

WARNING: External Message

Members of the DRB,

I'm Ryan Nick, a South End resident of Burlington, and I'm an enthusiastic supporter of Burton and Higher Ground's proposal to build a world class performing arts center on Queen City Park Road. Burton and HG v team up to repurpose an old manufacturing building for a new use that will enhance Burlington as a vibrant place to live. This will be a great continuation of the South End's positive transformation over the past few years. One of the things I value most about the city is that residents can walk and bike to these incredible amenities, and this can be another example of an accessible asset to Burlington. Burton and Higher Ground also fantastic community partners and are dedicated to making where we live, work, and play a better place us all. I trust them to do the work needed to satisfy the Conditional Use requirements. In addition to the cor venue, I'm looking forward to seeing the Hub idea come to fruition and think the whole project will be the highest and best use for this aging, industrial structure.

I sincerely hope that you can approve their Conditional Use Permit Application.

Thank you for your time and consideration,

Ryan

Ryan Nick
Burlington, VT
802-578-6634

Scott Gustin

From: Spencer Smith <sspencersmith92@gmail.com>
Sent: Tuesday, July 07, 2020 5:00 PM
To: Scott Gustin
Subject: Letter opposing Burton Proposal
Attachments: The Burton Proposal.docx

WARNING: External Message

Hello Scott,
Sorry I have a conflict so I'm unable to attend the DRB meeting tonight.
Attached is a note containing my opinions on the Burton issue.
Thanks for considering it.
Spencer Smith
288 Flynn Avenue
Burlington 05401
sspencersmith92@gmail.com

My Opinions on The Burton Proposal

The majority of us residents of Burlington who live in the area called The Addition (Flynn Ave South to Home Avenue) and the adjacent neighborhood in South Burlington don't want an active night-time venue.

The City owns Memorial Hall on Main Street and, according to Burlington City Councilor Joan Shannon, the City is prepared to preserve Memorial Hall, and lease it to a company, which would manage musical and other events. As for parking in the center of Burlington, there is plenty of night parking in downtown garages and on the street at night. Green Mountain Transit might be able to add extra buses for large events.

I appreciate that Burton provided jobs when they were making snowboards on their property but apparently they decided not to continue making them there or to find another light industry tenant or buyer to replace them. We need to draw more skill based jobs here in Chittenden County to replace low-wage retail and tourism.

After the Burton "porno" snowboard series, I as a woman feel no loyalty to them. If they can't accommodate us, why not use Eminent Domain to take the land and lease it to a Burlington-friendly light industry--which pays \$15 per hour or more?

Thanks for hearing my opinion as a 30 year resident of Vermont, the last 13 of them in Burlington.

Spencer Smith
288 Flynn Avenue

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JUL 07 2020

BURLINGTON
PERMITTING & INSPECTIONS



29 Church Street, Suite 305
Burlington, Vermont 05401
802-863-1175

July 7, 2020

The Burlington Business Association, founded in 1978, is a non-profit, non-political membership organization with over 200 business and non-profit members.

Board of Directors:

Shirin Hart, Chair
Leslee MacKenzie, Vice Chair
Russ Scully, Secretary
Chelsea Condos, Treasurer
Afi Ahmadi
Donna Austin-Hawley
Kyle Bostwick
John Caulo
Justin Heilenbach
Kevin Owens
Jeff Schulman
Stephanie Wernhoff
Zandy Wheeler

Staff:

Kelly Devine
Executive Director

Colin Hilliard
Director of Programming,
Advocacy & Member
Engagement

Alex Bunten
Special Projects Manager

TO: Burlington Development Review Board, Scott Gustin
RE: Conditional Use Permit for Burton at 266 Queen City Park Rd

On behalf of the 200+ businesses represented by the Burlington Business Association (BBA), please accept the following comments on the conditional use permit application for the Burton Corporation before the DRB this evening.

The BBA fully supports Burton's conditional use application. We believe Burton, Higher Ground, and the other for-profit and non-profit partners will team up to repurpose an aging industrial building for a new mixed-use that will enhance Burlington as a vibrant place to live. Their plan is in line with the evolving nature of the South End where adaptive reuse of old industrial spaces brings new vitality to the city.

Burton has long demonstrated a commitment to the Burlington and South End community. Higher Ground has a successful track record as a safe and responsible concert venue operator. The plan for the Burton Hub is reflective of that and our membership is entirely confident that the a newly transformed 266 Queen City Park will be thoughtfully managed and an asset for all in our community.

Sincerely,

Kelly Devine
Executive Director

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JUL 07 2020
BURLINGTON
PERMITTING & INSPECTIONS

July 7, 2020

Dear Development Review Board,

We are writing in regards to the Higher Ground/Burton redevelopment project in the South End. We are both South End residents (Flynn Ave) and South End business owners (Brio Coffeeworks). Recognizing that this has been a controversial project with loud voices opposing it, we thought that it was important to weigh in with our perspective.

To us, the Higher Ground/Burton project represents a creative approach to repurposing an existing development in our neighborhood. The South End has a rich tradition of repurposing legacy industrial properties to the benefit of area entrepreneurs and artists. This project, which seeks to become a hub for arts, entertainment and food, continues the trend set by the many other repurposing projects that have contributed so heavily to the vibrancy and quality of life in this part of the city.

Having options for entertainment, food, and arts that are accessible to local residents, as well as an attraction for visitors and tourists, will be a boost to the economic vitality and cultural life of the South End. The project would have secondary positive effects on other area businesses, including the restaurants, coffee shops, art galleries, and smaller music venues that line Pine Street.

All that said, we are aware of the concerns of some in the community that this proposal will increase noise and traffic. It seems to us that some noise mitigation accommodations for the adjacent property owners will be important, but it's also hard to believe that these concerns can't be addressed adequately. We encourage the council to broker a reasonable solution that allows the project to go forward. With regards to traffic, this is already a very low traffic neighborhood and it appears that it would increase traffic during times of the day when there currently is no traffic (outside of common rush hours). So, we don't really understand this objection.

There have also been concerns regarding safety. We regret that many of these have echoed common prejudices against youth. Skateboarding and music are wonderful, positive outlets for youth looking for ways to spend their time. Public safety around events will be necessary, but surely within the capacity of Burlington and South Burlington to manage effectively.

We have been excited to follow this project and hope to see it come to fruition.

Sincerely,



Magda and Nate Van Dusen
South End Residents
Co-owners, Brio Coffeeworks

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JUL 07 2020
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PERMITTING & INSPECTION

Scott Gustin

From: Elisa Nelson <nelsmith@burlingtontelecom.net>
Sent: Tuesday, July 07, 2020 7:32 PM
To: Scott Gustin
Subject: DRB hearing

WARNING: External Message

Scott,

Please let the board know the public frustration of sitting through a hearing and NOT BEING ABLE TO SPEAK! That is completely rude to the people who took time out of their busy lives to attempt to participate in a public process and have the door slammed in their faces.

Elisa Nelson
155 Austin Dr

Department of Permitting & Inspections

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

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



TO: Development Review Board
FROM: Scott Gustin
DATE: August 4, 2020
RE: 20-0854CA/CU; 266 Queen City Park Road

=====

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

Zone: ELM Ward: 5S

Owner/Applicant: Burton Corporation / LandPlan Development Associates

Request: Conditional use and certificate of appropriateness review of performing arts center within an existing mixed use commercial building. Associated building façade and rooftop mechanical alterations included.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking)

Background Information:

The applicant is seeking approval to convert 11,560 sf of vacant interior commercial space to a performing arts center. An additional 2,380 sf outdoor plaza is also associated with the proposed performing arts center. Maximum capacity for attendees is 1,500. Burton's primary industrial use of the building will remain. Additional non-industrial uses are contemplated but not included in this application.

Façade renovations are included in this proposal as are additional rooftop mechanical units. The site plan has been updated to call out a variety of minor site alterations relative to stormwater ponds, access, and 10 new parking spaces.

This application was initially reviewed by the DRB on July 7, 2020. The public hearing was continued to August 4, 2020. The findings have been revised to address information provided during and since the July 7 review.

Previous zoning actions for this property are as follows:

- 11/19/20, Approval for stormwater enhancements and parking layout revisions (appealed)
- 5/10/19, Approval for interior skate park
- 6/21/16, Approval for 3 exterior signs
- 11/3/15, Approval to relocate sculpture
- 5/16/14, Approval to install HVAC unit on rooftop
- 9/26/12, Approval to enclose footbridge

- 5/7/12, Approval of parking lot reconfiguration and landscaping improvements
- 8/25/11, Approval to establish showroom and construct façade improvements
- 3/18/11, Approval to install exhaust stack
- 10/29/10, Approval of façade and entryway alterations
- 6/7/10, Approval of new entry, windows, doors, and rooftop mechanical unit
- 11/2/01, Approval of new doors and demolish garage
- 8/13/98, Approval to heighten exhaust stack
- 6/11/98, Approval to install temporary office trailer

Recommendation: **Certificate of Appropriateness and Conditional Use approval** as per, and subject to, the following findings and conditions.

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The applicant has secured ability to serve letters from Burlington's Electric, Fire, and Police Departments. The Police Department endorsement is predicated on implementation of the proposed operational management plan for the performing arts center. This operational management plan will be incorporated into permit conditions.

Sufficient water and sewer service are available. A State of Vermont wastewater permit will be required for the new use. A capacity letter has been issued to the applicant by the Dept. of Public Works.

Impact fees will be due for the converted space included in this application and will be used to help offset impacts on city facilities. **(Affirmative finding as conditioned)**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The subject property is located within the Enterprise – Light Manufacturing zone. This zone is intended primarily for manufacturing, distribution, processing and the like. The existing Burton facility is consistent with this intent.

In June 2019, the City Council adopted a zoning amendment (ZA-19-07) to allow additional non-traditional commercial uses in the E-LM zone. The intent of the amendment was three-fold: 1) to prioritize industrial and art production uses in the southern portion of the E-LM zone; 2) to leverage market-rate commercial uses to support more traditional industrial uses; and 3) to expand the allowable area of performing arts centers within the district. The proposed performing arts

center is consistent with this intent. It is a newly allowable use of an acceptable size and serves to make Burton's primary industrial use more viable. **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

The proposed performing arts center is not expected to generate nuisance impacts from odor, dust, heat and vibrations that may be more typically associated with industrial uses. Noise impacts are a concern. Therefore, the applicant has provided a professional noise assessment to address anticipated noise impacts associated with the proposed use.

The noise assessment, performed by RSG, is comprehensive and evaluates anticipated noise associated with interior public concert events and exterior events, including new mechanical equipment, folks in the outdoor plaza, and the post-concert exit of attendees. Evaluation is performed in light of local noise ordinances in both Burlington and South Burlington. Although daytime use of the venue by private parties is anticipated, the noise study does not address it. Daytime uses will be limited to just 300 attendees, and ambient noise levels are greater than during the overnight hours. Adverse noise impacts associated with daytime use of the venue are not expected.

Projected noise impacts are compared to existing conditions. As public concert events at the venue will be exclusively during the evening hours, projected noise impacts are compared to existing background noise levels during the evening hours. Background noise levels during the overnight hours (10:00 PM – 7:00 AM) typically range from 40 -45 dBA. The noise assessment projects that noise levels will remain within this range at the nearest residences both during concert events (42 dBA) and during crowd departure (44 dBA) once the show is over.

The noise assessment notes generally the distinction between constant noises and intermittent noises – constant noises are less perceptible than intermittent ones. There's no apparent discussion of how this distinction may, or may not, be significant in the perception of noise associated with events at the performing arts center.

The operational management plan addresses pre-concert queuing of folks outside the venue to limit crowd size and duration outside. No tailgating will be permitted. Provisions are made for quick and orderly departure following events with specific parameters for events of various sizes. As noted previously, Burlington Police Department support of the project is contingent on implementation of this operational management plan to limit off-site impacts related to the proposed use.

It is important to note that the projected noise impacts assume implementation of proposed mitigation measures. These measures include sheet-rocking the ceiling and insulating a bare metal exterior wall within the venue. Additional insulation could improve these sound-deadening efforts to further offset impacts in the nearby neighborhoods.

As is sometimes done with traffic analyses, follow up noise analyses should be performed by the applicant once the venue is operational in order to determine actual impacts. Additional noise mitigation measures may be warranted or not, depending on the results of the analyses.

(Affirmative finding as conditioned)

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

A traffic analysis and related addendum have been provided. The analysis includes the standard items as to anticipated trip generation, high crash location identification, and intersection level of service (LOS) in build and no-build scenarios. Baseline traffic conditions are compared with and without the performing arts center, with and without the Champlain Parkway, now and in 2028.

While not central to the traffic study, note that the study cites onsite parking numbers that are inconsistent with the zoning permit records for the property and with the site plan included in the application. Additional parking detail is included under Article 8.

Anticipated trip generation is significant in the PM peak hour (net increase of 222) but much less so during the AM peak hour (net increase of 6). Impacts on nearby intersections vary. Some experience virtually no change while others, in particular the Shelburne Street/I-189 Ramp C, experience a drop in level of service from E to F. The unsignalized intersection at Pine Street and Home Avenue is also markedly impacted under a no-build Champlain Parkway scenario. Hosting events in the evening hours serves to lessen potential traffic impacts on the PM peak hour, though impacts remain significant. To address concerns of nearby residents, specific provision is included in the operational management plan to preclude accidental use of nearby Central Avenue in South Burlington by departing attendees.

Written comments from the Department of Public Works have been provided and will be incorporated into permit conditions. Public Works concurs with the findings in the traffic study and makes a number of recommendations. In an effort to reduce PM peak hour traffic impacts, Public Works requests that events at the proposed venue not draw traffic until after 6:00 PM Monday through Friday. Such could be accomplished by limiting event times to 6:30 PM or later. Smaller daytime events at the venue will be limited to 300 patrons and will, therefore, generate substantially less traffic and parking demand. Public Works also recommends follow-up traffic analyses post-construction of the performing arts center and of the Champlain Parkway. Depending on results, additional traffic mitigation measures may be required by Public Works. **(Affirmative finding as conditioned)**

and,

5. *The utilization of renewable energy resources;*

There is an existing solar array next door at Burton's 180 Queen City Park Road property, and the applicants will install an empty conduit line at 266 Queen City Park Road to support a possible future installation at this property. The application notes that at least 10 onsite parking spaces will be dedicated for electrical vehicles with charging station capabilities. Parking spaces will also be provided for carpool vehicles. **(Affirmative finding)**

and,

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances;*

As conditioned.

(b) Major Impact Review Standards
Not applicable.

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

Noise mitigation measures are proposed in order to decrease off-site noise impacts related to the proposed venue. See criterion (a) 3 above. **(Affirmative finding)**

2. Time limits for construction.

No construction timeline or phasing are included in the project plans. The standard 3-year timeframe for zoning permits will apply. **(Affirmative finding)**

3. Hours of operation and/or construction to reduce the impacts on surrounding properties.

The application notes a maximum range of weekday evening operating hours for the venue to be 7:00 PM – 2:00 AM (6:00 PM start on holidays and weekends). It also notes the performing arts center will open one hour prior to the published start time of the event. The applicant has clarified that doors will open at 7:00 PM or later for weekday events (or 6:00 PM on holidays or weekends) for more than 300 attendees.

The application notes that the proposed venue will be available to host private and community events in addition to concerts. Daytime operation is noted as a possibility, and the applicant has provided clarification. Weekday daytime use of the venue will be limited to 300 attendees. Doors would not open before 9:00 AM, and exiting times would not occur between 4:00 PM and 6:00 PM. Weekend daytime use appears not to be proposed, but clarification is needed. Comment from Burlington Public Works has been sought but not yet obtained as to this proposed daytime use. **(Affirmative finding as conditioned)**

4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

5. Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

See the recommended conditions.

Article 4: Maps & Districts

Sec. 4.4.3, Enterprise Districts:

(a) Purpose

(1) Light Manufacturing (E-LM)

The subject property is located in the E-LM zone which is intended as the primary commercial/industrial center of Burlington. Burton's primary industrial use is consistent with this intent. As noted previously, the applicable use standards in the E-LM zone have been opened up to allow non-traditional commercial uses to basically support the traditional industrial uses in the district. Performing arts centers are one such use. **(Affirmative finding)**

(b) Dimensional Standards & Density

Building FAR remains essentially unchanged.

Revised site plans clarify proposed site changes. Resultant lot coverage changes only slightly, going from 63.5% to 63.6%. The proposed lot coverage is under the maximum allowable 80% coverage.

Side setbacks remain unchanged. As a corner lot, there is no rear setback. The front yard setback is 5' minimum from the front property line. The 10 new parking spaces comply with this minimum front yard setback.

Building height remains unchanged. **(Affirmative finding)**

(c) Permitted & Conditional Uses

Subsection 2 of this criterion enables uses unrelated to industrial or art production on E-LM zone properties south of Home Avenue only when one or more industrial or art production uses exist on the lot and that the combined gross floor area of the unrelated uses does not exceed 49% of the GFA on the lot. Uses limited by this provision are identified in Footnote 27 of Appendix A – Use Table. A performing arts center is one such use included in Footnote 27. The performing arts center will be 11,560 sf (13.6% of the total 85,036 sf GFA). Note that floor plans depict the already-permitted 8,298 sf skateboard park (9.8% GFA) and a not-yet-permitted “food court” (~6,400). Combined, the non-industrial areas would total ~ 30% of total GFA within the building. The “food court” is not included in this application; however, it bears mentioning that the application asserts it will serve employees and will be open to the public. Cafes are allowable within this zone; however, they are limited in size to 1,500 sf.

Performing arts centers in the ELM zone are further limited by Footnote 32 that limits size to 15,000 square feet along Queen City Park Road (formerly Industrial Parkway). The proposed 11,560 sf performing arts center fits within this limitation, even if including the 2,380 sf outdoor plaza. **(Affirmative finding)**

(d) District Specific Regulations

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.6 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.6 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.6 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.6 (b) above.

Sec. 5.5.1, Nuisance Regulations

See Sec. 3.5.6 (a) 3.

Sec. 5.5.2, Outdoor Lighting

New lighting will illuminate the walkway beneath the proposed steel tube canopy structure along the building's west elevation as well as entryways on the south elevation. Fixture cut sheets have been provided and depict acceptable cutoff lighting fixtures. Locations are noted on project plans as well. Illumination levels are included in the fixture cut sheets, but a photometric plan has not yet been provided. One is needed to depict acceptable illumination levels for the covered walkway. Acceptable illumination levels are depicted for the entryway lights. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

As noted previously, the site plan has been updated to clearly indicate changes included in this application. They are limited to stormwater pond revision, 10 new parking spaces, and driveway access alterations. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The massing, height, and scale of the building remain unchanged. **(Affirmative finding)**

2. Roofs and Rooflines

Except for some minor revisions associated with revamped building entries, building roof and rooflines remain unchanged. **(Affirmative finding)**

3. Building Openings

Much of the façade renovations consist of new windows and doorways. New glazing is focused on the west building elevation; however, the north elevation receives additional glazing as well. The main entry into the building (on the west elevation) is significantly reworked to include a row of glass doors and a fixed canopy with storefront glazing above. New north-facing windows under the roofline of the venue space will introduce natural light

into the space. Other alterations to the north elevation include additional windows along the northwest end and an embellished north building entry. Alterations to the south elevation are limited to reworking some of the private entries. **(Affirmative finding)**

(b) Protection of important architectural resources

The existing building is not historic, nor is it eligible for listing on an historic register. The proposed façade renovations will have no adverse impact on Burlington's architectural resources. **(Affirmative finding)**

(c) Protection of important public views

No identified public view corridors are adversely affected by the proposed renovations.

(Affirmative finding)

(d) Provide an active and inviting street edge

The building as it exists today is largely industrial and appears that way from the street. The proposed façade renovations provide well-identified building entries that provide a more welcoming presence along the street. Existing walkways connect the parking areas to these revamped public building entries. The changes transform the building from one that appears largely closed to the public to one that is open and more inviting. **(Affirmative finding)**

(e) Quality of materials

Much of the building exterior will remain unchanged as metal siding. The west building elevation will be redone with glass fiber reinforced cement siding in horizontal and vertical arrangements. A small section of new metal siding will be installed over brick on the north elevation. The outdoor plaza will be enclosed with solid wood and metal fencing. Fiberglass windows will be installed throughout, except for aluminum-frame windows atop the performance space. A new steel canopy will be constructed alongside the west building elevation, presumably to provide shelter for patrons waiting to enter the building. The proposed materials are consistent with the commercial nature of the building and are of acceptable quality. **(Affirmative finding)**

(f) Reduce energy utilization

Applicable commercial energy codes pertain to the building renovations. The introduction of new windows will allow natural sunlight to illuminate the interior of the building during daylight hours.

(Affirmative finding)

(g) Make advertising features complimentary to the site

Elevation drawings depict several new sign locations. No signage is included in this application and will be handled by way of separate zoning permit. **(Affirmative finding if conditioned)**

(h) Integrate infrastructure into the building design

Several new rooftop mechanical units are proposed. Some are depicted on elevation drawings. A roof plan has been provided to clearly depict existing and proposed mechanical unit locations. Elevation drawings have been updated to depict screening of the mechanical units. **(Affirmative finding)**

(i) Make spaces safe and secure

Emergency vehicle access to the building appears to remain essentially unchanged. Adherence to applicable building codes will be required. **(Affirmative finding if conditioned)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

Under present conditions, the building has a total onsite parking requirement of 99 spaces (based on the manufacturing and skate park uses). Prior zoning permit 20-0514CA (which remains under appeal in court) revised the parking count from 180 existing spaces to 172 spaces. The current site plan for this application depicts 182 parking spaces. The proposed performing arts center will require 375 spaces (1 space per 4 seats – 1,500 proposed maximum capacity). Accounting for the existing manufacturing parking requirement for the 11,560 sf space, the net increase in required onsite parking is 360 spaces.

Parking information within the traffic analysis is inconsistent with parking information above and within the application site plan, although with the 10 new spaces, the discrepancy is less. The parking analysis refers to 181 spaces at the property (rather than 182) in combination with 276 at 180 Queen City Park Road (the zoning permit records show 244 spaces at 180 Queen City Park Road). As depicted in the current site plan, there is a combined availability of 426 parking spaces between both properties. Just 266 Queen City Park Road will require 459 parking spaces. A parking waiver is needed and is predicated on a parking management plan. **(Affirmative finding as conditioned – Sec. 8.1.15)**

Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans

The application proposes a parking management plan centered on shared use. Concert events open to the public will occur only in the evenings, after the daytime uses at the property have largely closed for the day. This shared-use parking arrangement is common and makes efficient use of a shared parking resource. The evening parking requirement of 375 spaces can be accommodated by the total available 426 parking spaces with no daytime use parking demand. Given that the parking plan is predicated on use of parking at both 180 Queen City Park Road and 266 Queen City Park Road, the shared parking at 180 Queen City Park Road will need to be secured by way of deed or easement for the duration of the performing arts center use at 266 Queen City Park Road. Such deed or easement will be subject to review and approval by the City Attorney's Office. The parking management plan acknowledges this requirement.

The parking management plan addresses daytime use of the proposed venue. Events are expected to be infrequent and will be limited to 300 attendees in any case. Such a limitation is important and limits parking to 75 spaces. The total daytime parking requirement is 159 spaces and can be accommodated by the 182 onsite parking spaces.

The parking management plan notes that alternative modes of transportation will be encouraged and that dedicated carpool spaces will be provided. More than the minimum required bike parking will also be provided. **(Affirmative finding)**

Sec. 8.2.5, Bicycle Parking Requirements

There is no specific bicycle parking requirement for performing arts centers. The closest approximation appears to be community centers which require 1 long term space per 20,000 sf and 1 short term space per 1,500 sf. As proposed, the performing arts center will require 1 long term bike parking space and 8 short term spaces. The long term space must be enclosed and secure. The short term spaces make take the form of bike racks and must be close to the public building entry. The application materials have been updated to include a tally of proposed short term and

long term bike parking spaces. A total of 16 short term spaces will be provided along with a total of 4 long term spaces. Short term and long term bike parking locations need to be shown on the project plans. **(Affirmative finding as conditioned)**

II. Conditions of Approval

1. **Prior to release of the zoning permit**, revised project plans addressing the following shall be submitted, subject to staff review and approval:
 - a. Photometric plan of the covered walkway consistent with the standards of Sec. 5.5.2;
 - b. Depiction of long term and short term bike parking spaces; and,
 - c. Erosion prevention and sediment control plan and stormwater screening form approved by the Stormwater Program.
2. **Prior to issuance of a building permit** for the project-related construction, impact fees based on the square footage of the converted space shall be paid to the Zoning Division at the Department of Permitting & Inspections.
3. **Within the first 6 months of operation** and at the applicant's expense, the applicant shall perform a noise assessment within the geographic area covered by the Burton Snowboards & Higher Ground HUB Project Noise Assessment dated April 20, 2020. The noise assessment shall measure sound levels associated with at least 3 full capacity evening events. If sound levels are found to be higher than those contained in the April 20, 2020 assessment, additional sound mitigation measures will be required to reduce noise levels to those consistent with the April 20, 2020 assessment.
4. Notwithstanding condition 3 above, this zoning permit requires installation of the Planned Mitigation measures noted in the Burton Snowboards & Higher Ground HUB Project Noise Assessment dated April 20, 2020.
5. Daytime use of the performing arts center shall be limited to 300 attendees. Doors shall not open for daytime uses of the performing arts center before 9:00 AM, and exiting times shall not occur between 4:00 PM and 6:00 PM and must occur prior to 7:00 PM. Evening use of the performing arts center shall be limited to 1,500 attendees. Doors shall not open for weekday evening uses of the performing arts center before 7:00 PM (6:00 PM for weekends and holidays). In no case shall any use of the performing arts center have an exiting time past 2:00 AM.
6. This zoning permit requires consistent implementation of the Burton Hub – Performing Arts Center (PAC) Operational Management Plan dated April 23, 2020.
7. This zoning permit requires execution of Department of Public Works' recommendations in their June 26, 2020 letter from Susan Molzon, P.E.
8. This zoning permit includes a 33-space parking waiver and is based on shared parking between 180 and 266 Queen City Park Road. The parking waiver is granted contingent on implementation of the Burton – Parking Management Plan dated July 7, 2020. Parking for use by the performing arts center located at 180 Queen City Park Road shall be secured by deed or easement for the duration of the performing arts center use. Such easement or deed is subject to review and approval by the city attorney prior to execution.
9. No exterior signs are included in this zoning permit. All exterior signs are subject to separate zoning permit(s).
10. A state wastewater permit is required.

11. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Permitting & Inspections as well as city and state energy code compliance and other permit(s) as may be required.
12. Standard permit conditions 1-15.

Critique of RSG Noise Assessment

July 29, 2020

By Les Blomberg

Executive Director, Noise Pollution Clearinghouse

This critique of the RSG Noise Assessment dated April 20, 2020, concerning the HUB Project consists of three parts.

First, the RSG report is **not comprehensive** because it failed to assess noise with respect to all the relevant sections of the Burlington and South Burlington Noise Ordinances and it failed to consider all relevant noises and noise impacts, particularly on sleep disruption and interference.

Second, RSG's very limited **noise analysis was flawed** because it inappropriately used a one hour average noise level to assess nighttime noise impacts and did not assess impacts at the property line.

Consequently, the DRB cannot make an affirmative finding with respect to nuisance impacts of noise.

Third, the RSG model on which its findings are based, is a black box that produces results the DRB and the neighbors cannot understand without examining the modeling and monitoring data. Consequently, the **DRB should require that the modeling and monitoring be provided** to the neighbors. Specifically:

1. All noise modeling files.
2. All noise monitoring data from Higher Ground, including raw data and monitoring notes.
3. All monitoring data used to determine the background noise levels, including raw data and monitoring notes. If the background data is actually based on modeling, all background modeling files.

If the modeling and monitoring data are not provided, the DRB should not consider the modeling results reliable and conclusions based on the modeling or monitoring should not be used in the DRB process.

Part 1: The RSG Noise Assessment Is Not Comprehensive

The RSG report claims that "the proposed concert venue can be constructed and operated in such a way as to comply with Sec. 21-13 **(b) (1)** of the Burlington Noise Control Ordinance" (page 1, **emphasis added**).

The Burlington Noise Ordinance is found in Sec. 21-13 of the Burlington Code of Ordinances. Sec. 21-13 **(b) (1)**, the section RSG claims to have considered, contains the *General Prohibition*. Sec. 21-13 **(b) (2)** contains two *Express Prohibitions* that are directly relevant to HUB Project noise that were not considered by RSG.

The relevant parts of the Burlington Noise Ordinance are (highlighting added):

21-13 (b) Prohibited noise offenses:

(1) *General prohibition.* It shall be unlawful for any person to make or cause to be made any loud or unreasonable noise. Noise shall be deemed to be unreasonable when it disturbs, injures or endangers the peace or health of another or when it endangers the health, safety or welfare of the community. Any such noise shall be considered to be a noise disturbance and a public nuisance.

(2) *Express prohibitions.* The following acts, which enumeration shall not be deemed to be exclusive, are declared to be noise disturbances:

a. Radios, television sets, musical instruments, phonographs and similar devices. The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.

c. Parties and other social events. Notwithstanding section (b)(1), it shall be unlawful for any person who is participating in a party or other social event to actively make unreasonably loud noise. A party or other social event is defined as a gathering upon the premises of one or more persons not residing at the premises. Unreasonably loud noise is noise that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of a premises to allow a party or other social event occurring in or about the premises to produce unreasonably loud noise. There is a rebuttable presumption that all residents of the premises have allowed such party or other social event to occur in or about the premises. All residents of the premises are responsible for such unreasonable noise made, each having joint and several liability.

Both Sec. 21-13 (b) (2) (a) and (c) require that noise from musical instruments, devices for the production or reproduction of sound, or events from the HUB not be plainly audible from the street or at other properties between 10:00 p.m. and 7 a.m. The RSG report actually recognizes the relevance of 21-13 (b) (2) (a) in the Report, citing the requirement on page 4, Local Standards. **Yet, nowhere does the report provide an assessment of compliance with this Express Prohibition.** There is, for example, no discussion of whether noise will be detectable.

Ignoring the *Express Prohibitions* in the Burlington Noise Ordinance is an unjustifiable omission. Burlington, Vermont is a college town, and the *Express Prohibitions* are arguably the most important

provisions in the Burlington Noise Ordinance. The town cannot be seen selectively enforcing the *Express Prohibitions* without crippling its response to noise from college students.

The RSG report made the same mistake with respect to the South Burlington noise regulations. The South Burlington regulations have nearly identical prohibitions to the Burlington Noise Ordinance. The relevant parts of the South Burlington Public Nuisance Ordinance are:

(3)(C)

(1) Operating or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls or floors between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.

(3) Notwithstanding section (3)(B), it shall be unlawful for any person who is participating in a party or other social event to actively make unreasonably loud noise. A "party or other social event" is defined as a gathering upon the premises of one or more persons not residing at the premises. Unreasonably loud noise is noise that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of a premises under his or her control to allow a party or other social event occurring in or about the premises to produce unreasonably loud noise. There is a rebuttable presumption that all residents of the premises have allowed such party or other social event to occur in or about the premises. All residents of the premises are responsible for such unreasonable noise made, each having joint and several liability.

With the omission of significant and relevant *Express Prohibitions* in the Burlington and South Burlington Noise Ordinances, the RSG report cannot be considered "comprehensive" and does not support an affirmative finding with respect to noise.

The RSG report is also not comprehensive in another way. It did not evaluate noise caused by the HUB project that would have significant nighttime impacts. In particular:

1. The assumption that the only noise from a 1,500 person audience and a 2,000 plus square foot outdoor patio will be a mere 15 voices, particularly before the concert, during intermissions, and at the end of the concert, is not credible.
2. No assessment of the noise of motorcycles, trucks, and buses leaving the HUB during the night was made, particularly with concern for sleep interference or awakenings.
3. No assessment of noise escaping the open doors was made.
4. At the end of a concert, when more than a thousand people who have been drinking and have suffered a temporary threshold shift in their hearing ability leave, they will not file out like monks following evening prayers. Noise of people leaving at 2 a.m. (and its impact on sleep loss) was not assessed in any credible way.
5. No assessment of low frequency noise escaping the HUB was made. Low frequency noise is critical to understanding impacts on neighbors as it more easily penetrates walls and homes.

Part 2: RSG's Very Limited Noise Analysis Was Flawed because It Inappropriately Used a One Hour A-Weighted Average Noise Level to Assess Nighttime Noise Impacts and Did Not Assess Impacts at the Property Line.

There are dozens of noise metrics available to evaluate noise impacts. These include the Lmax, the maximum instantaneous level; the L90, a statistical measure of the background noise; the Leq, an average over a time period; etc. Different metrics have different advantages and disadvantages for describing various noise impacts. The one hour Leq RSG chose to use is poorly suited to investigate sleep interference impacts on a residential neighborhood at 2 a.m. **No one has ever heard a one hour average noise.** What neighbors will hear are instantaneous noise events. **No one is ever awakened by a one hour average noise.** Neighbors are awakened by instantaneous noise. The Lmax is a much better tool for assessing instantaneous noise than the one hour average that hides individual events. The RSG report did not use this metric.

There are many frequency weighting tools that are available to evaluate noise impacts. These include, A-weighting, C-weighting, and several others including octave band measures. Different weighting schemes have different advantages and disadvantages for describing various noise impacts. A-weighting significantly discounts low frequency noise. Amplified music, however, tends to have a very strong low frequency component. And low frequency noise tends to be very intrusive, penetrating walls and homes. Therefore, A-weighting is a particularly poor choice for assessing noise impacts from the HUB Project. The RSG report, however, relied on A-weighting.

The RSG Report appears to have relied solely on these two poorly suited measures of noise (A-weighting and a one hour average) to determine that the HUB Project noise will comply with the *General Prohibition* found in the Burlington Noise Ordinance (see page 18). The claims that the HUB Project noise would not be unreasonable and would not impact the welfare of the community are based on measures of noise poorly suited to determine those particular issues.

Moreover, the RSG Report did not identify noise levels at the key location required for assessing noise with respect to Burlington's zoning and noise regulations. **The appropriate location for noise assessment in both cases is the property line.** The property line noise levels were not relied upon in the RSG report.

Summary of Parts 1 and 2

The RSG report is inadequate and incomplete. It is not comprehensive because the report and its conclusions are based on analysis that omits key *Express Prohibitions* in the Burlington Noise Ordinance, based on inappropriate noise measures, and based on inappropriate impact assessment locations. The report, therefore, does not support an affirmative finding with respect to noise.

Part 3: Noise Modeling Files and Noise Monitoring Data Must Be Provided to Allow Assessment of the RSG Report Claims

The RSG conclusions are based on the RSG noise model of the HUB Project. To the DRB and the neighbors, the model is a black box, in which results are unanalyzable. Even to those with knowledge of noise modeling, the results are unanalyzable, because the inputs are not clear. To avoid this problem the modeling and monitoring files are typically shared with all parties to increase transparency and confidence in the results.

Sharing these data are the only way for neighbors, and ultimately, the DRB, to “check the math” in the RSG report. Assuming that the “math” is accurate, there is no reason for the HUB Project to not share the modeling and monitoring data.

Consequently, the **DRB should require that the modeling and monitoring be provided** to the neighbors, in a timely manner, with sufficient time for the modeling and monitoring to be analyzed and assessed. Specifically, we request:

1. All noise modeling files that produce the same results shown in the RSG report when opened in the appropriate noise modelling software.
2. All noise monitoring data from Higher Ground, including raw data and monitoring notes so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured, including the number of patrons, type of music, number of vehicles, types of vehicles, etc.
3. All monitoring/modeling data used to determine the background noise levels in the neighborhood, including raw data and monitoring notes, so that it is clear who measured it, what is measured, when it is measured, where it was measured, under what conditions, and what metrics were used. In particular, it is critical to know the activity measured/modeled, number of vehicles, types of vehicles, etc.

If the modeling and monitoring data are not provided, the DRB should not consider the RSG modeling results reliable and conclusions based on the modeling or monitoring should not be used in the DRB process.

7/31/2020 Email from Norm Baldwin, City Engineer

Susan,

We absolutely need more information.

- Do we have a TIS or statement from their Traffic Engineer that provides the existing condition during the corresponding time of day these events will occur?
- We need to know what is the baseline volumes of traffic at that time to understand the scale of volume of traffic being introduced as a percentage
- how does it affect operational performance of the adjacent intersections.
- Should we expect a sudden surge of vehicles coming and going at the same time.
- Are they using some means of spreading out this traffic through secondary events beginning and end that temper traffic volumes.
- I think three people per vehicle under-estimates the volume of traffic introduced. Perhaps a happy medium of 2.5 per vehicle works.

Thanks

From: Susan Molzon <smolzon@burlingtonvt.gov>

Sent: Thursday, July 30, 2020 1:25 PM

To: Scott Gustin <SGustin@burlingtonvt.gov>; Norm Baldwin <nbaldwin@burlingtonvt.gov>

Cc: Laura Wheelock <lwheelock@burlingtonvt.gov>; Caleb Manna <cmanna@burlingtonvt.gov>

Subject: RE: Burton

Hi,

Here's my quick analysis:

- The traffic study prepared by VHB reflects an assumption of 3 persons per vehicle for the performing arts space. With 300 occupants, that translates to 100 additional vehicles during daytime use (with enter/exit that is 200 vehicles on adjacent streets). This doesn't seem like a lot, but could be a noticeable increase to the AADT on Home Ave. Depending on the types of events to be held during the daytime, the assumption of 3 persons per vehicle may be too aggressive.
- I'd like to hear from Burton and their traffic engineer what their assumptions are for daytime use and trip generation as well as distribution of trips throughout the street network both during AM/PM peak and total throughout the daytime use.
-

Unless Norm feels otherwise about allowing or restricting this daytime use, I think we need more information and analysis from Burton to understand this impact.

Thanks,
Susan

From: Scott Gustin <SGustin@burlingtonvt.gov>

Sent: Wednesday, July 29, 2020 8:55 AM

To: Susan Molzon <smolzon@burlingtonvt.gov>

Cc: Norm Baldwin <nbaldwin@burlingtonvt.gov>; Laura Wheelock <lwheelock@burlingtonvt.gov>; Caleb Manna <cmanna@burlingtonvt.gov>

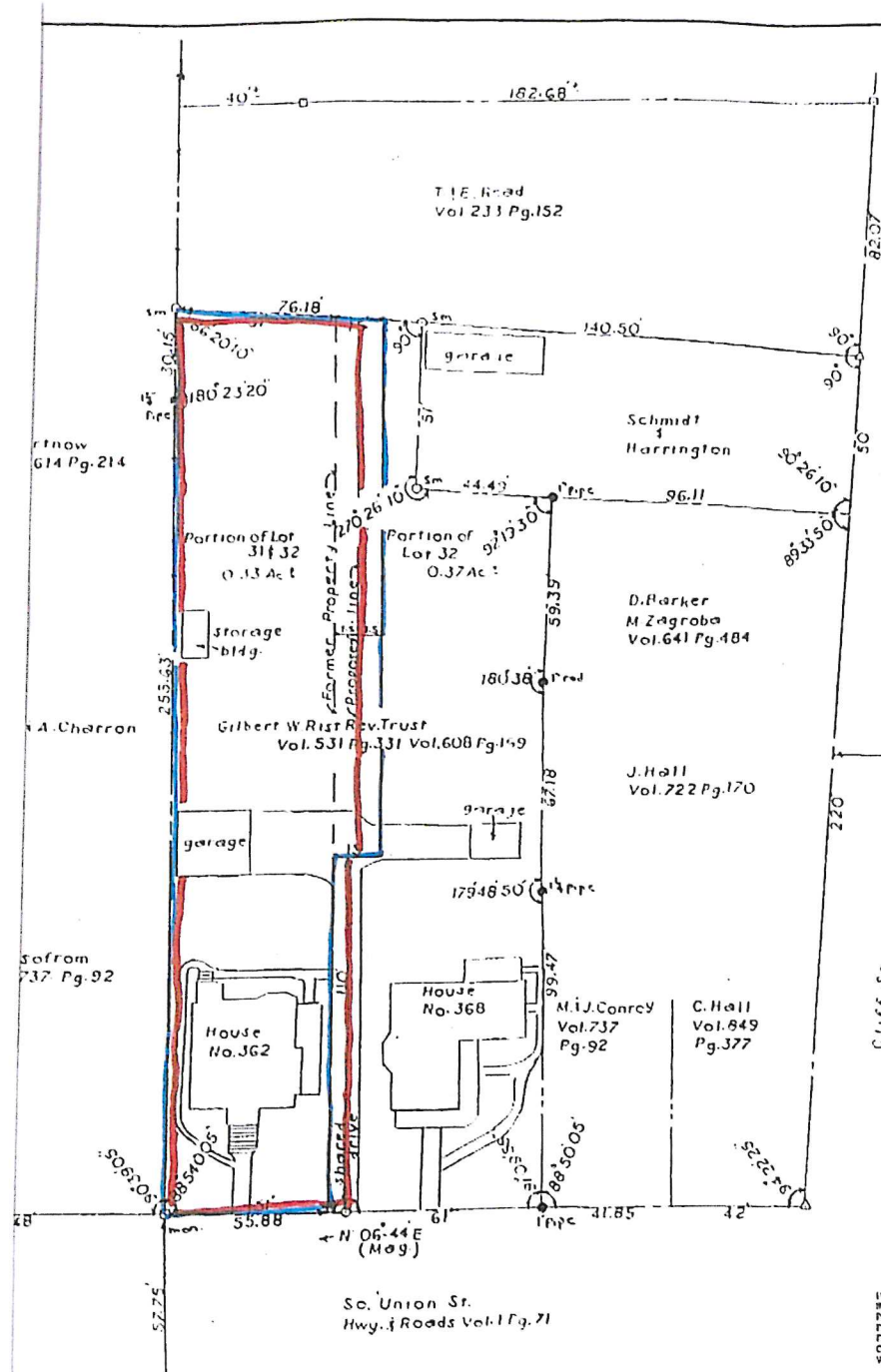
Subject: RE: Burton

Hi Susan,

The applicants are requesting daytime use of the proposed venue but will limit events to 300 patrons (as opposed to the 1,500 maximum capacity). DPW's comments request no venue-related traffic until after 6:30 PM. Is this limited daytime use of the venue acceptable on your end?

Scott

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



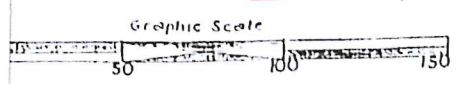
"Approval of this lot line adjustment plat
parcel or lot. It adjusts the physical location
parcels or lots. This lot line adjustment has
City of Burlington Administrative Officer's
Date _____ Zoning Permit # _____

NOTE:
See maps of record.
Vol. 46 Pg. 541
Vol. 46 Pg. 482
Vol. 17 Pg. 207 (old town records)

Lot Coverage of no. 368 = 17%
" " " no. 362 = 23%

LEGALLY TO THE BEST OF MY KNOWLEDGE AND BELIEF THE
INDICATIONS SHOWN ON THIS PLAT IS A FAITHFUL
REPRESENTATION OF THE ACTUAL SURFACE OF THE
PROPERTY. A COLLATION OF FIELD NOTES AND
RECORDS OF THE SURVEY WAS MADE IN THE PRESENCE
OF BOTH PARTIES CONCERNED AND THE PLAT
WAS PREPARED IN ACCORDANCE WITH 27 V.S.A. 1802

— MOST RECENT PROPERTY LINE
— PROPOSED LINE



FLAT
SHOWING BOUNDARIES
GILBERT W. RIST REV. TRUST
NO. 362 & 368 So. Union St.
DATE: July 3, 2013
WARREN A. ROBEN
P.O.
WINOOSKI
(802)

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS that We, JOHN H. SUITOR, JR., of Aspen, Colorado, and DAVID W. SUITOR, of Brunswick, Maine, Grantors, in consideration of TEN AND MORE DOLLARS paid to our full satisfaction by GILBERT R. SUITOR, of the City of Burlington, County of Chittenden and State of Vermont, Grantee, by these presents, do freely GIVE, GRANT, SELL, CONVEY AND CONFIRM unto the said Grantee, GILBERT R. SUITOR, his heirs and assigns forever, a certain piece of land in the City of Burlington, County of Chittenden and the State of Vermont, and described as follows, viz:

Being all our right, title and interest in and to all and the same land and premises conveyed to Gilbert R. Sutor, John H. Sutor, Jr., and David W. Sutor, each an undivided one-third interest as tenants in common, by Quitclaim Deed of Gilbert R. Sutor, John H. Sutor, Jr., and David W. Sutor dated July 18, 2013 and recorded on July 18, 2013 in Volume 1225 at Pages 560-562 of the City of Burlington Land Records and being more particularly described therein as follows:

The property is known and designated as 368 South Union Street, Burlington, Vermont, and is more particularly described as follows:

Being all of 368 South Union Street as depicted on the plan entitled "Plat of Survey Showing Boundary Line Adjustment, Gilbert W. Rist Revocable Trust Property, 0.70 Ac., No. 362 & 368 So. Union St., Burlington, Vermont" prepared by Warren A. Robenstien, R.L.S., dated July 3, 2013, and recorded in Map Slide No. 496-D of the City of Burlington Land Records (hereinafter the "Plan"). Said lot is depicted thereon as commencing at a 1" pipe that marks the southwest corner of the lot; thence proceeding in a northerly direction a distance of 61 feet, more or less, to a point marked by a "set s.m." that marks the northwest corner of the lot; thence turning to the right and running in an easterly direction along the line titled "Proposed line" on the Plan to an unmarked point in the westerly boundary line of property now or formerly owned by T. & E. Read; thence turning to the right and running in a southerly direction a distance of approximately 17.68 feet, more or less, to a point marked by a "set s.m."; thence turning to the right and running in a westerly direction to a point marked by a "set s.m."; thence turning to the left and proceeding in a southerly direction a distance of 44.49 feet, more or less, to a 1" pipe; thence turning to the right and proceeding in a southerly direction a distance of 59.39 feet, more or less to a point marked by a 1" rod; thence continuing in a westerly direction a distance of 67.18 feet, more or less, to a point marked by a 1 1/4" pipe; thence continuing in a westerly direction a distance of 99.47 feet, more or less, to a point marked by the 1" pipe that marks the point of beginning

Included in this conveyance is a non-exclusive easement and right of way to be shared with the owner of 362 South Union Street, their heirs and assigns, over a strip of land 4.88 feet wide, more or less, and running approximately 125 feet, more or less, over land on 362 South

Union Street in the location depicted on the Plan as "shared drive", for the purposes of ingress and egress to 368 South Union Street, and the maintenance, repair and replacement of said shared drive.

The conveyed property is subject to a non-exclusive easement and right of way in favor of the owners of 362 South Union Street, their heirs and assigns, to be used in common with Grantees, their heirs and assigns, over a strip of land 5.12 feet wide, more or less, and running approximately 125 feet, more or less, over 368 South Union Street in the location depicted on the Plan as "shared drive", for the purposes of ingress and egress to 362 South Union Street, and the maintenance, repair and replacement of said shared drive.

The owners of 362 South Union Street and 368 South Union Street, their respective heirs, successors and assigns (hereafter the "Owners") shall be subject to the following covenants and restrictions with respect to the shared drive, which covenants and restrictions shall run with the land:

1. The Owners shall use reasonable care in their use of the shared drive and their exercise of the rights granted them with respect thereto.
2. Use of the shared drive shall be restricted to single family residential use.
3. The Owners shall work in good faith to reach agreements on the maintenance, repair and/or replacement of the shared drive and the costs thereof shall be shared equally between the Owners.
4. The Owners, their guests and invitees, shall not block the shared drive at any time.
5. The respective Owner shall promptly restore and repair any damage to the shared drive arising from their or their family members, guests and/or invitees, use of the shared drive or other exercise of rights granted them with respect thereto, and shall be solely responsible for all costs of restoration and/or repair of the shared drive.
6. The respective Owner shall indemnify and hold the other Owner harmless from all liability, costs, damages, judgments, claims, loss and expenses arising from their or their family members, guests and/or invitees, use of the shared drive or other exercise of rights granted them, with respect thereto, including but not limited to attorney fees incurred by the other Owner in connection therewith.

Said land and premises are subject to the terms and conditions of City of Burlington Zoning Permit No. 14-0010LL dated July 3, 2013, on file in the City of Burlington Zoning files.

Said land and premises are a portion of the land and premises conveyed to Gilbert R. Sutor, John H. Sutor, Jr. and David W. Sutor by Quitclaim Deed of Peoples United Bank (formerly Chittenden Trust Company) and John H. Sutor, Jr., as Co-Trustees of the Gilbert W. Rist Revocable Trust dated May 17, 1993; said Quitclaim Deed dated June 19, 2013, and recorded in Volume 1223 at Page 232 of the City of Burlington Land Records and also are a portion of the land and premises conveyed to Gilbert R. Sutor, John H. Sutor, Jr. and David W. Sutor by Quitclaim Deed of Peoples United Bank, Trustee of the Gilbert W. Rist Revocable Trust dated May 17, 1993; said Quitclaim Deed dated July 18, 2013 and recorded in Volume 1225 at Page 556 of the City of Burlington Land Records

Reference is made to the following deeds for 362 South Union Street: (i) Deed into Trust of Gilbert W. Rist to Gilbert W. Rist, Trustee of the Gilbert W. Rist Revocable Trust dated May

17, 1993; said deed dated July 28, 1994, and recorded August 24, 1994, in Volume 513 at Page 331 of the City of Burlington Land Records; (ii) Warranty Deed of Martha R. Sutor to Gilbert W. Rist dated October 10, 1978, and recorded in Volume 256 at Page 232 of said Land Records; and (iii) Warranty Deed of Mary Weller Rist to Gilbert W. Rist and Martha Rist Sutor dated February 13, 1968, and recorded in Volume 187 at Page 397 of said Land Records

Reference is made to the following deeds for 368 South Union Street: (i) Special Administrator's Deed of Gilbert R. Sutor, Special Administrator of the Estate of Martha R. Sutor, to People's United Bank and John Sutor, Jr., Trustees of the Gilbert W. Rist Revocable Trust; said deed dated July 18, 2013, and recorded in Volume 1225 at Page 552 of the City of Burlington Land Records; (ii) Deed into Trust of Gilbert W. Rist to Gilbert W. Rist, Trustee of the Gilbert W. Rist Revocable Trust dated May 17, 1993, as amended December 5, 1994; said deed dated November 25, 1998, and recorded in Volume 608 at Page 169 of said Land Records; and (iii) Decree of Distribution in the Estate of Mary W. Rist dated December 7, 1977 and recorded in Volume 608 at Page 164 of said Land Records."

Reference is hereby made to the instruments aforementioned, and the records thereof, and the instruments therein referred to, and the records thereof, in further aid of this description.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantee, **GILBERT R. SUTOR**, his heirs and assigns, to his own use and behoof forever; and the said Grantors, **JOHN H. SUTOR, JR.** and **DAVID W. SUTOR**, for themselves and their heirs, assigns and administrators, do covenant with the said Grantee, **GILBERT R. SUTOR**, his heirs, administrators and assigns, that until the ensealing of these presents they are the sole owners of their interest in the premises, and have good right and title to convey the same in manner aforesaid, they are **FREE FROM EVERY ENCUMBRANCE**, except as aforesaid, and Grantors hereby engage to **WARRANT AND DEFEND** the same against all lawful claims whatever, except as aforesaid

August 4, 2020

Mr. Lawrence Smith
50 Central Ave,
South Burlington, VT 05403

Cell: 802-363-8070

e-Mail: wlbsmithvt@gmail.com

Subject: Peer Review of
Hub Project Noise Assessment

Dear Mr. Smith,

As requested, I have reviewed Burton Snowboards & Higher Ground Hub Project Noise Assessment dated April 20, 2020 prepared by RSG, White River Junction, Vermont. The Hub Project is to renovate the Burton Snowboard facility at 266 Queen City Park Road into an indoor entertainment venue with restaurants, retail space, and an indoor recreation area, as well including Burton offices, prototyping workshop, and manufacturing facility. The RSG report notes that the project will:

- Comply with Sec. 21-13(b)(1) of the Burlington Noise Control Ordinance.
- Not cause an “undue adverse impact on aesthetics” prohibited by the Vermont Act 250 process.
- Comply with WHO Community Noise Guidelines.

The RSG report only addresses the (b)(1) *General prohibition* of the Burlington Noise Ordinance. However, it is my understanding that the Hub Project must also comply with Sec. 21-13 (b)(2)(a) *Radios, television sets, musical instruments, phonographs and similar devices*; and Sec. 21-13 (b)(2)(c) *Parties and other social events*. These subsections are here quoted in full:

Sec. 21-13 (b)(2)(a) *Radios, television sets, musical instruments, phonographs and similar devices*. The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.

Sec. 21-13 (b)(2)(c) *Parties and other social events*. Notwithstanding section (b)(1), it shall be unlawful for any person who is participating in a party or other social event to actively make unreasonably loud noise. A party or other social event is defined as a gathering upon the premises of one or more persons not residing at the premises. Unreasonably loud noise is noise that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of a premises to allow a party or other social event occurring in or about the premises to produce unreasonably loud noise. There is a rebuttable presumption that all residents of the premises have allowed such party or other social event to occur in or about the premises. All

residents of the premises are responsible for such unreasonable noise made, each having joint and several liability.

This letter presents our conclusions regarding the analysis methods employed by RSG and makes recommendations on how the analysis should be revised to better protect the surrounding residential community.

Noise Standards

The Burlington Noise Control Ordinance is a nuisance type prohibiting “...any person to make or cause to be made any loud or unreasonable noise.” As the Act 250 process requires consideration of impacts in areas outside the primary jurisdiction, the Hub Project is also subject to the City of South Burlington Section A.3(b)(ii) noise ordinance limiting Hub Project sound to 45 dBA at night (12:00 AM and 8:00 AM). The ordinance notes this to be a “one-hour average”, presumably the A-weight one-hour equivalent sound level ($LA_{eq,1-hr}$). Music played at this level in neighborhoods, though compliant, may be clearly identifiable and “...out of character with the area...” as prohibited by Act 250.

It is my opinion that use of the equivalent sound level is most appropriate for broadband, indistinct sound such as that produced by ventilation equipment, for example, which contains no information. Music and speech are distinct, easily identifiable sounds that contain distracting information. We recommend that, in addition to adhering to applicable limits, a design goal for music transient sound be developed to minimize impact. Based on prior work of this firm¹, the community should be sufficiently protected if the 1st percentile A-weighted music and voice sound level ($LAF_{01,1-hr}$) does not exceed the existing residual sound level, expressed as the 90th percentile A-weighted sound level ($LAF_{90,1-hr}$), by more than 5 dBA. This correctly recognizes that the audibility of music in the environment is perceptible depending on the amount by which it exceeds the otherwise existing ambient sound level.

Music Sound Level

The RSG report assumes music sound will have an average ($LA_{eq,1-hr}$) sound level of 99 dBA. In the above footnoted paper, the A-weighted equivalent sound level for music of all genre ranged from 71 dBA (jazz and classical at the lowest levels) to 104 dBA (rock). The corresponding 1st percentile A-weighted sound level ranged between 79 and 107 dBA as measured mid-audience under the pavilion at Great Woods in Mansfield, MA. I would recommend that that performing acts be required to limit sound to an $LA_{eq,10 min}$ of 105 dBA and that this be used by RSG in its analysis. The high level I have suggested, as a practical matter, is important to many rock acts wishing to maintain their entertainment value.

Building Sound Isolation

Wall and roof section sketches, and a description of how their sound isolation performance has been determined, should be provided. Of most importance is the ability of the building to limit the transmission of low frequency sound to the community. This aspect of building design is important as

¹ Cavanaugh, W.J.; Tocci, G.C.; “Criteria for community acceptance of outdoor concert sound...a progress report on continuing research”, The 2002 International Congress and Exposition on Noise Control Engineering, Dearborn, MI, USA, August 19-21, 2002.

low frequency rhythm sound (bass beat) is generally the dominant source of complaints by residents living near entertainment venues.

Building Mechanical Systems

The report indicates that the building will be served by three existing Carrier rooftop air handling units producing sound power levels of 78-87 dBA (assumed to be based on field measurements) and two new units producing sound power levels of 86 and 87 dBA. I would recommend that manufacturer technical information for the new units be submitted when available.

Lounge Crowd Sound

Sound produced by patrons in the outdoor lounge with space for 150 to 300 patrons was modeled as 15 “loud” male voices. ANSI S3.5 Methods for Calculation of the Speech Intelligibility Index provides one-third octave band power spectral densities for normal, raised, loud, and shouting vocal effort. From this information, the sound power level of 1 loud male vocal effort is 85 dBA. For 15 voices, the total A-weighted sound power emitted, instead of 88 dBA, would be 97 dBA.

In a similar outdoor rooftop patio of a private downtown club, the average sound level measured in the seating area of a typical outdoor restaurant was 75 dBA. This level was applied to the design of an outdoor rooftop patio of a proposed private club. The corresponding sound power level for the maximum occupancy of 65 patrons was 98 dBA. Increasing the patron count from 65 to 300 would increase the emitted sound power level emitted from 98 dBA to 105 dBA.

For an outdoor hotel roof deck with 18 of 50 patrons speaking with normal vocal effort (instead of loud vocal effort), the total power emitted was 88 dBA. Scaling this up to 300 patrons would increase the sound power level to 92 dBA.

The RSG corrected assumption of an emitted sound power level of 97 dBA is probably on the low side compared with the scaled-up club roof deck emission of 105 dBA and the scaled-up hotel outdoor roof patio emission of 92 dBA. An assumed sound power emission of 100 dBA may be more appropriate.

The report does not provide details on shielding by buildings, the lounge elevation, nor possible screening by barriers to reduce crowd sound transmitted to the community. The analysis of the lounge would benefit from consideration of these and other details. In addition, some consideration should be given to sound transmission through double doors accessing the event space during concerts.

Parking Lot Sound

Without the Cadna model input file, it is not possible to evaluate parking lot sound power levels used in modeling. The Cadna parking lot computational standards do not include sound associated with crowds arriving at or departing from music events. This would require sound measurements near a similar event parking area during patron arrival and departure, at least to confirm the appropriateness of the Cadna standard algorithms for parking lot sound. We also wish to emphasize the Hub Project management decision to prohibit tailgating in facility parking areas. Barriers screening parking lot sound levels may provide some benefit as well.

Computer Modeling

I am familiar with Cadna and its methods for evaluating sound. It is among the correct tools to use for evaluating Hub Project sound. However, its inputs should be modified to reflect the above-mentioned descriptors, and to evaluate the potential for low frequency rhythm sound (bass sound) most often the source of community complaints in connection with entertainment facilities. Cadna can be used to evaluate other controls, among them sound barriers to screen sound from sensitive areas.

Conclusions

The organization of the technical study of potential impact of the proposed Hub Project is generally correct. However, though the regulations cited are important, they do not adequately protect the residential community from exposure to unwanted entertainment sound. Protecting residential areas requires developing design goals that incorporate existing background sound levels obtained through actual sound monitoring of existing conditions. Revising the study to develop design goals for sound as we have suggested, providing more detail on building envelope and outdoor lounge design, and investigating possible use of barriers to screen sound would provide better certainty that impacts have been minimized through project design.

* * *

If I can provide further detail, please do not hesitate to contact me. Thank you.

Sincerely,

CAVANAUGH TOCCI

A handwritten signature in black ink, appearing to read 'Gregory C. Tocci', with a stylized flourish at the end.

Gregory C. Tocci, Sr. Principal Consultant

S:\Leads And Proposals\2020\Higher Ground\Higher Ground 1b.Docx



City of Burlington
Department of Public Works

Technical Services Engineering Division
645 Pine Street, Suite A
Burlington, VT 05402
P 802-863-9094 / F 802-863-0466 / TTY 802-863-0450
www.burlingtonvt.gov/DPW

Memo

Date: May 11, 2020

To: City Council

From: Chapin Spencer, Director

CC: Norman Baldwin, P.E., Assistant Director/City Engineer
Susan Molzon, P.E., Senior Public Works Engineer

Subject: Champlain Parkway Project Update

To keep City leaders updated on the progress of the Champlain Parkway project, I have provided periodic reports to the City Council. The last update was provided at the December 2, 2019 meeting. We are closer than ever at advancing to construction on this project – which significantly improves multi-modal connectivity, enhances stormwater management and reduces truck traffic on residential streets and near a neighborhood school. A significant amount of work and planning has gone into this project, funded by a beneficial federal/state funding opportunity. While these federal/state funding opportunities are exceedingly rare, we are excited to finally make these improvements to the Burlington streetscape.

BACKGROUND

The Champlain Parkway, formerly the “Southern Connector” originated in the 1960’s as a four-lane limited access highway to improve vehicular access between downtown Burlington and I-89. Today’s two-lane version, with a multi-modal design that includes significant stormwater, bike/pedestrian, and traffic calming components, represents a fundamental departure from the project’s distant origins and will complement and foster the growing vitality of the South End well into the future. Specifically, this project will:

- Build a new 25 MPH city street between Home Avenue and Lakeside Avenue that will expand South End connectivity.
- Construct 1.5 miles of new shared-use path in the South End – creating a continuous shared-use path from the border of South Burlington at Queen City Park Road to Pine Street and Kilburn Street where new buffered bike lanes will connect to downtown on Pine Street up to Maple Street.
- Decrease the volume of truck and commuter traffic on overburdened residential streets through the Home Avenue, Flynn Avenue, and Champlain Elementary School neighborhoods – allowing for future street redesign opportunities in those areas.
- Install two major stormwater features that together with other project components will improve stormwater management over current conditions.
- Install new sidewalk, pedestrian signals, and transit shelters.

- Complement the Railyard Enterprise Project's multi-modal connectivity between Pine Street and Battery Street so that there will be more connections between downtown and the South End.

The Champlain Parkway design has become – through years of persistent and thoughtful effort – a greatly improved project. More background on the project, and my past memos that describe design refinements, can be found at www.champlainparkway.com.

The City, and the State of Vermont Agency of Transportation (VTrans) acknowledge that this transportation corridor will need to evolve as the needs of the South End evolve. In 2016, the State provided a letter which confirms the City will have the latitude to initiate new projects to support local planning goals, enhance economic development and strengthen the resiliency and diversity of the transportation system along the Champlain Parkway corridor once the project is completed.

We continue to manage a shrinking number of ongoing issues that have the potential to set this project back, and we are projecting a schedule to start construction in 2021.

DESIGN PHASE MILESTONES

Over the last two years, the City has achieved a number of important milestones for this project. These include:

- VTrans issued the Right-of-Way clearance for this project, following the necessity and compensation hearings in 2018.
- All necessary temporary and permanent rights for construction of the Champlain Parkway have been secured.
- The Vermont Superior Court and the Vermont Supreme Court rejected two legal challenges related to the Project's wetland permitting.
- The City secured a renewal of the Project's Operational Stormwater Permit, and has defended a challenge to the permit at the Vermont Superior Court, Environmental Division (the case is now on appeal to the Vermont Supreme Court).
- Legal appeals of the challenges to the City Council's May 2018 necessity hearing were dismissed by the Vermont Superior Court, and the City is defending appeal to the State of Vermont Supreme Court.
- The City developed a Corrective Action Plan (CAP) in order to isolate soils that will be disturbed during construction. Due to the industrial history of the South End, the soils in the project area are impacted by typical urban contaminants. The goal of the CAP is to ensure the safety of the construction workers and the public both during and after construction. The State of Vermont Department of Environmental Conservation (DEC) approved the Corrective Action Plan in March 2019.
- The City executed Utility Agreements for all telecommunication and electric utilities affected by the project.
- In July 2019, the City and the State of Vermont executed an amendment to the Cooperative Agreement for this project, which secures funding for the construction phase of this project.
- In September 2019, the City, in collaboration with the Federal Highway Administration (FHWA) and VTrans, held an open house and neighborhood meeting to engage the Maple Street and King Street neighborhood.
- The City entered into a contract with WSP USA for construction inspection services in November 2019.

LEGAL CHALLENGES

We continue to manage a shrinking number of legal challenges:

Stormwater Permit Appeal

Fortieth Burlington, LLC (which owns the “Innovation Center” building on Lakeside Avenue) appealed the Project’s Operational Stormwater Permit to the Vermont Superior Court, Environmental Division. The City prevailed on a number of motions substantially limiting the scope of Fortieth’s appeal, and resolved several others by settlement before trial. Fortieth has appealed two of the issues on which the City prevailed to the Vermont Supreme Court. Briefing in that case is anticipated to take place in May/June.

Appeals of Necessity Decision

Fortieth and the Pine Street Coalition (the “Coalition”) have also brought separate appeals challenging the City Council’s June 2018 necessity decision acquiring property interests for the Project right of way. The superior court dismissed those appeals on the ground that, because neither had property interests at stake, Fortieth and the Coalition lacked standing to challenge the City Council’s decision. Both parties appealed that decision to the Vermont Supreme Court. Argument in both cases took place December 10 and we are awaiting a decision from the Court.

National Environmental Policy Act (“NEPA”) Challenge

In the summer of 2019, the Coalition filed a federal lawsuit challenging certain aspects of FHWA’s 2018 NEPA re-evaluation. At FHWA’s request, the Court stayed the lawsuit in August 2019 to allow FHWA additional time to update its NEPA analysis. The City is cooperating on those efforts. In connection with a previous update, we asked outside legal counsel to prepare a memorandum describing the NEPA process and the City’s understanding of the NEPA review at that time. Because that memorandum contains analysis and advice related to ongoing litigation, we are not able to share it publicly, but can provide a copy to interested Councilors upon request.

We are actively managing these challenges and will provide future updates as these matters proceed.

PROJECT FUNDING

This project is funded primarily through the Economic Growth Center (EGC) Funding Program. The project participation percentages are: 95% Federal; 3% State; and 2% Local. The Local Share for this project is budgeted and paid for through the Department of Public Works Street Capital and Sustainable Infrastructure Bond revenues.

In addition to the project eligible expenses which will be participating at the percentages identified above, there are a number of costs associated with this project which are not eligible for reimbursement from Federal and State funds. These ineligible expenses include the disposal of contaminated soil from the Pine Street corridor, differential costs for street lighting along the new section of roadway, differential costs for undergrounding Burlington Electric Department utilities, additional landscaping, amenities for pocket parks, and cobblestone paving, bricking and stamping for pedestrian crossing treatments. These ineligible costs account for approximately \$2.5M in

construction costs which will be the sole responsibility of the City. This will be budgeted and paid for through the DPW Street Capital and Sustainable Infrastructure Bond revenues.

ONGOING EFFORTS

We continue to renew all necessary permits required for the construction of this project. The project team is working to secure an agreement with the railroad for work associated with the rail grade crossings.

On October 11, 2019, FHWA published a Notice in the Federal Register to advise the public that it was rescinding the 2010 Record of Decision for the project to conduct additional public outreach and analysis with respect to environmental justice issues. On January 27, 2020, FHWA published a Notice of Intent to prepare a Limited-Scope Supplemental Environmental Impact Statement (EIS) to address changes subsequent to 2010 in FHWA guidance and methodology for performing environmental justice analyses, updated demographic information contained in the latest available census data, and to provide additional opportunities for meaningful public involvement. This Supplemental EIS is limited in scope to assess impacts to low-income and minority populations and will address a limited portion of the project along Pine Street between Maple Street and Main Street. As part of this effort, additional public outreach will be conducted in June or July 2020. Information about these public engagement opportunities will be made available on the project website at www.champlainparkway.com.

We continue to work collaboratively with our partners at FHWA and the State of VTrans to progress through the final design and permitting phases. We anticipate advertising for construction in late 2020 and beginning construction in 2021.

PUBLIC OUTREACH

In September 2019, the project team hosted an open house and neighborhood meeting to engage the Maple Street and King Street neighborhood. Translated materials and interpreters were made available for this meeting, and both written and verbal comments were submitted by the public for consideration by FHWA, VTrans and the City. Additional background on this project and future project updates are also available on the project website at www.champlainparkway.com

Various stakeholders have requested briefings and information on the Project, which we have or will be providing. As this project's timeline advances, we will plan to conduct additional outreach to stakeholders and the public.

NEXT STEPS

We anticipate bringing forward a request for approval of a contract amendment for the project's design engineers, Clough, Harbour & Associates, at the 5/18/2020 Board of Finance and City Council meetings. This contract amendment will authorize the consultant to continue to work on the project to finalize construction plans and bid documents, to assist with the City's public engagement efforts, to continue to renew all necessary permits for the project, and to advance the NEPA process.

Feel free to contact us to discuss any of this in further detail.

Midday impact of Burton Hub project

1 message

Conley, Jenn <jconley@vhb.com>

Mon, Aug 3, 2020 at 10:03 PM

To: Susan Molzon <smolzon@burlingtonvt.gov>

Cc: John Caulo <john.caulo@gmail.com>, Justin Worthley <JustinW@burton.com>, Brian Dunkiel <bdunkiel@dunkielsaunders.com>

Susan,

As discussed on the phone, this email addresses the question of midday events at the Higher Ground location. Please contact me with any questions.

Baseline Traffic Volumes

VTrans automatic traffic recorders collected traffic volume information on Queen City Park Road (Industrial Parkway as it was called at that time) on Thursday, June 14, 2018. The data shows that on that day, the PM peak hour occurred from 3 to 4 pm when 141 vehicles traveled on Queen City Park Road. Earlier in the day, the closest traffic volume to that level was when 108 vehicles traveled on Queen City Park Road. Therefore, the baseline traffic volumes during times outside of the PM peak period are at least 30 percent lower than the PM peak period.

Trip Generation

The trip generation of a maximum 300 person daytime event corresponds to 120 trips using a vehicle occupancy of 2.5 people per car. Following a similar trip distribution to the existing Higher Ground facility (consistent with the Traffic Impact Study) results in 96 trips to and from Home Avenue if everyone arrives or departs during the same hour.

These 96 trips are significantly lower than the trip generation anticipated and analyzed during the PM peak hour. As shown in the Traffic Impact Study, during the PM peak, a total of 173 trips were assigned to Queen City Parkway at its intersection with Home Avenue. Therefore, during the midday peak, the trip generation impact is significantly lower than has been analyzed in the Traffic Impact Study.

Conclusion

Based on the existing traffic patterns on Queen City Park Road, where hourly traffic volumes during the midday hours is 30 percent lower than the PM peak hour, and the Burton Hub trip generation, which during the midday peak hour is 50 percent lower than the PM peak hour, the worst case scenario was analyzed in the Traffic Impact Study. The midday traffic volumes experienced with the traffic associated with a daytime 300 person event will be significantly less than was analyzed for the PM peak hour.

Please contact me with any questions,

Jenn

Jenn Conley, PE, PTOE
Director of Transportation Systems

LANDPLAN
61 Central Avenue
Burlington, Vermont 05401
802/233-6640 john.caulo@gmail.com

MEMORANDUM

TO: Scott Gustin
FROM: John Caulo
RE: Supplemental Information: Burton PAC Conditional Use Application
DATE: 4 August 2020

This memorandum provides additional information in support of the above-referenced application. Specifically, this memorandum addresses the following items either raised at the DRB public hearing dated 7/7/20, or included in Staff Comments released by Scott Gustin dated 7/29/20:

1. NUISANCE IMPACT: SUPPLEMENTAL NOISE INFORMATION

See attached memorandum prepared by RSG Associates dated 8/3/20 entitled *Burton's Hub Project - Additional Context and Information on Noise*. This memorandum provides additional context and information on noise, based on comments from the Burlington DRB meeting on 7/7/20 as well as feedback from Les Blomberg (Noise Pollution Clearinghouse) related to RSG's Noise Assessment (4/20/20) of the Hub Project ("Noise Assessment"). The additional noise information contained in the memo demonstrates for the DRB, even considering noise monitoring standards favored by Mr. Blomberg, noise from the proposed facility satisfies the applicable Burlington CDO standards.

2. TRANSPORTATION: CHAMPLAIN PARKWAY MEMO

CRZ is incorrect that the Application depends on construction of the Champlain Parkway to satisfy the Conditional Use criteria. This project, similar to other recent projects in this part of the City, is asked by DPW to evaluate traffic impacts under a "build" and "no build" scenario for the Champlain Parkway. This is the exact analysis conducted by VHB traffic impact report, and the report demonstrates that the project satisfies the Conditional Use criteria under both scenarios.

Notably, the Application's proposed "demand management" in the form of "hours of operation," specifically avoids larger events conflicting with PM peak traffic times. This aspect of the project design mitigates congestion issues. "Demand management" is standard practice. In any event, the CRZ's evidence concerning the Champlain Parkway, conflicts with DPW's view of expected project timing.

See attached memorandum to the Burlington City Council prepared by DPW Director Chapin Spencer dated 5/11/20 entitled *Champlain Parkway Project Update*. This memorandum provides a current and detailed, "boots on the ground" update on the progress of the Champlain Parkway project. Of particular note is the schedule update

highlighted on page 4 which anticipates “advertising for construction in late 2020 and beginning construction in 2021”. Further, it should be noted that the two appeals of the “necessity determination” by the City Council noted in the memo were resolved by the Vermont Supreme Court in the City’s favor last month.

3. STAFF NOTES: PROPOSED CONDITIONS OF APPROVAL – SUGGESTED EDITS

- **CONDITION 3: POST OCCUPANCY SOUND MONITORING PLAN.** The applicant requests that proposed Condition 3 be modified to read as follows: “Prior to the issuance of the Zoning Permit for the Project, the Applicant shall provide a post-occupancy sound monitoring plan to be reviewed and approved by Staff. Key parameters of the Monitoring Plan to include:
 - Within the first 6 months of operation, Applicant shall coordinate schedule with noise consultant to conduct monitoring for three (3) events that are expected to be at full capacity.
 - Sound monitoring shall be conducted within the same geographic area covered by the Project Noise Assessment prepared by RSG dated 4/20/20.
 - All costs associated with execution of Sound Monitoring Plan to be the responsibility of the Applicant.
 - If monitored sound levels from the facility exceed 45 dBA L_{eq} (1-hour) at night (10 PM to 7 AM) at residential areas, additional sound mitigation measures will be required to bring sound levels into compliance.”
- **CONDITION 5: HOURS OF OPERATION:** In the Staff Comments dated 7/29/20, DPW requests that evening events not draw traffic until after 6:00PM M-F by limiting event times to 6:30PM or later. We agree. Please modify proposed Condition 5 to read as follows:
 - “Daytime use of the Performing Arts Center (PAC) shall be limited to 300 attendees. Doors shall not open for daytime uses of the PAC before 9:00AM, and exiting times shall not occur between 4:00PM and 6:00PM.
 - Evening use of the PAC shall be limited to 1500 attendees. Doors shall not open for non-holiday, weekday evening uses of the PAC before 6:30PM. In no case shall any use of the PAC have an exiting time after 2:00AM.”

4. TRAFFIC: MID-DAY IMPACT OF BURTON HUB PROJECT

See attached email from Burton Traffic Consultant VHB responding to comments by DPW staff regarding potential traffic impacts resulting from daytime use of the Burton Hub.

Please share this information with the DRB at your earliest convenience. We look forward to concluding the public hearing at tonight’s DRB meeting.

MEMO

TO: Justin Worthley

FROM: Eddie Duncan, INCE Bd. Cert.

CC: Brian Dunkiel, Esq.

DATE: August 3, 2020

SUBJECT: Burton's Hub Project - Additional Context and Information on Noise

The purpose of this memorandum is to provide additional context and information on noise based on comments from the Burlington DRB meeting on July 7, 2020 and feedback from Les Blomberg (Noise Pollution Clearinghouse)¹ related to RSG's Noise Assessment (April 20, 2020) of the Hub Project ("Noise Assessment"). The topics addressed in this memorandum include:

- Sound from music including low-frequency sound
- Sound from vehicles in the parking lot
- Acoustical context of the existing character of the area
- Sound Level Metrics: L_{eq} & L_{max}
- Burlington Noise Ordinance

Sound from Music

Low-Frequency Sound

Low-frequency sound was evaluated in the Noise Assessment for the Hub Project (April 20, 2020), but this memorandum provides additional context related to low-frequency sound.

Bass is low-frequency sound which ranges from 20 Hz to approximately 200 Hz. The Noise Assessment for the Hub Project evaluated a hard rock concert using the full music frequency range including bass, midrange, and treble from 25 Hz to 10,000 Hz. This is detailed in Table 2 of the Noise Assessment. As discussed in Section 5.3 of the Noise Assessment, Higher Ground is working with another acoustical consultant to fit-up the interior of the concert venue and this mitigation takes into account reducing low-frequency sound.

¹ Blomberg, L., Critique of RSG Noise Assessment, July 29, 2020.

The proposed project will produce low-frequency sound that is comparable to or less than in level to other sound sources in the area. There are many other mobile and non-mobile sources of low-frequency sound in the Project area. Examples of mobile and non-mobile sources of low-frequency sound located between the Project facility and residences include:

- Electrical equipment at the substations adjacent to the Project which produce 120 Hz sound;
- Pumps at the Champlain Water District water treatment facility;
- Mechanical equipment at manufacturing facilities along Queen City Park Road; and
- Transportation sources, including the train passbys, bus activity at CCTA and commercial truck delivery on Queen City Park Road, and other roadway traffic.

These are existing sources that produce low-frequency sound within the zoning district. Residences in the surrounding area are closer to these other sources than they are to the proposed facility. For example:

- Residences along Maple Avenue in South Burlington are 200 to 300 feet from a VELCO substation, but over 700 feet from the proposed concert venue.
- Residences along Arthur Court are between 110 and 280 feet from the adjacent railway, but 470 to 660 feet from the proposed concert venue.
- Residences along Austin Drive and Redrock Drive are between 200 and 390 feet from other manufacturing facilities on Queen City Park Road and the CCTA facility, but over 1,000 feet from the proposed concert venue.

Low-frequency sound from these other sources of noise located closer to residences than the proposed facility are part of the existing background in the area. In addition, considering the purpose of the Enterprise Zoning District (intended to accommodate enterprises engaged in the manufacturing, processing, distribution ... of goods, merchandise and equipment”), other sources of noise are permitted in the area. The proposed project will produce levels of low frequency sound that is comparable to or less than other existing sources in the area. As such, this sound from the proposed facility is consistent with the character of the area.

Sound Levels from Music Versus Other Sources

As discussed in Section 5.2 of the Noise Assessment, the project involves several sources of exterior noise which includes rooftop mechanical equipment, socialization in the outdoor lounge area, and vehicles accessing the parking lot. All of these sources are in addition to the interior noise source, music, which was modeled as breakout noise that is transmitted through the building structure to the outside environment.

The model results that are presented in Section 5.4 of the Noise Assessment represent the summation of sound levels from all of these sources together, producing a total



sound level projection that can be evaluated against applicable limits and guidelines discussed in Section 3 of the Noise Assessment.

It is important to note that music is just one component of the overall projected sound levels. For example, the highest projected sound level during the Concert Model scenario is 42 dBA at 20 Arthur Court, but the breakdown of what is contributing to that 42 dBA is:

- Music from concert: 32 dBA
- Rooftop mechanical equipment: 41 dBA
- Outdoor lounge: 8 dBA
- Vehicles accessing the parking lot: 34 dBA

As another example, the highest projected sound level during the Concert Model Scenario at a South Burlington residence occurs at 26 Central Avenue on the corner of Central Avenue and Maple Street. The total projected sound level at that location is 37 dBA, but the breakdown of what is contributing to that 37 dBA is:

- Music from concert: 31 dBA
- Rooftop mechanical equipment: 34 dBA
- Outdoor lounge: 28 dBA
- Vehicles accessing the parking lot: 31 dBA

These breakdowns of contributing sound levels show that the level of sound due to music in neighboring residential areas are notably less than the total projected sound at each residence, and are in fact, at levels that would be perceived as more than four times quieter than conversational speech.²

Sound from Vehicles in the Parking Lot

During the July 7 DRB hearing, there were some comments or questions about extraneous sounds from vehicles in the Project parking lot, such as car doors “slamming” or “beeps” from people locking their cars. These types of sources are occasionally brought up as potential concerns of parking lot noise, but they are minor sources of sound. The closing of car doors, and the sounds from locking the doors are common sources both in parking lots and in residential areas. These are also sources that would be present if the building was being used as a manufacturing facility with first, second, and third shifts.

While it varies from vehicle to vehicle, the maximum sound level of forcefully closing car doors is typically between 55 and 65 dBA at 30 feet. Most residences are over 600 feet

² Conversational speech (at a distance of approximately 3 feet) typically occurs between 55 and 65 dBA. Generally, a 10 dB change in broadband sound level is perceived as a halving or doubling of loudness. As such 31 to 32 dBA, is over 20 dB less than conversational speech and would generally be perceived as 4 times quieter.

from the parking areas. Accounting for distance alone, the sound of a car door forcefully closing would be between 29 and 39 dBA outside nearby residences. Even for the closest residence to a Project parking area (20 Arthur Court), a car door forcefully closing would be between 34 and 44 dBA.

Similarly, the maximum sound level of the short “beep” from locking a car door is generally between 50 and 55 dBA at 30 feet. Accounting for distance alone, this would produce a sound level between 24 and 29 dBA outside nearby residences and between 29 and 34 dBA at the closest residence.

Acoustical Context of the Area

As discussed in the Noise Assessment, average background sound levels are generally 47 and 52 dBA during the day, and between 40 and 45 dBA at night, although some areas along Queen City Park Road are higher than this. Additional details on background sound levels at two residential property line locations near Queen City Park Road are provided below.

In June of 2017, RSG conducted background sound monitoring at the property line of a residence that abuts the “Enterprise – Light Manufacturing” zone along Queen City Park Road (Monitor A). In June and July of 2010, RSG conducted background sound monitoring near the property line of a residence along Maple Avenue in South Burlington (Monitor B). These monitor locations are shown in Figure 1.

These monitors collected background sound level data in the area for several days. The monitors logged sound level data using ANSI/IEC Type 1 sound level meters set to long A-weighted and 1/3 octave band sound levels once each second. Microphones were mounted approximately 5 feet above ground and were covered with wind screens. Both monitors were field-calibrated before and after the monitoring periods.

Background sound level data from Monitor A, summarized into 10-minute intervals, is provided in Figure 2. The average daytime background sound level at this location was 54 dBA, while the average nighttime background sound level was 52 dBA. Maximum sound levels however are higher both during the day and night with levels typically between 55 and 67 dBA. This is an example of an area along Queen City Park Road that is higher than the average background sound levels discussed in the Noise Assessment, and is an example from the borderline between the “Enterprise – Light Manufacturing” zone and the “Waterfront Residential – Low Density” zone.

Background sound level data from Monitor B, summarized into 10-minute intervals, is provided in Figure 3. The average daytime background sound level at this monitor was 49 dBA, and the average nighttime background sound level was 41 dBA. Maximum sound levels during the day are generally between 50 and 70 dBA, and at night vary between 35 and 55 dBA, although there are some maximum sound levels between 60 and 70 dBA at night.



These levels are representative of the types land uses in the area which includes a mixture of industrial, transportation (roadway, rail, and bus), utilities, and residential areas, and they speak to the acoustical character of the area. When compared with the projected sound levels in the Noise Assessment, this shows that the proposed Project will generate sound that is comparable to or less than that which is typically generated by other permitted uses in the zoning district.



FIGURE 1: BACKGROUND MONITOR LOCATIONS

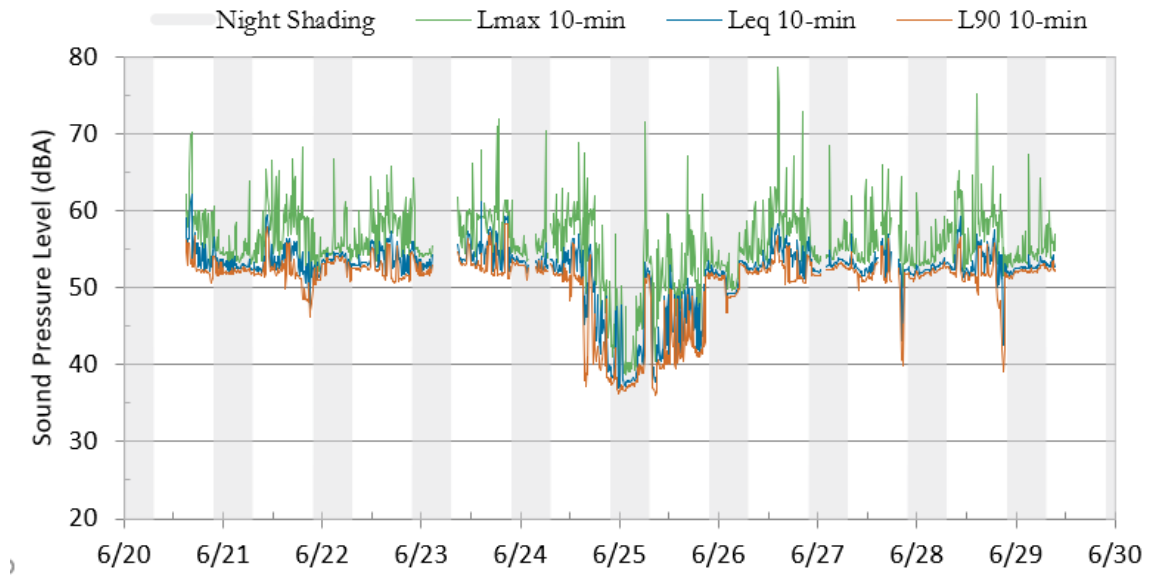


FIGURE 2: BACKGROUND SOUND LEVELS - MONITOR A, JUNE 2017

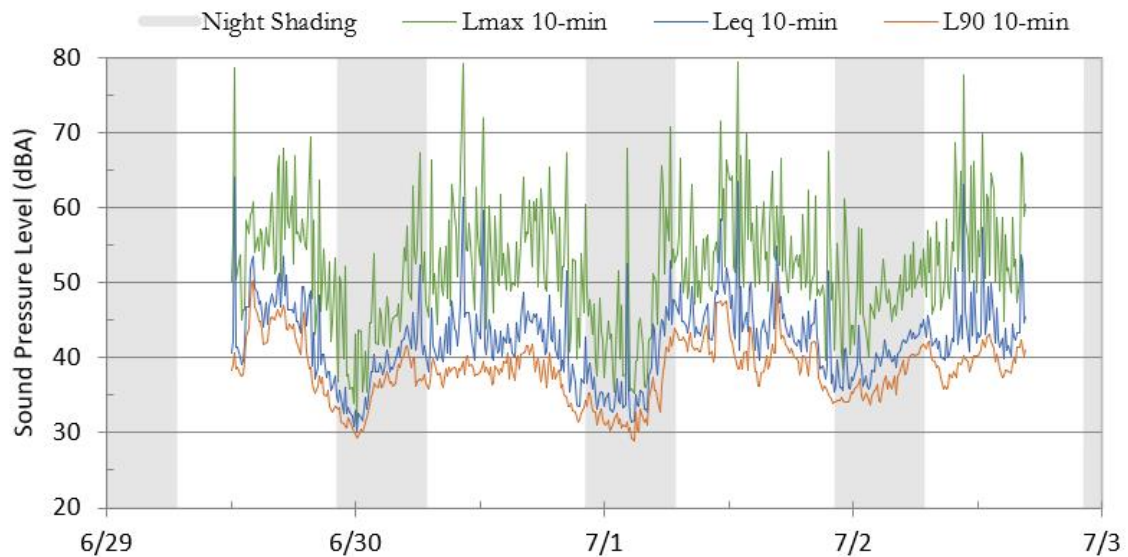


FIGURE 3: BACKGROUND SOUND LEVELS - MONITOR B, JUNE/JULY 2010

Sound Level Metrics: L_{eq} & L_{max}

The projected sound levels in the Noise Assessment are reported as hourly average equivalent sound levels, L_{eq} (1-hour), for two conservative scenarios that include the:

- Concert Model with all existing and proposed rooftop mechanical equipment operating simultaneously, hard rock music playing for the entire hour (no breaks between sets or songs are considered), 100 vehicles accessing the parking lot, and people socializing in the outdoor lounge.



- End-of-Concert Model with all existing and proposed rooftop mechanical equipment operating simultaneously and 500 vehicles accessing the parking lot.

The L_{eq} is an appropriate metric for assessing the noise impact of the proposed facility, especially under these conservative scenarios for several reasons:

1. It allows for comparison between the projected sound levels of the facility and community noise guidelines that speak to health and compatibility such as the WHO and ANSI guidelines discussed in Section 3.3 of the Noise Assessment. Those community noise guidelines use average sound levels to assess noise. Those guidelines are actually based on longer term averages than what is modeled for this Project, making the comparisons more conservative.
2. It allows for comparison between the projected sound levels of the facility and the existing average sound levels throughout the area and provide an element of quantification to the acoustical character of the area.
3. Many of the sources of sound associated with the facility are consistent, such as the rooftop mechanical equipment. The level of sound from such equipment does not fluctuate much, making the L_{eq} nearly equivalent to the L_{max} .

In addition, it should be noted that the South Burlington Zoning Ordinance uses the exact same metric, $L_{eq (1-hour)}$. The Noise Assessment compares projected sound levels from the proposed facility to the $L_{eq (1-hour)}$ standard set in the South Burlington Zoning ordinance in Section 6.

Standards that utilize L_{max} help to evaluate startle, particularly from sources that have rapid increases and decreases of sound that are high relative to the background. For example, trucks passing by a sensitive receptor on a remote roadway or a tailgate banging as it loosens material from the back of a dump truck. As discussed above, many of the non-mobile noise sources in the Enterprise Zoning District are moderately consistent sources of sound. Indeed, even hard rock music is a moderately consistent source of sound. For example, at the hard rock concert that RSG monitored at Higher Ground on August 17, 2019 and is discussed in Section 5.2 of the Noise Assessment, the quietest 10% of music (L_{90}) was 95 dBA while the loudest 10% of music (L_{10}) was 101 dBA. A difference of only 6 dB.

The CRZ argues that L_{max} must be considered based on Act 250 case law from Lathrop (2015 VT 49). Virtually all of the analysis in Lathrop and the cases it references involve projects (all but one, Act 250 permits), involving the introduction of new truck traffic to relatively rural settings. This context is critical. The context is one of low average background sound levels with periodic short-term increases in sound level due to truck passbys. This is different from the context of this project where there are numerous non-mobile sound sources, which are fairly consistent, and within the range of the existing background sound levels.

As discussed in the Noise Assessment, the sound propagation model used the average sound level during times when music was playing during the hard rock concert which

was 99 dBA. The $L_{\max}$ for one second during the evening of monitoring was 106 dBA. Even if the model utilized the $L_{\max}$ of the music at 106 dBA, the projected sound level due to music would only be up to 7 dB higher. Based on the breakdown of sound levels from 20 Arthur Court provided on page 3 of this memo, the sound levels using the $L_{\max}$ of music would be:

- Music from concert: 39 dBA
- Rooftop mechanical equipment: 41 dBA
- Outdoor lounge: 8 dBA
- Vehicles accessing the parking lot: 34 dBA

This would result in a sound level of 44 dBA at 20 Arthur Court that would occur during a 1-second maximum sound level from the concert while all the rooftop mechanical equipment is operating simultaneously. Thus, even considering the $L_{\max}$ metric, the music component is still not the dominant sound from the proposed facility, and sound levels remain not higher than those typical in the area.

This additional $L_{\max}$ information compares existing $L_{\max}$ from in the area with projections for the proposed facility. This information demonstrates for the DRB, even considering $L_{\max}$ data, noise from the proposed facility satisfies the applicable Burlington Zoning Ordinance (“Ordinance”) standards.

Burlington Noise Ordinance

Although the proposed concert venue is likely exempt³ from the Ordinance, the Noise Assessment demonstrates compliance with Conditional Use Review Standard #6 and the factors contained in the Ordinance. The purpose of the noise ordinances is to, “preserve the public health, safety, and welfare by prohibiting excessive and disturbing noise and to prevent noise which is prolonged or unsuitable for the time and place and which is detrimental to the peace and good order of the community.” As stated in Section 6 of the Noise Assessment, the projected sound levels are comparable to existing nighttime sound levels in the area, below WHO’s nighttime noise guideline, and considered compatible with urban/suburban residential areas per ANSI guidelines. This analysis in the noise assessment is a quantitative method for evaluating specific factors discussed in the Ordinance.

Mr. Blomberg argues that RSG did not evaluate the “plainly audible” clauses under Section 21-13(b)(2) a. & c. of the Ordinance. Mr. Blomberg states that there is “no discussion of whether noise will be *detectable*.” (emphasis added). Plainly audible is a vague and ambiguous standard. This is evidenced by Mr. Blomberg’s interpretation that it equates to whether a sound is detectable. One can detect a lot of sound that is not audible and discernible by a human listener with instrumentation. Rather, the plainly audible standards should be read within the context of the purpose of the ordinance,

³ Sec. 21-13.(c)(5).



which as discussed previously speaks to public welfare, health, and safety and preventing sound that is prolonged or unsuitable for the time and place.

It is our understanding that the DRB is tasked with determining if the project will cause an undue adverse effect on nuisance impacts from noise, and factors identified in the Ordinance. The noise modelling and evaluation of community noise guidelines contained in the Noise Assessment and the clarifying information provided in this memorandum demonstrate compliance with these standards.



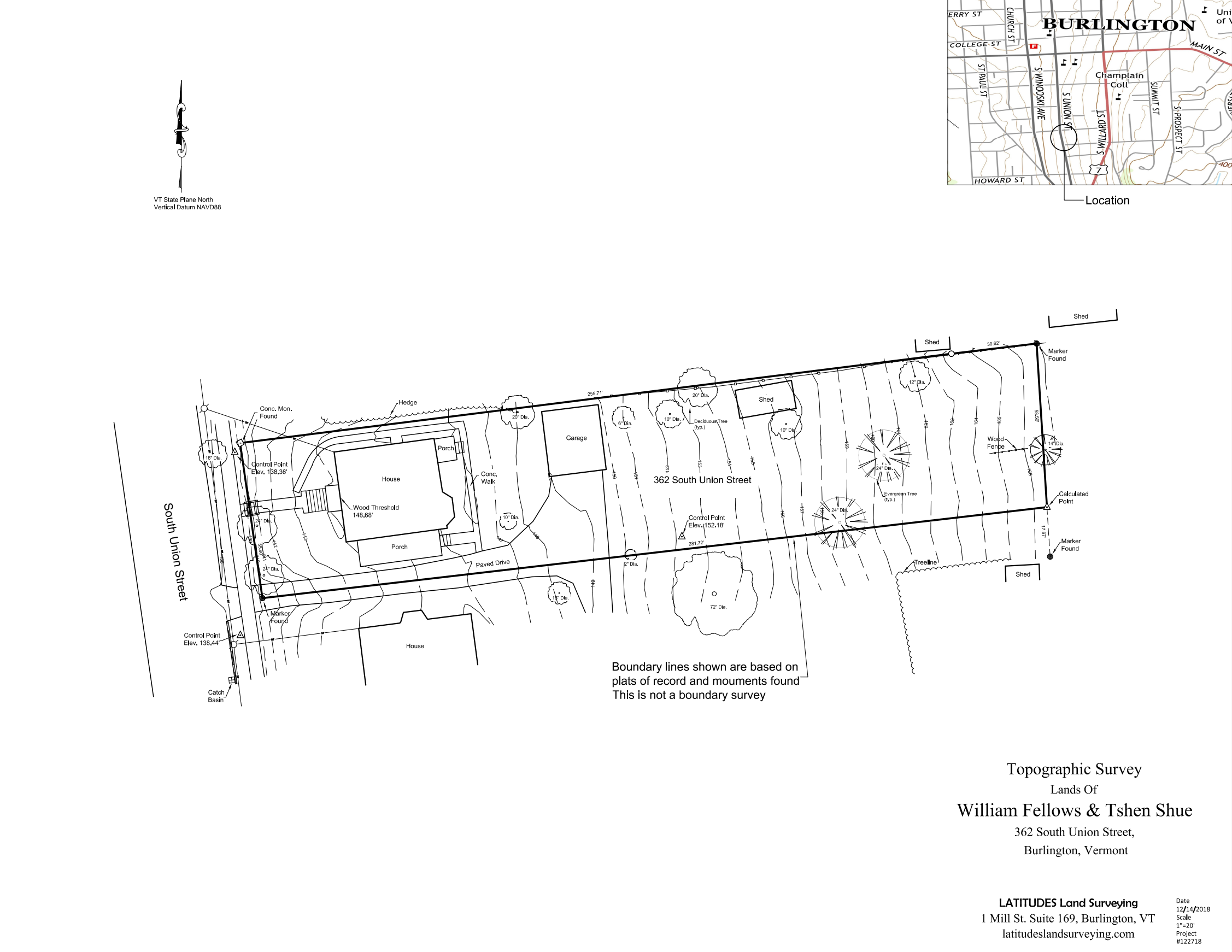
FELLOWS RESIDENCE

GARAGE REPLACEMENT & GUESTHOUSE

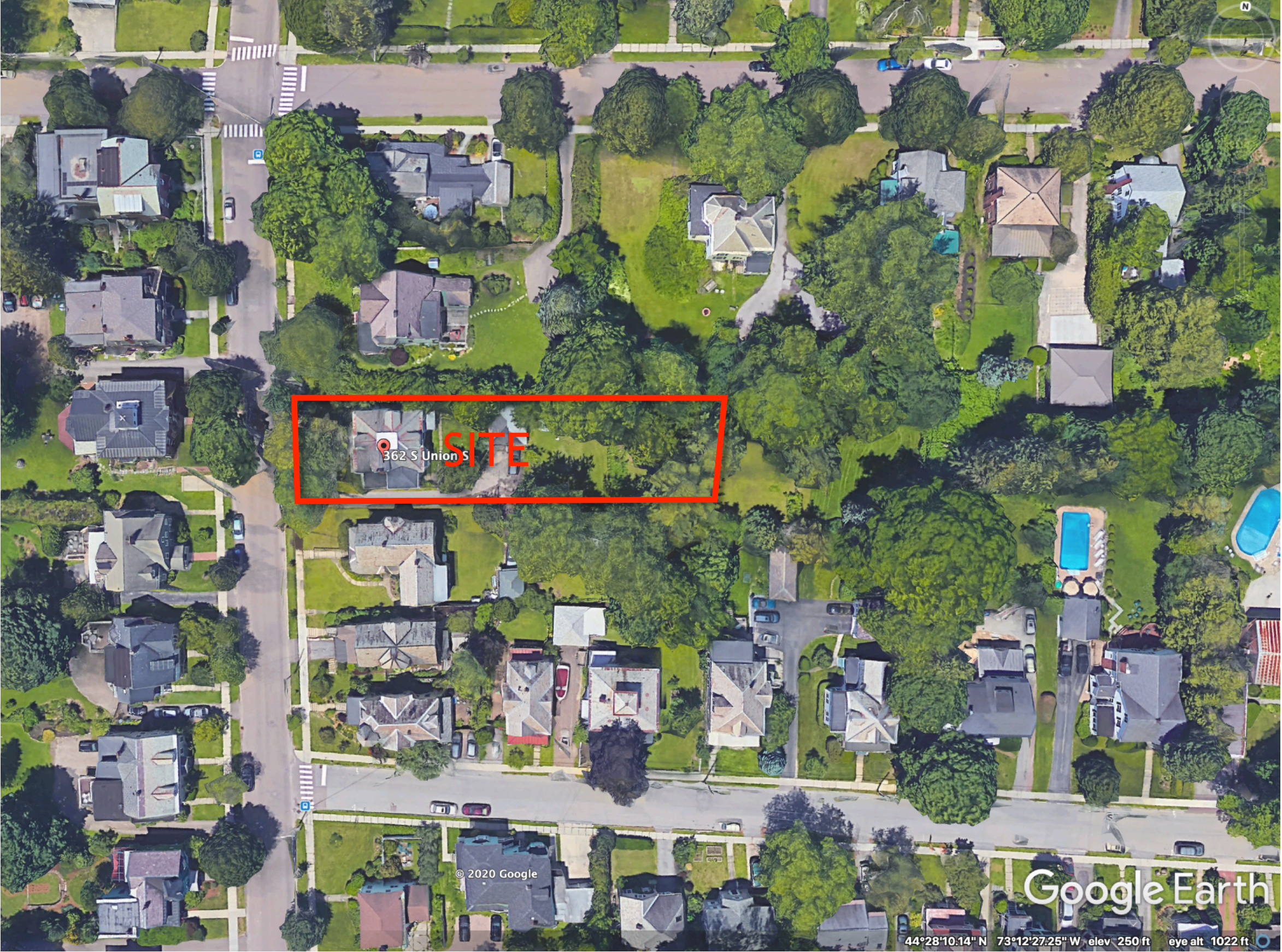
362 S UNION ST., BURLINGTON VT

DRB PRESENTATION

2020.08.04.



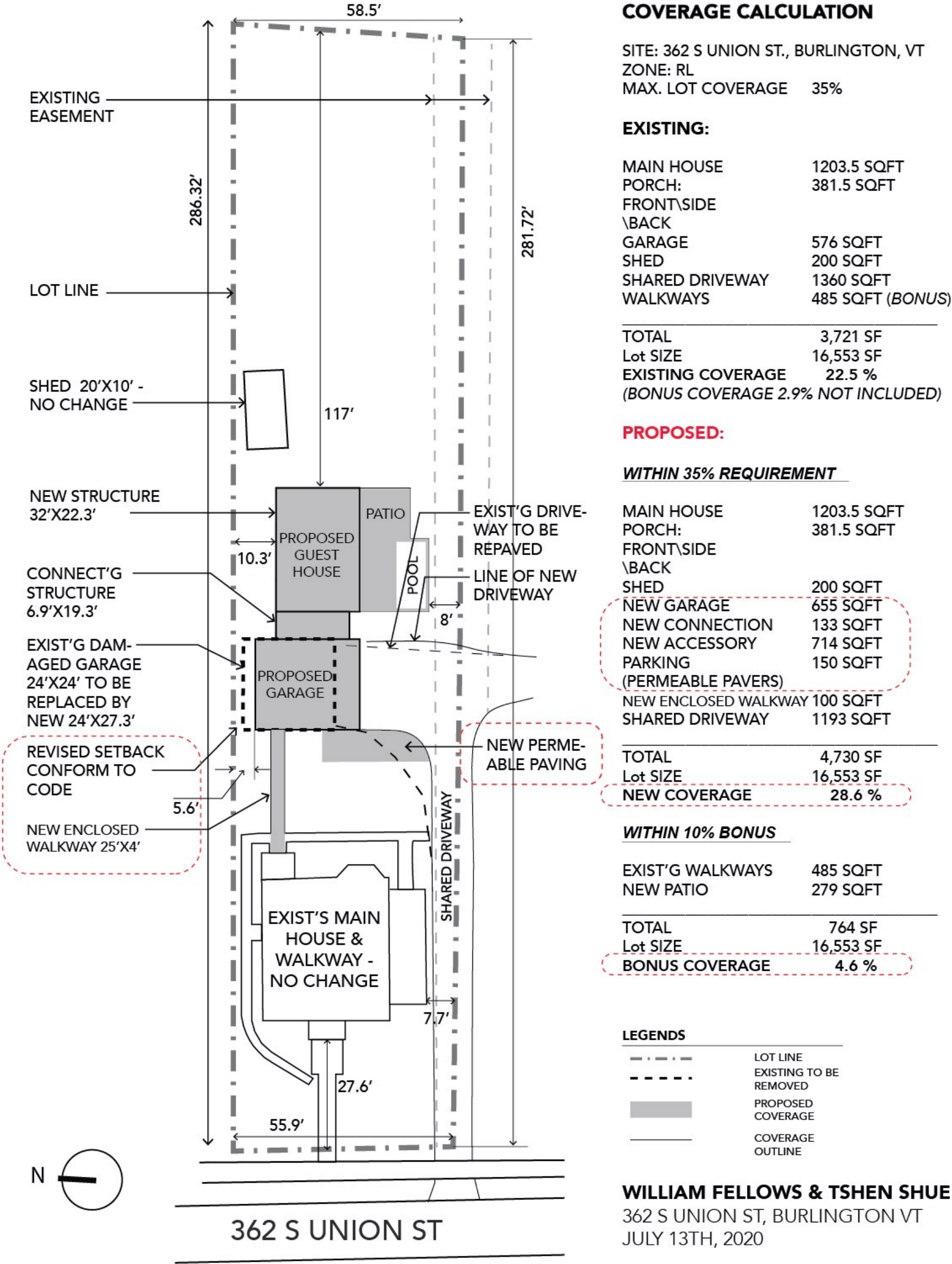
SITE SURVEY MAP



SITE GOOGLE EARTH MAP



PHOTOS FROM THE STREET



- PHOTOS OF THE EXISTING GARAGE







INTERIOR PHOTO SHOWS:

1. THE GARAGE STRUCTURAL FRAMEWORK IS SEVERELY DAMAGED AND BEYOND REPAIR.
2. THE BUILDING MATERIALS ARE ROTTEN; SEVERE MOLD CAN BE OBSERVED IN MULTIPLE SPOTS.
3. THE FLOOR GROUND IS BROKEN/WARPED.
4. THE WESTERN FOUNDATION WALL CRACKS OPEN ENTIRELY & THE WESTERN WALL IS SUPPORTED ON TEMPORARY VERTICAL TIMBERS ENTIRELY.

• PHOTOS OF THE EXISTING GARAGE





• PHOTOS OF THE EXISTING GARAGE

FELLOWS RESIDENCE

362 S UNION STREET
BURLINGTON, VT 05401

15 JUNE 2020

GARAGE REPLACEMENT & GUESTHOUSE



DRAWING LIST

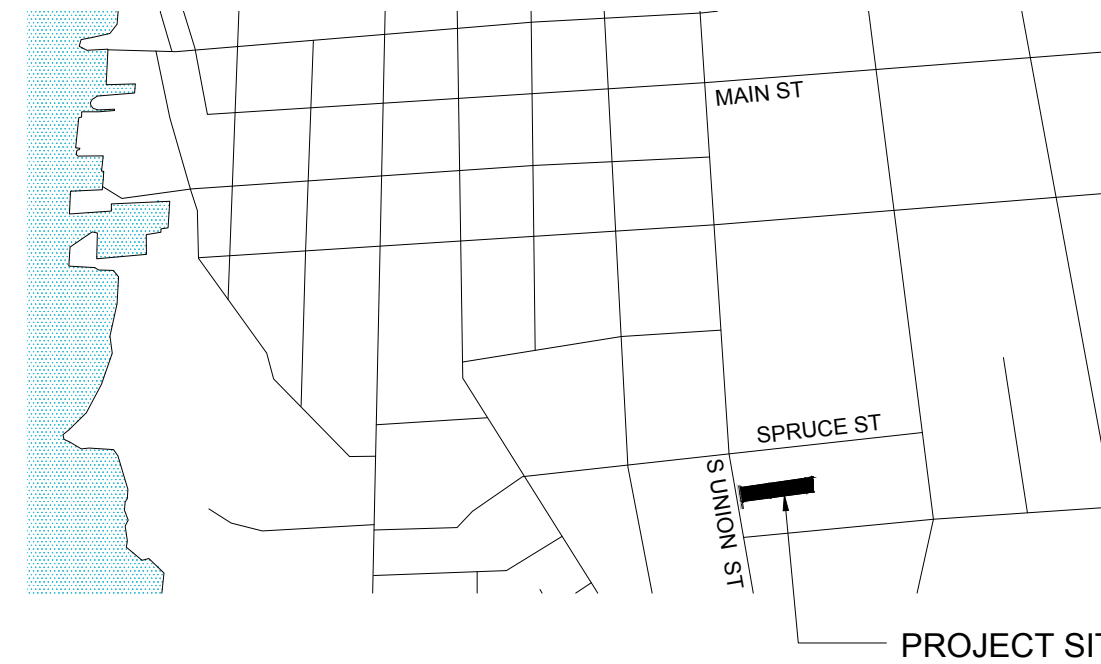
■ ARCHITECTURAL

A-000.00	COVER SHEET	T-001.00	GENERAL NOTES, LEGENDS & CODES
A-101.00	PROPOSED GROUND FLOOR PLAN	T-002.00	SPECIFICATIONS
A-102.00	PROPOSED SECOND FLOOR PLAN	T-003.00	SPECIFICATIONS
A-103.00	PROPOSED ROOF PLAN	T-004.00	SPECIFICATIONS
A-104.00	PROPOSED LANDSCAPING PLAN	T-005.00	SPECIFICATIONS
A-201.00	BUILDING ELEVATIONS & SECTIONS	T-006.00	SPECIFICATIONS
A-501.00	EXTERIOR WINDOW SCHEDULE	T-007.00	SPECIFICATIONS
A-502.00	EXTERIOR DOOR SCHEDULE	T-008.00	SPECIFICATIONS
		T-009.00	SPECIFICATIONS

LOCATION PLAN



NTS



ZONING PLAN

NTS

ADDRESS: 362 S UNION ST., BURLINGTON, VT 05401

ZONING: R M

COVERAGE CALCULATION

SITE: 362 S UNION ST., BURLINGTON, VT
ZONE: RL
MAX. LOT COVERAGE 35%

EXISTING:

MAIN HOUSE	1203.5 SQFT
PORCH:	381.5 SQFT
FRONT\SIDE	
\BACK	
GARAGE	576 SQFT
SHED	200 SQFT
SHARED DRIVEWAY	1360 SQFT
WALKWAYS	485 SQFT (BONUS)

TOTAL	3,721 SF
Lot SIZE	16,553 SF
EXISTING COVERAGE	22.5 %
(BONUS COVERAGE 2.9% NOT INCLUDED)	

PROPOSED

WITHIN 35% REQUIREMENT

MAIN HOUSE	1203.5 SQFT
PORCH:	381.5 SQFT
FRONT/SIDE	
\BACK	
SHED	200 SQFT
NEW GARAGE	655 SQFT
NEW CONNECTION	133 SQFT
NEW ACCESSORY	714 SQFT
PARKING	150 SQFT
(PERMEABLE PAVERS)	
NEW ENCLOSED WALKWAY	100 SQFT
SHARED DRIVEWAY	1193 SQFT

TOTAL	4,730 SF
Lot SIZE	16,553 SF
NEW COVERAGE	28.6 %

WITHIN 10% BONUS

EXIST'G WALKWAYS	485 SQFT
NEW PATIO	279 SQFT

TOTAL	764 SF
Lot SIZE	16,553 SF
BONUS COVERAGE	4.6 %

LEGENDS

-----	LOT LINE
-----	EXISTING TO BE REMOVED
■	PROPOSED COVERAGE
-----	COVERAGE OUTLINE

WILLIAM FELLOWS & TSHEN SHUE
362 S UNION ST, BURLINGTON VT
JULY 13TH, 2020



FELLOWS RESIDENCE
GARAGE REPLACEMENT & GUESTHOUSE

362 S UNION STREET
BURLINGTON, VT 05401

Architect

W F A

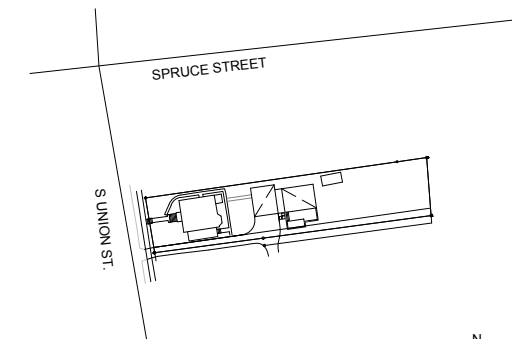
362 S UNION STREET
BURLINGTON VT 05401
T 917 923 8578

Civil Engineer

Mechanical / Electrical / Plumbing Engineer

Structural Engineer

PREMISES: 362 S UNION ST., BURLINGTON, VT
ZONING: R - MEDIUM DENSITY



NOTE

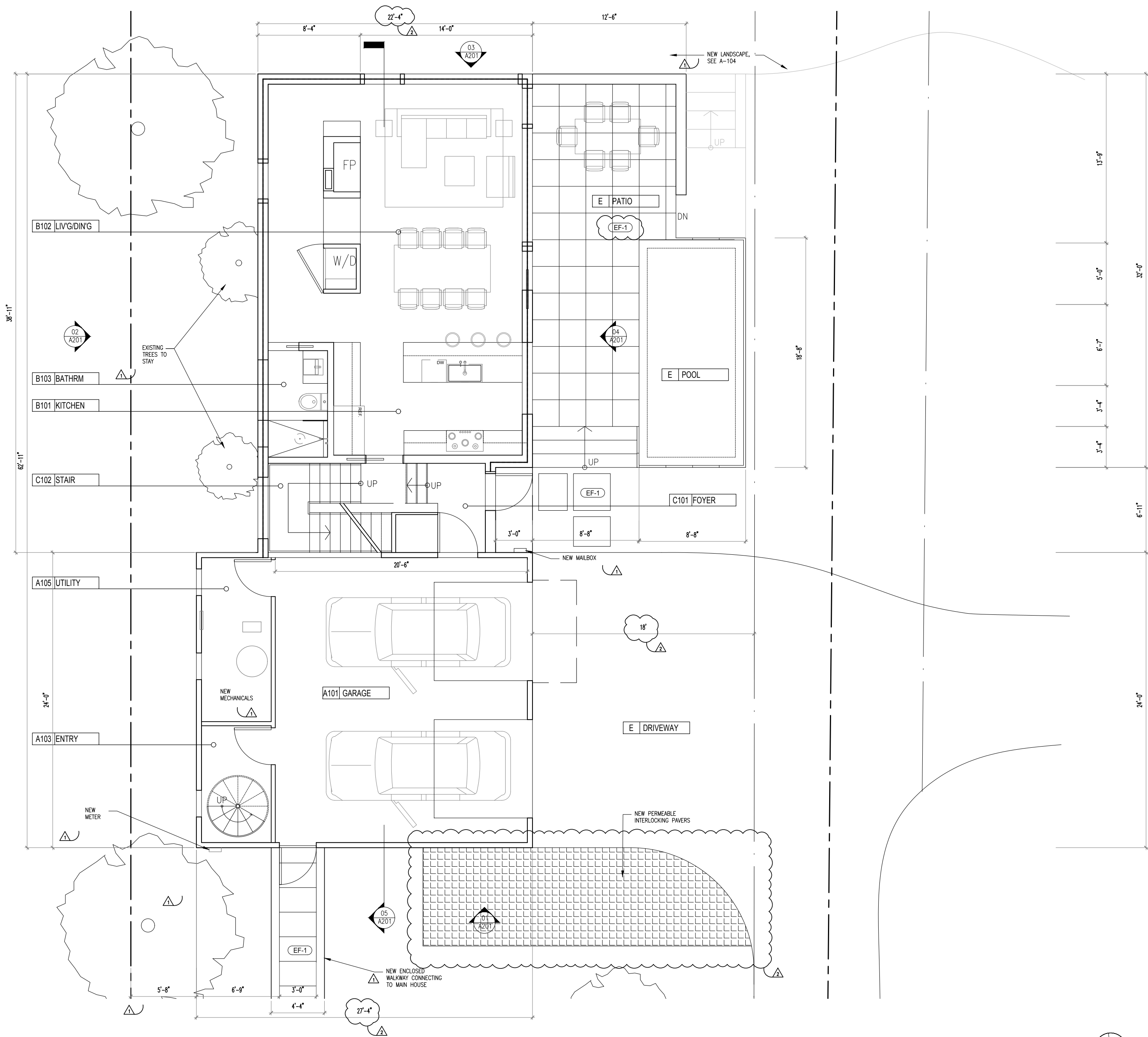
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Seal

2 08.03.2020 1 07.13.2020		
Revision	Date	Remarks
Drawing Title		

COVERSHEET

Project No. 20-002	Drawing No.
Date 06/15/2020	A-000.00
Scale	
AS NOTED	
Drawn / Checked TS	



01 PROPOSED FIRST FLOOR PLAN
1/4" = 1'-0"

EXTERIOR FINISH
(EF-1) LOCAL FIELD STONE

NOTE
ALL UTILITY CONNECTIONS SHALL
BE UNDERGROUND BACK TO MAIN

Project
FELLOWS RESIDENCE
GARAGE REPLACEMENT & GUESTHOUSE

362 S UNION STREET
BURLINGTON, VT 05401

Architect

W F A

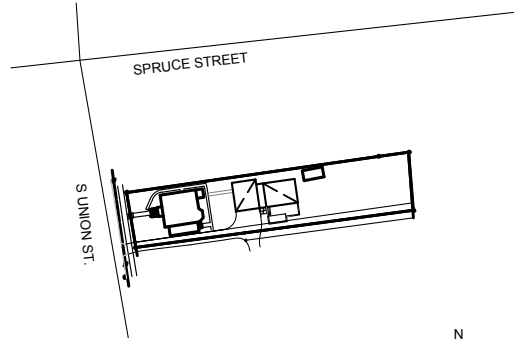
362 S UNION STREET
BURLINGTON VT 05401
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Civil Engineer

Mechanical / Electrical / Plumbing Engineer

Structural Engineer

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Revision	Date	Remarks
05	08.03.2020	
06	07.13.2020	

Drawing Title
PROPOSED PLANS

Project No. 20-002	Drawing No. A-101.00
Date 06/15/2020	
Scale AS NOTED	
Drawn / Checked TS	



01 PROPOSED 2ND FLOOR PLAN
1/4" = 1'-0"

Project

FELLOWS RESIDENCE
GARAGE REPLACEMENT & GUESTHOUSE

362 S UNION STREET
BURLINGTON, VT 05401

Architect

W F A

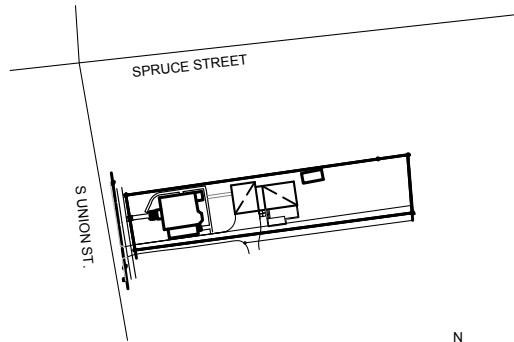
362 S UNION STREET
BURLINGTON VT 05401
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Civil Engineer

Mechanical / Electrical / Plumbing Engineer

Structural Engineer

PREMISES: 362 S UNION ST., BURLINGTON, VT
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Seal

08.03.2020
07.13.2020

Revision Date Remarks

Drawing Title

PROPOSED PLANS

Project No.

20-002

Date

06/15/2020

Scale

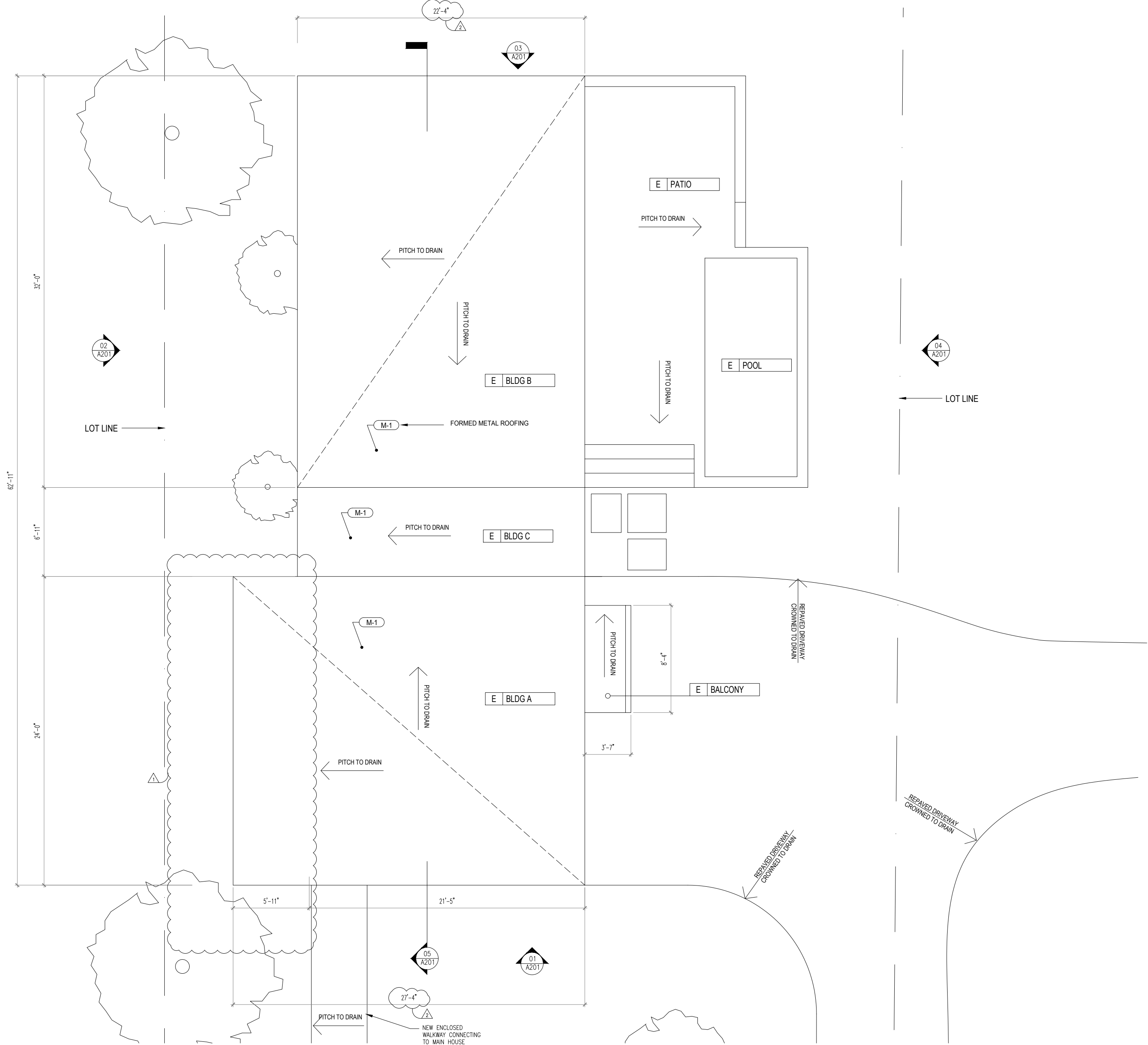
AS NOTED

Drawn / Checked

TS

Drawing No.

A-102.00



01 PROPOSED ROOF/SITE PLAN
1/4" = 1'-0"

EXTERIOR FINISH LEGEND	
WALL	
M-1	FORMED METAL WALL PANELS / WESTERN RIB BY WESTERN STATES METAL ROOFING
WD-1	MILL GRADE, PTD. CEDAR, CLAPBOARD 1X8 WD SIDING
C-1	WATER SEALED CONCRETE RETAINING WALL
ROOF	
M-1	FORMED METAL ROOFING / WESTERN RIB BY WESTERN STATES METAL ROOFING
TAG LEGEND	
	EXTERIOR DOOR NUMBER SEE SCHEDULE A-501
	WINDOW TYPE NUMBER SEE SCHEDULE A-500
	EXTERIOR FINISH

Project

FELLOWS RESIDENCE
GARAGE REPLACEMENT & GUESTHOUSE

362 S UNION STREET
BURLINGTON, VT 05401

Architect

W F A

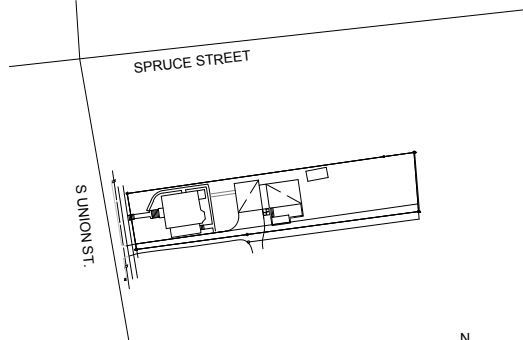
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Civil Engineer

Mechanical / Electrical / Plumbing Engineer

Structural Engineer

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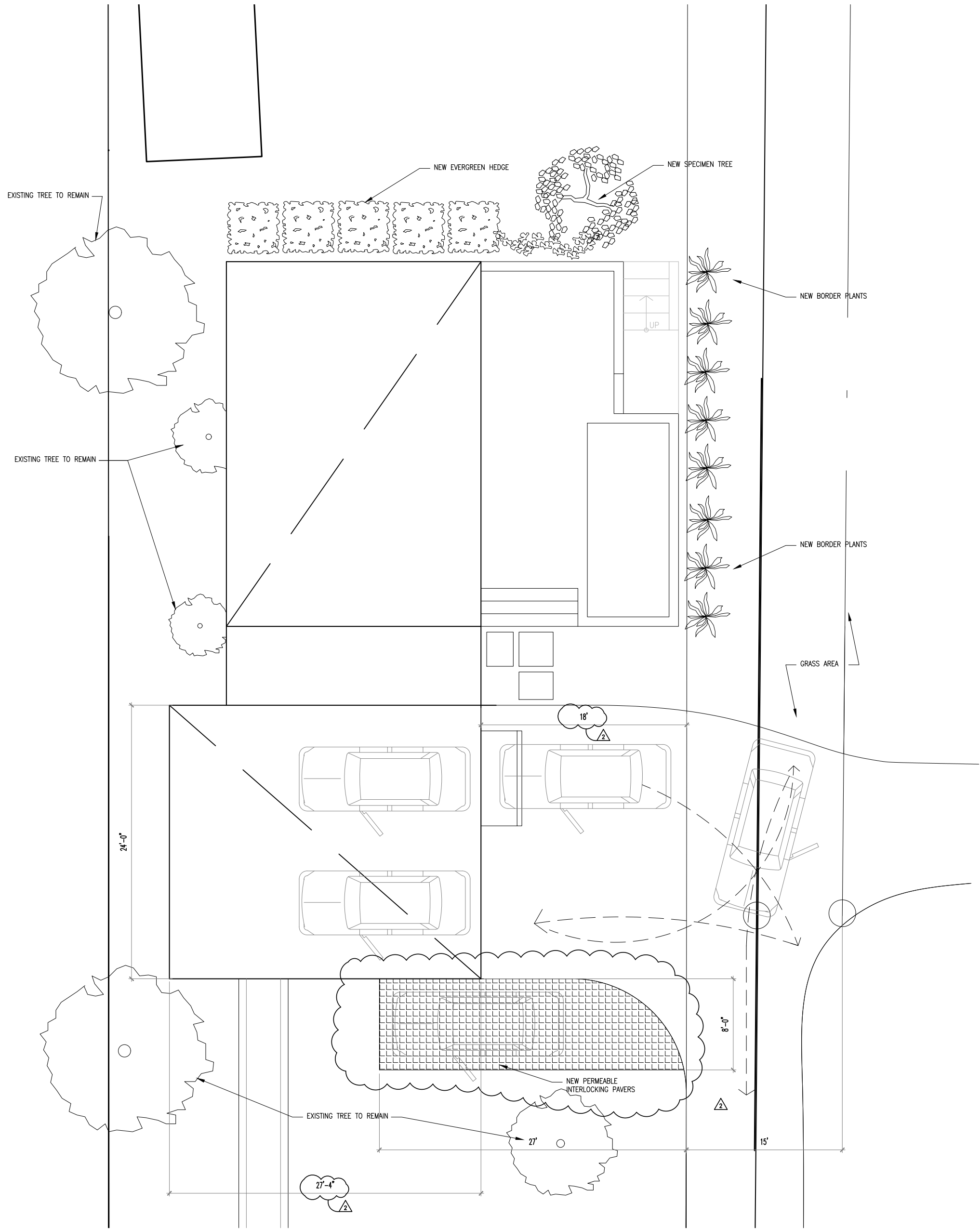
Seal

	08.03.2020	
	07.13.2020	
Revision	Date	Remarks
Drawing Title		

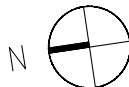
PROPOSED PLANS

Project No. 20-002	Drawing No.
Date 06/15/2020	
Scale AS NOTED	
Drawn / Checked TS	

A-103.00



01 PROPOSED LANDSCAPING PLAN
1/4" = 1'-0"



Project

FELLOWS RESIDENCE GARAGE REPLACEMENT & GUESTHOUSE

362 S UNION STREET
BURLINGTON, VT 05401

Architect

W F A

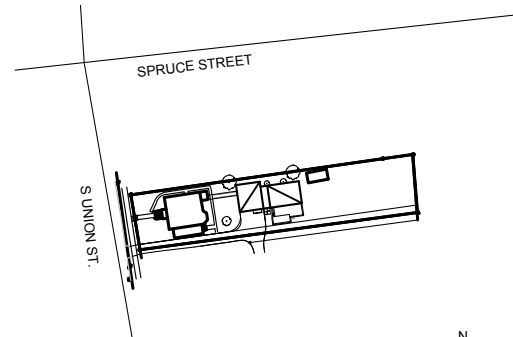
362 S UNION STREET
BURLINGTON VT 05401
T 917 923 8578

Civil Engineer

Mechanical / Electrical / Plumbing Engineer

Structural Engineer

PREMISES: 362 S UNION ST., BURLINGTON, VT
ZONING: R - MEDIUM DENSITY



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Seal

08.03.2020

Revision Date Remarks

Drawing Title

PROPOSED PLANS

Project No.

20-002

Date

06/15/2020

Scale

AS NOTED

Drawn / Checked

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Drawing No.

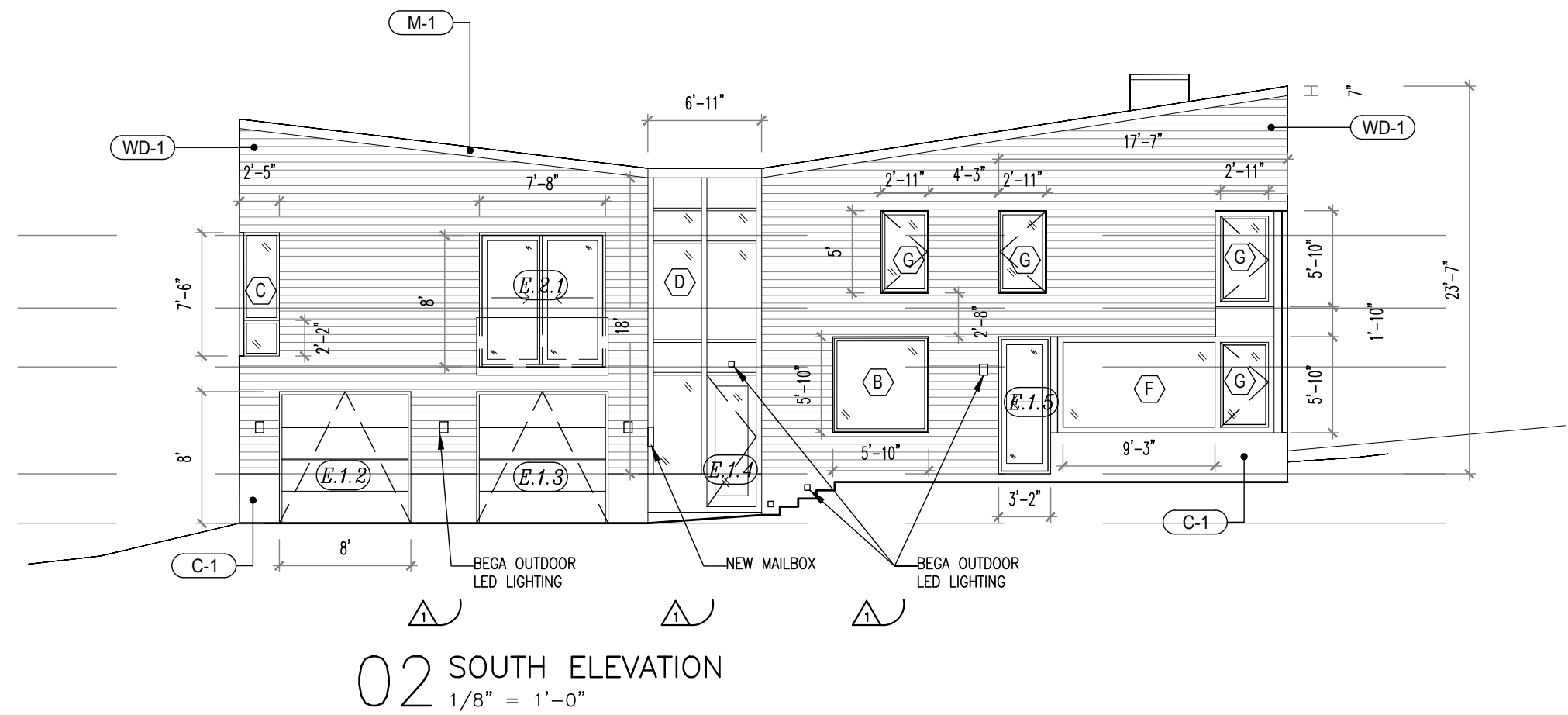
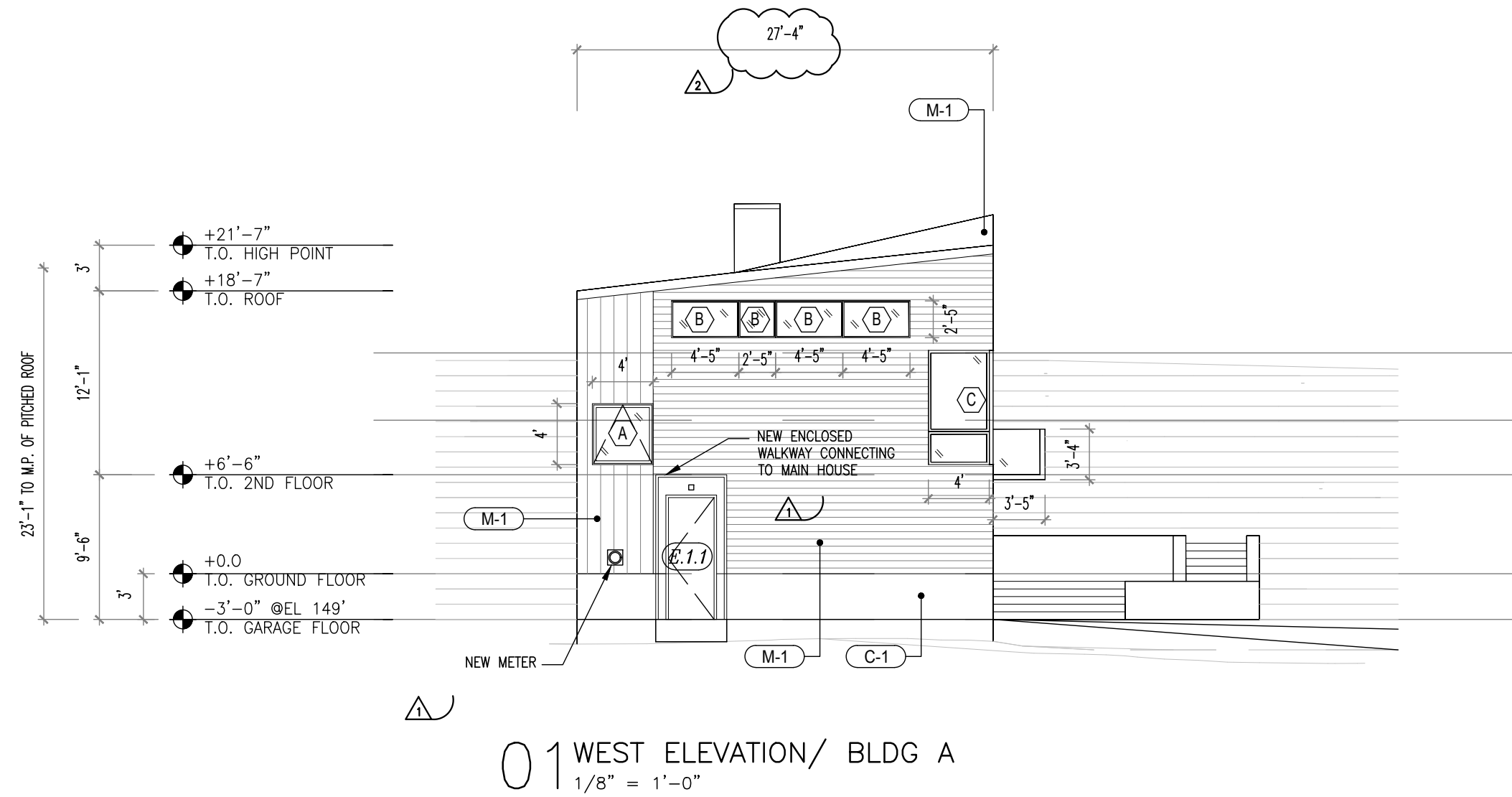
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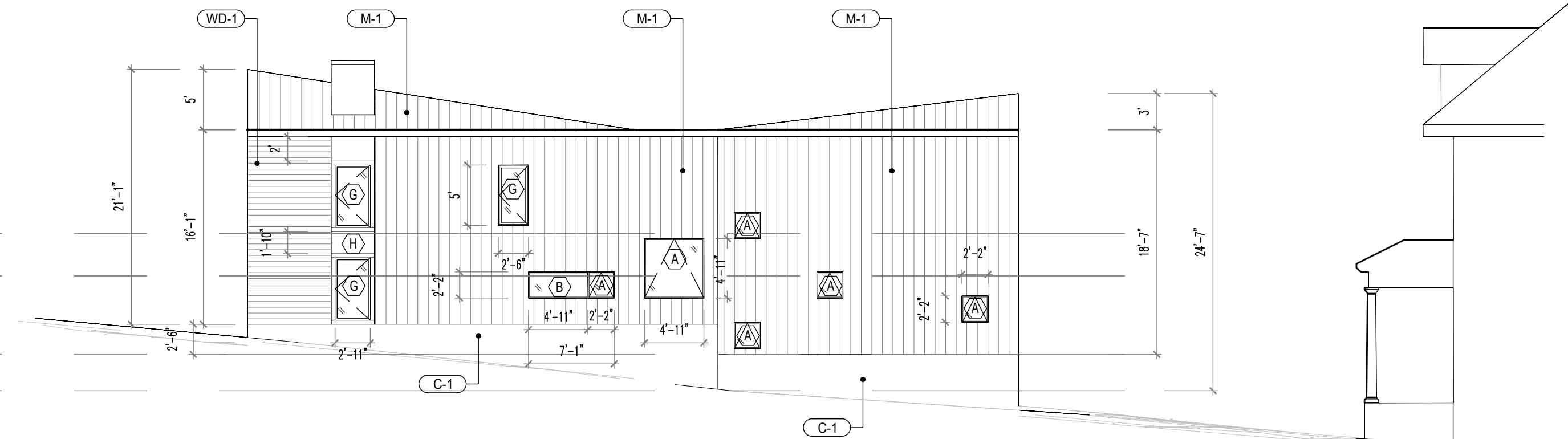
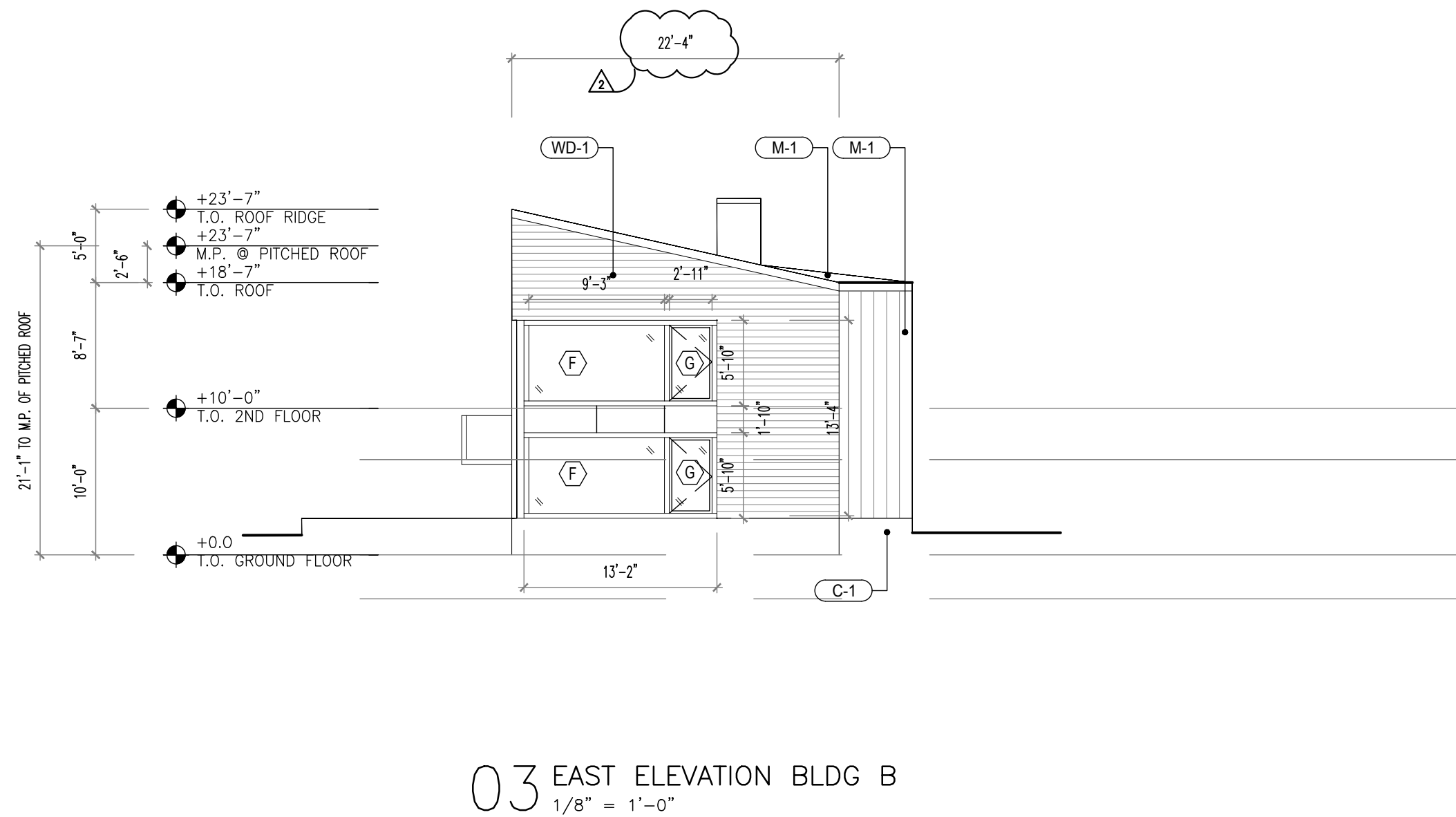
FELLOWS RESIDENCE
 GARAGE REPLACEMENT & GUESTHOUSE
 362 S UNION ST., BURLINGTON VT

3D RENDERINGS

DRB Presentation
 2020.08.04.



EXTERIOR FINISH LEGEND		
WALL		
M-1	FORMED METAL WALL PANELS/WESTERN RIB BY WESTERN STATES METAL ROOFING	
WD-1	MILL GRADE, PTD. CEDAR, CLAPBOARD 1X8 WD SIDING	
C-1	WATER SEALED CONCRETE RETAINING WALL	
ROOF		
M-1	FORMED METAL ROOFING / WESTERN RIB BY WESTERN STATES METAL ROOFING	
TAG LEGEND		
(E.O.O)	EXTERIOR DOOR NUMBER SEE SCHEDULE A-501	
(X)	WINDOW TYPE NUMBER SEE SCHEDULE A-500	
(XX-0)	EXTERIOR FINISH	



FELLOWS RESIDENCE
GARAGE REPLACEMENT & GUESTHOUSE
362 S UNION ST., BURLINGTON VT

ELEVATIONS

DRB Presentation
2020.08.04.



FELLOWS RESIDENCE

GARAGE REPLACEMENT & GUESTHOUSE

362 S UNION ST., BURLINGTON VT

DRB PRESENTATION

2020.08.04.

THANK YOU!

8/3/20

Dear Scott Gustin,

Please share my remarks as a part of the public comments for the August 4 hearing of public concern about the proposed Burton Higher Ground project.

My parents are in their early eighties living in the Red Rocks condominiums. The proposed project is likely to create conditions in which their access to urgent or emergency medical care, if needed, would be impeded by traffic.

I object to the proposed project because the project is inconsistent with the nature of the neighborhood and community. It is a quiet area and has a reasonable amount of commerce at present but would not be able to accomodate the proposed project at any scale.

This project was rushed through late at night without consideration for the statements of impacted neighbors. I remember a man who shared that traffic noise already makes sleep difficult at times for one of his children. The traffic studies that we have seen make it clear that there would be a dreadful burden, including a lot of air and noise pollution, any time HG would hold a concert in this area. There are far more suitable locations for such a project within Burlington. Neighbors also raised concerns about people leaving the venue when under the influence and creating increased accident risks to themselves and neighbors, and even accessing the nearby wooded areas and lakefront parks late at night and causing harm to themselves or others.

The main problem with the project idea is that it is less safe for residents living in the area. It is also unsafe for those who would be attending concerts. What happens if there is an emergency at the venue? Do you think realistically that emergency vehicles would be able to access the area in that kind of chaos? The answer is actually, no, they would not.

The roads, which are all quite narrow residential streets, coming into and going out of the area, are difficult to maintain and quickly fall into disrepair. Last year, the city paid me almost \$1000 for damage to my vehicle from the roadways. The road ways and traffic flow into the area ought to be maintained but not changed in any substantial way, as they are part of the unique character of this quiet and special place to live.

Please help Burton and Higher Ground remain neighbors in good standing and oppose this project.

Thank you,
Jennifer Decker

8/3/2020

Dear Mr. Gustin:

I strongly oppose the Burton plans to bring, as I see it, noise, party goers and congestion to our neighborhood in the 5th ward. This plan, if one can call it that, is misguided and harmful to our sense of well being and our joy in living in peace and quiet.

--

Jonathan F. Galloway
161 Austin Drive, #124
Burlington, Vermont 05401
U.S.A

8/3/2020

I live on Austin Drive in the Red Rocks condos. I am against Higher Ground moving into my neighborhood because of noise, not only during the concert but the noise that will be created as people come and go from the venue late at night. I am also concerned about the traffic congestion as the roads around here are not wide and cannot accommodate so much traffic. If there is an emergency, ambulances would have a hard time getting through. Please take your plan to another location like the Moran Plant! Thank you for listening. Judy Galloway Sent from my iPad

My name is Elisa Nelson. I live and own the property at 155 Austin Drive. My husband and I have lived there for over 28 years. I served for 16 years on the steering committee of the Ward 5 NPA.

The back side of our house looks right over the field between Rhino Foods and Edlund, across the parking lot and into the doors of the southern Burton building. When we first moved to our house, Rhino and Burton were also just moving in. As the businesses grew, the noise grew.

Although the DRB has often placed restrictions on hours of operation on businesses, and required noise mitigation measures on new equipment, it frequently falls to the residents to be the policing group having to push and remind businesses to honor their permits and to respect the neighbors. Once a permit is issued by the DRB, there is no entity that seems willing to require adherence to the permit details. Only continuous publicly calling to task has resulted in the creation of a reasonable sound level for most of the neighbors. For this reason, any conditions designed to limit noise and other harmful features of the Higher Ground project should be structural and not dependent on the day to day operation of the business.

With that background information, I have several questions and concerns regarding the Burton Higher Ground project.

1) Traffic. I will let others argue the very significant details of the issues of traffic concerns on Home Avenue and Queen City Park Rd one lane bridge. I would like to bring up the point that the entire neighborhood of Austin Drive, Dunder Road, South Cove Road, and most of the Ledgewood Condos uses the Home Avenue railroad crossing, or Queen City Parkway, to enter or exit the neighborhood. Any backup at the railroad crossing will create a significant safety issue for police fire and ambulance, as well as simple access to and from our homes. This is a minor road with multiple large condominium complexes that serves as a vital link to the major roads of Pine Street and Shelburne Rd.

I do not believe the traffic study included the rail traffic that frequents that crossing. There are many trains in a 24 hour period, specifically one that passes between 10:30pm and 11pm. This would be a significant traffic blockage as Higher Ground patrons are leaving the site and will cause traffic delays that are not accounted for in the traffic study. This needs to be addressed.

2) Police. Over the last 20 years at Ward 5 NPA meetings, the Burlington Police Department has frequently told the NPA that there are very few Officers available south of Maple Street. At bar closing time there are usually no Officers available in the area at all. With the recent budget decision reducing the Police budget by 30%, any letters from BPD should be required to address the new conditions anticipated under the reduced budget. We do not have good police coverage as it stands. Adding in this high alcohol venue demands the availability of police at any point in time.

4) Noise . As I stated at the beginning of my presentation, the neighbors have worked for years with businesses to create a livable neighborhood. The addition of heavy traffic, car alarms, horns honking as cars are locked and unlocked, loud voices, and revving engines, negates all of the work that has been done over the past 28 years. We simply want the ability to get a decent

night's sleep, from 10pm to 7am. Rhino, Green Mountain Transit, and Edlund are relatively quiet during those hours. The venue at Higher Ground specifically creates the potential for unreasonable conditions until midnight or even 2am. That leaves us with much less than 5 hours of sleep potential per night. That is completely unacceptable for the hundreds of neighbors on Austin Dr., Queen City Park, Home Avenue, Arthur Court, and South Crest Drive at a minimum. Please put a limit on the hours of operation of this venue so we can simply get a reasonable amount of sleep in our own homes.

I have many more concerns about this project, but these are the most important points that I feel need to be made. Please consider the taxpayers and homeowners living around this project. We need to allow some improvements like Chill headquarters, Talent Skate park, and cafes within our neighborhood. A museum of Burton history would fit well with the R & D facility. There are projects that make sense here, but the Higher Ground portion of this project is simply out of character with the surrounding neighborhood and is inappropriate.

Respectfully,

Elisa C. Nelson
155 Austin Dr.
Burlington, VT 05401

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax: (802) 863-0466

Brad Rabinowitz
AJ LaRosa
Springer Harris
Geoff Hand
Brooks McArthur
Kienan Christianson
vacant
Sean McKenzie, (Alternate)
Ravi Venkataraman, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday August 4, 2020, 5:00 PM

Remote Meeting

Zoom: <https://us02web.zoom.us/j/81648212473?pwd=V2NxNTk3N1Y0aDBiUmh2cGJQUS9HUT09>

Webinar ID: 816 4821 2473

Password: 842557

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

Minutes

Board Members Present: Brad Rabinowitz, Geoff Hand, Brooks McArthur, Kienan Christianson, AJ LaRosa, Springer Harris, Ravi Venkataraman (Alt), Sean McKenzie (Alt)
Staff Present: Scott Gustin, Ryan Morrison, and Alison Davis

I. Agenda

AJ LaRosa: No changes to the agenda

II. Communications

AJ LaRosa: No additional communications

III. Minutes

AJ LaRosa: There are several minutes to review

IV. Public Hearing

1. 20-0914CA/AP; 4-8 Strong Street (RM, Ward 3C) Alan Bjerke

Appeal of zoning permit #20-0914CA. Restore gravel driveways to same dimension; modify entry stairs to 8 Strong Street. No change to coverage. (Project Manager: Mary O'Neil) Appellant: Melissa J. Aloisi

Applicant: Alan Bjerke

Appellant: Missa Aloisi

M. O'Neil: Gives history of permit administrative approval and appeal. Mentions that staff found appeal request after appeal period due to short staff during quarantine period, but needs to be decided by Board if appeal request is timely. Burlington Telecom confirmed a voicemail for appeal request was left during appeal period. Appeal is regarding issue with property lines.

B. Rabinowitz: Asks for details about the application and appeal

M. O'Neil: Appellant is questioning the accuracy and validity of the site plan that was provided and disagrees with the location of the property lines. Clarifies that the substance of the appeal is that the abutting neighbor has a conflicting survey with the applicant's site plan.

G. Hand: Asks to clarify how the Board and zoning deals handles property line disputes and what boundaries they have for their consideration.

M. O'Neil: DRB is not inclined to take on property boundary disputes

G. Hand: Asks if there is a factual dispute about where a property boundary is, and the location of that boundary might reflect on Board's ability to approve or deny the request

AJ LaRosa: Mentions previous similar DRB item where a condition requires a survey and work towards resolution

M. Aloisi: Speaks on timeliness of submitting appeal. Applicant gave appellant copy of permit application before submittal. Fence setback would be 5' from property line, no issue with that proposal. Issue with application is that the previously approved site plan that was submitted with current application shows incorrect property lines. Provided applicant/neighbor with surveyed drawing, showing the correct property lines. Drawing was corrected, but property line was not corrected, but updated with new dimensions. Provided email communication with appeal. Describes timeliness of appeal submittal.

AJ LaRosa: Asks to clarify issue with approval being based on the previously approved site plan.

M. Aloisi: Provides details about history of property. Details about site plan and parking space issues. In appeal application, there was a land surveyed site plan showing record of pin locations. Speaks on issues with previous approval of site plan and driveway dimensions. Multiple and multi-layered issues with application and site plan.

S. Harris: Talks through Google maps street view of driveway and photos provided by applicant, looks like there was a gravel area where grass had grown through, gravel appears to align with curb cut and driveway apron where it connects the sidewalk to the road

M. Aloisi: Explains driveway has not been used as a four-car driveway, but as a two-car driveway. Last summer, redid driveway portion from sidewalk to the road, but previously, the width of that space was for one-car wide driveway. Explains issues with driveway location in respect to distance to her property and building. Explains history of granite monument.

AJ LaRosa: Concerns that this is a property line dispute, which is outside of Board's jurisdiction.

A. Bjerke: Speaks on issue of timeliness of appeal. Appeal was not submitted within the appeal period, so should not be admissible. Believes due diligence was not taken to submit appeal. Regardless of property boundary dispute, there is a preexisting nonconforming use of four-car driveway. Has been in place since 1982. When property was purchased, found gravel on site. Property lines have been unchanged since they were first created. Speaks on Google maps and photos about driveway apron. No evidence that survey is reliable. Believes it is a preexisting nonconforming use that has been in place for 25 years and is allowed to continue and cannot be abandoned because it is a requirement, and survey that raised the dispute about the property boundary is inaccurate and limited.

G. Hand: Asks about site plan and the notation of 5' setback to west side of driveway

A. Bjerke: Correct, if you use previous site plan, it would be 5.5' away from property line. Issue is that appellant does not believe that is the line that the 5' measurement applies to. Submitted original plan, communicated and worked with Mary O'Neil to create a drawing that could be approved. Believed that a 5' setback was required from the new property line and it was concluded that that was not the case.

G. Hand: Asks about driveway dimensions and reflection on site plan

AJ LaRosa: Closes public hearing

2. 20-0971CA/CU; 362 South Union Street (RL, Ward 6S) William Fellows and Tshen Shue

Demolish detached garage. Construct garage with attached dwelling unit for conversion to duplex. (Project Manager: Ryan Morrison)

Applicant: Tshen Shue

Public: Alice Suitor, Gilbert Suitor, Travis Rousseau, John Hall

T. Shue: Walks through project presentation. Gives brief history of property. Explains site plan.

A. Suitor: Has questions about parking, but sees that lot of the issues she had have been addressed. Mentions driveway easement dimension. Questions about snow removal, solutions still do not seem adequate. Questions about pool dimensions. Stormwater drainage of concern. Also worried about construction parking

T. Rousseau: Concerns with project looking more modern and not as historical

J. Hall: Extremely modern building located in the Hills Section, which relies on historic preservation. This project is different than surrounding buildings. Worries about lot coverage and removal of greenspace. Issues about height of building.

T. Shue: Wants to compromise with abutting neighbor, Alice Suitor, about concerns for project and construction of project. Gives details about pool dimensions. Speaks on modern rendition for historic structure.

R. Morrison: Warranty deed explains the shared driveway easement. Use of shared drive is for single family use

AJ LaRosa: Not sure if we can interpret deeds. It is good information, but do not want to discuss for public hearing item.

S. Harris: Speaks to height of building.

AJ LaRosa: Closes public hearing

3. 20-0854CA/CU; 266 Queen City Park Rd (ELM, Ward 5S) Burton Corporation

Conditional use application to create 11,560 SF Performing Arts Center use within an existing 85,000+ SF structure; proposed façade improvements to existing building exterior. *Continued review.* (Project Manager: Scott Gustin)

Continued from July 17 meeting. Geoff Hand recused from item

Applicant: Burton Corporation, Higher Ground

Public: CRZ Group; Laurie Smith, Almy Landauer, Lori Hayes, Doug Goodman, Les Blomberg, Gregory Tocci, Janice Ellis, Sharon O'Neill, Laura Waters, David Geddes, Michael Turner

Brendan Bush, Kyle Creason, Al Margulius, Elisa Nelson, Gabe Arnold, Colin McNeil, Tim Barrett, Sharon Bushor, Ben Traverse, Kerry Anderson, Seth Mobley, Stephanie

AJ LaRosa: Left off after applicant presentation. Next steps are to hear from the public. Public comment limited to three minutes per speaker. Applicant will have opportunity in the future to respond to public comment and DPW comment.

CRZ Group-

A. Landauer: Self-introduction, also there on behalf of Lori Hayes. Reads letter to Board on behalf of Lori Hayes. Concerns about the size, scale, and scope of the project, concerns about tailgating, security, police response.

L. Smith: Introduction, gives information about property location and opinions about application. Worries about transportation and safety.

D. Goodman: Gives concerns about application and impacts on surrounding area. Concerns about impacts on South Burlington and Burlington police force.

L. Blomberg: Noise ordinance expert. Burlington's Noise Ordinance is typical, but critical especially because of college town. Explains reasonable testing and audible testing in noise ordinance.

AJ LaRosa: Asks for further details and explanation about audible test in noise ordinance. Speaks on plainly audible standard vs decibel standards. Asks what standards Board should follow.

L. Blomberg: Plainly audible ordinance is only applicable at night.

G. Tocci: Speaks on environmental sounds and noise standards/baselines. Worries about other noises that should be taken into account that RSG report did not include.

AJ LaRosa: Asks if G. Tocci agrees with RSG perspective about what sound levels are harmful

G. Tocci: Feels like limits are too high corresponding with audible sound levels. Would be worth for RSG to determine how the proposed sound levels will compare to the current sound levels in the area.

J. Ellis: Concerns with possible noise issues from proposed project.

S. O'Neill: Concerns with safety, noise and traffic. Asks about police response and security plan. Asks about smoking area, issues with smell and sound. Concerns with current infrastructure of roads and transportation systems.

L. Waters: Speaks on April 23rd traffic impact study. Lists flaws and deficiencies about study. Concerns about intersections and traffic delays.

D. Geddes: Addresses data in traffic study report. Expresses concerns about traffic patterns, especially with lack of Champlain Parkway. At least five points about traffic study that should be taken into consideration.

M. Turner: Introduces Queen City Park neighborhood and demographic. Explains navigating neighborhood and surrounding area. Concerns with lack of pedestrian and bicycle infrastructure. Explains concerns with one-lane bridge.

L. Smith: Concludes CRZ Group presentation. Asks that applicant provides raw data to noise experts. Ongoing disturbances will occur if these issues are not addressed or resolved.

B. Bush: In full support of project. Concerns about sidewalks, one-lane bridge. Concerns about safety. Concerns with suggestions that unwanted communities, artists with a "disruptive following", are going to cause problems. Believes reduction in police force will not change police response. Concerns with what DRB reviews/approves vs the amount of information and issues they are being presented with. Concerns with data that was presented does not accurately reflect traffic patterns at the times of concern, which would be late at night after a concert is over (kids walking home from school, truck traffic).

K. Creason: Speaks on traffic study and traffic impact concerns on Home Avenue. Concerns about late night traffic. Concerns with timing of concertgoers arriving at concert and safety of neighborhoods with children.

A. Margulius: Concerns with disruption and safety. Concerns reflect many others who spoke prior.

E. Nelson: Concerns with traffic, police, noise issues. Concerns reflect other who spoke prior.

G. Arnold: Positive points, supports project and is exciting for addition to South End. Believes project will raise the quality of life to this neighborhood.

C. McNeil: Here on behalf of City of South Burlington. Also with Colin is, SB City Councilor, Tim Barrett. Submitted concerns about noise, traffic, parking, safety, protection of Red Rocks Park, and staffing levels.

S. Bushor: Asks to clarify if staff would help with people and cars leaving the venue. Concerns with sound and noise. Asks and recommends exploring satellite parking off Pine Street. Could be a solution for noise and traffic issues.

B. Traverse: Concerns with traffic and lack of traffic calming measures. Many of the issues brought up are outside of Burton's control (Champlain Parkway, infrastructure). Concerns with noise at Pine St and Home Ave intersection when cars are backed up. Believes there need to be conditions regarding the Champlain Parkway being built.

K. Anderson: Concerns with noise mitigation and traffic.

S. Mobley: Concerns with children safety, noise, traffic. Concerns with lack of pedestrian protection. Concerns with amount of traffic during lack of Champlain Parkway. In support of development of neighborhood, just need infrastructure support.

S. Herrick: Concerns with façade improvement and outdoor socialization areas.

AJ LaRosa: Motion to continue public hearing to August 18. Wants applicant to be prepared to respond to address update submissions, DPW comments, and public comments and concerns.

B. Rabinowitz: Seconds motion

Motion passed.

V. Certificate of Appropriateness

- 1. 20-0522CU; 75 Cherry Street (FD6, Ward 3C) BTC Mall Associates, LLC**
Amend ZP 17-0662CA/MA phasing schedule. *Applicant has requested 3-month time extension for application review.* (Project Manager: Scott Gustin)

Geoff Hand recused from item

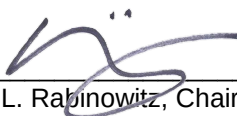
B. Rabinowitz: Motion for three-month extension

S. Harris: Seconds motion

Motion passed.

VI. Adjournment

Meeting adjourned at 8:30pm



Bradford L. Rabinowitz, Chair of Development Review Board

Feb 2, 2021

Date



Alison Davis, Zoning Clerk

Date

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

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