

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

www.burlingtonvt.gov/pz/drbb

Phone: (802) 865-7188

Fax: (802) 865-7195

Austin Hart
Michael Long
Jonathan Stevens
Brad Rabinowitz
Bob Schwartz
Jim Drummond
Missa Aloisi
Alexandra Zipparo (Alt.)
Israel Smith (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday July 15 2014, 5:00 p.m.

Contois Auditorium, City Hall, 149 Church Street, Burlington, VT

AGENDA

- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Public Hearing**
 1. **14-0748AP: 124 SPRUCE STREET (RL, Ward 6) Laurel Broughton**
Appeal of Notice of Violation regarding fence. (Project Manager: Jeanne Francis/Ken Lerner)
 2. **14-1254CU: 934 NORTH AVENUE (RL, Ward 7) 934 North Avenue LLC**
Change use from funeral services to general office. Existing residential apartments to remain. (Project Manager: Scott Gustin)
 3. **14-1172NA: 12 WESTON STREET (RL, Ward 1) Owner: Charles and Cynthia Burns/Appellant: Michael Long et al**
Appeal of administrative permit applicability determination to internal reconfiguration of existing units. No change to unit count, number of rooms or habitable space. (Project Manager: Ken Lerner)
- V. **Sketch Plan Review**
 1. **14-1206SP: 380 COLCHESTER AVENUE (RL, Ward 1) Nathaniel M. Hayward**
Sketch plan review for proposed three lot subdivision. (Project Manager: Scott Gustin)
- VI. **Other Business**
 1. **13-1232CA/CU: 31 RIVERMOUNT TERRACE (RL, Ward 7) Gregory A Jenkins**
One year review per condition 2 of approval for two bedroom bed and breakfast, one parking space waiver, widen driveway. (Project Manager: Mary O'Neil)
- VII. **Adjournment**

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

All staff comments, plans and supporting documents will be available on the Planning and Zoning website at: www.burlingtonvt.gov/pz/drbb/agendas approximately one week before the hearing.

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office and Development Review Board is considered public and cannot be kept confidential.

This agenda is distributed to: adjacent property owners of projects before the Development Review Board, Neighborhood Planning Assemblies, City Councilors, City Departments and interested parties. You may direct written comments to the Planning and Zoning Department, at the above address. Inquiries may be made by calling 865-7188. Oral comments may be given at the meeting by any persons on any project listed on the Agenda.

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BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday July 15, 2014

PUBLIC HEARING NOTICE

The Burlington Development Review Board will hold a meeting on **Tuesday July 15, 2014 at 5:00 p.m. in Contois Auditorium, Second Floor, City Hall.**

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Appeal of Notice of Violation regarding fence.
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This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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

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Brad Rabinowitz
Missa Aloisi
Israel Smith
A. J. LaRosa
Alexandra Zipparo (Alt.)
Vacant (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday July 1 2014, 5:00 p.m. Contois Auditorium, City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Austin Hart (chair), Jonathan Stevens (Vice Chair), Brad Rabinowitz, Ali Zipparo, A.J. LaRosa, Israel Smith

Staff: Mary O'Neil, Scott Gustin, Ken Lerner, Nic Anderson

Absent: Michael Long, Missa Aloisi,

I. Agenda

No changes.

II. Communications

Two communications. One for 8 College St. Five sets of minutes for review. Accepted by board.

III. Minutes

Five sets in communications packet for review and approval.

IV. Consent

1. 11-0734CA/CU: 668 PINE STREET (ELM, Ward 5) Stern Properties, LLC

Time extension request for new addition at side, install rooftop solar panel system and stormwater collection system. (Project Manager: Scott Gustin)

Applicant not present. No objections from Board with treating as consent item. No public present to speak.

Motion by J. Stevens to grant time extension and adopt staff findings.

Seconded by B. Rabinowitz

Vote: 6-0-0

Motion Passed

2. 14-1064CA/CU: 65 CHARLOTTE STREET (RL, Ward 5) Sara & Ethan Brown

Demolish existing shed and replace with new shed in different location. (Project Manager: Mary O'Neil)

Applicant Sara Brown present. No objections from Board with treating as consent item. No public present to speak.

B. Rabinowitz asked about reasons for orientation.

A. Hart appreciates efforts to save the building in past.

Has received staff comments and has no objections.

Motion by B. Rabinowitz to approve application and adopt staff findings.

Seconded by A. Zipparo

Vote: 6-0-0

Motion Passed

3. 14-1143HO: 78 NORTH PROSPECT STREET UNIT 78A (RL, Ward 1) Wayne Senville & Lila Shapero

Conditional use home occupation for office with part time employees. (Project Manager: Mary O'Neil)

Applicant Wayne Senville present. No objections from Board with treating as consent item but have questions. No public present to speak.

J. Stevens asked if discussed with neighbors.

W. Senville – Part of condo association so have discussed with board.

A. Hart asked if old home occupation will continue?

W. Senville – Wife had consulting business that may start up again soon. Uses separate space. Staff comments for size included both.

J. Stevens asked if employee would require a parking space.

W. Senville – Plan is to use the resident parking permit space available to them.

A. Zipparo asked M. O'Neil about equivalent employees count.

J. Stevens asked if could be removed from consent agenda.

A. Hart swore in applicant and opened as Public Hearing.

J. Stevens – Previous home occupations have had sequence of problems with neighbors and traffic.

W. Senville – Has Z-Card and condo association approval. Detailed employees hours.

All online publication. No supplies or mailings.

M. O'Neil – List of neighbors that were notified is in file. Neighbors have had time to participate and attend the hearing.

A. Hart closed Public Hearing at 5.15pm

4. 14-1169MP: 1-7 CHURCH STREET (D, Ward 3) One Church Street Partnership, LLC
Modification of existing master sign plan. (Project Manager: Scott Gustin)

Applicants Jesse Robbins and Jeff Nick present. No objections from Board with treating as consent item. No public present to speak.

J. Nick handed out plans that would add more signs.

S. Gustin – Confirmed additional items so will not be consent item.

A. Hart swore in applicants and opened as Public Hearing.

J. Nick – Added two signs. The Church Street Marketplace has unanimously approved the amended plan submitted tonight. Showed locations.

A. Hart asked about titles on plans and locations of signs.

S. Gustin – His take was there is no compelling reason to put sign higher. Board can approve what they want.

A. Hart asked for clarification.

J. Robbins – Example of existing sign above 14ft height limit. Would have GAP tenant on second floor so want signs for Gap above ground floor for visibility. This block struggles with tenants so hope this could be approved.

B. Rabinowitz asked for detail on sign materials.

J. Robbins – Would not be internally illuminated. Can accept staff recommendations but would like to see if they can add the two additional signs to push the limits.

A. Zipparo – one on Church St façade imposes on the historic architecture.

S. Gustin noted that previous report draft discussed this. Limited on size. Are proposing the maximum and cannot fit another sign within the allowable size limits regardless of location.

V. Public Hearing

1. 14-1181CA/CU: 8 COLLEGE STREET (BIKEPATH) (Multiple Zones, Wards 3, 5 and 7) Parks and Recreation

Bike Path rehabilitation, including phase 1 from Perkins Pier to North Beach. Also, improvements to Waterfront Park, including replacement lighting, potable water improvements, boardwalk renovation, and landscaping improvements. (Project Manager: Scott Gustin)

Applicants Jesse Bridges and Jen Francis present. No public present to speak. Only applicants sworn in.

J. Bridges – Director of Parks and Recreation. Detailed width of path being 2-11-2. 2ft shoulders. 11ft paved. Limitations in some locations. Detailed all portions of the path and the improvements.

A. Hart asked about lighting fixtures. Change to theme?

J. Bridges – Current lights need to be on to have outlets work. New standard lighting fixture to be used throughout the parks system.

A. Zipparo asked about change of alignment north of Moran and location.

J. Bridges detailed. Not proposing any changes to stormwater system. One of reasons for moving is that it will get it out of a depression.

B. Rabinowitz asked about intersection with College St. Doesn't work. Any reason this isn't being changed.

J. Bridges – Are doing some pavement markings but are not changing street work. College St will have curb cut to help improve but are stuck with the current alignment.

A. Hart – Asked about co-ordination with construction. Will it remain open during construction.

J. Bridges – Will be started in fall so less users but there are some relocations needed. Re-alignment will allow use of the existing path while building new portion.

A. Zipparo asked about timing of boardwalk replacement.

J. Bridges – Will not be doing that during the busy times.

Member of public sworn in.

Joe Harig – 86 Borestone Lane. College St intersection is asking for disaster. Wants to know if there is a way to make it a permanent right angle turn instead of angled. Needs more room or fence. Needs a dedicated stop sign or another legitimate way to reduce safety concerns.

J. Bridges – Section between Maple and College is on Railroad Right of Way and is restricted by leases.

I. Smith is also concerned. Differences in grade.

J. Bridges – Trying to determine ownership and potential for improvements.

I. Smith – Concerned about use of the roundabout from vehicles.

B. Rabinowitz – concern is width of path at that point and is a mess for congestion. Should cross the road and then take the left to cross the tracks. Still concerned. Need to separate pedestrians. 90 degree turn should be done before sidewalk.

J. Bridges – This project was paid for by TIGER grant funding.

J. Stevens asked if more time is needed to amend or would like to be reviewed as submitted.

J. Bridges – As submitted. This is in the ROW and have federal constraints.

A. Zipparo asked about King St intersection and improvements.

J. Bridges – Detailed plan for delineating path.

Public Hearing closed 5.47pm

VI. Certificate of Appropriateness

1. 14-1150CA: 17 NORTH WILLARD STREET (RM, Ward 2) Rachael Schwartz

Remove parking area at rear, two space parking waiver request. (Project Manager: Scott Gustin)

Application Withdrawn. No hearing held.

VII. Other Business

Annual Organizational Meeting

DRB Clerk

Motion by A. Hart for Nic Anderson

Vote 6-0-0

A. Hart doesn't feel right about dealing with now without M. Long and M. Aloisi so would like to defer until another date.

J. Stevens nominated A. Hart to be interim Chair

A. Hart nominated J. Stevens to be interim Chair

Will put on agenda for first meeting in August.

VII. Adjournment

Adjourned at 5.55pm.

Deliberative held immediately.

A. Hart - Chair, Development Review Board

Date

Nic Anderson, Zoning Clerk

Department of Planning and Zoning

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

David White, AICP, Director
Ken Lerner, Assistant Director
Sandrine Thibault, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Associate Planner
Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin 
DATE: July 15, 2014
RE: 14-1206SP; 380 Colchester Avenue

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

Zone: RL Ward: 1

Owner/Representative: Nathaniel Hayward

Request: Sketch plan review of 3-lot subdivision.

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 10 (Subdivision Review)

Background Information:

The applicant is requesting sketch plan review of a minor 3-lot subdivision. Two new vacant building lots would result from the subdivision. The existing duplex would be retained and converted to a triplex. The property is relatively large at 1.43 acres, but much of it is wooded slope down to Riverside Avenue to the west. A similar subdivision was approved at 366 Colchester Avenue in 2012. As this subdivision would result in just 3 lots, it is eligible for combined preliminary/final plat review per Sec. 10.1.7 of the CDO when application for subdivision review is made.

Previous zoning actions for this property are noted below.

- 2/8/85, Approval to convert single family home to a duplex
- 6/18/75, Approval to construct carport
- 4/23/75, Approval to relocate house from 128 Riverside Ave to subject property

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

1. The capacity of existing or planned community facilities;

One new dwelling unit will result from the conversion of the duplex to a triplex. It is served by municipal water and sewer and will require additional service. The new vacant lots will be served by public sewer and water when and if developed in the future. Sufficient reserve capacity is available. A state wastewater permit will be required.

2. The character of the area affected;

The property is located within the Residential Low Density zone running in a strip along Colchester Avenue. Single family homes are the norm; however, institutional and commercial uses and a cemetery are all located close by. The RL zone is intended primarily for single family homes and duplexes. Insofar as the two newly created lots could be developed with single family homes, the proposed subdivision can be found in character with the area.

3. Traffic on roads and highways in the vicinity;

The subdivision itself will not create any additional traffic. The conversion from duplex to triplex will entail minimal additional traffic. If the vacant properties are developed in the future, additional traffic created by two new single family homes would be negligible.

4. Bylaws then in effect;

The sketch plan appears to be generally compliant with applicable bylaws.

5. Utilization of renewable energy resources;

Not applicable.

6. Cumulative impacts of the proposed use;

Not applicable.

7. Functional family;

Not applicable.

8. Vehicular access points;

The sketch plans depict two shared driveways. This configuration reduces the potential number of access points along Colchester Avenue. The proposed curb cuts will need review and approval by the Department of Public Works. Sight lines will be particularly important in this location.

9. Signs;

Not applicable.

10. Mitigation measures;

Not applicable.

11. Time limits for construction;

Not applicable.

12. Hours of operation and construction;

Not applicable.

13. Future enlargement or alterations;

Not applicable.

14. Performance standards;

Not applicable.

15. Conditions and safeguards;

No conditions are included in sketch plan review.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The subject property is located in the RL zone, which is intended primarily for single family homes and duplexes. The existing duplex would be converted to a triplex as allowed under Sec. 4.4.5 (d) 5 A noted below. The proposed vacant lots would be large enough to each contain a single family home.

(b) Dimensional Standards & Density

The minimum lot size in the RL zone is 6,000 sf for single family homes and 10,000 sf for duplexes. The existing lot would be subdivided into lots 1, 2, and 3. They would be 48,955 sf, 6,065 sf, and 7,471 sf, respectively. Lots 2 and 3 are adequately sized for single unit density (7 units/acre in the RL zone). Lot 1 is sufficiently sized for the duplex conversion to triplex.

All three lots will have more than the minimum required 60' road frontage.

Building envelopes are depicted on the two new vacant lots, lots 2 and 3. Compliant front, side, and rear yard setbacks are depicted. The shared driveways are depicted along shared lot lines and are allowed per 5.2.5, *Setbacks*, (b) *Exceptions to Yard Setback Requirements*, 6.

No new lot coverage is included in this proposal. Lot coverage on lot 1 obviously remains compliant; however, no actual lot coverage calculation has been provided. One will be needed upon subdivision review.

Existing building height is unaffected by this proposal. The height of new homes must be indicated when proposed.

(c) Permitted & Conditional Uses

Two detached single family homes may be allowed (one on each new vacant lot) under separate permit. Single family homes are permitted uses. The existing duplex will be converted to a triplex and is subject to conditional use review and approval.

(d) District Specific Regulations

1. Setbacks

A. Encroachment for Residential Driveways

Not applicable.

B. Encroachment into the Waterfront Setback

Not applicable.

2. Height

A. Exceptions in the Waterfront RM District

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

The duplex was approved in 1985 and, therefore, may be converted to a triplex under this provision.

6. Uses

Not applicable.

7. Residential Development Bonuses

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.5.1, Nuisance Regulations

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

Sec. 5.5.2, Outdoor Lighting

Not applicable.

Sec. 5.5.3, Stormwater and Erosion Control

An erosion prevention and sediment control plan will be required for the construction associated with the duplex conversion to triplex. Similarly, erosion prevention and sediment control plans will be required for construction of single family homes on the new vacant lots. These plans will require review by the Stormwater Administrator.

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Sec. 6.1.2, Review Standards

(a) Protection of important natural features

The subdivision itself will have no impact on important natural features. The proposed building envelopes depict where development may take place. The building envelope on lot 2 largely avoids the steep slope to the west. Quite to the contrary, much of the building envelope on lot 3 extends over the steep slope. As required for the neighboring subdivision at 366 Colchester Avenue, the building envelope on lot 3 should be revised to avoid all or most of the slope to the west.

Much of the property, including all of the slope, is wooded. At the time of subdivision application, specimen trees (i.e. > 30" caliper) must be noted. Given the size of the property and the limited potential development, identification of specimen trees may be limited to the newly created lots 2 and 3. Very limited potential clearing is depicted on lot 1. Specimen trees should be retained insofar as possible, and a tree protection plan must be submitted as part of any construction plan for development of either new lot.

(b) Block size and arrangement

Not applicable.

(c) Arrangement of Lots

Lots 2 and 3 will be regularly shaped rectangular lots. The built area of lot 1 will be regularly shaped as well; however, it will have a large rear appendage consisting of the unbuildable slope. Lot sizes vary widely along Colchester Avenue. The proposed lots would be within the established size range.

(d) Connectivity of streets within the city street grid

While no new streets are proposed, the new lots will access Colchester Avenue with shared driveways. Given the grades onsite and the curvature of Colchester Avenue along the properties' frontage, adequacy and safety of vehicular access onto the street is a concern. The proposed driveway locations will be subject to review and approval by the Department of Public Works.

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

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

Only basic site plan details have been provided as related to the duplex to triplex conversion. Upon permit application, a fully developed site plan for lot 1 will be required.

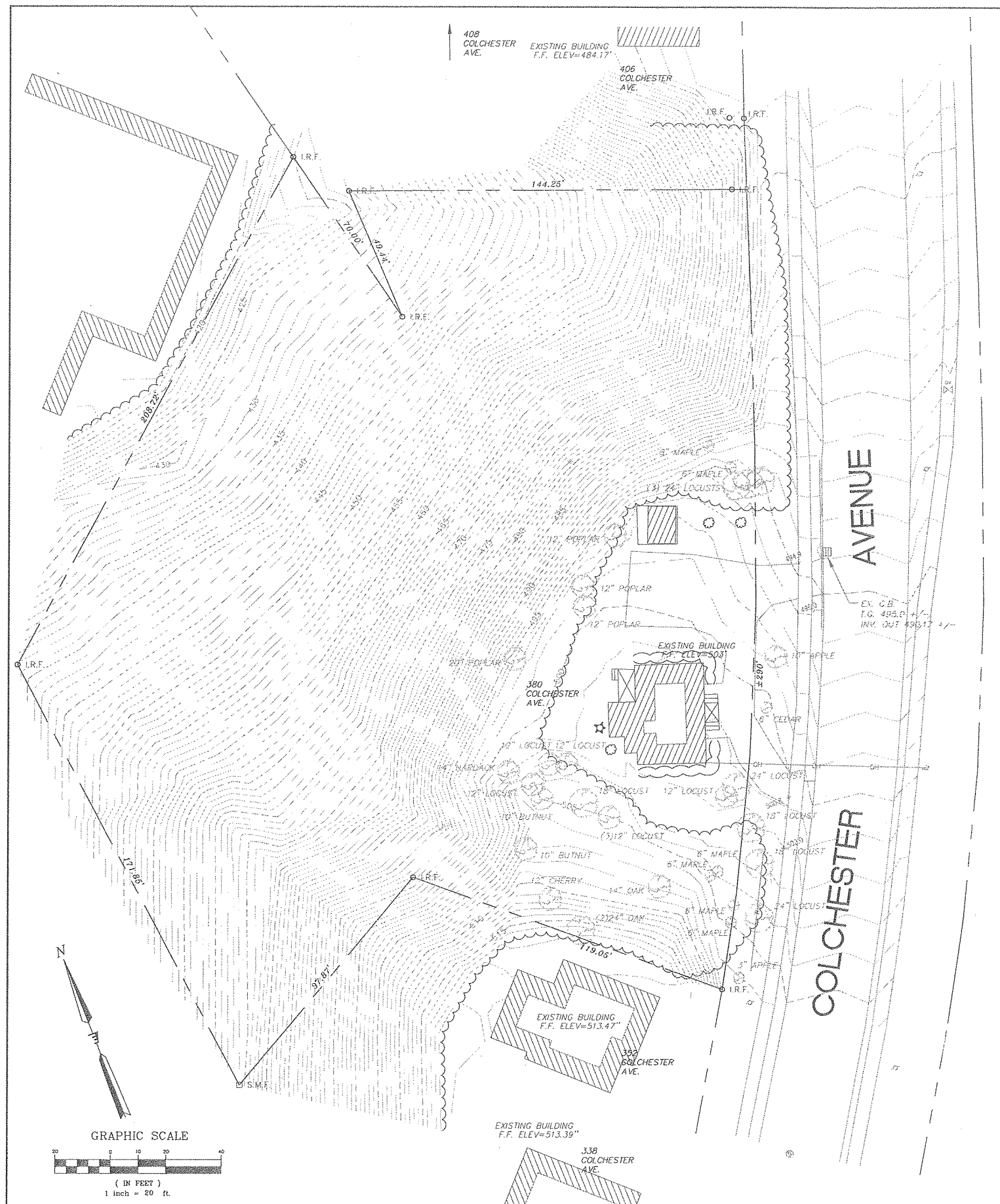
Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

No architectural details have been provided. Upon permit application, complete architectural plans for the proposed duplex to triplex conversion will be required. New single family homes on the newly created vacant lots are not subject to design review. Fully developed site plans will be required at the time of permitting for those homes.

Article 10: Subdivision Review

Other than making provision for sketch plan, no subdivision criteria pertain to sketch plan review.



EXISTING CONDITIONS PLAN

ZONING TABLE

	REQUIRED	EXISTING	PROPOSED
MIN LOT SIZE	6,000 SF	62,491 SF (1.43 AC.)	LOT 1: 48,955 SF (1.12 AC.) LOT 2: 6,065 SF (0.14 AC.) LOT 3: 7,471 SF (0.17 AC.)
MIN LOT FRONTAGE	60'	289.94'	LOT 1: 79.39' LOT 2: 65.00' LOT 3: 65.00'
MIN/MAX FRONT YARD SETBACK (1)	LOT 1: 15.7' (EXIST.) LOT 2: 17.2' +/- 5' LOT 3: 20.25' +/- 5'	LOT 1: 15.7' (EXIST.) LOT 2: N/A LOT 3: N/A	LOT 1: 15.7' LOT 2: N/A LOT 3: N/A
MIN SIDE YARD SETBACK (2)	LOT 1: 7.9' LOT 2: 6.1' LOT 3: 6.4'	LOT 1: 65.94' (EXIST.) LOT 2: N/A LOT 3: N/A	LOT 1: 12.33' LOT 2: N/A LOT 3: N/A
MIN REAR YARD SETBACK (3)	LOT 1: 66.6' (EXIST.) LOT 2: 30.0' LOT 3: 31.7'	LOT 1: 151.6' (EXIST.) LOT 2: N/A LOT 3: N/A	LOT 1: --- LOT 2: N/A LOT 3: N/A

NOTES

(1) FRONT YARD BASED ON AVG. OF 2 ADJACENT LOTS ON BOTH SIDES.

- LOT 1: EXISTING BUILDING AND EXISTING 15.7' SETBACK USED.
- LOT 2:

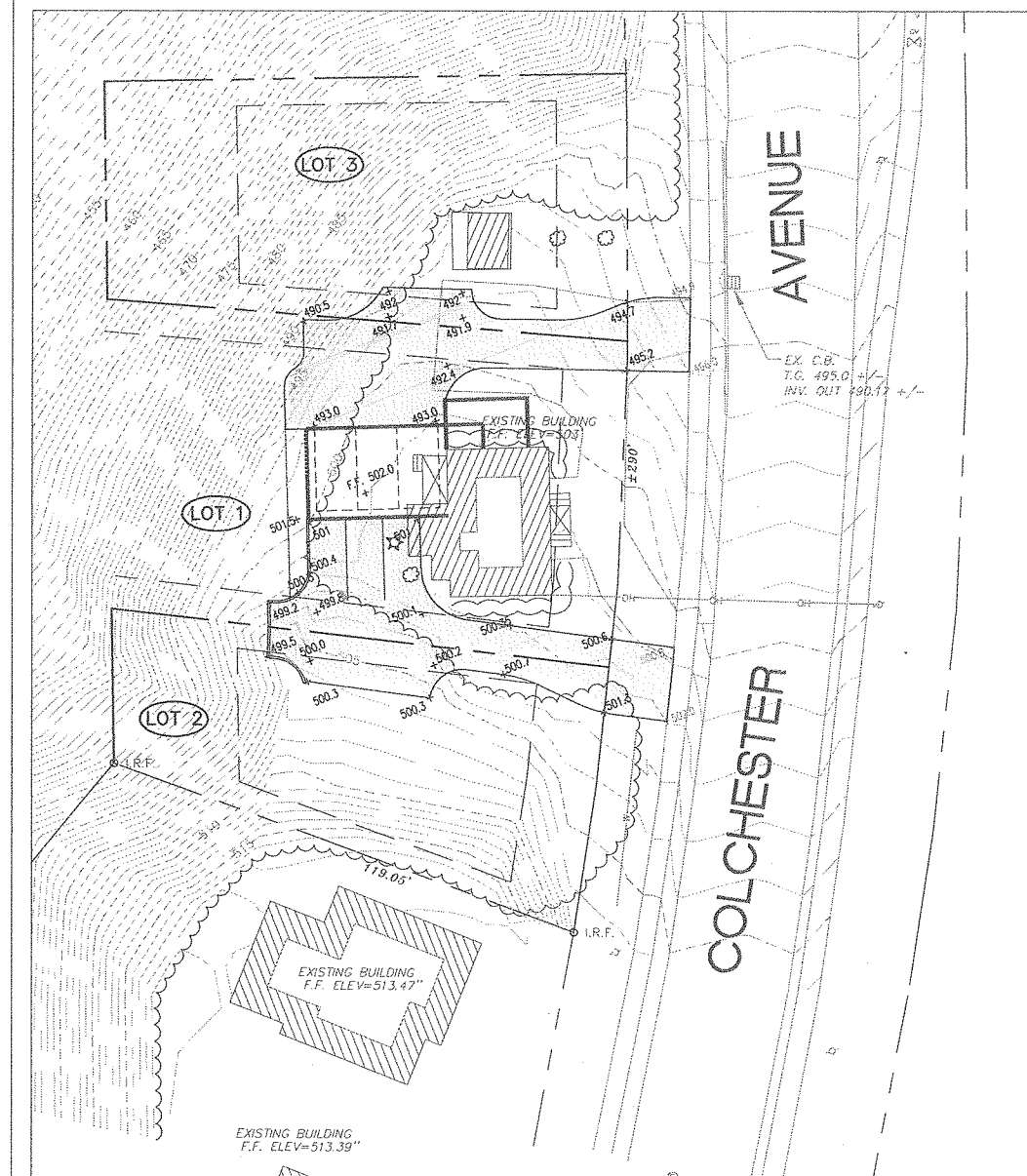
ADJACENT PROPERTIES SOUTH:	352 COLCHESTER AVE.	= 21.7'
	338 COLCHESTER AVE.	= 15.4'
ADJACENT PROPERTIES NORTH:	380 COLCHESTER AVE.	= 15.7'
	408 COLCHESTER AVE.	= 16.0'
	AVG =	17.2'

- LOT 3:

ADJACENT PROPERTIES SOUTH:	380 COLCHESTER AVE.	= 15.7'
	352 COLCHESTER AVE.	= 21.7'
ADJACENT PROPERTIES NORTH:	408 COLCHESTER AVE.	= 16.0'
	408 COLCHESTER AVE.	= 27.6'
	AVG =	20.25'

GENERAL NOTES

1. THIS PLAN IS BASED ON A FIELD SURVEY PERFORMED BY RICHARD W. BELL LAND SURVEYING, INC., DATED JANUARY, 2014. BOUNDARY INFORMATION SHOWN HEREON TAKEN FROM A BOUNDARY SURVEY PERFORMED BY RICHARD W. BELL LAND SURVEYING, INC. DATED JANUARY, 2014.
2. THE PROPERTY LINES, EASEMENTS AND OTHER REAL PROPERTY DESCRIPTIONS PROVIDED IN THIS PLAN ARE FOR THE USE OF THE CITY OF BURLINGTON AND FOR LOCAL PERMITTING ONLY. THEY DO NOT DEFINE LEGAL RIGHTS OR MEET LEGAL REQUIREMENTS FOR A LAND SURVEY AS REQUIRED IN VT. AND SHALL NOT BE USED IN LIEU OF A SURVEY AS THE BASIS OF ANY LAND TRANSFER OR ESTABLISHMENT OF ANY PROPERTY RIGHT.
3. UTILITIES SHOWN DO NOT PURPORT TO CONSTITUTE OR REPRESENT ALL UTILITIES LOCATED UPON OR ADJACENT TO THE SURVEYED PREMISES. EXISTING UTILITY LOCATIONS ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL FIELD VERIFY ALL UTILITY CONFLICTS. ALL DISCREPANCIES SHALL BE REPORTED TO THE ARCHITECT, OWNER, AND ENGINEER. THE CONTRACTOR SHALL CONTACT DIG SAFE A MINIMUM OF 48 HOURS PRIOR TO ANY CONSTRUCTION.



PROPOSED SKETCH PLAN

Sketch Plan		Project Title:	380 Colchester Avenue	Burlington, VT
Designed By:	MD/KW	Checked By:	KW	
Drawn By:	MD	Date:	06/04/14	
Scale:	1" = 20'			

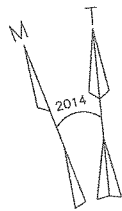
Hayward Design Build

302 Mountain View Drive
Suite 300
Colchester, VT 05446
(802) 578-3078

E ENGINEERING VENTURES PC

238 Ryan Avenue, Suite 2A Burlington, VT 05401
tel. 802.863.6235 • fax 802.863.6306
85 Merchant Street, Suite 350A, Lebanon, NH 03786
tel. 603.442.5333 • fax 603.442.5331
www.enrpe.com

Stamp



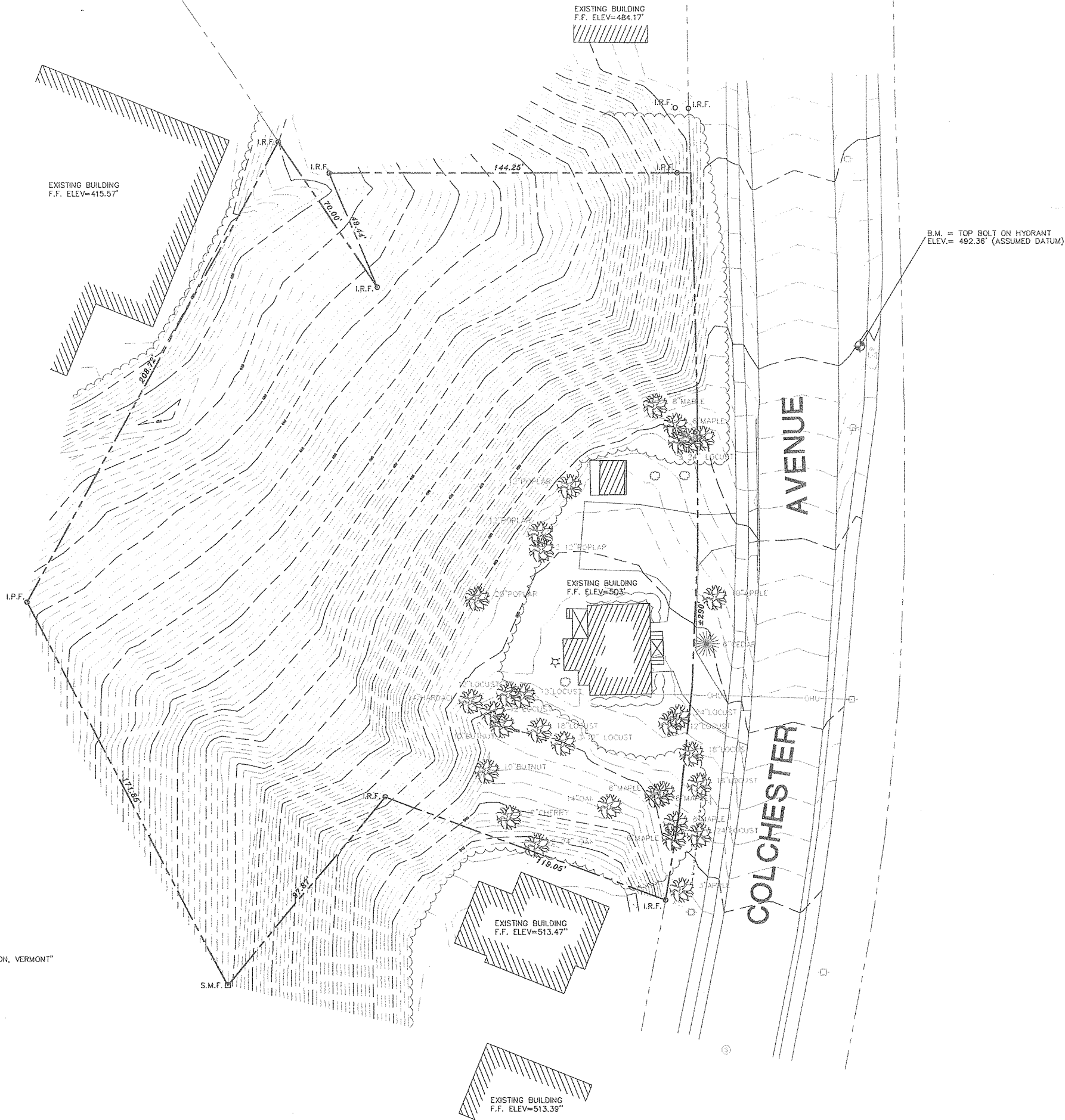
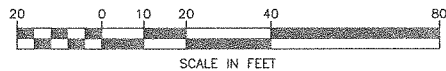
LEGEND	
	PROPERTY LINE
	RIGHT OF WAY OR PARCEL LINE
	TREELINE
	OVERHEAD UTILITY LINE
	UTILITY POLE
	GUY WIRE
	IRON ROD FOUND
	IRON PIPE FOUND
	STONE MONUMENT FOUND
	1' CONTOUR LINE
	5' CONTOUR LINE
	DECIDUOUS TREE
	CONIFEROUS TREE
	DECIDUOUS SHRUB
	CONIFEROUS SHRUB

NOTES:

- 1) MAGNETIC NORTH IS BASED ON REFERENCE #1.
- 2) ALL ELEVATIONS SHOWN HEREON ARE BASED ON LOCALLY ASSUMED DATUM.

REFERENCES:

- 1) A PLAT ENTITLED "PLAT OF LANDS OF GHISLAINE L. LEVEILLEE, 380 COLCHESTER AVENUE, BURLINGTON, VERMONT" PREPARED BY RICHARD W. BELL LAND SURVEYING.



RICHARD W. BELL
LAND SURVEYING, INC.
287 SOUTH MAIN ST.
BARRE, VERMONT 05641
802-478-9262 C 802-793-5037
EMAIL: RBELL@RBELL-LANDSURVEYOR.COM

PROJECT # 14792
PROJECT MANAGER: RWB
DESIGN: TWW
DRAFTER: TWW
CHECKED BY: RWB
DATE: JANUARY, 2014
SCALE: 1"=20'

REVISIONS
RECEIVED
JUN 10 2014
DEPARTMENT OF
PLANNING & ZONING

EXISTING CONDITIONS PLAN
GHISLAINE L. LEVEILLEE
380 COLCHESTER AVENUE
BURLINGTON, VERMONT

C1
DWG. # 5-792
SHEET 1 OF 1

RECEIVED
JUN 10 2014

DEPARTMENT OF
PLANNING & ZONING

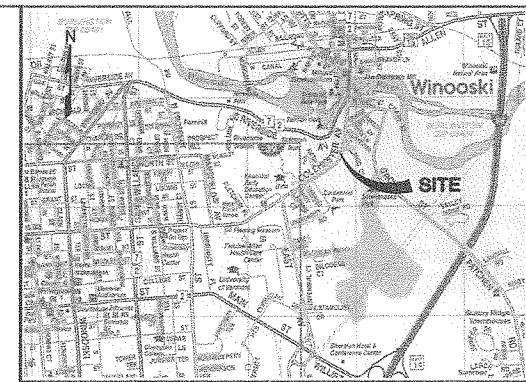
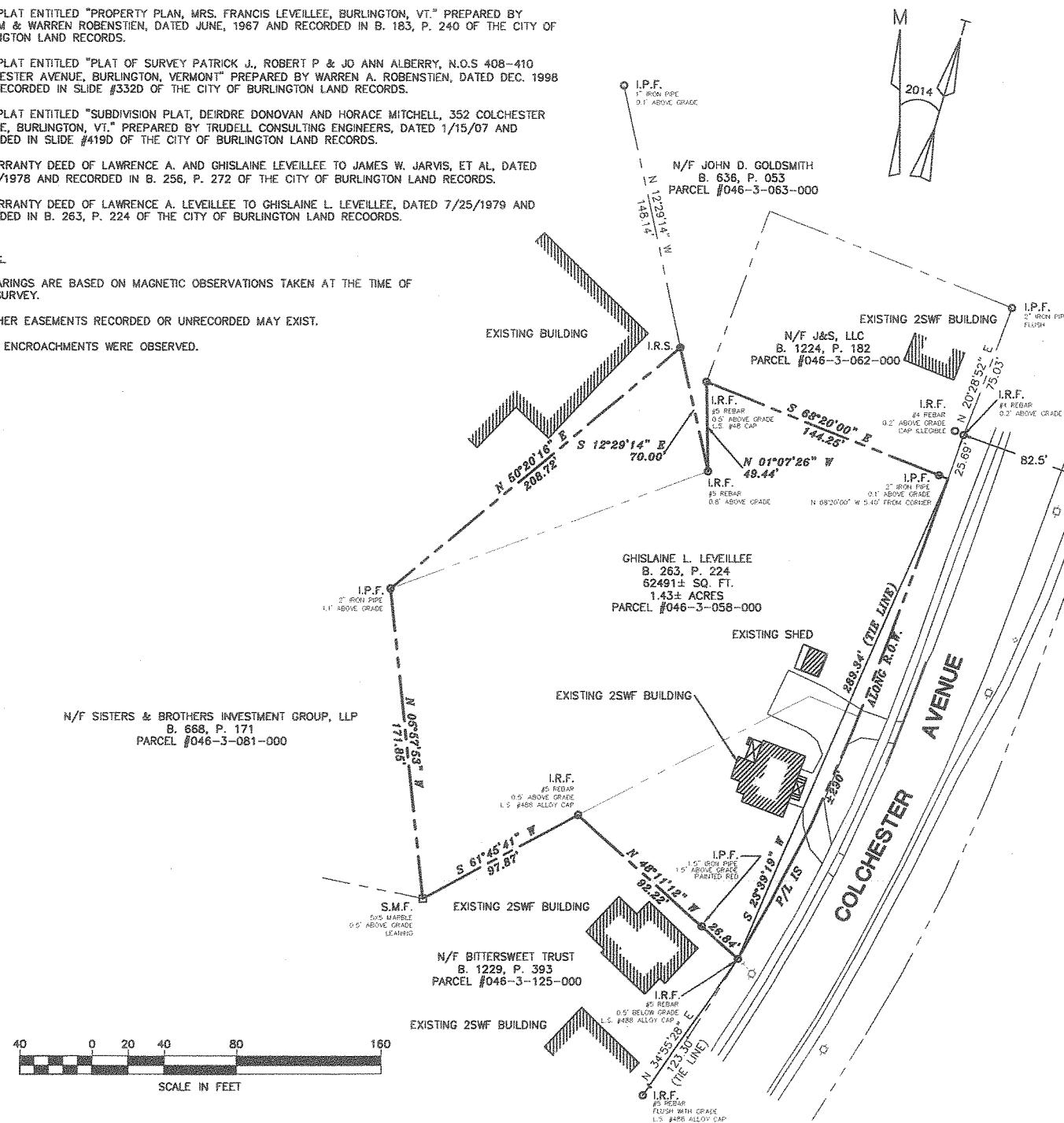
REFERENCES:

- 1) A PLAT ENTITLED "PLAN OF PROPERTY OF CHARLES CURTIS LORD, COLCHESTER AVENUE, BURLINGTON, VERMONT" DATED SEPT. 29, 1947 AND RECORDED IN B. 127, P. 350 OF THE CITY OF BURLINGTON LAND RECORDS.
- 2) A PLAT ENTITLED "PROPERTY PLAN, MRS. FRANCIS LEVEILLE, BURLINGTON, VT." PREPARED BY WILLIAM & WARREN ROBSTEN, DATED JUNE, 1967 AND RECORDED IN B. 183, P. 240 OF THE CITY OF BURLINGTON LAND RECORDS.
- 3) A PLAT ENTITLED "PLAT OF SURVEY PATRICK J., ROBERT P & JO ANN ALBERRY, N.O.S 408-410 COLCHESTER AVENUE, BURLINGTON, VERMONT" PREPARED BY WARREN A. ROBSTEN, DATED DEC. 1998 AND RECORDED IN SLIDE #332D OF THE CITY OF BURLINGTON LAND RECORDS.
- 4) A PLAT ENTITLED "SUBDIVISION PLAT, DEIRDRE DONOVAN AND HORACE MITCHELL, 352 COLCHESTER AVENUE, BURLINGTON, VT." PREPARED BY TRUDELL CONSULTING ENGINEERS, DATED 1/15/07 AND RECORDED IN SLIDE #419D OF THE CITY OF BURLINGTON LAND RECORDS.
- 5) WARRANTY DEED OF LAWRENCE A. AND GHISLAINE LEVEILLE TO JAMES W. JARVIS, ET AL, DATED 10/16/1978 AND RECORDED IN B. 256, P. 272 OF THE CITY OF BURLINGTON LAND RECORDS.
- 6) WARRANTY DEED OF LAWRENCE A. LEVEILLE TO GHISLAINE L. LEVEILLE, DATED 7/25/1979 AND RECORDED IN B. 263, P. 224 OF THE CITY OF BURLINGTON LAND RECORDS.

NOTES:

- 1) BEARINGS ARE BASED ON MAGNETIC OBSERVATIONS TAKEN AT THE TIME OF THIS SURVEY.
- 2) OTHER EASEMENTS RECORDED OR UNRECORDED MAY EXIST.
- 3) NO ENCROACHMENTS WERE OBSERVED.

CERTIFY THAT THIS PLAT IS AN ORIGINAL INK ON MYLAR DRAWING. RICHARD W. BELL L.S.



LOCUS
NOT TO SCALE

LEGEND

---	PROPERTY LINE
---	RIGHT OF WAY OR PARCEL LINE
□	POLE
---	GUY WIRE
○ I.R.F.	IRON ROD FOUND
● I.R.S.	IRON ROD SET
○ I.P.F.	IRON PIPE FOUND
□ S.M.F.	STONE MONUMENT FOUND

CERTIFICATION

I HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON IS A TRUE AND CORRECT REPRESENTATION OF THE PARCEL BOUNDARIES DETERMINED AS NOTED HEREON AND IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITH ELECTRONIC TOTAL STATION SURVEY EQUIPMENT, WITH A POSITIONAL TOLERANCE CONFIDENCE LEVEL ABOVE 95%. I FURTHER CERTIFY THAT THIS PLAT MEETS ALL THE REQUIREMENTS OF TITLE 27 V.S.A. SECTION 1403.

DATED _____

RICHARD W. BELL L.S. #638 VT.

© COPYRIGHT 2014

PROJ. #14792

DATE: JANUARY, 2014

SCALE: 1"=50'

SURVEYED BY: RWB/TWW

CHECKED BY: RWB

PLAT OF LANDS OF
GHISLAINE L. LEVEILLE
380 COLCHESTER AVENUE
BURLINGTON, VERMONT

SHEET 1 OF 1

DWG. # S-792

EMAIL: RBELL@RBELL-LANDSURVEYOR.COM

RICHARD W. BELL
LAND SURVEYING, INC.

297 SOUTH MAIN ST.
BARRE, VERMONT 05641
802-479-8262 C 802-793-5037



Department of Planning and Zoning

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David White, AICP, Director
Ken Lerner, Assistant Director
Sandrine Thibault, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Senior Planner
Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



MEMORANDUM

To: DRB
From: Ken Lerner *[Signature]*
Date: July 15, 2014
RE: 13-1232CA/CU: 31 RIVERMOUNT TERRACE (RL, Ward 7) Gregory A Jenkins

One year review per condition 2 of approval for two bedroom bed and breakfast, one parking space waiver, widen driveway:

2. The Board requires that the applicant report back to them in one year's time to revisit the parking and traffic issues and determine whether the use meets the requirements of the ordinance. The Board reserves the right to revoke or modify the permit at that time, including reconsideration of the parking waiver.

Correspondence from a neighbor received October 25, 2013 states that: "As expected, Greg Jenkins has gone about running his B&B without regard to the conditions of approval by the Planning and Zoning review board. A check of the following AIRBNB web site will show that he is still offering 3 bedrooms for rent and advertises parking on the street front of his house. To my knowledge he has not once had a guest park in his expanded driveway which was part of the agreement and one of the major concerns of neighbors when he asked for the variance and subsequent conditional use. These are both in direct violation of the conditions of approval dated July 22, 2013. He is also advertising and serving dinners which is not allowed for a bed and breakfast."

Based on this statement it would appear that with more vehicles than expected for a two room B&B, without serving diner, and with encouraging on-street guest parking are not in keeping with the approval. It is recommended that, unless the applicant can provide clear and convincing evidence indicating that no more than two rooms are rented and that meals and/or alcohol are not being served, the applicant shall not rent more than two rooms as allowed under the permit. He shall report back to the DRB within six months to again revisit the permit, and if any such conditions relative to any unpermitted uses continue the permit shall be revoked.

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.

Mary O'Neil

From: Gregory Jenkins <imzchef@gmail.com>
Sent: Monday, June 30, 2014 7:48 PM
Cc: Mary O'Neil
Subject: Re: 31 Rivermount Terrace

Hi Mary,

My business plan remains the same, no one just shows up, I do have a full time job and the last thing I want someone to pound on my door after midnight, I am pleased to say this has not happened, I do like to sleep.

Last summer I spoke with Chapin Spenser about what people that arrive on bikes need. Solution is simple, code for my garage door and space to park their bikes. Pleased to say I have hosted several bike tour groups. About 1/3 of my guest have arrived via a cab. When I get a reservation request I ask about how you will be arriving, I record this so that that if I get another request I can plan parking. That fact is I get 2 cars the weekend, sometimes one during the weekday, this is both profitable and far less than the cars I would get. I was just a 4 bedroom residential private home. I look forward to answering any questions the board may have of me. I am also going to forward an email from a FPF, please redact her email for the public.

Best,
Greg Jenkins
355-4562

On Wed, Jun 25, 2014 at 3:36 PM, Nic Anderson <nanderson@burlingtonvt.gov> wrote:

Hi Greg,

We have scheduled you for the **July 15th DRB**. You will get an agenda in the mail. In the mean time, we would like some detail in writing that addresses the condition:

- 1. The Board requires that the applicant report back to them in one year's time to revisit the parking and traffic issues and determine whether the use meets the requirements of the ordinance.** The Board reserves the right to revoke or modify the permit at that time, including reconsideration of the parking waiver.

Looking at the specific wording of the condition, it would be good to get a written narrative on the last 12 months and if/how any traffic or parking issues have arose or been resolved and comment on the use and how it has operated, which would be helpful for the board. Please email directly to Mary O'Neil...cc'd on this email.

Your attendance at the hearing would also be good for any questions the board may have.

Ken Lerner

From: Jeanne Francis
Sent: Tuesday, October 29, 2013 4:11 PM
To: Ken Lerner
Subject: FW: 31 Rivermount

Can you take a look at airbnb.com site. He advertises he has 3 bedrooms but not that they are all available at once. is approved for only 2 rooms. What do you think - violation or unsubstantiated?

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

From: Peter B [mailto:vtgrinch@gmail.com]
Sent: Friday, October 25, 2013 3:27 PM
To: Jeanne Francis
Subject: Re: 31 Rivermount

Re. 31 Rivermount Terrace

10-25-13

Hi Jean,

I just stopped down to your office to introduce myself, sorry I missed you.

As expected, Greg Jenkins has gone about running his B&B without regard to the conditions of approval by the Planning and Zoning review board. A check of the following AIRBNB web site will show that he is still offering 3 bedrooms for rent and advertises parking on the street in front of his house. To my knowledge he has not once had a guest park in his expanded driveway which was part of the agreement and one of the major concerns of neighbors when he asked for a variance and subsequent conditional use. These are both in direct violation of the conditions of approval dated July 2, 2013. He is also advertising and serving dinners which is not allowed for a bed and breakfast.

<https://www.airbnb.com/rooms/1011802>

Sincerely,

-----Peter Bahrenburg
54 Rivermount Terrace

> On Sep 4, 2013, at 4:25 PM, Jeanne Francis <JFrancis@burlingtonvt.gov> wrote:

>

> I did take a look, need to make a decision. Appeal date for zoning approval is Sept. 6. Will wait until then, then contact owner, and request he obtain a certificate of occupancy. That way we can look at all the conditions and approvals relating to this project.

>

> -----Original Message-----

> From: Gmail [mailto:vtgrinch@gmail.com]

> Sent: Tuesday, August 20, 2013 6:31 PM

> To: Jeanne Francis

> Subject: 31 Rivermount

>

> Hi Jean,

> Has anyone from your office had a chance to look at this driveway expansion to determine if it is a legal project?

>

Mary O'Neil

From: Gregory Jenkins <imzchef@gmail.com>
Sent: Monday, June 30, 2014 7:56 PM
To: Mary O'Neil
Subject: Fwd: Speeding

----- Forwarded message -----

From: Gregory Jenkins <imzchef@gmail.com>
Date: Tue, Jun 17, 2014 at 7:54 PM
Subject: Re: Speeding
To: Kelley Christie <kelleymchristie@gmail.com>

You were just fine Kelley and I thank you for posting, we all want to just feel safe.

On Tue, Jun 17, 2014 at 7:51 PM, Kelley Christie <kelleymchristie@gmail.com> wrote:

I completely agree. It's a windy street! Anyway. I hope my post wasn't mean or hateful but just pleading for speeding. I was trying to be diplomatic. I just want less speeding not just for my sake but for every pedestrian and every bicyclist and every wild animal. Right? :-)

On Tuesday, June 17, 2014, Gregory Jenkins <imzchef@gmail.com> wrote:
YEA! Our street should be 15mph.

On Tue, Jun 17, 2014 at 7:41 PM, Kelley Christie <kelleymchristie@gmail.com> wrote:

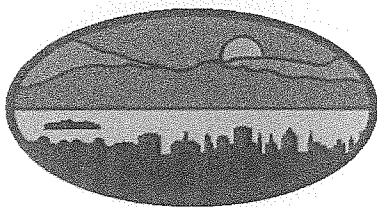
No not one of your guest at all. I think this car is a regular of a neighbor but I'm not sure. No you and your guests have never been disrespectful drivers. Thanks Greg. I'm glad you don't think my expectations are ridiculous. I've already received an email that said I should never expect people to drive the speed limit. Oh well.

On Tuesday, June 17, 2014, Gregory Jenkins <imzchef@gmail.com> wrote:

Hi Kelly,

I hope it was not one of my guests. I stress and it is part of the appeal, that this is a nice quiet place to sleep

Greg the wind up car guy...



ZONING PERMIT
CERTIFICATE OF APPROPRIATENESS

City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 06/10/2013

Appeal Expiration Date: 09/06/2013

Project Location: 31 RIVERMOUNT TERRACE

District: RL

Owner: Gregory A Jenkins

Ward: 7

Address: 31 RIVERMOUNT TER
BURLINGTON VT 05408

Tax ID: 029-4-056-000

Project Type: Residential - Change of Use

Project Description: Reapplication for two bedroom bed and breakfast, one parking space waiver requested, widen driveway.

Construction Cost:	\$500	Lot Size (Sq Ft):	12,973
Net New Habitable Sq Ft:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	12.60	Existing # of Parking Spaces:	2
Proposed % Lot Coverage:	14.56	Proposed # of Parking Spaces:	3
Net New % Lot Coverage:	1.96	Required # of Parking Spaces:	4

Zoning Permit #: 13-1232CA/CU

Decision By: Development Review Board

Level of Review: 1

Decision: Approved w/ Pre-Release Conditions

See Requirements for Permit Release

Decision Date: August 7, 2013

Project File: 13-1232CA/CU

Zoning Administrative Officer

Combined Review: Conditional Use

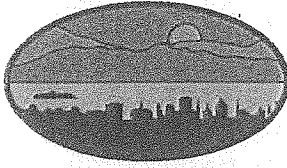
An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division until 4 pm on September 6, 2013.

Fee Type	Amount	Paid in Full	Balance Due: \$0.00
Application Fee:	\$230.00	Yes	Date Paid: _____
Development Review Fee:	\$0.00	NA	Check # _____
Impact Fee:	Not Applicable		

Building Permit Required: **Yes**

Permit Received by: _____

Date: _____



City of
Burlington, Vermont
149 Church Street

Zoning Permit - COA and Conditional Use – Conditions of Approval

ZP #: 13-1232CA/CU

Tax ID: 029-4-056-000

Issue Date: August 7, 2013

Decision: Approved w/ Pre-Release Conditions

Property Address: 31 RIVERMOUNT TERRACE

Description: Reapplication for two bedroom bed and breakfast, one parking space waiver requested, widen driveway.

Project Permit Conditions:

1. This approval is for a TWO bedroom Bed and Breakfast use. The applicant will allow Code Enforcement to periodically confirm that the use is limited to the two bedroom rental limitation. This may include review of web-based advertising, posted guest comments, or response to neighborhood complaints.
2. **The Board requires that the applicant report back to them in one year's time to revisit the parking and traffic issues and determine whether the use meets the requirements of the ordinance.** The Board reserves the right to revoke or modify the permit at that time, including reconsideration of the parking waiver.
3. The Bed and Breakfast must be and remain owner occupied.
4. This approval will include a one-space parking waiver, to be exercised toward the resident/owner's parking requirement only, subject to reconsideration pursuant to Condition 2 above.
5. The driveway shall not exceed 18' in width, and shall meet all required setback requirements (not less than 5' from any property boundary.)
6. The applicant will be required to annotate a floor plan defining which rooms will be dedicated to the two-bedroom Bed and Breakfast use **prior to release of the zoning permit.**
7. It is recommended that guests' arrival and departures be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
8. All guest parking shall be on-site and off-street.
9. No sign of the Bed and Breakfast use, other than a (separately permitted) sign, shall be visible on the exterior of the residence.
10. Any signage will require a separate sign permit.
11. While the Development Review Board never entertains individual property covenant restrictions, it is noted that the warranty deed(s) for this parcel specifically identify restrictions that prohibit certain activities and limit uses. (Burlington Land Records, 1158:721, 156:175; waiver of restrictions (limited) 258:22.) The property owner is alerted to these restrictions, dated May 7, 1959 and recorded specifically in 156:175.
12. Standard Permit Conditions 1-15.
13. This approval is conditioned on the applicant's abandonment of the previous home occupation.

Standard Permit Conditions:

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 one 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.

Burlington Development Review Board
149 Church Street
Burlington, VT 05401
www.burlingtonvt.gov/PZ
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

Austin Hart, Chair
Jim Drummond
Michael Long
Brad Rabinowitz
Missa Aloisi
Jonathan Stevens
Bob Schwartz
Alexandra Zipparo, (alternate)
Vacant, (alternate)



Burlington Development Review Board
Findings of Fact
Deliberative Hearing Monday, July 22, 2013

Board Members Present: Austin Hart, Michael Long, Brad Rabinowitz, Missa Aloisi (not participating), Jim Drummond, Ali Zipparo.

Staff members present: Ken Lerner, Mary O'Neil.

File: ZP 13-0830CA/CU

Location: 31 Rivermount Terrace

Zone: RL **Ward:** 7

Date application accepted: June 10, 2013

Applicant/ Owner: Greg Jenkins

Request: The applicant has revised a previous zoning application to minimize the number of rooms for let at a proposed Bed and Breakfast. The application is now for Conditional use approval for **two** bedroom bed and breakfast. Widen driveway to accommodate one additional parking space. Parking waiver request for one space.



Background:

- **Zoning Permit request 13-0830CA/CU**, request for a three bedroom bed and breakfast; widen driveway to accommodate a single parking space, request to lease one parking space off site. Request denied April 23, 2013. Decision not appealed.
- **Zoning Permit 06-673BA**; replace brick stairs with wooden stairs, same size. Approved April 2006.
- **Zoning Permit 02-103**; replace wooden deck with patio. Approved August 2001.
- **Zoning Permit 01-405**; home occupation (mobile home loan broker) in the existing single family home. No exterior changes or signs included. Approved May 2001.
- **Non-Applicability of Zoning Permit Requirements**: repair of front brick steps. June 1989.

Overview: The applicant wishes to convert 2 of his four bedrooms to bed and breakfast use. A third bedroom is proposed to be converted to an exercise/hot tub room, a single bedroom will serve the owner/occupant. There exists a single width driveway at present; proposed to be expanded to accommodate additional parking to provide 3 parking spaces on-site. A single space parking waiver is requested.

Findings of Fact

Evidence Presented:

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

I. Minutes

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

II. Motion by Austin Hart:

I move that the Board **approve** the application, and adopt the following findings and conditions:

III. Findings

Article 3: Applications, Permits and Project Reviews

Part 5: Conditional Use and Major Impact Review

Sec. 3.5.6 (a) Conditional Use Review Standards

1. Capacity of existing or planned community facilities.

The change of use to a bed and breakfast appears to pose no identified impact to the capacity of existing or planned community facilities. **Affirmative finding.**

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.

This is an existing, developed residential neighborhood. The conversion of two bedrooms in a low density residential neighborhood to rental lodging may have some impact on traffic and circulation, but not noticeably greater than a family with multiple drivers. If most cars are located on-site and only 2 bedrooms are intended for rental, the anticipated impact would be negligible.

Affirmative finding.

3. Traffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to complementing the flow of traffic and/or parking needs; if not in a commercial district, the impact of customer traffic and deliveries must be evaluated;

The proposed rental of two bedrooms has the potential of introducing at least two more vehicles to the parking demand, which already has a requirement for 2 parking spaces for the existing single family residential use. The change of use will likely increase traffic and circulation from the present residential demand of this parcel, however not to noticeable so as to affect the overall neighborhood. **Affirmative finding.**

4. Any standards or factors set forth in existing City bylaws and city and state ordinances;

The application and resultant change in use will be required to meet all bylaws and city and state ordinances in effect at the time of decision. **Affirmative finding as conditioned.**

5. The utilization of renewable energy resources;

See Section 6.2.2 (e), below.

and,

In addition to the General Standards specified above, the DRB;

6. *shall consider the cumulative impact of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible;*

A Bed and Breakfast is a special category residential use. The revised application, which diminishes the number of rooms proposed to be let, and the elimination of a request for an off-site parking lease minimizes the intensity and associated impact of the new use. It is possible to consider a conditioned Bed and Breakfast use within the low density residential district with such limitations to address impacts of traffic, circulation, parking, and intensity of activity. **Affirmative finding.**

7. *in considering a request relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, RL-W, RM and RM-W districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green space standards must be observed.*

The change-of-use proposed is for a special residential use, and has different review criteria than identified within this standard.

8. *may control the location and number of vehicular access points to the property, including the erection of parking barriers.*

No change to existing. Not applicable.

9. *may limit the number, location and size of signs.*

Any signage will require a separate permit, and will be limited by the standards for this zoning district. Not applicable.

10. *may require suitable mitigation measures, including landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

The applicant includes the proposal to expand the existing driveway to accommodate another parking space. Any headlight glare will likely affect only the subject property. **Affirmative finding as conditioned.**

11. *may specify a time limit for construction, alteration or enlargement of a structure to house a conditional use.*

Construction is typically limited by the zoning permit; i.e., one year to begin construction, two years to finish. **Affirmative finding as conditioned.**

12. *may specify hours of operation and/or construction to reduce the impact on surrounding properties.*

The applicant proposes being open 24 hours a day 7 days a week. If approved, arrivals are recommended to commence after 7:00 am and cease after 10:00 pm to preserve characteristic neighborhood quiet. Any limitations are at the discretion of the board. **Affirmative finding if conditioned.**

13. *may require that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.*

Footnote #4 in Appendix A informs that not more than 3 rooms may be let for that purpose in the RL district. Previous permit review has illustrated that parking limitations have functionally limited consideration of additional room rental. Future regulations may allow for different circumstances.

Affirmative finding if conditioned.

14. may consider performance standards, should the proposed use merit such review.

The applicant has requested a one-space parking waiver toward the parking requirement for the proposed 2 bedroom Bed and Breakfast. The applicant is a single individual property owner with a single vehicle, who will occupy one bedroom. With this information, it is possible to consider a one-space parking waiver for the resident parking requirement. The other two required parking spaces for guest use will be located on-site. The Board is requesting that the applicant return in one year to present and address any neighborhood concerns. **Affirmative finding as conditioned.**

15. may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

As noted, the DRB may request the applicant/owner to return after a period of time to assess neighborhood impacts, if appropriate. **Affirmative finding if conditioned.**

Article 4: Zoning Maps and Districts

Table 4.4.5-3 Residential District Dimensional Standards

Zone	Max lot coverage	Minimum Building Setbacks			Height
RL	35%	Front Min/Max: Ave. of 2 adjacent lots on both sides +/- 5'	Side Min: 10% of lot width, but in no event less than 5'	Rear 25% of lot depth but in no event less than 20'.	Max 35'
31 Rivermount Terrace	12.6% existing; 14.56% proposed	Not applicable	Not applicable	Not applicable	Not applicable.

Affirmative finding.

Sec. 4.4.5 (c) Permitted and Conditional Uses

A Bed and Breakfast is a Conditional Use in the RL zoning district.

Appendix A – Use Table has 2 footnotes for Bed and Breakfast Use:

#4 :no more than 3 rooms permitted to be let in the RL district.

The application proposes 2 bedrooms.

#6: Must be owner occupied.

The applicant lives at the subject property.

The property has previous been approved for a home occupation:

Zoning Permit 01-405; home occupation (mobile home loan broker) in the existing single family home.

The applicant agreed in a March 27, 2013 email that the home occupation will be abandoned for this request.

Findings of Fact

Affirmative finding.

Article 5: Citywide General Regulations

Sec. 5.1.1 Uses

(d) Conditional Uses

A conditional use is listed in any district where denoted by the letters "CU" in Appendix A – Use Table. Such uses may be permitted by the DRB only after review under the conditional use provisions provided in Article 3, Part 5, such further restrictions as the DRB may establish and such additional requirements as may be established by this ordinance such as but not limited to dimensional and intensity imitations, performance and design standards, and parking requirements.

A Bed and Breakfast is a Conditional Use in Appendix A, Use Table, for the RL District. The project meets the two footnote requirements; see Sec. 4.4.5(c), above. The subject parcel, however, does not at present meet the parking requirements for the proposed use. A driveway expansion is proposed to offer a third on-site parking space. The DRB previously approved a driveway expansion that had been administratively denied as constituting front yard parking (Zoning Permit 09-778CA/AP, 1323 North Avenue. See Article 8, Sec. 8.1.12, (c)). Given the limitation that the driveway cannot be wider than 18' and the cited decision precedent, the driveway expansion as proposed may be considered. **Affirmative finding as conditioned.**

Part 2: Dimensional Requirements

See Section 4.4.5, Table 4.4.5-3, above. **Affirmative finding.**

Sec. 5.2.3. Lot Coverage Requirements

See Section 4.4.5, Table 4.4.5-3, above. **Affirmative finding.**

Sec. 5.2.4. Buildable Area Calculation

For any properties two or more acres in size within any RCO, WRM, RM, WRL, or RL zoning district...
31 Rivermount Terrace is not more than two acres in size. This standard does not apply.

Sec. 5.2.5. Setbacks

See Section 4.4.5, Table 4.4.5-3, above. **Affirmative finding.**

Sec. 5.2.6, Building Height Limits.

See Section 4.4.5, Table 4.4.5-3, above.

Affirmative finding.

Sec. 5.2.7, Density and Intensity of Development Calculations

The application is for a change-of-use to a specialty residential use. It is viewed the same as a single dwelling unit for intensity purposes.

Affirmative finding.

Part 4: Special Use Regulations

Not applicable.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Findings of Fact

Not applicable.

Part 2: Site Plan Design Standards

(b) Topographical Alterations

The applicant proposes cutting into an existing elevated grade and stone retaining wall to widen a driveway and create a new parking space for the proposed Bed and Breakfast. Alteration to the natural contour of the site should minimize grading, cut, fill and needs to take necessary measures to protect against erosion and future instability. The applicant proposes to remove the wall, and grade to low slope. Groundcover is submitted as a method of stabilization. No construction details or specifics have been submitted. Any retaining wall over 3' will require approval of the building inspector. **Affirmative finding as conditioned.**

(l) Parking and Circulation

The application, as proposed, will require 2 parking spaces for the resident use and 2 for the Bed and Breakfast. The applicant has requested to expand the driveway to provide one required space. A request for a one-space parking waiver is included, and intended to address the second parking space requirement for the owner.

As proposed, with two spaces provided on-site for guests, and a single space within the garage for the owner, it is not unreasonable to consider a single parking space waiver for the owner's parking requirement. **Affirmative finding if one-space parking waiver extended.**

Part 3: Architectural Design Standards

Not applicable.

Article 7: Signs

Any signage will require a separate sign permit. Any signage will be required to meet the standards of this article and specific standards of the zoning district.

Not applicable.

Article 8: Parking

Sec. 8.1.1 Purpose

It is the purpose of this article to:

- (a) Ensure there are adequate parking and loading facilities to serve the use or uses of the property;*
- (b) Ensure that parking facilities are designed to provide proper circulation, reduce hazards to pedestrians, and protect the users of adjoining properties from nuisance caused by the noise, fumes, and glare of headlights which may result from the operation of vehicles parking off the street;*
- (c) Reduce congestion in the streets and contribute to traffic safety; and*
- (d) Encourage alternate modes of travel that will reduce dependence upon the single-occupancy automobile.*

Table 8.1.8-1 Minimum Off-Street Parking Requirements

Single family residential use (Neighborhood Parking District) requires 2 parking spaces.

Bed and Breakfast (per room, in addition to single-family residence) 1 per room; 2 required.

Total parking requirement: 4 parking spaces. 2 are provided on-site (one in the garage, one in the single lane driveway.) The applicant proposes expanding his driveway to the full 18' in width to provide an

Findings of Fact

additional parking space for a total of 3. There remains a deficiency of 1 parking space. The applicant has requested a one space waiver to be used toward the owner's requirement. This precedent has been acceptable in previous review: See 204 South Willard Street, ZP 1209942CU.

Affirmative finding, if parking waiver granted.

Sec. 8.1.12 Limitations, Location, Use of Facilities

(a) Off-site parking facilities

1. *Neighborhood parking district. No more than 50% of the total required parking shall be provided at a distance greater than 600 feet from the use it is intended to serve. For residential uses, a minimum of 1 space per unit shall be provided on-site.*

The application is asking for a one space waiver for the owner's parking requirement. Three spaces will be provided on site: one for the owner/resident use, the other two to accommodate the 2 bedroom B & B. As proposed, more than 50% of the requirement parking spaces will be provided on-site. No off-site spaces are proposed.

Affirmative finding.

Sec. 8.1.12 (c) Front yard parking restricted

Required parking in all residential zoning districts shall not be located in a required front yard setback area abutting a public street, except alleys. This prohibition extends from the edge of the public right-of-way into the required front yard setback for the entire width of the property with the exception of a single access drive no more than eighteen feet or less in width.

The proposed driveway expansion is limited to 18' per this section. As noted, previous review by the DRB has allowed for expansion of a parking area to accommodate further parking (See ZP 09-778CA/AF 1323 North Avenue.)

Per this precedent, the proposed driveway expansion does not constitute Front Yard Parking.

Affirmative finding.

Table 8.2.5-1 Bicycle Parking Requirements

Temporary lodging, include bed and breakfast: 1 per 20 rooms long term spaces, 2 per 20 rooms short term. The application, with 3 guest rooms, does not rise to the level to require bicycle parking. Given the interest in providing accommodations to cycling guests, bicycling parking is recommended outside of the reserved vehicular parking spaces.

Not applicable.

Article 13: Definitions

Bed and Breakfast: *An owner-occupied residence, or portion thereof, in which short-term lodging rooms are rented and where only a morning meal is provided on-premises to guests.*

Affirmative finding as conditioned.

IV. Conditions of Approval

1. This approval is for a TWO bedroom Bed and Breakfast use. The applicant will allow Code Enforcement to periodically confirm that the use is limited to the two bedroom rental limitation. This may include review of web-based advertising, posted guest comments, or response to neighborhood complaints.
2. **The Board requires that the applicant report back to them in one year's time to revisit the parking and traffic issues and determine whether the use meets the requirements of the**

Findings of Fact

ordinance. The Board reserves the right to revoke or modify the permit at that time, including reconsideration of the parking waiver.

3. The Bed and Breakfast must be and remain owner occupied.
4. This approval will include a one-space parking waiver, to be exercised toward the resident/owner's parking requirement only, subject to reconsideration pursuant to Condition 2 above.
5. The driveway shall not exceed 18' in width, and shall meet all required setback requirements (not less than 5' from any property boundary.)
6. The applicant will be required to annotate a floor plan defining which rooms will be dedicated to the two-bedroom Bed and Breakfast use **prior to release of the zoning permit.**
7. It is recommended that guests' arrival and departures be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
8. All guest parking shall be on-site and off-street.
9. No sign of the Bed and Breakfast use, other than a (separately permitted) sign, shall be visible on the exterior of the residence.
10. Any signage will require a separate sign permit.
11. While the Development Review Board never entertains individual property covenant restrictions, it is noted that the warranty deed(s) for this parcel specifically identify restrictions that prohibit certain activities and limit uses. (Burlington Land Records, 1158:721, 156:175; waiver of restrictions (limited) 258:22.) The property owner is alerted to these restrictions, dated May 7, 1959 and recorded specifically in 156:175.
12. Standard Permit Conditions 1-15.
13. This approval is conditioned on the applicant's abandonment of the previous home occupation.

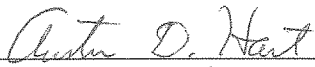
Second: Brad Rabinowitz

Vote: 5-0 (M. Aloisi not participating.)

Vote: motion carried

Dated at Burlington, Vermont, this 7th day of August, 2013.

Respectfully Submitted,


Austin Hart, Development Review Board Chair

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

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

Department of Planning and Zoning

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

David White, AICP, Director
Ken Lerner, Assistant Director
Sandrine Thibault, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Associate Planner
Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin *SG*
DATE: July 15, 2014
RE: 14-1254CU; 934 North Avenue

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

Zone: RL Ward: 7

Owner/Representative: 934 North Avenue, LLC / Michele Ready Ambrosino

Request: Convert mixed residential / funeral home to mixed residential / general office

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Maps & Districts), Article 8 (Parking)

Background Information:

The applicant is requesting conditional use approval to convert the existing funeral home use to general office use. The existing 3 apartments would remain unchanged. No site or exterior building changes are proposed. The fundamental flaw in this proposal is that general office is not a permitted or conditional use in this residential low density zone.

Previous zoning actions for this property are noted below.

- 10/28/11, Approval to replace windows
- 4/16/11, Approval to replace asphalt roofing with rubber membrane
- 6/9/01, Approval to enlarge the basement window of an existing residential unit
- 10/12/78, Approval to replace wooden trim, re-roof porch, and install vinyl siding

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

1. The capacity of existing or planned community facilities;

The conversion of the funeral home to general office will have little, if any, net increase in demand on community facilities. The change in use may require a state wastewater permit. **(Affirmative finding)**

2. The character of the area affected;

The property is located within the Residential Low Density zone. This zone is intended primarily for single family homes and duplexes. Only a handful of other nonresidential uses are allowed as

permitted or conditional uses in this zone. The funeral home is an allowable conditional use in this zone, so long as it is located along a major street such as North Avenue. The proposed office use is not a permitted or conditional and is inconsistent with the intent of this zoning district.

(Adverse finding)

3. Traffic on roads and highways in the vicinity;

No traffic information has been provided. Traffic patterns will likely change from large funeral events at varying days and times to a more consistent AM and PM peak hour trip generation. No information relative to anticipated numbers of employees has been provided. As a result, no accurate estimate of traffic generation can be made. **(No finding possible)**

4. Bylaws then in effect;

As proposed, the applicant is not compliant with applicable bylaws. **(Adverse finding)**

5. Utilization of renewable energy resources;

Not applicable.

6. Cumulative impacts of the proposed use;

Accepting the interpretation offered by the applicant, as per *Sec. 4.4.5, (a) (1)* below, would allow the establishment of any use whatsoever anywhere in the RL zone as long as it is in a mixed use building with attached dwelling units. This clearly is not the intent of the CDO to allow non-permitted uses just because it is in a mixed use building. **(Adverse finding)**

7. Functional family;

Not applicable.

8. Vehicular access points;

No changes to site access are proposed or would be necessary for the proposed change in use.

(Affirmative finding)

9. Signs;

Not applicable.

10. Mitigation measures;

The proposed general office use would not generate noise, odors, or glare requiring mitigation.

(Affirmative finding)

11. Time limits for construction;

Not applicable.

12. Hours of operation and construction;

The proposed general office use would operate 8:00 AM – 5:00 PM, Monday – Friday. These hours are more consistent and limited than those of the existing funeral home use. No new exterior construction is proposed. **(Affirmative finding)**

13. Future enlargement or alterations;

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

14. Performance standards;
Not applicable.

15. Conditions and safeguards;
No conditions are offered as the proposal is not a permitted or conditional use.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The subject property is located in the RL zone, which is intended primarily for single family homes and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history. The existing funeral home is a conditional use. While no site or exterior building changes are proposed, the general office use is not permitted or conditional and is inconsistent with the express intent of the RL zone. **(Adverse finding)**

(b) Dimensional Standards & Density

Not applicable.

(c) Permitted & Conditional Uses

The existing funeral home is a conditional use. The proposed general office use is not permitted or conditional and cannot be approved. The applicant has asserted that the proposal is acceptable under *Appendix A – Use Table – All Zoning Districts* which notes “attached dwellings – mixed use” as a conditional use in the RL zone. This provision is indeed made in the use table, but it does not somehow open the door wide to any and all mix of uses. It does not provide the ability add any unpermitted use, but only that uses allowed can be mixed with dwelling units. What the provision does is to allow exactly what is on the property now – a mix of an allowable nonresidential use (the funeral home) with attached dwellings (in this case, 3 apartments). To construe the “mixed use” provision to allow any mix of uses quickly leads to absurd results. **(Adverse finding)**

(d) District Specific Regulations

1. Setbacks

A. Encroachment for Residential Driveways

Not applicable.

B. Encroachment into the Waterfront Setback

Not applicable.

2. Height

A. Exceptions in the Waterfront RM District

Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features

Not applicable.

4. Accessory Residential Structures and Uses

Not applicable.

5. Residential Density

Not applicable.

6. Uses

Not applicable.

7. Residential Development Bonuses

Not applicable.

Article 8: Parking

The 2,000 sf funeral home space to be converted to general office space would require 4 parking spaces (2 per 1,000 sf). These spaces are required on top of the 6 spaces required for the existing 3 residential units (2 per dwelling unit). The existing parking area contains room for some 30 parking spaces. **(Affirmative finding)**

II. Reasons for Denial

Denial of the application is warranted per the adverse findings above.



Department of Planning and Zoning

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DEPARTMENT OF
PLANNING & ZONING

Zoning Permit Application

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

PROJECT LOCATION ADDRESS: 934 North Avenue

PROPERTY

OWNER*: 934 North Avenue LLC

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

POSTAL ADDRESS: 261 Shelburne Road

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE: 802/862-0991

EMAIL: mambrosino@readyfuneral.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: Michele Ready Ambrosino

POSTAL ADDRESS: 261 Shelburne Road

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE: 802/598-7047

EMAIL: mambrosino@readyfuneral.com

SIGNATURE: [Signature]

Description of Proposed Project: Conditional Use permit for Attached Dwelling/Mixed Use from funeral home to general office, hours of operation will

run from 24/7 365 days a year to 8-5 Monday-Friday. Current office square footage is @ 2000 sq ft and will remain the same. Traffic will diminish significantly as funerals and visiting hours c

hundreds of people over a short time period. There is parking currently for over 30-40 cars and this easily supports the change from Funeral Home to General Office

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

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

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

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

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

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

Estimated Construction Cost (value)*: \$ 0

(*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 Planning and Zoning at 802-865-7188 or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Zone: RL Eligible for Design Review? Y Age of House 1966 Lot Size 279

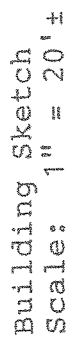
Type: SN ☐ AW ☐ FC ☐ BA ☐ COA 1 ☐ COA 2 ☐ COA 3 ☐ CU ☐ MA ☐ VR ☐ HO ☐ SP ☐ DT ☐ MF ☐

Check No. 29052

Amount Paid 150

Zoning Permit # 14-125764

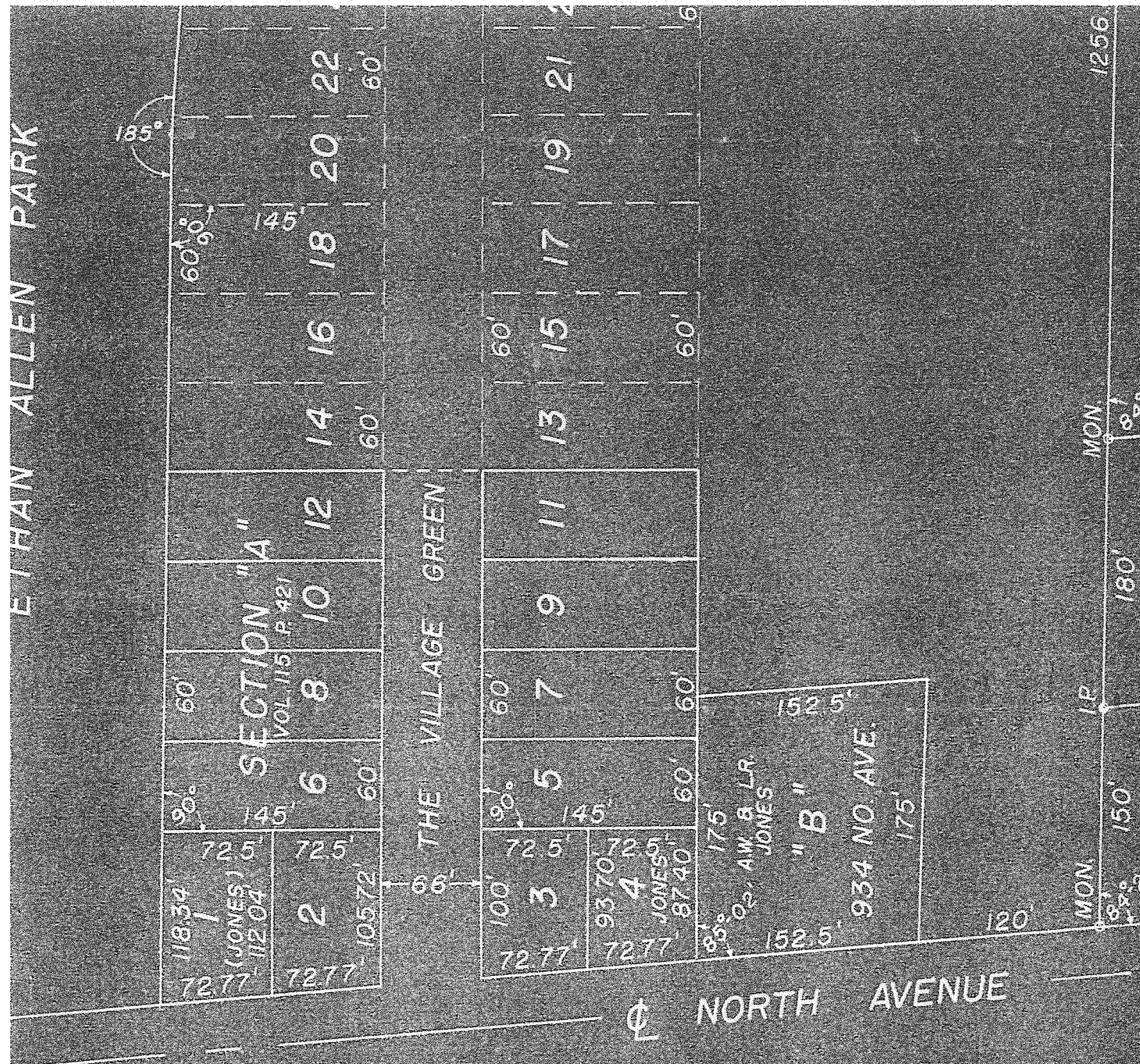
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934 North Avenue



50 25 0 50 Feet



Department of Planning and Zoning

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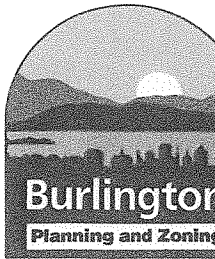
Jay Appleton, GIS Manager

Scott Gustin, AICP, Senior Planner

Mary O'Neil, AICP, Senior Planner

Nic Anderson, Zoning Clerk

Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Ken Lerner 
DATE: July 15, 2014
RE: 14-1172NA; 12 Weston Street

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

Zone: RL Ward: 1 Parcel ID # 045-1-240-000

Owner: Charles and Cynthia Burns

Appellant: Michael Long et al

Request: Appeal of administrative determination, #14-1172NA, regarding zoning permit non-applicability of internal reconfiguration of existing units. No change to unit count, number of rooms or habitable space.

Recommendation: Uphold the issuance of Determination of Non-Applicability 14-1172NA based on the following findings:

Findings

A. Background and Appeal

- April 8, 2014 - Zoning Complaint #269421 filed with Code Enforcement Office alleging "reconfiguration interior of home to expand living space to create 2 apartments without Zoning Approval".
 - 1. May 15, 2014 - Determination of the Code Enforcement Office was issued that this is not a zoning violation. This determination was not appealed and was based on the following:
 - Sworn affidavit from the owner indicates this property has been used as a duplex from 1969 forward. Based on this statement and supported by other evidence submitted by the owner, from city records, and lack of evidence to the contrary, the use of the property is a duplex since at least 1969.

- 1969 pre-dates the adoption of the Zoning Code of April 26, 1973. As all zoning permits issued prior to that date, (except for permits associated with Zoning Board of Adjustment actions), appear to have been removed from the zoning records of the Planning & Zoning Department and to the Department's knowledge are no longer available, any uses that may have been subject to obtaining permits prior to April 26, 1973 which can be documented to have existed prior to that date, may continue to remain as a pre-existing non-conforming use so long as there is no City record to the contrary.
 - Property owner additionally refuted complaint and submitted supporting documentation that occupancy of two units at 12 Weston Street has existed continuously since 1969. Supporting documentation included, but not limited to, the following:
 - Report of Burlington Public Works regarding permits issued on the property.
 - Affidavit of Monika Busse, tenant at the third floor apartment.
 - Affidavit of Elizabeth L. Gadue, property owner.
- June 3, 2014 Non-applicability determination 14-1172NA issued for: *Internal reconfiguration of existing units. No change to unit count, number of rooms or habitable space.* This determination was based on the work being internal with no increase in living space, rooms or additional units.
 - June 16, 2014 Appeal filed; see attached appeal letter dated June 14, 2014. Appellants contend that the reconfiguration disregards parking and density (minimum lot size for a duplex). Their position also is that the premises have been an owner occupied single family house with an accessory apartment. Their view is that this occupancy distinctly is different than duplex use. Thus, in their view, the proposed interior reconfiguration changes the use from an owner-occupied residence with an accessory apartment into duplex. The duplex would now contain two large residential units that no longer constitute an accessory apartment under current codes.

B. Response

- The documented use of the premises since at least 1969 has been for two residential units.
- Under the zoning regulations in affect at that time this property was zoned "Residential – Zone 1" (see attached *Title 27, Zoning and Planning, Chapter 1 Municipal Zoning, Section 6509*)
- The allowed uses in this district include "*single family dwellings*", "*two family dwellings*", "*apartment houses of three or more family units, hotels, tourist cabins and motels*", "*rooming and tourist homes*" as well as some non-residential uses.
- Accessory apartments are not listed as a use, nor are they defined in the zoning code. Thus, based on the provisions of the effective ordinance, a residence with an accessory apartment would not have existed at that time. Therefore, with sworn statements of the owner and renter the only conceivable use that existed in 1969 at this property is a "two family dwelling".
- Under current CDO regulations regarding zoning permit requirements, specific interior work that requires permits are listed as follows:

Sec. 3.1.2 Zoning Permit Required, (b) Interior work:

1. *Increase in habitable living space (including, but not limited to, attic, bedroom, basement, garage, and winterizing or otherwise enclosing a porch).*
2. *Installation of additional kitchen.*
3. *Change in use.*
4. *Home occupations.*
5. *Increase or decrease in the number of units.*

In the requested interior work under the subject determination there is no increase in habitable living space, no additional kitchen, no change in use, no associated home occupation, and the number of units does not increase or decrease. Thus, under current zoning regulations such internal reconfiguration can occur without requiring a zoning permit.



Department of Planning and Zoning

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Fax: (802) 865-7195

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DEPARTMENT OF
PLANNING & ZONING

Non-Applicability of Zoning Permit Requirements

This form is a written verification from the Department of Planning and Zoning that based upon the description and statement given by the owner/applicant, a zoning permit is not applicable or required for the proposed project.

NOTE: THIS IS NOT AN APPROVAL TO START WORK.

CONSTRUCTION PERMITS WILL ALSO BE REQUIRED FROM THE DEPARTMENT OF PUBLIC WORKS AT 645 PINE STREET. VISIT THE OFFICE OR CALL 802-863-9094

PROJECT LOCATION ADDRESS: <u>12 Western St Burlington</u>	
PROPERTY OWNER: <u>Elizabeth Gaudue</u>	APPLICANT: <u>Charles Burns</u>
*If condominium unit, written approval from the Association is also required	
POSTAL ADDRESS: _____	POSTAL ADDRESS: <u>44 Shelburne St</u>
CITY, ST, ZIP: _____	CITY, ST, ZIP: <u>Burlington, Vt. 05401</u>
DAY PHONE: _____	DAY PHONE: <u>802-343-0462</u>
EMAIL: _____	EMAIL: <u>ccburns@C21Jaxk.com</u>
SIGNATURE: <u>Elizabeth L. Gaudue</u>	SIGNATURE: <u>Charles Burns</u>
I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this application.	

Description of Proposed Project: Reconfiguring the interior of 1 unit on the 2nd + 3rd Floor and 1 unit on the 1st Floor. No change to number of rooms or finishes.

Existing Use of Property: ☐ Single Family ☒ Multi Family ☐ Other or finish change

Proposed Use of Property: ☐ Single Family ☒ Multi Family ☐ Other

OFFICE USE ONLY Zone: _____ Eligible for Design Review? _____ Year Constructed? _____ Property Class: _____

Based upon the above description, the proposed work does not require a zoning permit for the following reason(s):

- ☐ Project constitutes repair/maintenance or replacement in-kind
☐ Project is exempt from Zoning Permit requirements per Section 3.1.2(e)1 of the Zoning Ordinance
☒ Other: Interior work only - no exterior changes

Reviewed and approved by: _____ Date: 30 June 2014

☐ Additional Notes: 2nd units only are recognized
No additional living space or increase in the number of rooms
Non-Applicability Reference #: CC-072-NA

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DEPARTMENT OF
PLANNING & ZONING

June 14, 2014

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

Re: 12 Weston Street

Dear Mr. Hart and Participating Members of the Development Review Board:

The residents below object to the administrative determination that 12 Weston Street in the RL Zone can be "reconfigured" without a permit. Such reconfiguration would result in the creation of a duplex without the required parking or the minimum lot size. These requirements are intended to prevent the detrimental effects on the neighborhood that will result if this "reconfiguration" is allowed.

This property is and has been for many years (at least thirty) an owner occupied single family house with an accessory apartment on the top floor or dormer story. As such, it has been a permitted use under the CDO which requires owner occupancy when an accessory apartment is part of a single family house.

The view that it *is* a duplex or has been used as a duplex for an extended period disregards the clear and compelling distinction in the CDO between a duplex and a single family house with an accessory apartment. (See Article 13: Definitions: Duplex)

Reconfiguration would be not an incidental, but a major change -- morphing an accessory apartment into a larger duplex unit, changing a single family house to a duplex, eliminating the owner occupancy requirement, and increasing the intensity of use and parking demand many times over.

Changing this single family house into a duplex necessitates enlarging the dormer level accessory apartment by extending it downstairs to the second floor. The "reconfiguration" request itself refutes the view that the house is already a duplex. Both by CDO definition and by function and use the dormer level apartment has *always* been accessory to the single family house.

The Zoning Administrator has argued that because the accessory apartment pre-dates the CDO, it can be reconfigured into a duplex unit without permit or review and regardless of parking and minimal lot size requirements. However, simply because such a change *could* have been made in the 1960s, does not mean it can be permitted now. The fact is the change *was not made* under a previous ordinance and the current ordinance, wisely, does not allow such a change.

Only one legal off-street parking space in the garage is provided, while four are required, and the lot is just 3000 square feet while the minimum lot size for a duplex is 10,000 square feet.

At the very least, if the applicant or a subsequent owner desires to reconfigure and use this property as a duplex, there should be an application and full review for this requested change of use. Anything less would be a subversion and violation of the intent and letter of the CDO.

The definition of "Duplex" in the CDO is unambiguous in specifying that **"for purposes of this ordinance a single-family detached structure with an accessory apartment shall not be considered a duplex."**

As such, it is clear that "reconfiguration" without a permit would change this single family house to a duplex in violation of the CDO. We ask that the DRB uphold the CDO and rule accordingly in granting our appeal.

Thank you for your consideration.

Sincerely,

Michael Long, 55 Henry Street
Caryn Long, 55 Henry Street
Alex Friend, 53 Henry Street
Mary Moynihan, 53 Henry Street
Greg Hancock, 69 Henry Street
Kari Hancock, 69 Henry Street
Hamilton Davis, 26 Henry Street
Candace Page, 26 Henry Street
Matt Moore, 82 Henry Street
Susan Moakley, 82 Henry Street
Scott Richards, 96 Henry Street
Kathleen Donohue, 96 Henry Street
Norman Williams, 381 South Union Street
Peg Boyle Single, 58 Case Parkway
Richard Single, 58 Case Parkway
Paul Bierman, 86 Brookes Avenue
Judy Rosenstreich, 30 Henry Street
Sandra Wynne, 137 Mansfield Avenue
Bret Findley, 148-150 Loomis Street
Alexander Johnston, 148-150 Loomis Street
Jesse Robbins, 23 Weston Street

Copy sent
to Judy
Rosenstreich
6/4/14 @

TITLE 27

Zoning and Planning

Chapter

1. Municipal Zoning
3. Subdivisions

CHAPTER 1

Municipal Zoning

SECTION

6501. Definitions.
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Collateral references. For similar provisions, see Nimlo Model Ordinance Service section 11-201 et seq.

§ 6501. Definitions

For the purpose of this chapter:

(1) Singular words shall include the plural, and plural the singular, words in the present tense shall include the future, "used" shall include "designed or intended to be used," and the word "shall" is mandatory and not merely directory.

(2) Apartment house. A building or portion thereof used or designed to be used as a residence for three or more families living as units independently of one another.

(3) Building. Anything constructed or erected, the use of which requires more or less permanent location on the soil, or attached to something having a permanent location on the soil.

(4) Height of building. The vertical distance from the street curb level to the mean level of the slope of the main roof, provided, however, that the average elevation of the finished grade in front of the building may be substituted for the street curb level where the building in question is set back from the street a distance at least equal to the difference in elevation between the curb level and the grade level.

(5) Hotel. A building occupied as the temporary or permanent abiding place of individuals lodged therein with or without meals, in which there are more than fifteen sleeping rooms above the first story for separate occupancy and no provision made for cooking in individual rooms.

(6) Nonconforming use. The use of a building or premises which does not conform with the use regulations of the district where located.

(7) Public garage. A garage other than private, used or designed to be used for the housing or care of more than three self-propelled vehicles, where any such vehicles are for hire, stored, repaired, serviced, or kept for lease or sale.

§ 6502. Administration and enforcement

The building inspector of the city, or in case of his absence from the city, inability to serve, resignation, death or removal, the deputy building inspector, shall be the zoning administrative officer. No building or structure, or part thereof, shall be erected, altered or moved without a permit from the zoning administrative officer, issued upon application, stating that the plans and intended use indicate that the building is to conform in all respects with the provisions of this chapter. He shall have general charge of the administration of this chapter.

center line of Home Avenue, on the north by the center line of Flynn Avenue, on the east by the westerly line of Shelburne Street, and on the west by a line parallel to the westerly line of Shelburne Street and 325 feet westerly therefrom.

(2) That portion of the city bounded on the south by the south line of the driveway leading westerly from North Avenue to property of Consolidated Rendering Company, easterly by the westerly line of North Avenue, northerly by the south line of the S. W. Thayer School property, and westerly by a line parallel to the westerly line of North Avenue and 600 feet westerly therefrom.

Cross references. Dividing municipality into districts, see 24 V.S.A. § 3005. Uniform regulations, see 24 V.S.A. § 3006.

§ 6508. Lots in two districts

Where a district boundary line divides a lot held as an entity by any owner or owners of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion, provided the lot has street frontage in the less restricted district.

§ 6509. Residential district — Zone 1

Subject to the provisions of sections 6517–6520 hereinafter contained, no building shall be erected, altered or used, and no premises shall be used, in Zone 1, for any purpose except:

- (1) Single family dwellings.
- (2) Two family dwellings.
- (3) Farm or garden, provided such use shall not be injurious, noxious, detrimental or offensive to the neighborhood.
- (4) Church use, educational use, municipal recreational use.
- (5) Any of the following uses, when authorized as a special exception by the zoning board of adjustment:
 - (A) Apartment houses of three or more family units, hotels, tourist cabins, and motels.
 - (B) Rooming houses and tourist homes.
 - (C) Customary home occupations, such as millinery, hair-dressing, manicuring, laundering, preserving, home cooking, or the office of a doctor, dentist, musician, teacher, architect, artist, attorney, or member of some other recognized profession, provided such occupation be carried on by a person only within the dwelling or apartment used by him as his private residence, that no more than one other person be employed therein, and that such occupation occupy not more than one-third of the floor area of such dwelling

or apartment. No such occupation shall be carried on in an accessory building, and there shall be no display or advertising visible from the street except a professional or announcement sign not exceeding $11\frac{1}{2}$ square feet in area.

(D) Offices of one or more doctors, dentists, musicians, teachers, architects, artists or attorneys, located other than within dwellings or apartments used by him or them as a private residence.

(E) Greenhouses or nurseries.

(F) Hospitals, sanitariums, or buildings used for charitable purposes.

(G) Governmental use.

(H) Golf courses.

(I) Club uses.

(J) Any use of the same general character as (A)–(I), *supra*.

Cross references. Restrictions in erection, construction, reconstruction, alteration, repair or use, see 24 V.S.A. § 3005.

— Exceptions to existing structures and uses, see 24 V.S.A. § 3010.

§ 6510. Park district — Zone 2

Subject to the provisions of sections 6517–6520 hereinafter contained, no building shall be erected, altered or used, and no premises shall be used, in Zone 2, for any purpose except those permitted in Zone 1, or for park or recreational purposes. This section shall, however, be subject to the provisions of any existing law with respect to the use of parks.

Cross references. Parks, see section 3801 et seq.

§ 6511. Outdoor advertising

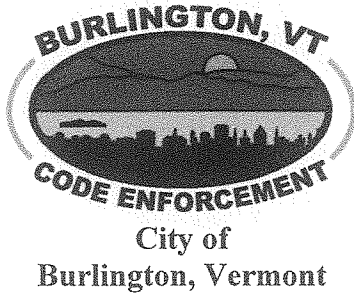
Subject to the provisions of sections 6517–6520 hereinafter contained, and except as otherwise herein provided, no person shall erect or maintain, or cause to be erected or maintained, in Zones 1 and 2 any outdoor advertising structure, device, or display, and for the purpose of this section, the word “display” shall mean erecting, maintaining, pasting, painting, and posting an advertisement or sign out of doors or erecting or maintaining a billboard or other structure designed and intended for display of advertising matter where the same may be seen by the public.

Cross references. Illuminated signs, see section 4501 et seq.

Limiting advertising structures, see 24 V.S.A. § 3008.

Signs over street, see section 4207.

Statutory provisions, see 9 V.S.A. § 3621 et seq.



Miscellaneous Appeal - Enforcement – DRB Staff Comments

ZP #: 14-0748AP

Tax ID: 050-2-097-000

Application Date: July 1, 2014

Property Address: 124 SPRUCE STREET

TO: Development Review Board

FROM: Jeanne Francis, Zoning Enforcement Specialist
Ken Lerner, Zoning Administrator

DATE: July 15, 2014

RE: 14-0748AP; Appeal of Notice of Violation # 266942 at 124 Spruce 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.

LOCATION: 124 Spruce Street

TAX LOT #: 050-2-097-000

APPELLANT: Laurel Broughton

Recommendation: Uphold the issuance of Zoning Violation # 11-0936FC regarding the placement of a fence based on the findings below, and request Code Enforcement to follow up with the responsible party to cure the violation by:

- (1) Removing or relocating the current fence to within one-foot west of the 124 Spruce St. property line consistent with approved site plan.
- (2) Submitting to Planning Zoning Office, an accurate and corrected site plan for the fence if relocated other than consistent with the ZP 11-0936FC site plan
- (3) Repairing, at Appellant's expense, any and all damage incurred from the relocation or removal of the fence (including disturbances incurred at 132 Spruce Street).
- (4) Obtaining a Unified Certificate of Occupancy for the fence.

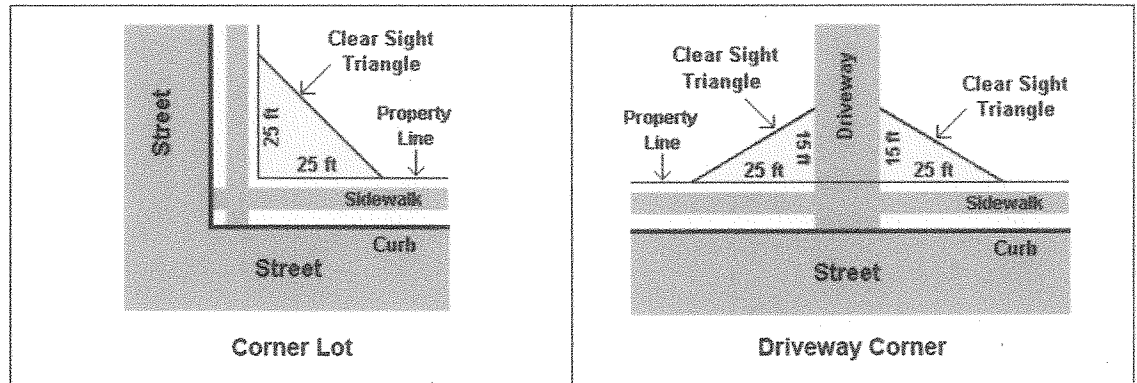
Findings

A. Background

- May 20, 2011 ZP 11-0936FC approved to "Install Cedar picket fence; 3 ft. high from 15 ft. setback; 4 ft. high beyond that to rear fence. Replace existing fence from NE corner of garage to rear and from NE corner to new fence on East property line."
 - o Conditions of Approval include the following:
 1. The fence design is as depicted on the submitted photo approved May 20, 2011.
 2. The proposed fence shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the

adjoining property and public street in accordance with Sec. 6.2.2(m) of the City of Burlington Comprehensive Development Ordinance.

3. The fence scales at 26.5 feet from the driveway. If the fence is placed within the clear sight triangle along any driveway it shall be limited to 3-feet in height above the curb for a distance of not less than 15 ft. in order to provide safe sight distances for pedestrians and vehicles in accordance with the following diagrams from Sec. 6.2.2(m) of the City of Burlington Comprehensive Development Ordinance:



Plus Standard Permit Conditions 1-18

- June 6, 2011 the approved permit released; no appeal filed.
- April 23, 2013 Certificate of Occupancy requested. Code Enforcement Office determined, based on all approved documentation, project complied and issued a certificate of occupancy for ZP 11 0936FC.
- October 22, 2013 fence location was questioned by the adjacent owner, but opted to work with Appellant to try and resolve issues; attempt was unsuccessful.
- October 28, 2013 written complaint filed that fence was constructed on 132 Spruce Street property; Owner of 132 Spruce St. submitted a survey by a Certified Land Surveyor depicting the two properties indicating the fence was constructed on 132 Spruce St. property.
- October 28, 2013 Code Enforcement Office verified fence on eastern boundary of 124 Spruce Street was constructed on 132 Spruce St. property; fence is approximately 3 feet inward (east) of survey stake.
- October 28, 2013 Code Enforcement Office sent a letter to Owners of 124 Spruce St. informing that the fence was placed beyond their property boundary lines. Owner responded that the fence would be relocated.
- November 6, 2013, attorney for appellant responded in writing requesting the Code Enforcement Office to decline investigating the complaint as the issue at hand is a property line dispute that cannot be resolved by Code.

- January 28, 2014, City Attorney responded to the appellants' attorney that based on new evidence, (the survey), the fence is constructed on property at 132 Spruce St.; and this constitutes a zoning violation. The City allowed until May 1, 2014 to relocate the fence onto 124 Spruce St. with a written agreement. If fence is not removed, the City will move forward with enforcement.
- Fence was not removed by May 1.
- May 19, 2014 a notice of violation issued.
- May 30, 2014 notice of violation appealed.

B. Appeal Position/Response

- Appellant argues that there is a dispute regarding the location of the boundary line between 124 and 132 Spruce Street. Specifically, that the survey relied upon by the City is incorrect, as the boundary line has been established by adverse possession, such that the fence does not encroach on the adjacent property. Appellant indicated they will be prepared to present evidence before the Board.
Appellant claim of adverse possession is not in the Board's jurisdiction and can only be adjudicated by a court order.
- Attorney for Appellants has stated that his clients may dispute the property line. However, this land dispute is not before the Board to determine. Currently the City has relied on the submitted survey that demonstrates non-compliance with the installation of a fence. This document is sufficient evidence of the fence not being placed as illustrated on the approved site plan.
Note that Standard Permit Condition #15 states *"For Properties Involved in Boundary Disputes. When there is a boundary dispute regarding the subject property, and, as no certified survey has been produced to the Planning and Zoning office to help resolve the dispute, this permit is granted upon the information, including site plan, provided by applicant. If another party submits sufficient evidence (i.e. a certified survey) to demonstrate that the boundary is not as indicated by applicant, this permit shall be null and void. Further applicant 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 zoning ordinance and receive an amended permit in light of the actual boundary line"*.
- Further, the Comprehensive Development Ordinance (CDO) identifies the "persons liable", which in this case is the owner of 124 Spruce St. who is responsible to correct the misplacement of the fence. Refer to CDO Sec. 2.7.6: *The owner, tenant, or occupant of any structure or land or part thereof who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, and any architect, builder, contractor, agent, or other person who knowingly participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.* Standard permit condition #11 states *"Errors. Permittee is solely responsible for the accuracy of all information contained in the Zoning Permit form and in accompanying documentation. Any errors contained therein may*

invalidate the Zoning Permit and may result in issuance of a zoning violation citation and prosecution”.



124 Spruce Street

Fence in Question

132 Spruce Street



Stake placed by surveyor showing the property line. Stake and flag have since been removed.



Property marker (pin) placed by Surveyor.



Fence remains on property known as 132 Spruce Street. Pin.

PRIMMER

PRIMMER PIPER EGGLESTON & CRAMER PC

150 SO. CHAMPLAIN ST. | P.O. BOX 1489 | BURLINGTON, VT 05402-1489

KEVIN M. HENRY
ADMITTED IN VT, DC AND
khenry@primer.
TEL: 802-864-0
FAX: 802-864-0

February 12, 2014

City of Burlington
Department of Planning and Zoning
149 Church Street, City Hall
Burlington, VT 05402-8415

RE: Complaint regarding 124 Spruce Street, Burlington

Dear Sir or Madam:

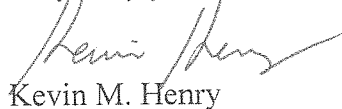
Please find enclosed Ms. Broughton's Appeal of an Administrative Decision Request along with a check in the amount of \$250. This letter will serve as a supplement to the above-referenced form.

The decision under appeal is a finding that the installation of a fence by Ms. Broughton is in violation of permit ZP# 11-0936FC because the fence is located on the adjacent property located at 132 Spruce Street. *See* enclosed letter dated January 28, 2014.

Ms. Broughton's property is a single family home located at 124 Spruce Street. This appeal is brought pursuant to Sec. 2.7.11 the Burlington Comprehensive Development Ordinance (Administrative Appeal).

Ms. Broughton requests that the finding be vacated on the grounds that there is a dispute regarding the location of the boundary line between 124 and 132 Spruce Street. Specifically, Ms. Broughton contends that the survey relied upon by the City is incorrect, and she also contends that the boundary line has been established by adverse possession, such that the fence does not encroach on the adjacent property. Ms. Broughton will be prepared to present evidence before the Development Review Board.

Very truly yours,



Kevin M. Henry

Enclosures

cc: Laurel G. Broughton



Department of Planning and Zoning

149 Church Street, City Hall

Burlington, VT 05401-8415

Phone: (802) 865-7188

Fax: (802) 865-7195

www.burlingtonvt.gov/pz

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: 124 Spruce Street

Subject Property Owner: Laurel Broughton

Appellant: Laurel Broughton

Agent/Representative: Kevin Henry

Mailing Address: 150 S. Champlain Street P. O. Box 1489

City, St, Zip: Burlington, VT 05402-1489

Day Phone: 802-864-0880 Email: khenry@primmer.com

Appellant Signature: Laurel Broughton Date: February 11, 2014

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

- ☒ The Appeal fee of \$250;
- ☐ Description of the decision under appeal; See attached letter
- ☐ 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. 004517 Amount Paid \$250 Zoning Permit # _____

May 8, 2014

Mailed Certified Mail #7010 0780 0001 2226 1155
And FIRST CLASS MAIL

T. ALAN & LAUREL BROUGHTON
124 SPRUCE STREET
BURLINGTON, VT 05401

NOTICE OF VIOLATION AT:
124 SPRUCE ST, BURLINGTON, VT
TAX LOT #050-2-097-000

Zoning Violation# 266942

Dear T. ALAN & LAUREL BROUGHTON,

It has come to the attention of this office that a zoning violation exists at 124 Spruce St.

Description of Violation: Fence approved under ZP 11-0936 constructed does not comply with approvals. Violation of standard permit condition #15 and approved site plan. See attached documents

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

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars (\$200.00) for each day that a violation continues. You may submit an application to attempt correction of the violation, however, but any advised application and filing fees are subject to a fee increase for permits required to correct a violation (see Violation Details Remedy Options #2 and CDO Section 2.7.8).

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

This NOV is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, may be appealed to the Development Review Board in accordance with the provisions of CDO Sections 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV May 6, 2014, and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Appeal fee and completed application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by 4 pm on May 22, 2014; an appeal shall not be perfected until the fee is received.

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

Sincerely,



Jeanne Francis
Zoning Compliance Officer

Enclosures: Violation Details

Cc: Land Records for Tax Lot # 050-2-097-000

VIOLATION DETAILS

LOCATION: 124 Spruce ST

DECISION DATE: May 6, 2014

VIOLATION DESCRIPTION: Fence approved under ZP 11-0936 has been constructed on property located at 132 Spruce St. Violation of standard permit condition #15 and approved site plan. See

attached documents.

FINDINGS: On May 20, 2011 ZP 11-0936F was approved to install a cedar picket fence, 3 ft. high from 15 ft. setback; 4 ft. high beyond that to rear fence. Replace existing fence from NE corner of garage to rear and from NE corner to new fence on East property line; subject to conditions of approval; Unified Certificate of Occupancy issued April 23, 2013.

October 22, 2013 Code Enforcement Office received a written complaint that fence constructed and installed by owners of 124 Spruce Street (east property line) was constructed on their property at 132 Spruce Street, east of 124; complainant attached a survey drawn by Warren Robenstein, a certified surveyor which was filed in City land records; the disputed fence appears to be located on property known as 132 Spruce Street; our inspector confirmed, according to surveyor markers, the fence is not on 124 Spruce St.

October 28, 2013 a notification letter was mailed to Alan and Laurel Broughton informing them the Code Office received a written complaint alleging the fence constructed under ZP 11-0936 was actually placed on their property (132 Spruce Street); owners responded initially they would relocate the fence, then obtained the services of Attorney Kevin Henry.

November 6, 2013, Kevin Henry corresponded to Code Enforcement Office in response to the October 28, 2013 notice; Attorney Henry asked Code to consider declining to investigate the complaint as the issue at hand is a property line dispute that cannot be resolved by Code.

January 28, 2014 Assistant Atty. Kimberlee Sturtevant responded to the Henry memo. Broughtons constructed a fence under ZP 11-0936FC and based on new information (survey) it appears that Broughton's did not install the fence according to the approval granted in ZP 11-0936FC. In lieu of a notice of violation, if agreeable to Broughtons, City would be agreeable to a deadline of May 1, 2014 to relocate the fence to their parcel; formal agreement would be required, along with financial reimbursement to the City. Broughton's did not agree and Attorney attempted to appeal Attorney Sturtevant's letter; Sturtevant letter is not appealable.

To date fence remains on property of 132 Spruce Street. No agreement between property owners and City were

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

1) – Removing the violation noted above, [detail of how the violation can be removed – ie. Removing additional porch, deck, installing a barrier around parking area and restore lawn, etc.], **restoring the Premises to its prior state, and informing the Code Enforcement Office that the violation has been removed so our office may verify compliance; or**

2) - Obtaining approval from the City's Department of Planning and Zoning for Inconsistent Site Plan [nature of violation ie. Increasing parking, adding an additional unit, etc. from Info folder] without an approved zoning permit (permit application **fee is doubled** if complete application is submitted within seven days from receipt of the NOV,

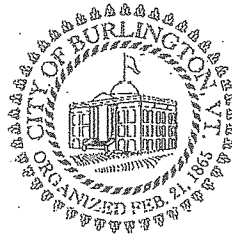
tripled if a complete application is submitted 7-15 days from receipt of the NOV, or triple plus \$75 per hour of Code Enforcement staff time (up to \$500) if a completed application is submitted after 15 days from date of NOV receipt). See CDO Section 2.7.8. **PLEASE NOTE:** If the zoning permit request is denied, the violation is **NOT** cured. Owner shall be required to remove the violation as noted in #1 above or request an agreement as noted in #3 below within five (5) business days from date of the permit denial to remedy the violation; **or**

3) - Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance (**administrative fees required**).

APPEAL RIGHTS: You have the right to appeal the enforcement officer's decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice. The deadline for filing an appeal is 4 pm on May 22, 2014.** Submit a complete application with ZV# and appropriate fee to the Department of Planning and Zoning, accompanied by a memo stating the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

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

EILEEN M. BLACKWOOD, ESQ.
City Attorney
EUGENE M. BERGMAN, ESQ.
Sr. Assistant City Attorney
RICHARD W. HAESLER, JR., ESQ.
Assistant City Attorney
GREGG M. MEYER, ESQ.
Assistant City Attorney
KIMBERLEE J. STURTEVANT, ESQ..
Assistant City Attorney



CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

149 Church St., Room 11
Burlington, VT 05401-8489
Phone: (802) 865-7121.
Fax: (802) 865-7123
TTY: (802) 865-7142

RECEIVED
JAN 28 2014
DEPARTMENT OF
PLANNING & ZONING

January 28, 2014

Kevin M. Henry, Esq.
Primmer Piper Eggleston & Cramer, PC
150 South Champlain Street
PO Box 1489
Burlington, VT 05402-1489

RE: Complaint regarding 124 Spruce Street, Burlington

Dear Attorney Henry:

I am in receipt of your letter dated November 6, 2013 to Jeanne Francis, Zoning Specialist for Burlington Code Enforcement regarding the above-referenced matter. I have discussed the issue with my clients and reviewed the permit obtained by your clients T. Alan and Laurel G. Broughton for the installation of a cedar fence at 124 Spruce Street, ZP# 11-0936FC. Based upon the information now known to the City, it appears that your clients did not install the fence according to the approval granted in ZP# 11-0936FC. This unfortunately constitutes a zoning violation.

ZP# 11-0936FC and its correlating site plan approved May 20, 2011 identify the requested fence to be located on your clients' property, 124 Spruce Street. A recent survey prepared by a licensed Vermont surveyor submitted to the City identifies the subject fence as being located on the adjacent property, specifically 132 Spruce Street. Without sufficient evidence to the contrary, the current best evidence indicates that the fence is not installed on your clients' property in accordance with the approval they received.

I understand from your letter that your clients may dispute the property line. That is not before the City. Currently, the City has before it a survey that demonstrates non-compliance with the installation of a fence. Given the season, it is understandable that it would be difficult for your clients to move the fence within the statutory time frame to remedy a violation. The City is willing to allow your clients until May 1, 2014 to remove the fence from 132 Spruce Street and install it on their own property at 124 Spruce Street as per the approved site plan. Please confirm that your clients are

Henry, K.
January 28, 2014
Page 2 of 2

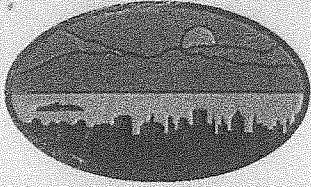
agreeable to this timeline. If your clients are unwilling to agree to this schedule, the City is willing to enter into a written agreement for an alternate timeline that is more agreeable with an explanation as to the necessity of a different schedule. Note that if this alternative solution is preferred it will require financial reimbursement to the City for administrative time used to implement an agreement. Also, as the fence is not on your clients' property, you will have to work with the owners of 124 Spruce Street to arrange removal details. 132

Please let me know if your clients do not plan to move the fence, as the City will need to move forward with enforcement.

Very truly yours,



Kimberlee J. Sturtevant

**ZONING PERMIT****FENCE**

City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 5/19/2011

Appeal Expiration Date: 6/4/2011

Project Location: 124 SPRUCE STREET

District: RL

Owner: T ALAN BROUGHTON
Address: 124 SPRUCE STREET
BURLINGTON, VT 05401

Ward: 6

Telephone:

Tax ID: 050-2-097-000

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

Project Description: Install Cedar picket fence; 3 ft. high from 15 ft. setback; 4 ft. high beyond that to rear fence. Replace existing fence from NE corner of garage to rear and from NE corner to new fence on East property line.

Construction Cost:	\$2,140	Lot Size (Sq Ft):	12,640
Net New Square Feet:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	0.00	Existing # of Parking Spaces:	0
Proposed % Lot Coverage:	0.00	Proposed # of Parking Spaces:	0
Net New % Lot Coverage:	0.00	Required # of Parking Spaces:	0

Zoning Permit #: 11-0936FC

Decision Type: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Decision Date: May 20, 2011

Project File #: NA

Zoning Administrator

An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on June 4, 2011.

Fee Type	Amount	Paid in Full	Balance Due:	\$0.00
Application Fee:	\$45.00	Yes	Date Paid: _____	
Development Review Fee:	\$0.00	NA	Check # _____	
Impact Fee:	Not Applicable			

Building Permit Required: Yes

Permit Received by: Laurel BroughtonDate: June 6, 2011

RECEIVED

MAY 19 2011

DEPARTMENT OF
PLANNING & ZONING

124 SPRUCE ST

1 1/2" INCH = 10 FT

XX Current fence

— Proposed fence

470'



NOTE

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

FINAL APPROVAL

SIGNED

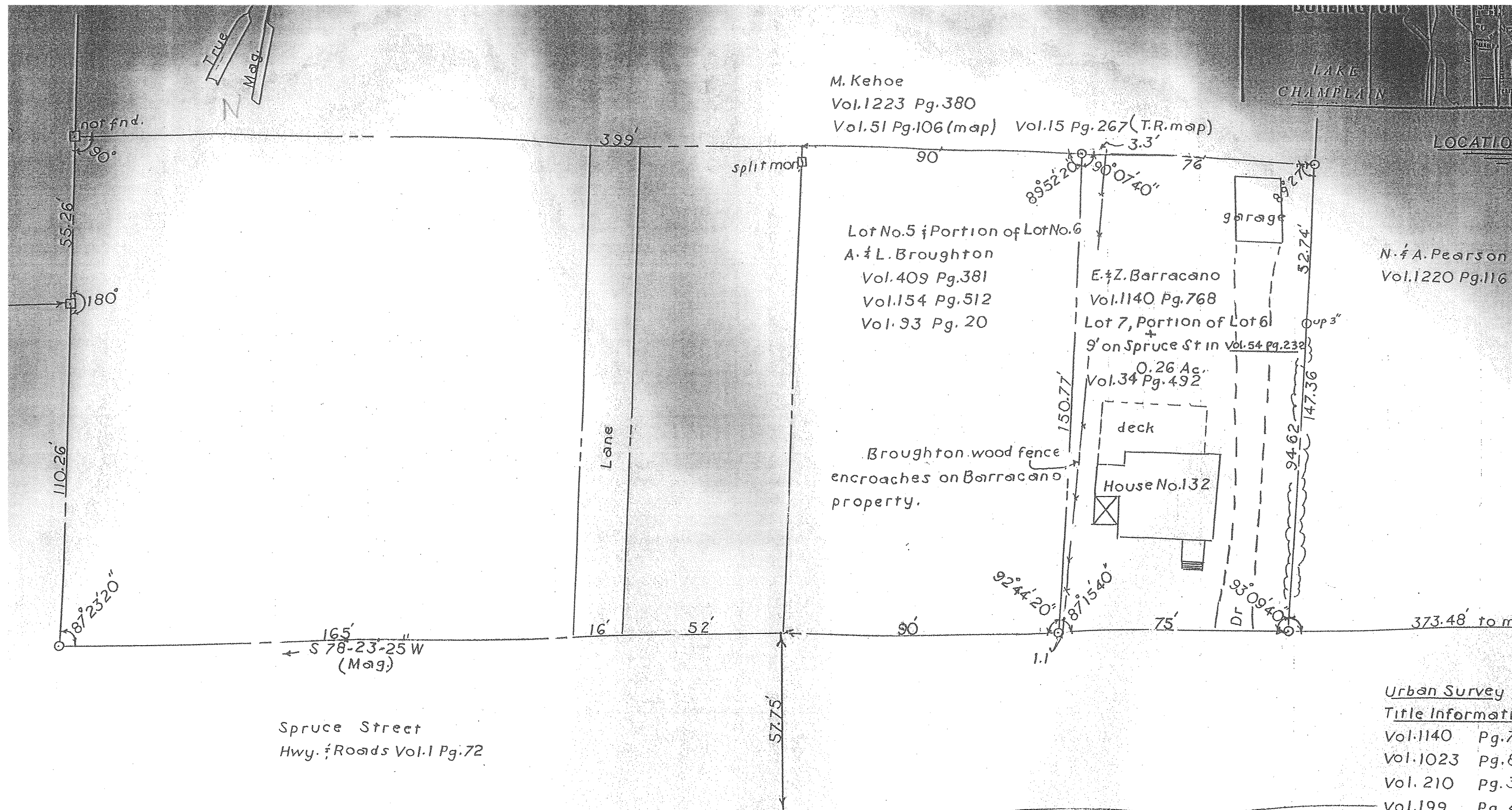
PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

DATE

5/20/11

SCALES
2 1/2" = 10' PL
26.5' PL
40' PL

SPRUCE



M. Kehoe
 Vol. 1223 Pg. 380
 Vol. 51 Pg. 106 (map) Vol. 15 Pg. 267 (T.R. map)

Lot No. 5 & Portion of Lot No. 6
 A. & L. Broughton
 Vol. 409 Pg. 381
 Vol. 154 Pg. 512
 Vol. 93 Pg. 20

E. & Z. Barracano
 Vol. 1140 Pg. 768
 Lot 7, Portion of Lot 6
 9' on Spruce St in Vol. 54 Pg. 232
 0.26 Ac.
 Vol. 34 Pg. 492

N. & A. Pearson
 Vol. 1220 Pg. 116

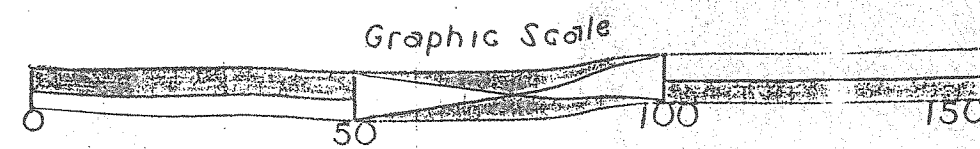
Broughton wood fence
 encroaches on Barracano
 property.

deck
 House No. 132

garage

Spruce Street
 Hwy. & Roads Vol. 1 Pg. 72

Urban Survey	
Title Information	
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Vol. 90	Pg. 1
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Vol. 34	Pg. 1



Nic Anderson

From: dynamozoe@yahoo.com
Sent: Thursday, June 05, 2014 11:27 PM
To: Ken Lerner
Cc: Jeanne Francis; Kimberlee Sturtevant; William Ward; Nic Anderson
Subject: Re: appeal hearing at DRB July 1 meeting

Hi Ken,

Thank you for your email.

I'd actually prefer to make it earlier instead of later since this has been a known issue for many months and the delays seem unnecessary. Mrs. Broughton at 124 Spruce knows we leave town as the children finish school each summer work work out of the country. The delays are tactical. We intended to plant trees in the Spring after the fence was supposed to be moved in order to prevent damage to them by the workers. It would not be the first time that people within Mrs. Broughton's employ have come into our yard and driven over and damaged the lawn and chopped down our perennials including peonies in the care of her fence.

The invasion to our privacy and property from both sides has been unrelenting and we really want to resolve these matters and live our lives in peace and privacy.

It's important that we attend the hearing since historically those involved have had no qualms about lying under oath. Presumably the DRB trusted as we did, that everyone would tell the truth. The information in the last hearing was accepted as fact and DRB decisions have been determined in error. The delay to the hearing is merely a continuation of unethical tactics.

Please consider making the meeting sooner or keep the original date.

I'd like a copy of both letters - thanks for asking.

Respectfully,

Zoë Barracano
802-343-6889

On Jun 5, 2014, at 10:55 AM, Ken Lerner <KLerner@burlingtonvt.gov> wrote:

Hi Zoey:

In response to your voice mail - the schedule is that this is on the July 15th agenda - it will not be any later, it must be held by that date as there is a statutory time frame to hear an appeal. If you are unable to make that hearing written testimony can be provided. If you request a continuance, it would be at the DRB's discretion and we are not able to provide assurance that it would be granted. Let us know if you need a copy of the Notice of Violation or their attorney's letter.

Ken

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

The domain "@ci.burlington.vt.us" will no longer work. Please update your contacts to use only "@burlingtonvt.gov" for any future correspondence. Thank you!

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

From: Ken Lerner

Sent: Tuesday, June 03, 2014 12:15 PM

To: 'Laurel Broughton'

Cc: Kevin M. Henry; Kimberlee Sturtevant; Jeanne Francis; William Ward; dynamozoe@yahoo.com; Nic Anderson

Subject: RE: appeal hearing at DRB July 1 meeting

Hi Laurel:

It has, at this time, been rescheduled - however just to let you know, that is the last possible hearing date due to statutory time frame when an appeal must be heard.

Ken

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

The domain "@ci.burlington.vt.us" will no longer work. Please update your contacts to use only "@burlingtonvt.gov" for any future correspondence. Thank you!

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

From: Laurel Broughton [<mailto:lbrought@uvm.edu>]

Sent: Monday, June 02, 2014 10:26 AM

To: Ken Lerner

Cc: Kevin M. Henry

Subject: appeal hearing at DRB July 1 meeting

Dear Ken,

I understand that the hearing on the appeal of the city's citation of a zoning violation against the fence between 124 and 132 Spruce St. (#266942) has been scheduled for the DRB's July 1 meeting. As I will be out of the country until July 10, could we please reschedule this for the July 15 meeting? Thank you.

Laurel Broughton

July 17, 2014

TO: Developent Review Board

FROM: Laurel Broughton

RE: Appeal Zoning Violation #226942

As requested, I have attempted to clarify the perspectives of the photos by putting the photo numbers and approximate sight lines on a section of the survey. I have given each photo its own color in the hope that this will make the map easier to read. Please note that these locations are approximate as there are no drawings of the buildings or other landscape elements of 124 Spruce to serve as reference points. In addition, I have added to each picture's caption a description of the photo's orientation.

I hope this helps you better understand the configuration of the property. Thank you for the opportunity to clarify the photographic evidence.



M. Kehoe

Vol. 1223 Pg. 380

Vol. 51 Pg. 106 (map) Vol. 15 Pg. 267 (T.R. map)

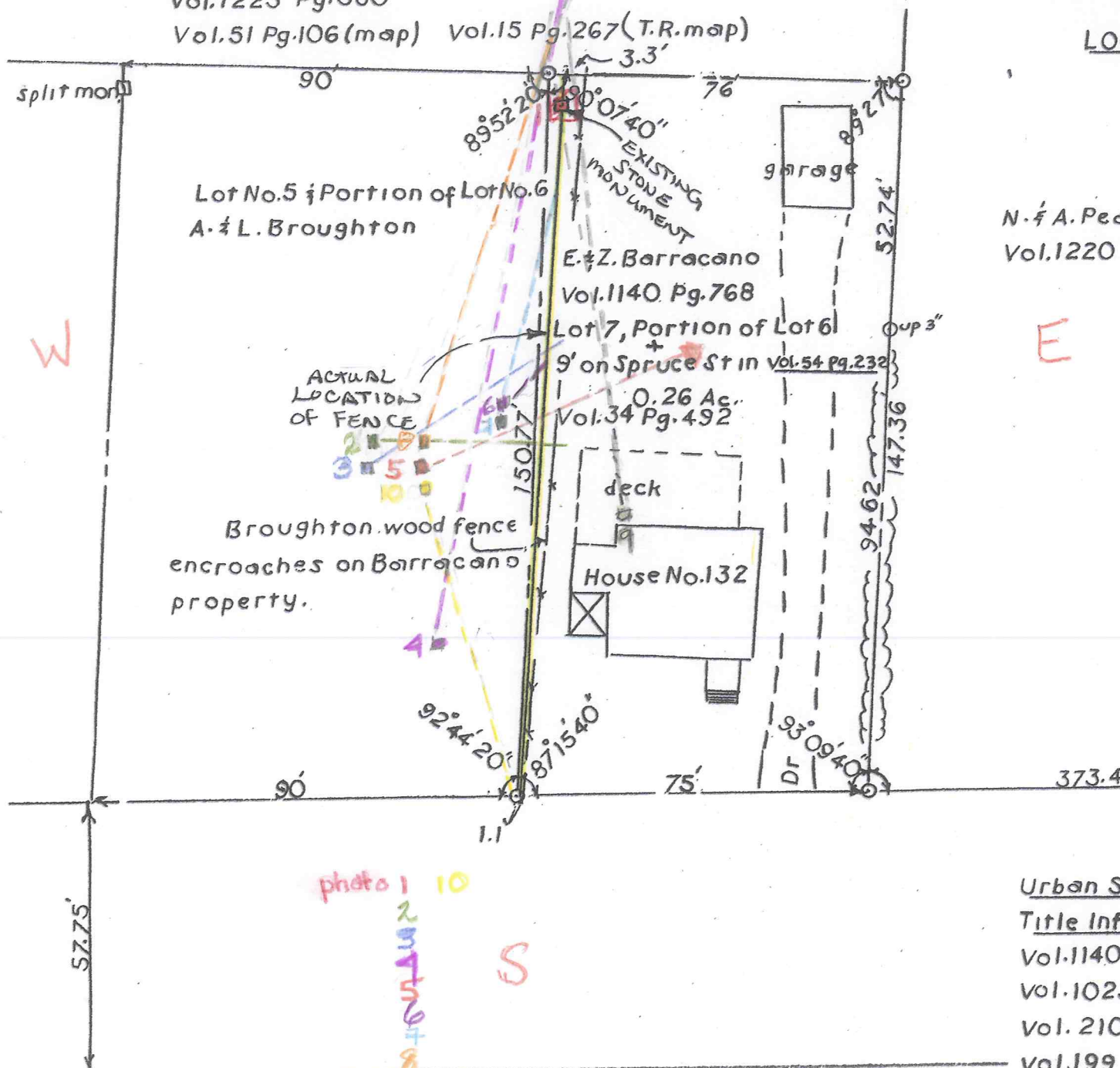




Photo 1: 124 Spruce St. Boundary marker under fence, painted out by Mr. Robenstien. This shot was taken in the northeast corner of 124 Spruce Street's yard, looking toward the southeast.



Photo 2: 124 Spruce St. Yates family, 1982. This image shows the original fence, retaining wall and yucca plant behind Mr. Yates's shoulder. Taken from driveway, looking east. (Courstesy Maureen Yates)



Photo 3: 124 Spruce St, Eric Yates and friends, 1983. Image shows retaining wall, yucca plant behind outdoor grill, and original fence. Taken from driveway, looking northeast (photo courtesy Maureen Yates)



Photo 4: 124 Spruce St, ca. 2008. Image shows retaining wall, railroad ties (placed by the Yateses) and original fence. Taken from lawn to east of driveway, looking northeast.



Photo 5: 124 Spruce St, May 2011. Shows original fence just before installation of new fence. Key elements visible: retaining wall, railroad ties and yucca. Taken from driveway, looking east northeast.



Photo 6: 124 Spruce St. Shows current fence location in relation to yucca and railroad ties. Taken from edge of driveway, looking east.

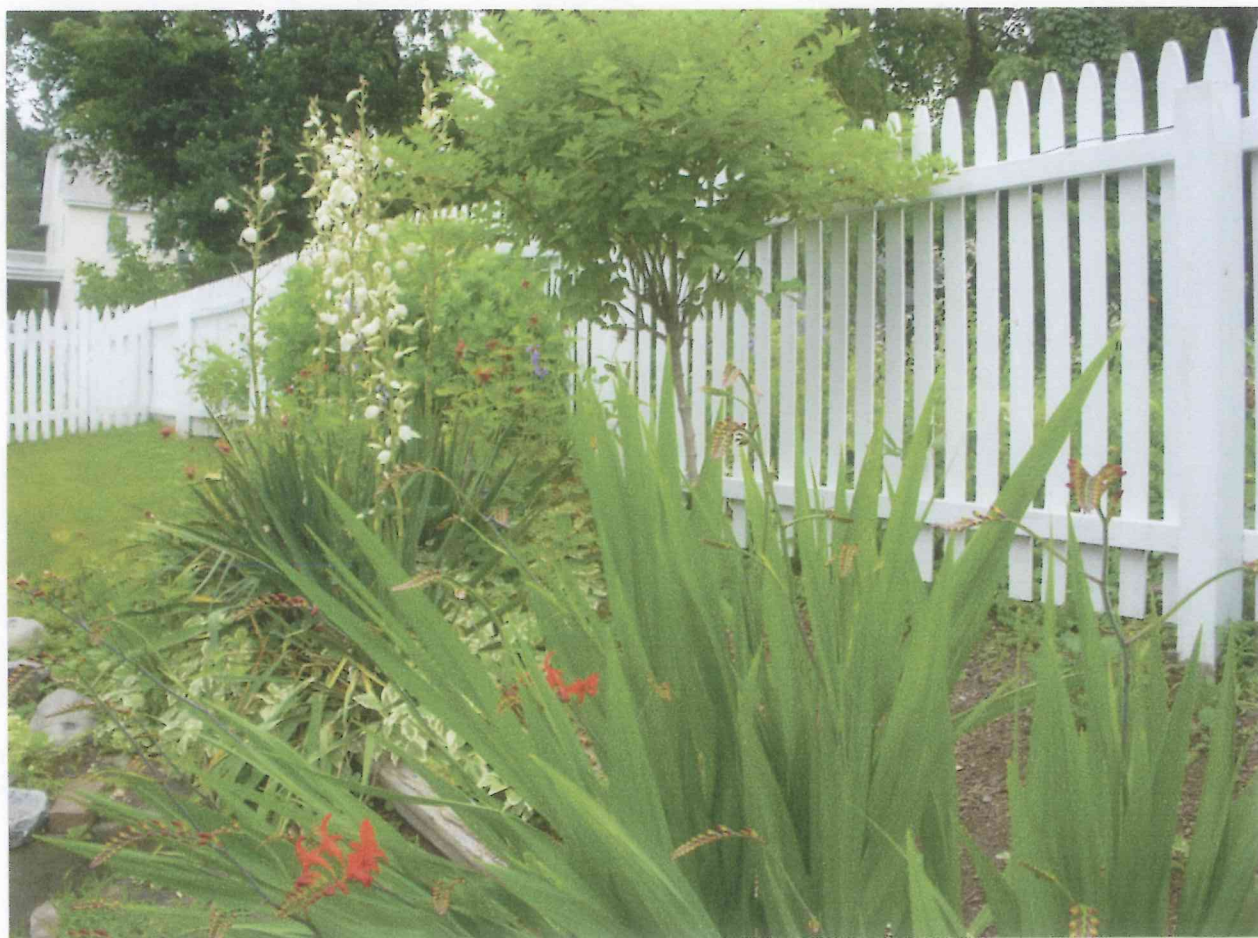


Photo 7: 124 Spruce St. Current fence, showing retaining wall, railway ties and yucca. Taken from edge of driveway, looking northeast.



Photo 8: 124 Spruce St., Northeast corner. Shows circular garden and stump up to which 124 residents have maintained. Taken from retaining wall, looking northeast.



Photo 9: 132 Spruce St, view from upstairs window. Image shows old fence and circular garden plots.



Photo 10: 124 Spruce St, southeast corner. We removed the tree on closest to the house at Mr. Wilkens's request. He believed it was on our property and was concerned by its proximity to his house. Taken from northerly edge of side yard looking southeast.

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401
www.burlingtonvt.gov/PZ/DRB
Phone: (802) 865-7188
Fax: (802) 865-7195

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



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday July 15 2014, 5:00 p.m. Contois Auditorium, City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Jonathan Stevens (Vice Chair), Brad Rabinowitz, Ali Zipparo, A.J. LaRosa, Israel Smith, Michael Long, Missa Aloisi,

Staff: Mary O'Neil, Scott Gustin, Ken Lerner, Nic Anderson

Absent: Austin Hart (chair),

I. Agenda

No changes.

II. Communications

Five communications. Accepted by board.

III. Minutes

One set from July 1 for review and approval.

IV. Public Hearing

1. 14-0748AP: 124 SPRUCE STREET (RL, Ward 6) Laurel Broughton

Appeal of Notice of Violation regarding fence. (Project Manager: Jeanne Francis/Ken Lerner)

Appellant L Broughton and Surveyor Terry Harris present. Submitted communications to board. Applicants sworn in.

K. Lerner gave summary of application and Notice of Violation.

J. Stevens have no jurisdiction to approve a property line. Believe that adverse possession requires a court order. DRB not body to adjudicate where property line is. Is applicant here to decide that?

L. Broughton – No. Read statement that was submitted. Detailed history of properties. Noted errors in submitted survey. Noted consistency with previous decisions. Not appropriate location.

J. Stevens asking for dismissal or suspended NOV?

L. Broughton – Yes. Need NOV suspended.

B. Rabinowitz asked how long needed?

L. Broughton - Would take at least a month to complete survey and then how long the court takes.

AJ LaRosa asked about photos. On photo 4, how many feet above railroad ties are trees?

L. Broughton – Railroad ties are approx 6-7 ft from old fence location.

M. Long – So we potentially have two surveys that are against each other?

T. Harris – May not be inaccurate. Need more time to complete research. There appear to be a number of issues on the original survey which need further review.

M. Long – So at some point, there would be an authoritative demarcation of the boundary?

T. Harris – If discrepancy there could be resolution by neighbors or litigated.

B. Rabinowitz asked about timeframes between NOV issuance and today. Asked why there is a big time gap.

J. Stevens swore in other persons.

Thomas Melovo and Zoe Barracano

T. Denovo? Noted timeframes. Survey submitted to City in October. Has been no discussions on agreements. Detailed adverse possession point. Has been no negotiations.

Z. Barracano – Today is first time that they have hear about an easement.

T. Denovo – Agrees with J. Francis comments. Fence installed intentionally while neighbors were away. Gave until May to remove but that has not happened. No evidence that current survey is incorrect. Submitted letter summarizing comments and documenting attendance.

M. Long asked about location. Asked when fence was installed.

T. Denovo – Brand new fence. Noted survey from 1894 in Land Records.

T. Barracano – Marker could have been moved. Neighbor has installed on property and removed plantings.

T. Denovo – Per condition 15 of the permit conditions, the permit is automatically void.

Kevin Henry, Attorney for L. Broughton. Sworn in. Addressed timing issue. Not clear in record. Noted letter from January from City Attorneys decision. Appealed that letter to the Planning and Zoning office. Found out from Attorneys office that the letter was not appealable. Waited until May for the Notice of Violation, which was then subsequently appealed. Were working toward additional survey. Certainly not the case that there was no negotiation.

L. Broughton – Contests the fence and location. Clearly maintained up to the stockade fence that was falling down. In some cases maintained beyond, onto the adjacent property. Noted on photographs. Considered that their yard extended to dilapidated fence which was removed.

M. Aloisi would like clarification on the photos and where they have been taken from and looking towards.

J. Stevens asked for submission of plan to show which photographs.

AJ LaRosa asked about location of new fence relative to old fence. Further away from house?

L. Broughton – Yes. Noted on photograph 6. Noted photograph 10 looking south east. Had tree removed as previous owner believed it was on her land. Stump is directly on the line with the current fence.

M. Aloisi – Noted survey submitted tonight.

L. Broughton – Robenstein survey that has notations by Mr. Harris.

Member of public sworn in. Laura Mascell. Encouraged the board to extend the timeframes to allow the property to be disputed in the appropriate court. Back yard neighbors. For last 8 years, 124 has been meticulously kept up.

T. Denovo – reiterated that boundary dispute is not up to the DRB.

Jeanne Francis – Gave history of dispute and timeframes. Did CO, received complaint and survey, sent warning letter and received response stating they would move the fence, then received response from attorney asking for no NOV to be issued and would be dealt with in Superior Court, Attorney sent letter to explain citys stance, this letter was appealed. Entered agreement to move fence in Spring, got no response, received more complaints so issued NOV based on survey.

J. Stevens asked if survey recorded in land records.

JF – When appealed, appellants stated that documentation would be submitted for DRB. Stands by NOV as it stands.

M. Long – Today we hear there is controversy. Was this known previously.

JF – No.

A. Zipparo asked about competing surveys and what ruling would be?

JF – Would ask City Attorneys office.

A. Zipparo – Was survey filed at same time as complaint?

JF – Yes.

J. Stevens – Public Hearing closed 5.50pm.

2. 14-1254CU: 934 NORTH AVENUE (RL, Ward 7) 934 North Avenue LLC

Change use from funeral services to general office. Existing residential apartments to remain. (Project Manager: Scott Gustin)

No public present to speak. Applicants sworn in.

Dan O'Rourke and Michelle Devino?

D. O'Rourke clarified that application was made under attached dwelling and mixed use property.

J. Stevens asked when funeral home was stopped.

MD? – Property owned by father since 1970's, was more an office space than a defined funeral home. Stopped being used about 6-9 months ago. Most of the time there is little amount of staff doing office activities and then short periods of time with a lot of people. Would like to sell.

J. Stevens – Asked staff for comment.

S. Gustin – Noted use table does not permit general offices with funeral homes being a Conditional Use. Can't slice and dice sub uses within a funeral home category and cannot see how it can be approved.

D. O'Rourke – In residential use table, there is a category of Attached Dwelling/Mixed use which is a stand alone use. This is a conditional use in that zone. This is a less impact use. It is in ordinance that is defined and should be used.

J. Stevens asked for clarification.

D. O'Rourke – if there is an existing residential use it may be given conditional use approval to have mixed use.

S. Gustin – Noted provision allows for adding units to an existing commercial space as a mixed use. Doesn't allow any residential unit to add a McDonald's under the mixed use guise.

J. Stevens asked if it was just an office?

MD – No it was retail and other aspects of funerals also. Sure neighbors would like to see just office use.

B. Rabinowitz noted that there could be another residential unit.

S. Gustin – Correct. Could add one unit as a conditional use.

MD – Doesn't make financial sense. Cannot get financing for units of that size. Property is used by other uses such as parking for the Elks Club.

J. Stevens closed Public Hearing 6.03pm

3. 14-1172NA: 12 WESTON STREET (RL, Ward 1) Owner: Charles and Cynthia Burns/Appellant: Michael Long et al

Appeal of administrative permit applicability determination to internal reconfiguration of existing units. No change to unit count, number of rooms or habitable space. (Project Manager: Ken Lerner)

Appellant M. Long. Speaking on behalf of a group of appellants. Will hear from City first.

K. Lerner detailed history and justification of determination of non-applicability.

J. Stevens asked about accessory apartments.

K. Lerner have documentation that two units existed in 1969, not accessory apartment.

J. Stevens asked if owner lived on premises?

B. Rabinowitz – not relevant.

J. Stevens can't see where the access is for the second unit. Changing to a duplex will have a lot of complications.

K. Lerner – this is a duplex. Complaint was investigated and was not appealed. Understands there will be more people on site.
J. Stevens – Was this registered as a rental.
K. Lerner – Yes.

Public sworn in.

M. Long disagrees with that the ordinance allows higher density. Respond to staff comments. Would like to have final response afterwards also. 12 Weston in 1969 was not a two family dwelling.

J. Stevens asked for elaboration.

M. Long – In 1969 it was a four unit apartment building, not a two family. Duplex or accessory apartment not defined in 1969 but construed that two family dwelling is duplex.

J. Stevens asked how it was determined it was a 4 unit.

M. Long – With affidavit from appeal. Rented as 4 unit until 1977 until family occupied the first three units and floors and kept 4th unit as rental on top floor which remained as rental unit. Never been dispute that there has been 2 units as third floor accessory apartment and main residential unit. Detailed non-conformities. Never been a non-conformity due to a change of ordinance. Previous ordinance language not relevant. Under current ordinance, it precisely fits accessory apartment regulations. A two unit structure is not necessarily a duplex. Under current ordinance it fits with definition of accessory apartment. Read definition of duplex. Not every two unit structure is a duplex. Staff disregarded this definition. This is how the property has been used for 37 years. Noted new owners own duplex next door which has had a number of previous violations with regards to noise, parking, lot coverage. A change of use affects peoples lives. Read and elaborated on portion of ordinance regarding intent for Burlington. Burdened by old ordinance. Owners can choose to live on site as owner occupied property. Zoning ordinance is applicable and standard permit process should be done.

J. Stevens – ZA has made determination that duplex is grandfathered.

M. Long – Can only be grandfathered if not allowed by ordinance. Nothing to grandfather.

K. Lerner – This use existed.

M. Long – Single family house and accessory apartment existed. Should be held to current standard.

A. Zipparo asked staff it was to be a single family with accessory apartment?

K. Lerner – Code Enforcement determined that the property was a duplex. That was not appealed. Interior work does not require a permit.

J. Stevens asked when accessory units were introduced in Code.

K. Lerner – Late 80's. Can be provided if required.

M. Long – Determination made by code disregarded definition of duplex. Every two unit is not a duplex. If looked closely at that, they could have made a different determination. Has functioned as single family with accessory apartment for many many years. Code office misunderstood the nature of the complaint. Never dispute about it being two units. Concern was changing from accessory apartment to full blown duplex.

AJ asked if room count has changed.

K. Lerner – That is his understanding. Should ask applicants.

M. Long – Changing from single family house with accessory apartment to duplex which is a huge change. Doesn't know if any new rooms has been made. Noted building permit description and approval that continued to be used for construction.

B. Rabinowitz asked about vacating unit if they did not own and live on the property.

M. Long – Previous discussions about the ordinance dealt with other applications.

Ordinance has evolved and fits the accessory apartment definition. Big deal living in neighborhoods. History should not be free pass to degrade neighborhood. Concerned about management of the neighboring property and how this property will be managed.

J. Stevens asked if different criteria applies for accessory apartment and would a permit be needed.

K. Lerner – Yes a permit would be required and there are different standards. Detailed standards.

Judy Rosenstreich. Filed complaint. Read statement in communications packet. Construction continued while Code Enforcement complaint was being investigated. Didn't appeal Code decision as she wasn't able to appeal it. Was not given chance to provide 'evidence to the contrary'. Significant procedural flaw in that one party was not allowed opportunity to respond. Flawed investigation and decision should be invalidated. Continued reading written statement.

A. Zipparo asked about appeal possibility. What were the other factors that precluded appeal?

J. Ros...could not afford and did not have the resources or time to research and undertake an appeal.

A. Zipparo asked how long they had to appeal?

J. Ros – 15 days from the decision. Was not appealed because there was concurrence.

IS – Curious about basement. Asked if previously not living space?

J. Ros – Mrs Gadue was not living in basement. Disappointed City did not go and inspect. Wasn't solid information as to what was going on in the house.

Norm Williams. Concerned about use of property and also of use of non-applicabilities, proper notice and appeal fee being so high. No debate about being an accessory apartment and that to make it a duplex they could go through process and no debate that they don't have the lot size or parking. Question of if basement is being used. Question if unit floor space is getting bigger and as such is a change. Could have been made duplex in 1969 so is it true that it can be done 40 years later? Not a good way to read zoning ordinance. If it could have been then, it should not be now if it hadn't been done in the past.

J. Stevens asked about accessory apartment. Asked why it should not be declared an accessory apartment?

N. Williams – Agrees mother in law apartment needs a separate entrance but doesn't think that an accessory apartment needs to be. Doesn't meet requirements for a duplex now. Doesn't matter what it could have been in the past, it matters what it is now.

J. Stevens asked if making floor area over 30% now changes it to a duplex?

N. Williams – Yes, as well as persons. Determination by Code Enforcement is not binding.

K. Lerner – Z Card posted on property is notification. Files do not have permits prior to 1973 so have to rely on such evidence as affidavits.

J. Stevens asked JF about determination of duplex and if it was intentional to rule out accessory apartment.

JF - Determination was based on complaint. Work being conducted was based on minimum housing compliance.

J. Stevens asked if there was a determination on if it was an accessory apartment.

JF – No, that was the Zoning Administrators decision. My decision was based on construction.

Ashley Bond – 51 Henry St. Adjacent to 18-20 Weston. Encourage diversity in neighborhood. Supports statements made by neighbors. Noted how property was managed with previous third floor tenant. Parking is being completely overlooked.

B. Rabinowitz – We have a narrow window on looking at determination. Parking not relevant now.

AB – Disingenuous that it can function as a duplex. Half a parking space and no backyard. Contesting statement made by Mrs Gadue. Zoning analysis was short sighted and flawed.

J. Stevens asked if there is a parking problem?

AB – 8 cars in parking lot of 18-20 Weston. 12 has no parking and using next door will impact her and her fence on the shared border.

Caryn Long – 55 Henry St. Know Gadue family. Did use basement, 1st and 2nd floors for family and third floor apartment. Basement was hangout family room for kids and access from garage. Third floor was an accessory apartment. Understands why Judy Rosenstriche could not handle the appeal at the time.

J. Stevens asked for third floor access.

CL – Fire escape access. Doesn't know if used other access points. Read written statement.

J. Stevens – Stopped comments as they specifically related to maintenance and not to 12 Weston.

CL – Is an accessory apartment with single family owner occupied home. Still wants to know why there has been work done without permits and why there is no enforcement. Would like it investigated. This same thing happened at 114 North Willard street without them knowing and it was missed and appeal period was over. People involved should be notified.

Alex Frank – 56 Henry – Supports infill but should be done in the right locations. Should have further review by the City. June 16th Electrical Permit suggests there could be three units.

JF – Added that office has been reviewing it as two units and has done rental registration for two units. Normally for accessory apartments, they are not registered separately. A number of years.

A. Zipparo asked if changes to railings need zoning permit.

K. Lerner if external, it depends on the zoning district.

JF – Did send informative letter to Mrs Gadue at the time, to get feedback on the complaint.

K. Lerner – Has additional documentation in file.

Candice Page – Lives on Henry Street. Context has role to play. Defined appurtenant. Reality is that this was accessory apartment and the question on is if it can be made into a duplex. Competing legal arguments. Important decision for neighborhood. Asked for equal consideration from both arguments. Mixed neighborhood for homes and rentals. Parking is problem in neighborhood. Doesn't feel heard by Planning and Zoning and DRB.

Property owner takes table. Sworn in. Brian Hehir, Chuck and Cindy Burns, Property owners. Directs to Jeanne Francis' opinion that property a duplex since 1969. Bottom paragraph, appeal rights spelled out. This decision is now decided as not appealed. We can't take it up here tonight, folks. Chair asked about access to the building. Access on the rear to access first floor, second floor, third floor. Separate leases, separate utilities, separate kitchens. When I did a title search, code enforcement visited them. Code enforcement had treated this property as a duplex for at least 20 years. Late 1980s, early 1990s.

Jonathan Stevens – there are 2 leases now?

Brian Hehir – no, there will be 2 leases.

Jonathan – not owner occupied?

Brian Hehir, no, it previously was owner occupied. Mrs. Gadue is not here to testify on her own. Grandfathering DOES apply here. By way of tax bills, lister's cards and public works review, it has been treated as a duplex. The basement will not be occupied as a bedroom. It was previously finished. Increasing living space? It can't happen without enlarging the footprint, which isn't happening. It was a duplex with low intensity use. The city determined it was a duplex, that determination was not appealed, and therefore cannot be discussed here.

Chuck Burns – I relied on the decision of Ken and Jeanne when I purchased the property. When the determination was not appealed, I went forward and purchased the property. We did not do any work on the property prior to owning it. The previous owner had some code issues; smoke detectors, hand rails, lead paint, inoperable windows that had to be addressed. That is what her grandson was in there doing. Once we owned the property, I had an electrician open up a permit. New meters, exterior lighting, house meter pack. Each tenant will have their own meter. We got a building permit from Ned Holt – he inspected the property. We did exactly what the permit called for. Closed the permit. We were told by the zoning office that we could move ahead with building permits when the Green Z went up. We went ahead with exterior painting. I have intentions for electrical work. The interior – painting, sanding softwood floors. We have removed some carpeting to expose wood floors, new appliances.

A.J. LaRosa – Are you changing the number of bedrooms?

Chuck Burns – the third floor unit was a combination living room/kitchen. That would become a bedroom. Including the second floor, that would be a unit. There is a kitchen on the 2nd floor. Betty rented the 2nd floor in the summer because she has a camp on the lake. We had intentions to remodel that kitchen on the 2nd floor, but when this appeal came in, we stopped. Yes, it will add more bedrooms.

Jonathan – how many bedrooms in each unit.

Burns – three bedroom unit, upstairs a four bedroom unit.

LaRosa – how was it previously -?

Burns – An eight bedroom house.

Michael Long – The owner says there will be an increase in the number of bedrooms...

Brad Rabinowitz – the testimony was that there were 8 bedrooms, to be converted to 7.

Michael Long – the lawyer tried to make a big point about it being a duplex. Jeanne Francis gave testimony that the issue of it being an accessory unit was NOT CONSIDERED. So did Mr. Lerner. Indisputably, it was a single family house with an accessory unit. No non-conformity was ever created. The testimony about separate units is irrelevant. What is being appealed here is the decision of June 3rd by the administrative officer that the zoning ordinance did not apply for work (Non-applicability.) We hold that the zoning ordinance applies fully and that the regular permitting process should apply for this very substantive use of a single family house to a duplex as proposed. The use of the property currently and the amount of work that has gone on without permits should be investigated further. It seems like the kitchen on the first floor has already been removed. If that is true, the work has been done while the appeal period was still running and while appeal was made; and that has eliminated the accessory apartment and has continued blithely without zoning approval. A serious violation of the ordinance, and should have consequences to follow.

Israel Smith – We heard from the property owner that the previous owner had rented out other floors.

Michael – Up to 1969. After that, I understood that only the third floor was rented, and the record demonstrates that.

Jonathan – closes Public Hearing at 7:51 pm.

V. Sketch Plan Review

1. 14-1206SP: 380 COLCHESTER AVENUE (RL, Ward 1) Nathaniel M. Hayward

Sketch plan review for proposed three lot subdivision. (Project Manager: Scott Gustin) Kevin Worden, Nate Hayward present.

Overview presented. 3 lot subdivision. House was moved here in the 1970s from Riverside Avenue. Large lot. Similar subdivision done on Colchester Avenue recently. Presents photos. Lots will be at least 60' wide. Similar development pattern. "Ravine Area" behind lots. Make existing duplex a triplex, a conditional use. Would request a combined preliminary and final plat review. Existing curb cut, u – shaped drive. We would look to re-use those curb cuts; review with DPW for site distances. Those curb cuts ramp up – we would look to level, ramp up. Adding an addition to the existing house. Relieve the over burden of that steep slope, reduce instability. Move parking.

Site plan layout intended to allow for parking behind and below structures; not visible from the streetscape. No elevations yet.

We have not shown building envelopes – just setbacks. Most of lot 3 is unbuildable. Very constrained building envelope.

Jonathan – How many curb cuts will there be?

Kevin – there are 2 existing curb cuts – there will be 2 – one shared with lot 2 and 1. Not continue through. The northerly curb cut will be a shared drive with access to lot one and lot three. Below the addition.

Jonathan – my concern is traffic safety. I am trying to picture exactly where it is on that stretch. You are reconfiguring the angle from Colchester Avenue, to improve site lines?

Kevin – the southerly one will be more perpendicular to the road. Cars will be facing forward, not backward when entering Colchester Avenue. Site distances will be better with removal of some of the vegetation.

Michael – slope of the drives will change, not the location?

Kevin – yes.

Brad – Lot 3 has the steep slope?

Kevin – Yes.

Brad – disappointing that the center lot become asphalt bound. Not a very good aesthetic in the RL zone. Two single family houses, as you show, will be really restricted.

Kevin – Rather than sloping up, we will be leveling, sloping down. Grades will be 5-7' lower than existing grade. Removing 5-7 contour lines back there. We will show that on a complete application. Level area will be enlarged.

Brad – and paved.

Kevin – the parking drive out front will be removed and returned to lawn. By using 2 driveways rather than 3 driveways, integral parking. Less parking than three distinct parking areas.

Brad – we challenge you to create more useable ground area.

[laughter]

Ken – there is a supplemental communication.

Kevin – Something we should see, Ken?

Scott Gustin – we just got it today. We will give you a copy.

Jonathan Stevens – closes Sketch Plan Review 8:05 pm.

VI. Other Business

2. 13-1232CA/CU: 31 RIVERMOUNT TERRACE (RL, Ward 7) Gregory A Jenkins

One year review per condition 2 of approval for two bedroom bed and breakfast, one parking space waiver, widen driveway. (Project Manager: Mary O'Neil)

Greg Jenkins, present.

Jonathan – we received a communication that you are not compliant with parking with your permit. Please describe.

Jenkins – for me to be successful, I need to limit the number of cars at my place. That is what I have done. Nobody just shows up. They do an inquiry on Airbnb. I have 2 cats, shared bath. Parking is limited. I inquire how they will be arriving. Could be bicycle, airport. I only have 2 bedrooms, I could have 4 cars. It is not inconceivable. There are three rooms out there. I had Mom and Dad book one room, Johnny in the small room. They come in one care.

Jonathan – You have the ability to do that?

Jenkins – I can turn off “Instant book.” I don't enable instant book. People send me an email. I have a template that I had addressed key questions, and the foremost is “how are you arriving?” In a taxi from the airport, I don't have a parking issue. Key code for garage.

Mary O'Neil – by specific permit conditions, approval was for 2 bedroom bed and breakfast. By conditions, he can have his use monitored by web and advertising. In your supplemental communication, you will see Airbnb advertising, taken today, advertising 3 bedrooms, evening meals, and parking on the street.

Jenkins – My neighbor and his cars, damn historic trolley park in the street. So can I.

Ali Zipparo – How many rooms do you rent out?

Jenkins – I have to control cars. 2 cars tonight. I have superbus from Boston. So what? Even if you put me down for 2 bedrooms, that has no bearing on the number of cars I have. You approved the Hotel Vermont. They don't have the number of parking spaces, especially for employees. I am an employee, I live there. Everybody doesn't drive. We have an airport. I have a lot of business people. They fly in.

Brad – You would be better served by showing us that you rent 2 bedrooms, instead of telling us that, Gee, I can have three bedrooms if I control the cars. You had conditions of approval.

Mary O'Neil – I would suggest that the permit be revoked. He has ignored the conditions of his approval; was originally denied for a three bedroom use. Has ignored his conditions and limitations of approval. Is serving dinner; running a hotel and restaurant in an RL zoning district. Many people gave testimony against permit request for the three bedroom bed and breakfast use. He is not compliant.

Jenkins – controlling the number of cars!

Brad – we have to deliberate. How about complying?

Jenkins – I will come back in 6 months, and I can guarantee only 2 bedrooms, and won't serve dinner.

Michael – That is key. No dinner. No cars on street. Two rooms.

Jenkins – I can do that.

Mr. Larosa - I have used Airbnb. We can check rental schedule. It is possible to see how many rooms are being rented.

Jenkins – I can do it.

Jonathan – There is an explosion in airbnb. It impacts low density residential neighborhoods. It is not his problem to solve.

Jenkins – I would disagree that I do not impact the neighborhood. As a single family home, I have a four bedroom house. That would be four cars leaving in the morning, returning at night.

Jonathan – we will be deliberating Monday.

Neighbor – tough area. Residential. Peter Bahrenberg. I live on 54 Rivermount, across the street. It is a dangerous corner. He has shown no intention of complying with your conditions. He was running when he was denied the first time. He has not complied with the conditions imposed. He asks his customers to park on the street. He has a sign on the door. His bedroom is a 2 bedroom house, not sure what he is renting. I looked at the review. The impact from last month – in their party, there were 8 people the first night, 5 the second night. I don't know how you do that with three bedrooms. There are impacts, not just parking. Perhaps we can't deal with that tonight, but it is exposure. This amounts to a commercial entity.

Jonathan – it is in the works.

Ali – noise level?

Peter Bahrenberg – I have not experienced any noise problems.

Jenkins – The sign just has my phone number on it. I have to have a way to folks contact me.

Jonathan – Is a sign permit required?

Scott Gustin – 2 sq. ft.

Ken Lerner – Signs need a permit.

Public hearing closed 8:20 pm.

VII. Adjournment

Adjourned at 8:21 pm.

Deliberative to be held Monday, July 21st at 5:00 pm.

A. Hart - Chair, Development Review Board

Date

Nic Anderson, Zoning Clerk