

Burlington Development Review Board

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

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



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, July 6, 2021, 5:00 PM

Amended PUBLIC HEARING NOTICE

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401

Zoom: <https://us02web.zoom.us/j/84713629087?pwd=Z29nZDd3ekc2U3pNdmVpVW4yVnJrUT09>

Password: 350327

Webinar ID: 847 1362 9087

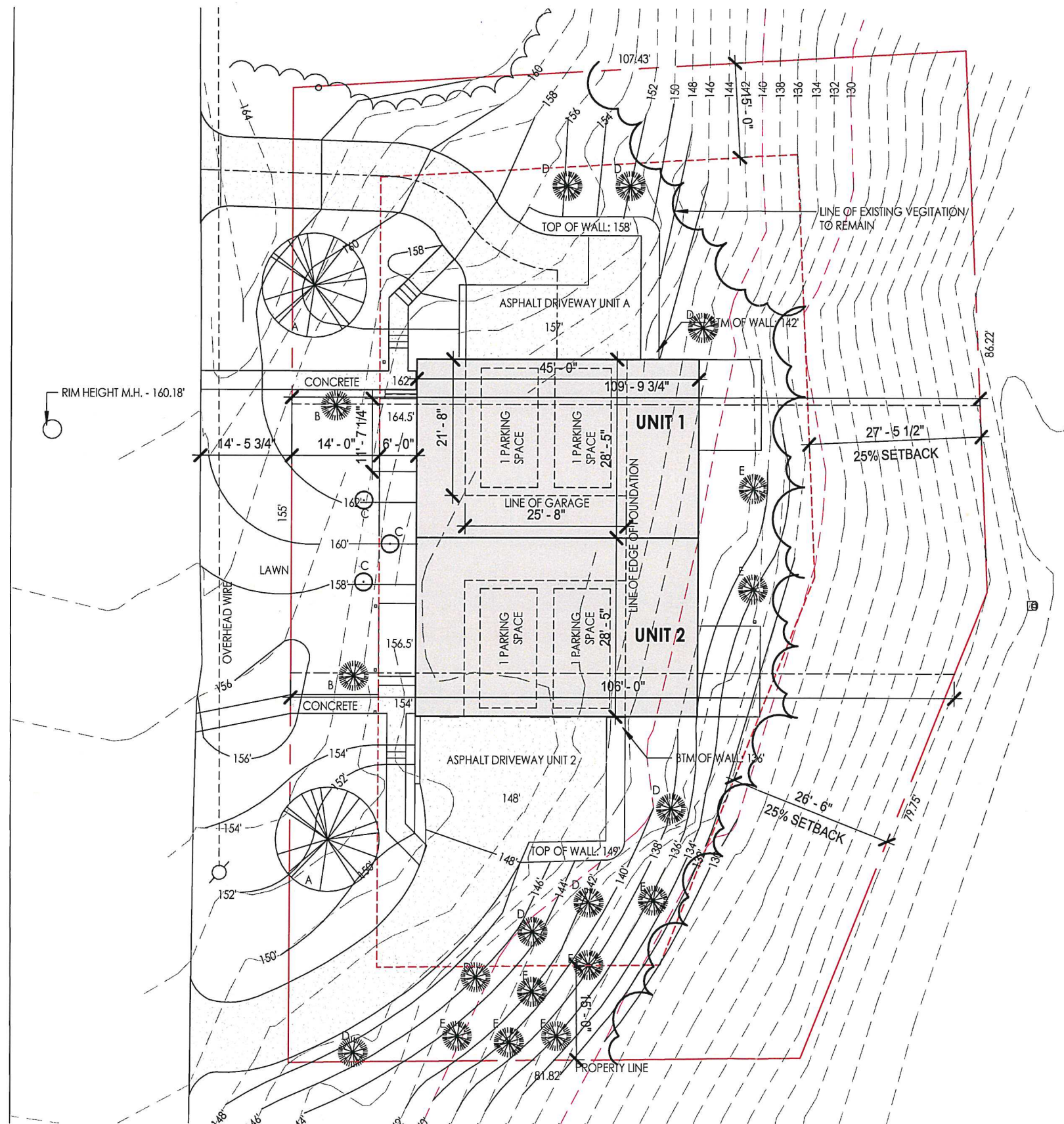
Telephone: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782

- 1. ZP-20-671; 41 Pine Place (RM, Ward 5S) Sam Catalano**
- Request for three-bedroom short-term rental (bed and breakfast) and two-bedroom boarding house within duplex. No construction proposed.
- 3. ZP-20-72; 15 Rockland Street (RL, Ward 7N) James Daigle**
Request extension of ZP# 20-0687CA to construct new duplex. Two-car garage under each unit. Each unit having own driveway, front porch and rear porch.
- 4. ZP-21-421; 12-22 North Street (NMU, Ward 3C) Draker Solar Properties LLC**
Converting basement space to small brewery and tasting counter.
- 5. ZP-21-213; 38 Latham Court (RL, Ward 1E) Mark McGee**
Two-story addition; first floor shop and second floor office space. Roof replacement. Patio door and window replacements.
- 6. ZP-21-446; 501 Pine Street (ELM, Ward 5S) Vermont Gas Systems Inc**
Construct parking and service area for food truck stop (cafe).

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

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

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



ZONING DISTRICT: RL

MIN. LOT SIZE: 10,000 S.F.
MAX. LOT COVERAGE 35%
FRONTAGE: '
LOT DEPTH: 100'

FRONT: Ave. of 2 adjacent lots on both sides +/-5-feet
SIDE: 10% of lot width or ave. of sideyard setback of 2 adjacent lots on both sides.
REAR: 25% of lot depth but in no event less than 20'
HEIGHT: 35'

PROPOSED LOT COVERAGE

LOT SIZE: 16,248 S.F.*

UNIT 1: 1,278.5 S.F.
PORCHES: 226 S.F.
WALKWAY: 126 S.F.
DRIVEWAY: 936 S.F.
RETAINING WALLS:

UNIT 2: 1,278.5 S.F.
PORCHES: 226 S.F.
WALKWAY: 142 S.F.
DRIVEWAY: 1,095 S.F.

PROP LOT COVERAGE / TOTAL WITH PORCHES
5,308 S.F. = 32.66%

+10% FOR PORCHES
* lot area is based off tax parcel map

DRAWING KEY

- PROPOSED STRUCTURE
- DECK OR PORCH
- PROPERTY LINE
- SETBACK LINE

19 ROCKLAND FRONT YARD = 18'-0"

PLANTING KEY

KEY	COMMON NAME	QUANTITY	SIZE
A	SUGAR MAPLE	2	3CAL.
B	HYDRANGEA	2	
C	WEeping ALASKIAN CEDAR	3	
D	GRAY DOGWOOD	8	
E	NANNYBERRY VIBURNUM	8	

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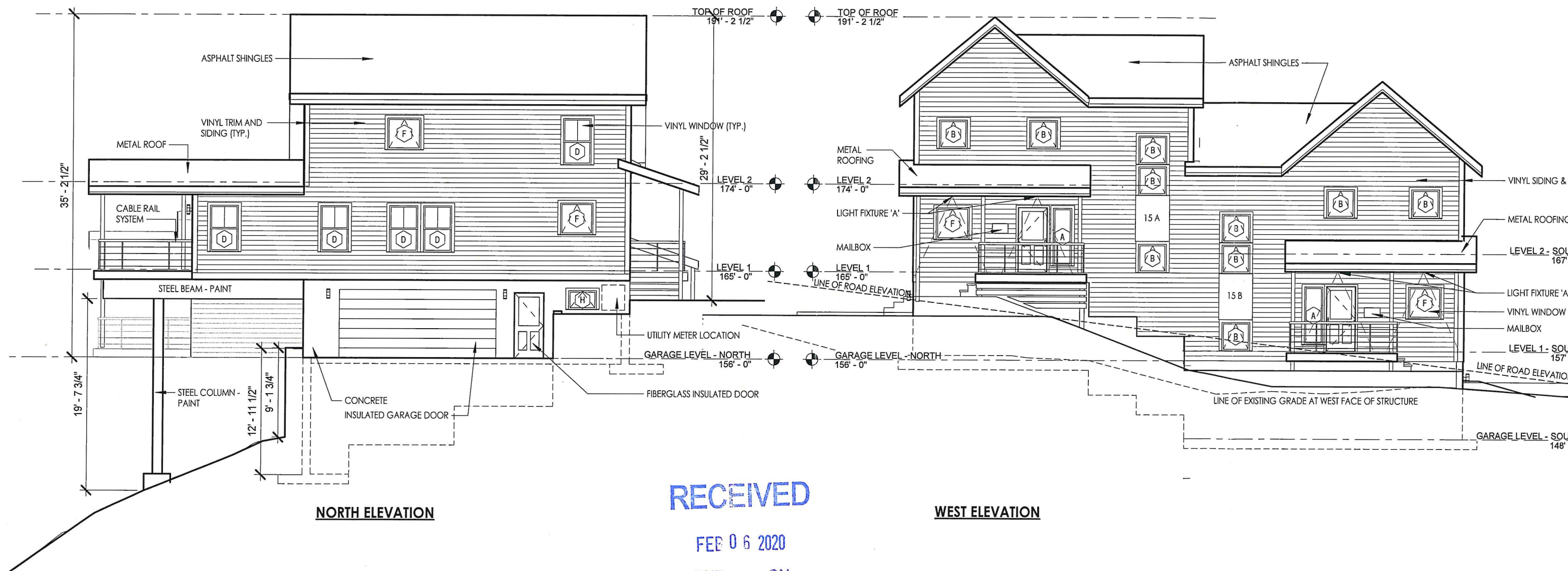
DUPLEX

15 ROCKLAND BURLINGTON VT



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LOT COVERAGE PROPOSAL
SHEET NO: A0



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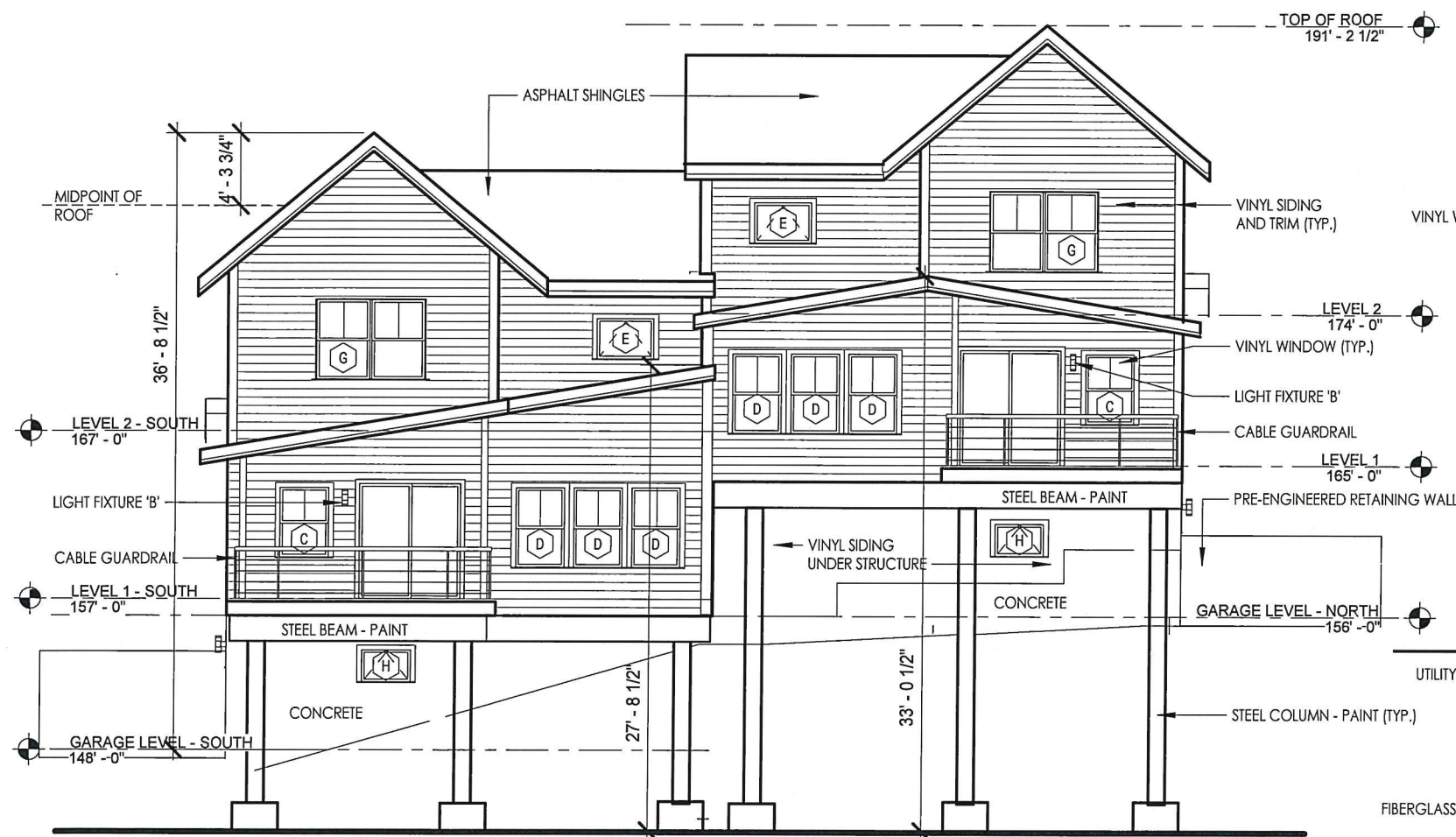


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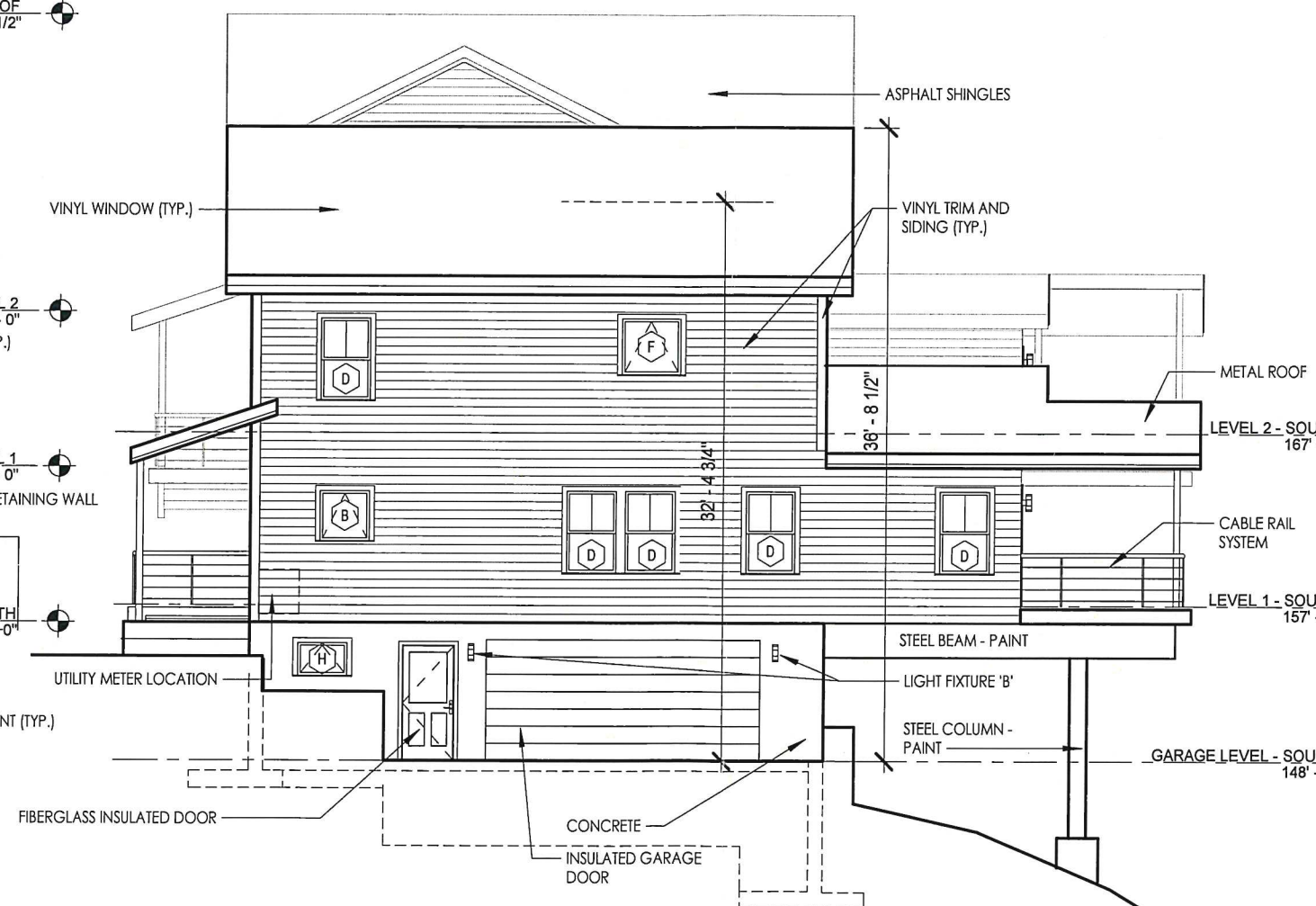
ELEVATION

SHEET NO.

A2



EAST ELEVATION



SOUTH ELEVATION

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15 ROCKLAND BURLINGTON VT

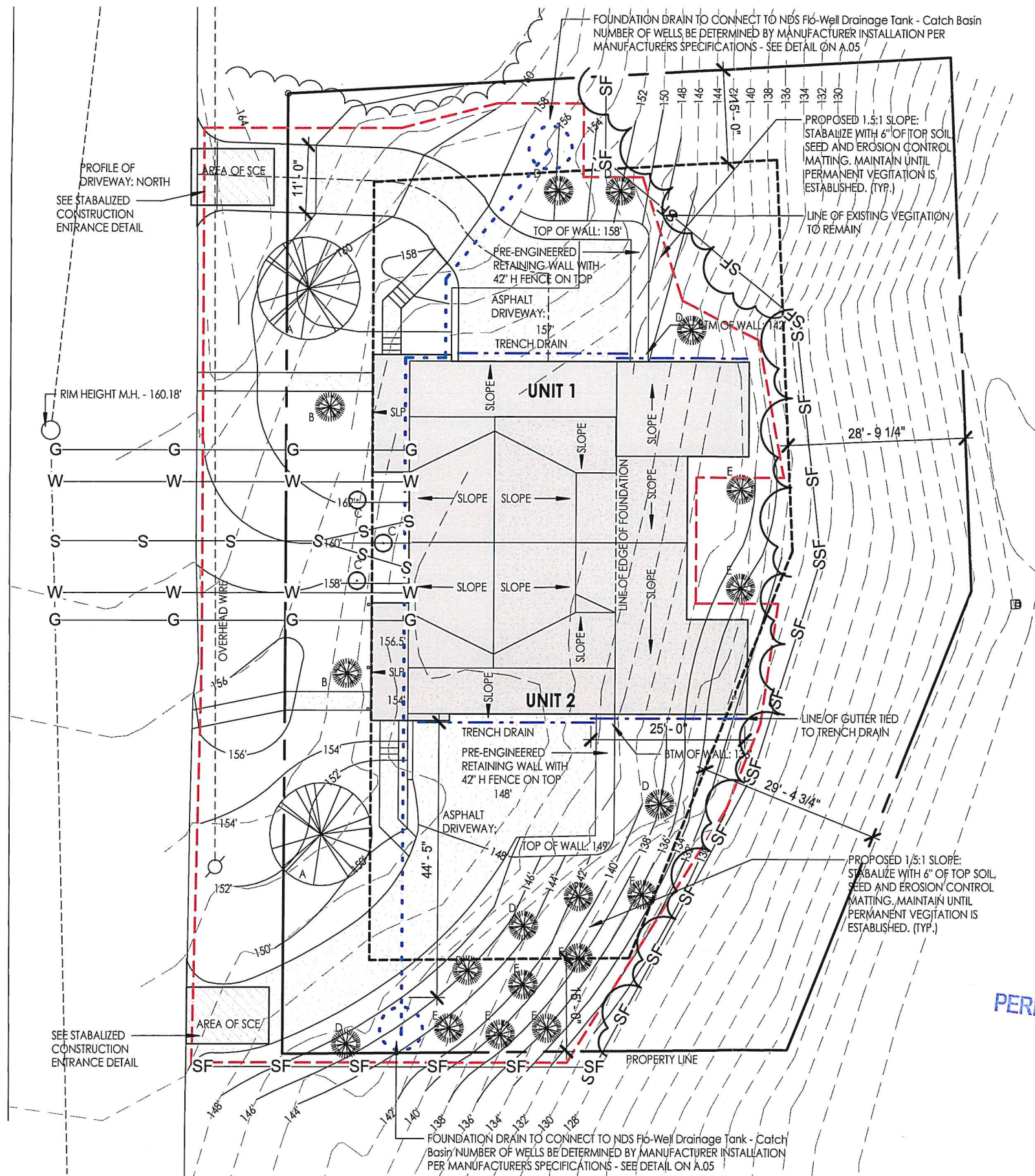


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ELEVATION

SHEET NO:

A 2



GENERAL NOTES

1. ARCHITECTURAL DRAWINGS ARE FOR GENERAL INFORMATION ONLY. ARCHITECTURAL DRAWINGS DO NOT INCLUDE STRUCTURAL, MECHANICAL OR ELECTRICAL CALCULATIONS, TECHNICAL INFORMATION OR COORDINATION. CONTRACTOR TO PROVIDE STRUCTURAL, MECHANICAL AND ELECTRICAL INFORMATION FOR PERMITTING AND CONSTRUCTION.
2. ALL CONSTRUCTION TO MEET OR EXCEED ALL LOCAL, STATE AND FEDERAL CODES.
3. ALL DIMENSIONS TO BE VERIFIED IN FIELD BY OTHERS. ANY DISCREPANCY SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT FOR RESOLUTION.
4. ALL DIMENSIONS ARE TO FACE OF FRAMING OR CONCRETE UNLESS OTHERWISE NOTED.
5. CONTRACTOR SHALL COORDINATE ALL WATER, SEWER AND ELECTRICAL CONNECTIONS WITH SUB-CONTRACTOR. LOCATIONS ARE APPROXIMATE AND SHALL BE REVISED BY THE SUBCONTRACTOR.

DRAWING KEY

- PROPOSED STRUCTURE
- DECK OR PORCH
- PROPERTY LINE
- SETBACK LINE
- GUTTER
- TRENCH DRAIN
- FOUNDATION DRAIN
- AREA OF DISTURBANCE = 12,245 S.F.

- SF—SF LOCATION OF SILT FENCE
- S—S LOCATION OF WASTE WATER
- W—W LOCATION OF WATER
- G—G LOCATION OF GAS

PLANTING KEY

KEY	COMMON NAME	QUANTITY
A	SUGAR MAPLE	2
B	HYDRANGEA	2
C	WEeping ALASKIAN CEDAR	3
D	GRAY DOGWOOD	8
E	NANNYBERRY VIBURNUM	8

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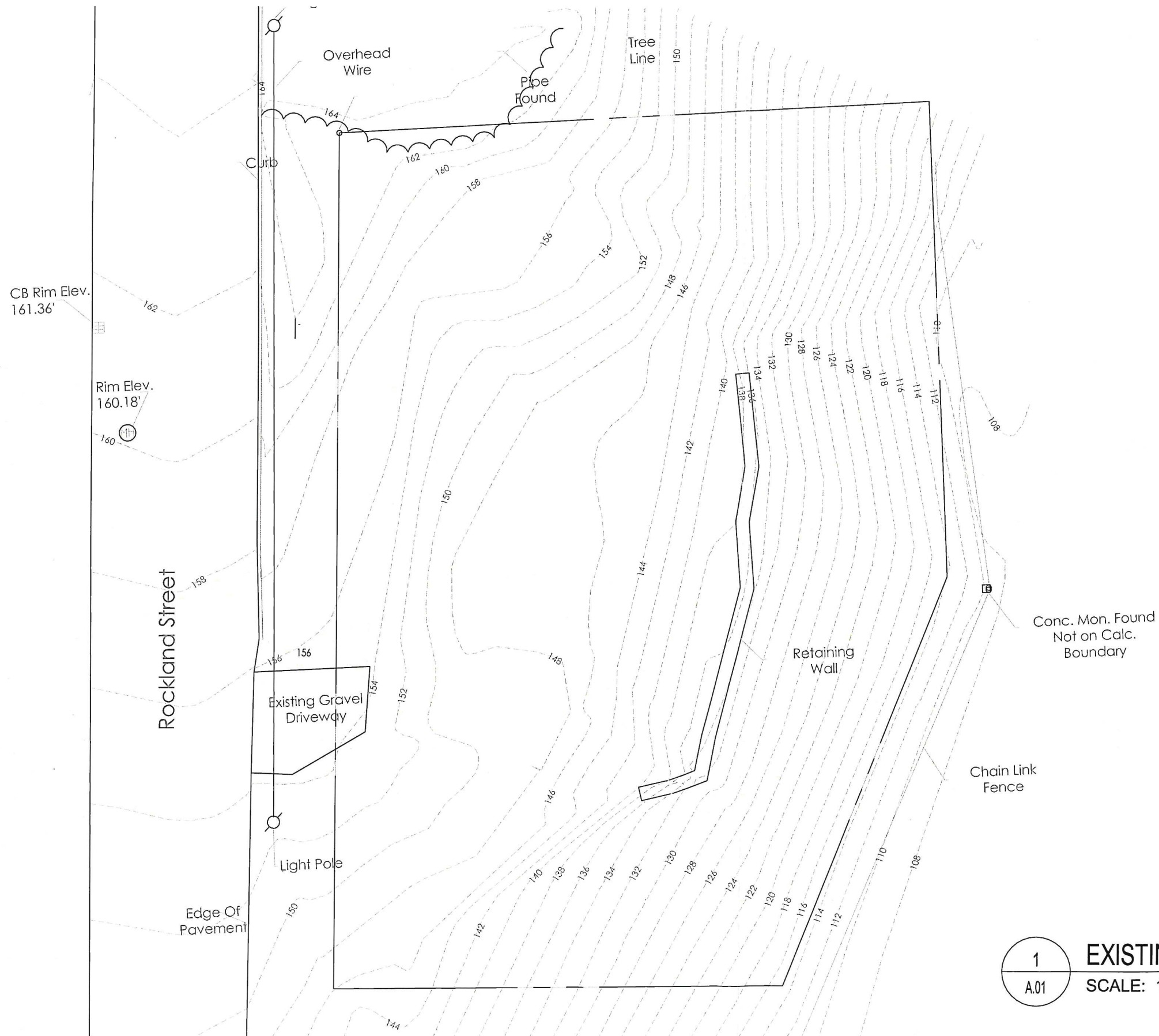
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1
A.01
EXISTING SITE PLAN
SCALE: 1" = 20'-0"

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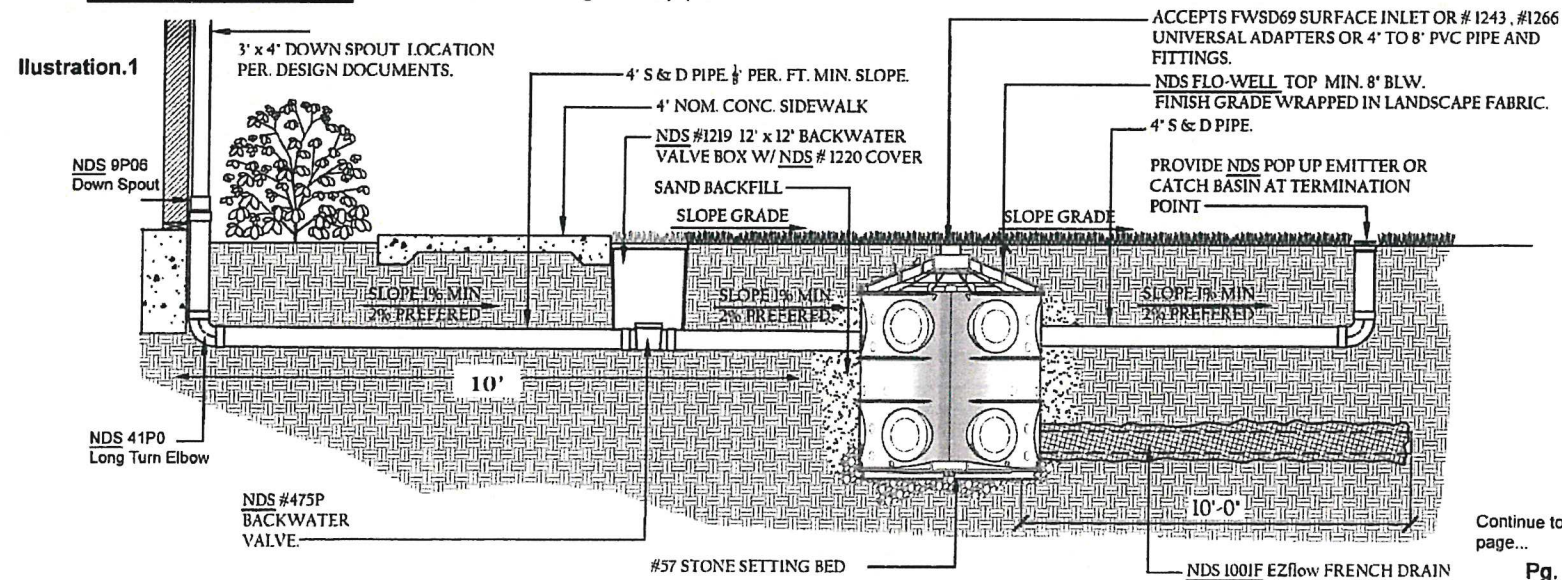
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DRY WELL SETUP

Required items: Small hammer, tape, fabric pack, NDS Universal Adapter, shovel, sand or recommended 3/4" stone gravel, 4" PVC pipe, jig-saw, and catch basin or downspout adapter

1. Strategically plan Flo-Well's location at a minimum distance of 10' from foundations.
 - a. Note: Take into consideration traffic and elevation conditions.
2. Once Flo-Well location is verified; dig a 4' wide by 4' deep hole.
3. Dig a trench from the end of the downspout at about 1' deep and 6" wide that slopes gradually towards the Flo-Well.
4. For pipe connection and leach direction, use small hammer to knock-out appropriate 1" and 4" panel ports or use jigsaw to cut out universal adapter port.
5. Wrap fabric around Flo-Well and secure with tape to prevent soil from entering drain holes.
6. Place Flo-Well assembly into ground and insert preferred 4" pipe into knocked-out port. Connect other end of 4" pipe to downspout either by catch basin or downspout adapter.
 - a. Note: Use NDS Universal Adapter and lock within panel universal adapter cut out for 3" and 6" pipes.
7. Backfill evenly around the Flo-Well with sand or recommended 3/4" stone gravel.
8. Bury Flo-well assembly with top at least 8" below the surface grade.

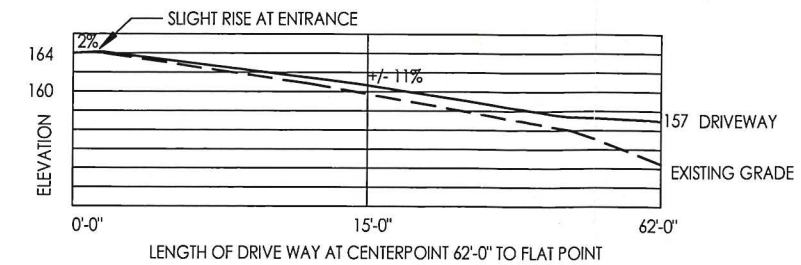
Installation Example: Groundwater Recharge Hardpipe.



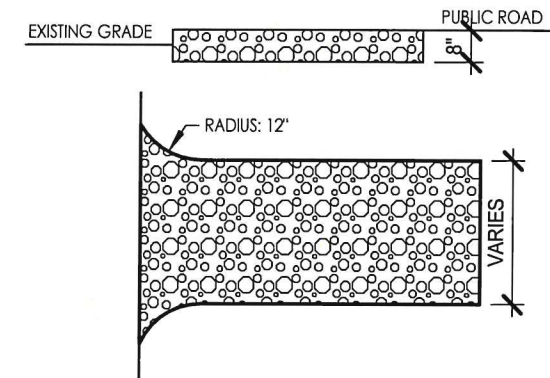
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Pg. 1

STORMWATER RETENTION SYSTEM



NORTH DRIVEWAY PROFILE



CONSTRUCTION SPECIFICATION

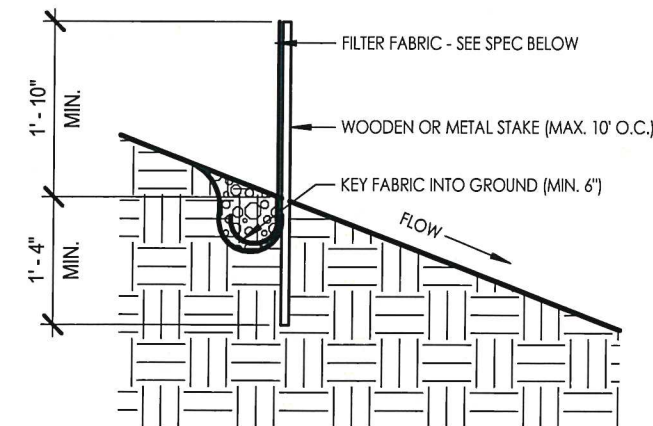
1. STONE SIZE 4-8" CRUSHED STONE OR RECLAIMED OR RECYCLED CONCRETE EQUIVALENT.
2. LENGTH - NOT LESS THAN 30'
3. THICKNESS - NOT LESS THAN 8"
4. WIDTH - NOT LESS THAN 12'
5. GEOTEXTILES MUST BE PLACED OVER THE ENTIRE AREA BEFORE PLACING STONE.
6. SURFACE WATER - ALL SURFACE WATER FLOWING OR DIVERTED TOWARDS CONSTRUCTION ENTRANCES SHALL BE PIPED BENEATH THE ENTRANCE. IF PIPING IS IMPRACTICAL, A MOUNTABLE BERM WITH 5:1 SLOPES WILL BE PERMITTED. MAINTENANCE - THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION WHICH WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. ALL SEDIMENT SPILLED, DROPPED, WASHED OR TRACKED ONTO PUBLIC RIGHTS-OF-WAY MUST BE REMOVED OF IMMEDIATELY AND DISPOSED OF IN ACCORDANCE WITH EPSC PLANS. (i.e. PLACED IN A SOIL STOCKPILE AREA OR AREA WHERE IT CAN BE STABILIZED. IF SWEEPING IS THE CHOSEN METHOD FOR REMOVAL THE SWEEPED MATERIAL MUST BE COLLECTED AND DISPOSED OF AS STATED ABOVE.
7. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH STONE AND WHICH DRAINS INTO AN APPROVED SEDIMENT TRAPPING DEVICE.
8. PERIODIC INSPECTION AND NEEDED MAINTENANCE SHALL BE PROVIDED ACCORDING TO PERMIT REQUIREMENTS BASED ON SITE CONDITIONS, WEATHER AND FLOW OF TRAFFIC.

STABILIZED CONSTRUCTION ENTRANCE

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CONSTRUCTION SPECIFICATION FOR SILT FENCE

1. WOVEN WIRE FENCE TO BE FASTENED SECURELY TO FENCE POSTS WITH WIRE TIES. WIRE FENCE REINFORCEMENT REQUIRED WITHIN 100 FEET OF UPSLOPE OF RECEDED WATERS.
2. FILTER CLOTH TO BE SECURELY FASTENED TO WIRE FENCE WITH TIES SPACED EVERY 24" AT TOP AND MIDSECTION. FENCE SHALL BE WOVEN WIRE 6" MAXIMUM MESH OPENING.
3. WHEN TWO SECTIONS OF FILTER FABRIC ADJOIN EACH OTHER THEY SHALL BE OVERLAPPED BY SIX INCHES AND FOLDED. FILTER FABRIC SHALL BE EITHER FILTER X STABIUNKA 1140N, OR MIRAFI 100X, OR APPROVED EQUIVALENT.
4. FABRICATED UNITS SHALL BE GEOFAB, ENVIROFENCE OR APPROVED EQUIVALENT.
5. MAINTENANCE SHALL BE PERFORMED AS AND MATERIAL REMOVED WHEN SEDIMENT REACHES HALF OF FABRIC HEIGHT.

SILT FENCE DETAIL

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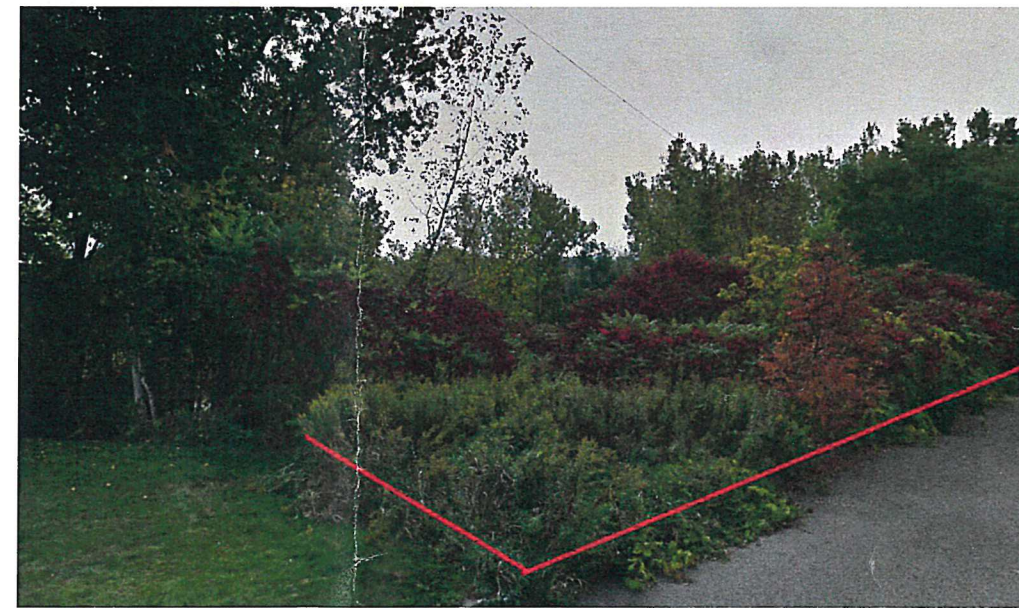
14 ROCKLAND - EXISTING



10 ROCKLAND - EXISTING



19 ROCKLAND - EXISTING



15 ROCKLAND - EXISTING



22 ROCKLAND - EXISTING



3 ROCKLAND - EXISTING

Window Schedule				
Type Mark	Description	Count	Type	Comments
A	FIXED	2	24" x 72"	
H	AWNING	4	36" x 24"	
B	AWNING	12	36" x 36"	
C	DOUBLE HUNG	2	36" x 52"	
D	DOUBLE HUNG	16	36" x 58"	
E	AWNING	2	42" x 30"	
F	AWNING	5	42" x 40"	
G	DOUBLE HUNG PAIR	2	78" x 58"	

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DUPLEX

15 ROCKLAND - BURLINGTON, VT



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CHECKED BY: Author

IMAGES / WINDOW SCHEDULE
SHEET NO: 10

Burlington Development Review Board

149 Church Street, City Hall

Burlington, VT 05401

www.burlingtonvt.gov/PZ/Boards/Development-Review-Board

Phone: (802) 865-7188

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Burlington Development Review Board

Findings of Fact

Deliberative Hearing Tuesday, June 2, 2020

In RE: 20-0687CA/CU; 15 Rockland Street (Ward 7N, RL) (Tax Lot No. 029-3-053-000)

Owner/Applicant: James Daigle / Hinge, Inc. (Missa Aloisi)

Request: The applicant seeks approval to construct a new duplex on a vacant lot, with associated site improvements.

Members Present:

Brad Rabinowitz
AJ LaRosa
Brooks McArthur
Springer Harris
Ravi Venkataraman
Kienan Christianson

Evidence Presented:

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

I. FINDINGS

Background Information:

The applicant proposes to construct a new duplex on a vacant 16,248 sf lot. Each unit will have parking beneath the structure, and their own individual driveway off Rockland Street.

I. Findings

Article 3: Applications, Permits and Project Reviews

Part 3: Impact Fees

Section 3.3.8 Time and Place of Payment

(a) New Buildings

Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.

Impact fees shall apply. The fees will be based on the net new square footage of the building.

Affirmative finding as conditioned.

Part 5: Conditional Use and Major Impact Review

Section 3.5.6 Review Criteria

(a) Conditional Use Review Standards

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

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

The proposal will have minimal impact on public utilities, facilities and services. A letter of confirmation from DPW will be required to assure adequate sewer capacity. Additionally, a state wastewater permit will be required. **Affirmative finding as conditioned.**

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

The property is within an established residential neighborhood and a residential zoning district. The Residential Low Density (RL) zoning district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This particular stretch of Rockland St contains four single family structures and two duplex structures. The proposed use conforms with the purpose of the RL zone. **Affirmative finding.**

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

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

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

This parcel is located along Rockland Street, a residential street. This section of Rockland Street eventually turns to the west and becomes Temple Street – an approx. 215 ft long street that dead ends. Each unit will have its own driveway providing access off Rockland Street. Each unit's two-car garages individual driveways will provided adequate onsite parking. There are no transit stops in this neighborhood. The nearest stops are along North Avenue, approximately 4,000 ft away via sidewalks. A sidewalk exists on the opposite side of Rockland Street. **Affirmative finding.**

- 5. The utilization of renewable energy resources;*

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

and;

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

The applicant will be required to secure a state wastewater permit, and associated building and trades permits for construction of the new structure. **Affirmative finding as conditioned.**

(c) Conditions of Approval

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

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

The plans indicate new landscaping to surround the new construction. Landscaping includes a mix of trees and shrubs. Landscaping will also provide a stabilization function on the slope at the rear of the property. **Affirmative finding.**

2. *Time limits for construction.*

The standard 3 year time limit will apply to this permit. The applicant will have one year to at least start the project, and an additional two years to bring to the project to a conclusion. **Affirmative finding.**

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

Construction hours are not specified. Typical construction hours in residential areas are Monday – Friday from 7:30 AM – 5:30 PM. Saturday construction may occur for interior work only. No work on Sunday. **Affirmative finding as conditioned.**

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

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

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

None identified. It is the applicant's obligation to secure any additional permits (from state or federal offices) as required. **Affirmative finding.**

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

(a) Purpose

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

Duplexes are conditional uses within the RL district. **Affirmative finding.**

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

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

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

Not applicable. The property is located within the RL Larger Lot Overlay District. See Sec. 4.5.5 below.

Table 4.4.5-2 Base Residential Density

Not applicable. The property is located within the RL Larger Lot Overlay District. See Sec. 4.5.5 below.

Table 4.4.5-3 Residential District Dimensional Standards

Zoning District	Max. Lot Coverage	Setbacks				Max. Height
		Front	Side	Rear	Waterfront	
RL	35%	Min/Max: Ave. of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides Max required: 20-feet	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	Min: 75' feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet
15 Rockland Street	32.66%	<i>Ave. front yard setback: 18'</i> <i>Proposed Setback: 20'</i>	<i>Lot width: 155' – min. setback req'd – 15'</i> <i>Proposed setbacks: 44' (North) & 55' (south)</i>	<i>Lot depth: 111' – min. setback req'd: 27' 5 ½"</i> <i>Proposed setback:</i>	<i>N/A</i>	32'

Zoning District	Max. Lot Coverage	Setbacks				Max. Height
		Front	Side	Rear	Waterfront	
				27' 5 ½"		

The proposed building complies with the maximum lot coverage and height requirements, as well as the minimum setback requirements. **Affirmative finding.**

(c) Permitted and Conditional Uses

A duplex is a conditional use in the RL zone. **Affirmative finding.**

(d) District Specific Regulations

1. Setbacks

A. Encroachment for residential driveways

Not applicable.

B. Encroachment into the Waterfront Setback

Not applicable.

2. Height

Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features

Not applicable.

4. Accessory Residential Structures and Uses

Not applicable.

5. Residential Density

A. Additional Unit to multi-family

Not applicable.

B. Additions to Existing Residential Structures

Not applicable.

C. Residential Occupancy Limits

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

Not applicable.

6. Uses

A. Exception for Existing Neighborhood Commercial Uses

Not applicable.

7. Residential Development Bonuses

Not applicable.

Section 4.5.5 RL Larger Lot Overlay District

*The RL Larger Lot Overlay District is intended to maintain the existing residential development pattern of larger residential lots reflective of the respective neighborhoods' development history. The property is within this overlay district and is subject to the requirements herein. **Affirmative finding.***

Table 4.5.5-1 Residential Density, Minimum Lot Size and Frontage: RL Larger Lot Overlay

	Minimum Lot Frontage¹ <i>(In linear feet)</i>	Minimum Lot Size <i>(In square feet)</i>	Maximum dwelling units per acre² <i>(without bonuses or any Inclusionary Zoning allowances)</i>
Single detached dwelling	75 feet	9,900 sqft	4.4 units/acre
Duplex and above	100 feet	15,840 sqft	5.5 units/acre
<i>15 Rockland St</i>	<i>155'</i>	<i>16,248 sqft</i>	<i>5.36 units/acre</i>

The lot and proposed duplex is compliant with the minimum requirements laid out above.
Affirmative finding.

Article 5: Citywide General Regulations

Part 5: Performance Standards

Section 5.5.1 Nuisance Regulations

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

Affirmative finding.

Section 5.5.2 Outdoor Lighting

Lighting fixture spec sheets have been provided, and the elevation drawings show the location of the proposed fixtures. The fixtures comply with the lighting standards of this section.

Affirmative finding.

Section 5.5.3 Stormwater and Erosion Control

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

Section 5.5.4 Tree Removal

Based on aerial photographs, it appears that there could be a few trees removed due their proximity to the proposed development footprint. However, the plans do indicate that new landscaping will be installed. Landscaping consists of maple trees and various shrubs. The plans show a high concentration of shrubs on the slope behind the proposed structure to aid in slope stabilization. **Affirmative finding.**

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The subject property contains no important natural features as identified in the Open Space Protection Plan. **Affirmative finding.**

(b) Topographical alterations

The property slopes downhill considerably moving west to east – from approx. 162 ft in elevation to 110 ft in elevation. Topographical alterations will be made to accommodate the footprint of the structure and the driveways. The project will include a retaining wall to provide slope and structure stability. **Affirmative finding.**

(c) Protection of important public views

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

(d) Protection of important cultural resources

The property contains no archaeologically significant site points, nor is it located within an archaeologically sensitive area. The property is of no known historical significance. **Affirmative finding.**

(e) Supporting the use of alternative energy

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

(f) Brownfield sites

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

(g) Provide for nature's events

As total lot coverage will exceed 2,500 sf, a residential stormwater plan has been provided. As noted above, the city's stormwater program manager is reviewing the proposed stormwater management.

The front and rear entries into the duplex are sheltered, and ample room is available onsite for seasonal snow storage. **Affirmative finding.**

(h) Building location and orientation

The proposed duplex is appropriately oriented towards the street. The building will be situated on the lot similar to other homes in the neighborhood. Ample lawn and open space will surround the home. **Affirmative finding.**

(i) Vehicular access

The proposal involves two separate driveways off of Rockland Street, both providing access to each individual unit. The bottom level of each unit will contain a two car garage, and each driveway will be of sufficient size to accommodate additional parking, should the need arise. **Affirmative finding.**

(j) Pedestrian access

This criterion requires that a walkway connect the duplex to the public sidewalk. While there is no sidewalk on this side of Rockland Street, the plans indicate walkways connecting each unit to the street. **Affirmative finding.**

(k) Accessibility for the handicapped

No handicap accessibility is evident or required with this proposal. **Affirmative finding.**

(l) Parking and circulation

First level garages for each unit will provide 4 parking spaces (the minimum requirement for a duplex). Additional driveway space can accommodate additional parking should the need arise. Circulation is simple with individual access provided to each unit. **Affirmative finding.**

(m) Landscaping and fences

The plans indicate a variety of landscaping proposed. Maple trees and weeping Alaskan cedars will be planted along the front of the property, as well as a few shrubs. To the side and rear of the duplex, several shrubs will be installed to aid in aesthetics and slope stability. **Affirmative finding.**

(n) Public plazas and open space

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

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

The development will be required to utilize underground utilities. The surrounding neighborhood already utilizes underground utilities. Should utility units locate in the front yard,

or visible side yard, they will need to be screened from view from the public street. Trash and recycling totes are expected to be contained inside each garage, and brought curbside for pick up on the appropriate days. **Affirmative finding as conditioned.**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The massing, height, and scale of the proposed duplex is consistent with that of existing homes within this neighborhood. The homes come in a variety of typically suburban forms and styles. Each unit will have covered front porch entries, which will provide for a clear distinction between the first and second floor. Building openings on the front façade will break up any possibility of a blank wall. As viewed from the street, the height will be consistent with the heights of other nearby homes. **Affirmative finding.**

2. Roofs and Rooflines

The duplex will have gable roof lines – running north/south and east/west. Given the topography of the property, each unit will vary in its height, as viewed from the street, but the rooflines will be similar to each other. **Affirmative finding.**

3. Building Openings

The front doors will be protected under each front porch roof. Fenestration is appropriately scaled and placed in consistent rhythm throughout the building. **Affirmative finding.**

(b) Protection of important architectural resources

There are no historically significant structures on, or near, the subject property. **Affirmative finding.**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The front doorways are clearly articulated. There are no large blank walls or expanses of roof. Fenestration and roof variations work successfully to provide an active and inviting street elevation. **Affirmative finding**

(e) Quality of materials

The proposed duplex will be clad in vinyl siding and trim. The windows will be vinyl as well. Asphalt shingles will be installed on the main roof, and metal will cover the roofs of the rear building section and both sets of front and rear porches. The materials proposed are of acceptable quality and durability for new construction such as this. **Affirmative finding**

(f) Reduce energy utilization

The proposed duplex must comply with the current energy efficiency standards of Burlington and the State of Vermont. **Affirmative finding as conditioned**

(g) Make advertising features complimentary to the site

Not applicable. No advertising is included in this proposal.

(h) Integrate infrastructure into the building design

Utilities must be underground. Should there be utility units/boxes placed within view from the street, they shall be screened. **Affirmative finding as conditioned**

(i) Make spaces safe and secure

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

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

Duplexes require 2 parking spaces per unit in the Neighborhood Parking District. The plans indicate a 2-car garage beneath the structure for each unit. The overall minimum requirement of 4 onsite spaces will be met. **Affirmative finding.**

II. MINUTES

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

III. MOTION

Motion: Brooks McArthur

I move that the Board approve the application as proposed, based on the findings in Section I above and subject to the following conditions:

1. **Prior to the release of the zoning permit**, the applicant shall secure a letter of adequate capacity from DPW for water and sewer services.
2. **Prior to the release of the zoning permit**, the site plan shall be revised to include:
 - a. All utility units and adequate screening.
3. **Prior to the start of construction**, the EPSC plan shall be reviewed and approved by the Stormwater Program Manager.
4. **At least 7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Planning & Zoning Department the impact fee as calculated by staff based on the net new square footage of the proposed development.

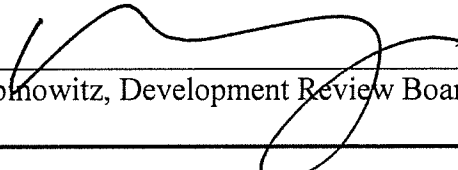
5. Construction shall be limited to the following schedule: Monday – Friday from 7:30 AM – 5:30 PM; Saturday construction may occur for interior work only; and no work on Sunday.
6. Utility lines to the new duplex shall be underground and the utility meters shall be sufficiently screen from view from the public street.
7. The occupancy of both dwelling units is limited to members of a family as defined in Article 13.
8. A state wastewater permit will be required, and is the responsibility of the applicant to secure.
9. Should the structure or use be altered in the future, a new zoning permit will be required, subject to the regulations in effect at that time.
10. The applicant/property owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
11. Standard Permit Conditions 1-15.

Seconded: Springer Harris

Vote: 6-0-0, motion carried

Dated at Burlington, Vermont, this 10th day of June 2020

Respectfully Submitted, ,'



Brad Rabinowitz, Development Review Board Chair

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

Burlington Development Review Board

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

Brad Rabinowitz
AJ LaRosa
Geoff Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, July 6, 2021, 5:00 PM

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401

or

Zoom: <https://us02web.zoom.us/j/84713629087?pwd=Z29nZDd3ekc2U3pNdmVpVW4yVnJrUT09>

Password: 350327

Webinar ID: 847 1362 9087

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

Amended Agenda

- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Consent**
 1. **ZP-20-72; 15 Rockland Street (RL, Ward 7N) James Daigle**
Request extension of ZP# 20-0687CA to construct new duplex. Two-car garage under each unit. Each unit having own driveway, front porch and rear porch. (Project Manager: Ryan Morrison)
 2. **ZP-21-421; 12-22 North Street (NMU, Ward 3C) Draker Solar Properties LLC**
Converting basement space to small brewery and tasting counter. (Project Manager: Mary O'Neil)
- V. **Public Hearing**
 1. **ZP-20-671; 41 Pine Place (RM, Ward 5S) Sam Catalano**
Continued hearing for request of three-bedroom short-term rental (bed and breakfast) and two-bedroom boarding house within duplex. No construction proposed. (Project Manager: Scott Gustin)
 2. ~~**ZP-21-213; 38 Latham Court (RL, Ward 1E) Mark McGee**~~ *Deferred to future meeting*
Two-story addition; first floor shop and second floor office space. Roof replacement. Patio door and window replacements. (Project Manager: Mary O'Neil)
 3. **ZP-21-446; 501 Pine Street (ELM, Ward 5S) Vermont Gas Systems Inc**
Construct parking and service area for food truck stop (cafe). (Project Manager: Ryan Morrison)
- VI. **Executive Session**

Anticipated discussion of pending litigation regarding 75 Cherry Street.
- VII. **Adjournment**

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential.

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

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

Department of Permitting and Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
<http://www.burlingtonvt.gov/PZ/>
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William Ward, Director
Theodore Miles, Code Compliance Officer
Charlene Orton, Permitting and Inspections Administrator
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Alison Davis, Zoning Clerk



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: July 7, 2021
RE: 21-421; 12-22 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.

File Number: ZP21-421

Zone: NMU **Ward:** 3C

Date application accepted: May 16, 2021 A revised floor plan received June 17, 2021.

Applicant/ Owner: Casey Thomas / A.J. Rossman

Request: Small brewery (Food and Beverage Processing) and tasting room (bar) in basement of existing mixed use building. The area of the proposed uses has been minimized since the first application.

Background:

- **Zoning Permit 21-0377CU;** Use conference room on first floor for educational use. 510 sf. December 2020.
- **Zoning Permit 91-193;** Installation of double hung window, first floor in rear of building. No change in use. December 1990.
- **Zoning Permit 01-110;** Change of use from office space to educational/office on the first floor, Residentail unit and artist studio on the second floor. No exterior changes included. August 2000. [Subsequent request to relinquish permit.]
- **Zoning Permit 02-341;** Convert entire second floor to residential unit; Currently 1 residential unit and 33 sf artist studio. March 2002.
- **Zoning Permit 05-385CA;** Installation of photovoltaic panels on lower roof of building. February 2005.
- **Zoning Permit 08-016CA;** install solar tracker. July 2009.
- **Zoning Permit 13-0462FC;** install solid privacy fence in rear yard and across driveway at rear with gates. October 2012.
- **Zoning Permit 14-0636CA;** Replace 5 windows (identified as phases I and III). December 2013.

- **Zoning Permit 15-0121CA**; replace three existing skylights in kind. Two on front and one on back. July 2014.
- **Zoning Permit 17-0699CA**; Replace rotted decking boards on south entrance ramp and landing. January 2017.

Overview: the applicant wishes to install a 167 sf brewing space and 69 sf tasting room in the corner of the basement of 12-22 North Street. Both Food and Beverage Processing and a bar/tavern are Conditional Uses in the NMU zoning district.

Recommended motion: Consent Approval, per the following Findings and Conditions:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 3: Impact Fees

The basement is currently used for storage (“Offices and Other”), so Impact Fees will be calculated for the change to Manufacturing (167 sf, Food and Beverage Processing) and Retail (69 sf. Bar/Tavern.)

Change from storage to Food and Beverage Processing

SF of Project 167

FY 21: July 1, 2020 - June 30, 2021

Department	<u>Industrial</u>		<u>Offices & Other</u>	
	Rate	Fee	Rate	Fee
Traffic	0.268	44.76	0.690	115.23
Fire	0.200	33.40	0.203	33.90
Police	0.358	59.79	0.358	59.79
Parks	0.430	71.81	0.428	71.48
Library	0.000	0.00	0.000	0.00
Schools	0.000	0.00	0.000	0.00
Total	1.256	\$ 209.76	1.679	\$ 280.40

The industrial use is less, so no impact fees are assessed.

Change from storage to bar/tavern (Retail)

Department	<u>Offices & Other</u>		<u>Retail</u>	
	Rate	Fee	Rate	Fee

Traffic	0.690	47.61	0.751	51.82
Fire	0.203	14.01	0.203	14.01
Police	0.358	24.70	0.358	24.70
Parks	0.428	29.53	0.428	29.53
Library	0.000	0.00	0.000	0.00
Schools	0.000	0.00	0.000	0.00
Total	1.679	\$ 115.85	1.740	\$ 120.06

Difference:(All Traffic) \$ 4.21

Affirmative finding as conditioned.

Section 3.3.8 Time and Place of Payment

(b) Existing Buildings: Impact fees must be paid prior to issuance of a zoning permit, or if a building permit is required, within thirty (30) days of issuance of the building permit.

Affirmative finding as conditioned.

Part 5: Conditional Use

Section 3.5.6 Conditional Use Review Criteria

(a)Conditional Use Review Standards:

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

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

The application proposes the use of 167 sf. for brewing, and 69 sf as a tasting area. Both Food and Beverage Processing and a Bar/Tavern are Conditional Uses in the NMU zoning district. The support of Water Resources will be required for the greater intensity use for brewing. Industrial Waste Water review and an upsized meter have been alluded to in staff communications. Any advanced conditions are at the discretion of the Water Resources division.

Affirmative finding as conditioned.

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

The NMU zoning district was intended to allow an increased intensity of development than would typically be found in the surrounding residential areas, and provides neighborhood oriented goods and services and employment opportunities within walking and biking distance.

The following references from the Municipal Development Plan may apply: (Plan BTV)

- Identify opportunities to leverage the creative economy and institutions to strengthen the economy (*Economic Development, Section 5.2*)
- Promote and support locally owned and controlled small businesses. (*Economic Development, Section 5.8.*)

Promote local-owned small businesses, entrepreneurs, home occupations. (*Land Use, Section 5.8*)

Affirmative finding.

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

The relatively small area of use, appropriate proprietor supervision and adherence to Burlington's Noise Ordinance should collectively address any potential for noise, odor or other nuisance. **Affirmative finding as conditioned.**

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

12-22 North Street is located on a major thoroughfare within the city and on or adjacent to public bus routes. There are no minimum parking requirements for the uses. It may be anticipated that the business will attract those within the immediate neighborhood and introduce no negative impact the local transportation network. **Affirmative finding.**

and,

5. *The utilization of renewable energy resources;*

Nothing within this applications will preclude the use of wind, water, solar, geothermal or other renewable energy resources. **Affirmative finding.**

and,

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

Written confirmation and any additional conditions from Burlington's Water Resources division will be required so as to mitigate any extra demand on wastewater services due to the high nutrient content. A State of Vermont Wastewater permit will be required, as will approval by the State for a brewery license and a 4th class (manufacturing) license. It is the applicant's obligation to secure the latter.

Any fit-up, if required, will be subject to all applicable building and life safety codes.

Affirmative finding as conditioned.

(C) Conditions of Approval:

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

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

The utilization of 236 sf of the basement for a brewery/tasting room will not spur any requirement for screening, landscaping, or other exterior mitigation measures.. **Affirmative finding.**

2. *Time limits for construction.*

The identified location is an existing developed site. Any interior work, if demanded, will be subject to trades permit review. **Affirmative finding as conditioned.**

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

As a Conditional Use, the DRB may define the hours of operation. **Affirmative finding as conditioned.**

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

Any change in the use will require review under the regulations in effect at the time of application. **Affirmative finding as conditioned.**

and,

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

The imposition of additional performance standards is at the discretion of the Development Review Board. Conformity to Burlington's Noise Ordinance will be essential to assuring no nuisance impacts. **Affirmative finding as conditioned.**

Article 4: Zoning Maps and Districts

Section 4.4.2 Neighborhood Mixed Use Districts

(a) Purpose

The Neighborhood Mixed Use districts promote development that combines non-residential and residential uses on a single site. These zones allow an increased intensity of development than would typically be found in the surrounding residential areas, and provides neighborhood oriented goods and services and employment opportunities within walking and biking distance. This development type will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new commercial and residential opportunities in the City. The emphasis of nonresidential uses should primarily be oriented to serving the needs of the surrounding residential neighborhoods and other neighborhood commercial uses.

2. *The Neighborhood Mixed Use (NMU) district is intended to preserve and enhance historically commercial areas while reinforcing the compact scale and development patterns within the city's older neighborhoods. Uses are intended to*

provide neighborhood oriented goods and services and employment opportunities within walking or biking distance of residential neighborhoods;

The introduction of a small brewery and tasting room at 12-22 North Street is consistent with the overall purpose of the zoning district; particularly relative to providing new opportunities and neighborhood oriented services within walking or biking distance of residential neighborhoods.

Affirmative finding.

(b) Dimensional Standards and Density:

There are no exterior physical changes proposed to the existing building. **Affirmative finding.**

(c) Permitted and Conditional Uses:

The principal land uses that may be permitted, or conditionally permitted pursuant to the requirements of Article 3, within the Neighborhood Mixed Use districts shall be as defined in Appendix A – Use Table.

Both Food and Beverage Processing (brewery) and Bar/Tavern (tasting room) are Conditional Uses within the NMU zoning district. See Section 3.5.6, Conditional Use Review Criteria (above) and Appendix A, Use Table.

(d) District Specific Regulations:

1. Ground Floor Residential Uses Restricted

This applies only to the NAC District. Not applicable.

2. Exception to Maximum Lot Coverage in NAC District

Not applicable.

A. Landscaping

Not applicable.

B. Housing

Not applicable.

3. Development Bonuses/Additional Allowances

No bonuses are sought. Not applicable.

A. Inclusionary Housing:

Not applicable.

B. Senior Housing:

Not applicable.

C. Maximum Bonus:

Not applicable.

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots. Not applicable.

Section 5.2.2 Required Frontage or Access

This is an existing, developed site with access along North Street. **Affirmative finding.**

Section 5.2.3 Lot Coverage Requirements

Not applicable.

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks

Not applicable.

Section 5.2.6 Building Height Limits

Not applicable.

Section 5.2.7 Density and Intensity of Development Calculations

Not applicable.

Part 3: Non Conformities

Not applicable.

Sec. 5.4.8 Historic Buildings and Sites

Not applicable.

Article 8: Parking

12-22 North Street is now within the Multi Modal Mixed Use parking district, which has no minimum parking requirements.

Section 8.1.6 Transportation Demand Management

b) Applicability

Non-residential or mixed use development: A building footprint of 8,000 sf or more.

The building footprint of 12-22 North Street is less than 8,000 sf. Not applicable.

Part 2: Bicycle Parking

The requirement for Food and Beverage Processing is:

Long Term: 1/20,000 sf

Short Term: 1/25,000, at least 2 per entrance.

Retail (Restaurant, Bar)

Long Term 1/1,000

Short Term 1/500 sf serving area.

The use of 167 sf for brewing will only spur 2 bicycle parking spaces (“at least two per entrance”.) The area is too small to require any Long Term spaces for Food and Beverage Processing or Retail.

The applicant has the opportunity to work with the Department of Public Works for placement within the right-of-way, or Payment in Lieu for the required bike parking as defined under **Section 8.2.7, Payment in Lieu.**

Affirmative finding as conditioned.

II. Conditions of Approval

1. Impact fees. Based on the provided area calculations, \$4.21 is required to offset impacts from Traffic for the Bar/Tavern use. This must be paid **prior to issuance of the zoning permit.**
2. A Vermont Wastewater permit will be required.
3. A Vermont brewer’s license and a 4th class (Manufacturing) license will be required. It is the applicant’s obligation to secure these.
4. Written approval shall be received from Burlington’s Water Resources Division to confirm adequate wastewater facility and metering prior to release of the zoning permit.
5. Two bike parking spaces shall be provided. Their location is subject to review and approval by staff; or if Payment-In Lieu is chosen, confirmation from DPW of appropriate arrangement.
6. Hous of operation shall be set by the DRB.
7. Standard Permit Conditions 1-15.

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

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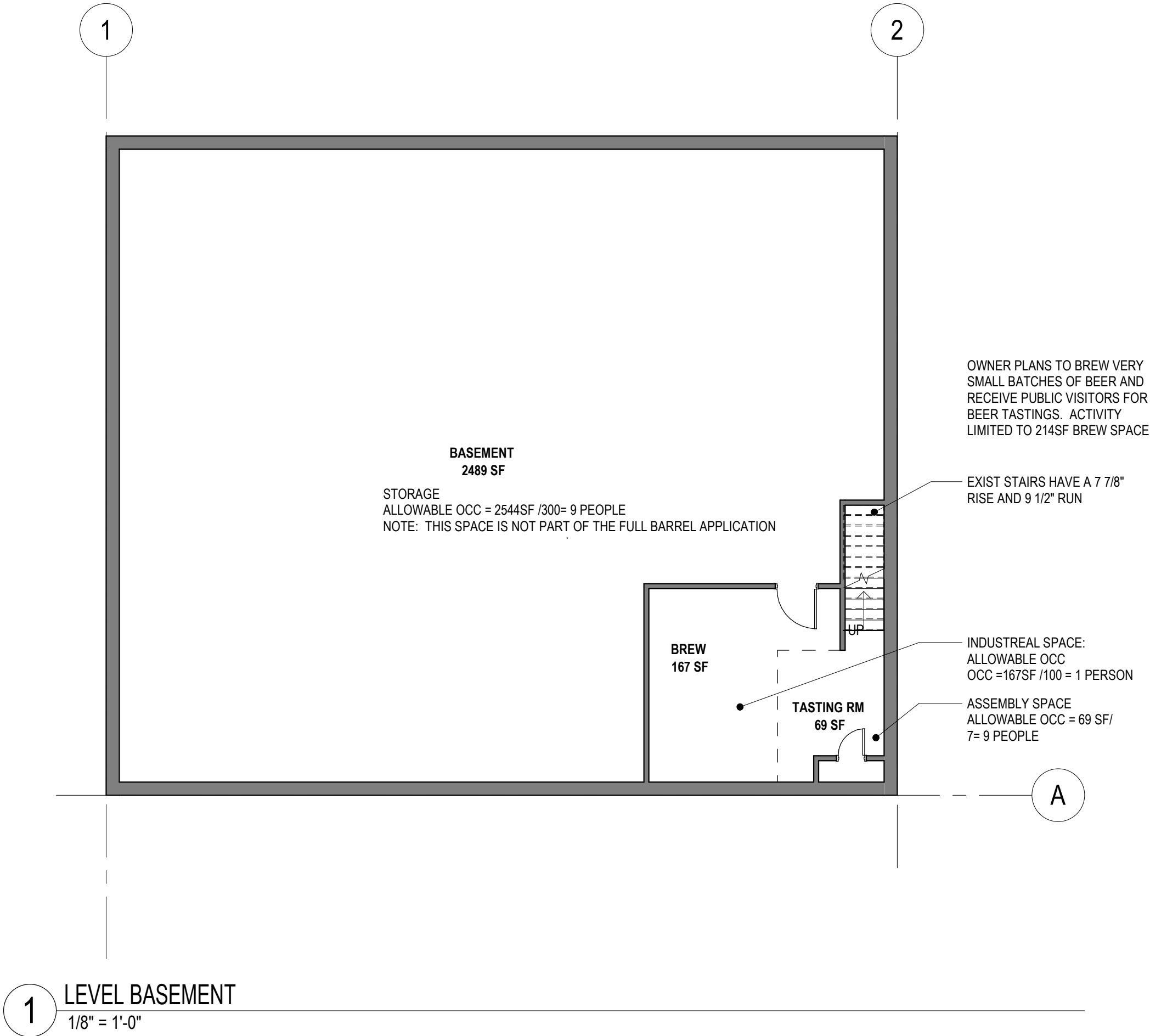
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NORTH STREET

PLN V8"-1'-0"

PLOT RUN 12 NCSTL1

THE NEEDS OF MATRONS & TEENAGE AIDS



REF:

NOT FOR CONSTRUCTION

ERIC MORROW ARCHITECT

EMORROW2030@gmail.com

CELL: 802-343-6990

Project No.			
Project Number			
FULL BARREL COOP BREWERY 24 NORTH STREET, BURLINGTON, VT 05401	Sheet Title. BASEMENT CODE PLAN	Date	Scale
		6/16/2021	1/8" = 1'-0"
		Drawn By Author	Checked By Checker
A1.00			

Department of Permitting & Inspections

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

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



TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: July 6, 2021
RE: 20-0687CA/CU; 15 Rockland 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: 7N

Owner/Applicant: James Daigle / Hinge, Inc. (Missa Aloisi)

Request: Time extension for zoning permit to construct a new duplex on a vacant lot, with associated site improvements.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews)

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

Background Information:

The applicant is seeking an extension for zoning permit 20-0687CA/CU. That permit included approval to construct a new duplex on a vacant lot, with associated site improvements. The DRB approved the application on June 10, 2020. The extension request was submitted on May 18, 2021.

Article 3: Applications, Permits, and Project Reviews

Sec. 3.2.9, Zoning Permits

(d) Time Limit on Zoning Permits

Notwithstanding (e) and (f) below, a zoning permit shall become invalid unless the work or action authorized commences within one (1) year after the date of final decision. All work or action authorized there under shall be completed, and a Final Zoning Certificate of Occupancy received, within three (3) years of the date of decision unless a written extension of time not to exceed one (1) year is granted in advance by the administrative officer. Extensions of time for a zoning permit issued in connection with a conditional use or variance shall require approval by the DRB after a public hearing. Extensions of time may be granted only when the work or action authorized under the zoning permit remains compliant with the current zoning regulations. Up to two (2) time extensions may be granted.

The zoning permit was approved June 10, 2020, and work related to the permit was to be started by June 10, 2021, and completed by June 10, 2023. Work has not yet commenced, however the

applicant submitted this extension request within 1 year from the date of zoning permit approval, on May 18, 2021.

This subsection enables the DRB to approve zoning permit extensions up to 1 year so long as the permitted work remains compliant with the current zoning regulations. Such is the case here. No changes to the zoning code have occurred that would preclude the approved project. A 1-year time extension for the zoning permit may be granted. **(Affirmative finding)**

II. Conditions of Approval

1. All conditions of approval of zoning permit 20-0687CA/CU remain in effect, except that the permit expiration dates are changed as follows:
 - Work or action authorized by the permit must commence by June 10, 2022; and
 - The project shall be completed and a UCO (combined Zoning and Building certificates of occupancy) shall be obtained by June 10, 2024.

PART 1. VARIANCES

Sec.12.1.1 Variance

As stated in other documents, the Breakwater Condo Association would like to locate our garbage shed to a place that would not be in compliance with the city setback ordinance. To be clear, where the shed is now located is in noncompliance. After a complaint by one of the condo owners, we asked Ted Miles who has worked with us before, to instruct us where we could put the shed. Unfortunately, the ONLY place we could legally put the shed would make it very difficult for one of the owners to exit his garage. We're at an impasse.

a) The Breakwater Condos (BWC) were built in 1983. The lot plan was designed by Krebs and Lansing Consulting Engineers, Inc. It was submitted to and approved by the City of Burlington as certified by Robert C. Krebs #3379. It was built by the Larkin Construction Company. As seen from the aerial site map provided to us by Ryan Morrison, the south side of the BWC and the north side of Star Press are about a foot apart. Also, the property line in the northwest corner cuts into the building about a foot. So to conform to the zoning requirement there, we would have to cut into the foundation to be in compliance. Of course that is absurd, but fortunately not an issue, but it could be.

Therefore, we believe there are unique physical circumstances and conditions, including irregularity and narrowness of the lot size and shape peculiar to our property. This has been true from the beginning, and we feel this is an unnecessary hardship and not circumstances created by the provisions of the zoning regulations in our neighborhood.

b) The shed was located for many years partially on the slope leading down to Depot Street. It was buttressed by 4x4s and blew down at least three times because of the wind off the lake. It's important to note that even then, it still did not meet the setback requirement because of the odd lot line. We feel that because of these physical circumstances we cannot place the garbage shed in strict conformity with the zoning regulations and the variance is essential to our reasonable use of the property.

c) It's a city regulation that we need to have a garbage shed. This problem was created when the building was built and not any fault of ours.

d) We have worked with the owner of the Star Press in the past. He has told our Secretary that he has no problem placing the shed anywhere we want. If you authorize the variance, in our opinion it definitely will not alter the essential character of the neighborhood in which it is located or permanently impair the appropriate use or development on the adjacent property, Star Press. As stated above, the owner is in compliance with the agreement. Actually, the shed and its garbage cans will be less noticeable from Depot Street which should be a plus for everyone.

e) Yes, the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible. We would gladly welcome Ted Miles or another inspector from the Zoning Division to be there to insure that this is true while allowing the one owner to access to his garage without impediment.

f) If the variance is granted, we feel it will not result in either the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

***Joe Piscotty, Vice-president, and Ken Axelson, Board member, were appointed by the Breakwater Condo Association to present the request for a variance.

This is the current shed location without a five foot setback. Please notice that the “setback” between The Star Press building on the right is less than one foot from the Breakwater Condo Association building.

Hello, My name is Ken Axelson and I am an owner and a board member at the Breakwater Condo Association

I would like to call to your attention a difficult situation that our association is dealing with regards the location of our trash shed.

There is extreme constraint in finding a suitable location that meets the city setback ordinance of five feet from the property lines.

We met with Ted Miles from the city's code enforcement office on July 6th with Joe Piscotty, Ken Axelson and Joe Mitros attending. Mr. Miles determined that there were only two possible locations for the shed on the entire property and that was in the south west corner of the lot and neither of these locations were acceptable to Joe Mitros who stated that locating the shed there would impede his access to his garage.

In order to resolve this impasse the association requests a variance to locate the shed next to and along the the southern property line. The shed would be facing toward the north.

I would like to make a few statements in support of this request.

The Breakwater condos were built back in 1983 on what was throwaway land used as a trash dump. Since then there have been tremendous changes in the old north end. The city has closed Depot street to through traffic turning the street into a pedestrian walkway accessing the waterfront park and bike path. The entire old north end the "ONE" has gained substantial value as residential real estate has greatly appreciated due in no small part to the Depot Street waterfront corridor. The Moran plant which shed a pall over the entire waterfront and the properties to the east of it has finally been closed and a plan is being executed to bring the site in line with the cities ambitious plans to develop the waterfront as a beautiful recreation area. As these plans have evolved the value of the Breakwater condos have appreciated and the new owners have set upon a plan to enhance the beauty of their property. We have partnered with the city and negotiated the use of the right of way along the eastern side of Depot street which the association shares with the city. We have begun work in the side garden to the north of the condos with a walkway and plantings and pruning of older and dying shrubbery. We have a plan which we will be presenting to the planning and zoning department in the near future to upgrade the western facing balconies with more attractive and modern railings. We have begun work on the garden area along the southern area siding on Depot street.

The board has given much thought to the location of the shed and we feel that the best location for all concerned from the consideration of convenience of access for the members to their garages, for the aesthetic consideration both for the members and there enjoyment of the magnificent view and from the pedestrians accessing the waterfront corridor sense of the attractiveness of the Depot street corridor

Thank you for your consideration,

Ken Axelson on behalf of the members of the Breakwater Condo Association

The secretary of the Breakwater Condo Association, Carol Maulhardt, spoke with the owner of The Star Press, Simon George on July 8, 2021. The building is located at 57 North Ave and is adjacent to our condos which are at 63/83 North Ave. He stated he has no problem with our putting the shed anywhere on our property and is not concerned about the five foot setback. We can get this in writing if necessary.

Joe Piscotty vice-president

802-310-7878

joexcaryl@gmail.com

Carol Maulhardt secretary

carolmaulhardt@gmail.com

802-310-7878

Department of Permitting & Inspections

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

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



TO: Development Review Board
FROM: Scott Gustin
DATE: July 6, 2021
RE: 21-0361CU; 41 Pine Pl

=====

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: RM Ward: 5S

Owner/Applicant: Sam Catalano

Request: Establish a 3-bedroom short term rental (bed and breakfast) and 2-bedroom boarding house within duplex. No construction proposed.

Applicable Regulations:

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

Background Information:

The applicant lives within a duplex and occupies one side. The applicant is requesting approval of a 3-bedroom short term rental (bed and breakfast) within one of the two duplex units. The applicant is also seeking approval of a 2-bedroom boarding house as part of his residence in the other duplex unit. Both the short term rental and boarding house uses are in place. This approval is sought after-the-fact following a warning from code enforcement in October 2020. Much of the time since has been spent trying to address parking for the application.

Within the RM zone, wherein the property is located, both bed and breakfasts and boarding houses are predicated on owner-occupancy. The applicant is the property owner and lives onsite. No site or exterior building changes are proposed. The bed and breakfast is a conditional use, whereas the boarding house is a permitted use.

This application has been pending for nine months, including one 3-month extension. If need be, one additional 3-month extension could be granted; however, DRB action is recommended at this time. The DRB reviewed this application May18, 2021 and decided to continue the public hearing to obtain additional information as to the location of the front property line so as to better understand onsite parking availability. The front property line on the current tax map differs substantially from that on the original site plan. The site plan shows enough room for parking spaces within the two driveways, whereas the tax map does not. The applicant has provided additional information as to the front property line and parking availability. Changes to these findings are **noted in red** and are otherwise unchanged.

Previous zoning actions for this property are noted below.

- 4/6/21; Affirmative 15-year statute of limitations determination as to front yard parking
- 11/90; Approval to construct duplex

Recommendation: Conditional use and certificate of appropriateness denial as per, and subject to, the following findings.

I. Findings

Article 3: Applications, Permits, and Project Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards

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

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

Use of one of the duplex units as a short term rental (bed and breakfast) has no appreciable impacts on existing or planned public utilities, services, or facilities. The applicant is advised to check with VT DEC to inquire as to whether additional permitting, including wastewater, is needed.

(Affirmative finding if conditioned)

- 2. The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The property is located within the residential – medium density zone. The neighborhood consists of single- and multi-family homes within buildings of similar scale. No construction is included in this proposal, and residential density will remain unaffected. The property remains in character with the zoning district. **(Affirmative finding)**

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

The subject dwelling will remain physically unchanged. It will provide living space for guests on a short term basis. The short term rental is not expected to generate nuisance impacts from noise, odor, dust, and the like. **(Affirmative finding)**

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

Little, if any, change in traffic is expected. Rather than residents arriving and departing, short term guests will arrive and depart within established timeframes. Guests will be within easy bike or walking distance to area attractions. **(Affirmative finding)**

- 5. The utilization of renewable energy resources;*

No part of this application would prevent the use of wind, water, solar, or other renewable energy resources. **(Affirmative finding)**

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

The short term rental must adhere to applicable life safety standards and provide payment of rooms and meals taxes as per the State of Vermont. **(Affirmative finding if conditioned)**

(b) Major Impact Review Standards
Not applicable.

(c) Conditions of Approval:

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

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

The short term rental is not expected to produce adverse effects in need of mitigation.
(Affirmative finding)

2. *Time limits for construction.*

No construction timeline or phasing is included in this proposal. **(Affirmative finding)**

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

Guest check-ins should be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisances. **(Affirmative finding if conditioned)**

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

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time. **(Affirmative finding if conditioned)**

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

Not applicable.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(3) Residential Medium Density (RM)

The Residential Medium Density (RM) district is intended primarily for medium density residential development in the form of single-family detached dwellings and attached multi-family apartments. The residential duplex is consistent with this intent. The residence will serve as a short term rental as well as the owner's primary residence with boarders. The uses will not adversely impact the property's consistency with the character of this district. **(Affirmative finding)**

(b) Dimensional Standards and Density

Not applicable.

(c) Permitted and Conditional Uses

The “bed and breakfast” (short term rental) use is conditional in the RM zone. Owner occupancy is required, and up to 5 rooms may be let. In this case, the applicant is the owner and lives onsite. The short term rental will contain 3 bedrooms. **(Affirmative finding)**

(d) District Specific Regulations

Not applicable.

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The property is located within the Neighborhood Parking District. Single family dwellings require 2 parking spaces. “Bed & Breakfast” uses require 1 parking space per bedroom, and boarding houses require 1 space per two beds. **As a result, the applicant’s residence requires 2 parking spaces. The 3-room Bed & Breakfast requires 3 spaces and the 2-bedroom boarding house requires 1 space. A total of 6 off-street parking spaces are required.**

The applicant asserts that only 5 off-street parking spaces are needed, seemingly by combining the parking requirement for his dwelling unit with the boarding house (i.e. just 2 spaces); however this assertion is incorrect. The parking requirement for the dwelling unit is counted separately from that of the boarding house. The intent is to more accurately reflect the anticipated separate parking demand associated with the boarders. This practice has been consistently applied with other boarding houses at 62 East Avenue, 85 Crescent Road, and 60 Adams Street.

The applicant has found a property pin and has based onsite measurements on that which are consistent with the property dimensions depicted in the original site plan. As a result, the front property line is ~ 24’ from the front of each attached garage. Onsite parking totals 4 spaces (2 garage spaces and 2 driveway spaces). This is consistent with the originally approved site plan.

With the ~24’ distance to the front property line in front of the building, the applicant points out that there is room for a 5th parking space in the unpermitted gravel area to the northeast of the building. The portion of this unpermitted gravel within the property (not within the Pine Place right-of-way) was recently recognized as an unenforceable violation but was too small for another parking space based on the tax map boundaries. Based on the original site plan boundaries, it appears to be large enough for a 5th parking space within the property.

As an unenforceable violation, the 5th parking space noted above is not granted the same status as a legitimate pre-existing nonconformity per Sec. 5.3.2, “*Bianchi*” controlled uses, structures, and lots. As a zoning violation, albeit unenforceable, it cannot be used to meet a minimum parking requirement. (See also In re: Keenan conditional use approval, 266-12-07Vtec.)

The four legitimate onsite parking spaces are two spaces shy of the total off-street parking requirement. Note also that the spaces are arranged in tandem. As such, they may be used in support of each dwelling unit – the primary residence and potentially the boarding house. Tandem arrangement may be used for the short term rental only if the applicant is onsite and available to

move vehicles during operation of the short term rental and provides a written guarantee of such availability.

Conceivably, the onsite parking arrangement could work to support the requested uses with a parking management plan per Sec. 8.1.15, *Waivers from Parking Requirements/Parking Management Plans* and by addressing the tandem arrangement per Sec. 8.1.14, *Stacked and Tandem Parking Restrictions*. The applicant has declined to address these two sections in favor of asserting that only 5 parking spaces are required and that 5 spaces are available onsite. As noted above, this assertion is incorrect. Legitimate off-street parking remains insufficient for the application as proposed. **(Adverse finding)**

II. Reasons for Denial

1. The application lacks compliant minimum onsite parking per the standards of Sec. 8.1.8, *Minimum Off-Street Parking Requirements*.

The proposed project will use one side of a side-by-side duplex for short-term rental use. Unit A, to the West, will remain owner-occupied. Unit B, to the East, will be used as a short-term rental. Both units are mirrored, each one is a spacious 1313 square ft apartment. I will be renting Unit B as a single rental unit with three bedrooms. I will never be renting single rooms out to individual renters. The goal is to provide an affordable, safe, and flexible hotel alternative for a family or medium size group to stay on vacation or business trip. It's an ideal location close to downtown and the budding South End.

The existing building is already a multi-family dwelling and there will not be an increase in bedrooms. Often the number of occupants are less than there may otherwise be if Unit B was rented for a longer term. The property is serviced by Pine Place. The change of use to short term rentals will not have undue adverse effect on the existing public utilities. The Property is serviced by municipal sewer and water and no wastewater permit is required. There will not be an undue adverse effect on the character of the area. The Property is located in a Residential zoning district, the purpose for which is to create a safe, livable, and pedestrian friendly environment for residents and visitors. The change of use will be for residential purposes only, thereby preserving the stated purpose for the residential district. Unit B's use as a short-term rental will not create a nuisance greater than typically generated by other permitted uses in the residential zone and the paved roadway is sufficient to support the proposed use in addition to the existing uses in the area. Pine Place connects with Pine Street, which is an arterial road capable of supporting the proposed use.

Parking Layout.

The property is located in the Neighborhood Parking District. Section 8.1.8 requires that the proposed project provides for one parking space per bedroom in addition to the two parking spaces required for my owner-occupied Unit A.

The proposed parking layout will provide 5 parking spaces as depicted by the green rectangles in the image below. Currently, the Property has 4 spots: two in each garage and two in tandem with the garage spots. However, there is a large gravel parking lot that has been used for parking since the building was constructed in 1991. The Department of Permitting and Inspections approved the current size and state of my gravel lot as a non violation. This was approved after the submission of affidavits from neighbors and picture proof of the unchanged condition of the property since it was built in 1991. See images below. See appendix A for signed affidavits.

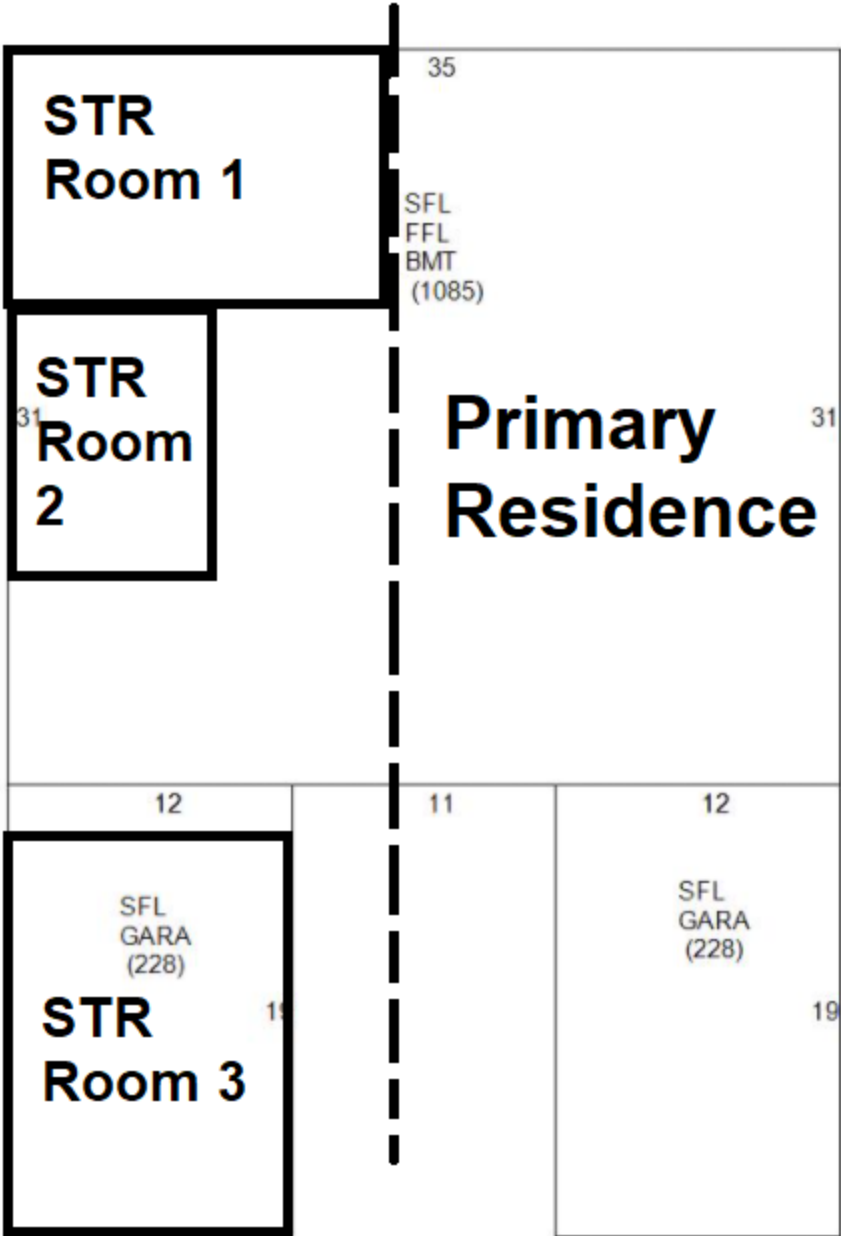
There is sufficient space in the parking lot on my property to accommodate at least 9 feet of width per vehicle, and 22' of depth for at least 3 vehicles outside. Pine Place is within a public right of way but is unaccepted by the City. The right of way curves to the North to connect with St. Paul Street right in front of my property. See images below. The proposed parking spaces will not impact or encroach upon the City's right of way. The owners of every parcel on Pine Place have approved this layout and signed a quit claim easement deed to permit the parking to the extent that the parking plan encroaches on any portion of the shared right of way. See Appendix A attached. We do not believe that it does, but their signatures and consent to the easement indicate their consent to the parking layout. The additional parking spots will not impact the character of the neighborhood. The Pine Place residents have all agreed that this parking arrangement was the best thing for the neighborhood. Since there are no parking regulations on Pine Place, there are a lot of non-residents who park on the street, limiting the number of available spots for residents and their guests. By allowing me to use my driveway to a reasonable capacity, as it has been since the house was built, myself, my tenants, and my visitors, rarely use street parking. See pictures below for examples of how the driveway has historically been used and how I would like to continue to use it.

There will be no physical changes to the property and written approval has been obtained from all parcel owners on the street.

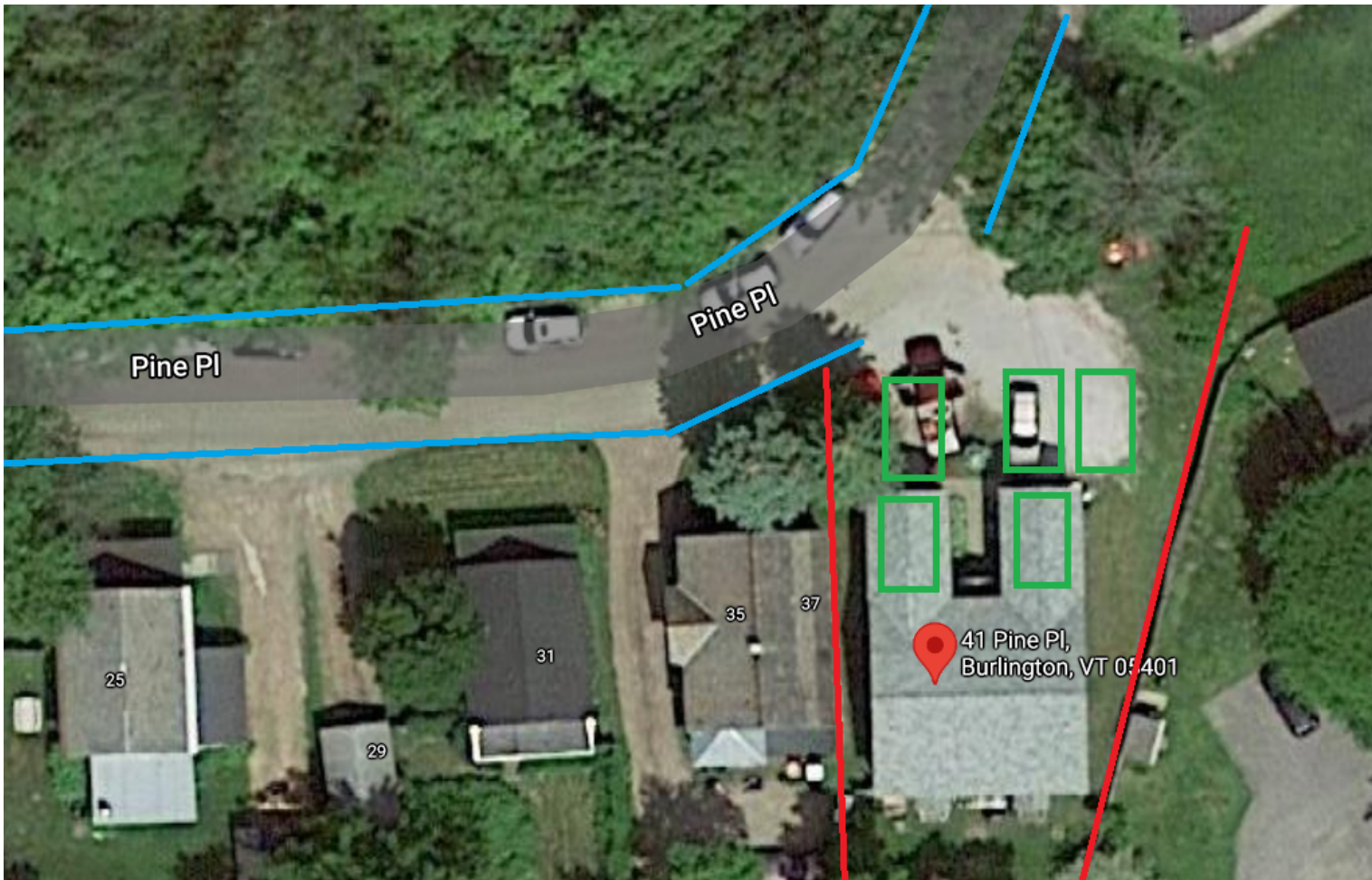
Sam Catalano

The proposed layout is to use the entire left side, unit B, as a short term rental. I currently live in side A as my primary residence/homestead and do not have plans on moving in the foreseeable future. Both units are mirrored, each side is a spacious 1313 square ft apartment. I will be renting side B as a single unit, I will never be renting single rooms out short term. The goal is to provide an affordable, safe, flexible hotel alternative for a family or medium size group to stay on vacation or business trip. It's an ideal location close to downtown and the budding South End.

STR Room Locations



Parking Layout.





Last picture below is from approximately year 2000, showing 3 cars parked on half the driveway.



PINE PLACE

68.0'

COMPACT PRITZER
JUNIPER (6)

15' FRONTYARD
SETBACK

PIN OAK (1)

BURNING BUSH (2)

EXISTING SPRUCE

48'-0"

100.0'

35'-0"

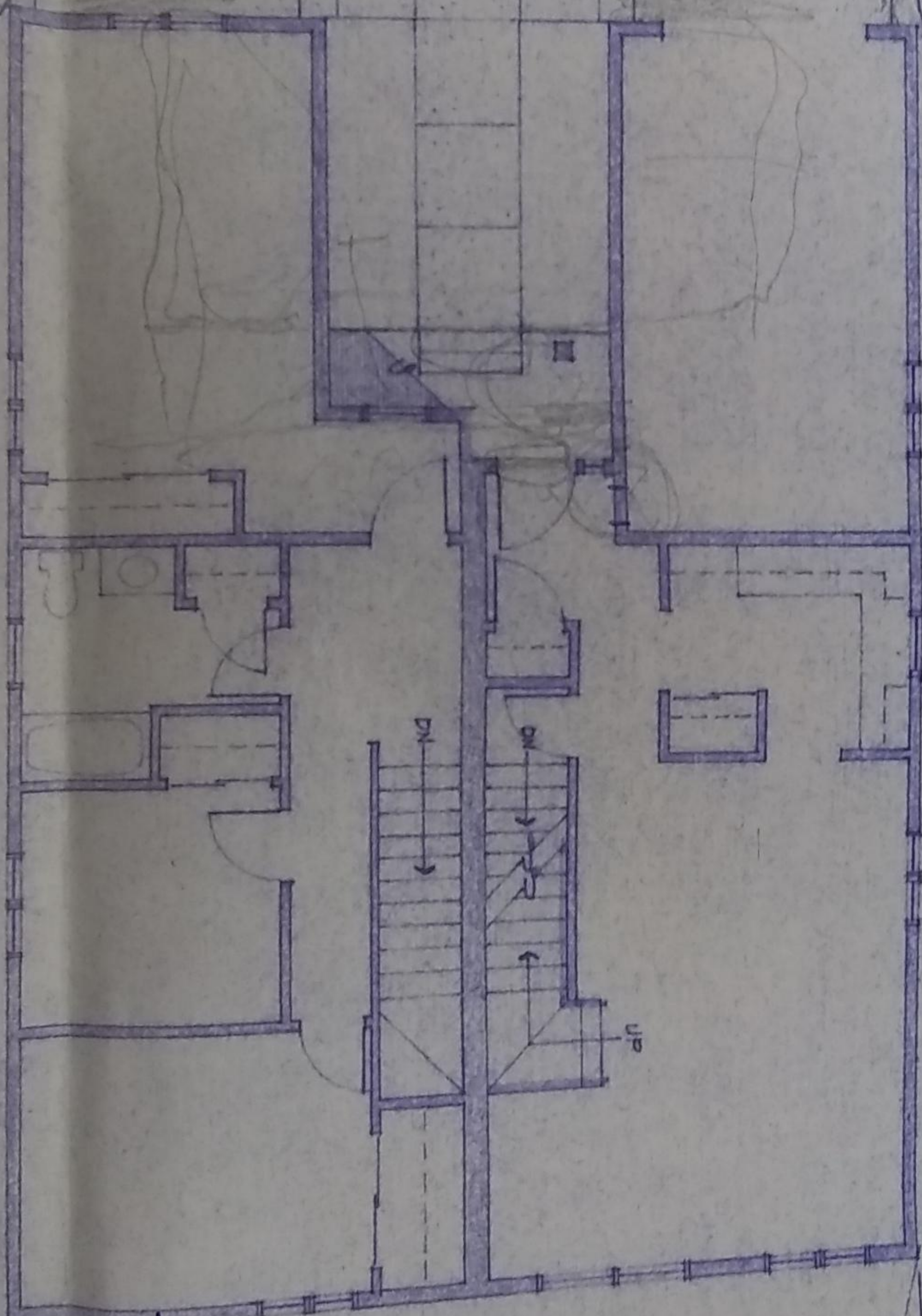
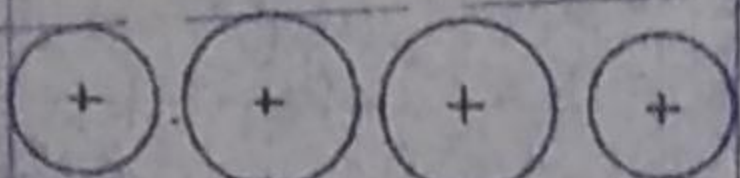
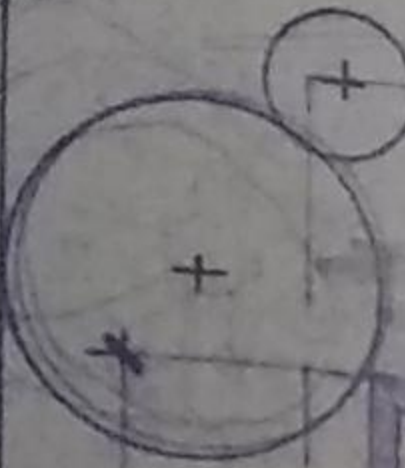
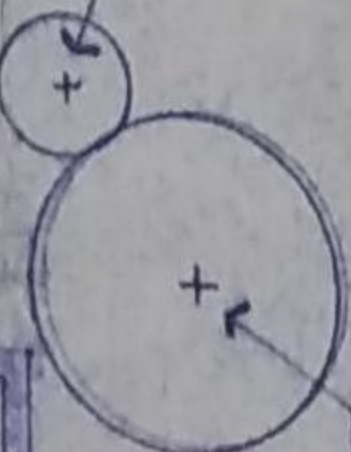
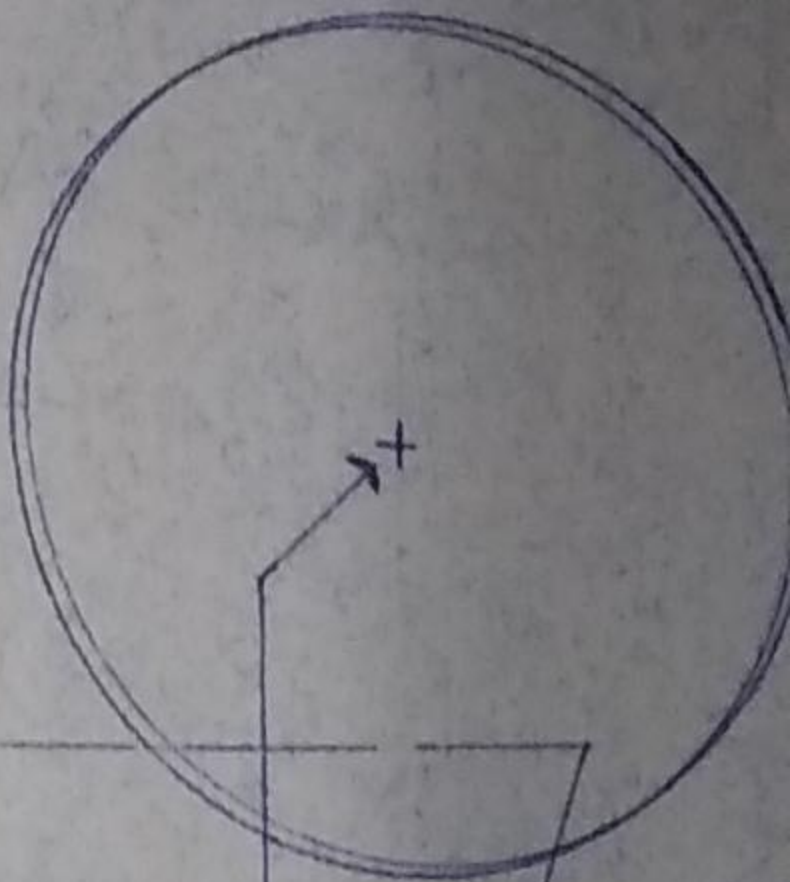
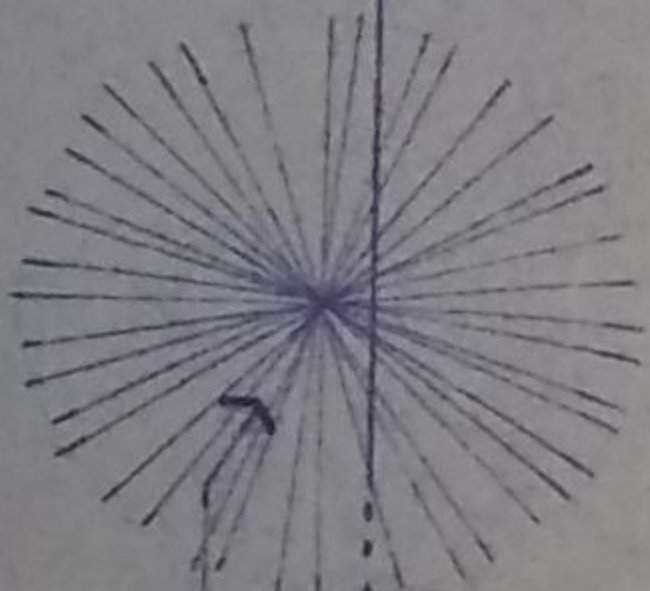
110.0'

5' SIDERYARD
SETBACK

NORTH

SITE/FLOOR PLAN

1/8"





City of
Burlington, Vermont
645 Pine Street

Zoning Determination – Findings

ZP #: 21-0853DT

Tax ID: 049-4-004-000

Issue Date: April 6, 2021

Decision: Affirmative

Property Address: 41 PINE PLACE

Description: Seeking determination as to whether the front yard parking is unenforceable zoning violation due to the 15 year statute of limitations

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize that the yard parking next to the east side of the driveway has been in place continuously for over 15 years. The City reviewed the following documents and evidence to form its determination:

- The City's zoning permit records
- 2008 Comprehensive Development Ordinance and as amended
- Affidavits from neighbors provided with the determination request
- Orthophotos of 2000, 2004, 2016, 2018, & 2019

Following review of these items, it is the determination of the Administrative Officer that the yard parking has been in place continuously for at least 15 years. There is no zoning permit on file permitting this yard parking. As such, it is in violation of the Comprehensive Development Ordinance; however, as the evidence demonstrates that it has been in place for more than 15 consecutive years, it is not presently subject to zoning enforcement action per Sec. 5.3.2, *Bianchi controlled uses, structures, and lots*, of the Comprehensive Development Ordinance.

This determination pertains only to the property at 41 Pine Place. It does not pertain to lands within the Pine Place right-of-way.

41 Pine Place



0 10 20 40 Feet

A horizontal scale bar with vertical tick marks. The numbers 0, 10, 20, and 40 are placed above the bar, with "Feet" at the end. The bar is divided into four equal segments by the 10, 20, and 30-foot marks.

2009 WL 4396753 (Vt.Env'tl. Ct.) (Trial Order)
Vermont Environmental Court.
Chittenden County

In re KEENAN CONDITIONAL USE APPROVAL.

No. 266-12-07 Vtec.
June 4, 2009.

West Headnotes (1)

[1] **Zoning and Planning** 🔑 Family or Multiple Dwellings

Property owner was not entitled to a special exception to convert three-unit residential building on property to a four-unit building, even though the property had been used as a four-unit residential building in excess of 40 years; building had three parking spots in front of building and three behind building, zoning ordinance required two parking spaces per dwelling unit, the parking spaces in the front of the building were not legal parking spaces, and thus property owner did not have enough parking for a four-unit building. 24 V.S.A. § 4446.

Decision on Cross-Motions for Summary Judgment

Thomas S. Durkin, Environmental Judge.

Appellant-Applicant Anne Keenan (“Applicant”) brings this appeal of a decision by the City of Burlington Development Review Board (“DRB”), denying her request for conditional use approval to maintain four residential units in a building that is currently permitted for only three units. We are now presented with cross-motions for summary judgment by the City of Burlington (“City”) and Applicant.¹

Factual Background

For the sole purpose of putting the pending motions in context, we recite the following facts, which we understand to be undisputed unless otherwise noted:

1. Applicant owns property at 79 Spruce Street (“the Property”) in the City.
2. Before 1967, a church was located on the Property.
3. In 1967, one of Applicant's predecessors-in-interest applied for a special exception to convert the church into five apartments. On March 14, 1967, the Burlington Zoning Board of Adjustment (“ZBA”) denied the request.

4. On March 28, 1967, the ZBA approved a request for a special exception to convert the church into three apartments, with the stipulation that there would be no parking in the front area. This conversion apparently occurred shortly after the ZBA issued its approval.
5. On August 8, 1967, the ZBA denied a request for a special exception to convert the three-unit building at the Property to a four-unit building.
6. At some point before January 18, 1972, one of Applicant's predecessors-in-interest converted the three-unit building at the Property to a four-unit building. The predecessor-in-interest then applied to the ZBA for retroactive approval of this conversion.
7. On January 18, 1972, the ZBA again denied a request to grant retroactive approval to convert the three-unit building at the Property to a four-unit building.
8. Since at least 1972, the Property has been used-and continues to be used-as a four-unit residential building.
9. Since at least 1972, tenants at the Property have consistently made use of six parking spaces: three spaces in the back of the building, and three spaces in the front.
10. The three parking spaces in the front of the building abut-or at least come quite near to-the sidewalk. In the municipal proceedings below, there was a dispute over whether cars and pick-up trucks parked in those spots actually impede the sidewalk. The parties do not, however, appear to dispute that cars parked in those spots at least come within a few feet of the sidewalk, and photos submitted both by Applicant and the City confirm this to be the case.
11. On January 10, 2000, Applicant bought the Property and continued its use as a four-unit building.
12. On September 20, 2007, Applicant applied for conditional use approval to operate the Property as a four-unit building.
13. On November 6, 2007, the DRB denied conditional use approval. It is from that determination that Applicant appealed to this Court.
14. The City has yet to initiate an enforcement action against Applicant or any of her predecessors-in-title for the construction or use of a fourth residential unit at the Property. The parties agree that such use has continued uninterrupted for nearly forty years.

Discussion

This municipal appeal is entitled to “a de novo hearing on those issues which have been appealed.” 10 V.S.A. § 8504(h); accord 24 V.S.A. § 4472(a); V.R.E.C.P. 5(g). In a *de novo* hearing, we are directed to consider the pending application “ ‘as though no action whatever had [previously] been held.’ ” *Chioffi v. Winooski Zoning Bd.*, 151 Vt. 9, 11, 556 A.2d 103 (1989) (quoting *In re Poole*, 136 Vt. 242, 245, 388 A.2d 422 (1978)).

We have before us cross-motions for summary judgment. We may grant summary judgment only when “the pleadings, depositions, [and] answers to interrogatories, ... together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” V.R.C.P. 56(c)(3). Generally, the burden of proof is on the party requesting summary judgment. *Chapman v. Sparta*, 167 Vt. 157, 159, 702 A.2d 132 (1997). When presented with cross-motions for summary judgment, we must consider each motion in turn and afford all reasonable doubts and inferences to the party opposing the particular motion under consideration. *City of Burlington v. Fairpoint Commc'ns, Inc.*, 2009 VT 59, ¶ 5, 980 A.2d 226 (citing *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 48, 582 A.2d 123 (1990)).

The facts relevant to this conditional use approval appeal are quite straightforward, and indeed the parties do not dispute them. In short, one of Applicant's predecessors-in-interest applied at various points for approval to have four or five residential units at the Property, but the City denied those requests on numerous occasions and only granted approval for a three-unit building. Further, the approval for the three-unit building was expressly conditioned on the stipulation that there would be no parking in the front area. Despite only obtaining approval to operate a three-unit building with parking limited to the rear area, Applicant and all of her predecessors-in-interest since at least 1972 have operated a four-unit building and allowed tenants to use three parking spaces in the front yard.

Although the parties make a number of collateral arguments in their briefs, we are unable to address them, since this Court is without authority to consider issues upon which the municipal panel never actually conducted a hearing or rendered a substantive determination. *Simendinger v. City of Barre*, 171 Vt. 648, 652, 770 A.2d 888 (2001). As the Vermont Supreme Court has frequently stated, the “reach of the [Environmental Court] in zoning appeals is as broad as the powers of a zoning board of adjustment or a planning commission, but is not broader.” *In re Torres*, 154 Vt. 233, 235, 575 A.2d 193 (1990). According to what is often called the *Torres* doctrine, if the municipal panel could not have done something because it was not properly noticed to the public, then the Environmental Court is also without power to do so. See *id.*; see also *In re Maple Tree Place*, 156 Vt. 484, 500 (1991) (“The [Environmental Court] is limited to consideration of the matters properly warned as before the local board.” (citing *Torres*, 154 Vt. at 235, 575 A.2d 193)). Thus, we cannot address issues that were not properly warned for a hearing at the municipal level.

The appeal that is before this Court solely concerns an application for conditional use approval. The DRB was not presented below and did not consider the propriety of a possible future enforcement action, not yet instituted by the City. Although Applicant is understandably concerned about the possibility of future municipal enforcement proceedings, we could only address the validity of enforcement actions after such proceedings go through the proper municipal processes and are brought before this Court in a timely appeal. See *In re Maple Tree Place*, 156 Vt. at 500, 594 A.2d 404.

In the context of the appeal before us, the statute of limitations in 24 V.S.A. § 4454(a)—a statute that by its explicit terms only applies to enforcement actions—is simply inapplicable. We regret that we cannot address Applicant's enforcement concerns here, particularly given that the parties have expended so much effort in briefing them, and given that it undoubtedly places Applicant in the awkward situation of uncertainty regarding apparent claims by the City that its potential enforcement actions are not estopped by the limitations of 24 V.S.A. § 4454(a). Nevertheless, our Supreme Court has noted in other contexts that courts must decline to pass judgment on all issues that fall outside their jurisdiction, regardless of “the importance of the question posed.” *Chittenden S. Educ. Ass'n, Hinesburg Unit v. Hinesburg Sch. Dist.*, 147 Vt. 286, 294, 514 A.2d 1065 (1986). To the extent that Applicant wishes to adjudicate enforcement issues, other avenues may be available, but we are without authority to adjudicate those issues in this appeal.

Turning to our *de novo* review of Applicant's request for conditional use approval, the analysis here is quite straightforward. The conditional use approval requested here cannot be granted if it would result in a violation of the Burlington Zoning Ordinance (“Ordinance”). See, e.g., Ordinance § 17.1.1 (noting that the DRB—and therefore also this Court standing in its stead—cannot permit any use that is prohibited by the Ordinance); see also 24 V.S.A. § 4446 (“Within the jurisdiction of any municipality that has adopted any of the bylaws authorized by this chapter, no land development may be undertaken or effected except in conformance with those bylaws.”).

In analyzing the Ordinance, §§ 10.1.8 and 10.1.18 both present insurmountable hurdles for Applicant. Section 10.1.8 of the Burlington Zoning Ordinance (“Ordinance”) requires that “[p]arking for all uses and structures shall be provided in accordance with Table 10-A.” Turning to Table 10-A, it is unfortunately difficult to interpret which number corresponds to which line in the applicable section on multi-unit rental buildings. The City claims that two parking spaces are required per dwelling unit for a four-unit building, which would mean that eight parking spaces are needed here. This is undoubtedly the most natural reading of the ordinance, but it assumes that the numbers on the Table were each meant to be moved down a line. Although that assumption makes sense here, since it is the only explanation for the blank line at the bottom of the numbers column, we must

also be mindful that any uncertainty in a zoning regulation should be decided in favor of the property owner. *In re Weeks*, 167 Vt. 551, 555, 712 A.2d 907 (1998). Here, another plausible interpretation is that all that is required for the first four units of a multi-unit rental building is 1.5 parking spaces per unit plus “[a]n additional 10% of the total spaces ... for visitor parking,” which translates to a total of 6.6 parking spaces needed here. Ordinance at 10-3 & 10-3 n..

We need not resolve which interpretation applies here because, even if only 6.6 parking spaces are needed, Applicant cannot meet that requirement. Whenever a calculation for parking spaces results in a fraction, the number must be either rounded up or down. In this case, under the normal conventions of rounding, 6.6 would be rounded up to seven. Indeed, the Ordinance itself explicitly adopts normal rounding conventions in its statement on density calculations. Ordinance § 5.2.3 (“[F]ractional units of less than five-tenths (0.5) shall be rounded down to the nearest whole number and fractional units of five-tenths (0.5) or greater shall be rounded up to the nearest whole number.”). Even absent such a statement in the Ordinance, we would adopt normal rounding conventions here. Cf., e.g., *Appeal of Berezniak*, No. 171-9-03 Vtec, slip op. at 9 n.5 (Vt. Env’tl. Ct. July 7, 2005) (Wright, J.) (rounding up 24.56 parking spaces to 25 parking spaces).

In short, even under the most favorable interpretation of Table 10-3, Applicant is required to have at least seven parking spaces to meet the requirements of Ordinance § 10.1.8. Applicant cannot meet the minimum parking space requirement here because Applicant only has three legal parking spaces.

On March 28, 1967, when the ZBA approved the conversion of the church building on this Property into three apartments, it was done with the express stipulation that there would be no parking in the front area. That decision was not appealed and therefore cannot be contested “directly or indirectly” in a later proceeding. 24 V.S.A. § 4472(d).²

Even if Applicant were to apply for an amendment to this permit condition, such an amendment could not be granted here because Ordinance § 10.1.18 prohibits front-yard parking spots that abut a sidewalk: “Front yard parking for residential uses, with the exception of access drives to the site eighteen feet (18’) or less in width, shall be in conformance with the required minimum front yard setback or average building line of adjacent lots, whichever distance is greater.” Applicant does not claim that her three parking spaces are an access drive of less than eighteen feet wide.³ Thus, at a bare minimum, Applicant must demonstrate that her parking spaces meet the front-yard setback requirement. But even the least restrictive zones and streets require a minimum front-yard setback for residential structures of 15 feet. Ordinance at 5-23 tbl.5-D. Although the parties to the municipal proceeding below disputed whether Applicant’s three front-yard parking spaces abut or even impede the sidewalk, it is undisputed that these parking spaces are less than 15 feet from the sidewalk.

We recognize that under Ordinance § 10.1.19, parking waivers are possible, if an applicant can demonstrate that less parking is needed for their use. However, Applicant has made no showing that she meets-or could meet-the requirements for such a waiver. To the contrary, Applicant alleges that she and her predecessors-in-interest have made consistent use of the three unpermitted parking spaces on the front of her property, and that such a consistent, unpermitted use is entitled to approval here.

Applicant argues that because of the consistent use of the three front-yard parking spaces, 24 V.S.A. § 4454(a) estops the City from bringing an enforcement action against these unpermitted front-yard parking spaces, and the law therefore also obligates the City to sanction their use with a zoning permit. We know of no statutory authority or legal interpretation that supports this assertion. Rather, if land development was commenced more than fifteen years ago and if 24 V.S.A. § 4454(a) restricts a municipality from acting against it, the development is non-conforming, even if it might be protected from an enforcement action. Any alleged protection from enforcement does not mean that such development is entitled to automatic issuance of a zoning permit. Applicant’s argument here melds the law of enforcement with zoning approval in a manner that we are not aware is authorized by statute or legal precedent.

In regards to Applicant’s three unpermitted parking spaces, we note that it is indisputable that these parking spaces do not conform to the current or past zoning regulations. In fact, their use violates the express parking conditions of the March 28, 1967 permitting approval, as well as the three explicit denials-on March 14, 1967, on August 8, 1967, and on January 18, 1972-

of requests to maintain more than three units at the Property. It appears as if Applicant recognizes that this prior use of the front parking spaces is non-conforming. Perhaps 24 V.S.A. § 4454(a) precludes the City from commencing an enforcement action against the continued use of these parking spaces. We leave that question to when such an enforcement action is actually noticed, brought, and preserved for our review and an appeal presented to this Court. See *Torres*, 154 Vt. at 235, 575 A.2d 193. But we are unaware of any legal authority that requires the City to legitimize this non-conformity with a zoning permit. In fact, we understand the relevant precedent to be exactly the opposite: that when the opportunity arises, a municipality is authorized to *not* sanction non-conformities. See, e.g., *In re Richards*, 178 Vt. 478, 872 A.2d 315, 2005 VT 23, ¶ 6 (mem.) (“[O]ne goal of zoning is to phase out nonconforming uses.”); accord *Drumheller v. Shelburne Zoning Bd. of Adj.*, 155 Vt. 524, 529, 586 A.2d 1150 (1990).

The 15-year statute of limitations in 24 V.S.A. § 4454(a) only applies to enforcement proceedings; we have no enforcement proceeding before us in this appeal. We therefore decline to provide any opinion on whether the City is barred from bringing an enforcement action regarding the three front-yard parking spaces. See *Torres*, 154 Vt. at 235, 575 A.2d 193. Further, even if we could address the enforcement issues here, we would not do so because they are irrelevant to the question of the legality of the parking spots.

As courts often state, a statute of limitations is merely “a procedural rule that requires the bringing of a complaint within a certain time.” *United States v. Musacchio*, 968 F.2d 782, 790 (9th Cir.1991). Numerous courts have held that activities that fall outside the statute of limitations can still be used as evidence in other hearings, see, e.g., *id.*, and can also be used for other purposes, see, e.g., *United States v. Behr*, 93 F.3d 764, 765-66 (11th Cir.1996) (citing cases from five other circuits for this same proposition). Thus, even if we were to assume that the City could not bring an enforcement action here, the DRB (or this Court standing in its stead) can-and should-continue to view the parking spaces as non-conforming when evaluating Applicant's request for conditional use approval. Simply put, just because an action cannot be condemned does not mean it must be condoned.

Applicant's other main argument for granting conditional use approval relies upon a footnote in the Ordinance that allows the DRB to approve the addition of one unit to certain multi-unit buildings. The following footnote appears in the “use, density, and dimensional requirements” section of the Ordinance: “One additional unit may be added to structures, which contained two or more units as of April 26, 1973, if approved in advance as a conditional use, by the development review board.” Ordinance at 5-13 n.1. Although the parties place great weight on whether the phrase “if approved in advance” modifies “[o]ne additional unit” or “structures,” we need not reach that issue today. Even assuming that Applicant could receive retroactive approval for the addition of a unit that predated 1973, nothing in this footnote grants Applicant authority to ignore the other requirements of the Ordinance. Rather, Applicant must meet all “applicable provisions” of the Ordinance to receive conditional use approval under the current Ordinance. Ordinance § 1.1.7. Indeed, the City's Ordinance goes even further and notes that whenever there are conflicts between provisions of the Ordinance, “the more restrictive shall apply unless otherwise specified.” *Id.* § 1.1.9.

We do not read the footnote at issue here as conflicting with the parking space requirements in a later section of the Ordinance (since both can-and should-be applied), but even if there were a conflict, Applicant could not escape complying with the more restrictive requirements regarding parking spaces. See *id.* As discussed in detail above, Applicant's four-unit building fails to meet the minimum parking space and setback requirements of Ordinance §§ 10.1.8 and 10.1.18—a result that cannot be changed under any interpretation of a footnote from another section of the Ordinance.

In summary, although we sympathize with Applicant's situation, we must remain mindful of our limited jurisdiction in this appeal. Here we are only called upon to determine whether Applicant meets the requirements for conditional use approval for her four-unit building—a question that we must answer in the negative. Even construing all material facts in the light most favorable to Applicant, we conclude that she cannot meet the parking space requirements of § 10.1.8 of the Ordinance with only three legal spaces when Table 10-3 requires at least seven. Indeed, even if we were to count the illegal spots, Applicant would only have six spaces. But we cannot count any of the front-yard parking spaces because they are in direct violation of a permit condition (dating to March 28, 1967) and because they fail to meet the minimum setback requirements of § 10.1.18. We also are compelled to reject Applicant's interpretation of 24 V.S.A. § 4454(a) as placing an affirmative duty upon a municipality

to issue a zoning permit for non-conformities that have allegedly now existed so long as to prohibit enforcement. Finally, we cannot accept Applicant's argument that a footnote in the Ordinance allows Applicant to ignore other, more stringent provisions of the Ordinance. For these reasons, we must GRANT the City's request for summary judgment and DENY Applicant's request for conditional use approval to maintain a four-unit building.

Conclusion

For all the reasons more fully discussed above, we GRANT summary judgment in favor of the City. As a result, Applicant's request for conditional use approval to maintain a four-unit building is hereby DENIED.

A Judgment Order accompanies this Decision. This concludes the proceedings before this Court in this appeal.

Done at Ripton, Vermont, this 4th day of June 2009.

.....

Thomas S. Durkin, Environmental Judge

Footnotes

- 1 Applicant is represented by Liam L. Murphy, Esq., and Pamela A. Moreau, Esq.; the City is represented by Kimberlee J. Sturtevant, Esq.
- 2 This is not to say that Applicant is precluded from applying for an amendment to the permit condition at issue here. See *In re Dunkin Donuts S.P. Approval*, 2008 VT 139, 969 A.2d 683 (mem.). However, we do not have a permit amendment application before us and are therefore without jurisdiction to evaluate the merits of such a claim. See *Torres*, 154 Vt. at 235, 575 A.2d 193. At any rate, the requirements for amending a permit condition—be it a showing of changed circumstances, see *In re Hildebrand*, 181 Vt. 568, 917 A.2d 478, 2007 VT 5, ¶¶ 12-13, or an analysis under the successive-application doctrine, see *Dunkin Donuts*, 2008 VT 139, ¶ 8-, 969 A.2d 683—are *in addition to* the requirements for receiving a permit in the first instance. Thus, even if Applicant were entitled to another hearing on this matter, it would appear futile, given that Applicant cannot meet the requirements of Ordinance § 10.1.18, as explained in detail in the body of this Decision.
- 3 Indeed, even if Applicant made such a claim, we could not credit it given that it would be unreasonable to infer that three cars could fit in an area less than 18 feet wide. See *City of Burlington*, 2009 VT 59, ¶ 5, 980 A.2d 226 (noting that the party opposing summary judgment is only entitled to “all *reasonable* doubts and inferences” (emphasis added)). Indeed, under the Ordinance, even three compact cars would require 24 feet of parking space. See Ordinance at 10-8 tbl.10-D.

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08/04 PERMIT DRAWINGS (P

name

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MAP

sheet

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001	CONCEPT PLANS
002	SELECTED FOR PERMIT
003	PERMIT DRAWINGS

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PERSPECTIVE

sheet

A104

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06/10 ISSUED FOR PERM

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ZONING ANALY

sheet

01 | AZ 100 - ZONING ANALYSIS
1/16" = 1'-0"

ZONING CALCULATIONS

ZONING RM (MEDIUM DENSITY RESIDENTIAL)
 ARTICLE 4.3.5 40% LOT COVERAGE ALLOWED
 FRONT SETBACK AVERAGE 2 ADJACENT LOTS + / - 5'-0'

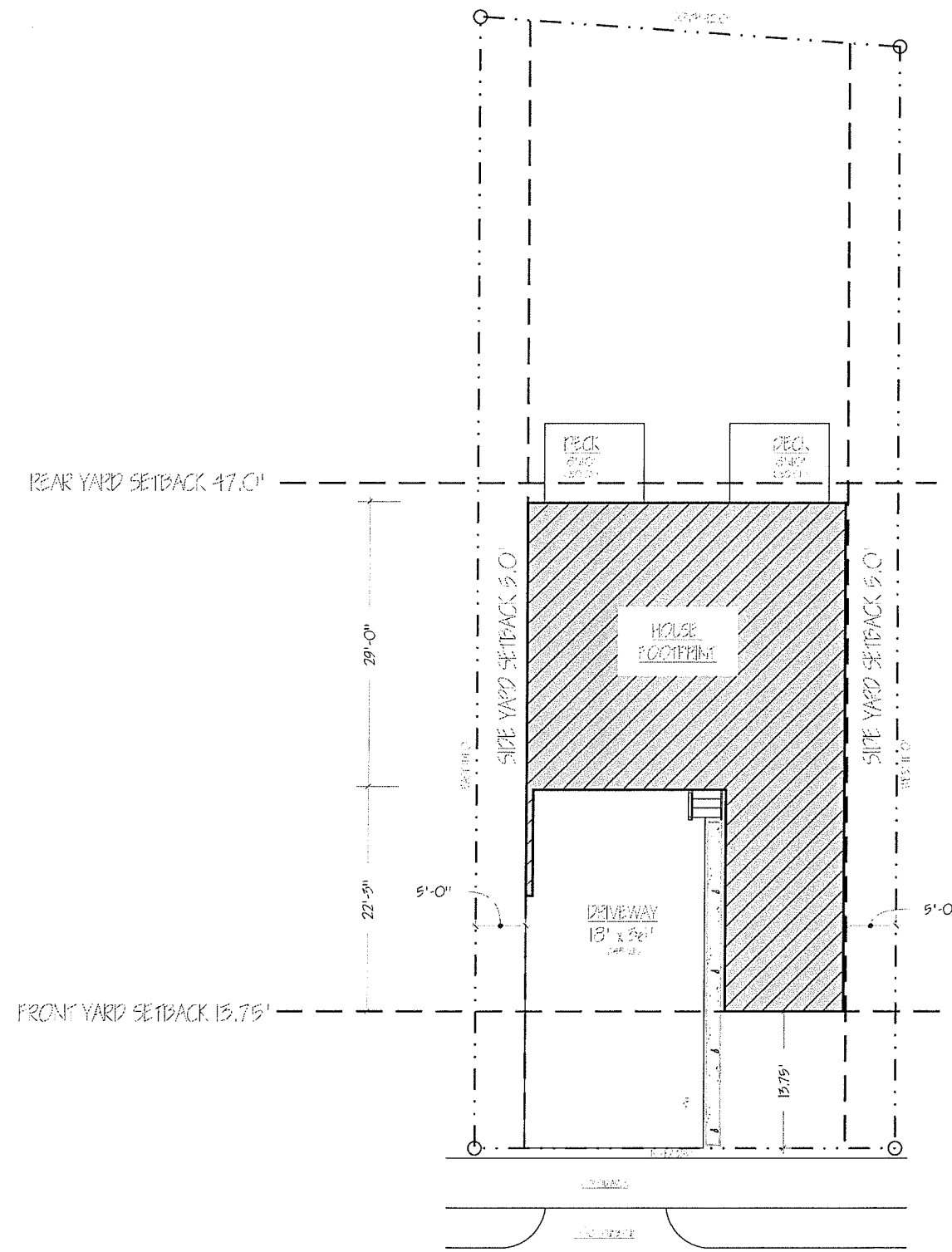
LOT SIZE
42.0' x 112.4'
4,721 SQ.FT

HOUSE FOOTPRINT 1195 SQ.FT
DRIVEWAY 648 SQ.FT (18' x 36')

TOTAL LOT COVERAGE 1843 SQ. FT.
1843 / 4721 = 39% LOT COVERAGE

DECK	160 SQ.FT	2x	(8' x 10')
WALK-WAY	72 SQ.FT		(2' x 36')

TOTAL 2075 SQ.FT
2075 / 4721 = 43% LOT COVERAGE



AZ 10

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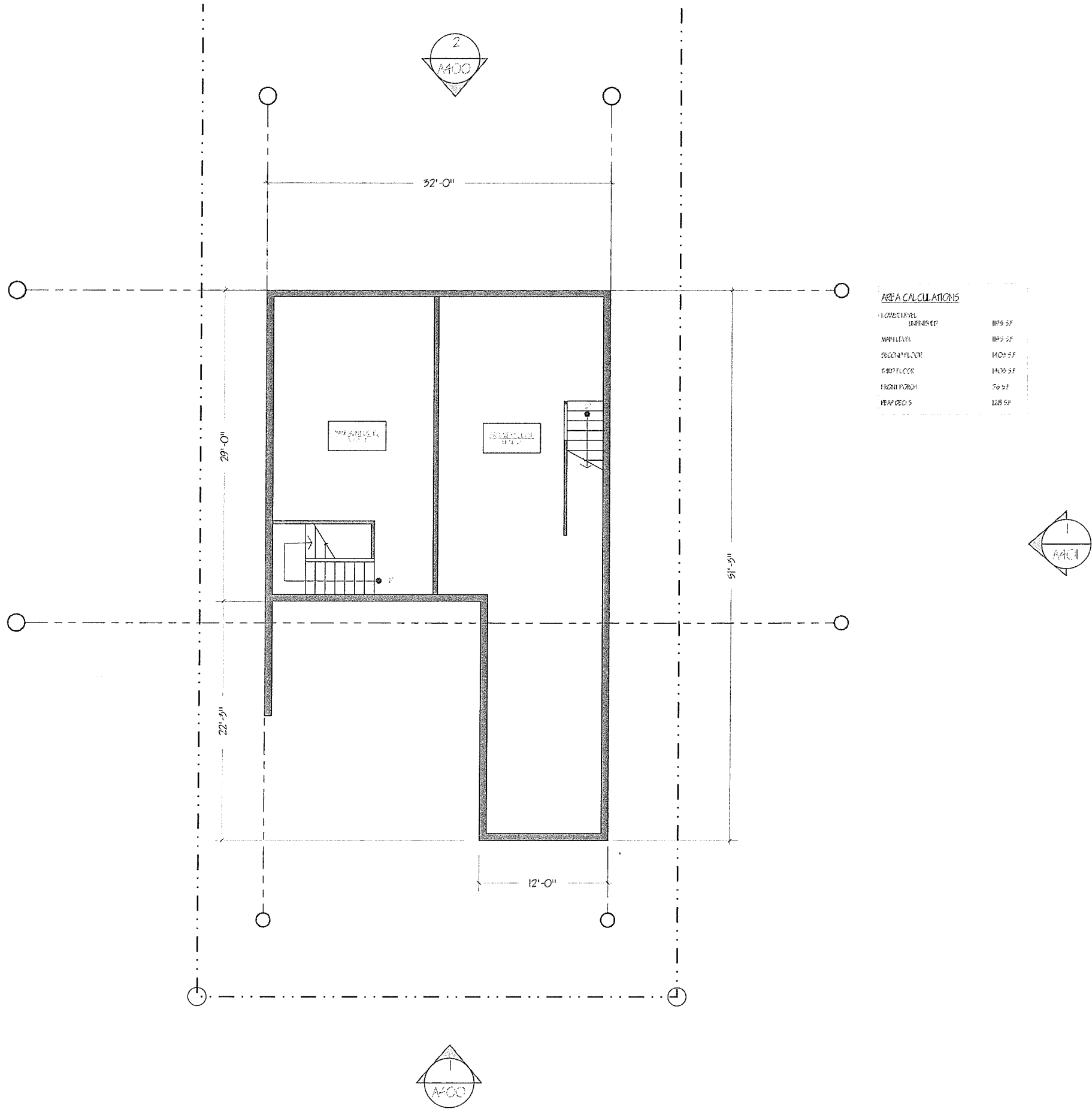
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08/04	PERMIT DRAWINGS (P

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FOUNDATION P

sheet

A200



01 | 200 - FOUNDATION LEVEL
3/32" = 1'-0

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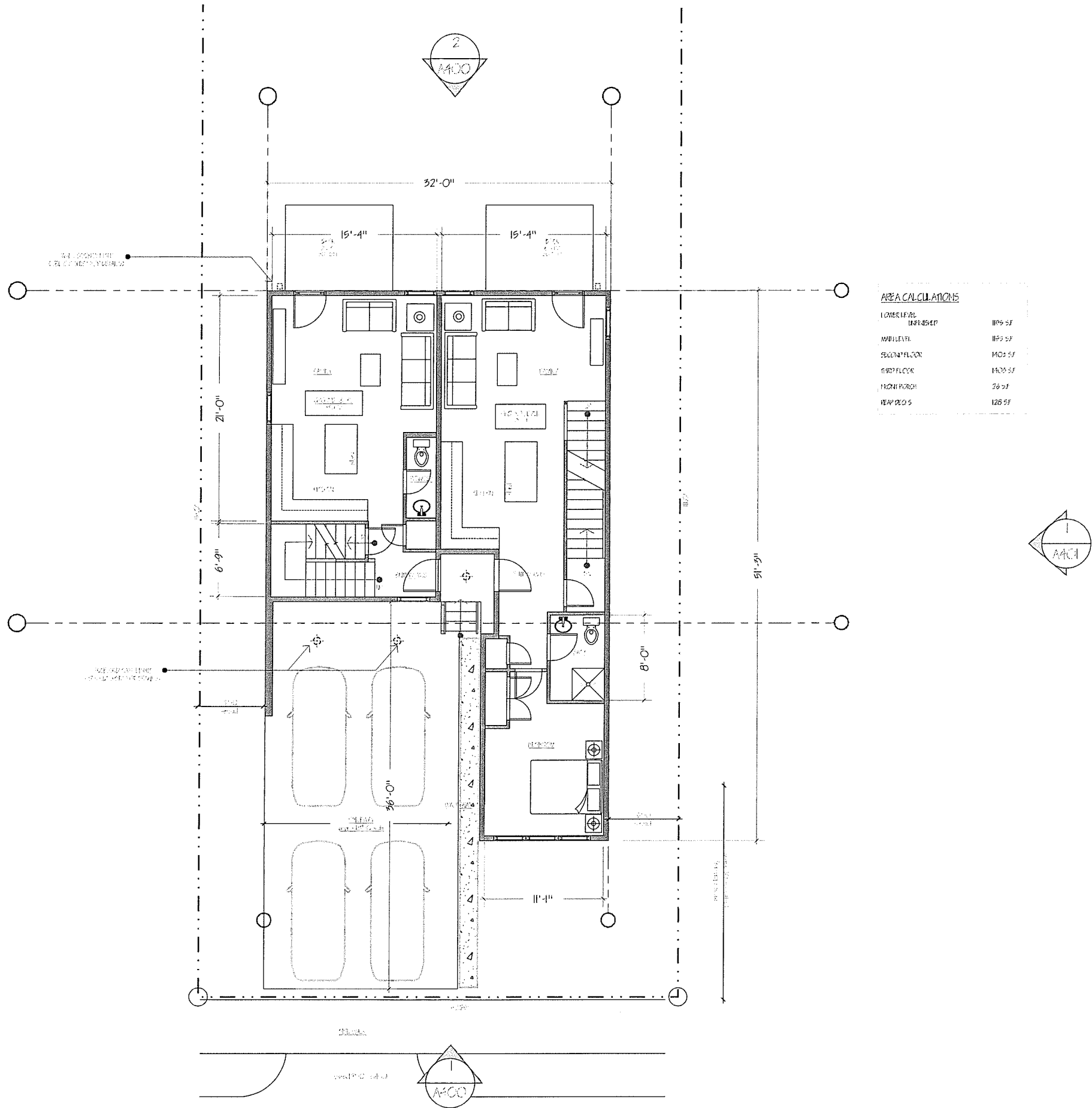
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GROUND FLOOR

sheet

A20

01 | 201 - GROUND FLOOR PLAN
3/32" = 1'-0"



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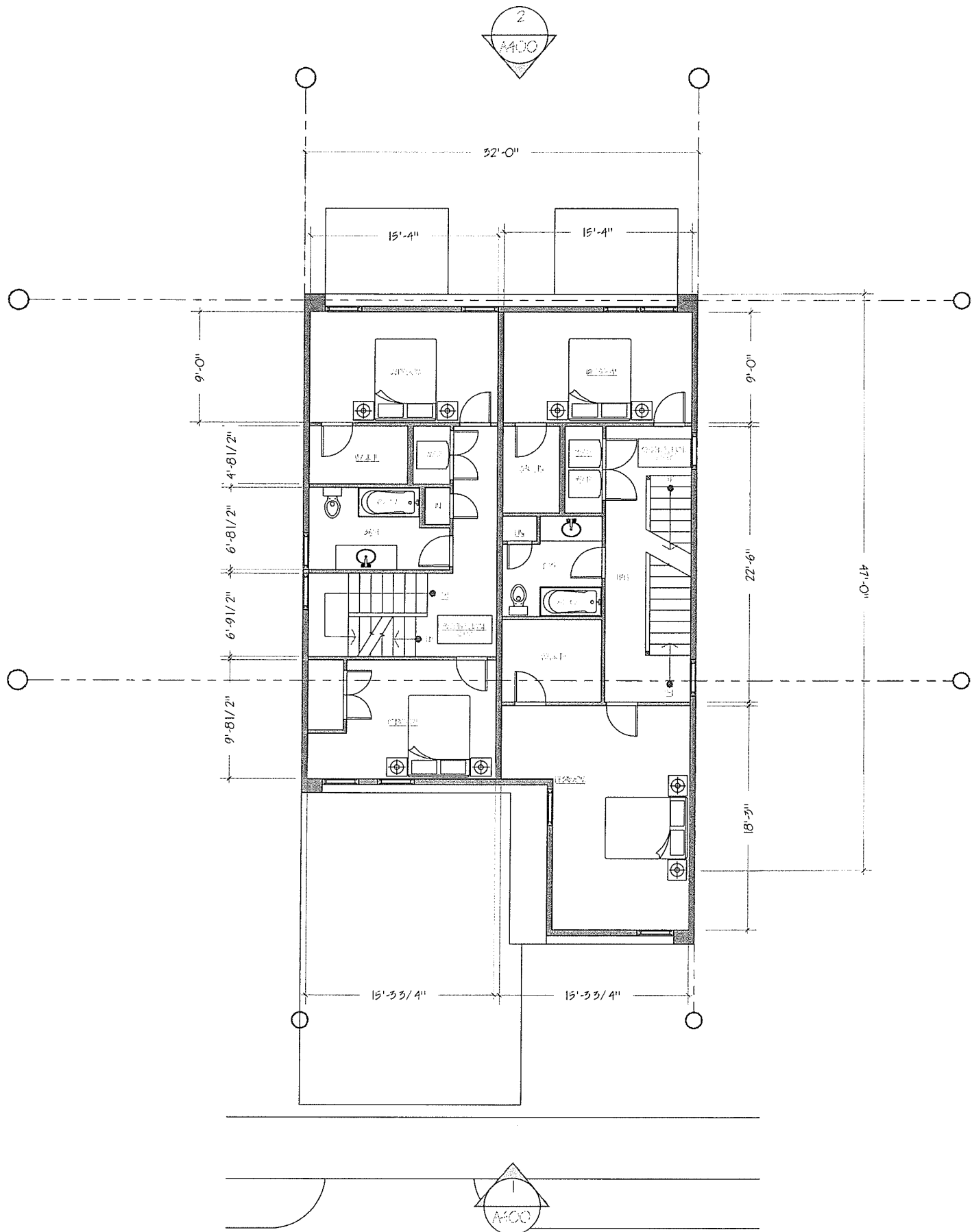
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SECOND FLOOR

sheet

A202



01| 202 - SECOND FLOOR PLAN
3/32" = 1'-0

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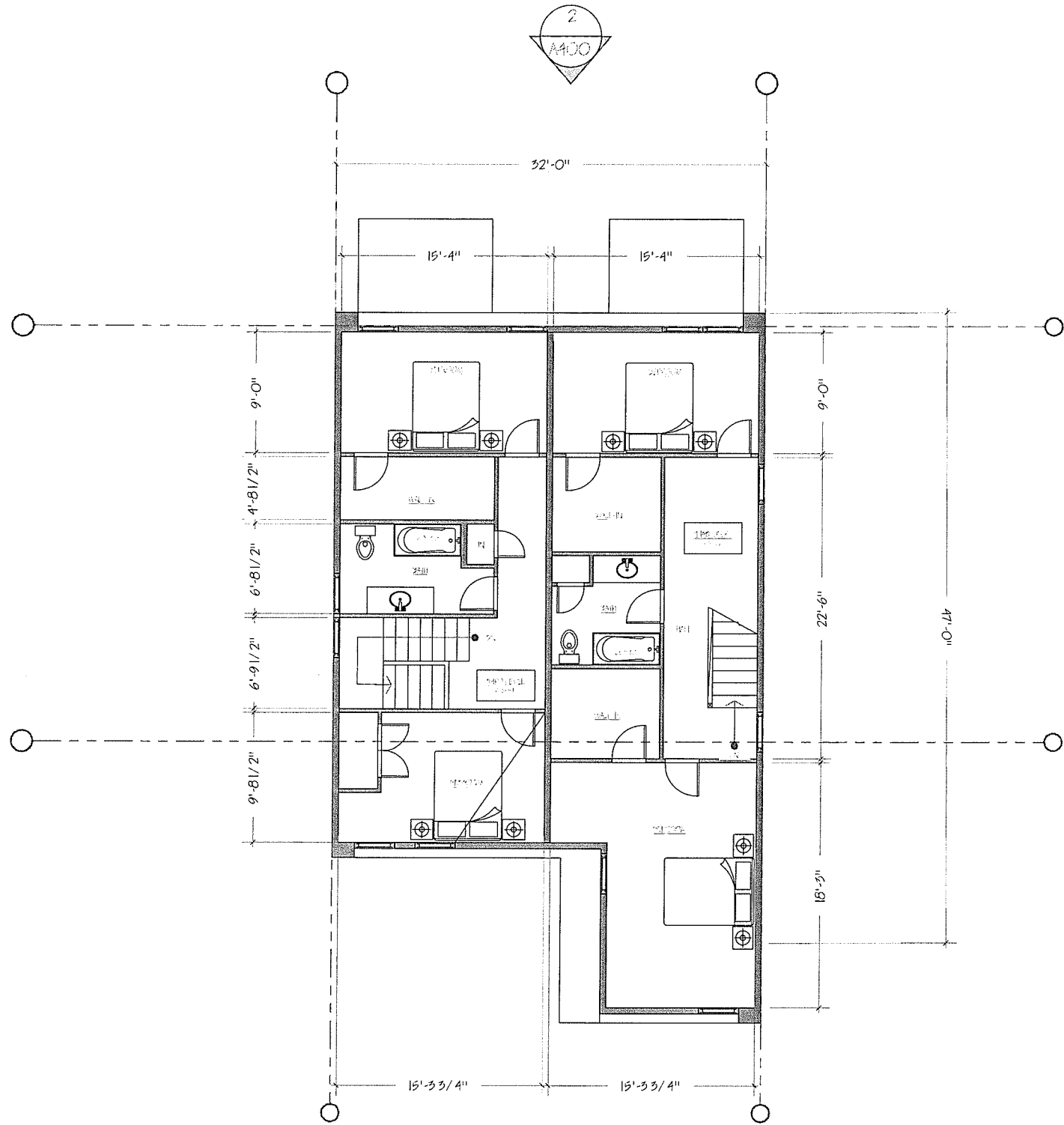
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THIRD FLOOR P

sheet

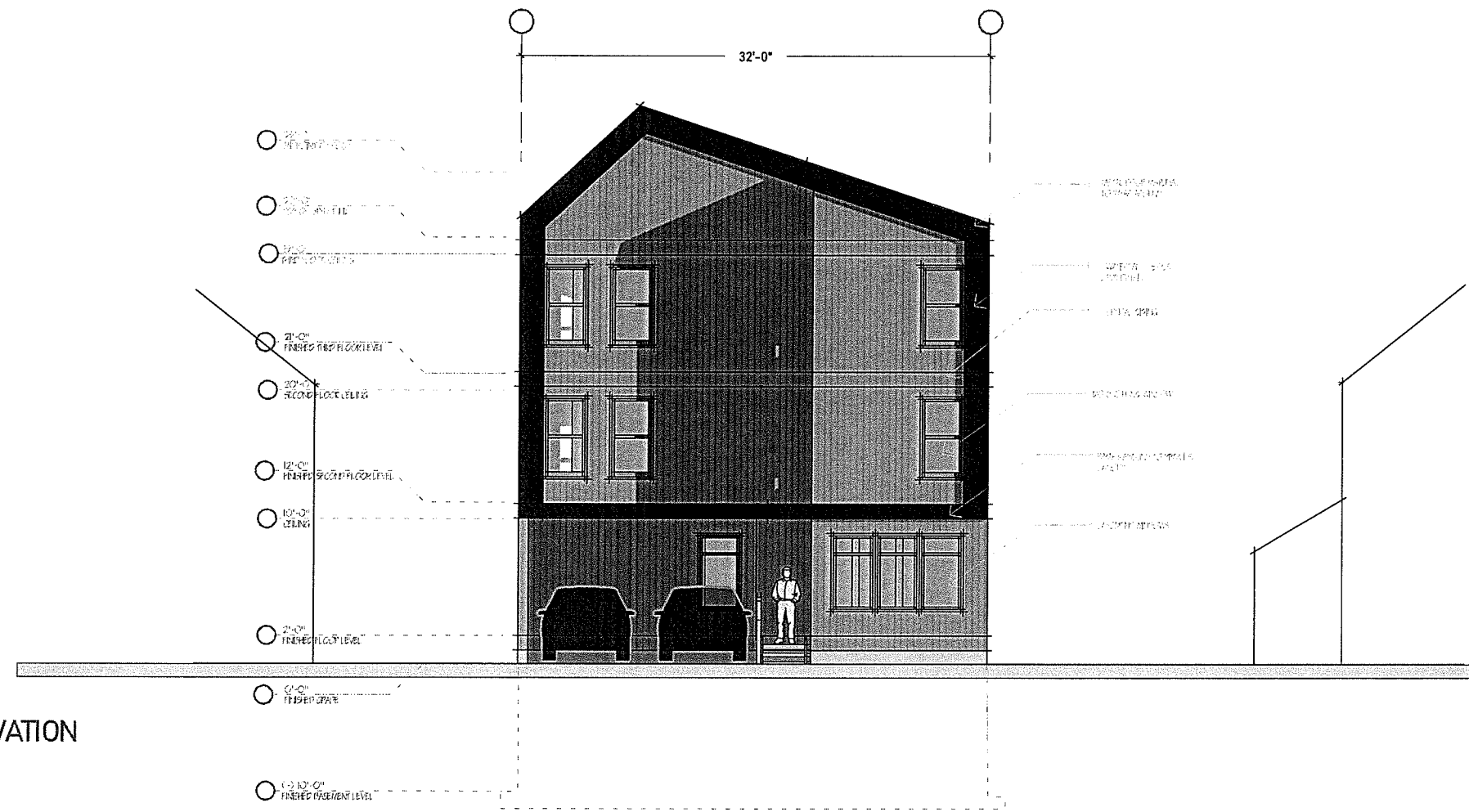
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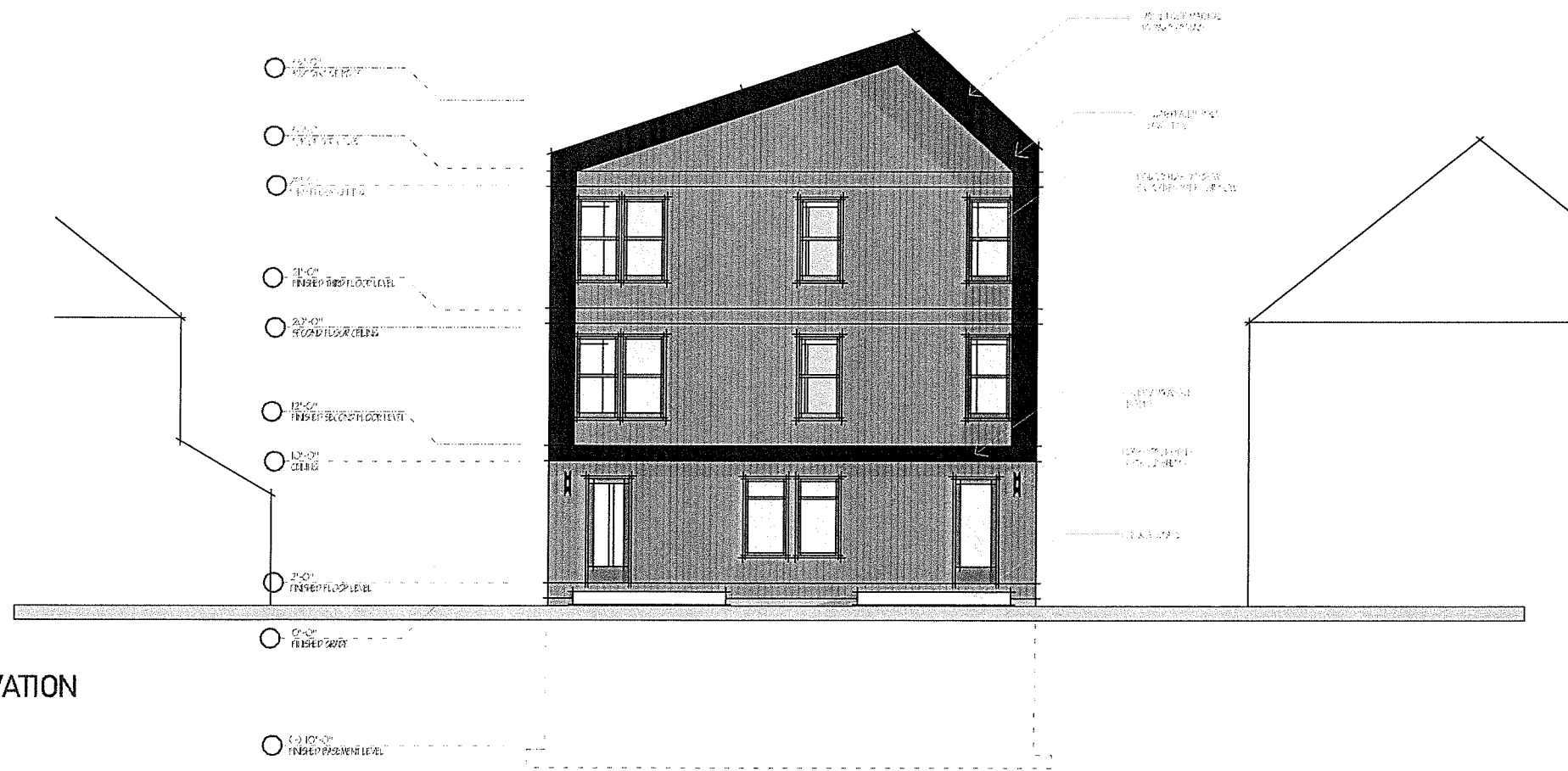
AREA CALCULATIONS

LOWER LEVEL	1195 SF
UPPER LEVEL	1195 SF
SECOND FLOOR	1405 SF
THIRD FLOOR	1405 SF
FRONT PORCH	70 SF
REAR DECK	125 SF

01 | 203 - THIRD FLOOR PLAN
3/32" = 1'-0



01 | 400 - FRONT ELEVATION
3/32" = 1'-0



02 | 400 - REAR ELEVATION
3/32" = 1'-0

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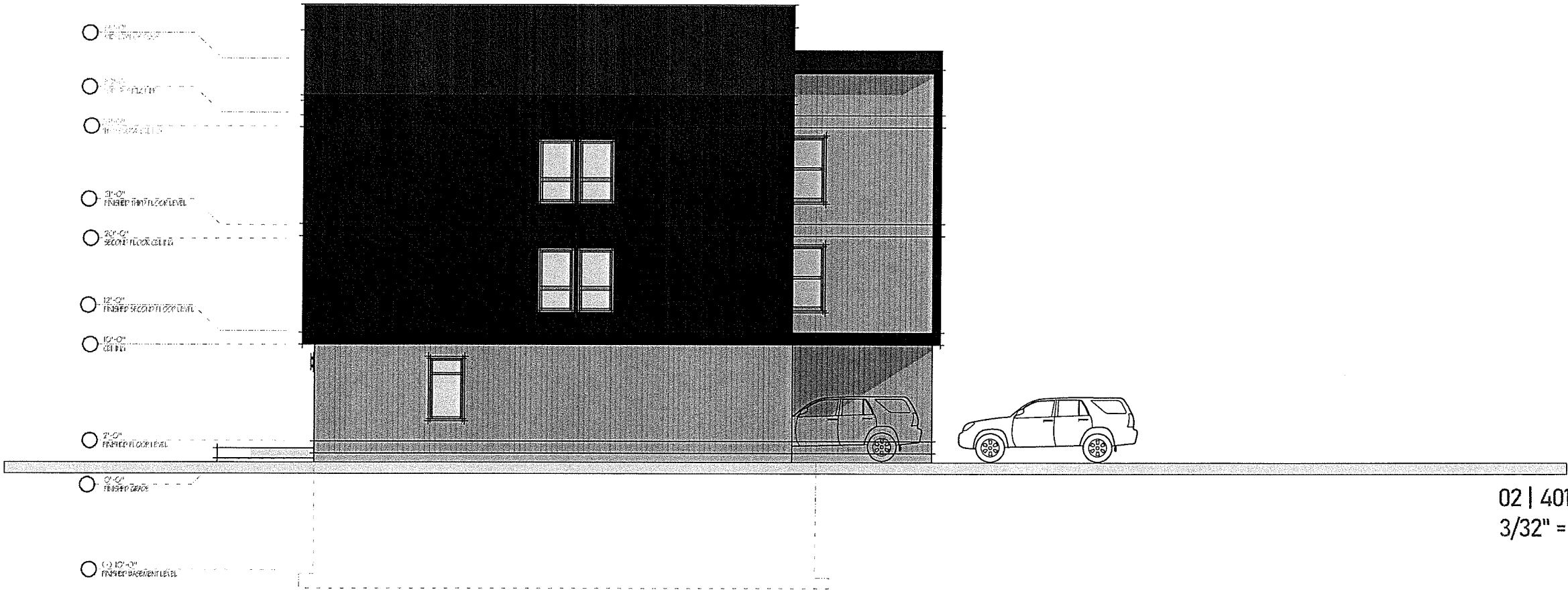
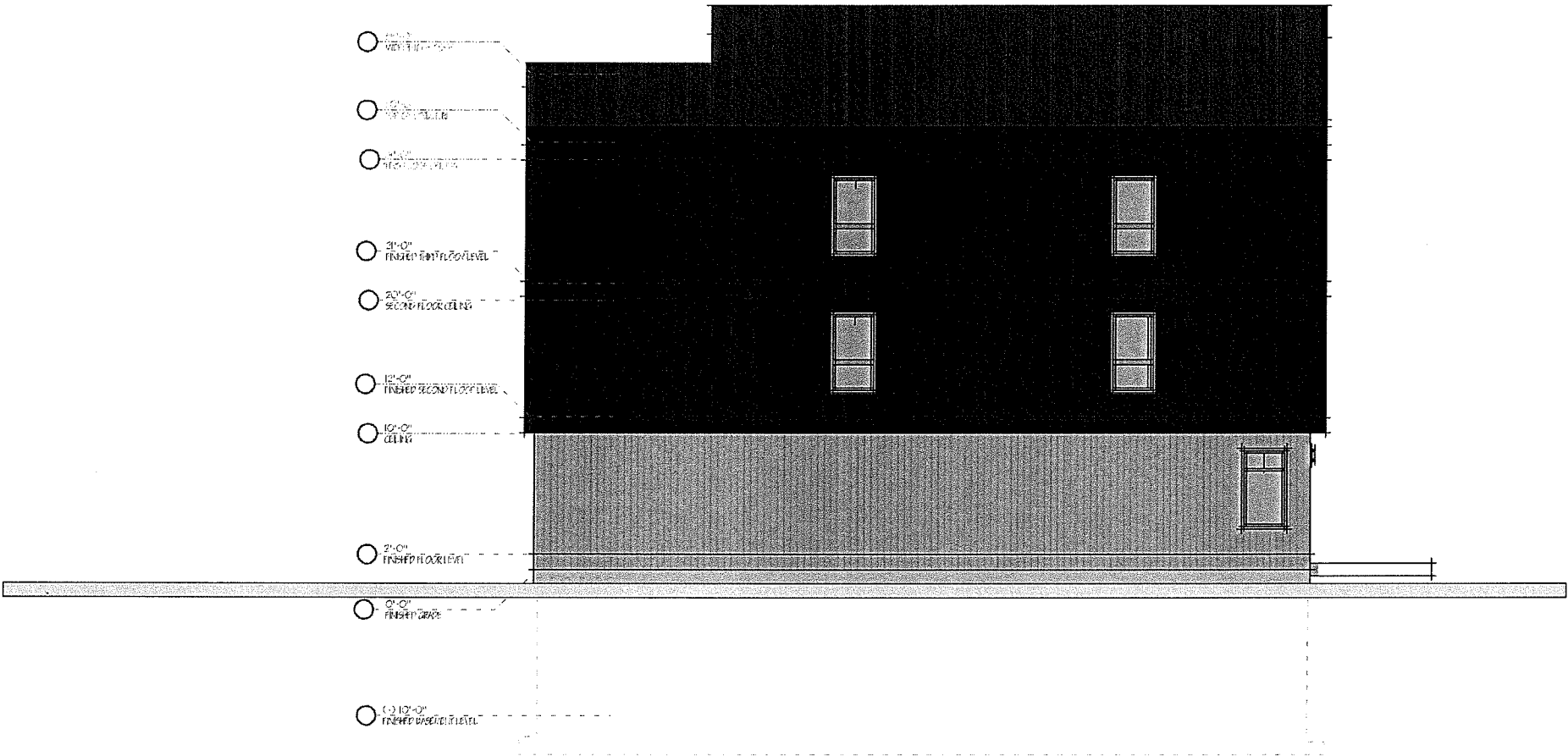
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ELEVATIONS

sheet

A400

01 | 401 - SIDE ELEVATION
3/32" = 1'-0



02 | 401 - SIDE ELEVATION
3/32" = 1'-0

project

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ELEVATIONS

sheet

A40

FRONT (RECESSED LIGHTS)

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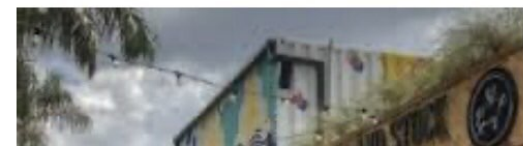
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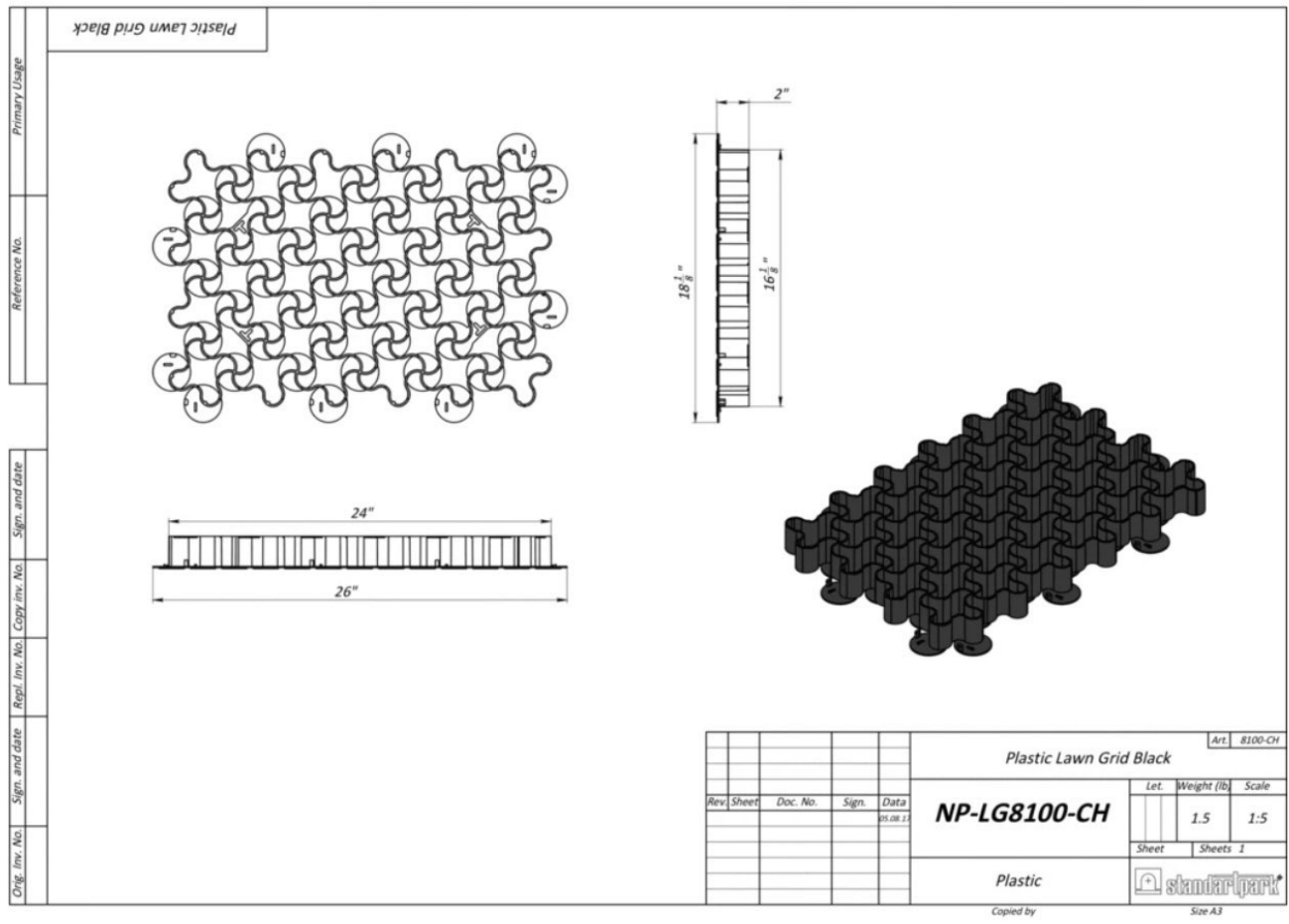








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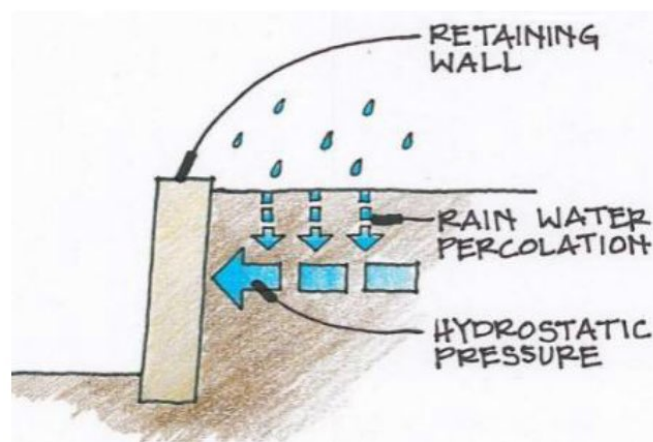
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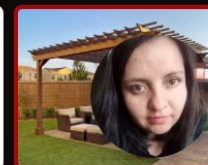
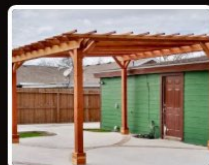


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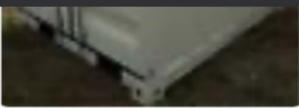
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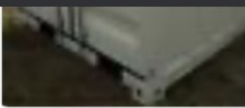


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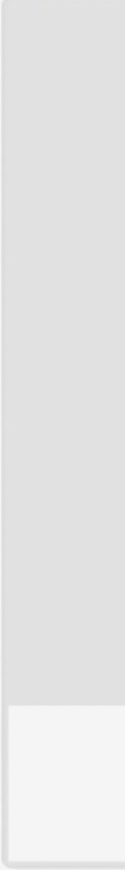


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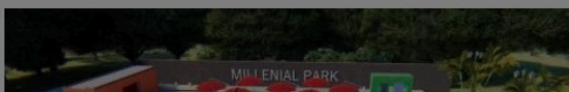
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Layne Darfler, Planning Technician
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Ryan Morrison
DATE: July 6, 2021
RE: ZP-21-446; 501 Pine 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: ELM Ward: 5S

Owner/Applicant: Vermont Gas Systems, Inc. / Kurt Schueler

Request: Develop a seasonal outdoor patio and picnic area that will support up to 4 food trucks, container kitchens and/or food carts (café use).

Applicable Regulations:

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

Background Information:

The applicant is requesting approval to develop a seasonal outdoor patio and picnic area that will support up to 4 food trucks, container kitchens and/or food carts – more specifically a café use as defined by the Burlington Comprehensive Development Ordinance. The subject property is vacant.

There are no previous zoning actions for this property:

Recommendation: Certificate of Appropriateness and Conditional Use approval as per, and subject to, the following findings and conditions.

I. Findings

Article 3: Applications, Permits, and Project Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 Review Criteria

(a) Conditional Use Review Standards

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

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

The project will see new electric and water utilities connected to the site. The proposal should have no appreciable impacts on existing or planned public utilities, services, or facilities. The applicant is advised to check with VT DEC as to whether a state wastewater permit is needed. **(Affirmative finding as conditioned)**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The Enterprise-Light Manufacturing zoning district is the primary commercial/industrial center of Burlington, and is intended to accommodate enterprises engaged in the manufacturing, processing, distribution, renovating, or assembling of goods, merchandise, or equipment without potential conflicts from interspersed residential uses. Other commercial uses are allowed as primary or accessory uses to support a wide range of services and employment opportunities. The proposed café use is allowed in the zone as a conditional use. **(Affirmative finding)**

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

Contrary to other uses within the district that may be manufacturing or utilizing machinery and equipment that emit greater volumes of noise and dust, the proposed development will not induce similar nuisance impacts. **(Affirmative finding)**

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

Pine Street is a major arterial with sidewalks on both sides. There are transit stops within walking distance from the subject property. Pine Street has an articulated bicycle lane as well. There is a robust transportation system in place to support the proposed use. **(Affirmative finding)**

5. *The utilization of renewable energy resources;*

No part of this application would prevent the use of wind, water, solar, or other renewable energy resources. **(Affirmative finding)**

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

Required building and/or life safety codes will be under the review of the building inspector. **(Affirmative finding as conditioned)**

(b) Major Impact Review Standards

Not applicable.

(c) Conditions of Approval:

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

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

The café use is not expected to produce adverse effects that would exceed those of other uses allowed in the ELM zoning district. **(Affirmative finding)**

2. *Time limits for construction.*

The zoning permit will have the standard timelines to complete construction: 1 year from the approval date to commence construction, and 2 more years to complete the project. **(Affirmative finding)**

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

Typical construction hours are Monday-Friday 7:30 am to 5:30 pm, Saturdays limited to interior work unless specific allowances are granted by the DRB, and no construction permitted on Sundays. The café use will operate between the hours of 11:00 am and 10:00 pm. **(Affirmative finding as conditioned)**

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

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time. **(Affirmative finding as conditioned)**

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

Not applicable.

Article 4: Maps & Districts

Section 4.4.3 Enterprise Districts

(a) Purpose

1. *The Light manufacturing district is the primary commercial/industrial center of Burlington, and is intended primarily to accommodate enterprises engaged in the manufacturing, processing, distribution, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment without potential conflicts from interspersed residential uses. ...This district is primarily intended to provide for industrial uses suitable for location in areas of proximity to residential development. Development is intended to respect interspersed in historic industrial buildings, and reflect the industrial aesthetic of the district's past. Parking is intended to be hidden within, behind, or to the side of structures.*

‘Café’ is a conditional use in the ELM zoning district, which will be the primary use of the property. The site plan identifies two short-term pick-up parking spaces at the front. As the property is in the Multimodal Mixed Use Parking District, there is no onsite parking requirement. **(Affirmative finding)**

(b) Dimensional Standards and Density

Table 4.4.3 -1 Dimensional Standards and Density

Districts	Max. Intensity (floor	Max. Lot Coverage¹	Minimum Building Setbacks¹ (feet)			Max. Height¹
			Front	Side	Rear³	

	<i>area ratio¹⁾</i>					<i>(feet)</i>
Light Manufacturing	2.0 FAR	80%	5 min	0 ²	10% ²	45'
501 Pine Street	n/a	70%	9' to the pick-up parking spaces; approx. 23 ft to the pergola and food truck pads.	5' to the food truck pads.	A 60' deep lot requires a 6 ft rear yard setback. The site plan shows what appears to be a 5 ft rear yard setback to the food truck pads.	< 45'

1 – Floor area ratio is further described in Art 5. Measurement of and exceptions to coverage, setback, and height standards are found in Art 5. Actual maximum build out potential may be reduced by site plan and architectural design considerations of Art 6.

2 – Structures shall be setback a minimum of 25-feet along any zoning district boundary line that abuts a residential zoning district. Lots of record existing as of September 9, 2015 that are split by enterprise and residential zones are exempt from this district boundary setback.

3 – Percentage of the lot depth.

The property does not abut a residential zoning district. The applicant will need to revise the site plan to show the food truck pads at a minimum distance of 6 ft from the rear yard property line.

(Affirmative finding as conditioned)

(c) Permitted and Conditional Uses

Cafés are Conditional Uses in the E-LM. See Section 3.5.6 (a), above. **(Affirmative finding)**

(d) District Specific Regulations

1. *Convenience Stores* Not applicable.
2. *Drive Thrus* Not applicable.

Article 5: Citywide General Regulations

Part 5, Performance Standards

Sec. 5.5.2 Outdoor Lighting

The application makes no reference to outdoor lighting. The applicant will need to provide this information to staff to ensure compliance with this section. **(Affirmative finding as conditioned)**

Sec. 5.5.3 Stormwater and Erosion Control

The application does not include Erosion Prevention / Sediment Control and stormwater plans. The applicant will have to submit these plans to the stormwater program manager for review and approval, prior to the release of the zoning permit. **(Affirmative finding as conditioned)**

Sec. 5.5.4, Tree Removal

(a) Review criteria for zoning permit requests for tree removal

(1) Grounds for approval

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be permitted for any of the following reasons:

D. As part of a development with an approved zoning permit.

The project site will be cleared of trees as part of the proposed development. **(Affirmative finding)**

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Not applicable.

Part 2: Site Plan Design Standards

(a) Protection of Important Natural Features:

There are no natural features. The site is currently undeveloped and will be cleared to make way for the proposed development. **(Affirmative finding)**

(b) Topographical Alterations:

The applicant expects there to be 2-4 feet of site grading/excavation to make way for the development. The end result of the project, however, will see insignificant topographic alterations. **(Affirmative finding)**

(c) Protection of Important Public Views:

There are no protected public views from the parcel. Not applicable.

(d) Protection of Important Cultural Resources:

There are no cultural resources on the subject property. Not applicable.

(e) Supporting the Use of Renewable Energy Resources:

Clearing the lot will allow for natural sunlight. No other renewable resources are proposed. **(Affirmative finding)**

(f) Brownfield Sites:

Not applicable.

(g) Provide for nature's events:

An approved Erosion Prevention and Sediment Control plan, as well as a stormwater plan, will be required prior to the release of the zoning permit. Since the café use will operate between May and November, snow storage should not be a concern. **(Affirmative finding as conditioned)**

(h) Building Location and Orientation:

Aside from the centrally located pergola, there will be no permanent buildings constructed on the site. Food trucks and carts will park temporarily in the designated locations, as depicted on the site plan. **(Affirmative finding)**

(i) Vehicular Access:

The development proposes direct access off Pine Street with two curb cuts to allow for an easy, one-way circulation pattern. See site plan. **(Affirmative finding)**

(j) Pedestrian Access:

Pedestrians will have direct access from the Pine Street sidewalk. Internal walkways will be provided for access to the café use. **(Affirmative finding)**

(k) Accessibility for the Handicapped:

The building inspector has jurisdiction over ADA requirements, and the proposal must comply with the Burlington Code of Ordinances. **(Affirmative finding)**

(l) Parking and Circulation:

The development will have a one-way driveway (with two curb cuts on Pine Street), and two temporary parking spaces for food pick-ups. **(Affirmative finding)**

(m) Landscaping and Fences:

The proposal does not include any landscaping, and it should. Given the amount of hard surface proposed, there could be some planter boxes strategically placed around the development to enhance site aesthetics. A wooden fence is proposed to run along the outer edge of the development, specifically along the rear property line and along the back half of both side property lines. **(Affirmative finding as conditioned)**

(n) Public Plazas and Open Space:

Not applicable.

(o) Outdoor Lighting:

As noted above, there is no reference to exterior lighting, and all lighting is subject to the requirements of Sec. 5.5.2 CDO. The applicant will need to submit lighting information to staff to confirm compliance with Sec. 5.5.2 CDO, and update the site plan to show the location of all lights. **(Affirmative finding as conditioned)**

(p) Integrate infrastructure into the design:

Electric and water utilities will be provided underground. No other utilities are proposed. The site plan does not identify trash/recycling areas or bins and will need to. **(Affirmative finding as conditioned)**

Part 3: Architectural Design Standards

Not applicable.

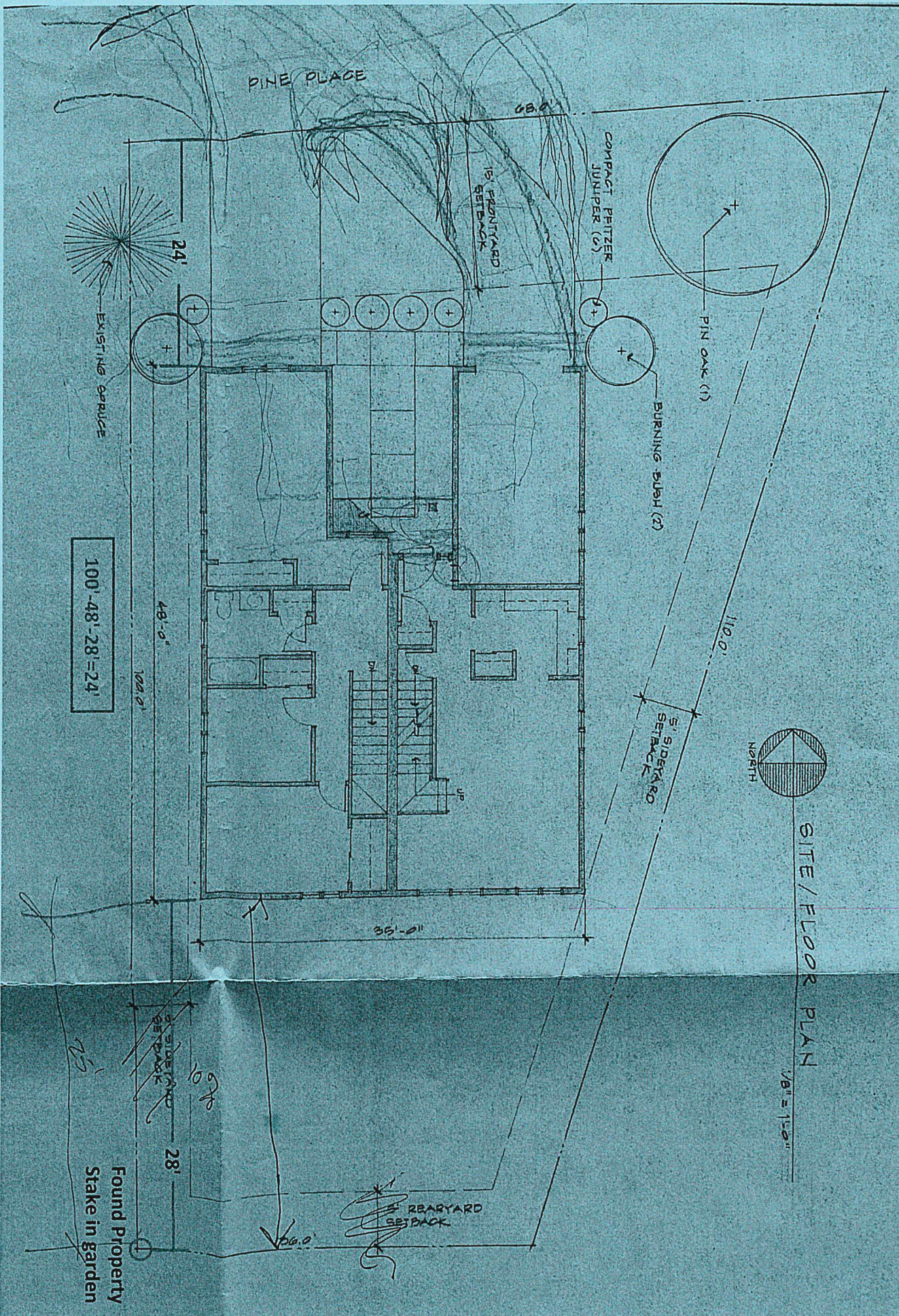
Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The property is located within the Multimodal Mixed Use Parking District, where parking requirements have been eliminated. The applicant proposes two short term parking spaces along the driveway for to-go food pick-ups. **(Affirmative finding)**

II. Conditions of Approval

1. **Prior to the release of the zoning permit**, the applicant shall provide staff with the following:
 - A revised site plan showing the food truck pads meeting the 6 ft rear yard setback, and trash/recycling containers.
 - Exterior lighting plans and manufacturer's spec sheets.
 - A landscape plan.
2. **Prior to the release of the zoning permit**, the applicant shall submit an Erosion Prevention and Sediment Control plan, as well as a stormwater plan, to the Stormwater Program Manager for review and approval.
3. **Prior to the start of construction**, the applicant shall obtain curb cut approval from the Dept. of Public Works for the proposed curb cuts on Pine Street.
4. Construction hours shall be limited to Monday-Friday 7:30 am to 5:30 pm, Saturdays limited to interior work unless specific allowances are granted by the DRB, and no construction permitted on Sundays
5. A state wastewater permit may be required. It is the applicant's responsibility to inquire with VT DEC as to whether such permit is necessary.
6. Any future enlargement or alteration shall be reviewed under the zoning regulations in effect at that time.
7. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
8. Standard permit conditions 1-15.



Burlington Development Review Board

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

Brad Rabinowitz
AJ LaRosa
Geoff Hand
Brooks McArthur
Kienan Christianson
Caitlin Halpert
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, July 6, 2021, 5:00 PM

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401

and

Zoom: <https://us02web.zoom.us/j/84713629087?pwd=Z29nZDd3ekc2U3pNdmVpVW4yVnJrUT09>

Password: 350327

Webinar ID: 847 1362 9087

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

Minutes

Board Members Present: Brad Rabinowitz, AJ LaRosa, Brooks McArthur, Kienan Christianson, Caitlin Halpert, Chase Taylor

Board Members Not Present: Geoff Hand, Sean McKenzie (Alt)

Staff Members: Mary O'Neil, Ryan Morrison, Alison Davis, Kimberlee Sturtevant—City Attorney

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

1. ZP-20-72; 15 Rockland Street (RL, Ward 7N) James Daigle

Request extension of ZP# 20-0687CA to construct new duplex. Two-car garage under each unit. Each unit having own driveway, front porch and rear porch. (Project Manager: Ryan Morrison)

James Daigle and appeared on behalf of item

No public appeared to provide testimony

B. Rabinowitz: Explains that staff is recommending approval. Asks if they have seen the staff recommendations.

J. Daigle: Looking for one-year extension due to labor shortages. No objections to treating this as a consent agenda item.

B. Rabinowitz: Asks if anyone from the Board or applicant has objection to treating this as a consent item.

None

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

C. Halpert: Seconds motion.

6-0-0

2. ZP-21-421; 12-22 North Street (NMU, Ward 3C) Draker Solar Properties LLC

Converting basement space to small brewery and tasting counter. (Project Manager: Mary O'Neil)

Casey Thomas appeared on behalf of item
No public appeared to provide testimony

B. Rabinowitz: Explains that staff is recommending approval. Asks if they have seen the staff recommendations.

J. Daigle: Yes, No comments.

B. Rabinowitz: Asks if anyone from the Board or applicant has objection to treating this as a consent item.

None

C. Halpert: Motion to approve the application and adopt staff findings.

B. McArthur: Seconds motion.

6-0-0

V. Public Hearing

1. ZP-20-671; 41 Pine Place (RM, Ward 5S) Sam Catalano

Continued hearing for request of three-bedroom short-term rental (bed and breakfast) and two-bedroom boarding house within duplex. No construction proposed. (Project Manager: Scott Gustin)

Sam Catalano and Alec Slater appeared on behalf of application
No public appeared to provide testimony

B. Rabinowitz: Continuance from a previous hearing. Focusing on parking.

S. Catalano: From where we left off last time, the plan that we looked at before was cut-off and zoomed in, but I have the full size. Was able to find a pin for the property line. Explains the confirmed dimensions of the property lines.

B. Rabinowitz: Asks to clarify that the goal is to be approved for five parking spaces.

S. Catalano: Correct

B. Rabinowitz: Question about the previously determined grandfathered parking spot.

M. O'Neil: Clarifies that there was a determination that there is a undersized parking space there, and since it is an unenforceable violation it cannot be used towards any parking requirement.

B. Rabinowitz: Asks even though it is a parking space.

S. Catalano: Thought it was an undersized space because it was we didn't have proof that the space was deep enough.

M. O'Neil: Explains that it is an unenforceable violation and the City recognizes that it has been there long enough that it cannot take enforcement action against it. However, that space cannot be used as part of a parking requirement. You cannot use that space to your advantage.

C. Halpert: Clarifies that he would be required for what is in the staff report to essentially have seven spaces then that one can count because of the previously determined space.

A. Slater: We were under the impression that we only needed five spaces.

B. Rabinowitz: The staff report expresses that some were double counted.

M. O'Neil: A single family home still requires two parking spaces.

A. Slater: The fact that it is being classified as a boarding house is not accurate. It is a single person renting out that unit.

S. Catalano: Explains history with property. There are two three-bedroom units. Explains that he lives with roommates in one unit, and then the other unit is a three-bedroom short-term rental.

B. Rabinowitz: We have it in the staff report to be a two-bedroom boarding house with a duplex and then a three-bedroom short-term rental.

S. Catalano: This is where the project manager, Scott, and I have been disagreeing. I have brought forth the zoning application solely for the short-term rental in the other unit. He insisted that the use of my primary residence unit would be a boarding house, but it should not be.

B. Rabinowitz: Clarifies that it is not short-term.

S. Catalano: Correct. Long-term, full time renting. Have been living there for 4-5 years.

B. Rabinowitz: Understands what applicant is saying. Between the two three-bedroom units, you are living in one unit with long-term roommates. The other unit is being set up as a three-bedroom short-term rental.

C. Halpert: Asks if the three rooms would be rented together.

S. Catalano: Correct. Rooms will never be rented separately. The whole unit is rented as one.

B. Rabinowitz: Asks staff if a three-bedroom unit will count as a single-family dwelling.

M. O'Neil: Explains that she is not the project manager and is representing the project manager, Scott, who is not in attendance. Understood that Scott identified three uses on the property. A single family home, a boarding house, and a bed and breakfast (short-term rental). The boarding house and bed and breakfast require owner occupancy, which is evident on site.

B. Rabinowitz: Asks if the owner occupancy is in that interpretation, that any apartment in the City could become a boarding house if it had more than one bedroom.

M. O'Neil: Not necessarily, in this circumstance, as a duplex, the owner could live in one unit and renting out the bedrooms in the other unit.

B. Rabinowitz: Asks if someone is not renting out the bedrooms one at a time on short-term, wouldn't it just be a house and not a boarding house?

C. Halpert: Asks to bring up the definition for boarding house.

K. Christianson: Mentions the case that was cited by staff in the staff report and how it might be a problem for the applicant. Asks if the applicant has any thoughts or comments on the case that they want to bring to the Boards attention. Whether it is a boarding house or not, the case states that we can't count that sixth parking space.

A. Slater: Explains that there is room for five spaces, but not the six.

A. LaRosa: There was a comment in the staff report that the applicants have not requested a parking waiver. If they submitted a parking management plan with waivers for parking requirements, we would not have this issue.

B. Rabinowitz: Potentially, because we could waive up to half of the parking requirement.

M. O'Neil: Explains that the project manager indicated that there was no submission of a transportation demand management plan or request of a parking waiver.

S. Catalano: I had talked to Scott before he submitted these reports. He had brought up the parking waiver, but it was brought up and put in front of me like I needed to do this. I did not understand what the implications of that were. I did not realize what

problems that could solve since there is still disagreement on the use. If you are insinuating that I can do a parking waiver to take care of the parking issue, would like to do that. Was confused when it was first presented to me.

B. Rabinowitz: Asks to go back to the question of definitions of the terms for boarding house, apartment, and single-family home.

M. O'Neil: Reads definitions in the CDO.

B. Rabinowitz: Two separate issues. One is the parking and the other is determining a use. The suggestion of a parking management plan is smart because we could grant up to 50% of the required parking spaces. There is no question that there are four spaces. For the tandem, there does need to be some management regarding those spaces. Still having trouble with why it is single-family, boarding house and bed and breakfast. Asks if that fifth space actually meets all the setback requirements for a parking space.

S. Catalano: I believe so. The dimensions are more than the minimum required.

B. Rabinowitz: Questions and has applicant walk through site and show where fifth parking space is designated.

S. Catalano: Explains that early on Scott suggested that he got a parking easement, and so they got allowance and received the parking easement.

B. Rabinowitz: Asks if front yard parking is still relevant off a private street.

R. Morrison: Correct, there is no differentiation between the two. I am not the project manager, but from reading the staff report, it seemed like that fifth parking space, so you got the bianchi allowance for being there for more than 15-years, so it cannot be enforced against, but to take that space and put it towards the required spaces, is not allowed. It is an unpermitted space, but it cannot be enforced against.

A. LaRosa: If the waiver is down to four spaces, which would be within the 50% waiver, then the fifth space becomes irrelevant to our consideration.

B. Rabinowitz: Correct. I think AJ is coming up with the simplest way to resolve this. Rather than to resolve the issue with the use of the property, if there was a request for a two-space parking waiver, this could be a solution. Applicant would need to provide some management of the parking, the location, why there is a need for the waiver. If we have that request in front of us, we can act on that as a waiver for the full parking requirement. Might be the simplest way.

S. Catalano: Yes, agrees.

B. Rabinowitz: Asks if Board members have anything else to add or comment.

None

B. Rabinowitz: Invites for motion to continue public hearing to later date.

A. LaRosa: Motion to continue the public hearing to allow the applicant to submit a parking management plan and parking waiver. I move that we continue the item to August 3.

K. Christianson: Seconds motion

6-0-0

2. ~~ZP-21-213; 38 Latham Court (RL, Ward 1E) Mark McGee~~ *Deferred to future meeting*
Two-story addition; first floor shop and second floor office space. Roof replacement.
Patio door and window replacements. (Project Manager: Mary O'Neil)

3. ZP-21-446; 501 Pine Street (ELM, Ward 5S) Vermont Gas Systems Inc
Construct parking and service area for food truck stop (cafe). (Project Manager: Ryan Morrison)

Kurt Schueler appeared on behalf of item
No public appeared for testimony

B. Rabinowitz: Invites applicant to speak on project. Comments that it is a neat looking project and that it is recommended for approval.

K. Scheuler: Not much to add from what I presented in the application.

B. Rabinowitz: Asks about lighting plan, erosion control, trash receptacles. There is more that will need to be added to the plan.

K. Scheuler: Yes, can provide those.

K. Christianson: Asks about a traffic plan or any study for the Pine Street corridor.

R. Morrison: This property is in a parking district that does not have a parking requirement and is not a big enough development to trigger a transportation demand management plan.

A. LaRosa: Mentions amplified music and whether that is in the proposal or if there is any plan of loud or live music, concerts. Asks what the hours of operation are.

K. Scheuler: Proposed operational time is 11am to 10pm. As far as music, not planning to be a place to play music other than background music. That is not in the proposal. No plans of having concerts or live music.

B. Rabinowitz: Curious about the size. Asks about multiple food trucks and if there will be more than one at a time.

K. Scheuler: Correct, there could be more than one food truck, food cart or container kitchen.

B. Rabinowitz: Asks about the ground material proposed.

K. Scheuler: My proposal would be to use crushed stone or gravel for the driveway and the pads. For underneath the pergola, there is a sitting area and the rest would be grass. Shows engineered proposal plan.

B. Rabinowitz: Mentions that gravel gets pretty messy over time.

K. Scheuler: Was hoping to help the coverage and drainage.

B. Rabinowitz: Asks about signage, and that would have to be a separate permit.

K. Scheuler: Proposing very limited signage. Will be a different application.

B. Rabinowitz: Mentions to consider concrete instead of the gravel because of the easier maintenance. Asks about any lighting plans.

K. Scheuler: Thinking of proposing lights hanging from pergola, and then some walkway lighting.

B. Rabinowitz: Asks what pergola would be made of.

K. Scheuler: Thinking natural wood. Non-pressure treated wood, maybe redwood.

B. Rabinowitz: Nice looking project. Asks if there are any other questions or comments.

None

B. Rabinowitz: Closes public hearing.

VI. Executive Session

Anticipated discussion of pending litigation regarding 75 Cherry Street.

The Development Review Board took a request from City Attorney, Kimberlee Sturtevant, to go into executive session to discuss pending litigation and attorney-client

communications regarding a current lawsuit by 100 Bank Street against the City, including members of this Board and City employees.

K. Christianson: I move to find that premature general public knowledge of a discussion of pending litigation and attorney client communications regarding a lawsuit filed by 100 Bank Street against the City in relation to 75 Cherry Street, including members of this board and City employees, would clearly place the City at a substantial disadvantage because it risks disclosing its legal strategy if discussed in public.

C. Halpert: Seconds motion.

5-0-0 (AJ LaRosa, recused)

B. Rabinowitz: Based upon finding of substantial disadvantage, I move that we enter into executive session to discuss pending litigation and receive attorney-client communications regarding 100 Bank Street's lawsuit against the City in relation to 75 Cherry Street, including members of this board and City employees. I request the presence of Assistant City Attorney Kim Sturtevant, and outside Council for the City, Attorney Jennifer MacDonald, DRB staff Mary O'Neil, as well as other named Defendants if present including: Brad Biggie, Kim Ianelli and Springer Harris during the Executive Session.

K. Christianson: Seconds motion.

5-0-0 (AJ LaRosa, recused)

VII. Adjournment

Meeting adjourned 6:20 PM



Bradford L. Rabinowitz, Chair of Development Review Board

September 7, 2021

Date



Alison Davis, Zoning Clerk

Date

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential.

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