

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

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BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday April 17rd, 2018, 5:00 PM

PUBLIC HEARING NOTICE

The Burlington Development Review Board will hold a meeting on
Tuesday April 17rd, 2018 at 5:00pm in Contois Auditorium, City Hall.

1. **18-0771AP; 12 Weston St (RL, Ward 1E) Charles and Cynthia Burns**
Appeal of NOV 336638 pertaining to duplex use.
2. **18-0768CA; 75 Cherry St (FD6, Ward 3C) BTC Mall Associates LLC**
7th and 12th floor amenity space; change to project phasing.

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

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

The programs and services of the City of Burlington are accessible to people with disabilities.

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

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Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

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

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



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: April 17, 2018
RE: ZP18-0768CA; 75 Cherry Street

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

File: ZP18-0768CA

Location: 75 Cherry Street

Zone: FD 6 **Ward:** 3C

Date application accepted: March 12, 2018

Applicant/ Owner: Freeman French Freeman / Devonwood Investors LLC (Don Sinex)

Request: 7th and 12th floor amenity spaces; change to project phasing as approved under ZP17-0662CA.

Background:

- **ZP18-0648CA;** Amendment to ZP17-0662CA/MA adding 16 new residential units, façade alterations and parking arrangement. February 2018.
- **ZP17-0662CA/MA;** Mixed use redevelopment of the existing Burlington Town Center mall site and associated lot line adjustments. July 2017.

Overview: The applicant seeks to modify project plans for the approved multi-use building to include a **seventh floor pool pavilion and deck**, a **12th floor fitness/health space**, and a request to modify the overall **project phasing** schedule.

As the project is within Form District 6 (FD6), physical changes are reviewed under Article 14 of Burlington's Comprehensive Development Ordinance.

Review of façade changes are reviewed administratively as allowed by the Form Code. The requested change to include the addition of new building mass/volume requires DAB and DRB review per the standard, below.

Changes to project phasing is under the jurisdiction of the DRB.

The **Design Advisory Board** reviewed the application on the March 27, 2018 agenda. The DAB voted unanimously to recommend approval of the 7th and 12th floor additions, with comments that the project "had negligible impact to the street" and "this is a terrific inclusion of amenities to support residential uses in the downtown."

Recommendation: Consent Approval, per the following findings and conditions:

The programs and services of the City of Burlington are accessible to people with disabilities. For accessibility information call 865-7188 (for TTY users 865-7142).

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

Section 3.2.9 Zoning Permits

(f) Exceptions to Permit Time Limits

*Except for projects subject to additional state or federal permitting jurisdiction, or which have been appealed to Vermont Environmental Court pursuant to the requirements of Article 12, there shall be no exceptions to the time limits specified in Section 3.2.9 (d) and (c) unless **longer or shorter time limits are specifically imposed as permit conditions of approval by the DRB at the time of approval.***

The original permit approval (ZP17-0662CA/MA) was approved with the following phasing schedule:

- 1st Phase of occupancy: (9.1.2019)
 - ◆ UVMCMC Office Space
 - ◆ Parking Garage Levels P + 12
 - ◆ Cherry St + Bank Street improvements
 - ◆ Retail Space, Bank + Cherry Streets
- 2nd Phase of occupancy (6.30.2020)
 - ◆ Residential Tower, East Wing (103 units)
 - ◆ Residential L3, L4+L5 (61 units, includes inclusionary)
 - ◆ Bank Street office tower
 - ◆ Parking Garage Levels L3 + L4
- 3rd Phase of occupancy (8.1.2020)
 - ◆ Residential Tower; Center + West Wings (109 units)
 - ◆ Retail Space; St. Paul + Pine Streets
 - ◆ St. Paul and Pine Street improvements

Zoning Permit 18-0648CA (*Amendment to 17-0662CA/MA; Addition of 16 residential units on the east and west elevations at level 2,3, and 4 reflected in exterior revisions and floorplans. Elimination of awnings at retail. Parking layout revision.*) amended that timeline, pushing the phasing schedule out from the February 23, 2018 approval.

This application requests to amend the three phase project, proposing one additional phase:

- Phase 1 / TCO 1 November 20, 2019
 - ◆ Cherry & Bank Retail – LG & 1
 - ◆ Cherry & Bank Street Sidewalks
 - ◆ UVMCMC – Levels 5 & 6 North Tower

- ◆ Parking Levels – L1, L2, L3, L4
- Phase 2 / TCO 2 February 2020
 - ◆ Wrapper Housing – L2, L3, L4
 - ◆ Pine & St. Paul Retail
 - ◆ Pine & St. Paul Streets
- Phase 3 / TCO 3 April 2020
 - ◆ Basement Parking
 - ◆ North Tower Residential L7-L10
 - ◆ South Tower Office L5-L12
- Phase 4 / TCO 4 June 2020
 - ◆ North Tower Residential L11-L14

Final Certificate of Occupancy October 2020.

The proposed phasing schedule differs in the number of segments (3 vs 4), and extends the permitting timeline by two months. The request appears to be consistent with the original approval, but modified to allow for securing an additional temporary certificate of occupancy in the interim period to allow for earlier occupancy. **Affirmative finding as conditioned.**

Part 3: Impact Fees

Section 3.3.5 Calculation of Impact Fee

Impact fees are calculated on the total gross square footage of the principal use of the building, including accessory uses. In the event there is more than one principal use within a building, impact fees will be calculated separately for each principal use and associated accessory uses, with common space computed on a pro-rata basis.

Impact fees shall be assessed based on the final gross area calculation submitted to staff. The applicant has indicated that the area amount provided for residential use in the previous application (ZP18-0648CA) was inclusive of this new amenity space.

Affirmative finding as conditioned.

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.

Affirmative finding as conditioned.

Article 4: Zoning Maps and Districts

Part 4: Base Zoning District Regulations

Section 4.4.1 Downtown Mixed Use Districts

1. FD6. See Article 14.

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots.

Not applicable.

Section 5.2.2 Required Frontage or Access

No change. Not applicable.

Section 5.2.3 Lot Coverage Requirements

No change. Not applicable.

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks

Setbacks are addressed under *planBTV Downtown Code Application Compliance Checklist – Sec. 14.4.13 Urban Design Standards*, administrative review.

Section 5.2.6 Building Height Limits

There is no proposed change to the overall building height. Review of height is within *planBTV Downtown Code Application Compliance Checklist – Sec. 14.4 Building Types*, under administrative authority.

The change to massing above 65' is subject to review by the DRB; the purpose of this application.

Section 5.2.7 Density and Intensity of Development Calculations

There is no change to the density/intensity of Development. Not applicable.

Part 3: Non Conformities

Not applicable.

Section 5.4.7 Wireless Telecommunications Facilities

Not applicable.

Sec. 5.4.8 Historic Buildings and Sites

Not applicable.

Section 5.4.9 Brownfields

Not applicable.

Part 5: Performance Standards

Section 5.5.1 Nuisance Regulations

Not applicable.

Section 5.5.2 Outdoor Lighting

The proposal has not included any lighting information. If additional lighting is proposed, fixture information and light levels shall be submitted for staff review. **Affirmative finding as conditioned.**

Section 5.5.3 Stormwater and Erosion Control

Not applicable.

Section 5.5.4 Tree Removal

Not applicable.

Article 8: Parking

The proposed new amenity spaces are intended as accessory to the approved residential uses, and therefore spur no additional parking requirement. Parking spaces approved under ZP17-0662CA/MA as amended within ZP18-0648CA remain in effect. **Affirmative finding as conditioned.**

Section 14.6.4 Building Height

(f) Design and Public Standards Required for Additional Building Height

After consultation with the Design Advisory Board and a Public Hearing, the Development Review Board shall evaluate any proposal seeking addition building height under each of the following additional design standards, and affirmatively find that:

- a. The proposed building presents a design that emphasizes slender, vertically-oriented proportions to assure a rich visually interesting experience as viewed with the context of the downtown skyline; reinforces opportunities for establishing points of reference for visual orientation; and provides visual interest and human scale at the pedestrian level through the use of a variety of scales, materials, fenestration, massing or other architectural design standards.*

The overall building height will not exceed beyond what was approved under ZP17-0662CA/MA. DAB and DRB review is required due to the new building **mass** (7th and 12th floor amenity spaces) and the requested alteration to the phasing schedule.

The pool/deck feature on the 7th floor will not be visible from any of the streetfront elevations (see Plans A200-A201.) The fitness center at the 12th floor will be apparent only from the north (Cherry Street) façade as a small building volume that is largely unapparent from street view (see lower illustration at A-202, sight lines noted.)

Plan A-202 illustrates views from the interior of the block complex, and the proposed amenities as may be apparent of the north courtyard. With the noted exception along Cherry Street, neither amenity space will be visible to the pedestrian at street level. Pavilion finishes are consistent with the overall building design and specific activities within. Overall skyline views will remain as previously approved.

Although no new overall building height is requested, the additional volume is inconspicuous between the larger towers (fitness center) or recessed behind existing building volumes (pool pavilion.) The proposal will continue to assure a rich visually interesting experience.

Affirmative finding.

- b. Step backs, horizontal and vertical variation, selection of materials, and/or other architectural design techniques are used to reinforce the street wall, create transitions*

from buildings of a smaller mass and height, and reduce the perceived height and mass of upper stories from the street level,

The proposed building amenity additions do not influence the previously approved street wall(s). The new mass/volume is set within the existing building volume, and in the case of the fitness amenity, provides a transition between two (previously approved) building volumes at a building elevation and stepback that is minimally apparent from the street. As both amenity spaces are proposed to be located within or among approved building volumes, and as proposed have no visual connection to the streetfront pedestrian, neither will negatively influence the perceived height and mass of the upperstories from the street. **Affirmative finding.**

and,

- c. Upper story propositions of the building are oriented and tapered and/or separated into separate masses in order to retain sky view between individual buildings elements from the public thoroughfare.*

The 7th floor pool pavilion, located on an interior court within the entire complex, is proposed as an individual volume on a lower floor that has no impact to sky views between buildings. The 12th floor fitness pavilion adds a minor volume between two higher building extrusions, and is only visible (with difficulty) from Cherry Street. The limited volume, at a height and stepback negating visibility from the pedestrian level assures no obstruction to skyview between building elements from the public thoroughfare. **Affirmative finding.**

II. Conditions of Approval

1. Per **Section 2.7.8, Withhold Permit**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations.
2. Impact fees shall be calculated based on the gross area as submitted to staff. Per Section 3.3.8, Impact fees must be paid at least seven (7) days **prior to occupancy of the building** or any portion thereof.
3. If additional lighting is proposed, fixture information and light levels shall be consistent with Section 5.5.2 and submitted for staff review.
4. No change in parking is required of this application, as amenity spaces are accessory to the approved residential use. Parking spaces approved under ZP17-0662CA/MA as amended under ZP18-0648CA remain in effect.
5. This permit modifies the original phasing schedule approved under ZP17-0662CA/ MA to the following four-part schedule:
 - Phase 1 / TCO 1 November 20, 2019
 - ◆ Cherry & Bank Retail – LG & 1
 - ◆ Cherry & Bank Street Sidewalks
 - ◆ UVMC – Levels 5 & 6 North Tower
 - ◆ Parking Levels – L1, L2, L3, L4
 - Phase 2 / TCO 2 February 2020
 - ◆ Wrapper Housing – L2, L3, L4

- ◆ Pine & St. Paul Retail
- ◆ Pine & St. Paul Streets
- Phase 3 / TCO 3 April 2020
 - ◆ Basement Parking
 - ◆ North Tower Residential L7-L10
 - ◆ South Tower Office L5-L12
- Phase 4 / TCO 4 June 2020
 - ◆ North Tower Residential L11-L14

Final Certificate of Occupancy October 2020.

6. Any conditions of ZP17-0662CA/MA or ZP18-0648CA not explicitly altered herein shall remain in effect.
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.

BURLINGTON TOWN CENTER BURLINGTON, VT



PLANNING & ZONING SUBMISSION

12/15/2016

Revised 01/11/2017

Revised 01/20/2017

Revised 02/16/2017

Revised 01/25/2018

BURLINGTON TOWN CENTER PLANNING AND ZONING APPLICATION

12/15/2016

01/11/2017 Revised

01/20/2017 Revised

02/16/2017 Revised

01/25/2018 Revised (Podium changes)

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1.0 OWNER, APPLICANT, AND DESIGN TEAM

1.1 PLANNING AND ZONING APPLICATIONS REQUIRED:

- COA LEVEL II REVIEW APPLICATION
- MAJOR IMPACT REVIEW APPLICATION

1.2 OWNER:

Devonwood Investors, LLC
101 Cherry Street, Suite 440
Burlington VT 05401
802-658-2545

Donald Sinex

1.3 DESIGN TEAM:

Design Architect	PKSB Architects
Construction Management	PC Construction
Applicant/Architect of Record	Freeman French Freeman, Inc.
Structural Engineer	Hardy Structural Engineering
Mech./Elec./Plumbing Engineer	Hallam ICS
Civil Engineer	Engineering Ventures
Landscape Architect	SE Group
Traffic, Noise, and Pollution	VHB

1.4 NEIGHBORHOOD MEETING:

Per Zoning Section 3.5.2(b), pre-application neighborhood meetings were held. See FIGURE 1-A for affidavit, list of meeting dates, and meeting minutes.

2.0 NARRATIVE

2.1 PROJECT INTRODUCTION:

Devonwood Investors, LLC proposes to develop a multi-use project within the Downtown Mixed Use Core Overlay (DMUC) District on the project site presently occupied by Burlington Town Center Mall at 49 Church Street. The site is currently spread across six parcels of land, and will be reconfigured into five, two of which will be turned over to the City of Burlington for use as new public through-street extensions of Pine Street and St. Paul Street, between Cherry and Bank Streets (See Drawing C0.1 Adjusted Parcel Boundaries). The lot reconfiguration is a separate application. The proposed uses include retail, residential, office, and parking. The development consists of one building composed of a Base, a South Tower, and a North Tower.

2.2 DECONSTRUCTION (DEMOLITION) OVERVIEW:

Our limits of deconstruction will be framed by the existing street lines and building structures. Cherry Street will provide boundary to the North and Bank Street to the South. The 100 Bank Street building will anchor the southwest deconstruction limits and the Macy's building will provide terminus to the West. The L.L. Bean building and remaining mall structure will provide boundary to the East.

Site and building utilities will be cut and capped where serving the deconstruction areas and the project team will coordinate to maintain utilities for abutting properties. We will coordinate to ensure emergency egress and needs of all abutting properties are met throughout the course of construction.

As part of our LEED goals, we are seeking 75% or more diversion of recycled materials from the waste stream during the deconstruction process.

See Drawing AD-001 for drawing and photos.

2.3 DISTRICT SPECIFIC REGULATIONS: Zoning Section 4.5.8(c)1

Uses: Adjusted Parcel 2 is the lot bounded by Cherry, St. Paul, Bank, and Pine Streets exclusive of 100 Bank Street at the corner of Bank and Pine Streets. Square footage of Parcel 2 is 109,779. The total proposed square footage in subject Parcel 2 is 961,447, divided as follows:

Retail:	125,209 sf	13%
Office:	222,476 sf	23%
Residential:	342,546 sf	36%
Residential Parking:	99,775 sf	10%
Non-Residential Parking:	168,439 sf	18%
Public Amenity:	<u>3,002 sf</u>	0%
TOTAL:	961,447 sf	

Per zoning section 4.5.8(c)1, the maximum allowed FAR is 9.5

$109,779 \times 9.5 = 1,042,900.5$ sf **Maximum allowed area.**

The proposed FAR for Adjusted Parcel 2 is: $961,447 / 109,779 = 8.76$ **PROPOSED FAR.**

2.4 URBAN DESIGN STANDARDS: Zoning Section 4.5.8(c)2 and Section 6.3.2(a)

Stepbacks are provided within 60'-0" of grade level and by 12th floor at all portions of the development, see Drawing Z-021 Zoning Sections. Upper story floorplates are split into reduced plates to provide tower-like proportions to allow views of the sky between individual building elements.

Projecting bay windows, recessed entryways, recessed balconies, spandrel panels, and brick offsets offer multiple surface relief in articulation of the facades of 4" or more at each facade. Primary material choices include brick, limestone-finished panels, and glass. Material changes are provided at upper story setbacks and other façade elements. Accent materials include metal railings and screens.

Setbacks provided are activated as outdoor amenities for tenants and visitors. The tops of the tower-like elements include columned structure with screened mechanical penthouses including all mechanical equipment (except for plumbing and shaft vents) setback from the façade. The columns also serve as support structure for an extensive photovoltaic array, providing power to the development. A 6" stone projection is provided at the roof level of the North Towers.

The lower stories, consisting of retail, parking, and residential uses, are visually differentiated from upper stories through material changes and setbacks. The upper stories are also differentiated with material changes and setbacks.

Multiple pedestrian access points are provided to buildings on all sides of the development and are typically setback 10'-0" from the main façade. The entry setbacks continue to the upper stories to create vertical expression, and are further expressed through canopies and signage.

Proposed Exterior Finish Materials

	Cherry St.		St. Paul St.		Bank St.		Pine St.	
Brick-Faced Panels	13,875	28%	6,884	15%	1,663	5%	7,234	24%
Limestone Finished Panels	4,580	9%	4,934	11%	3,631	10%	4,730	15%
Glazing	23,704	49%	23,135	51%	20,076	55%	15,503	51%
Glazed Spandrel Panel	0	0%	4,761	11%	7,990	22%	0	0%
Stone Base	211	0%	258	1%	152	1%	192	1%
Metal Panels	6,404	13%	5,075	11%	2,834	8%	2,996	10%
Total:	48,774		45,047		36,346		30,655	

For additional compliance information, see Zoning Ordinance Appendix.

2.5 RESIDENTIAL: Zoning Section 9.

Total proposed residential units is 288. Proposed units include 64 Studio apartments, 110 1-Bedroom apartments, and 114 2-Bedroom apartments.

Of the total 288 units, 56 (19.44%) are proposed to be Inclusionary apartments. The Inclusionary units are proportionally distributed amongst unit types and are distributed throughout residential portions of the development. See Drawings A-051 – A-053.

See **FIGURE 2-D RESIDENTIAL UNIT PROTOTYPES**.

2.6 RETAIL: Zoning Section 4.5.8(c)2C

Retail uses are proposed at street-level areas along all four street frontages, as well as second floors at Bank and St. Paul Streets. Approximately 75% of the retail facades consist of glazing to allow for prescribed display and visual requirements. See Elevations A201-A202 for specific percentages at each facade. Glazing allows transparency in order to provide window displays for tenants. Ground floor heights (floor to floor) are typically 15'-6", but vary per retail tenant space and meet or exceed 14'-0".

2.7 OFFICE:

Proposed office uses are located at floors 6-12 of the Bank Street (South) tower and at floors 5-6 of the Cherry Street (North) tower. See plan drawings.

2.8 PARKING: Zoning Section 4.5.8(c)4, Section 6.2.2(i,l), and Section 8

The development commits to participate in the Downtown Parking and Transportation Management District. Parking for tenants and visitors is provided at and above the second floor of the development on floors 2 through 5 of the South Tower. Vehicular parking access is provided on both Cherry and Bank Streets. Pedestrian access to parking area is provided at Cherry, Pine, and St. Paul Streets. Vehicles and headlights within the parking area are screened from public view with building façade elements consistent with the scale and materials of the overall development. The appeal resolution added a basement level of below grade parking. Below grade basement parking is counted at 1.75 per space.

An off-street loading area is proposed on Bank Street sharing the driveway with the off-street parking vehicular access.

Electric Vehicle Charging Stations are a component of the proposed parking use. See LEED checklist for more information.

Car Parking Requirements

Use	Required Base #	Ratio	Required
General Retail		0	0
Office	222,426 sf	2 per 1000 sf	444
Residential	288 Units	1 per unit	288
Preschool		2 stalls	2
Totals			734

Required Accessible Parking (2%)

16

Proposed

	Actual	w/ 1.75 multiplier @ basement
Basement	88	154
Level 1	47	47
Level 2	179	179
Level 3	177	177
Level 4	177	177
Total		734

Below grade parking counts at 1.75 per space.

Total required and proposed bicycle parking is 172. This is subdivided by 122 long term spaces and 50 (max required per Zoning Section 8.2.5) short term spaces. See table below. The long term spaces are located on floors 2-5 of the parking area, adjacent to the Pine Street parking pedestrian access and includes shower and changing facilities. Short term spaces are located at streetscape, adjacent to major entry points. See LA-200 Layout Plan.

Bicycle Parking Requirements

Use	Required Base #	Long Term		Short Term	
		Ratio	Spaces	Ratio	Spaces
General Retail	98,046 sf	1 per 20,000 sf	5	1 per 5,000 sf	20
Office	222,426 sf	1 per 5000 sf	45	1 per 10,000 sf	22
Residential	288 Units	1 per 4 units	72	1 per 10 units	29
Sub-Total		122		50 (Max Req'd)	
Required Total		172			

NOTE: By Development Agreement, 100 short-term will be required.

2.9 PUBLIC AMENITY:

A public observation deck is located on the 13th floor of the Bank Street (South) tower consisting of an enclosed observation area and an exterior deck. Public access is via the Bank Street Office entry point.

2.10 SIGNS: See Zoning Sections 4.5.8(c)5 and Section 7.

Signs shall be submitted for review under a separate permit application. Any signs shown in the drawings or renderings are generic in nature and do not necessarily represent actual signage to be proposed.

2.11 GREEN BUILDING: Zoning Section 4.5.8(c)6

This project is required to meet a LEED Gold Standard as part of the zoning changes for the Downtown Core Mixed Use Overlay district that were approved by Burlington voters. The project will pursue certification under the “LEED v4 for New Construction and Major Renovations” rating system.

See FIGURE 2-A for a Summary LEED Checklist per Zoning Section 5.4.8(c)6A. This checklist illustrates the most straightforward path to the 60 points required for certification at the Gold level. It is of a schematic nature at this time and is subject to change based on design adjustments over the course of the project and may take a significantly different path to certification.

The project team hereby commits to pursuing pre-certification at the earliest appropriate milestone. The ability to pre-certify projects registered for the “New Construction and Major Renovations” version of LEED has not been available in the past, but a precertification option applicable to this project was announced on December 1, 2016. The precertification worksheet requires specific details about the project to be provided to the LEED certification body, such as mechanical equipment schedules, plumbing fixture data, and other details which will not be determined until the design has progressed substantially, although the LEED checklist provided with this application indicates the level of performance we intend to pursue.

<http://www.usgbc.org/articles/new-precertification-optionslaunched-leed-v4-bdc-and-om-projects>

We note that the LEED process is rigorous and that our team’s experience indicates that for a project of this size and complexity, it generally takes a year following final completion of the project to submit the extensive documentation required for formal review by GBCI, the official certifying body for LEED.



freeman | french | freeman

MEMORANDUM

Freeman French Freeman Inc. | Architecture · Planning · Interiors

81 Maple Street · Burlington Vermont 05401
802-864-6844 · www.fffinc.com

Project Name: City Place Burlington

Project Number: A1636

Date: 3/8/2018

To: Don Sinex, Devonwood; William Fellows, Devonwood; Art Klugo, PC.
From: Jesse Beck, FFF.
Subject: Revised Phasing Plan

Revised Phasing Plan to present to P&Z / DPW / FM for Temp Certificate of Occupancy and Unified Certificate of Occupancy.

CONSTRUCTION PERMITS

1. Foundations - Feb 2, 2018 (Submitted)
2. A&E All Disciplines - April 19, 2018

PHASE SCHEDULE

Phase 1 / TCO 1 - November 20, 2019

Cherry & Bank Retail – LG & L1
Cherry & Bank Street Sidewalks
UVMCMC – Levels 5&6 North Tower
Parking Levels – L1, L2, L3, L4

Phase 2 / TCO 2 - February 2020

Wrapper Housing – L2, L3, L4
Pine & St. Paul Retail
Pine & St. Paul Streets

Phase 3 / TCO 3 - April 2020

Basement Parking
North Tower Residential – L7-L10
South Tower Office – L5-L12

Phase 4 / TCO 4 - June 2020

North Tower Residential – L11-L14

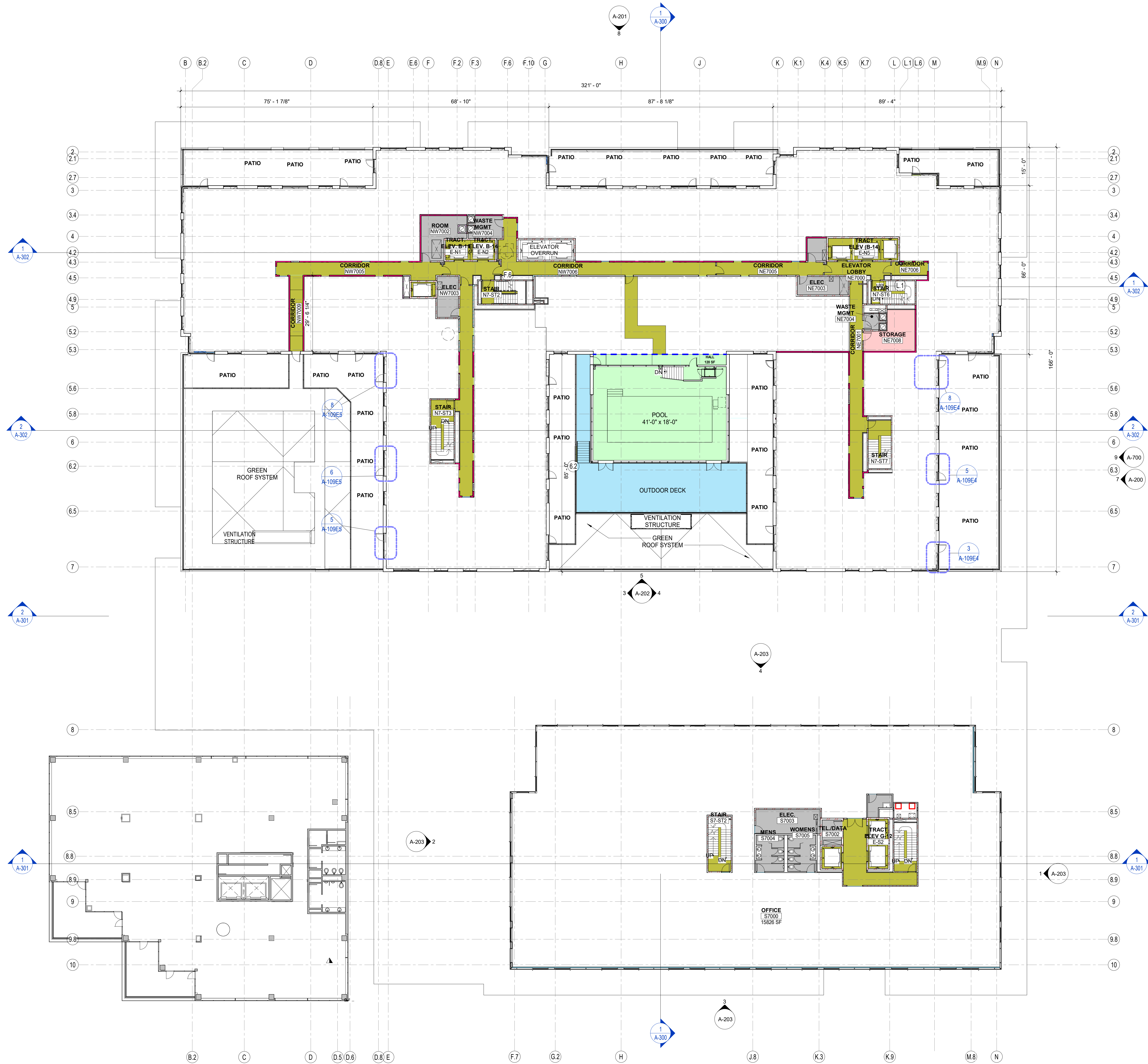
10/8/20 Final Certification of Occupancy (FCO)

CC:

A1636	Karen Deutscher, PC		
Jesse Robbins, FFF			

3/20/2018 10:14:34 AM

1 OVERALL PLAN - 7TH FLOOR NT, 7TH FLOOR ST - POOL PAVILION
SCALE: 1/16" = 1'-0"



FLOOR PLAN GENERAL NOTES:

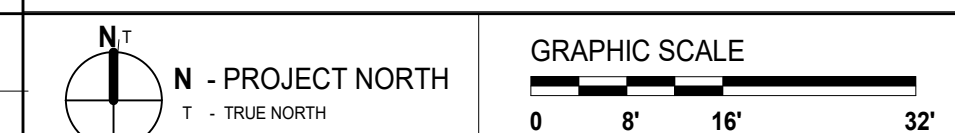
1. SEE 1/8" (WHERE APPLICABLE), 1/4" SCALE PLNS FOR DIMENSIONS, WALL TYPES ETC.
2. FIELD VERIFY ALL DIMENSIONS OF AND TO EXISTING BUILDING(S) AS THEY RELATE TO THIS WORK.
3. PLANS ARE TO BE VIEWED IN CONJUNCTION WITH ENLARGED PLANS, CIVIL, LANDSCAPE, STRUCTURAL, MEP, FP, AND ALL OTHER TRADES, AS APPROPRIATE. DISCREPANCIES ARE TO BE BROUGHT TO THE ARCHITECT'S ATTENTION FOR RESOLUTION BEFORE COMMENCING WORK.
4. ALL NON-ARCHITECTURAL INFORMATION SHOWN HERE IS FOR REFERENCE ONLY.
5. REFER TO CIVIL PLANS FOR LIMIT OF WORK.
6. VERIFY ALL TOP OF STEEL AND TOP OF CONCRETE FOOTING ELEVATIONS PRIOR TO NEW WORK.
7. REFER TO G200-G204 CODE PLANS FOR LOCATIONS OF SMOKE AND FIRE RESISTANT RATED CONSTRUCTION.
8. SEE COVER PAGE AND G-100 FOR REQUIREMENTS RELATED TO CONTINUITY OF THERMAL ENVELOPE AND AIR/VAPOR BARRIER.
9. THE DISTANCE FROM THE HINGE SIDE OF THE DOOR TO THE FACE OF ADJACENT PERPENDICULAR WALL SHALL BE 6 INCHES (INCLUDING FRAME) UNLESS NOTED OTHERWISE.
10. KEEP STANDPIPES AND ASSOCIATED ASSEMBLIES CLEAR OF THE REQUIRED PATH OF EGRESS.
11. ALL VERTICAL AND HORIZONTAL PENETRATIONS THROUGH RATED ASSEMBLIES ARE TO BE SEALED WITH UL-LISTED FIRESTOPPING AND/OR SEALANT ASSEMBLIES TO MAINTAIN RATING.
12. REFER TO A003 THROUGH A008 FOR PARTITION TYPES AND GENERAL PARTITION DETAILS AND NOTES.
13. REFER TO A700 SERIES DRAWINGS FOR WINDOW, STOREFRONT AND CURTAIN-WALL TYPES.
14. REFER TO A900 SERIES DRAWINGS FOR DOOR SCHEDULE AND DETAILS.
15. REFER TO A900 SERIES DRAWINGS FOR FINISH SCHEDULE.
16. REQUIRED SERVICE SINKS ARE BY TENANTS, AND N.I.C.
17. ALL ELECTRICAL BUS DUCT FLOOR PENETRATIONS REQUIRE A MIN. 4" HIGH WATERPROOF CURB AS REQUIRED BY NEC. PROVIDE CONCRETE CURB 4" HIGH X 4" WIDE AT ALL FLOOR PENETRATIONS.

FLOOR PLAN LEGEND

- NEW METAL STUD/ GWB WALL
- GWB COLUMN ENCLOSURE
- SEMI RECESSED FIRE EXTINGUISHER AND CABINET
- RAIN LEADER

AREA OF USE LEGEND

- INTERIOR:**
- RETAIL USE
 - RETAIL USE- NOT AVAILABLE
 - RETAIL - GROCERY
 - OFFICE USE
 - PARKING USE
 - INDOOR OBSERVATION DECK
 - CORE & CIRCULATION
 - MEP/TOILET
- RESIDENTIAL:**
- STUDIO
 - 1 BEDROOM
 - 2 BEDROOM
 - 3 BEDROOM
 - INCL INCLUSIONARY HOUSING
 - RESIDENTIAL STORAGE
 - RESIDENTIAL- OTHER
- EXTERIOR:**
- GREEN ROOF
 - ACCESSIBLE ROOF
 - MEMBRANE ROOF
 - PLAY SURFACE



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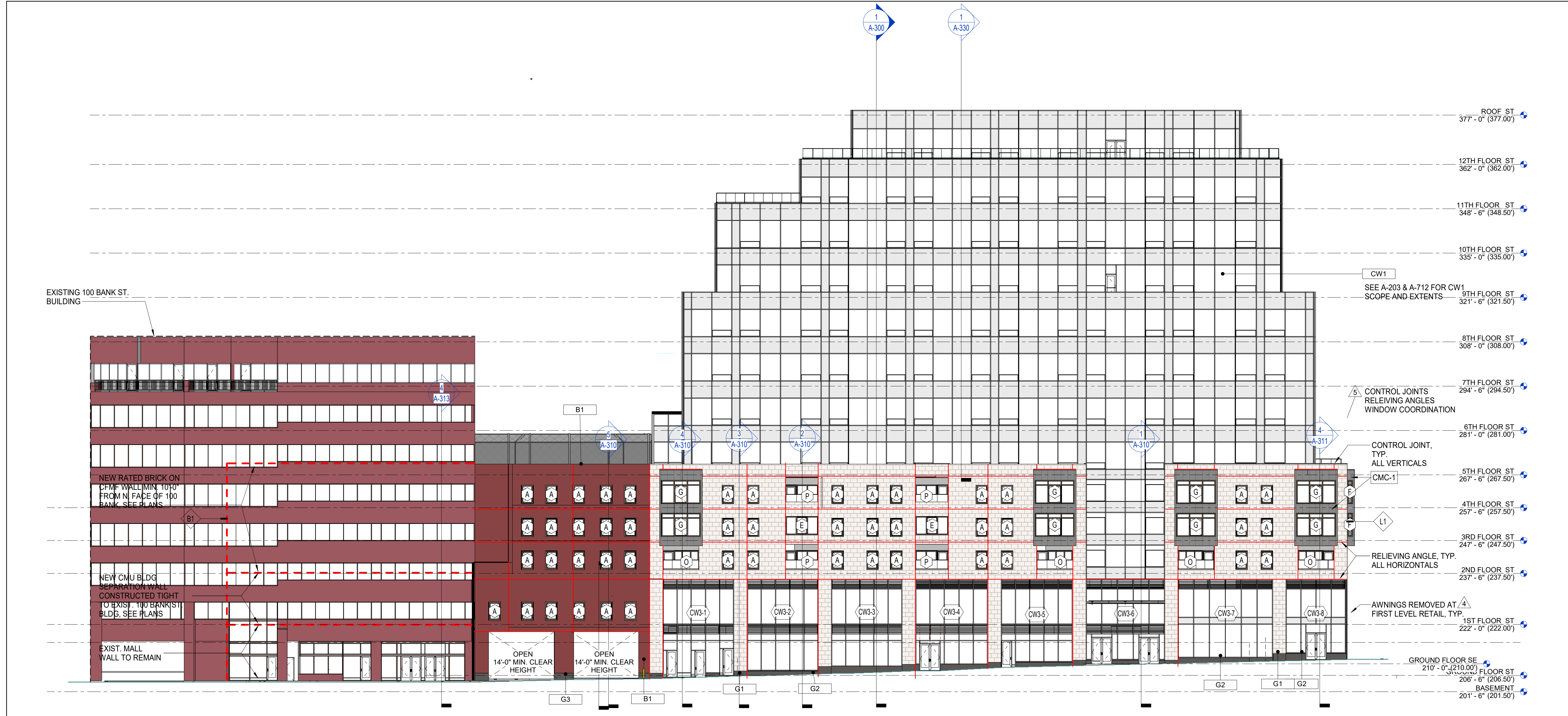
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BRIAN HANSEN, CEO

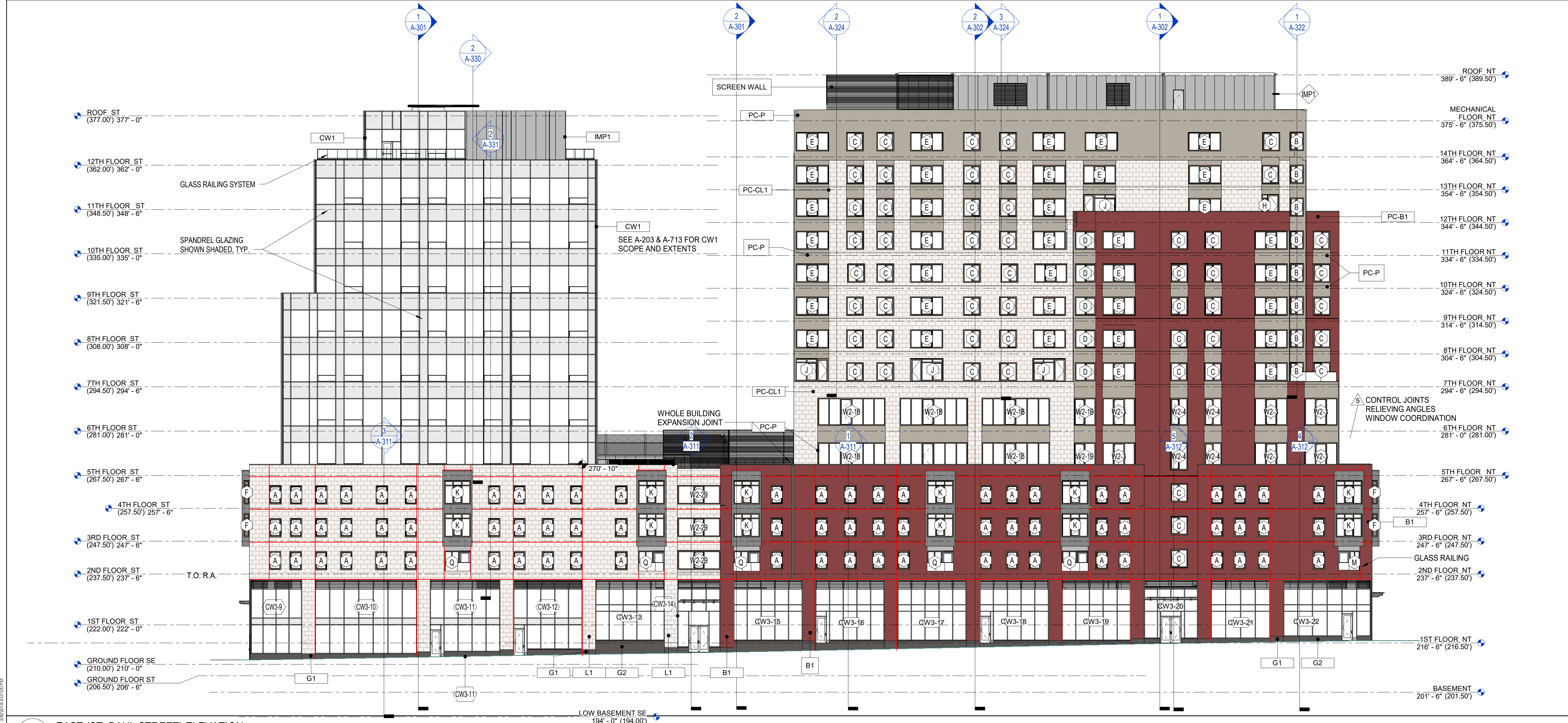
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CHECKED BY: JDR
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1317
75% PROGRESS
10/01/2017
01/22/2018

SHEET CONTENTS:
OVERALL PLAN -
7TH FLOOR NT,
7TH FLOOR ST -
POOL PAVILION

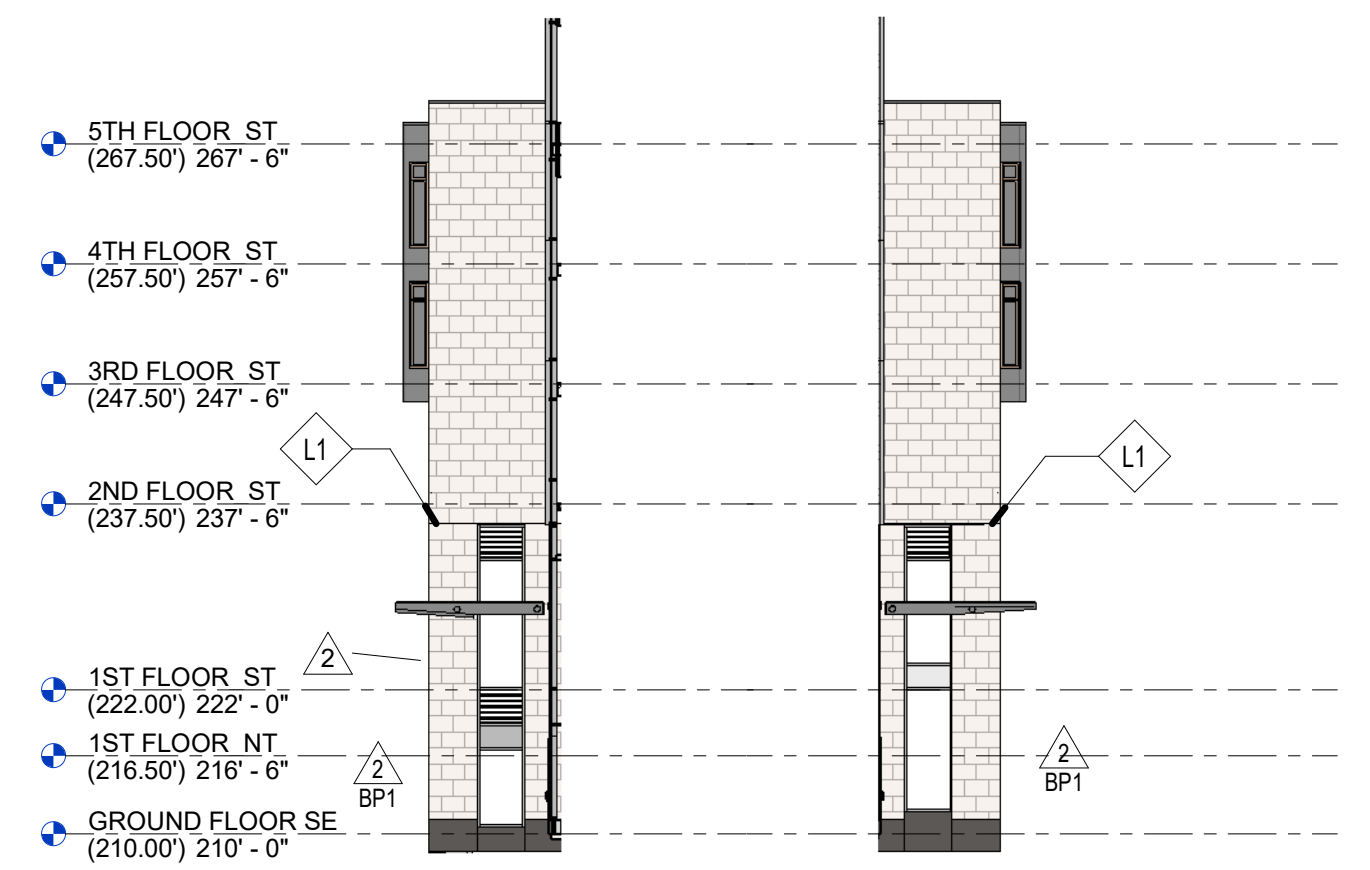
SHEET NO:
A-108
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8 SOUTH (BANK STREET) ELEVATION
SCALE: 1/16" = 1'-0"

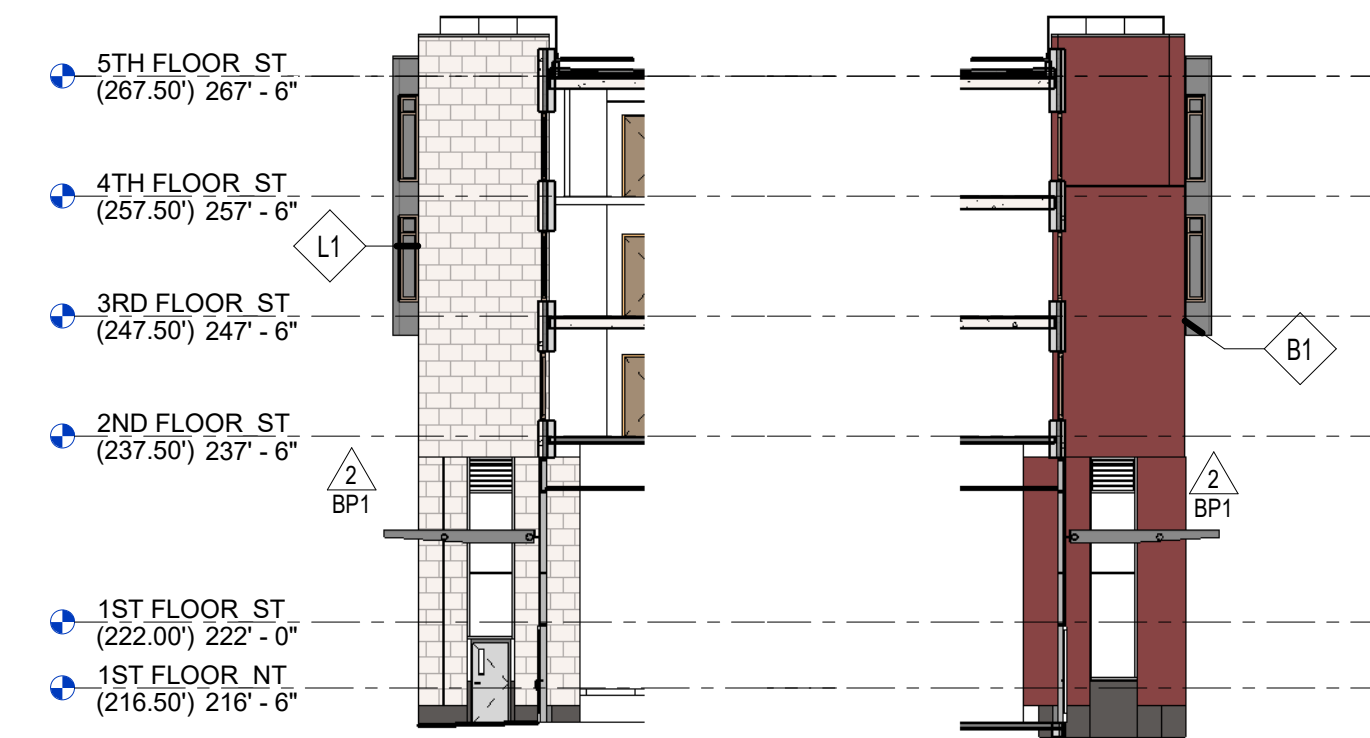


7 EAST (ST. PAUL STREET) ELEVATION
SCALE: 1/16" = 1'-0"



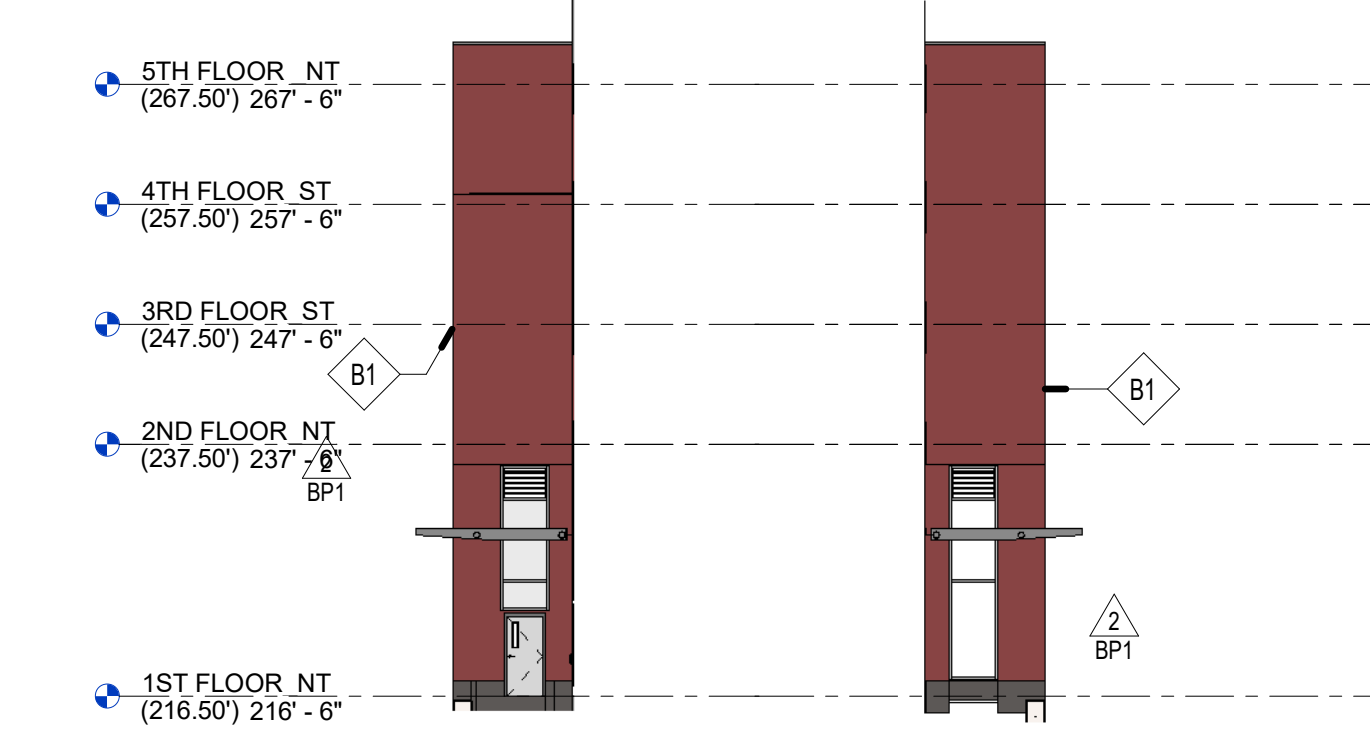
BANK ST ENTRY RECESS-
LOOKING WEST
SCALE: 1/16" = 1'-0"

BANK ST ENTRY RECESS-
LOOKING EAST
SCALE: 1/16" = 1'-0"



ST PAUL RETAIL ENTRY
RECESS, LOOKING SOUTH
SCALE: 1/16" = 1'-0"

ST PAUL RETAIL ENTRY
RECESS, LOOKING NORTH
SCALE: 1/16" = 1'-0"



ST PAUL RES. ENTRY RECESS,
LOOKING SOUTH
SCALE: 1/16" = 1'-0"

ST PAUL RES. ENTRY RECESS,
LOOKING NORTH
SCALE: 1/16" = 1'-0"

NOTES:

- SEE A-005 FOR EXTERIOR WALL ASSEMBLIES (EXCEPT GLAZED ASSEMBLIES)
- SEE A-700 FOR RESIDENTIAL WINDOW TYPES
- SEE A-701 THROUGH A-704 FOR PODIUM CURTAIN WALL ELEVATIONS, A-710 THROUGH A-713 FOR SOUTH TOWER CURTAIN WALL ELEVATIONS, A-715 + A-716 FOR NORTH TOWER LEVEL 586 CURTAIN WALL ELEVATIONS
- SEE A205.1 FOR ALTERNATE ELEVATION FOR 7/A-200 & 7/A-201 (LEVELS 2, 3, 4 BETWEEN COL. LINES 8 & 9)
- CJ - CONTROL JOINT; EJ - EXPANSION JOINT; PJ - PANEL JOINT
- ANY JOINT/REVEAL SHOWN ON PRECAST PANELS IS AN ACCEPTABLE PANEL JOINT LOCATION
- SEE ALSO A-220 THROUGH A-225 FOR PRECAST PANEL ELEVATIONS

ENCLOSURE SCHEDULE - WALL ASSEMBLIES	
ENCLOSURE TYPE	DESCRIPTION
B1	BRICK 1 CAVITY WALL ON CMF
B2	BRICK 2 CAVITY WALL ON CMF
CMC1	COMPOSITE METAL CLADDING (CMC) ON CMF
CMU1	2HR 8" CMU FIRE SEPARATION ABUTTING ADJACENT BUILDING
CW1	METAL AND GLASS CURTAIN WALL ASSEMBLY - OFFICE ENCLOSURE
CW3	METAL AND GLASS CURTAIN WALL ASSEMBLY - RETAIL ENCLOSURE
CW6	INSULATED CURTAIN WALL BASE
CWSW	CURTAINWALL SPANDREL WALL
FN01	CAST-IN-PLACE CONCRETE FOUNDATION WALL
FN02	CAST-IN-PLACE CONCRETE FOUNDATION WALL - INSULATED
G1	GRANITE FACED CAVITY WALL ON 10" CONCRETE STEM WALL BELOW PILASTERS
G2	GRANITE FACED CAVITY WALL ON 10" CONCRETE STEM WALL BELOW RETAIL CURTAIN WALL
G3	GRANITE VENEER ON CMF
IMP1	INSULATED METAL PANEL ON GIRTS - MECHANICAL FLOORS
L1	LIMESTONE FINISH MATERIAL ON CMF
P2-1	INSULATED 3 5/8" CFMF W/ CEMENT BOARD AT GARAGE INSUL WARM SIDE
P2-4	INSULATED 6" CFMF W/ CEMENT BOARD AT GARAGE INSUL WARM SIDE
P2A-3	INSULATED 3 5/8" CFMF W/ CEMENT BOARD AT GARAGE INSUL COLD SIDE
P2A-4	INSULATED 6" CFMF W/ CEMENT BOARD AT GARAGE - INSUL COLD SIDE
P3	INSULATED APPLIED FURRING AT PARKING
P4	INSULATED CMF W/ CEMENT BOARD AT GARAGE
PC	PRECAST CONC. PANEL - BARE NAKED PRECAST FINISH
PC-B1	PRECAST PANEL - CLAD W/ BRICK 1
PC-B1-P	PRECAST CONC. PANEL - CLAD W/ BRICK 1 UNINSULATED @ PARAPET
PC-B2	PRECAST PANEL - CLAD W/ BRICK 2
PC-B2-P	PRECAST CONC. PANEL - CLAD W/ BRICK 2 UNINSULATED @ PARAPET
PC-CL1	PRECAST PANEL - LIMESTONE FINISH
PC-CMC1	ALL OF THIS MATERIAL NEEDS TO CHANGE TO PC-P
PC-P	PRECAST CONC. PANEL - TEXTURED COLORED CONCRETE
SF1	METAL AND GLASS STOREFRONT ASSEMBLY - VESTIBULES



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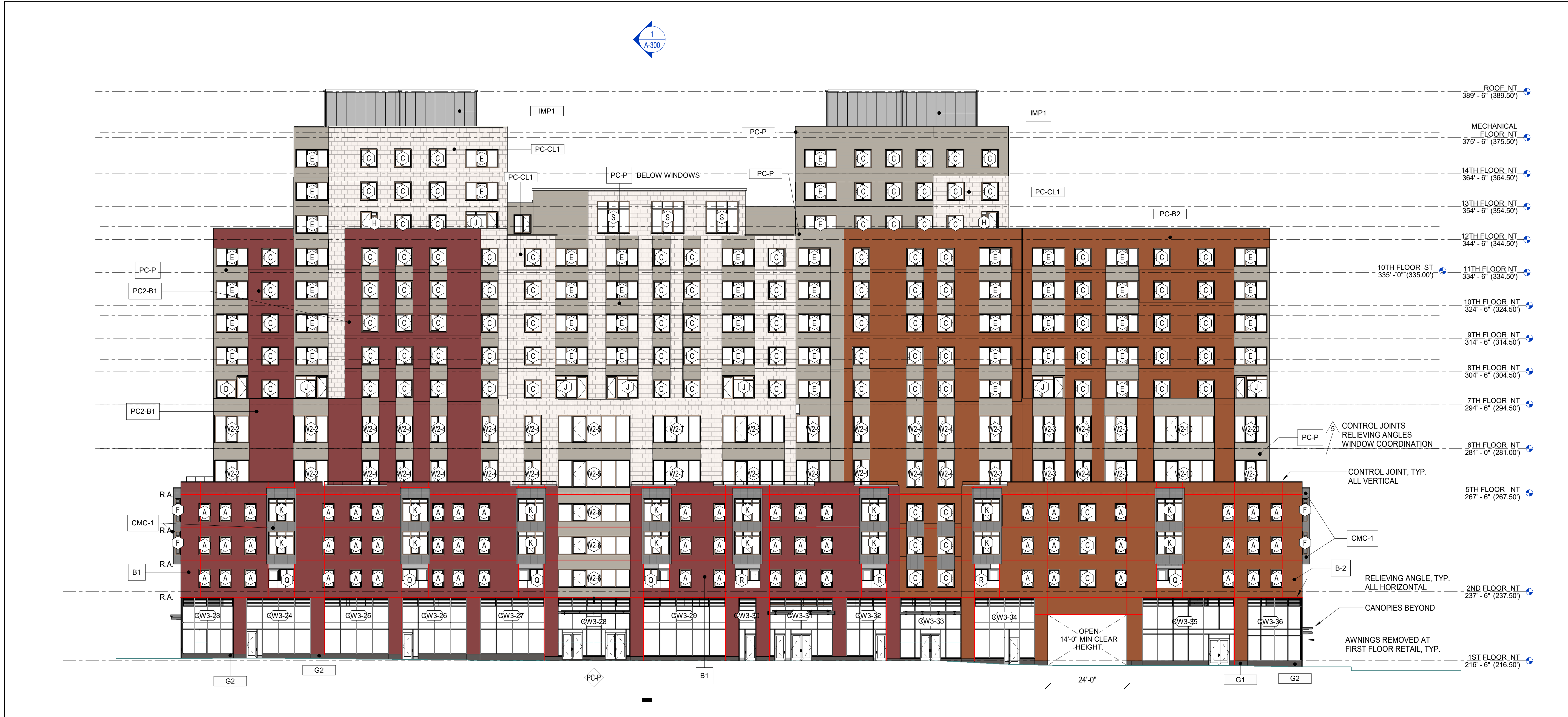
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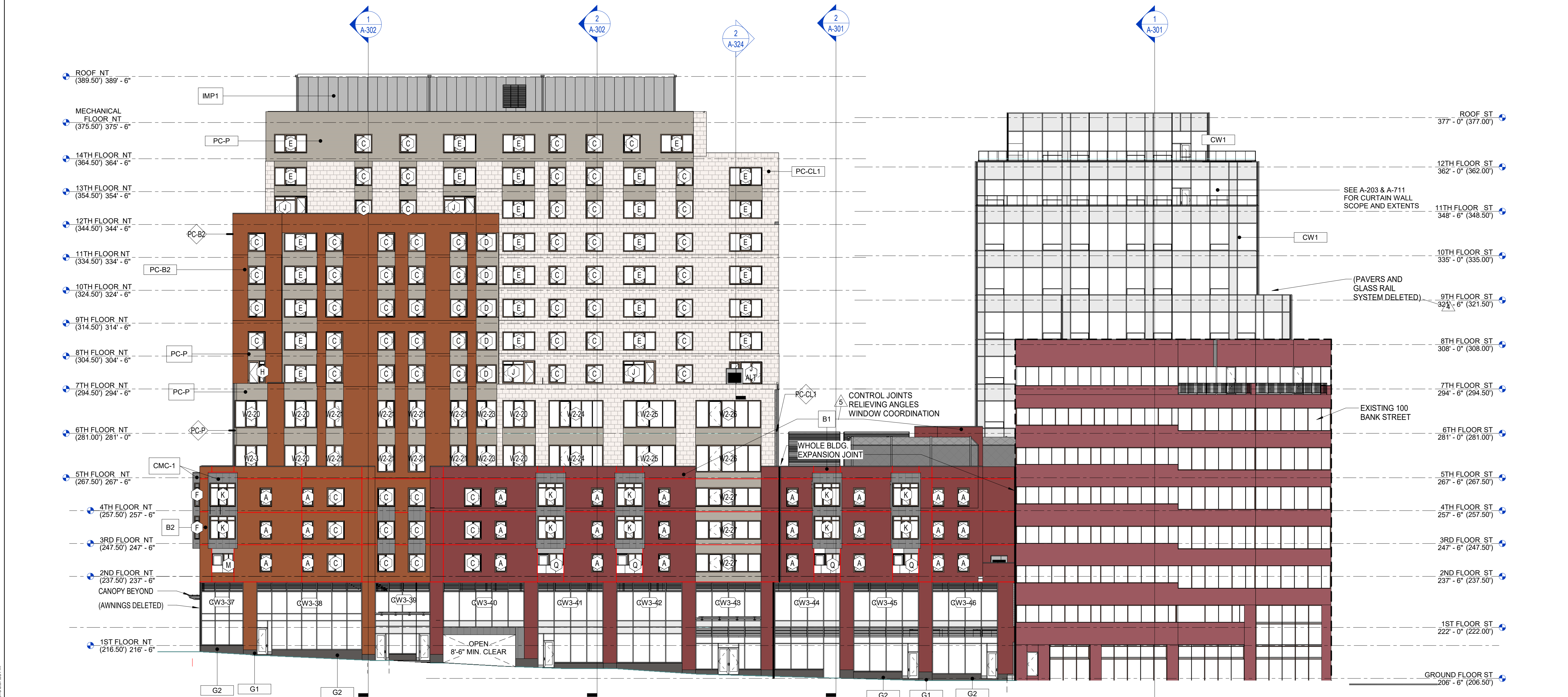
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PKSB PROJECT NO: 1317
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CHECKED BY: JDR

SHEET CONTENTS:
ELEVATIONS -
BANK STREET &
ST. PAUL STREET

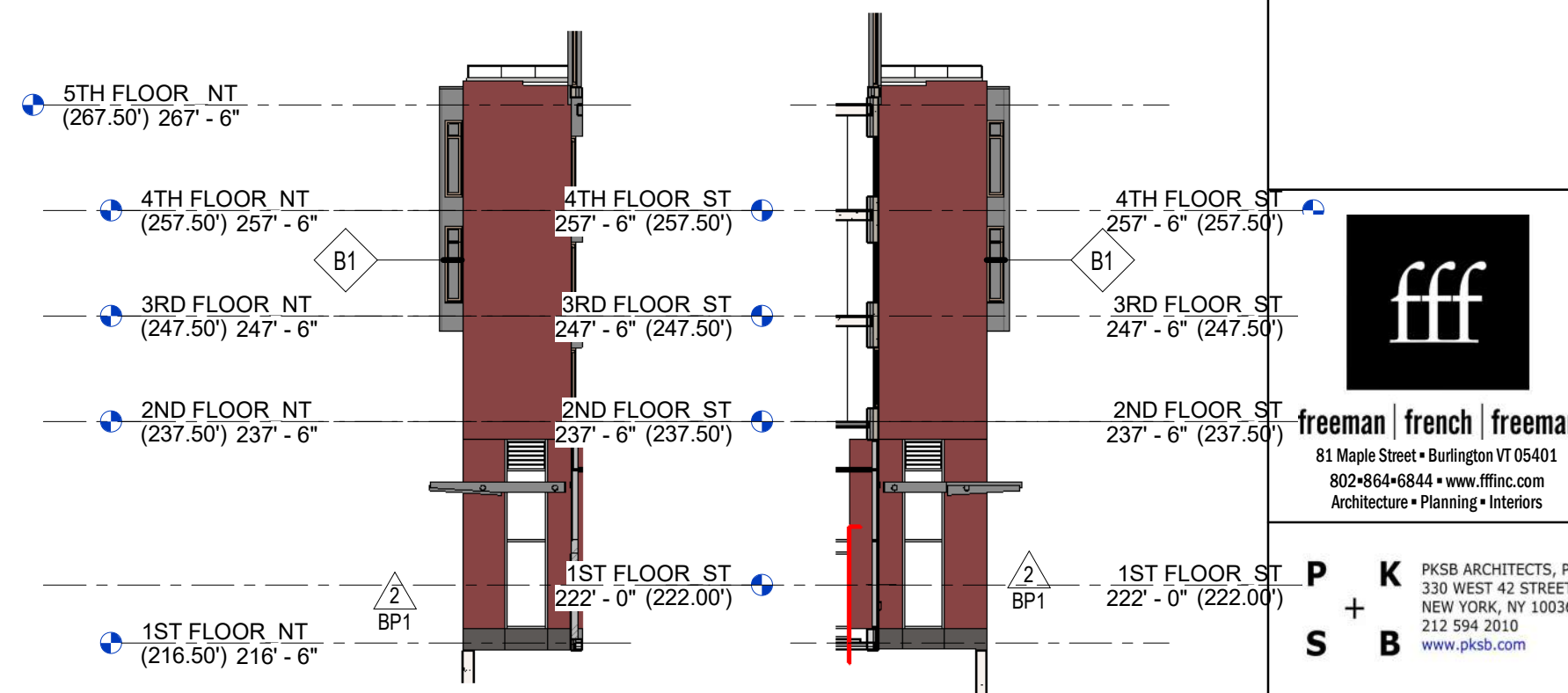
A-200



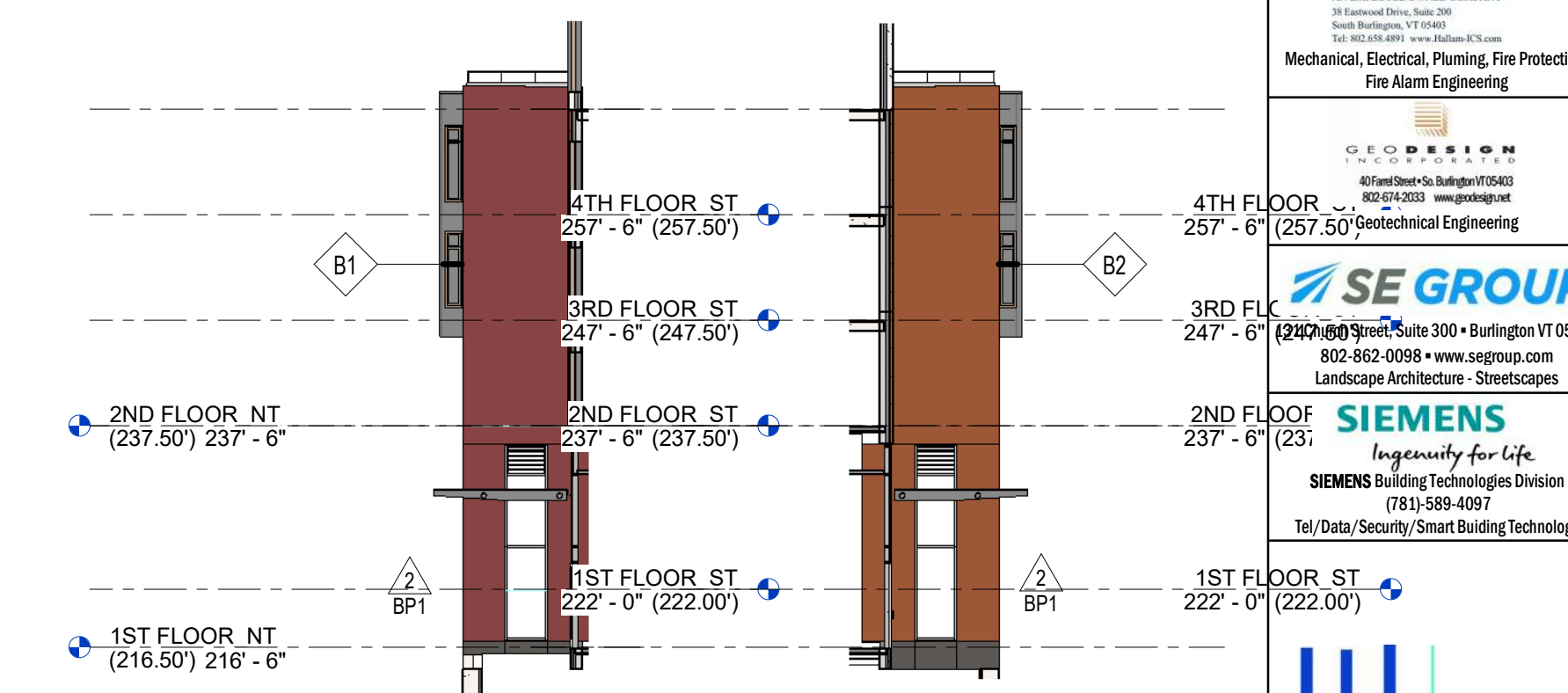
8 NORTH (CHERRY STREET) ELEVATION
SCALE: 1/16" = 1'-0"



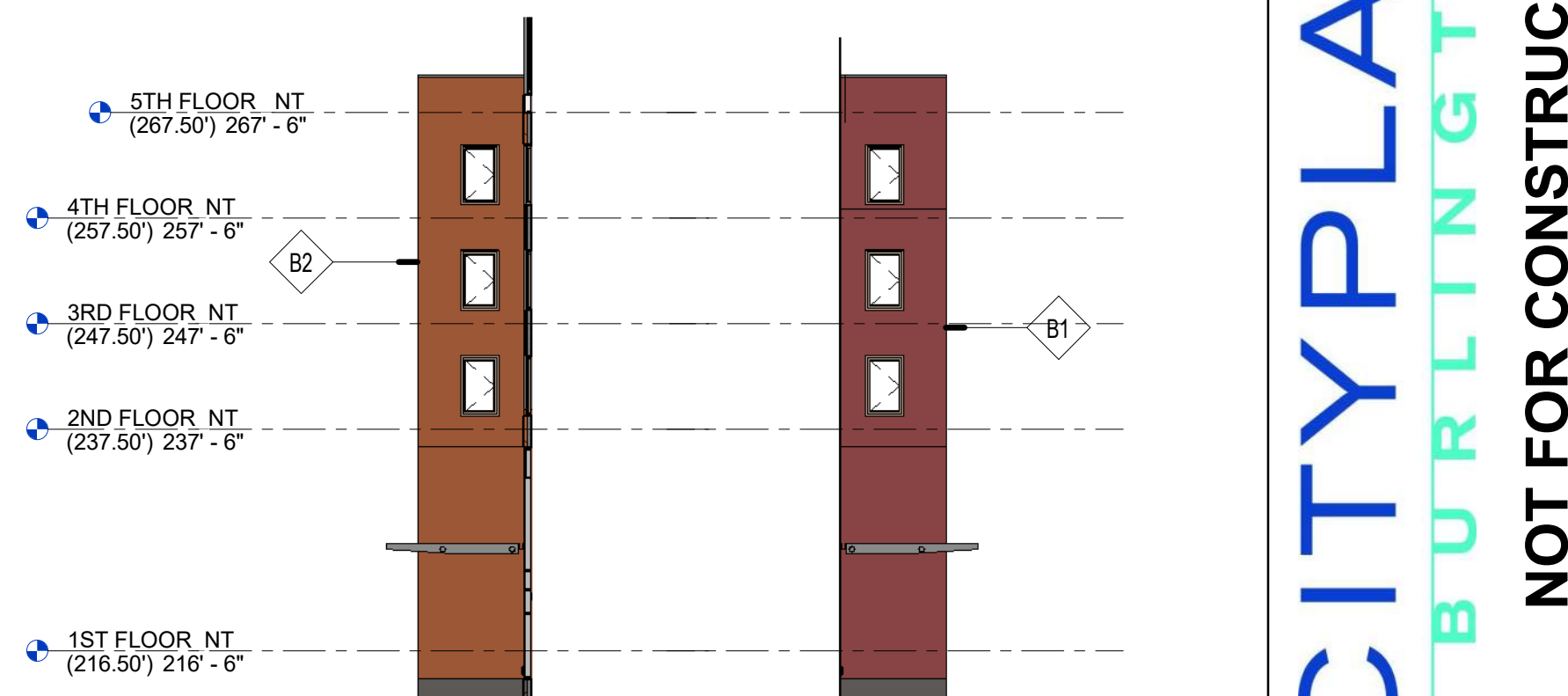
7 WEST (PINE STREET) ELEVATION
SCALE: 1/16" = 1'-0"



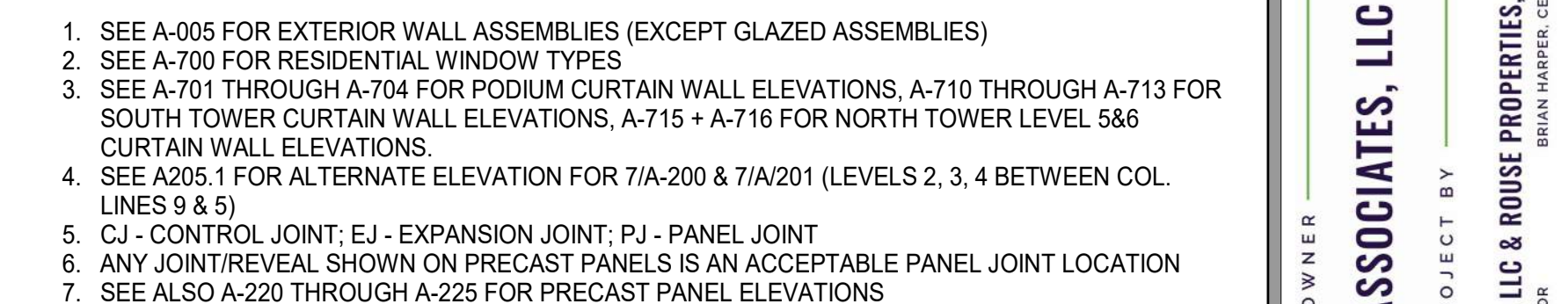
6 CHERRY ST OFFICE ENTRY
RECESS- LOOKING EAST
1/16" = 1'-0"



3 CHERRY ST OFFICE ENTRY
RECESS- LOOKING WEST
1/16" = 1'-0"



5 CHERRY ST RES. ENTRY
RECESS- LOOKING EAST
1/16" = 1'-0"



4 PINE ST PARKING ENTRANCE
RECESS- LOOKING NORTH
1/16" = 1'-0"

A201/8 PINE ST RES. ENTRY
RECESS- LOOKING NORTH
1/16" = 1'-0"

- NOTES:**
1. SEE A-005 FOR EXTERIOR WALL ASSEMBLIES (EXCEPT GLAZED ASSEMBLIES)
 2. SEE A-700 FOR RESIDENTIAL WINDOW TYPES
 3. SEE A-701 THROUGH A-704 FOR PODIUM CURTAIN WALL ELEVATIONS, A-710 THROUGH A-713 FOR SOUTH TOWER CURTAIN WALL ELEVATIONS, A-715 + A-716 FOR NORTH TOWER LEVEL 5&6 CURTAIN WALL ELEVATIONS
 4. SEE A205.1 FOR ALTERNATE ELEVATION FOR 7/A-200 & 7/A201 (LEVELS 2, 3, 4 BETWEEN COL. LINES 9 & 5)
 5. C.J. - CONTROL JOINT; E.J. - EXPANSION JOINT; P.J. - PANEL JOINT
 6. ANY JOINT/REVEAL SHOWN ON PRECAST PANELS IS AN ACCEPTABLE PANEL JOINT LOCATION
 7. SEE ALSO A-220 THROUGH A-225 FOR PRECAST PANEL ELEVATIONS

ENCLOSURE SCHEDULE - WALL ASSEMBLIES		
ENCLOSURE TYPE	DESCRIPTION	
B1	BRICK 1 CAVITY WALL ON CFMF	
B2	BRICK 2 CAVITY WALL ON CFMF	
CMC1	COMPOSITE METAL CLADDING (CMC) ON CFMF	
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CW1	METAL AND GLASS CURTAIN WALL ASSEMBLY - OFFICE ENCLOSURE	
CW3	METAL AND GLASS CURTAIN WALL ASSEMBLY - RETAIL ENCLOSURE	
CWB	INSULATED CURTAIN WALL BASE	
CWSW	CURTAINWALL SPANDREL WALL	
FND1	CAST-IN-PLACE CONCRETE FOUNDATION WALL	
FND2	CAST-IN-PLACE CONCRETE FOUNDATION WALL - INSULATED	
G1	GRANITE FACED CAVITY WALL ON 10" CONCRETE STEM WALL BELOW PILASTERS	
G2	GRANITE FACED CAVITY WALL ON 10" CONCRETE STEM WALL BELOW RETAIL CURTAIN WALL	
G3	GRANITE VENEER ON CFMF	
IMP1	INSULATED METAL PANEL ON GIRTS - MECHANICAL FLOORS	
L1	LIMESTONE FINISH MATERIAL ON CFMF	
P2-3	INSULATED 3 5/8" CFMF W/ CEMENT BOARD AT GARAGE INSUL WARM SIDE	
P2-4	INSULATED 6" CFMF W/ CEMENT BOARD AT GARAGE INSUL WARM SIDE	
P2A-3	INSULATED 3 5/8" CFMF W/ CEMENT BOARD AT GARAGE INSUL COLD SIDE	
P2A-4	INSULATED 6" CFMF W/ CEMENT BOARD AT GARAGE - INSUL COLD SIDE	
P3	INSULATED APPLIED FURRING AT PARKING	
P4	INSULATED CFMF W/ CEMENT BOARD AT GARAGE	
PC	PRECAST CONC. PANEL - BARE NAKED PRECAST FINISH	
PC-B1	PRECAST PANEL - CLAD W/ BRICK 1	
PC-B1-P	PRECAST CONC. PANEL - CLAD W/ BRICK 1 UNINSULATED @ PARAPET	
PC-B2	PRECAST PANEL - CLAD W/ BRICK 2	
PC-B2-P	PRECAST CONC. PANEL - CLAD W/ BRICK 2 UNINSULATED @ PARAPET	
PC-CL1	PRECAST PANEL - LIMESTONE FINISH	
PC-CMC1	ALL OF THIS MATERIAL NEEDS TO CHANGE TO PC-P	
PC-P	PRECAST CONC. PANEL - TEXTURED COLORED CONCRETE	
SF1	METAL AND GLASS STOREFRONT ASSEMBLY - VESTIBULES	

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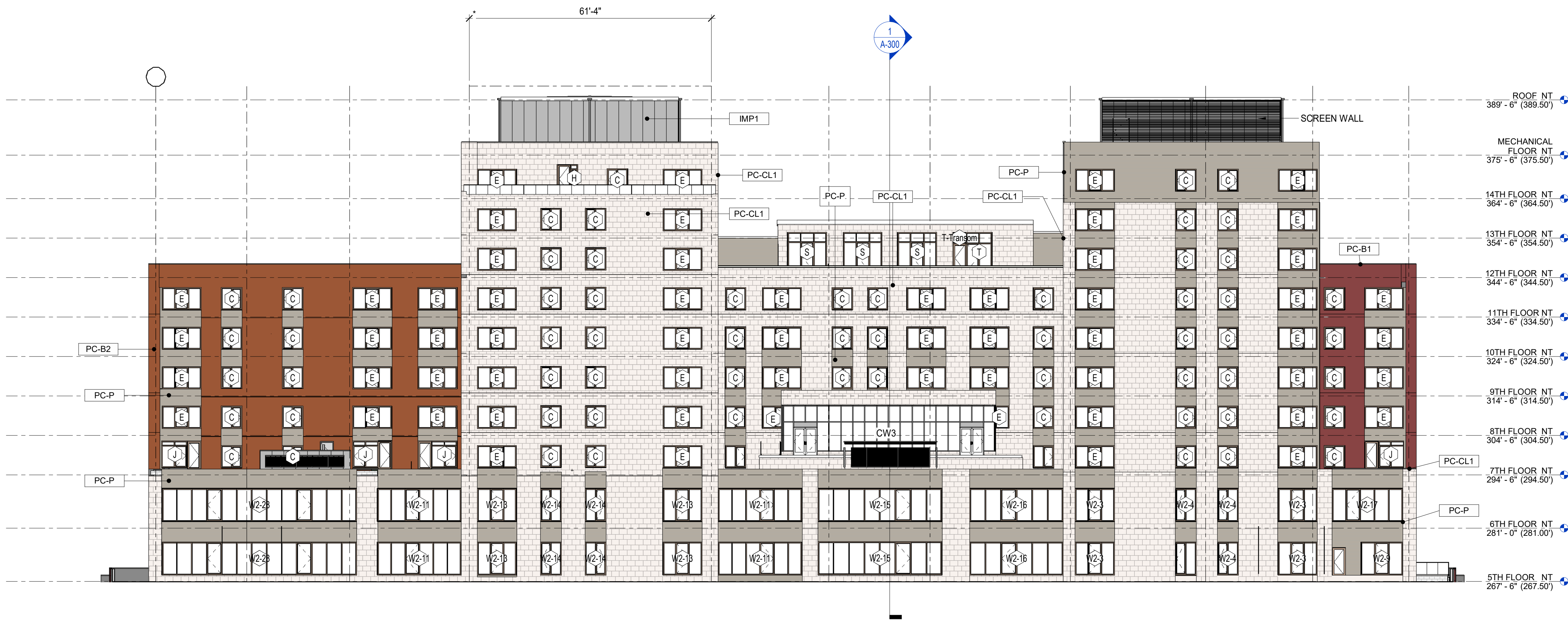
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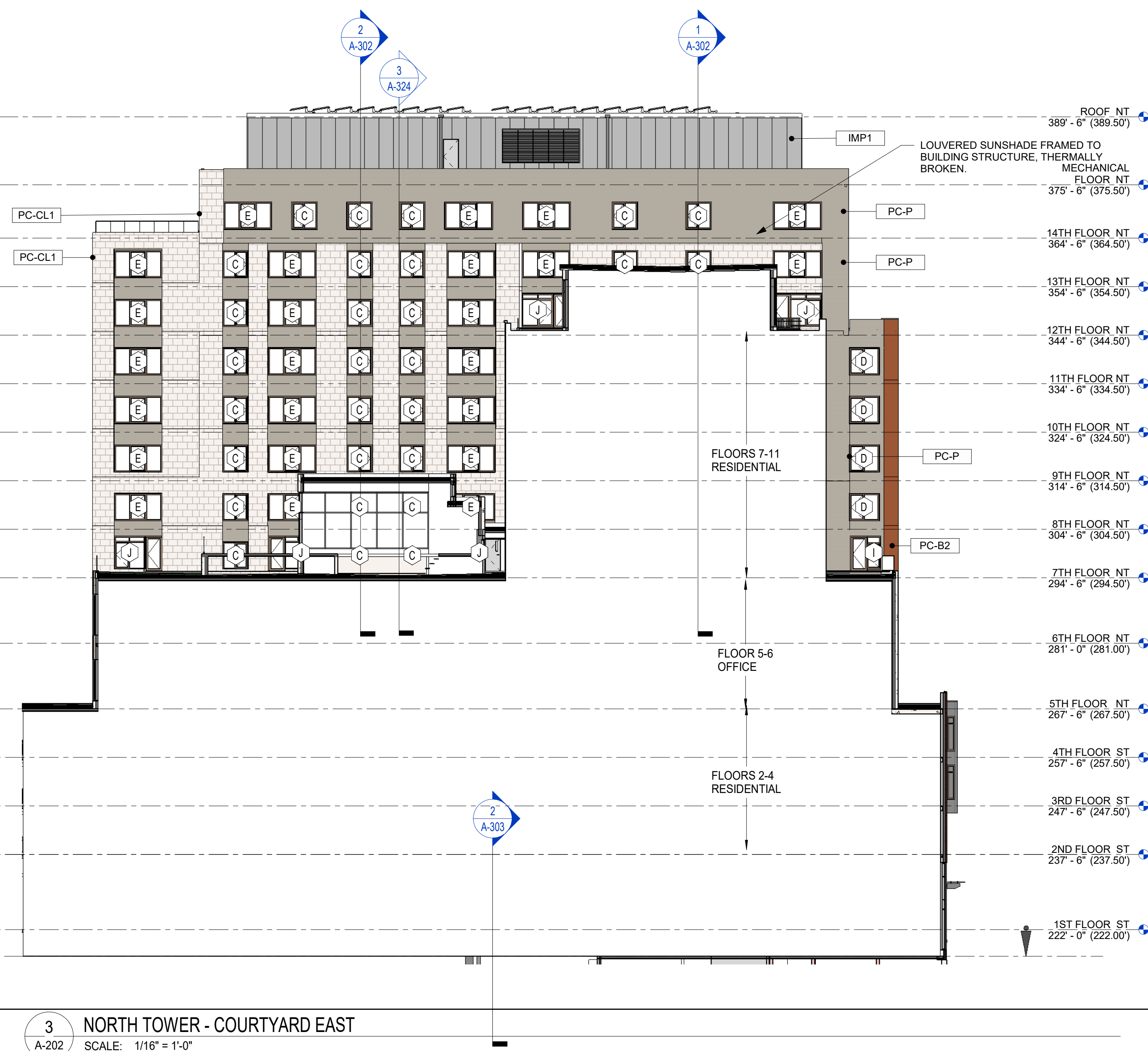
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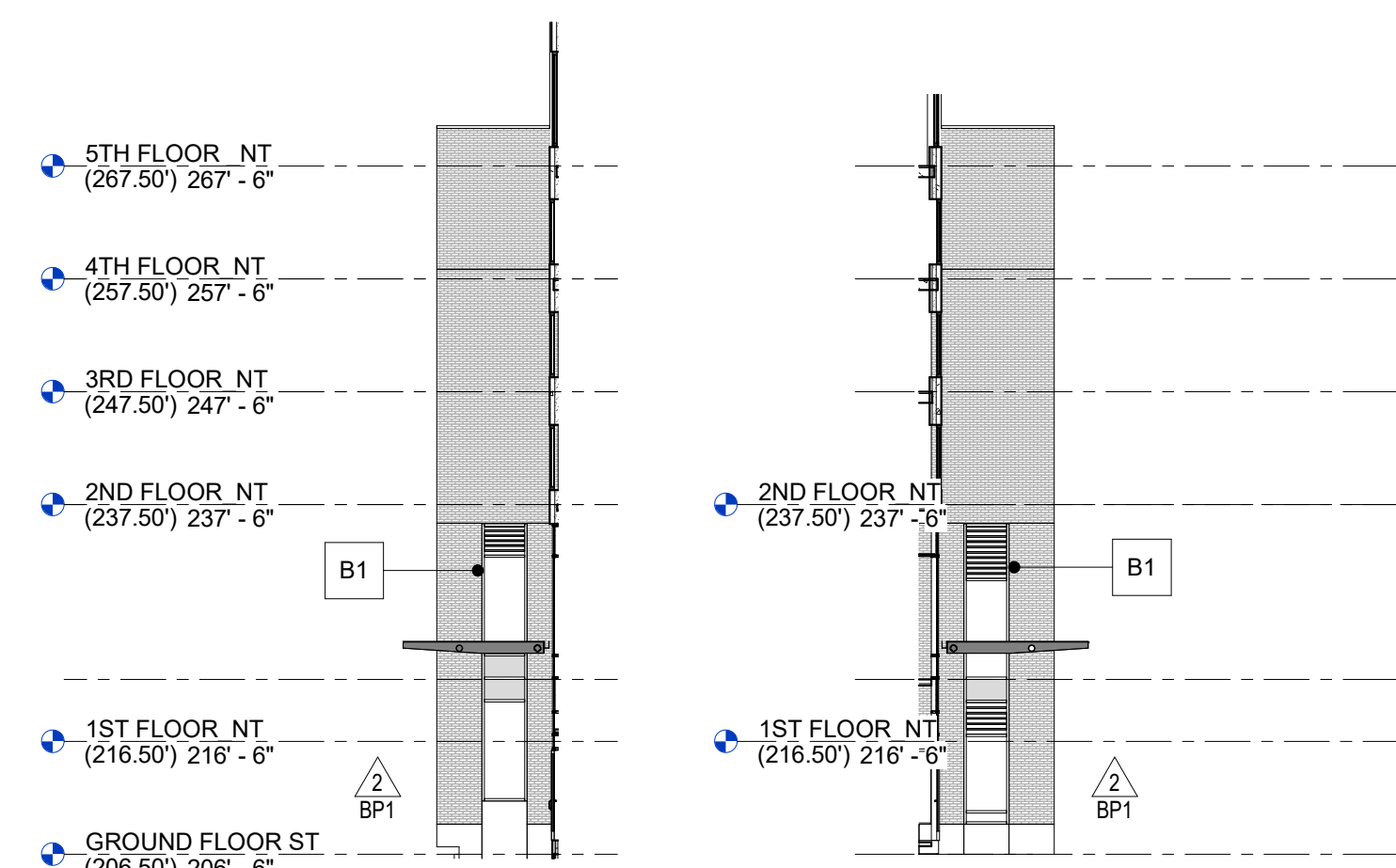
5 NORTH TOWER - COURTYARD SOUTH
SCALE: 1/16" = 1'-0"



4 NORTH TOWER - COURTYARD WEST
SCALE: 1/16" = 1'-0"



3 NORTH TOWER - COURTYARD EAST
SCALE: 1/16" = 1'-0"



PINE ST ENTRY RECESS-
LOOKING NORTH
1/16" = 1'-0"

- NOTES:**
- SEE A-005 FOR EXTERIOR WALL ASSEMBLIES (EXCEPT GLAZED ASSEMBLIES)
 - SEE A-700 FOR RESIDENTIAL WINDOW TYPES
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ENCLOSURE SCHEDULE - WALL ASSEMBLIES	
ENCLOSURE TYPE	DESCRIPTION
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B2	BRICK 2 CAVITY WALL ON CFMF
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CMU1	2HR 8" CMU FIRE SEPARATION ABUTTING ADJACENT BUILDING
CW1	METAL AND GLASS CURTAIN WALL ASSEMBLY - OFFICE ENCLOSURE
CW3	METAL AND GLASS CURTAIN WALL ASSEMBLY - RETAIL ENCLOSURE
CWB	INSULATED CURTAIN WALL BASE
CWSW	CURTAINWALL SPANDREL WALL
FND1	CAST-IN-PLACE CONCRETE FOUNDATION WALL - INSULATED
FND2	CAST-IN-PLACE CONCRETE FOUNDATION WALL - UNINSULATED
G1	GRANITE FACED CAVITY WALL ON 10" CONCRETE STEM WALL BELOW PILASTERS
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IMP1	INSULATED METAL PANEL ON GIRTS - MECHANICAL FLOORS
L1	LIMESTONE FINISH MATERIAL ON CFMF
P2-3	INSULATED 3 5/8" CFMF W/ CEMENT BOARD AT GARAGE INSUL WARM SIDE
P2-4	INSULATED 6" CFMF W/ CEMENT BOARD AT GARAGE INSUL WARM SIDE
P2A-3	INSULATED 3 5/8" CFMF W/ CEMENT BOARD AT GARAGE INSUL COLD SIDE
P2A-4	INSULATED 6" CFMF W/ CEMENT BOARD AT GARAGE - INSUL COLD SIDE
P3	INSULATED APPLIED FURRING AT PARKING
P4	INSULATED CFMF W/ CEMENT BOARD AT GARAGE
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PC-B1	PRECAST PANEL - CLAD W/ BRICK 1
PC-B1-P	PRECAST CONC. PANEL - CLAD W/ BRICK 1 UNINSULATED @ PARAPET
PC-B2	PRECAST PANEL - CLAD W/ BRICK 2
PC-B2-P	PRECAST CONC. PANEL - CLAD W/ BRICK 2 UNINSULATED @ PARAPET
PC-CL1	PRECAST PANEL - LIMESTONE FINISH
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PC-P	PRECAST CONC. PANEL - TEXTURED COLORED CONCRETE
SF1	METAL AND GLASS STOREFRONT ASSEMBLY - VESTIBULES



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DON SINES, MANAGING DIRECTOR

FFI PROJECT NO: A1636.00
P&B PROJECT NO: 1317
ORIGINATION DATE: 01/31/17
SCALE: 1/16" = 1'-0"
DRAWN BY: CL
CHECKED BY: JDR

ISSUE LOG:
Bid Package 1 10/01/2017
2-BP1 A02 11/02/2017
75% PROGRESS 01/22/2018
WINDOWS, ELEVATIONS 02/23/2018

SHEET CONTENTS:
ELEVATIONS -
NORTH TOWER
COURTYARD

SHEET NO: A-202
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LAW OFFICES
OF
JOHN L. FRANCO, JR.

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

RECEIVED
APR 09 2018
DEPARTMENT OF
PLANNING & ZONING

April 9, 2018

Burlington Development Review Board
c/o Burlington Department of Planning and Zoning
City Hall
Burlington, VT. 05401

Re: *BTC Mall Associates, LLC*, Zoning Permit #18-0768CA

Greetings,

Barbara McGrew, Michael Long, Lynn Martin, and Steven Goodkind hereby enter their appearance as interest persons in the proceedings before the Development Review Board in the above captioned matter and in opposition to the permit amendments application.

They had brought a series of legal challenges to the redevelopment being proposed for the former Burlington Square Mall at 75 Cherry Street.

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

The claims were all settled and compromised in a global *Settlement Agreement* between the plaintiffs and the developer mediated by former Burlington Mayor Peter Clavelle. These actions were each dismissed by the plaintiffs with prejudice and/or they individually withdrew as per the *Settlement Agreement* in exchange for the conditions in that *Settlement Agreement*. Paragraph 3

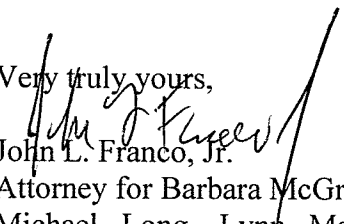
of that *Settlement Agreement* incorporated by reference a *Stipulation for Final Judgment* along with a *Proposed Judgement Order*. The *Stipulated Findings of Fact Supporting Final Judgment* were approved and signed by the plaintiffs, the developer and the City. The *Proposed Judgment Order* was adopted by the Vermont Superior Court Environmental Division as a *Judgment Order* on July 17, 2017 in Docket 35-4-17 Vtec.

The proposed project amendments now before the Board violate that *Settlement Agreement* and *Judgment Order* in two respects. First, ¶9 of the *Settlement Agreement* provides that it “may not be amended, modified, or terminated except by written consent signed by all the parties hereto.” BTC Mall did not obtain the written consent of my clients for these amendments. Secondly these amendments do not meet the requirements for a permit amendment under the finality provisions of successive application doctrine which require a showing that the permit amendments are justified by either (a) changes in factual or regulatory circumstances beyond the control of the permittee; (b) changes in the construction or operation of the permittee’s project not reasonably foreseeable at the time the permit was issued; or (c) changes in technology.

Also please be advised that the administrative amendments for the project approved by the Planning Department on February 23, 2018 are being challenged by my clients under the federal Civil Rights Acts before the United States District Court in *McGrew et al. v. City of Burlington et al.*, case no. 5-18-cv-59 as being unlawful and invalid for having violated procedural due process under the 14th Amendment.

Thank you for your attention to this matter.

Very truly yours,


John L. Franco, Jr.

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

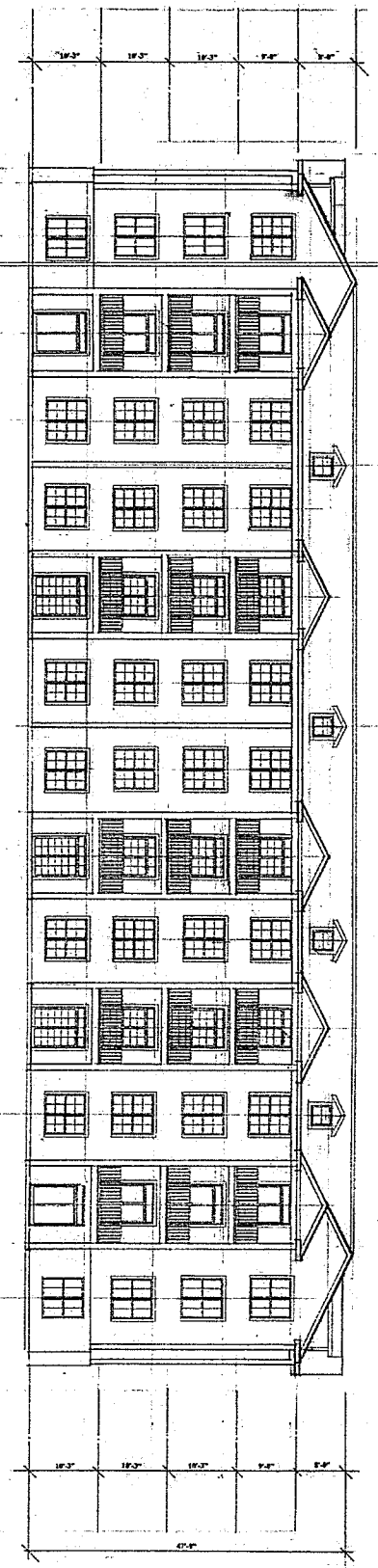
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APR 09 2018

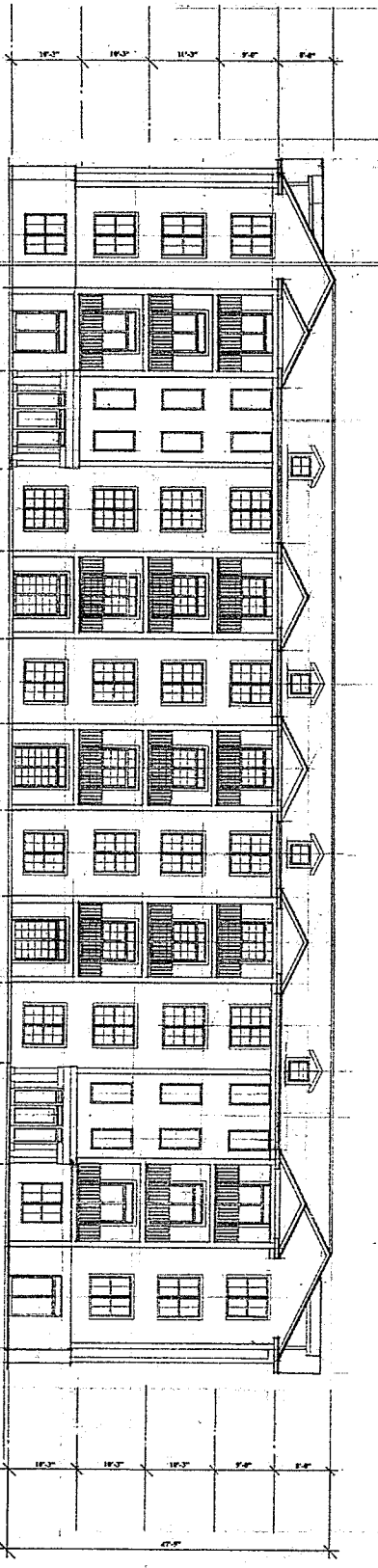
DEPARTMENT OF
PLANNING & ZONING

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MAR 15 2018

DEPARTMENT OF
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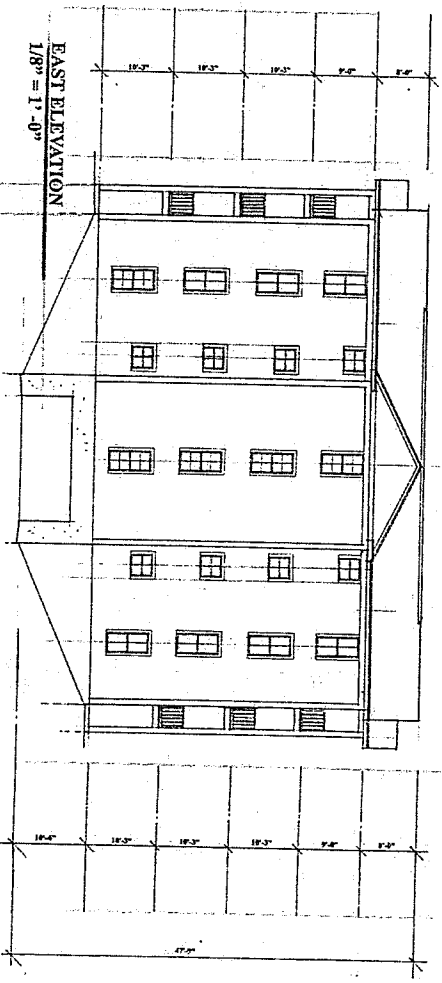


NORTH ELEVATION
1/8" = 1' - 0"

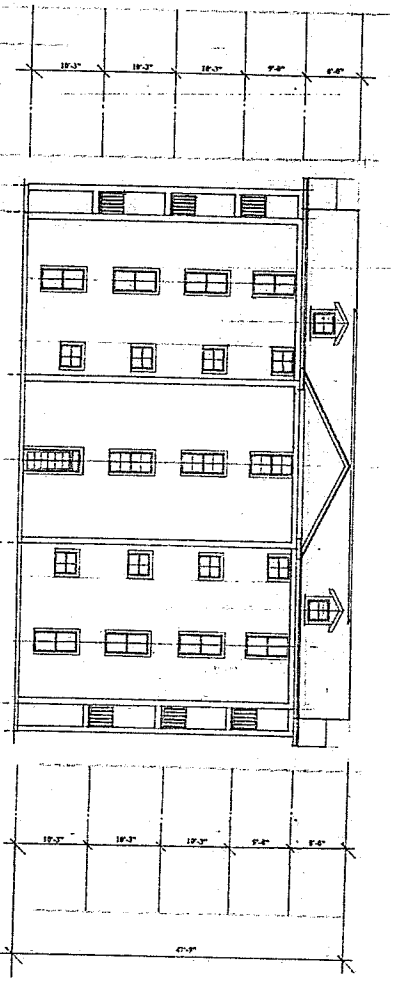


SOUTH ELEVATION
1/8" = 1' - 0"

NOTE: GENERAL CONTRACTOR IS TO VERIFY ALL DIMENSIONS ON THIS DRAWING PRIOR TO CONSTRUCTION. GENERAL CONTRACTOR IS TO VERIFY ALL SITE CONDITIONS PRIOR TO CONSTRUCTION.



EAST ELEVATION
1/8" = 1' - 0"



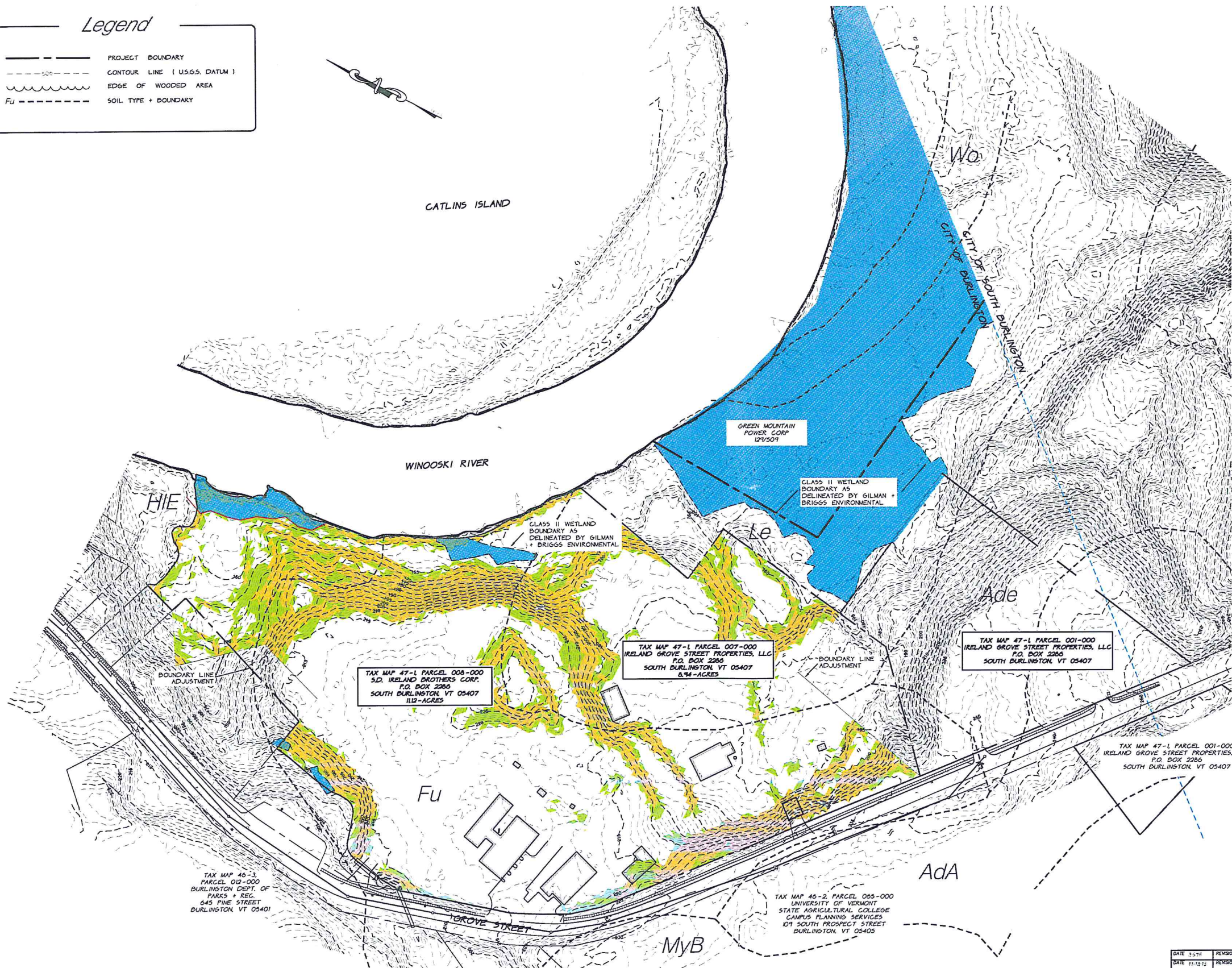
WEST ELEVATION
1/8" = 1' - 0"

NOTE: GENERAL CONTRACTOR IS TO VERIFY ALL DIMENSIONS ON THIS DRAWING PRIOR TO CONSTRUCTION. GENERAL CONTRACTOR IS TO VERIFY ALL SITE CONDITIONS PRIOR TO CONSTRUCTION.



Legend

- PROJECT BOUNDARY
- CONTOUR LINE (U.S.G.S. DATUM)
- EDGE OF WOODED AREA
- SOIL TYPE + BOUNDARY



Zoning Information

ZONING DISTRICT: RESIDENTIAL - LOW DENSITY

DIMENSIONAL REQUIREMENTS

	REQUIRED	PROPOSED
MINIMUM ROAD FRONTAGE	60'	1250'
MINIMUM LOT SIZE	10,000 SF	N/A
MAXIMUM DENSITY	7 UNITS/AC	N/A
MAX LOT COVERAGE	50%	44.1%
MINIMUM FRONT SETBACK	AVG. OF 2 ADJACENT LOTS ON BOTH SIDES	14'
MINIMUM SIDE SETBACK*	10% OF LOT WIDTH	120'
MINIMUM REAR SETBACK**	25% OF LOT DEPTH	175'
MINIMUM WATERFRONT SETBACK	75'	175'

*NOT TO EXCEED 20'

**NOT TO EXCEED 75'

Buildable Area Calculation

TOTAL LOT SIZE - 20.87 ACRES (908,960 SQ. FT.)

-LESS PORTIONS OF THE PROPERTY COVERED BY STREAMS, PONDS, LAKES, WETLANDS, AND OTHER BODIES OF WATER; AND LANDS WITH A SLOPE IN EXCESS OF 30%.

SLOPES GREATER THAN 30% - 18,9751 SQ. FT.
WETLANDS - 18,945 SQ. FT.
SLOPES BETWEEN 15% AND 30% - 107,530 SQ. FT.

TOTAL UNBUILDABLE AREA - 6.03 ACRES (262,461 SQ. FT.)
(18,9751 SQ. FT. + 18,945 SQ. FT. + 107,530 SQ. FT.)

TOTAL BUILDABLE AREA - 14.84 ACRES (646,499 SQ. FT.)
(908,960 SQ. FT. - 262,461 SQ. FT.)

Density Calculation

BASE DENSITY: 8.75 D/U PER ACRE	8.75 D/U/ACRE X 14.84 BUILDABLE ACRES	129.85 UNITS
RESIDENTIAL CONVERSION BONUS: 5 D/U PER ACRE	5.00 D/U/ACRE X 14.84 BUILDABLE ACRES	118.72 UNITS
TOTAL ALLOWABLE DENSITY**		248.57 UNITS

(135 INCLUSIONARY UNITS + 210 MARKET RENT UNITS)

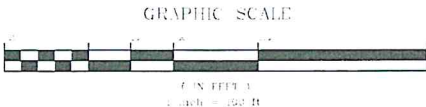
*PER SECTION 4.4.5 IDL TABLE 4.4.5-7. THE SECTION ALSO ALLOWS FOR A MAX. LOT COVERAGE OF 50%.

**PER SECTION 4.4.1 TABLE 4.4.1-1 A TOTAL OF 15% OF ALL UNITS ARE REQUIRED TO BE INCLUSIONARY UNITS. THIS PARCEL WOULD THEN ALLOW FOR 36 INCLUSIONARY UNITS AND 212 MARKET RENT UNITS FOR A TOTAL OF 248 RESIDENTIAL UNITS.

Soil Information

FU-FILL LAND	12.94 ACRES
HIE-HARTLAND VERY FINE SANDY LOAM, 25 TO 60 PERCENT SLOPES	1.99 ACRES
LE-LIMERICK SILT LOAM	5.90 ACRES
ADE-ADAMS AND WINDSOR LOAMY SAND, 30 TO 60 PERCENT SLOPES	.04 ACRES
	20.87 ACRES TOTAL

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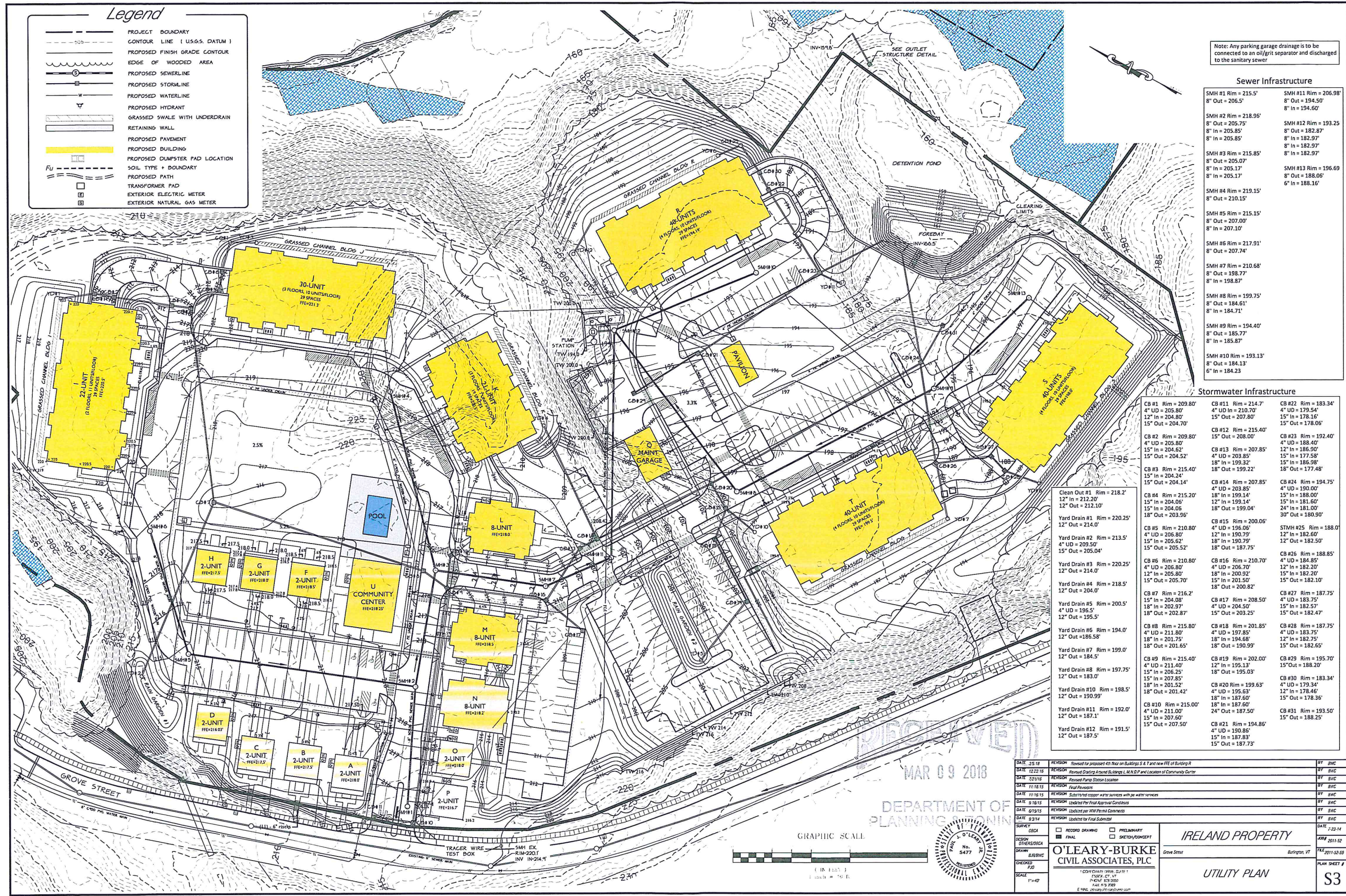
DATE: 3-5-14	REVISION: Revised for proposed with map on Building 5 & 7 and new EFC of Building 8	BY: SHC
DATE: 11-13-13	REVISION: Final Revisions	BY: SHC
DATE: 3-16-13	REVISION: Update Per Final Approval Comments	BY: SHC
DATE: 9-3-12	REVISION: Update for Final Submittal	BY: SHC
SURVEY: 08/01/08	☒ RECORD DRAWING ☐ PRELIMINARY	DATE: 7-23-14
DESIGN: 07/08/08	☒ FINAL ☐ SKETCH/CONCEPT	DATE: 2011-02
DRAWN: 07/08/08		FILE: 2011-02-02
CHECKED: 7-23-14		PLAN SHEET: 1
SCALE: 1"=100'		

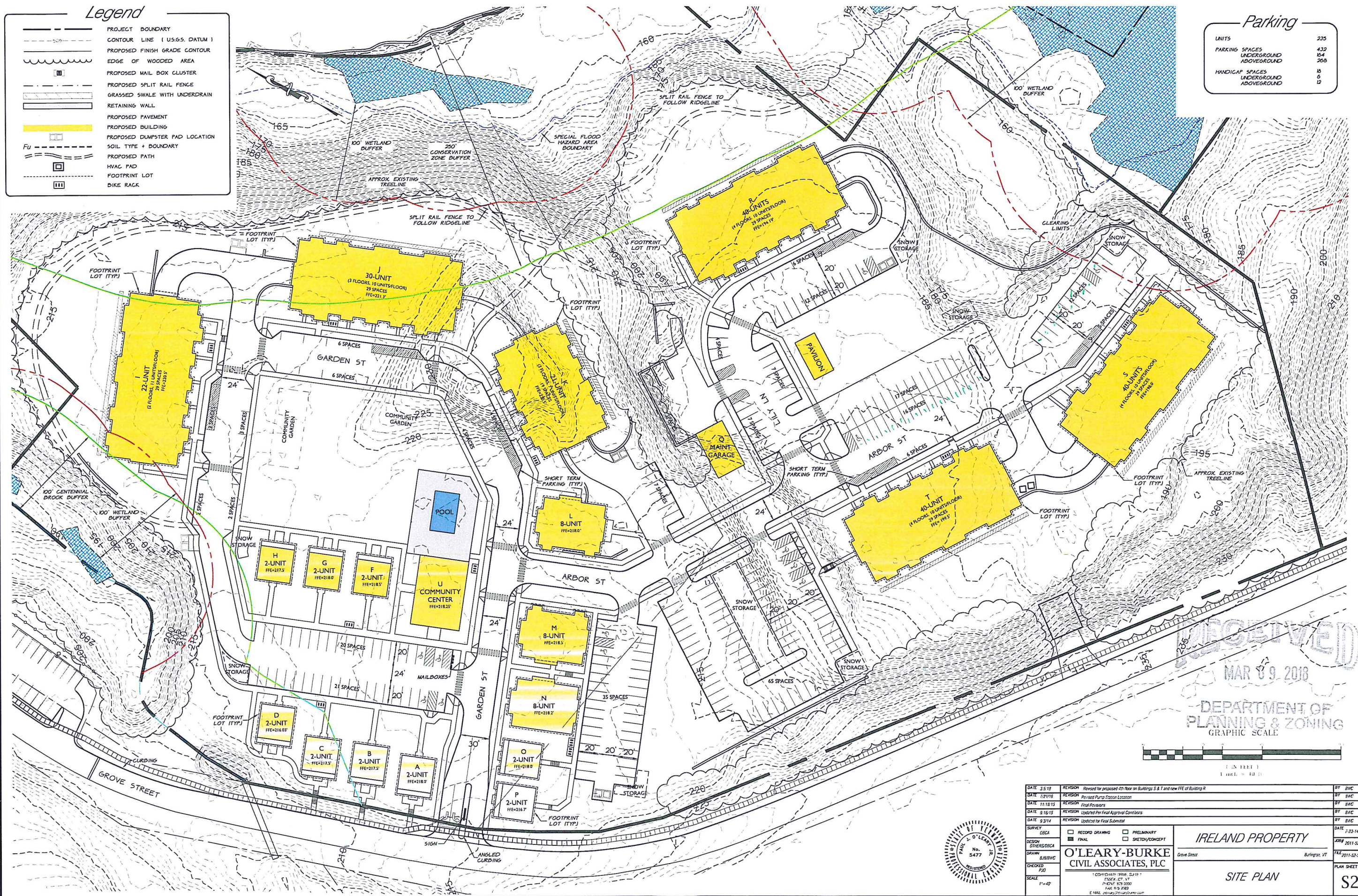
O'LEARY-BURKE CIVIL ASSOCIATES, P.C.

100 SOUTH PROSPECT STREET, SUITE 100
BURLINGTON, VT 05401
PHONE: 802.255.1234
FAX: 802.255.1235
E-MAIL: info@olearyburke.com

IRELAND PROPERTY

645 Pine Street
Burlington, VT

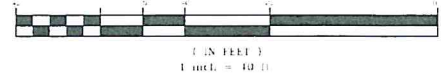




Parking	
UNITS	235
PARKING SPACES	432
UNDERGROUND	164
ABOVEGROUND	268
HANDICAP SPACES	18
UNDERGROUND	6
ABOVEGROUND	12

MAR 09 2018

DEPARTMENT OF
PLANNING & ZONING
GRAPHIC SCALE



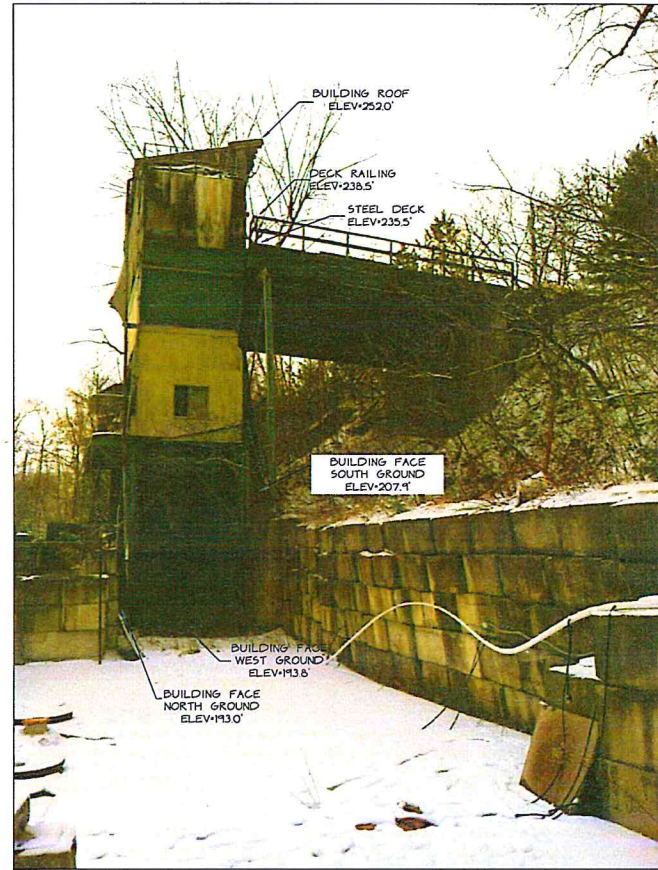
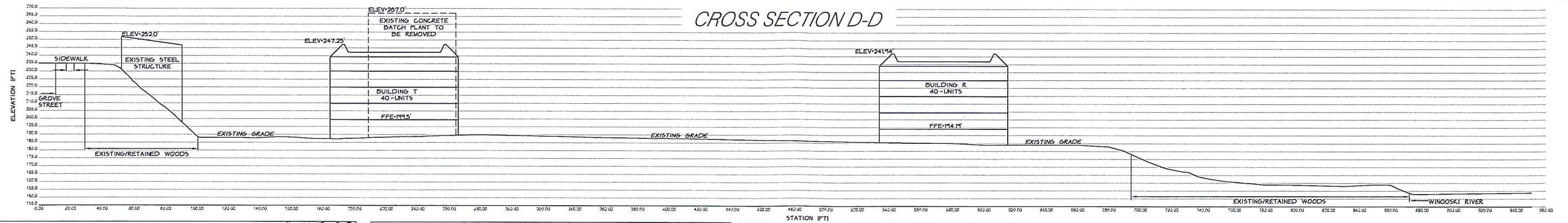
DATE 3/5/13	REVISION Revised for precast 2nd floor on Buildings S & T and new TFE of Building R	BY BHC
DATE 7/27/15	REVISION Revised Paving Season Location	BY BHC
DATE 11/18/15	REVISION Final Redvisions	BY BHC
DATE 3/16/15	REVISION Updated Per Final Approval Conditions	BY BHC
DATE 9/3/14	REVISION Updated for Final Submittal	BY BHC
SURVEY	☐ RECORD DRAWING ☐ PRELIMINARY ☐ FINAL ☐ SKETCH/CONCEPT	DATE 7-23-14
DESIGN OTHER/OSCA	<i>IRELAND PROPERTY</i> Great Street Burlington, VT	DATE 2011-52
DRAWN BJB/BHC		DATE 2011-52-59
CHECKED PJB		PLAN SHEET #
SCALE 1"=40'		S2

IRELAND PROPERTY

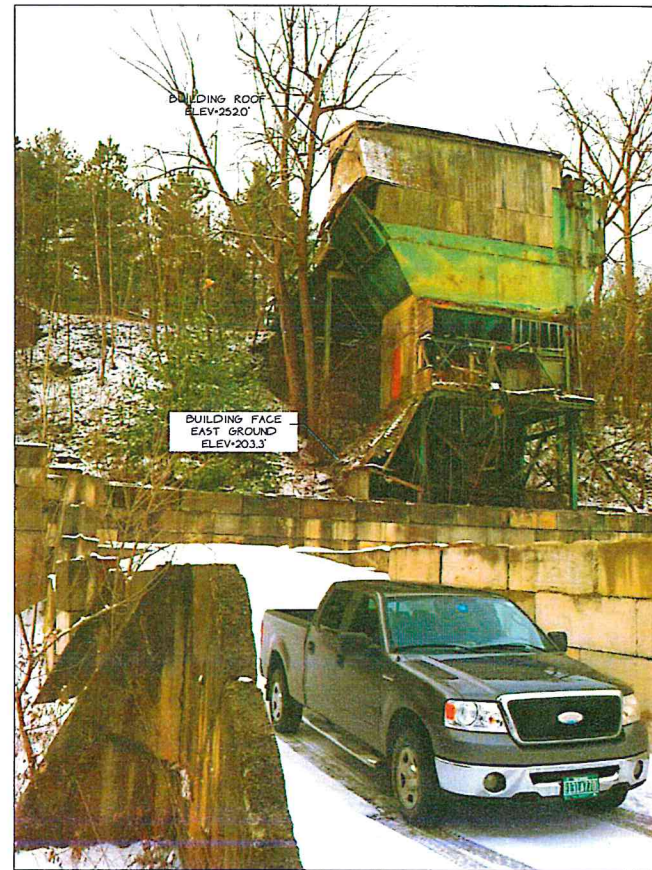
O'LEARY-BURKE
CIVIL ASSOCIATES P.L.C.

SITE PLAN

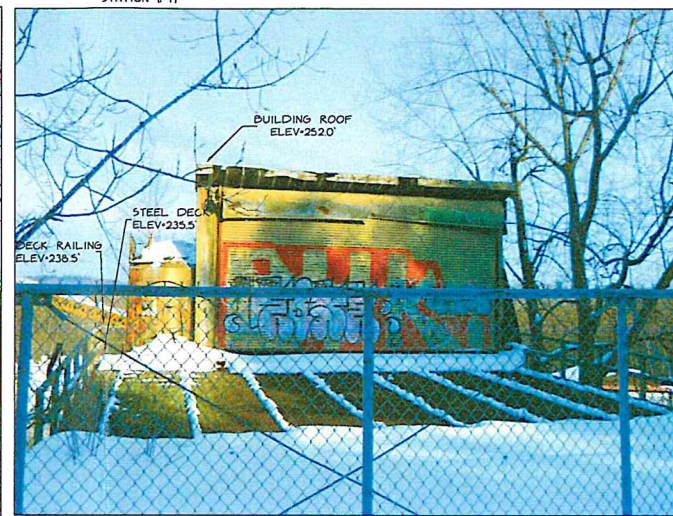
S2



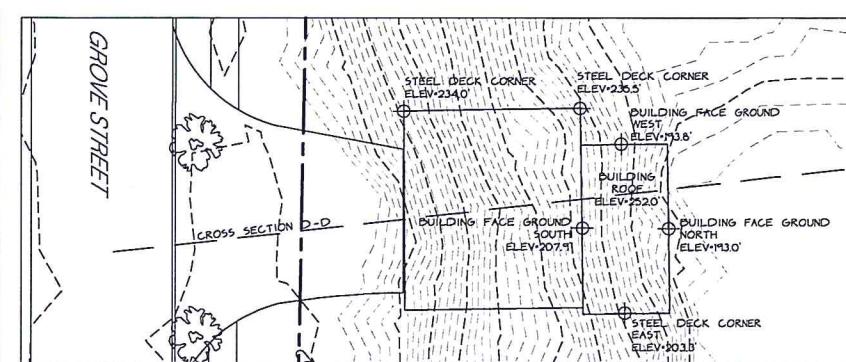
STEEL STRUCTURE LOOKING SOUTH EAST



STEEL STRUCTURE LOOKING SOUTH WEST



STEEL STRUCTURE STREET VIEW



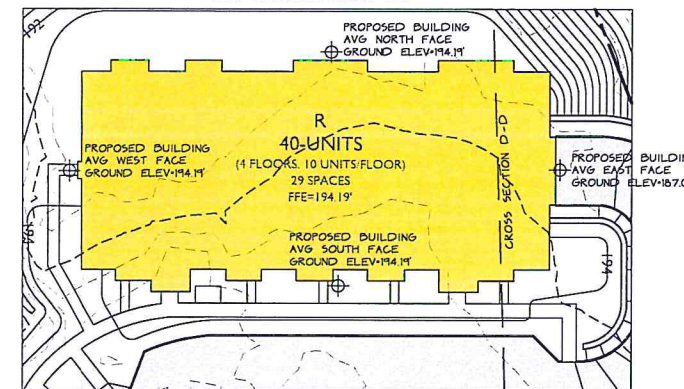
EXISTING STEEL STRUCTURE PLAN VIEW

BUILDING HEIGHT CALCULATION

AVERAGE GROUND ELEVATION:
 $(\text{BLDG FACE-NORTH} + \text{BLDG FACE-EAST} + \text{BLDG FACE-SOUTH} + \text{BLDG FACE-WEST}) / 4 \text{ BUILDING FACES} = \text{AVG GROUND ELEV}$
 $(193.0' + 203.3' + 207.4' + 193.8') / 4 = 199.5'$

AVG GROUND ELEV = 199.5'
 ROOF ELEV = 252.0'

HEIGHT OF EXISTING STRUCTURE = 52.5'



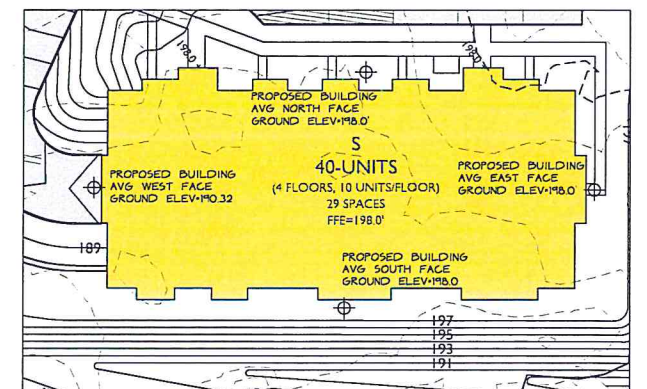
BUILDING 'R' PLAN VIEW

BUILDING 'R' HEIGHT CALCULATION

AVERAGE GROUND ELEVATION:
 $(\text{BLDG FACE-NORTH} + \text{BLDG FACE-EAST} + \text{BLDG FACE-SOUTH} + \text{BLDG FACE-WEST}) / 4 \text{ BUILDING FACES} = \text{AVG GROUND ELEV}$
 $(194.1' + 197.0' + 194.1' + 194.1') / 4 = 192.3'$

AVG GROUND ELEV = 192.3'
 TOP ROOF ELEV = 241.14'

HEIGHT OF NEW BUILDING = 49.55'



BUILDING 'S' PLAN VIEW

BUILDING 'S' HEIGHT CALCULATION

AVERAGE GROUND ELEVATION:
 $(\text{BLDG FACE-NORTH} + \text{BLDG FACE-EAST} + \text{BLDG FACE-SOUTH} + \text{BLDG FACE-WEST}) / 4 \text{ BUILDING FACES} = \text{AVG GROUND ELEV}$
 $(198.0' + 198.0' + 198.0' + 190.32') / 4 = 196.08'$

AVG GROUND ELEV = 196.08'
 TOP ROOF ELEV = 245.75'

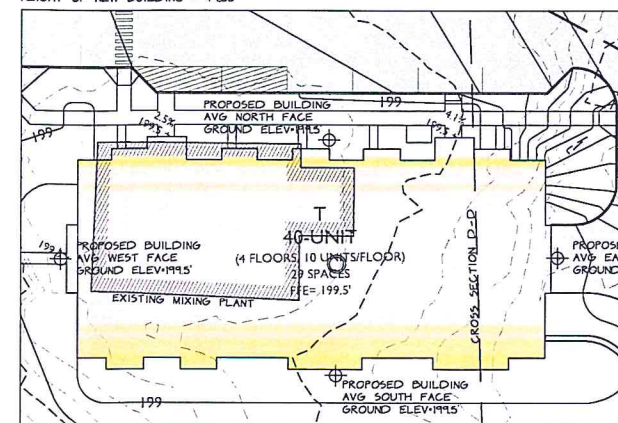
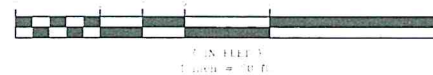
HEIGHT OF NEW BUILDING = 49.67'



ARCHITECTURAL DRAWING - FOUR STORY BUILDING

AVG GROUND ELEV
 BLDG T=197.55'
 BLDG R=192.34'
 BLDG S=196.08'

GRAPHIC SCALE



BUILDING 'T' PLAN VIEW



BUILDING 'T' HEIGHT CALCULATION

AVERAGE GROUND ELEVATION:
 $(\text{BLDG FACE-NORTH} + \text{BLDG FACE-EAST} + \text{BLDG FACE-SOUTH} + \text{BLDG FACE-WEST}) / 4 \text{ BUILDING FACES} = \text{AVG GROUND ELEV}$
 $(199.5' + 198.2' + 199.5' + 199.5') / 4 = 197.58'$

AVG GROUND ELEV = 197.58'
 TOP ROOF ELEV = 247.25'

HEIGHT OF NEW BUILDING = 49.67'

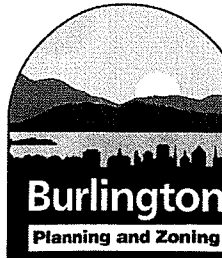
DATE: 3-15-18	REVISION: Revised for proposed 4th floor on Buildings S & T and new FFE of Building R	BY: BHC
SURVEY: GSK	☐ RECORD DRAWING ☐ PRELIMINARY	DATE: 12/22/14
DESIGN: BHC	☒ FINAL ☐ SKETCH/CONCEPT	DATE: 2011-53
DRAWN: BHC	O'LEARY-BURKE CIVIL ASSOCIATES, PLLC	FILE: 2011-52-02
CHECKED: JCB	Scale: 1"=30'	PLAN SHEET 1
SCALE: 1"=30'		EX1

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 PLANNING & ZONING

Department of Planning and Zoning

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

David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Anita Wade, Zoning Clerk



TO: Development Review Board
FROM: Scott Gustin *SD*
DATE: April 17, 2018
RE: 18-0777CA; 165 & 181 Winterberry Lane

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: 1E

Owner/Applicant: Bayberry, LLC

Request: Add a floor to Buildings S & T and increase the overall unit count from 232 to 235. Also, increase parking to 432 spaces and relocate one gazebo and remove another.

Applicable Regulations:

Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), and Article 6 (Development Review Standards)

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

I. Findings

Background Information:

The applicant is seeking approval to add one additional story to two of the larger apartment buildings in the Bayberry Commons development. Specifically, buildings S and T would increase from 3 stories to 4 stories. The net increase in total dwelling units is modest, increasing by just 2 to a total of 235. The applicant is also seeking approval to increase onsite parking from 411 presently permitted spaces to 432 spaces. This total remains below the standard requirement of 2 spaces per dwelling unit (470 spaces). The pavilion in the upper green is to be removed, while the pavilion in the lower green is to be retained but relocated.

Previous zoning actions for this property are noted below.

- 2/6/17, Amended final plat approval to relocate community building and adjust grading
- 8/26/16, Amended final plat approval to adjust phasing schedule
- 5/19/15, Final plat approval of 232-unit PUD
- 3/20/14, Preliminary plat approval of 245-unit PUD
- 11/10/97, Approval of lot line adjustment with neighboring parcel

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The residential low density district is intended primarily for single family homes and duplexes. Planned Unit Developments, such as the subject of this application, are allowed on larger parcels of land and are afforded a substantially greater degree of flexibility as to housing types. During the initial permit review for this project, emphasis was placed on presenting a smaller scale development along the street while allowing a transition to greater intensity further back and down into the development site. The two buildings subject to this application are set away from Grove Street and down on the lower plateau. Allowing additional building mass in this location remains consistent with the intended layout of this project. **(Affirmative finding)**

(b) Dimensional Standards & Density

Residential density will increase from 232 units to 235. This density remains within the 16.75 units/acre permitted via development bonuses for this redevelopment project on 14.48 buildable acres.

As originally approved, lot coverage within the buildable area was 42.8%. The revised site plan for this application notes 44.1% lot coverage. This lot coverage remains below the 50% lot coverage limit permissible with the associated development bonuses.

Within this planned unit development, only peripheral setbacks apply. None are affected by the proposed revisions.

Building height was a significant concern during original review of this project. The Development Review Board required that all of the buildings on the upper plateau (nearer Grove Street) remain below 35'. The buildings on the lower plateau were allowed to be taller. The tallest on this lower plateau is building R at 4 stories and 49.9' tall. As permitted, buildings T and S are slightly below 40' tall. The additional story on each will increase height to 4 stories and 49.7' tall. As required, height remains below the 59' height of the existing steel hopper structure. **(Affirmative finding)**

(c) Permitted & Conditional Uses

No change in use is requested.

(d) District Specific Regulations

1. Setbacks

No setback encroachments are sought.

2. Height

Not applicable in RL.

3. Lot Coverage

No lot coverage exceptions are sought.

4. Accessory Residential Structures and Uses

The pavilion within the upper green will be deleted, seemingly in favor of other features such as community garden space, the club house, and a community pool. The pavilion within the lower green will remain but will be relocated to the northern end. **(Affirmative finding)**

5. Residential Density

All of the residential units are subject an occupancy limit of 4 unrelated adults or a family as defined in the CDO. **(Affirmative finding)**

6. Uses

Not applicable.

7. Residential Development Bonuses

Not applicable to this amendment.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.5.5 above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the amendment appears to constitute a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

No additional outdoor lighting is evident in the project plans. Seemingly, additional illumination of the new row of parking that is being added in front of building T would be warranted. If this is the case, a revised photometric plan is needed. **(Affirmative finding as conditioned)**

Sec. 5.5.3, Stormwater and Erosion Control

Stormwater management and erosion control are unaffected by this amendment. Permitted measures will remain. **(Affirmative finding)**

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Sec. 6.1.2, Review Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

The site plan remains largely unchanged. The permitted row of parking in front of building T will be expanded to accommodate an additional row. Doing so incrementally lessens green space but has little effect on the interior streetscape. A prior amendment allowing angled parking in front of building T rather than parallel parking had a more significant effect on the streetscape. Simply adding another row of parking now has little perceptible effect. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

As originally approved, the three largest buildings remain on the lower plateau. Building T was originally approved at 4 stories tall, while buildings S and R were approved at 3 stories tall. This application seeks to make buildings S and R four stories tall. With the two additional stories, buildings S and R will reflect the appearance of building T with very similar massing, scale, and architectural treatment. The cross section and elevation information submitted with this application demonstrates that building T remains most prominent – closest in proximity to Grove Street and highest in total elevation. Buildings S and R are set at somewhat lower elevations, and building R is set far back from Grove Street. The additional height is within the limits established for this development. Building location set down and away from Grove Street helps to mitigate perceived visual impacts of the larger structures. **(Affirmative finding)**

II. Conditions of Approval

1. Except as specifically modified in this amendment, all conditions of the original final plat approval dated May 19, 2015 shall remain in effect.
2. If additional outdoor lighting is proposed, an updated photometric plan along with fixture cutsheets shall be submitted, subject to staff review and approval.
3. Standard permit conditions 1-15.

Department of Planning and Zoning

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Burlington, VT 05401
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Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Anita Wade, Zoning Clerk
Layne Darfler, Planning Technician



TO: Development Review Board
FROM: Scott Gustin *[Signature]*
DATE: April 17, 2018
RE: 18-0779CA; 214 North Prospect 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: 1E

Owner/Applicant: Synagogue Corporation

Request: Addition to existing building and associated site work.

Applicable Regulations:

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

Background Information:

The applicant is seeking approval to construct an ~ 1,800 sf addition to the existing senior housing building. The addition includes new common space for residents and an elevator. A new patio, slightly reconfigured parking, and other minor site alterations are also included. No change in dwelling units is proposed, nor is there any change in the total number of parking spaces. While the scope of this project is relatively small, it exceeds the 500 sf limit for administrative zoning permit review. Therefore, review and approval by the Development Review Board is required.

Previous zoning actions for this property are as follows:

- 12/21/17, Approval of lot line adjustment
- 10/25/13, Approval for stormwater system improvements
- 7/23/09, Approval for new parking spaces and walkway modifications

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

I. Findings

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The subject property is located in the RL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes. Senior housing facilities, such as the one at the subject property, are specifically enabled. No change in use is proposed. **(Affirmative finding)**

(b) Dimensional Standards & Density

Residential density will remain unchanged.

Lot coverage will increase slightly from 36.37% to 37.29%. Standard lot coverage will remain below the 35% limit. Of the total lot coverage, 2.9% includes sidewalks and patio area which are afforded an additional 10% lot coverage allowance.

The front yard setback will remain unchanged. The addition will be some 75' from the nearer side property boundary, whereas the minimum required is just 20.' From the rear property line, the addition will be ~ 105,' whereas the minimum required is 75.'

Most of the proposed single story addition is below the height of the existing building. The elevator shaft reaches to 35.' This height is within the 35' height limit. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The senior housing facility is an allowed use. No change in use is proposed. **(Affirmative finding)**

(d) District Specific Regulations

(Not applicable)

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

(Not applicable)

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

New outdoor lighting is proposed and consists of a building mounted fixture to illuminate an entry within the addition. The fixture location is noted on the elevation plans. Illumination will come from an acceptable cut-off light fixture using an LED illumination source. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

As more than 400 sf of earth disturbance is proposed, a “small project erosion control” form has been provided. A post-construction stormwater management questionnaire has also been completed and submitted. Both are under review by the city’s stormwater program. Final approval is required. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

No significant natural areas are affected by this proposal. The new addition will be constructed on what is presently a small section of grassy lawn. **(Affirmative finding)**

(b) Topographical alterations

No exceptional topographic alterations are proposed. Some new grading is evident where the parking is to be reconfigured. **(Affirmative finding)**

(c) Protection of important public views

There are no public views associated with this property. Identified view corridors will remain unaffected. **(Affirmative finding)**

(d) Protection of important cultural resources

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

(e) Supporting the use of alternative energy

Utilization of alternative energy is not included in the project plans. The addition 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

See Sec. 5.5.3 for stormwater management. Snow management remains unchanged and so do the existing sheltered building entries. **(Affirmative finding)**

(h) Building location and orientation

The building’s location and orientation remain unchanged. The proposed addition is set behind the existing building and is not visible from any public way. **(Affirmative finding)**

(i) Vehicular access

Vehicular access remains unchanged. **(Affirmative finding)**

(j) Pedestrian access

Pedestrian access to the site and to the building's primary entrance remains unchanged. The proposed addition includes a doorway to access the adjacent patio area. **(Affirmative finding)**

(k) Accessibility for the handicapped

Existing handicap accessibility features remain essentially unchanged. Handicap accessibility standards for the new addition will be administered by the city's building inspectors. **(Affirmative finding)**

(l) Parking and circulation

Parking and circulation remain largely as is. A small section of parking area immediately adjacent to the addition will be reconfigured; however, the overall parking count remains unchanged. **(Affirmative finding)**

(m) Landscaping, fences, and retaining walls

This project includes some additional new landscaping consisting of several new deciduous trees to be planted adjacent to the new patio area. Within the patio, several new raised planters are proposed. Existing lawn and wooded areas around the addition will remain unaffected. **(Affirmative finding)**

(n) Public plazas and open space

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

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

No new site infrastructure is included in this application. **(Not applicable)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The proposed addition is quite small in comparison to the existing structure and is imperceptible from most vantage points. With the exception of the elevator shaft, the addition presents a singular mass and clearly reads as distinct from the original building. As noted above, height of the addition (except for the elevator shaft) is well under that of the existing building. **(Affirmative finding)**

2. Roofs and Rooflines

The addition will be flat-roofed. While uncommon in this residential area, the flat roof matches that on the existing building. **(Affirmative finding)**

3. Building Openings

The style of window for the proposed addition varies from that in the existing building, albeit only modestly. The fenestration pattern is consistently applied throughout the addition.

(Affirmative finding)

(b) Protection of important architectural resources

The existing building is not listed on the state or national historic register, nor has it been deemed eligible for listing. The addition will have no adverse impact on Burlington's wealth of important architectural resources. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The addition is invisible from the street. **(Not applicable)**

(e) Quality of materials

The addition will be clad in fiber cement panels. Fiberglass windows will be installed throughout the addition. While these materials differ from those on the existing building, they are of acceptable quality and help to set the addition apart from the existing structure. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed building addition 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

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

(h) Integrate infrastructure into the building design

No building- or roof-mounted equipment is included in this proposal. **(Affirmative finding)**

(i) Make spaces safe and secure

The proposed addition must comply with the city's current egress requirements. The entry will be illuminated. **(Affirmative finding as conditioned)**

II. Conditions of Approval

1. Final review and approval of the erosion prevention and sediment control plan and of the post-construction stormwater management plan is required by the city's Stormwater Program prior to construction.
2. 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.
3. Standard permit conditions 1-15.



FERN HILL

214 NO. PROSPECT STREET BURLINGTON, VT. 05401

802-658-6442

March 13, 2018

Scott Gustin, Zoning Administrator
Burlington Planning and Zoning
149 Church St, City Hall
Burlington, VT 05401

RE: 214 North Prospect, Additions to Existing Building and Associated Site Work, COA Level 2

Dear Scott:

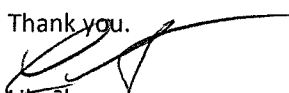
The Synagogue Corporation owns Fern Hill Apartments, a Section 202 project providing housing for low-income seniors and low-income people with disabilities who are not elderly. We are in the process of refinancing and plan to improve the property by adding an elevator; by adding an addition to provide more and improved common space including offices for services such as SASH, improved kitchen, and designated exercise space; doing renovations to existing apartments; improving lighting and ventilation through the hallways and common areas; putting raised beds for gardening; and providing better access to the gardens in the back yard area.

I am also confirming that our consultant Amy Wright spoke to you several weeks ago about submitting this application pending the completion of the lot line adjustment with Ohavi Zedek Synagogue. When the application for lot line adjustment was approved, Burlington Planning and Zoning found that Ohavi Zedek Synagogue had numerous open permits. Significant progress has been made to correct the open permits and we believe the lot line adjustment will come to fruition shortly. We understand that Synagogue Corporation's zoning permit cannot be completed until Ohavi Zedek closes its permits. We also understand based on Amy's conversation with you that we can file our application and start the process.

Attached please find the Zoning Permit Application, a check for \$110 to file the application and a check for \$2,400 based on the estimated construction costs, and the COA Level II Review Application Checklist along with the referenced documents.

Please let me know if anything further is required. We appreciate the help you have given us to understand the requirements of this zoning process.

Thank you.


Lila Shapero

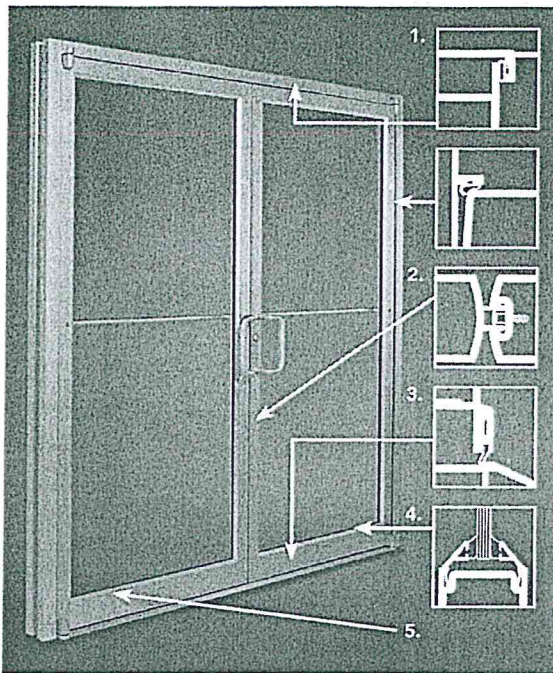
President, Synagogue Corporation

Enc.

Hand-delivered

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PLANNING & ZONING



1. Thermoplastic elastomer weatherstrip in blade-stop of frame jambs, header or transom bar.
2. Integral polymeric fin is attached to adjustable astragal creating an air barrier between pairs of doors.
3. Optional surface-applied bottom weatherstrip with flexible blade gasket. Extruded raised lip on threshold to provide a continuous contact surface for bottom weatherstrip.
4. Standard 1/4" beveled glass stops sheet water and dirt off without leaving residue.
5. Available in all finishes offered by Kawneer.

The 190 Narrow Stile Entrance

- Is engineered for moderate traffic in applications such as stores, offices and apartment buildings
- Vertical stile measures 2-1/8"; top rail 2-1/4" and bottom rail 3-7/8"
- Results in a slim look that meets virtually all construction requirements

The 350 Medium Stile Entrance

- Provides extra strength for applications such as schools, institutions and other high traffic applications
- Vertical stiles and top rails measure 3-1/2"
- Bottom rail measures 6-1/2" for extra durability

The 500 Wide Stile Entrance

- Creates a monumental visual statement for applications such as banks, libraries and public buildings
- Vertical stiles and top rail are 5"; bottom rail measures 6-1/2"
- Results in superior strength for buildings experiencing heavy traffic conditions

Economy

Kawneer's Sealair™ bulb neoprene weatherstripping forms a positive seal around the door frame and provides a substantial reduction in air infiltration, resulting in improved comfort and economies in heating and cooling costs. The system is wear and temperature-resistant and replaces conventional weathering. Bottom weatherstrip at the interior contains a flexible blade gasket to meet and contact the threshold, enhancing the air and water infiltration performance characteristics.

For the Finishing Touch

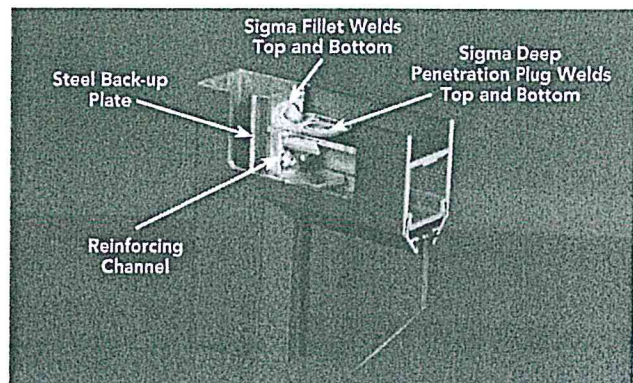
Architectural Class I anodized aluminum finishes are available in clear and Permanodic™ color choices.

Painted finishes, including fluoropolymer, that meet AAMA 2605 are offered in many standard choices and an unlimited number of specially designed colors.

Solvent-free powder coatings add the green element with high performance, durability and scratch resistance that meet the standards of AAMA 2604.

General

- Heights vary to 10'; widths range from approximately 3' to 4'
- Door frame face widths range to a maximum of 4", while depths range to 6"
- Door operation is single or double-acting with maximum security locks or Touch Bar Panics standard
- Architect's Classic one inch round, bent bar push/pull hardware is available in various finishes and sizes
- Infills range from under 1/4" to more than 1"



Kawneer Company, Inc.
Technology Park / Atlanta
555 Guthridge Court
Norcross, GA 30092

kawneer.com
770 . 449 . 5555

KAWNEER
AN ARCONIC COMPANY



SLIM12N

12, 18 and 26 Watt SLIM wallpacks are ultra efficient and deliver impressive light distribution with a compact low-profile design that's super easy to install as a downlight or uplight.

LED Info

Watts: 12W
Color Temp: 4000K (Neutral)
Color Accuracy: 86
L70 Lifespan: 100000
LM79 Lumens: 1,168
Efficiency: 79 LPW

Driver Info

Type: Constant Current
120V: 0.12A
208V: 0.08A
240V: 0.07A
277V: 0.06A
Input Watts: 15W
Efficiency: 82%

Technical Specifications

UL Listing:

Suitable for wet locations. Suitable for mounting within 1.2m (4ft) of the ground.

IP Rating:

Ingress Protection rating of IP66 for dust and water.

LED:

Multi-chip, long-life LED.

Lifespan:

100,000-hour LED lifespan based on IES LM-80 results and TM-21 calculations.

Driver:

Constant Current, Class 2, 100-277V, 50/60 Hz., 4KV surge protection, 350mA, 100-240VAC 0.3-0.15 Amps, 277VAC 0.15Amps, Power Factor 99%.

THD:

10.2% at 120V

Input Watts:

15W.

Output Lumens:

1,168.

Color Accuracy (CRI):

86 CRI

Correlated Color Temp. (Nominal CCT):

4000K

Cold Weather Starting:

The minimum starting temperature is -40°F/-40°C.

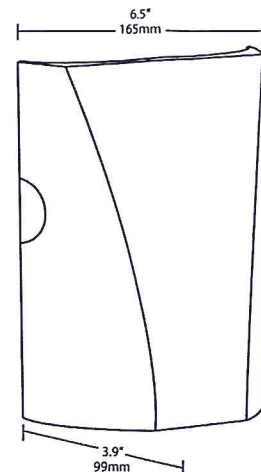
Ambient Temperature:

Suitable for use in 40°C (104°F) ambient temperatures.

Typical Exterior
Wall Mounted
Fixture



Weight: 4.5 lbs



Thermal Management:

Superior heat sinking with internal Air-Flow fins.

Housing:

Precision die-cast aluminum housing.

Mounting:

Heavy-duty mounting bracket with hinged housing for easy installation.

Recommended Mounting Height:

Up to 8 ft.

HID Replacement Range:

The SLIM12 can be used to replace 70W MH based on delivered lumens.

Lens:

Tempered glass lens.

Reflector:

Specular thermoplastic.

Gaskets:

High-temperature silicone.

Finish:

Our environmentally friendly polyester powder coating are formulated for high-durability and long-lasting color and contains no VOC or toxic heavy metals.

ADA Compliant:

SLIM™ is ADA Compliant.

DLC Listed:

This product is on the Design Lights Consortium (DLC) Qualified Products List and is eligible for rebates from DLC Member Utilities.

HardiePanel®

HardiePanel® Vertical Siding Product Description

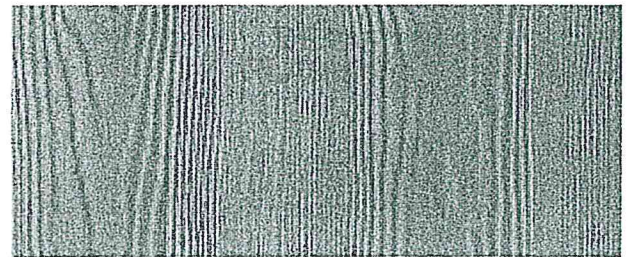
HardiePanel® vertical siding is factory-primed fiber-cement vertical siding available in a variety of sizes and textures. Examples of these are shown below. Textures include smooth, stucco, Cedarmill® and Sierra 8. HardiePanel vertical siding is $\frac{5}{16}$ -in. thick and is available in 4x8, 4x9 and 4x10 sizes. Please see your local James Hardie dealer for texture and size availability.

HardiePanel vertical siding is available as a prefinished James Hardie® product with ColorPlus® Technology. The ColorPlus coating is a factory applied, oven baked finish available on a variety of James Hardie siding and trim products. See your local dealer for availability of products, color and accessories.

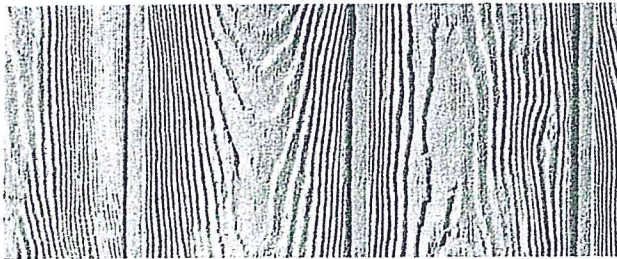
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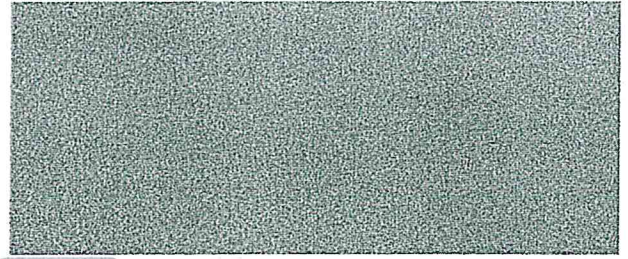
Stucco



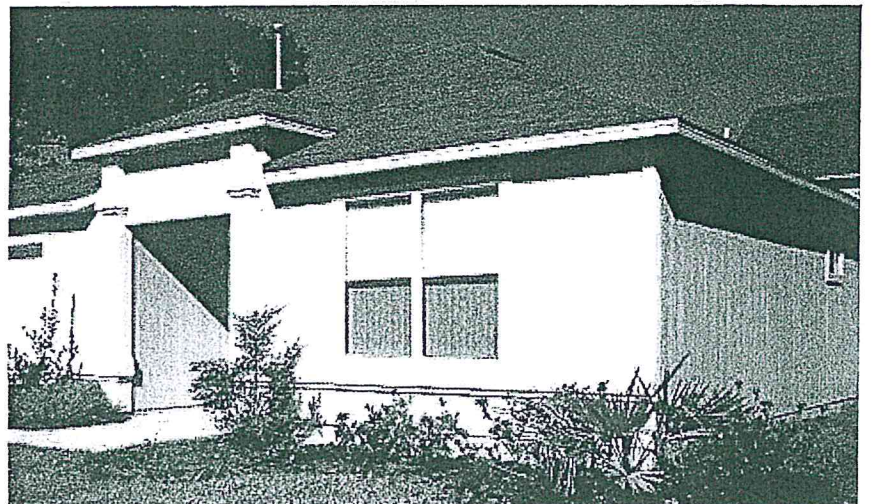
Cedarmill®



Sierra 8



Smooth





Windows

Home > Building Professionals > Product Specs > Casement & Awning

Product Specs

The Product Selector is your quick-search home for complete specifications, installation instructions and product resources for all Integrity Ultrex fiberglass products. Use the drop-down menus below to narrow your search.

1. Select Product Type

Window ▾

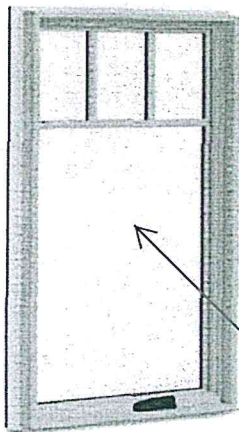
2. Select Product Series

Wood-Ultrex ▾

3. Select Product

Casement & Awning ▾

Or

View Entire Product
Resource Library

Wood-Ultrex

Casement and Awning Windows

A maintenance-free exterior, elegant wood interior and an airtight/watertight seal that stands up to driving rains and strong winds: what more could you want in a window? Integrity Wood-Ultrex Casement and Awning windows offer the clean lines you expect from Integrity and dual-arm roto gear operation for long-lasting performance and sashes that never sag.

- Low-maintenance Ultrex exterior; rich pine interior
- DP50 performance
- Sash tilts and removes easily with no tools
- Folding nail fin and all installation accessories included
- 10-year manufacturing warranty/20-year glass seal warranty
- LoE2 glass with argon gas standard
- LoE3-366 and tempered glass available

See drawings for divided lite patterns and sizes

Specifications

Installation Guides

Energy Ratings

Architectural Drawings
(2D & 3D Symbols)

Parts Manual

Architectural Detail Manual (ADM)

Click a link below to download detailed product information, including sizes, features, design pressures, NFRC values, egress information, elevations and section details. Documents can be opened and viewed using Adobe Acrobat Reader.

[Integrity Windows and Doors NFRC Values](#)

[Integrity Wood-Ultrex and All Ultrex Accessories](#)

[Integrity Wood-Ultrex Casement, Awning, Casement Picture and Casement Transom](#)

[Product Performance and Information](#)



PDF's can be viewed using
[Adobe Acrobat Reader](#)

Construction Specifications

Click a link below to download customizable specification information for use in preparing project documentation and submittals. Documents can be opened and viewed using Microsoft Word or a text editor of your choice.

[CSI for Awnings](#)

[CSI for Casements](#)

FERN HILL, 214 N Prospect Street
Property owned by Synagogue Corporation

East side of the
building



Area to be expanded



Northeast corner of building
elevator expansion by double
doors.

Common room expansion
wrap around corner to
approximately where existing
fence ends.

FERN HILL, 214 N Prospect Street
Property owned by Synagogue Corporation

Facing West, looking at building
corner to be expanded



FERN HILL APARTMENT

214 North Prospect Street
Burlington, VT 05401

OWNER:
Synagogue Corporation
214 North Prospect Street
Burlington, VT 05401

ARCHITECT:
S2 Architecture
5224 Shelburne Rd.
Shelburne, VT 05482
(802) 985-5595

CIVIL ENGINEER:
Summit Engineering, Inc.
1233 Shelburne Rd., C-2
South Burlington, VT 05403
(802) 658-5588

STRUCTURAL ENGINEER:
Knight Consulting Engineers, Inc.
51 Knight Lane
Williston, VT 05495
Phone: (802) 879-6343

MECHANICAL ENGINEER:
Engineering Services of Vermont
9 Washington Street
Rutland, VT 05701
Phone: (802) 855-8091

ELECTRICAL ENGINEER:
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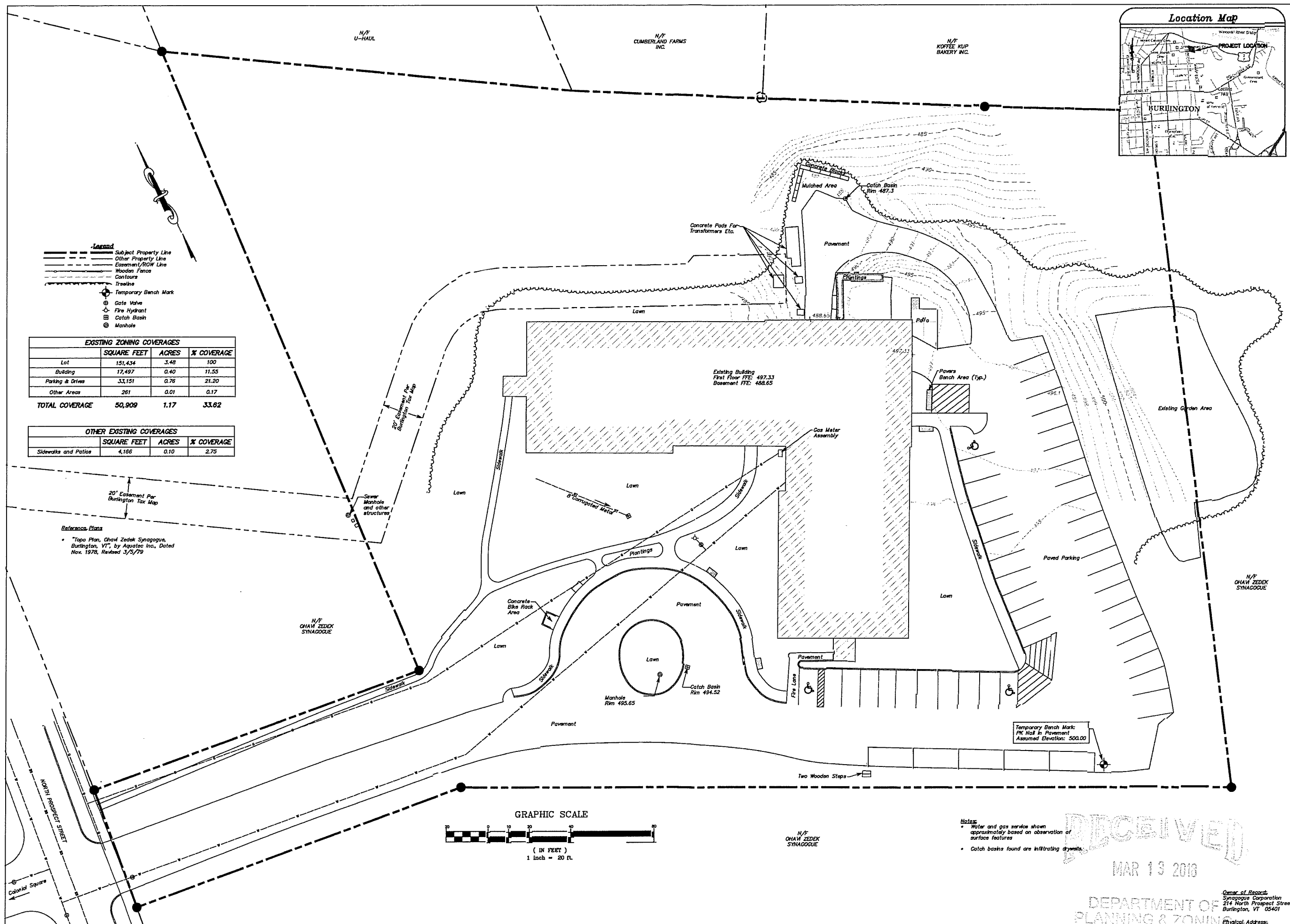


DATE: 2.7.2018

REVISIONS

EXISTING CONDITIONS

C1



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Owner of Record:
Synagogue Corporation
214 North Prospect Street
Burlington, VT 05401
Physical Address:

FERN HILL APARTMENT

214 North Prospect Street
Burlington, VT 05401

OWNER:
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214 North Prospect Street
Burlington, VT 05401

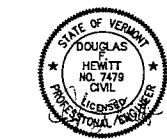
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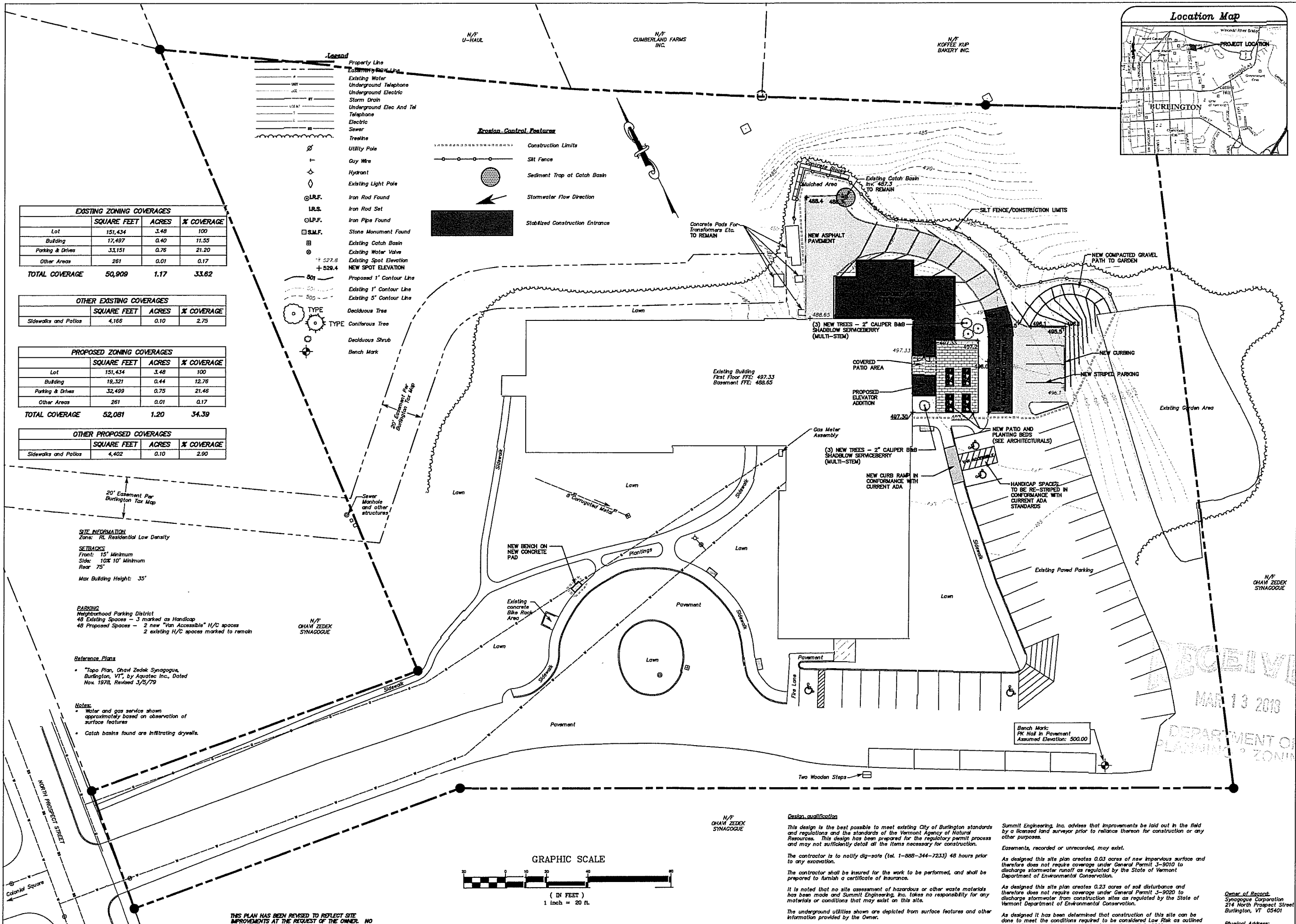


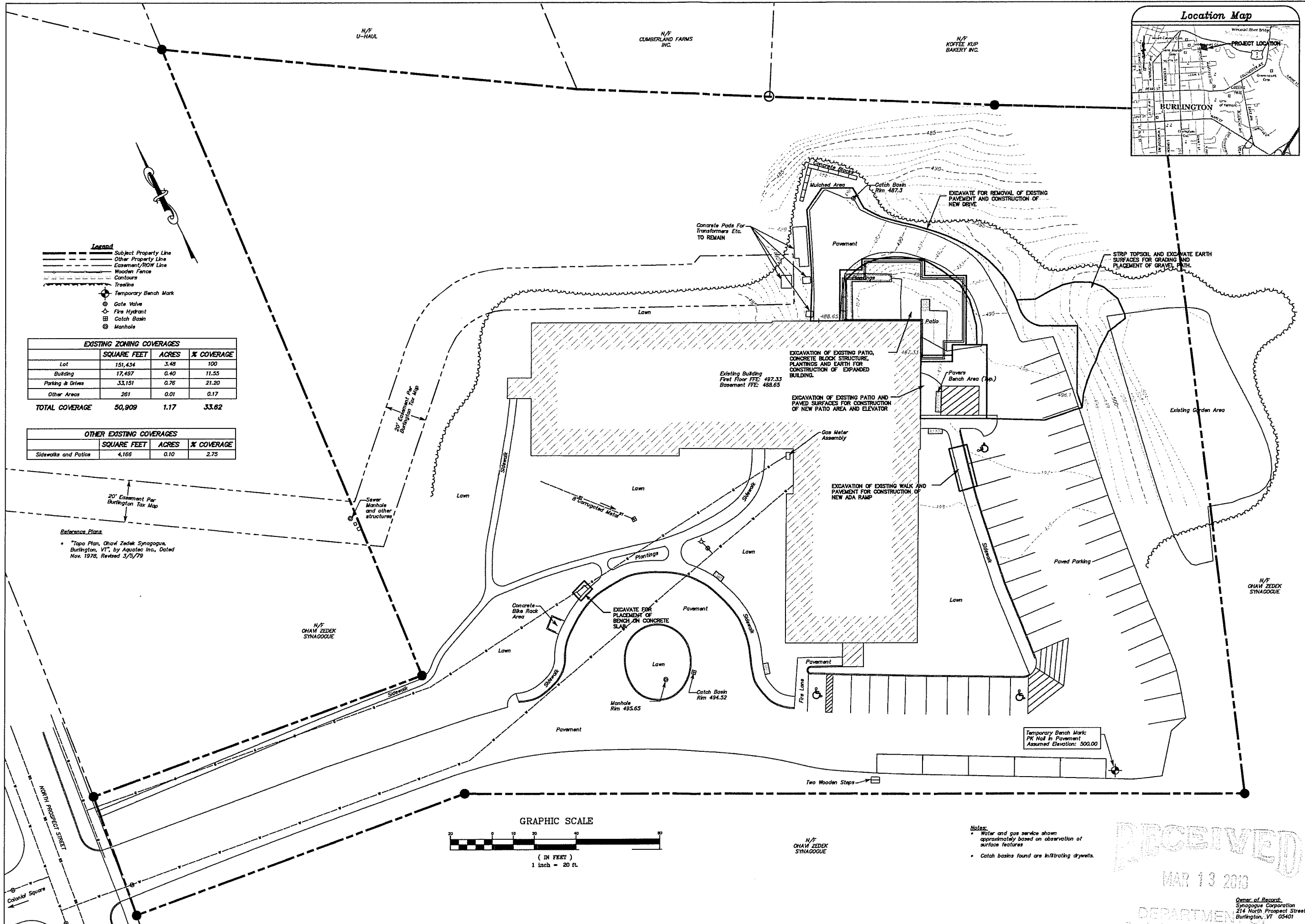
DATE: 2.7.2018

REVISIONS

SITE & EROSION CONTROL PLAN

02





Legend

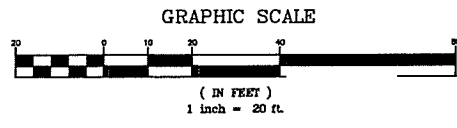
- Subject Property Line
- Other Property Line
- Easement/ROW Line
- Wooden Fence
- Contours
- Tree Line
- Temporary Bench Mark
- Gate Valve
- Fire Hydrant
- Catch Basin
- Manhole

	SQUARE FEET	ACRES	% COVERAGE
Lot	151,434	3.48	100
Building	17,497	0.40	11.55
Parking & Drives	33,151	0.76	21.20
Other Areas	261	0.01	0.17
TOTAL COVERAGE	50,909	1.17	33.62

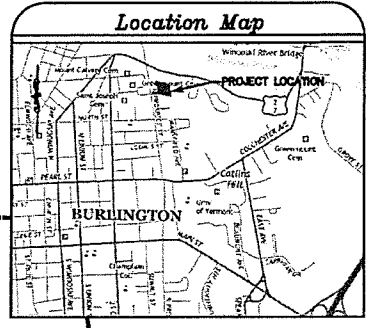
	SQUARE FEET	ACRES	% COVERAGE
Sidewalks and Patios	4,166	0.10	2.75

	SQUARE FEET	ACRES	% COVERAGE
Sidewalks and Patios	4,166	0.10	2.75

Reference Plans:
• "Topo Plan, Ohav Zeдек Synagogue, Burlington, VT", by Aquatic Inc., Dated Nov. 1978, Revised 3/5/79



Notes:
• Water and gas service shown approximately based on observation of surface features
• Catch basins found are infiltrating drywells.



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DATE: 2.7.2018

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DEMOLITION PLAN

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Owner of Record:
Synagogue Corporation
214 North Prospect Street
Burlington, VT 05401

FERN HILL
APARTMENTS

214 North Prospect Street
Burlington, VT 05401

OWNER:
Synagogue Corporation
214 North Prospect Street
Burlington, VT 05401

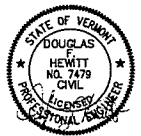
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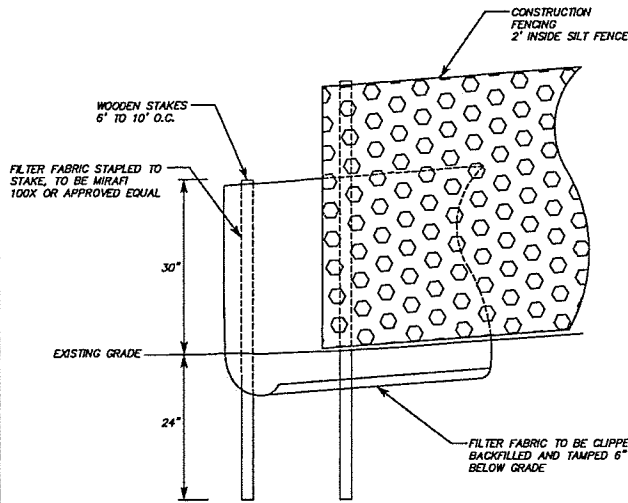


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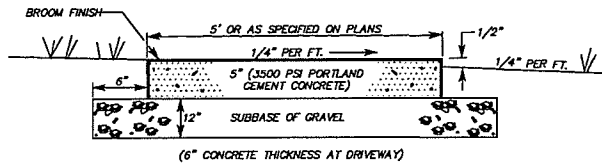
SITE & EROSION
CONTROL DETAILS

C4



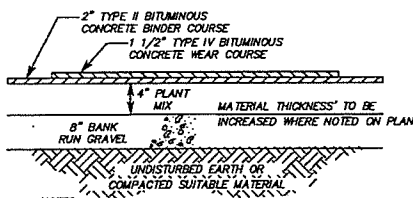
NOTES:
INSTALL SILT FENCES AT TOES OF UNPROTECTED SLOPES AND AS PARALLEL TO CONTOURS AS POSSIBLE. CURVE THE ENDS OF THE FENCE UP INTO THE SLOPE. REMOVE SEDIMENT WHEN ACCUMULATED TO HALF THE HEIGHT OF THE FENCE. CONTRACTOR SHALL INSTALL SILT FENCES AT THE TOE OF ALL FILLED OR UNPROTECTED SLOPES CREATED DURING CONSTRUCTION. NOT NECESSARILY REFLECTED ON FINAL PLANS. SILT FENCES ARE TO BE MAINTAINED UNTIL SLOPES ARE STABILIZED, AND REMAIN THE PROPERTY OF THE CONTRACTOR.

SILT/CONSTRUCTION FENCE EROSION CONTROL TYPICAL
N.T.S.



NOTE:
CONSTRUCT EXPANSION & CONTRACTION JOINTS EVERY 20' WITH DUMMY JOINTS EVERY 5'.

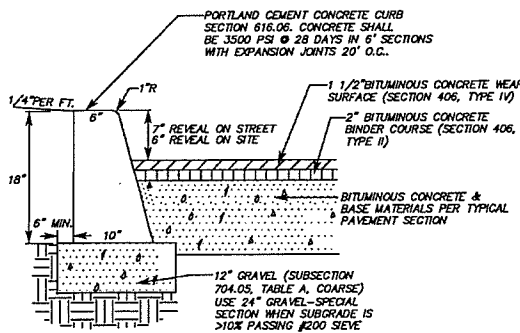
SIDEWALK TYPICAL
N.T.S.



NOTES:
SUBBASE AND BASE LAYERS SHALL BE COMPACTED TO MIN. 95% STANDARD PROCTOR IN 6\"/>

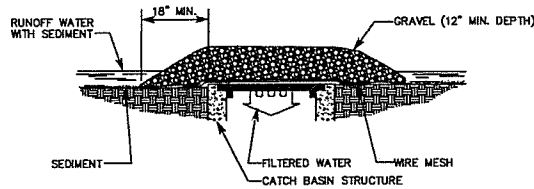
*SECTION TO BE USED WHERE RECLAIM IS NOT ADEQUATE

TYPICAL PAVEMENT SECTION
N.T.S.



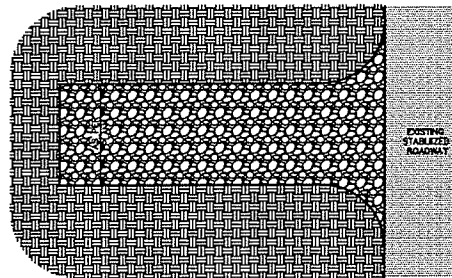
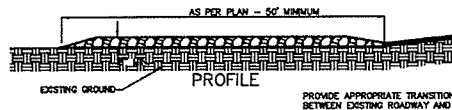
NOTE:
REFERENCED SPECIFICATION SECTIONS SHALL BE IN CONFORMANCE WITH THE VERMONT AGENCY OF TRANSPORTATION STANDARD SPECIFICATION FOR CONSTRUCTION, CURRENT EDITION.

CURB AND PAVEMENT TYPICAL
N.T.S.



1. A WIRE MESH SHALL BE PLACED OVER THE DROP INLET OR CURB OPENING SO THAT THE ENTIRE OPENING AND A MINIMUM OF 12 INCHES AROUND THE OPENING ARE COVERED BY THE MESH. THE MESH MAY BE ORDINARY HARDWARE CLOTH OR WIRE MESH WITH OPENINGS UP TO 1/4 INCH.
2. THE WIRE MESH SHALL BE COVERED WITH CLEAN COARSE AGGREGATE SUCH AS CRUSHED STONE FOR A MINIMUM DEPTH OF 12 INCHES. CRUSHED STONE SHALL BE BEDDING STONE FOR SEWERS (ASTM STONE SIZE NO. 67). SEE SPECIFICATIONS.
3. THE COARSE AGGREGATE SHALL EXTEND AT LEAST 18 INCHES BEYOND ALL SIDES OF THE CATCH BASIN/DRAIN OPENING.
4. THIS SEDIMENTATION CONTROL SHALL BE UTILIZED AT ALL CATCH BASINS THAT WILL RECEIVE RUNOFF FROM DISTURBED AREAS.

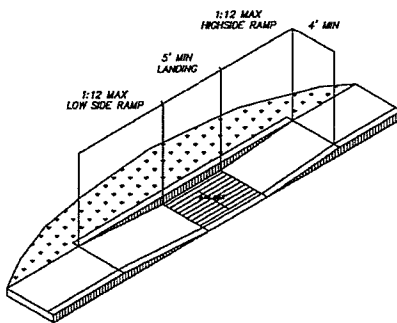
**SEDIMENTATION CONTROL
AT CATCH BASIN**
N.T.S.



NOTES:

1. STONE SHALL BE 1.5 TO 4 INCHES WITH A MINIMUM THICKNESS OF 8 INCHES.
2. LENGTH, WIDTH AND RETURN RADII SHALL BE AS SHOWN ON THE APPLICABLE CONSTRUCTION STABILIZATION PLAN.
3. MAINTENANCE OF ENTRANCE WILL BE NECESSARY TO PREVENT TRACKING OF SEDIMENT OFF SITE. THIS MAY INCLUDE ADDING STONE, AND/OR REMOVING AND REPLACING STONE.
4. THE EMPLOYMENT OF APPROVED ALTERNATIVE METHODS OF REMOVING SEDIMENT FROM VEHICLE PRIOR TO EXITING SITE IS ENCOURAGED TO MINIMIZE REQUIRED MAINTENANCE OF STABILIZED ENTRANCE.
5. CONSTRUCT STABILIZED APRON AROUND BUILDING AS SHOWN ON THE PLAN, AND WITH THE PROFILE SHOWN ABOVE.

STABILIZED CONSTRUCTION ENTRANCE
NOT TO SCALE



PARALLEL HANDICAP RAMP
N.T.S.

**EROSION PREVENTION AND SEDIMENT
CONTROL STABILIZATION NOTES:**

1. MULCH SHALL BE APPLIED TO ALL DISTURBED AREAS AT 2 TONS PER ACRE. MULCH SHALL CONSIST OF AIR-DRIED HAY OR STRAW FREE OF SEEDS AND COARSE MATERIALS.

2. TOPSOIL PILES SHALL BE MULCHED AND RINGED WITH SILT FENCE.

3. DISTURBED SOILS TO BE STABILIZED AS FOLLOWS:

CHANNEL SLOPE 1% TO 5% > 5%	LINING NORTH AMERICAN GREEN S150 STONE RIP RAP
SIDE SLOPES <3:1 >3:1 >2:1	LINING MULCH NORTH AMERICAN GREEN S150 OR EQUAL NORTH AMERICAN GREEN SC250 OR EQUAL

4. LIME MAY BE APPLIED TO ACHIEVE SOIL PH OF 6.5 FOR AREAS TO BE SEEDED.

5. APPLY COMMERCIAL FERTILIZER AT 1.0 LBS./1,000SQ. FT. OF N20, P5 AND K20, IF REQUIRED.

6. LIME AND FERTILIZER SHALL BE MIXED THOROUGHLY INTO THE SEEDBED DURING SOIL PREPARATION.

7. GRASSED CHANNELS SHALL HAVE A MIN. OF 4\"/>

8. DISTURBED SOILS SHALL BE SEEDING ACCORDING TO THE FOLLOWING TABLE:

SEEDING RATES FOR TEMPORARY STABILIZATION:			
APRIL 15 - SEPT. 15: RYEGRASS (ANNUAL OR PERENNIAL: 20 LBS./ACRE)			
SEPT. 15 - APRIL 15: WINTER RYE (120 LBS./ACRE)			
SEEDING RATES FOR FINAL STABILIZATION:			
CHOOSE FROM:	VARIETY	LBS./ACRE	LBS./1000 SQ. FT.
BIRDSFOOT TREFOIL OR COMMON WHITE CLOVER PLUS TALL FESCUE	EMPRE/PARDEE	5'	0.1
PLUS REDTOP OR RYEGRASS (PERENNIAL)	COMMON	8	0.2
	KY-31/RIBEL	10	0.25
	COMMON	2	0.05
	PENNFINE/LINN	5	0.1

* - MIX 2.5 LBS. EACH OF EMPRE AND PARDEE OR 2.5 LBS. OR BIRDSFOOT AND 2.5 LBS. WHITE CLOVER PER ACRE.

**LIMIT-OF-DISTURBANCE CORDON
CONSTRUCTION SPECIFICATIONS**

1. LIMIT OF DISTURBANCE CORDON SHALL BE 3-FOOT HIGH ORANGE "CONSTRUCTION" SAFETY FENCE OR APPROVED EQUIVALENT, AND SHALL BE LOCATED AS SHOWN ON THE APPLICABLE PHASE PLAN. INSTALLATION OF PERMANENT SECURITY FENCING IS ALSO ACCEPTABLE.
2. SAID FENCE SHALL BE SUPPORTED BY STEEL "V" OR "T" TYPE POSTS PLACED AT MAXIMUM 16-FOOT INTERVALS.
3. FENCE SHALL BE WIRE OR "ZIP" TIED TO THE SUPPORT POSTS.
4. THE FENCE SHALL BE MAINTAINED IN A WORKMAN LIKE MANNER, AND SHALL REMAIN IN PLACE UNTIL FINAL SITE STABILIZATION IS ACHIEVED.

**EROSION PREVENTION AND SEDIMENT CONTROL
CONSTRUCTION NOTES:**

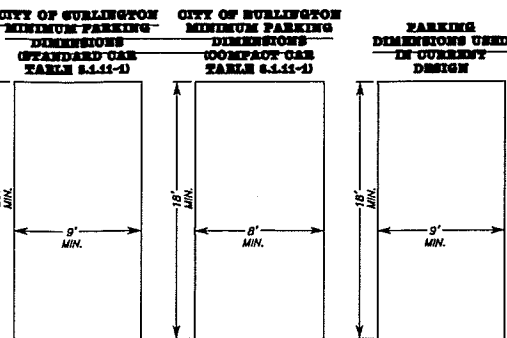
1. NEW LOT OWNERS/CONTRACTORS MUST COMPLY WITH THE EROSION PREVENTION AND SEDIMENT CONTROL STANDARDS OF THE CITY OF BURLINGTON.
2. THE ROADWAYS ADJACENT TO THE CONSTRUCTION ARE TO BE INSPECTED AT THE END OF EACH CONSTRUCTION DAY AND SWEEP AS NECESSARY.
3. ALL TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES MUST BE REMOVED WITHIN 30 DAYS AFTER FINAL SITE STABILIZATION OR AFTER AREAS ARE NO LONGER NEEDED, UNLESS OTHERWISE AUTHORIZED.
4. ALL AREAS MUST HAVE TEMPORARY OR PERMANENT STABILIZATION WITHIN 14 DAYS OF INITIAL DISTURBANCE. AFTER THIS TIME ANY DISTURBANCE IN THE AREAS MUST BE STABILIZED AT THE END OF EACH WORK DAY. THE FOLLOWING EXCEPTIONS APPLY:
 - STABILIZATION IS NOT REQUIRED IF WORK IS TO CONTINUE IN THE AREA WITHIN THE NEXT 24 HOURS AND THERE IS NO PRECIPITATION FORECAST WITHIN THE NEXT 24 HOURS.
 - STABILIZATION IS NOT REQUIRED IF THE WORK IS OCCURRING IN A SELF-CONTAINED EXCAVATION (I.E. NO OUTLET) WITH A DEPTH OF 2 FEET OR GREATER (E.G. HOUSE FOUNDATION EXCAVATION, UTILITY TRENCHES)
5. ALL EROSION CONTROL MEASURES MUST BE INSPECTED AT A FREQUENCY OF EVERY 7 DAYS OR WITHIN 24 HOURS OF A PRECIPITATION EVENT CAUSING RUNOFF TO LEAVE CONSTRUCTION SITE, AND REPLACED OR REPAIRED AS NECESSARIES.

EROSION CONTROL SEQUENCING

1. DELINEATE THE AREA TO BE DISTURBED WITH LIMIT OF DISTURBANCE CORDON, SILT FENCE OR CONSTRUCTION FENCING AS APPROPRIATE.
2. INSTALL STABILIZED CONSTRUCTION ENTRANCES.
3. INSTALL TEMPORARY AND PERMANENT EROSION CONTROL FEATURES AS APPROPRIATE AND AS DESCRIBED IN THESE DETAILS.

ADDITIONAL EROSION PREVENTION AND SEDIMENT CONTROL MEASURES MUST BE IMPLEMENTED DURING THE WINTER CONSTRUCTION SEASON IF EARTH DISTURBANCE IS PLANNED DURING THIS TIME (OCTOBER 15TH TO APRIL 15TH). CONTRACTOR SHALL READ AND UNDERSTAND THE FOLLOWING ITEMS:

1. NON PROTECTION MUST BE INSTALLED AFTER SEPTEMBER 15TH TO BARE SOILS INCLUDING EROSION CONTROL BLANKETS AND/OR HEAVY MULCH LAYER.
2. APPLY A MINIMUM OF 3 INCHES OF MULCH WITH AN 80-90% GROUND COVER. MULCH SHALL BE TRACKED OR STABILIZED WITH NETTING IN OPEN AREAS VULNERABLE TO WIND.
3. PROVIDE ENLARGED ACCESS POINTS TO THE SITE, STABILIZED TO PROVIDE FOR SNOW STOCKPILING.
4. LIMITS OF DISTURBANCE MOVED OR REPLACED TO REFLECT BOUNDARY OF WINTER WORK.
5. CLEARED SNOW SHALL BE STOCKPILED DOWNSLOPE OF ALL AREAS OF DISTURBANCE AND OUT OF STORMWATER TREATMENT STRUCTURES.
6. A MINIMUM 25 FOOT BUFFER SHALL BE MAINTAINED ON PERIMETER CONTROLS SUCH AS SILT FENCE.
7. IN AREAS OF DISTURBANCE THAT DRAIN TO A WATERBODY WITHIN 100 FEET, TWO ROWS OF SILT FENCE MUST BE INSTALLED ALONG THE CONTOUR.
8. DRAINAGE STRUCTURES MUST BE KEPT FREE AND CLEAR OF SNOW AND ICE DAMS.
9. SILT FENCE AND OTHER PRACTICES MUST BE INSTALLED AHEAD OF FROZEN GROUND.
10. DISTURBED SOILS MUST BE STABILIZED AT THE END OF EACH WORK DAY, UNLESS NO PRECIPITATION IS FORECAST WITHIN 24 HOURS AND WORK WILL RESUME WITHIN 24 HOURS IN THE SAME DISTURBED AREA. IN AREAS THAT COLLECT AND RETAIN RUNOFF SUCH AS HOUSE FOUNDATIONS AND UTILITY TRENCHES DAILY STABILIZATION IS NOT REQUIRED.
11. PRIOR TO STABILIZATION SNOW AND ICE SHALL BE REMOVED TO LESS THAN 1 INCH THICKNESS.
12. USE STONE TO STABILIZE AREAS SUCH AS THE PERIMETER OF BUILDINGS UNDER CONSTRUCTION OR WHERE CONSTRUCTION VEHICULAR TRAFFIC IS ANTICIPATED.



PARKING DIMENSIONS
N.T.S.

FERN HILL
APARTMENT

214 North Prospect Street
Burlington, VT 05401

OWNER:
Synagogue Corporation
214 North Prospect Street
Burlington, VT 05401

ARCHITECT:
S2 Architecture
5224 Shelburne Rd.
Shelburne, VT 05482
(802) 983-5595

CIVIL ENGINEER:
Summit Engineering, Inc.
1233 Shelburne Rd., C-2
South Burlington, VT 05403
(802) 658-5388

STRUCTURAL ENGINEER:
Knight Consulting Engineers, Inc.
51 Knight Lane
Williston, VT 05495
Phone: (802) 879-6343

MECHANICAL ENGINEER:
Engineering Services of Vermont
9 Washington Street
Rutland, VT 05701
Phone: (802) 855-8091

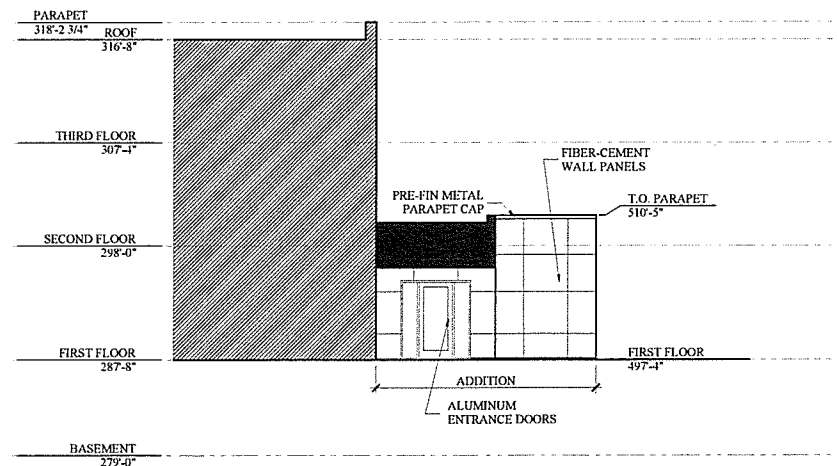
ELECTRICAL ENGINEER:
Engineering Services of Vermont
9 Washington Street
Rutland, VT 05701
Phone: (802) 855-8091

ISSUED
FOR
PERMIT

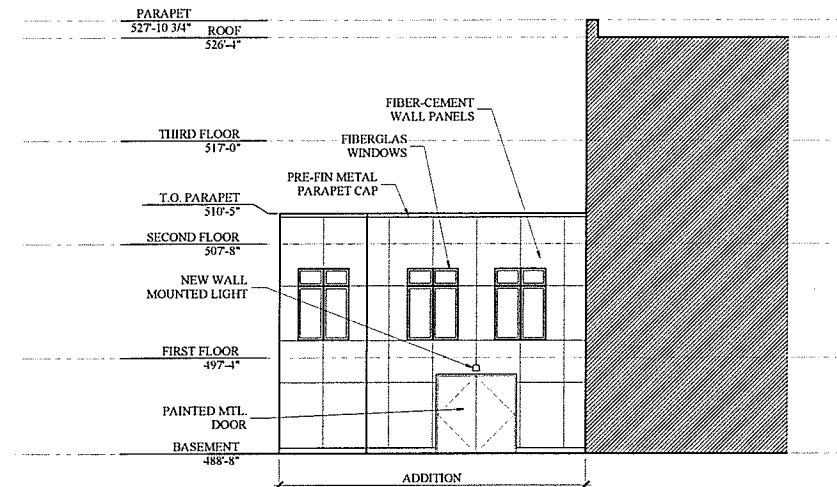
DATE: 3.5.18

REVISIONS

PROPOSED EXTERIOR
ELEVATIONS



4 PROPOSED SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



3 PROPOSED WEST ELEVATION
SCALE: 1/8" = 1'-0"



2 PROPOSED EAST ELEVATION
SCALE: 1/8" = 1'-0"



1 PROPOSED NORTH ELEVATION
SCALE: 1/8" = 1'-0"

DEPARTMENT OF
PLANNING & ZONING

MAR 13 2018

SHEEHEY FURLONG & BEHM
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SARAH L. J. ACEVES
DAVID T. AUSTIN
R. JEFFREY BEHM
DEBRA L. BOUFFARD
JUSTIN A. BROWN
IAN P. CARLETON
ARLINE P. DUFFY
PETER I. DYSART
MICHAEL G. FURLONG
JEFFREY W. LIVELY
KEVIN A. LUMPKIN
DIANE M. MCCARTHY
WALTER A. MCCARTHY
OWEN J. MCCLAIN
MARK E. MELENDY
RENEE L. MOBBS
DAPHNE MORITZ
CRAIG S. NOLAN
LEIGH K. PHILLIPS
PETER G. RAYMOND
HEATHER E. ROSS
JAMES W. SPINK

PAUL D. SHEEHEY (1919-2004)

RECEIVED
SEP 22 2017

DEPARTMENT OF
PLANNING & ZONING

30 MAIN STREET
POST OFFICE BOX 66
BURLINGTON, VERMONT 05402
TELEPHONE (802) 864-9891
FACSIMILE (802) 864-6815

18 ELM STREET
WOODSTOCK, VERMONT 05091
TELEPHONE (802) 457-9492
FACSIMILE (802) 457-9158

WWW.SHEEHEYVT.COM

VIA HAND-DELIVERY

September 22, 2017

City of Burlington
Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

Re: Zoning Permit Application/Request for Determination

To Whom It May Concern:

Please find enclosed a Zoning Permit Application/Request for Determination, together with a check in the amount of \$80.00 for the application fee.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.



Kevin A. Lumpkin

KAL/dms
Enclosures

RECEIVED
SEP 22 2017

REQUEST FOR DETERMINATION

DEPARTMENT OF
PLANNING & ZONING

Applicant Priscilla Rassin Toomey, trustee of the Isabel Rassin Revocable Trust (dated Feb. 3, 1989), requests a determination by Planning & Zoning as to the property located at 59-61 University Terrace (the "Property") as follows.

The Property is a duplex, each side of which has 5 bedrooms. Since at least 1986, the Property has been operated as a rental property, with each of the bedrooms being rented out and occupied by tenants. At no time has the Property's use been discontinued for a period of one year or more since 1986.

On September 11, 2017, Applicant received a notice from Zoning Specialist Jeanne Frances stating that the Property is not in compliance with the "4-Unrelated Ordinance." Upon information and belief, the 4-Unrelated Ordinance came into effect in 2000 as it applies to the Property.

For the foregoing reasons, the applicant requests that Planning & Zoning issue a determination that the Property's use is a pre-existing, non-conforming use.

In support of this request for determination, the applicant attaches the following documentation:

1. The affidavit of Priscilla Toomey, who has served as trustee for the trust that owns the property for over 20 years; and
2. The affidavit of Curt Wheeler, who has served as the manager of the Property since 1986.

If you require or would be assisted by any additional documents or other forms of evidence, please do not hesitate to contact my attorney, Kevin Lumpkin, at 864-9891 to discuss what additional evidence would help you make the requested determination.

RECEIVED

SEP 22 2017

Dated at Westchester, NY this 21st day of September, 2017, DEPARTMENT OF PLANNING & ZONING

Priscilla Rassin Toomey, Trustee
Priscilla Rassin Toomey, Trustee

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SEP 22 2017

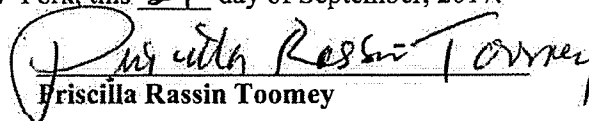
AFFIDAVIT

DEPARTMENT OF
PLANNING & ZONING

I, Priscilla Rassin Toomey, being duly sworn, hereby depose and state:

1. I am personally familiar with all of the facts deposed herein and I make this Affidavit based on my own knowledge.
2. I am the Trustee of the Trust that owns the property located at 59-61 University Terrace in Burlington, Vermont (the "Property").
3. I became Trustee in 1996.
4. In my capacity as Trustee, I have traveled to Burlington many times in connection with the Trust's ownership of the Property.
5. The Property is a duplex, each side of which has five bedrooms.
6. Since at least 1986, the Property has been rented out to tenants that occupy each of the bedrooms.
7. At no time since 1986 has the Property's use as described above been discontinued for a period of one year or more.

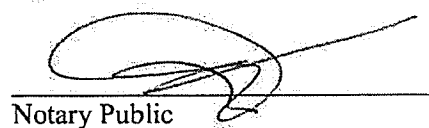
Dated at Westchester, New York, this 21 day of September, 2017.


Priscilla Rassin Toomey

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS

Subscribed and sworn this 21 day of ~~January~~ ^{September}, 2017.

Before me:


Notary Public

My Commission expires:

KIRK O. WARNER
Notary Public, State of New York
No. 01WA6092288
Qualified in Bronx County
Commission Expires May 19, 2019

RECEIVED

SEP 22 2017

AFFIDAVIT

DEPARTMENT OF
PLANNING & ZONING

I, Curtis J. Wheeler, being duly sworn, hereby depose and state:

1. I am personally familiar with all of the facts deposed herein and I make this Affidavit based on my own knowledge.
2. I have served as the Property Manager for the property located at 59-61 University Terrace in Burlington, Vermont (the "Property") since March of 1986, first for Isabel and Irwin Rassin and then for Priscilla Rassin Toomey as trustee for the trust that owns the Property beginning in 1996.
3. The Property is a duplex, each side of which has five bedrooms.
4. Since at least 1986, the Property has been rented out to tenants that occupy each of the bedrooms.
5. At no time since 1986 has the Property's use as described above been discontinued for a period of one year or more.

Dated at Burlington, Vermont, this 21st day of September, 2017.

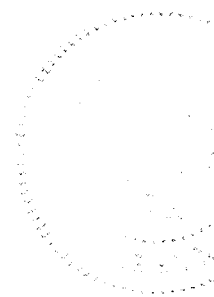

Curtis J. Wheeler

STATE OF VERMONT)
COUNTY OF Chittenden) SS

Subscribed and sworn this 21st day of September, 2017.

Before me: Karen Landry
Notary Public

My Commission expires: 2/10/2019



SHEEHEY FURLONG & BEHM
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

RECEIVE
NOV 22 2017

DEPARTMENT OF
PLANNING & ZONING

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JAMES W. SPINK

PAUL D. SHEEHEY (1919-2004)

November 20, 2017

Scott Gustin
City of Burlington
Planning and Zoning
149 Church Street
Burlington, VT 05401-8489

Re: 59-61 University Terrace

Dear Scott:

I write in connection with the pending request for a determination that my client's property at 59-61 University Terrace is grandfathered as a pre-existing, nonconforming use. Simultaneous with the application, we have submitted evidence that each side of the duplex has been rented continuously to five tenants since prior to the passage of the first 4-unrelated ordinance in 2000.

I understand from my conversations with you that the City's position is that the prohibition on multiple unrelated individuals living together dates back further than the 4-unrelated ordinance to 1970, when the zoning bylaws were amended to define a family as "[o]ne or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities[,] convents, and communes." In taking that position, the City relies on the Environmental Court's decision in *In re Mentos*, No. 132-6-00 Vtec, 2000 WL 34151285 (May 10, 2002) (Wright, J.).

We disagree with the City's interpretation of the phrase "group quarters." Based on my research, the phrase "group quarters" is not an oft-used term, and it is difficult to define. Indeed,

the only major instance of its use that I was able to uncover is by the Census Bureau. The Census Bureau defines group quarters as:

[A] place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other. Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

See https://www2.census.gov/programs-surveys/acs/tech_docs/group_definitions/2010GQ_Definitions.pdf.

“Group quarters” is not defined in the 1970 Ordinance, but the references to dormitories, sororities, fraternities, convents, and communes strongly suggest that it was meant to apply to the kinds of arrangements described by the Census Bureau above – atypical housing arrangements involving large numbers of people.

Five roommates living together does not fit within the Census Bureau’s definition of “group quarters,” nor does it resemble a dormitory, sorority, fraternity, convent, or commune. To the extent that the *Mentes* decision opined that a group of roommates are living in a “commune” because they “are living as a group and share household chores and responsibilities,” we respectfully suggest that the *Mentes* decision was decided incorrectly.¹

Moreover, the definition of “group quarters” is not enforceable because it is unconstitutionally vague. Regulations are unconstitutionally vague when they “fail to provide sufficient notice for ordinary people to understand what conduct is prohibited, or allow arbitrary and discriminatory enforcement.” *In re Beliveau NOV*, 2013 VT 41, ¶ 15, 194 Vt. 1. The 1970 definition of “group quarters” meets both of those tests. It is impossible for an ordinary person to understand how many unrelated persons – and under what circumstances – would convert the use of a property into “group quarters.” Stretched to its limit, the definition of “group quarters” could be applied to two unrelated people living together. And *because* “group quarters” has no readily discernible definition, holds the potential for arbitrary or discriminatory enforcement.²

For those reasons, we submit that in order to qualify as a pre-existing, nonconforming use, we must show current use only back to the passage of the first 4-unrelated ordinance in 2000. Because we have provided that proof, we request that you grant the permit application as submitted.

¹ It is worth noting that the *Mentes* decision was not appealed to the Vermont Supreme Court, and so it is not mandatory precedent for Vermont courts.

² That is not to say that the City has arbitrarily or discriminatorily enforced the definition – only that the vagueness of the definition allows for such enforcement.

Scott Gustin
November 20, 2017
Page 3

Please do not hesitate to contact me at (802) 864-9891 with any questions.

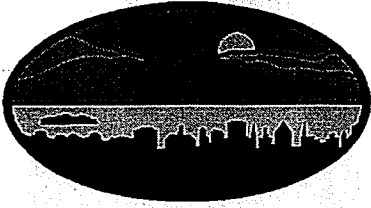
Sincerely,

SHEEHEY FURLONG & BEHM P.C.

A handwritten signature in black ink, appearing to be 'K. Lumpkin', with a stylized flourish extending to the right.

Kevin A. Lumpkin

KAL/dms



ZONING DETERMINATION

ADVERSE

City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 09/22/2017

Appeal Expiration Date: 12/14/2017

Project Location: 59-61 UNIVERSITY TERRACE

District:

Owner: Priscilla R. Toomey

Ward: 8E

Address: 44 Merriam Place
Bronxville, NY 10708

Tax ID: 050-3-036-000

Determination Type: Residential - Other

Determination Description:

Determination of pre-existing, non-conforming use of 5-person occupancy (unrelated tenants) of each of the two duplex units.

Zoning Review #18-0323DT

Decision Type: Administrative

Decision: Adverse

See Determination Findings

Decision Date: November 29, 2017

Zoning Administrative Officer

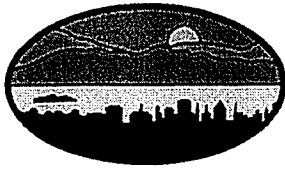
An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on December 14, 2017.

Fee Type	Amount	Paid in Full	Balance Due: \$0.00
Application Fee:	\$80.00	Yes	Date Paid: _____ Check # _____

Building Permit Required: **No**

Permit Received By: _____

Date: _____



City of
Burlington, Vermont
149 Church Street

Zoning Determination – Findings

ZP #: 18-0323DT

Tax ID: 050-3-036-000

Issue Date: November 29, 2017

Decision: Adverse

Property Address: 59-61 UNIVERSITY TERRACE

Description: Determination of pre-existing, non-conforming use of 5-person occupancy (unrelated tenants) of each of the two duplex units.

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize 5-person occupancy (unrelated tenants) of each of the two duplex units as grandfathered (legally pre-existing non-conformity). The City reviewed the following documents/evidence to form its determination:

- The City's zoning permit records
- The City's property assessment records
- The City's rental registration records
- The Sanborn maps from 1919, 1938, 1962, and 1984
- Affidavits of
 - Priscilla Rassin Toomey
 - Curtis J. Wheeler
- *In re: Appeal of John Mentis*, Docket No. 132-6-00 Vtec (Vt. Env'tl. Div. October 22, 2001 and May 10, 2002)
- Burlington zoning regulations including, but not limited to, the following versions: 2008 Comprehensive Development Ordinance and as amended, ZA #2000-01 Residential Districts Established passed November 22, 2000, and Burlington Zoning Ordinance approved December 21, 1970

Based on the review of these items, it is the determination of the Planning and Zoning Department that insufficient evidence has been provided to grandfather 5-person occupancy (unrelated tenants) of the subject dwelling units. Grandfathered or pre-existing legal non-conformities pertain to lots/parcels/structures/uses that are non-compliant with a current zoning regulation, but were compliant prior to a change in the regulations. While Sec. 4.4.5 (d) 5, C, *Residential Occupancy Limits*, was approved in November 2000, pursuant to *In re: Appeal of John Mentis*, Docket No. 132-6-00 Vtec (Vt. Env'tl. Div. October 22, 2001 and May 10, 2002), the city's zoning ordinance in effect prior to the November 2000 amendment prohibited occupancy of dwelling units as "group quarters". The case found "shared student housing" to be "group quarters." The inclusion of the "group quarters" exclusion can be found in the Burlington Zoning Ordinance starting in 1970 (Burlington Zoning Ordinance approved December 21, 1970). As such, evidence would need to be provided that the occupancy of the requested units was 5 unrelated persons prior to December 21, 1970 and has continued as such. Such evidence was not provided and therefore, the grandfathering determination request must be DENIED.

SHEEHEY FURLONG & BEHM
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

RECEIVED
DEC 14 2017

DEPARTMENT OF
PLANNING & ZONING

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HEATHER E. ROSS
JAMES W. SPINK

PAUL D. SHEEHEY (1919-2004)

VIA HAND-DELIVERY

December 14, 2017

City of Burlington
Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

Re: Appeal of Administrative Decision No. 18-0323DT

To Whom It May Concern:

Please find enclosed an Appeal of an Administrative Decision Request with attached supplement providing pertinent information, for appeal of the above-referenced Administrative Decision, together with our firm check in the amount of \$250.00 for the appeal filing fee. Also enclosed is my Notice of Appearance on behalf of the appellant.

Please contact me if you have any questions.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.



Kevin A. Lumpkin

**CITY OF BURLINGTON
DEVELOPMENT REVIEW BOARD**

RECEIVED
DEC 14 2017

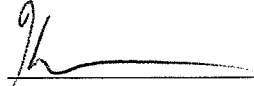
DEPARTMENT OF
PLANNING & ZONING

**IN RE: APPEAL OF PRISCILLA RASSIN
TOOMEY, AS TRUSTEE OF THE ISABEL
RASSIN REVOCABLE TRUST, OF
ADMINISTRATIVE DETERMINATION
NO. 18-0323DT**

NOTICE OF APPEARANCE

NOW COMES Kevin A. Lumpkin, Esq., of the law firm of Sheehey Furlong & Behm P.C., and hereby enters his appearance on behalf of appellant Priscilla Rassin Toomey, as Trustee of the Isabel Rassin Revocable Trust, in the above-captioned matter.

Dated at Burlington, Vermont, this 14th day of December, 2017.



Kevin A. Lumpkin, Esq.
Sheehey Furlong & Behm P.C.
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RECEIVED
DEC 14 2017
DEPARTMENT OF
PLANNING & ZONING

SUPPLEMENT TO
APPEAL OF ADMINISTRATIVE DECISION REQUEST -
ADMINISTRATIVE DETERMINATION NO. 18-0323DT

Pursuant to Section 12.2.2, Appeals of Administrative Officer Decisions, of the 2008 Comprehensive Development Ordinance, as amended, of the City of Burlington, Applicant Priscilla Rassin Toomey, trustee of the Isabel Rassin Revocable Trust (dated Feb. 3, 1989), appeals Administrative Determination No. 18-0323DT issued on November 29, 2017, regarding the property located at 59-61 University Terrace (the "Property") as follows.

Applicant requested a determination by the Planning & Zoning office that the property at 59-61 University Terrace is grandfathered as a pre-existing, nonconforming use. Simultaneous with the application, the applicant submitted evidence that each side of the duplex has been rented continuously to five tenants since prior to the passage of the first 4-unrelated ordinance in 2000.

In the Administrative Determination, the Planning & Zoning office did not disagree that the applicant submitted sufficient evidence to establish grandfathering back to 2000. Instead, it took the position that the prohibition on multiple unrelated individuals living together dates back further than the 4-unrelated ordinance to 1970, when the zoning bylaws were amended to define a family as "[o]ne or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities[,], convents, and communes." In taking that position, Planning & Zoning relies on the Environmental Court's decision in *In re Mentos*, No. 132-6-00 Vtec, 2000 WL 34151285 (May 10, 2002) (Wright, J.).

Applicant disagrees with the Planning & Zoning's interpretation of the phrase "group quarters." Based on research conducted by undersigned counsel, the phrase "group quarters" is

not an frequently used term, and it is difficult to define. Indeed, the only major instance of its use that undersigned counsel was able to uncover is by the Census Bureau. The Census Bureau defines group quarters as:

[A] place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other. Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

See https://www2.census.gov/programs-surveys/acs/tech_docs/group_definitions/2010GQ_Definitions.pdf.

“Group quarters” is not defined in the 1970 Ordinance, but the references to dormitories, sororities, fraternities, convents, and communes strongly suggest that it was meant to apply to the kinds of arrangements described by the Census Bureau above – atypical housing arrangements involving large numbers of people.

Five roommates living together does not fit within the Census Bureau’s definition of “group quarters,” nor does it resemble a dormitory, sorority, fraternity, convent, or commune. To the extent that the *Mentes* decision opined that a group of roommates are living in a “commune” because they “are living as a group and share household chores and responsibilities,” applicant respectfully suggests that the *Mentes* decision was decided incorrectly.¹

Moreover, applicant argues the definition of “group quarters” is not enforceable because it is unconstitutionally vague. Regulations are unconstitutionally vague when they “fail to provide sufficient notice for ordinary people to understand what conduct is prohibited, or allow arbitrary and discriminatory enforcement.” *In re Beliveau NOV*, 2013 VT 41, ¶ 15, 194 Vt. 1.

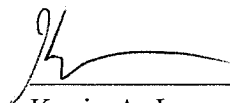
¹ It bears noting that the *Mentes* decision was not appealed to the Vermont Supreme Court, and so it is not mandatory precedent for Vermont courts.

The 1970 definition of “group quarters” meets both of those tests. It is impossible for an ordinary person to understand how many unrelated persons – and under what circumstances – would convert the use of a property into “group quarters.” Stretched to its limit, the definition of “group quarters” could be applied to two unrelated people living together. And *because* “group quarters” has no readily discernible definition, holds the potential for arbitrary or discriminatory enforcement.²

For those reasons, in order to qualify as a pre-existing, nonconforming use, applicant must show current use only back to the passage of the first 4-unrelated ordinance in 2000. Applicant has provided that proof. For that reason, this Board should reverse Planning & Zoning’s decision to require proof dating back to 1970, and direct Planning & Zoning to issue the requested grandfathering determination.

Dated at Burlington, Vermont, this 14th day of December, 2017.

PRISCILLA RASSIN TOOMEY, AS
TRUSTEE OF THE ISABEL RASSIN
REVOCABLE TRUST

By: 
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² That is not to say that the City has arbitrarily or discriminatorily enforced the definition – only that the vagueness of the definition allows for such enforcement.

Department of Planning and Zoning

149 Church Street
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Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Anita Wade, Zoning Clerk



TO: Development Review Board
FROM: Scott Gustin
DATE: March 7, 2018
RE: 18-0323DT; 59-61 University Tr.

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: 8E

Owner/Appellant: Priscilla Rassin Toomey (as Trustee) & Kevin A. Lumpkin, Esq.

Request: Appeal of adverse zoning determination relative to 5-person occupancy (unrelated tenants) of each of the two duplex units.

Overview:

The appellant is seeking a determination relative to occupancy of the dwelling units in the subject duplex. Specifically, the appellant is looking to grandfather the occupancy of each of the two dwelling units by 5 unrelated adults. As the property is located in the Residential – Low Density zone, up to 4 unrelated adults may be allowed. More than 4 may be allowed only by way of Sec. 4.4.5, D, 5, *Residential Occupancy Limits*, and conditional use approval or grandfathering.

The applicant has sought an affirmative grandfathering determination relative to occupancy. Grandfathered status (i.e. pre-existing legal non-conformities) pertains to lots/parcels/structures/uses that are non-compliant with a current zoning regulation, but were compliant prior to a change in the regulations. An adverse determination was issued administratively, and the appellants have appealed to the Development Review Board. The city and appellant worked to settle this matter; however, settlement was not achieved.

The Development Review Board considered a substantially similar appeal involving an apartment building at 2-8 Hickok Place. In that appeal, grandfathered status for 5 – 6 unrelated adult occupancy of several dwelling units was sought. The DRB denied that appeal. It was appealed to Vermont Superior Court Environmental Division where it remains pending. Importantly, the court has affirmed the operative date of December 21, 1970 for proving grandfathered status relative to occupancy.

There is some discrepancy in city records as to the duplex use of the property. Most zoning and assessor records refer to duplex; however, a 1978 zoning permit refers to the then-existing use as a single family dwelling. Sanborn maps from 1962 and 1984 depict a duplex.

The grandfathering request implies occupancy of the duplex units by 5 unrelated adult occupants; however, nothing has been submitted by the appellants that actually demonstrates occupancy by 5 unrelated adult occupants. Information provided only asserts occupancy of all 5 bedrooms in each unit. Occupancy by a family, such as related by kinship, would not require any sort of zoning approval.

Recommendation: **Uphold adverse determination** based on the following findings and conditions:

I. Findings:

The appellant is seeking an affirmative determination that occupancy of the two duplex units by 5 unrelated adults is legitimately grandfathered. Sec. 4.4.5 (d) 5, C, *Residential Occupancy Limits*, of the Comprehensive Development Ordinance (CDO) limits occupancy of all dwelling units within the residential zones to a family as defined in Article 13. The definition of family has several subsections including (c): “No more than four unrelated adults and their children.” This provision of the CDO limits occupancy of dwelling units throughout the city’s residential zones to families with kinship, group homes, “functional families,” or up to 4 unrelated adults. This same provision was originally adopted in November 2000 (in just the RL and RM zones) and was incorporated into the Zoning Ordinance in effect at that time. Prior to adoption of this provision, the city’s zoning regulations prohibited occupancy of dwelling units as “group quarters.” Group quarters includes shared student housing (in re: *Mentes*) similar to the occupancy at 59-61 University Terrace. The prohibition of group quarter occupancy of dwelling units dates back to December 21, 1970.

The duplex units at 59-61 University Terrace are rental apartments. The city’s 2003 rental registration records expressly note 5 unrelated occupants. Seemingly, that occupancy may have continued, and the appellant wishes to have these apartments grandfathered as legitimately pre-existing nonconformities. The determination request was denied and has been appealed to the Development Review Board.

On September 22, 2018, the appellant submitted a zoning determination request seeking grandfathered status for occupancy of the two units at 59-61 University Terrace. Little in the way of evidence was provided – just two affidavits (one from the property manager and one from the trustee). Both affidavits asserted occupancy of all 5 bedrooms in each of the two rental units since 1986 and without interruption of a year or more. Nothing in the affidavits asserted occupancy by unrelated adults. Following review of the determination request, zoning staff contacted the appellant’s attorney and noted that the date for proving grandfathered unrelated adult occupancy of a dwelling unit in the residential – low density zone is December 21, 1970.

On November 22, 2017, appellant’s attorney submitted a letter asserting that reliance on the December 21, 1970 date is incorrect and that the correct date is 2000. No additional documentation in support of the determination request was submitted.

Following a final review of the determination request with the City Attorney’s Office, an adverse determination was issued on November 29, 2017:

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize 5-person occupancy (unrelated tenants) of each of the two duplex units as grandfathered (legally pre-existing non-conformity). The City reviewed the following documents/evidence to form its determination:

- The City's zoning permit records
- The City's property assessment records
- The City's rental registration records
- The Sanborn maps from 1919, 1938, 1962, and 1984
- Affidavits of
 - Priscilla Rassin Toomey
 - Curtis J. Wheeler
- *In re: Appeal of John Mentas*, Docket No. 132-6-00 Vtec (Vt. Env'tl. Div. October 22, 2001 and May 10, 2002)
- Burlington zoning regulations including, but not limited to, the following versions: 2008 Comprehensive Development Ordinance and as amended, ZA #2000-01 Residential Districts Established passed November 22, 2000, and Burlington Zoning Ordinance approved December 21, 1970

Based on the review of these items, it is the determination of the Planning and Zoning Department that insufficient evidence has been provided to grandfather 5-person occupancy (unrelated tenants) of the subject dwelling units. Grandfathered or pre-existing legal non-conformities pertain to lots/parcels/structures/uses that are non-compliant with a current zoning regulation, but were compliant prior to a change in the regulations. While Sec. 4.4.5 (d) 5, C, *Residential Occupancy Limits*, was approved in November 2000, pursuant to *In re: Appeal of John Mentas*, Docket No. 132-6-00 Vtec (Vt. Env'tl. Div. October 22, 2001 and May 10, 2002), the city's zoning ordinance in effect prior to the November 2000 amendment prohibited occupancy of dwelling units as "group quarters". The case found "shared student housing" to be "group quarters." The inclusion of the "group quarters" exclusion can be found in the Burlington Zoning Ordinance starting in 1970 (Burlington Zoning Ordinance approved December 21, 1970). As such, evidence would need to be provided that the occupancy of the requested units was 5 unrelated persons prior to December 21, 1970 and has continued as such. Such evidence was not provided and therefore, the grandfathering determination request must be DENIED.

The appeal of the adverse determination was filed December 14, 2017, within 15 days as required.

The appeal reasserts that the benchmark for grandfathering occupancy dates to the year 2000 (specifically November 22, 2000) when the city adopted its present definition of family and associated occupancy limits in the RL and RM zones rather than to December 21, 1970. In its decision relative to the determination request for grandfathered occupancy at 2-8 Hickok Place, the DRB found that December 21, 1970 is the operative date for grandfathering occupancy of more than 4 unrelated adults in the RL and RM zones. The Vermont Superior Court - Environmental Division has recently reaffirmed that date in its consideration of that appeal.

The central matter here is "grandfathering." As noted in the adverse determination, grandfathered status (i.e. pre-existing legal non-conformities) pertains to lots/parcels/structures/uses that are non-

compliant with a current zoning regulation, but were compliant prior to a change in the regulations. This determination request is not a “Bianchi” or 15-year statute of limitation request; it is a grandfathering request. In order to issue an affirmative grandfathering determination, the appellant in this case would need to demonstrate consistent occupancy of the subject dwellings by 5 unrelated adults to at least December 20, 1970 (a day before the December 21, 1970 amendment).

On December 21, 1970, the city adopted an amended zoning ordinance. In part, the amendments included provision to exclude “group quarters” from the definition of “family.” Then, as now, dwelling units are to be occupied by families. Family was defined as:

One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes.

At that point, the city prohibited occupancy of dwelling units as group quarters. The implied occupancy by unrelated adults of the dwelling units at 59-61 University Terrace amounts to group quarters.

As with the 2-8 Hickok Place appeal, the Mentos case from 2001 and 2002 is fundamentally important to this appeal. The Mentos case, decided by the Vermont Environmental Court, stemmed from an appeal by John Mentos against the Zoning Administrator’s decision not to take enforcement action against the owners of a 7-bedroom home at 36 North Willard Street occupied by seven unrelated students. “Family” and “group quarters” were central to that case. The 1999 zoning regulations in effect at the time contained the same definition of “family” as adopted December 21, 1970. The Court found that “...to fall within the zoning use category of a single detached dwelling, the occupants of the house must satisfy *both* prongs of the definition of family. ...The shared student housing at issue... met the first prong of this test, in that the students were living as a single, nonprofit housekeeping unit, but found that material facts were disputed as to whether or not they also fell outside of the category of ‘group quarters.’” The Court decided that occupancy by unrelated adult students amounted to group quarters and was, therefore, prohibited under the zoning ordinance.

While the Mentos case was pending, the city amended its zoning ordinance November 22, 2000 to address residential occupancy limits (see attached City Council resolution “Appendix A, Zoning #2000-01). The present language, Sec. 4.4.5 {d} 5, C, *Residential Occupancy Limits*, is below.

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. Notwithstanding the following, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied.

Subject to Conditional Use approval by the DRB, a dwelling unit may be occupied by more than four (4) unrelated adults if it contains at least twenty-five hundred (2,500) square feet excluding its attic and basement pursuant to the following:

- (i) If in a RL district, the dwelling unit also contains at least an additional two hundred fifty (250) square feet and one (1) additional parking space per adult occupant in excess of four (4); or,

- (ii) If in a RM district, the dwelling unit also contains at least an additional two hundred (200) square feet and one (1) additional parking space per adult occupant in excess of four (4).
- (iii) If in a RH district, the dwelling unit also contains at least an additional 150 square feet and 1 additional parking space per adult occupant in excess of four (4).

Family: One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes. Occupancy by any of the following shall be deemed to constitute a family:

- (a) Members of a single family, all of whom are related within the second degree of kinship (by blood, adoption, marriage or civil union).
- (b) A “functional family unit” as defined in Article 30, Sec. 30.1.2(1).
- (c) Persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the “Fair Housing Amendments Act of 1988”.
- (d) A state registered or licensed day care facility serving six or fewer children as required by 24 V.S.A. 4409(2), as the same may be amended from time to time.
- (e) No more than four unrelated adults and their minor children.

Provided that a dwelling unit in which the various occupants are treated as separate roomers cannot be deemed to be occupied by a family.

For purposes of this definition of family, a group of adults living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in residential neighborhoods shall be regarded as a “functional family unit” and shall also qualify as a family hereunder...

While commonly thought of as a restrictive provision, the amendment is actually permissive in light of the *Mentes* case. *Mentes* found that occupancy by unrelated adults constituted group quarters and was, therefore, prohibited. The *residential occupancy limits* amendment added provision for up to 4 unrelated adults within the definition of “family” and established criteria for occupancy exceeding 4 unrelated adults. This amendment enabled occupancy of dwelling units by up to 4 unrelated adults, and under certain criteria, occupancy by more than 4 unrelated adults. The residential occupancy limits amendment originally pertained only to the residential medium density and residential low density zones. It was later expanded to include the residential high density zone. The subject property is within the residential low density zone.

This appeal for an affirmative grandfathering determination cannot be upheld.

- Nothing submitted by the appellant actually demonstrates occupancy by more than 4 unrelated adult occupants, consistently or not.
- Assuming occupancy is by more than 4 unrelated adult occupants, there is no zoning permit to do so.
- Under the case law established by *Mentes*, such occupancy amounts to group quarters.

- Group quarters are specifically excluded from the definition of family.
- Dwelling units must be occupied by a family; occupancy of the duplex units as group quarters is not allowed.
- Occupancy of dwelling units as group quarters became prohibited December 21, 1970.
- Consistent use of the subject dwelling units as group quarters with 5 unrelated adult occupants would need to be demonstrated back to at least December 20, 1970.
- Neither city records nor documentation provided by the appellant demonstrate consistent use of the subject apartments as group quarters with 5 unrelated adult occupants back to at least December 20, 1970.

While it may be possible that these two units have been used as group quarters since at least December 20, 1970, there is simply no documentation to support consistent occupancy as such. As a result, no affirmative grandfathering determination can be issued.

II. Recommended Motion:

Uphold the adverse determination 18-0323DT.

Excerpt from VSCEO
Decision on Motion
regarding Diemer
Apartments, LLC
Denial (2-8 Hickok PL)
dated 12/29/17.

tions in zoning permits. "The Vermont
from finding implied conditions in a
ons." In re Byrne Trusts NOV, No. 150-
n, J.) (citing Farrell & Desautels, 135 Vt.
ts, the Supreme Court has held that
be imposed on the permittee." In re
resentations made by a landowner and
ed as explicit conditions in the zoning
efore, we will refrain from finding an
uilding, plumbing, wiring, and zoning
e based on the mere alleged knowledge

of the building's design in various permits that contain a clear, plain meaning.

Appellants' motion for summary judgement in their favor for Question 3 is therefore **DENIED** and Appellee's motion is **GRANTED**.

→ II. Whether the Use of the Property is Grandfathered or in Compliance with the CDO

Questions 1, 2, 5, and 6 address the Property's compliance with the CDO and its grandfathered status.

Question 1 asks if "Diemer's use of [the Property] which includes 3 five-bedroom apartments and 1 six-bedroom apartment in use since 1986, compl[ies] with [the CDO]." Question 2 asks if the use at issue at the Property is permitted or grandfathered under the CDO. Question 5 asks whether the 1970 Ordinance applies to the current use of the Property. Question 6 asks "[i]f the City . . . had knowledge of the use of [the Property] since 1986, are they barred from denying a request that the use be grandfathered?"

Appellant argues that the Property's use is grandfathered as a nonconforming use under the CDO.

The term "grandfathered" refers to legally pre-existing uses that do not conform with present bylaws, but complied with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws. 24 V.S.A. § 4303(15). Determining if a use is grandfathered is

based on proving that its use was legal when it began. See Purvis Nonconforming Use, No. 45-5-15 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Jan. 27, 2016) (Durkin, J.).

Appellant argues that the relevant date for determining if the use is grandfathered is October 2000 when the “family” definition was amended. Appellant asserts the Property’s use legally pre-dated October 2000 because the City issued permits on the Property in 1986. In contrast, the City argues that December 21, 1970 is the relevant date for grandfathering analysis, as the Property did not comply with the City’s definition of “family” or “functional family unit” prior to December 21, 1970. We agree with the City’s assessment of the operative date.

The definition of “family” and “group quarters” as it existed in the December 1970 Ordinance was applicable to the dwelling at issue in an appeal decided in 2002 by this Court. See In re John Mentés, No. 132-6-00 Vtec (Vt. Envtl. Ct. May 10, 2002) (Wright, J.), *available at* <https://www.vermontjudiciary.org/sites/default/files/documents/ecrt132600docmsj.pdf>.⁴ At that time, the term “group quarters” was undefined. City’s Ex. G. The Mentés Court concluded that a dwelling unit occupied by seven unrelated adult students more likely constituted “group quarters” and, that being the case, their occupancy in a dwelling unit was in violation of the CDO. Mentés, No. 136-6-00 Vtec at 3 (May 10, 2002). In reaching this conclusion, the Court compared shared housing to those examples provided as prohibited group quarters such as dormitories, sororities, and fraternities. Id. at 2. The act of living as a group, sharing common spaces and household responsibilities make shared student housing like the statutorily prohibited examples of “group quarters.” Id. Mentés clarified that a group of seven unrelated students sharing household chores and responsibilities was prohibited pursuant to the definition of “group quarters” prior to October 2000.

Based upon the Court’s analysis in Mentés, and our determination that the 1986 Permits do not authorize the occupancy at issue in this appeal, we conclude that Appellant’s Property was not legally occupied prior to 2000. Appellant, therefore, must demonstrate that the current

⁴ Appellant argues that Mentés does not apply to the present action as the type of dwelling at issue is different. However, at issue in both this action and Mentés is the definition of “family” and “group quarters” as it relates to rental units since December 1970. We therefore conclude that Mentés is applicable.

use has been continuous since before the December 1970 Ordinance became effective. In reaching this conclusion, the Court can answer Question 5 as a matter of law affirmatively.

Appellant also raises the argument that the Property's use is a preexisting nonconformity. The analysis of a property's preexisting use is highly factual. In general, landowners have the burden of proving that their use is preexisting and was lawful under the zoning provisions before the applicable amendment. Town of Sandgate v. Colehamer, 156 Vt. 77, 87 (1990) (citation omitted). Appellant has failed to provide the necessary facts to show that the Property qualifies as a preexisting nonconforming use since before December 1970. Therefore, the Court cannot determine if the use is grandfathered and Appellant are not presently entitled to judgment as a matter of law.

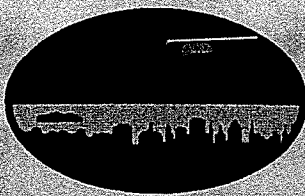
However, the Court must also give Appellant's all reasonable doubts and inferences when considering the City's cross motion on this same Question. Fairpoint Commc'ns, Inc., 2009 VT 59, ¶ 5. The City has also failed to conclusively disprove a lawful preexisting use. Therefore, as the record has not been fully developed on this issue, both the Appellant's and the City's motions for summary judgment on Question 2 must be **DENIED**. We look forward to the parties' respective factual presentations on this legal issue at trial.

As the Court cannot conclude the Property is grandfathered, and the units at issue are currently occupied by more than four unrelated adults, the Court must conclude that the use of the Property is not currently in compliance with the CDO. Therefore, summary judgement with respect to Question 1 in favor of the Appellants is **DENIED** and the City's motion is **GRANTED** on that same Question.

Finally, Appellant does not cite, and the Court is not aware of, any authority supporting their assertion that knowledge by a municipality of the Property's nonconforming use is relevant when determining if a use is a preexisting nonconforming use. As such, the Court can answer Question 6 in the negative as a matter of law.

III. Whether the Court has Jurisdiction to Hear Issues Related to Enforcement

Question 7 asks if the City is "estopped from commencing an enforcement action for use of the 3 five-bedroom apartments and 1 six-bedroom apartment?" Question 8 asks if "24 V.S.A. § 4454 appl[ies] to Diemer's use of the property?"



ZONING PERMIT - CERTIFICATE OF APPROPRIATENESS

City of Burlington, Vermont
Department of Planning and Zoning

(802) 865-7188 <http://www.ci.burlington.vt.us/planning/>

Application Date: 7/30/2007

Appeal Expiration Date: 8/22/2007

Project Location: 59-61 UNIVERSITY TERRACE

Zone: RL

Ward: 1

Owner: CITYTRUST OF BRIDGEPORT CT

Address: 44 MERRIAM PLACE

BRONXVILLE, NY 10708

Telephone:

Parcel ID: 050-3-036-000

Project Description:

Residential / Renovation/Facade

Remove existing garage doors and replace with a 9 ft light steel exterior door on each side. New finished living area at basement level.

Existing Use: RESIDENTIAL - DUPLEX

Proposed Use: RESIDENTIAL - DUPLEX

Construction Cost:	\$4,000	Lot Size (Sq Ft):	7,550
Net New Square Feet:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	0.00	Existing # of Parking Spaces:	0
Proposed % Lot Coverage:	0.00	Proposed # of Parking Spaces:	0
Net New % Lot Coverage:	0.00	Required # of Parking Spaces:	4

Zoning Permit #: 08-092CA

Decision Type: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Decision Date: August 7, 2007

Project File #: NA


Zoning Administrator

An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on August 22, 2007.

Fee Type	Amount	Paid in Full	Balance Due:	\$0.00
Application Fee:	\$77.00	Yes	Date Paid:	
Development Review Fee:	\$0.00	Yes	Check #	
Impact Fee:	Not Applicable			

Permit Received by: 

Date: 9-4-07

ZONING PERMIT

Burlington, Vermont

Permit #

87-1

PROJECT LOCALE 59-61 University Terrace ZONE R-6

Applicant/owner Irwin Rassin/Paul Nestork-Casey Construction

Address 33 North Ave. Telephone No. 863-4944

Existing use of property duplex Estimated Cost \$2,000

DESCRIPTION Remove existing rear porch/landing and stairs replace with same of pressure treated lumber to be painted after one year.

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

PARKING exist _____ proposed _____ required _____ N/A X

YARDS front _____ side _____ rear _____ N/A X

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

DECISION approved 7/14/88 denied _____ referred to ZBA _____
denial reason _____

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

APPLICATION DATE _____ APPEAL EXP. DATE 7/29/88

SIGNATURES APPLICANT Paul W. Nestork

not ZONING ADMINISTRATOR K. [signature]

CERTIFICATE OF APPROPRIATENESS

COA # _____

LEVEL OF REVIEW I _____ II _____ III _____

TYPE OF REVIEW siteplan _____ design _____ subdivision _____

COMPLETE APPLICATION 7/14/88 fee _____

DISTRICT historic _____ innercity _____ regional core _____ waterfront _____

DECISION DATE _____ DENIED _____ APPROVED _____

APPROVED WITH CONDITION _____

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

SIGNATURE Planning Director _____

CITY OF BURLINGTON

no. P78-2

ZONING PERMIT

To apply for a Zoning Permit, please completely fill out the blanks below:

PROJECT LOCATION: 61 University Terrace

APPLICANT:

Name:

Address:

Phone:

Alf Oukerman / Oukerman Assoc.
PO Box 386 - Burlington
802-9190

OWNER:

Laura Howard
803-4557

EXISTING USE:

S. F. dwelling

PROPOSAL:

Create family room in attic; no additional
Coverage (25' x 21')

ZONE (see wall map):

U.C.

TOTAL ESTIMATED COST

2,500.-

Signature:

Alf Oukerman

For Office Use

TECHNICAL ASPECTS

(site plan may be requested to be submitted) none requested

1. Parcel Size: _____

2. % Lot Coverage: _____

3. Residential Density: _____

4. Existing/Proposed
Required Parking Spaces: 1 1

5. Set Back, Side Yards:

front: _____

side: _____

rear: _____

6. Number of Principle
Buildings on Parcel:☐ 0☐ 1☐ >1

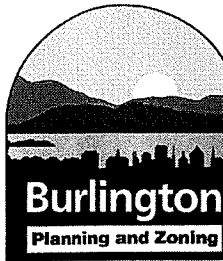
7. Change In Use:

☐ yes☐ no

Department of Planning and Zoning

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

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



TO: Development Review Board
FROM: Scott Gustin 
DATE: April 17, 2018
RE: 18-0771AP; 12 Weston Street

The appellants have requested deferral of this public hearing item until the May 15, 2018 Development Review Board meeting. Staff is amenable to this request.

April 16, 2018

Via Email

Mary O'Neil
City of Burlington
Development Review Board
City Hall
Burlington, VT 05401
MCOneil@burlingtonvt.gov

Re: Application to Amend Zoning Permit No. 17-0662CA

Dear Board Members:

I write on behalf of the Applicant, BTC Mall Associates, LLC ("BTC"), in response to Attorney John Franco's April 9, 2018 letter requesting to enter the appearance of Barbara McGrew, Michael Long, Lynn Martin, and Steven Goodkind (the "Opponents") as "interested persons" in this proceeding on BTC's application to amend zoning permit no. 17-0662CA. The Opponents, however, have not offered any valid reason why they should be afforded "interested person" status in this proceeding.

In his letter, Attorney Franco argues that his clients should receive "interested person" status because they participated in a series of court cases challenging the Project that have been resolved by a settlement agreement. According to the Opponents, the amendments at issue here violate that settlement agreement.

That is simply not true. The amendments requested by BTC – a timeline adjustment and some changes to the 7th and 12th floors of the Project – do not implicate the settlement agreement, which relates to parking issues. Indeed, if anyone is violating the settlement agreement, it is the Opponents, who agreed that they would "not oppose any other permits or regulatory or legislative approval that may be required to implement the Project consistent with the terms of" the agreement.¹ But in any event, the settlement agreement is irrelevant. The DRB's jurisdiction is limited to the zoning ordinance; it has no jurisdiction to address alleged violations of a settlement agreement.

Moreover, nothing in the settlement agreement – or anywhere else in the law – gives Opponents "interested person" status simply because they were part of a previous settlement. Rather, under 24 V.S.A. § 4461(b), these three individual opponents must establish that they are

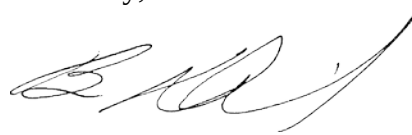
¹ Specifically, the agreement contemplated that BTC would increase parking capacity by providing space for "approximately" 200 vehicles subject to "engineering and other constraints." It said nothing about the project timeline or the design issues implicated by the present request for an amendment.

“interested persons” under 24 V.S.A. § 4465(b). That is, each of them must show that he or she lives in the “immediate neighborhood” of the Project and that the modifications sought in the amendment would have a “physical or environmental impact on the person’s interest under the criteria reviewed” by the DRB. 24 V.S.A. § 4465(b)(3). *In re UVM Certificat of Appropriateness*, No. 90712, 2013 WL 1182790 (Vt. Super. Ct. Envtl. Div. Feb. 26, 2013) (to show standing “interested person” must “describe how the development under review will impact . . . her specifically (i.e., describe a concrete and particularized injury) and must [show] that such impact is not hypothetical.”). Attorney Franco’s letter does not even attempt to assert that these individuals live in the “immediate neighborhood,” or how any of the three individuals mentioned will experience impacts caused by the proposed amendments before the DRB as required by this standard. And they cannot, given the limited nature of the actual changes implicated by the amendment request. *See, e.g., In re Hartland Group Real Estate*, No. 94-7-11 Vtec, 2011 WL 5910136 (Vt. Super. Ct. Envtl. Div. Sept. 9, 2011) (standing denied where neighbors failed show any physical or environmental impact resulting from time extension request).

Finally, Vermont law is clear that Opponents’ “interested person” status can be based solely upon the impacts of this amendment, and not the DRB’s previous approvals. They are barred from using this proceeding to contest what was resolved by the Judgment Order of July 17, 2017 or any prior amendments to the project approved by the July 2017 Judgment Order. “All interested persons affected shall be bound by that decision . . . and shall not thereafter contest, either directly or indirectly, the decision or act, provision, or decision of the panel in any proceeding.” 24 VSA § 4472(d).

The DRB should preclude the Opponents from using this proceeding to litigate the terms of a settlement agreement and should deny them “interested person” status because they cannot establish any physical or environmental impact on their interests arising out of the proposed amendment presently under review.

Sincerely,



Brian S. Dunkiel
Dunkiel Saunders Elliott Raubvogel
& Hand, PLLC
On Behalf of BTC Mall Associates, LLC

Burlington Development Review Board

149 Church Street, City Hall

Burlington, VT 05401

www.burlingtonvt.gov/PZ/DRB

Phone: (802) 865-7188

Fax (802) 865-7195

Austin Hart
Jonathan Stevens
Brad Rabinowitz
Geoff Hand
Israel Smith
A. J. LaRosa
Alexandra Zipparo
Jim Drummond (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, April 17, 2018 at 5:00 p.m.

SUPPLEMENTAL COMMUNICATIONS

- 1. 18-0768CA; 75 Cherry St (FD6, Ward 3C) BTC Mall Associates LLC**
7th and 12th floor amenity space; change to project phasing.
(Project Manager: Mary O'Neil)
- 2. 18-0619CA; 149 Church St (FD6/CIVIC, Ward 3C) City of Burlington**
(Project Manager: Scott Gustin)
 - a) Letter regarding City Hall Park Proposed Changes



91 College Street, PO Box 545
Burlington, VT 05402-0545
tel 802.860.1003 | fax 802.860.1208
www.dunkielsaunders.com

Brian S. Dunkiel *	Alex "Sash" Lewis *	Jonathan T. Rose
Eileen I. Elliott	Kelly D. H. Lowry *	Zoe E. Sajor **
Shawn Gordon **	Justin W. McCabe **	Mark A. Saunders
Geoffrey H. Hand	Elizabeth H. Miller	Karen L. Tyler
John B. Kassel	Andrew N. Raubvogel	Victoria M. West
Drew Kervick *		

April 16, 2018

Via Email

Mary O'Neil
City of Burlington
Development Review Board
City Hall
Burlington, VT 05401
MCOneil@burlingtonvt.gov

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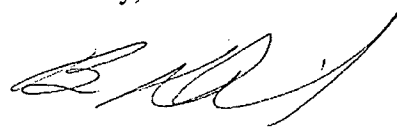
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“interested persons” under 24 V.S.A. § 4465(b). That is, each of them must show that he or she lives in the “immediate neighborhood” of the Project and that the modifications sought in the amendment would have a “physical or environmental impact on the person’s interest under the criteria reviewed” by the DRB. 24 V.S.A. § 4465(b)(3). *In re UVM Certificat of Appropriateness*, No. 90712, 2013 WL 1182790 (Vt. Super. Ct. Env’tl. Div. Feb. 26, 2013) (to show standing “interested person” must “describe how the development under review will impact . . . her specifically (i.e., describe a concrete and particularized injury) and must [show] that such impact is not hypothetical.”). Attorney Franco’s letter does not even attempt to assert that these individuals live in the “immediate neighborhood,” or how any of the three individuals mentioned will experience impacts caused by the proposed amendments before the DRB as required by this standard. And they cannot, given the limited nature of the actual changes implicated by the amendment request. *See, e.g., In re Hartland Group Real Estate*, No. 94-7-11 Vtec, 2011 WL 5910136 (Vt. Super. Ct. Env’tl. Div. Sept. 9, 2011) (standing denied where neighbors failed show any physical or environmental impact resulting from time extension request).

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The DRB should preclude the Opponents from using this proceeding to litigate the terms of a settlement agreement and should deny them “interested person” status because they cannot establish any physical or environmental impact on their interests arising out of the proposed amendment presently under review.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Dunkiel', with a long, sweeping horizontal stroke extending to the right.

Brian S. Dunkiel
Dunkiel Saunders Elliott Raubvogel
& Hand, PLLC
On Behalf of BTC Mall Associates, LLC

Layne Darfler

From: Kay Frances Schepp
Sent: Saturday, April 14, 2018 5:27 PM
To: Layne Darfler
Subject: Letter regarding City Hall Park

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Please include my letter in the Monday April 16, 2018 meeting, and include it in the Proceedings. Thank you
KFS

April 14, 2018

TO: Mayor Weinberger, the City Council

the Development Review Board

and other interested parties

FROM: Kay Frances Schepp, Ed.D.

The Dolan House

156 College Street

Burlington, Vermont 05401

ABOUT: City Hall Park proposed changes

As a person who has worked across from City Hall Park at 156 College Street for almost ten years, I strongly object to the proposed plan to remove trees and actually add more hardscape. At all times of day and in every season I see people avoiding the bricks, cement and glare, meeting friends, listening to impromptu music, eating lunch, or enjoying the winding paths through the trees.

As a serious gardener myself, with dozens of trees at our home in South Burlington, I know that mature trees do bear scars and show the impact of weather, so they should not look like new “lollipop” saplings. Having worked at UVM for 34 years, I recall the distress when Dutch Elm disease took so many stately specimens. Quickly the Green was restored to full, so that it offers a welcoming entrance to downtown at the top of both Main and Pearl Streets.

Suggestions: Consult others with knowledge of the tradition of New England towns and small city greenspace. Most importantly, finally begin to take care of most of the existing trees. This is likely to include aerating the root space and adding fertilizer, compost and mulch around the trees. Really this is not a large expense.

Watch the Park as I do from across the street. See the snow on the branches, the preschool groups playing there, the teens listening to music, the wheelchairs, strollers, and people with no lawns of their own, the lunch break traffic, and the shortcut or meet-up spot where so many people enjoying our vibrant downtown.

As a psychologist I believe that association with growing plants is healthy for both people and the environment. Please maintain this wellness atmosphere for downtown citizens and visitors alike.

Sincerely,

Kay Frances Schepp

SHEEHEY FURLONG & BEHM
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

DAVID T. AUSTIN
R. JEFFREY BEHM
DEBRA L. BOUFFARD
JUSTIN A. BROWN
IAN P. CARLETON
ARLINE P. DUFFY
PETER I. DYSART
MICHAEL G. FURLONG
KEVIN A. LUMPKIN
DIANE M. MCCARTHY
WALTER A. MCCARTHY
OWEN J. McCLAIN
MARK E. MELENDY
RENEE L. MOBBS
DAPHNE MORITZ
CRAIG S. NOLAN
LEIGH K. PHILLIPS
PETER G. RAYMOND
HEATHER E. ROSS
JAMES W. SPINK

30 MAIN STREET
POST OFFICE BOX 66
BURLINGTON, VERMONT 05402
TELEPHONE (802) 864-9891
FACSIMILE (802) 864-6815

18 ELM STREET
WOODSTOCK, VERMONT 05091
TELEPHONE (802) 457-9492
FACSIMILE (802) 457-9158

WWW.SHEEHEYVT.COM

PAUL D. SHEEHEY (1919-2004)

VIA HAND-DELIVERY

April 17, 2018

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

Re: Case No. 18-0323DT

To Whom It May Concern:

Pursuant to an agreement reached with the City, please accept this letter as a withdrawal of the pending appeal for Case No. 18-0323DT.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.


Kevin A. Lumpkin

KAL/dms
Enclosure

cc: Assistant City Attorney Kimberlee J. Sturtevant, Esq.

RECEIVED
APR 17 2018

DEPARTMENT OF
PLANNING & ZONING

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

www.burlingtonvt.gov/pz/DRB

Telephone: (802) 865-7188

Fax (802) 865-7195

Austin Hart
Brad Rabinowitz
Israel Smith
AJ LaRosa
Geoff Hand
Alexandra Zipparo
Samantha Tilton
Jim Drummond, (Alternate)
Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday April 17th, 2018, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT AGENDA

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

- 1. 18-0777CA; 165-181 Winterberry Lane (RL, Ward 1E) Bayberry LLC**
Add a floor to building S and building T and increase the overall unit count from 232 to 235. Increase parking to 432 spaces and relocate one gazebo and remove another.
(Project Manager: Scott Gustin)
- 2. 18-0779CA; 214 North Prospect St (RL, Ward 1E) Synagogue Corp.**
Addition to existing building and associated site work.
(Project Manager: Scott Gustin)
- 3. 18-0768CA; 75 Cherry St (FD6, Ward 3C) BTC Mall Associates LLC**
7th and 12th floor amenity space; change to project phasing.
(Project Manager: Mary O'Neil)

V. Public Hearing

- 1. 18-0323DT; 59-61 University Terrace (RL, Ward 8E) Citytrust of Bridgeport Connecticut / Priscilla Toomey**
Appeal adverse administrative decision regarding determination of pre-existing, non-conforming use of 5-person occupancy (unrelated tenants) of each of the two duplex units.
(Project Manager: Scott Gustin)
- 2. 18-0771AP; 12 Weston St (RL, Ward 1E) Charles Chauncey Burns**
Appeal of NOV 336638 pertaining to duplex use.
(Project Manager: Scott Gustin)
Note: Applicants have requested deferral to the May 15th, 2018 meeting.

VI. Other business

- 1. 18-0692BA; 46 Cross Parkway (RL, Ward 4N) Ronald Koss and Carley Claghorn**
Consider re-opening Public Hearing on appeal of denial of ZP18-0692BA
(Project Manager: Ryan Morrison)

VII. Adjournment

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

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

Burlington Development Review Board

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

Austin Hart
Brad Rabinowitz
Israel Smith
AJ LaRosa
Geoff Hand
Alexandra Zipparo
Samantha Tilton
Jim Drummond, (Alternate)
Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday April 17th, 2018, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT MINUTES

Board Members Present: A. Hart, B.Rabinowitz, I.Smith, A.LaRosa, G.Hand, A. Zipparo, S.Tilton

Board Members Absent: J.Drummond (Alt.)

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

I. Agenda

A.Hart: Any changes to the agenda?

S.Gustin: The first Public Hearing item has been withdrawn with settlement achieved and the second Public Hearing item the appellants have requested deferral to date certain May 15th.

II. Communications

A.Hart: No new items

III. Minutes

A.Hart: Minutes from the April 3rd meeting will be considered at next deliberation

IV. Consent

1. 18-0777CA; 165-181 Winterberry Lane (RL, Ward 1E) Bayberry LLC

Add a floor to building S and building T and increase the overall unit count from 232 to 235. Increase parking to 432 spaces and relocate one gazebo and remove another.

(Project Manager: Scott Gustin)

A.Hart: What are the changes proposed? We are taking this item off consent and treating as public hearing item

P.O'Brien: we have built most of the units on the upper level- under construction is Building M which is an apex; lower level 3 large buildings; proposing to add story to Buildings T and S; Building R is already approved 4 story; elevation change from Grove St to lower plateau varies but is quite a drop, added parking; -showed parking on site plan- We took two parking spaces out as we deemed them impractical spaces; 3rd item is pavilion moved to another location; another pavilion proposed is removed from the plan One minor adjustment in staff comments and that is background info in findings-staff said increase number of units by 2 but it is an increase of 3. Thinking 11 or 12 units per floor decided on 10 units per floor which means Building J was approved for 33 units, but we only built 30; Building R was approved for 44 units but we're only building 40; the sequence of events- base density -came in a little under base density; went to act 250 and neighbor appealed- we took 11 or 12 units out of the project. Appellant told it is ok and has

The programs and services of the City of Burlington are accessible to people with disabilities.

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

Printed on 100% Recycled Paper

no issues with new proposal; discussed table; approved for 232 units; 215 is number of units that they would end up as they lost some units due to act 250 and redesign; proposing 235 total units- still below max density that was approved at preliminary;

A.LaRosa: What is the number of affordable units; does this increase mean another affordable unit?

P.O'Brien: Yes, for every 15 units there is one additional inclusionary unit

G.Hand: unclear about steel structure, is that coming down?

P.O'Brien: the steel structure is basically the old plant-; the ordinance states you can build up to a preexisting structure as long as it stays; that structure is going to become an overlook

A.Zipparo: is there another structure that is coming down?

P.O'Brien: yes the concrete plant is coming down it currently sits where Building T is going to be built.

G.Hand: Additional parking on lower level, does that take away green spaces?

P.O'Brien: yes about a 30 foot strip of green space;

S.Gustin: discussed inclusionary housing requirement; no change in requirement.

P.O'Brien: Important for everybody to understand that these two buildings do sit way low and as you drive up and down Grove St the view is up Grove St; varying trees shield the project; the lookout will be the only place there is an opening in the trees; no view blocked

S.Bushor: project has developed nicely, would have liked to have left the trees; wants to know about notification of one abutter. The neighborhood that this becomes part of is small older homes; understand the building is set down so that masks some of the height wondering if that looms over the other homes in close proximity.

P.O'Brien: met with abutter and discussed the project- they were happy; regards to distance its 175 feet; not that close to Grove St edge of pavement to Building S and T; closest distance is 175 feet.

A.Hart: grade may be different but close in height

P.O'Brien: correct; closest thing to Building S is Apple Grove which is quite a bit higher.

A.Hart: closed Public Hearing

2. 18-0779CA; 214 North Prospect St (RL, Ward 1E) Synagogue Corp.

Addition to existing building and associated site work.

(Project Manager: Scott Gustin)

A.Hart: Do any members of the Board object to this item being treated as consent?

None

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

None

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

None

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

B.Rabinowitz: Seconds the motion

7-0-0

(Project Manager: Mary O'Neil)

G.Hand/A.LaRosa: Recused

A.Hart: Do any members of the Board object to this item being treated as consent?

None

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

None

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

None

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

A.Zipparo: Seconds the motion

5-0-0

V. Public Hearing

1. 18-0323DT; 59-61 University Terrace (RL, Ward 8E) Citytrust of Bridgeport Connecticut / Priscilla Toomey

Appeal adverse administrative decision regarding determination of pre-existing, non-conforming use of 5-person occupancy (unrelated tenants) of each of the two duplex units.

(Project Manager: Scott Gustin)

Withdrawn

2. 18-0771AP; 12 Weston St (RL, Ward 1E) Charles Chauncey Burns

Appeal of NOV 336638 pertaining to duplex use.

(Project Manager: Scott Gustin)

Note: Applicants have requested deferral to the May 15th, 2018 meeting.

A.Hart: Request to defer to May 15th. Are any members of the public here to speak?

None

A.Hart: Motion to defer to date certain May 15th 2018

A.LaRosa: Seconds the motion

7-0-0

VI. Other business

1. 18-0692BA; 46 Cross Parkway (RL, Ward 4N) Ronald Koss and Carley Claghorn

Consider re-opening Public Hearing on appeal of denial of ZP18-0692BA

(Project Manager: Ryan Morrison)

G.Hand: Recused

R.Morrison: April 3rd appeal hearing on admin denial 18-0692BA for 46 Cross Parkway staff recommended denial; public hearing was held and closed; appellants submitted 7 examples of other garage conversions with permit to prove inconsistency with department's approval of permits; we did not have chance to respond to submittals but found 4 out of the 7 examples provided are legitimate permits for proposals 3 of the older permits are illegitimate; 4 current are legitimate- given the consistency in our response

R.Koss: one of the important points is we submitted 12 or 13 examples of contradictions to denial and when you start parsing this out; if an interpretation is what is governing the decisions then people who don't have access to the interpretation and are reading the plain meaning that's the way the board should be judging these applications. The ordinance says nothing about the parking being behind the setback; if the planner's want there to be an ordinance that specifies those things than go through the public process and do that- otherwise we have to make decisions without the information available to us. People on the review board are sympathetic to plain meaning and not contradictory. We would like that to apply to our app

A.Hart: Decision is whether to reopen an reconsider if we were to decide then we would schedule another hearing.

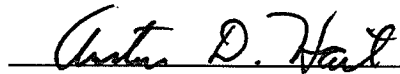
C.Claghorn: number of conversions we presented- looking around Burlington we Identified 43 conversions, many of them weren't permitted and many were; it's so inconsistent even as each permit is being given

A.Hart: Are there any other members of the public that wish to speak, or any members of the Board have any further questions?

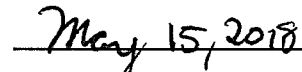
None

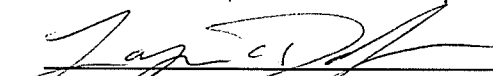
VII. Adjournment

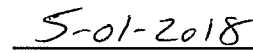
The meeting was adjourned at 5:40 PM.



Austin D. Hart, Chair of Development Review Board


Date


L. Darler, Planning Technician


Date

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

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.