

Burlington Development Review Board

Department of Permitting & Inspections
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Burlington, VT 05401
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Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, January 3, 2023, 5:00 PM

PUBLIC HEARING NOTICE

In Person (at 645 Pine Street) Meeting

- 1. ZP-22-596; 170 Park Street (RM, Ward 3C) Iryna Poberezhniuk**
Variance for additional lot coverage.

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

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

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AMENDED AGENDA

In Person (at 645 Pine Street) Meeting

I. Agenda

II. Communications

III. Minutes

IV. Public Hearing

- 1. ZP-22-596; 170 Park Street (RM, Ward 3C) Iryna Poberezhniuk**
Variance for additional lot coverage. (Project Manager, Scott Gustin)
- 2. ZAP-22-5; 170 Park Street (RM, Ward 3C) Iryna Poberezhniuk**
Appeal of zoning application denial ZP-22-505 to install gravel extension to existing driveway and rear parking lot. (Project Manager, Scott Gustin)

V. Certificate of Appropriateness

- 1. ZP-22-608; 800 Pine Street (RL/E-LM, Ward 5S) City School Department / James Sherrard**
After-the-fact tree cutting associated with ongoing maintenance of a stormwater pond. (Project Manager, Scott Gustin)
- 2. ZP-22-611; 834-922 North Avenue (RL, Ward 7N) City DPW / Michael Schramm**
After-the-fact tree cutting associated with emergency stormwater outfall repair. (Project Manager, Scott Gustin)

VI. Master Plan

- 1. ZP-22-617; 53 Lavalley Lane (RCO-RG, Ward 5S) City DPW Water/Wastewater Department / Michael Schramm**
DPW Citywide Tree Maintenance Plan. (Project Manager, Scott Gustin)

VII. Executive Session

VIII. Adjournment

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

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HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

Department of Permitting & Inspections

Zoning Division
645 Pine Street
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Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Planning Technician
Ted Miles, Code Compliance Officer
Vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: January 3, 2023
RE: ZP-22-617; 53 Lavalley 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 & Ward: Citywide applicability

Owner/Applicant: City of Burlington / Water Resources Division, DPW

Request: Tree Maintenance plan for water resources infrastructure throughout the city.

Applicable Regulations:

Article 5 (Citywide General Regulations)

Background Information:

The applicant is seeking approval of a Tree Maintenance Plan per Sec. 5.5.4, *Tree Removal*, of the Comprehensive Development Ordinance. This section allows property owners to address tree removal and maintenance on their property in 5-year increments without the need for separate zoning permits for each individual tree removal project. In this case, the applicant is seeking approval for a tree maintenance plan applicable city-wide for maintenance of water resources infrastructure. Specifically, the requested maintenance plan would apply to areas outside of public street rights-of-way with water resources infrastructure (work within the public street rights-of-way is exempt from zoning).

The Development Review Board approved a previous tree maintenance plan August 6, 2016. That approval was valid for 5 years. The plan has expired, and a renewed plan approval is sought.

Recommendation: Tree maintenance plan approval as per, and subject to, the following findings and conditions:

I. Findings

Article 5: Citywide General Regulations

Sec. 5.5.4, Tree Removal:

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

See (b) below.

(b) Tree Maintenance Plans

1. A Tree Maintenance Plan prepared by a certified arborist shall be submitted as a Level I Certificate of Appropriateness... This plan shall include general and specific criteria for removing trees based on the criteria as per Sec. 5.5.4 (a).

The original Tree Maintenance Plan was prepared in conjunction with the city arborist. This new plan is based, in large part, on the prior plan. It is basically an updated plan. The city arborist has reviewed and commented on this update as noted in more detail below. The updated plan touches on each of the criteria of Sec. 5.5.4 (a) as required.

Tree pruning and removal are addressed within the context of site access and infrastructure maintenance. Initial assessment criteria touch on individual site specifics, alternatives, delineation of potential cutting and pruning, and erosion control measures. The tree maintenance plan also contains a specific tree protection plan for implementation during infrastructure maintenance and construction activities. The tree protection plan outlines procedures to be followed for protection of existing trees, minimizing damage, and tree replacement as needed.

As required by the DRB in the prior plan, the proposed tree maintenance plan specifies trigger points for city arborist involvement. The general trigger point mirrors the threshold for typically requiring a zoning permit for tree cutting (i.e. 6 or more trees of 10" or greater caliper or 10 or more trees of 3" or greater caliper). This new tree maintenance plan splits tree work into three categories not specified in the prior plan:

- Emergency repair/replacement projects
- Maintenance projects
- Planned construction projects

The prior plan included a requirement for site-specific tree plans for all projects. The proposed plan eliminates this requirement for emergency and maintenance projects unless compelled by the city arborist (consultation with the city arborist remains a requirement). The revision for emergency work is reasonable given the characteristics of emergency infrastructure work, and the city arborist concurs with this change. The city arborist commented that maintenance projects should continue to have site-specific tree plans unless they are emergency work.

Regardless of the scope of tree cutting, standards for assessment and implementation of tree cutting and pruning will be followed. The plan calls for coordination and consultation with the city arborist as part of initial assessment work – prior to tree cutting. Consideration of alternatives to tree cutting or pruning are articulated within the preliminary assessment criteria. As applicable, city arborist involvement will continue through project planning and execution, including periodic site inspections at project sites.

As required under state statute, the tree protection plan contains provision for notification of neighboring property owners prior to any tree removal. **(Affirmative finding as conditioned)**

2. The Tree Maintenance Plan if approved...

This updated Tree Maintenance Plan, when approved, will be valid for 5 years. **(Affirmative finding as conditioned)**

3. In order to continue tree removal...

For ongoing tree removal on the subject lands beyond the initial approval, the Tree Maintenance Plan must be updated or re-written and approved by the DRB at 5 year intervals. **(Affirmative finding as conditioned)**

II. Conditions of Approval

1. The tree maintenance plan shall be revised to require site specific tree plans for maintenance projects in addition to planned construction projects. Only emergency repair/replacement projects will not require site specific tree plans.
2. This tree maintenance plan is valid for a period of 5-years from the date of approval.

City of Burlington, Vermont

DPW Water Resources Division

Tree Maintenance Plan

December 2022



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ATTACHMENTS

1. Tree Maintenance Specification

INTRODUCTION

The City of Burlington Department of Public Works Water Resources Division (WRD) is responsible for the maintenance of roughly 149 miles of both sanitary sewer and stormwater piping, 120 miles of water distribution system piping, 270 stormwater outfalls, three wastewater treatment facilities, a water treatment facility, water supply reservoir, 40 bioretention systems, 20 sub-surface infiltration systems, wet-ponds, and 25 sewage pump stations (hereinafter referred to as “Facilities”).

The majority of the Facilities fall within public ROW or on City Property which provides sufficient space to service, repair, or replace infrastructure without impacts to the Urban Forest. However, a portion of these Facilities are not bound within the public ROW and run “cross country” within forested areas, or are located on City owned property. Many of these Facilities fall within easements, expressed or implied. WRDs ability to access and maintain these Facilities is limited by Article 5 of the City’s Comprehensive Development Ordinance (CDO), Citywide General Regulations Section 5.5.4 Tree Removal.

The zoning ordinance reads:

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

- A. Removal of dead, diseased, or infested trees
- B. Thinning of trees for the health of remaining trees according to recognized accepted forestry practices
- C. Removal of trees that are a danger to life or property; or
- D. As part of a development with an approved zoning permit”

The Ordinance provides for an exemption from the requirement to obtain a permit for individual tree projects with the approval by the Development Review Board of a Tree Maintenance Plan prepared by a certified arborist.

The WRD has drafted this Tree Maintenance Plan in consultation with the City Arborist. The City Arborist has noted that his designee can act on his behalf to make decisions regarding Tree Maintenance Plans in his absence. The designee will be a Certified Arborist approved by the City Arborist. For this plan the “City Arborist or designee” will hereinafter be referred to as “City Arborist”.

PURPOSE OF TREE MAINTENANCE PLAN

The WRD Tree Maintenance Plan addresses the need to access and maintain WRD Facilities throughout the City in a comprehensive way that considers the maintenance and care of urban trees. The WRD routinely maintains its properties and cross country easements during maintenance projects and larger capital construction projects in order to construct, repair, maintain, stabilize, and replace these assets. This includes the ability to cut down, trim, remove and keep cleared such trees, roots, underbrush, or parts thereof growing within, under, or overhanging the area as may interfere with or endanger the efficient operation and use of the infrastructure. All tree work completed by the WRD to access and maintain Facilities will be completed in accordance with the techniques prescribed in the City of Burlington Urban Forestry Master Plan. It is the policy of WRD to minimize the removal or pruning of trees where possible, as the urban forest is important to maintaining water quality.

For the purposes of the WRD Tree Maintenance Plan, projects will either be considered a construction related or a maintenance related effort.

All projects with tree removal will be reviewed against the thresholds established in CDO 5.5.4 tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper. All projects that trigger this threshold will require some oversight from the City Arborist but, depending on the nature and extent of the project and consultation with the City Arborist, may not require the development of a written tree maintenance plan.

Emergency Repair/Replacement projects: Projects that may involve construction, but are deemed to be an emergency by the Director of Public Works, require a site visit and consultation with the City Arborist, but will not require a written project specific tree maintenance plan unless required by the City Arborist.

Maintenance Projects: require a site visit and consultation with the City Arborist, but will not require a written project specific tree maintenance plan unless required by the City Arborist.

Planned Construction Projects: require the review and approval of a tree maintenance plan by the City Arborist.

When the development of a tree maintenance plan is required based on the categories above the City Arborist oversight will continue throughout the assessment and implementation phase to insure that the techniques recommended in the Urban Forestry Master Plan are implemented. This oversight shall include review of a project specific Tree Maintenance Plan (hereinafter referred to as “the Plan”) and site visit by the City Arborist prior to any tree removal operations.

Any recommended changes by the City Arborist will be incorporated in the Plan. During implementation of the Plan, the City Arborist will periodically inspect the work as necessary to verify all work is accomplished in accordance with the Plan and the techniques referenced in the City of Burlington Urban Forestry Master Plan.

If a formal tree maintenance plan is not required, WRD will still continue to follow the protocols of assessment and implementation in accordance with techniques in the Urban Forestry Master Plan.

INITIAL ASSESSMENTS

Coordination with the City Arborist will be an integral part of the WRDs effort to manage trees that obstruct the ability to access and maintain Facilities, address emergencies or repair or renew existing facilities. Prior to any tree pruning or removal an Initial Assessment will be performed by a WRD representative and include the City Arborist when required by the project threshold. Depending on the nature of the work (maintenance, emergency or planned construction) and extent of tree removal and the final determination of the City Arborist, a project specific Tree Maintenance Plan will be developed by the WRD. The Plan will depict the limits of work, specific trees to be pruned, cut, and protected.

Goals of these assessments are as follows:

- Identify and delineate dimensions of the easement and any additional land requirements required to access surface or subsurface infrastructure.
- Determine whether alternative construction techniques or access may be better suited to a particular site in order to avoid tree conflicts.
- Determine best possible vehicle and equipment access, which limits the overall area of disturbance.
- Physically indicate which trees require removal, pruning, or other tree maintenance.
- Plan for site restoration based on the State of Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control and any additional stabilization as required by WRD staff and the City Arborist.

PUBLIC OUTREACH

When applicable by State statute, prior to any tree removal, adjacent property owners shall be notified of trees that are scheduled for removal. This policy is in accordance with the current Vermont Tree Warden Statutes (Amended 1969, No. 238 (Adj. Sess.), § 6.)

IMPLEMENTATION

Tree Pruning

Where applicable, tree pruning will be performed by a Certified Arborist which the City Arborist would approve for project pruning. Pruning will be in accordance with the techniques referenced in the Urban Forestry Master Plan.

Tree Removal

Tree removal will be performed by DPW and, if required by the project threshold, under the supervision of the City Arborist or by an approved contractor. Removal will be in accordance with the techniques referenced in the Urban Forestry Master Plan.

Future Access

The WRD shall determine whether there is a need for continual access to the Facilities to meet routine maintenance schedules. If continual access is necessary, a stabilized construction entrance, consistent with the State of Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control, shall be installed.

Construction Project Specifications

All construction projects bid out by the WRD that impact trees that would otherwise be subject to the City's Tree Removal zoning ordinance will include a Tree Protection Plan Specification that implements the Tree Maintenance Plan. The detailed specification is in Attachment 1.

Maintenance Project Specifications

All maintenance projects will be reviewed by the City Arborist to determine if a Tree Maintenance Plan, is or is not required. In all cases, basic tree protection and marking requirements will be implemented.

Emergency Projects

For projects that are being performed on an emergency basis, as determined by the Director of Public Works, project consultation with the City Arborist can be performed in lieu of submittal of a Tree Maintenance Plan. Tree protection requirements, as identified through consultation with the City Arborist, shall be incorporated to the maximum extent practicable into the emergency project's scope of work and executed accordingly.

ATTACHMENT 1

SPECIAL PROVISION ITEM #900.645

Tree Protection Plan

Description: The purpose of this item is to prevent damage to branches, trunks, and root systems of existing individual trees to remain and to ensure their survival. Provisions under this item include steps to minimize soil and root disturbance, and to construct protection measures for trees and shrubs close to construction areas that are labeled on the Plans as either “save”, “protect” or “transplant”. The Contractor shall install barrier fence labeled as Tree Protection Zone (TPZ) on the Plans adjacent to existing trees and, prior to any earth disturbance. Barrier fence shall not be removed until the final project inspection. There will be no activity within the TPZ except watering or installation of erosion prevention or sediment control measures where required. Tree protection methods and schedule of work shall be approved by the Engineer.

The Contractor shall hire a Certified Arborist, certified by the ISA, International Society of Arboriculture or equivalent, before construction to assist with tree protection measures as part of the Tree Protection Plan and site inspection. The Certified Arborist shall be approved by the City Arborist.

A continuous level of protection shall be provided for trees marked “Save”, “Protect” or “Transplant”. At the direction of the City or the Engineer, the Certified Arborist shall inspect damage to trees and recommend mitigation treatment and replacement if damaged trees are determined to need replacement.

Fenced, Tree Protection Zone: No construction may occur within the fenced Tree Protection Zone (TPZ) unless pre-approved. In locations where construction needs to occur within the TPZ due to the proximity of existing trees to the proposed sidewalk, construction may be approved on a case by case basis. Placement of protective, temporary fencing called barrier fence shall extend to the TPZ. The Contractor is prohibited from the following practices within the tree protection zone (fenced area):

Breaking of branches, scraping of bark, or unauthorized cutting, nailing or bolting into trunks; use of plants as temporary support (i.e. cables, leaning equipment). No unauthorized filling, excavating, trenching or auguring within "root zone". Compaction/driving over the "root zone" caused by heavy equipment or concentrated foot traffic which may significantly alter the soil conditions prior to construction. Storage of any materials or vehicles within the "root zone". Dumping of construction waste or materials (including liquids). Unauthorized removal or relocation of woody plants.

Execution or pre-emption of pre-determined Consulting Arborist responsibilities.

Removal of tree protection barricades or construction fencing prior to completion of project.

Construction shall be conducted so as to minimize impacts on the existing tree root structure. Excavation within the drip-line of the tree itself shall be completed using hand tools only to excavate to depth of base material and design elevation as shown on project cross-sections and typical details.

Barrier Fence shall be used as shown on the plans and as directed by the Engineer for the protection of trees and other landscape features for the delineation of areas as shown on the Plans.

Prior to Construction, site work may not commence until the contractor meets on-site with the Engineer and the Certified Arborist to complete a pre-construction walk through to review and map all construction and work

procedures, access routes, storage and tree protection areas relating to the protection of trees marked “Save” or “Protect”. Excavation measures beyond the protective fencing but within the drip-line area or TPZ shall be resolved.

All underground utilities and drain or irrigation lines shall be routed outside the Tree Protection Zone. If lines must traverse the protection area, they shall be tunneled or bored under the tree.

Prior to construction, unless otherwise directed by the Engineer, the Contractor shall install physical barrier to remain until all site work has been completed that will consist of:

1. Installation of barrier fencing as detailed on the plans.
2. Installation of weather proof signage, minimum size of 8-1/2” x 11”, which reads: “Trees are being protected. No unauthorized trespass is allowed.”
3. Fences shall not be relocated or removed without the written permission of the Engineer.
4. The Contractor shall assign an individual on site responsible to oversee continuous maintenance of protective fencing, signs, and to follow tree protection plan
5. If the fenced, tree protection zones are breached by the contractor or subcontractor, a cash fine shall be charged for each violation resulting in damage (this amount shall be determined by the Engineer.)
6. Monitor the water needs of the trees during and after construction.

BRANCH PRUNING - Pruning should be performed to provide adequate clearance for the new sidewalk and for equipment and construction. Clearance during construction shall be identified in advance and approved by the Engineer and the Certified Arborist. All pruning shall be in accordance with the International Society of arboriculture’s Best Management Practices for tree pruning and the ANSI A300Pruning Standard(American National Standard for Tree Care Operations) and adhere to the most recent edition of ANSI Z133.1.

ROOT PRUNING - The Certified Arborist and the Engineer shall first inspect each tree marked “Save” or “Protect” to determine if the plant may tolerate root pruning considering tree species, age, crown size, site exposure, existing defects, vigor, and severity of necessary root pruning. Root pruning shall occur between the months of March and May. If possible, roots shall first be pruned to sever them cleanly since soil excavation equipment may pull, rip or shatters roots, causing unnecessary damage for some distance towards the tree.

Root pruning shall be completed by root pruning equipment specifically designed for that purpose including large circular saws used to cut concrete and rock saws. The saws must cut through the wood roots to the depth of the required excavation. Root pruning equipment designed primarily for curb and sidewalk repair may cut only 8 to 12 inches deep. Where excavation must occur very close to trees, digging the soil away with a shovel may be necessary, and then cut the exposed root with a saw. Before grading, excavation for gravel base, or trenching, trees (as indicated on plan) shall be root pruned 1 foot outside the tree protection zone by cutting all roots cleanly to a depth of 24 inches, or to a depth of base material indicated on cross-sections or the typical details for the project. Roots shall be cut by manually digging a trench and cutting exposed roots with a saw, vibrating knife, rock saw, a narrow trencher with short blades, or other approved root-pruning equipment.

The following procedure is recommended.

1. Stake the edge of excavation.

2. Root pruning shall be done with a stump grinder where possible. Do not use trenchers or backhoes, which may rip the roots closer to the root collar than the intended cut. If a stump grinder cannot be used, roots shall be exposed by hand excavation. All roots 1" or greater in diameter shall be cut with a hand saw or chain saw. Cuts shall be made clean with no tearing of the roots.
3. If it is determined by the Engineer and the Certified Arborist that root pruning equipment cannot be used, dig a trench along the staked line. Equipment such as a backhoe can be used until roots larger than 1 inch in diameter are encountered. Then, dig with a shovel.
4. When a root is encountered, expose it by removing soil by hand, and cut it cleanly with a saw at the outside edge of the trench (towards the tree). Do not paint the cut root end.
5. Replace soil in the trench.
6. Depth of root pruning is typically the same as the depth of excavation, up to 24" depth.

CONSTRUCTION PHASE

When excavation is to be performed near trees or shrubs labeled "Save" or "Protect" on the plans, then the following root protection procedure shall be observed. Contractor shall immediately contact the Engineer or Certified Arborist, should roots larger than 1" be exposed, for inspection and root pruning. Failure to communicate promptly could result in 100% damage assessment of fines.

1. All roots 4" or greater in diameter shall be left intact and trenches shall be completed by excavating under the root, unless otherwise directed by the Engineer or Certified Arborist.
2. All roots 1" or greater in diameter shall be cut with a hand saw or chain saw. Cuts shall be made clean with no tearing of the roots.
3. All trees affected by construction activity and marked "Save" or "Protect" shall be irrigated on a schedule to be determined by the Engineer and the Certified Arborist. Each watering shall wet the soil within the tree protection zone to a depth of 8 inches unless otherwise directed by the Engineer.
4. Any roots damaged during grading or construction shall be exposed to sound tissue and cut cleanly with a saw.
5. Care shall be taken to avoid breaking tree limbs and branches with construction equipment.
6. If a tree is damaged and not repairable (as determined by the Engineer with assistance from the Certified Arborist) due to the Contractor's negligence, then the Contractor shall replace (at the Contractor's expense) the tree with the same tree of equal value, or two or more trees with a total value equal to that of the damaged tree.
7. If a tree is damaged and repairable, a determination shall be made by the consulting arborist. The tree(s) will be repaired by a Certified Arborist at the contractor's expense. Liquidated damages for trees damaged by construction operations shall be the equivalent of the replacement cost for the damaged tree or shrub plus \$100.00 each to cover administrative costs.
8. If encroachment causes the destruction of a tree(s), as determined by the Engineer and Certified Arborist, the Contractor shall replace the tree(s) with trees of equal trunk diameter. For example, if a 10" diameter tree is destroyed, it shall be replaced with two 5" diameter trees or five 2" diameter trees, etc. The owner may elect to receive a settlement equal to the value of these trees in lieu of planting.

9. The Diameter Breast High (DBH) or Caliper of trees removed shall be the guide for the number of trees to be planted. For example if the total DBH removed is 30" then ten (10) 3" caliper trees shall be planted. A settlement equal to the value of the trees in lieu of planting may be an option for replacement.

10. Any grading, construction, demolition, or other work expected to encounter tree roots shall be monitored by the Certified Arborist as recommended by the Engineer.

METHOD OF MEASUREMENT. The quantity of Tree Protection to be measured for payment will be on a lump sum basis in the complete and accepted work.

BASIS OF PAYMENT. The accepted quantity of Tree Protection will be paid for at the Contract lump sum price. Payment will be compensation for all tree protection measures including providing and installing barrier fence, branch and root pruning, watering, and all incidentals necessary to complete the work. Partial payments will be made as follows:

(a) The first payment of 25 percent of the lump sum price will be paid upon installation of all required barrier fence;

(b) The second payment of 50 percent of the lump sum price will be paid upon completion of 50 percent of the work under the Contract;

(c) The third payment of 25 percent of the lump sum price will be paid upon removal of all barrier fence.

Payment will be made under:

Pay Item

Pay Unit

900.645 Special Provision

Lump Sum

(Tree Protection)

City of Burlington, Vermont DPW Water Resources Division Tree Management Plan

July 2016



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INTRODUCTION

The City of Burlington Department of Public Works Water Resources Division (WRD) is responsible for the maintenance of roughly 149 miles of both sanitary sewer and stormwater piping, 120 miles of water distribution system piping, three wastewater treatment facilities, a water treatment facility, water supply reservoir, and 25 sewage pump stations (hereinafter referred to as "Facilities").

The majority of the Facilities fall within public ROW or on City Property which provides sufficient space to service, repair, or replace infrastructure without impacts to the Urban Forest. However, a portion of these Facilities are not bound within the public ROW and run "cross country" or are within forested areas. Many of these Facilities fall within easements, expressed or implied. WRDs ability to access and maintain these Facilities is limited by Article 5 of the City's Comprehensive Development Ordinance, Citywide General Regulations Section 5.5.4 Tree Removal.

The zoning ordinance reads:

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

- A. Removal of dead, diseased, or infested trees
- B. Thinning of trees for the health of remaining trees according to recognized accepted forestry practices
- C. Removal of trees that are a danger to life or property; or
- D. As part of a development with an approved zoning permit"

The Ordinance provides for an exemption from the requirement to obtain a permit for individual tree projects with the approval by the Development Review Board of a Tree Maintenance Plan prepared by a certified arborist.

The WRD has drafted this Tree Management Plan in consultation with the City Arborist, Warren Spinner. The City Arborist has requested that his designee be allowed authority to make decisions regarding this Tree Maintenance Plan in his absence. The designee will be a Certified Arborist approved by the City Arborist. For this plan the "City Arborist or designee" will hereinafter be referred to as "City Arborist".

PURPOSE OF TREE MANAGEMENT PLAN

The WRD Tree Management Plan addresses the need to access and maintain WRD Facilities throughout the City in a comprehensive way that considers the maintenance and care of urban trees. The WRD routinely maintains its properties and cross country easements during maintenance projects and larger capital construction projects in order to construct, repair, maintain, stabilize, and replace these assets. This includes the ability to cut down, trim, remove and keep cleared such trees, roots, underbrush, or parts thereof growing within, under, or overhanging the area as may interfere with or endanger the efficient operation and use of the infrastructure. All tree work completed by WRD to access and maintain Facilities will be completed in accordance with the techniques prescribed in the City of Burlington Urban Forestry Master Plan.

The project threshold that will require review by the City Arborist is the trigger that would normally require zoning permit review: tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper. This project threshold will be applied to individual maintenance and construction projects carried out by the WRD to access and maintain Facilities.

When oversight by the City Arborist is required by having met the project threshold, the City Arborist oversight will continue throughout the assessment and implementation phase to insure that the techniques recommended in the Urban Forestry Master Plan are implemented. This oversight shall include review of a project specific Tree Maintenance Plan (hereinafter referred to as “the Plan”) and site visit by the City Arborist prior to any tree removal operations. Any recommended changes by the City Arborist will be incorporated in the Plan. During implementation of the Plan, the City Arborist will periodically inspect the work as necessary to verify all work is accomplished in accordance with the Plan and the techniques referenced in the City of Burlington Urban Forestry Master Plan.

If the project threshold is not met and review by the City Arborist is not required, WRD will still continue to follow the protocols of assessment and implementation in accordance with techniques in the Urban Forestry Master Plan.

INITIAL ASSESSMENTS

Coordination with the City Arborist will be an integral part of the WRDs effort to manage trees that obstruct the ability to access and maintain Facilities. Prior to any tree pruning or removal an Initial Assessment will be performed by a WRD representative and include the City Arborist when required by the project threshold. From the Initial Assessment a project specific Tree

Maintenance Plan will be developed by the WRD. The Plan will depict the limits of work, specific trees to be pruned, cut, and protected.

Goals of these assessments are as follows:

- Identify and delineate dimensions of the easement and any additional land requirements required to access surface or subsurface infrastructure.
- Determine whether alternative construction techniques or access may be better suited to a particular site in order to avoid tree conflicts.
- Determine best possible vehicle and equipment access, which limits the overall area of disturbance.
- Physically indicate which trees require removal, pruning, or other tree maintenance.
- Plan for site restoration based on the State of Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control and any additional stabilization as required by WRD staff and the City Arborist.

PUBLIC OUTREACH

Prior to any tree removal, adjacent property owners shall be notified of trees that are scheduled for removal. This policy is in accordance with the current Vermont Tree Warden Statutes (Amended 1969, No. 238 (Adj. Sess.), § 6.)

IMPLEMENTATION

Tree Pruning

Where applicable, tree pruning will be performed by a Certified Arborist which the City Arborist would approve for project pruning. A list of approved contractors is in Attachment 1. Pruning will be in accordance with the techniques referenced in the Urban Forestry Master Plan.

Tree Removal

Tree removal will be performed by DPW and, if required by the project threshold, under the supervision of the City Arborist or by an approved contractor. Removal will be in accordance with the techniques referenced in the Urban Forestry Master Plan.

Future Access

The WRD shall determine whether there is a need for continual access to the Facilities to meet routine maintenance schedules. If continual access is necessary, a stabilized construction entrance, consistent with the State of Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control, shall be installed.

Construction Project Specifications

All construction projects bid out by the WRD that impact trees that would otherwise be subject to the City's Tree Removal zoning ordinance will include a Tree Maintenance Plan Specification. The detailed specification is in Attachment 2.

Attachment 2

TREE PROTECTION PLAN

Description: The purpose of this item is to prevent damage to branches, trunks, and root systems of existing individual trees to remain and to ensure their survival. Provisions under this item include steps to minimize soil and root disturbance, and to construct protection measures for trees and shrubs close to construction areas that are labeled on the Plans as either "save", "protect" or "transplant". The Contractor shall install barrier fence labeled as Tree Protection Zone (TPZ) on the Plans adjacent to existing trees and, prior to any earth disturbance. Barrier fence shall not be removed until the final project inspection. There will be no activity within the TPZ except watering or installation of erosion prevention or sediment control measures where required. Tree protection methods and schedule of work shall be approved by the Engineer.

The Contractor shall hire a Certified Arborist, certified by the ISA, International Society of Arboriculture or equivalent, before construction to assist the Resident Engineer with tree protection measures as part of the Tree Protection Plan and site inspection.

The following is a list of three ISA Certified Arborists:

1. **Limbwalker Tree Service**, Mike Fallis

642 Monument Hill Road

Castleton, VT 05735

or

P.O. Box 733

Shelburne, VT 05482

800 -559 -0422

2. **Treeworks**, *Bill* de Vos 453

Stone Cutters Way #1

Montpelier, VT 05602 (802)

223-2617

3. **Heritage Tree Service**, Beth Fuehrer and Patrick Grant

2864 Malletts Bay Ave

Colchester, VT 05446

(802) 343-2303

A continuous level of protection shall be provided for trees marked "Save", "Protect" or "Transplant". At the direction of the Resident Engineer, the Certified Arborist shall inspect damage to trees and recommend mitigation treatment and replacement if damaged trees are

determined to need replacement.

Fenced, Tree Protection Zone: No construction may occur within the fenced Tree Protection Zone (TPZ) unless pre-approved. In locations where construction needs to occur within the TPZ due to the proximity of existing trees to the proposed sidewalk, construction may be approved on a case by case basis. Placement of protective, temporary fencing called barrier fence shall extend to the TPZ. The Contractor is prohibited from the following practices within the tree protection zone (fenced area):

Breaking of branches, scraping of bark, or unauthorized cutting, nailing or bolting into trunks; use of plants as temporary support (i.e. cables, leaning equipment). No unauthorized filling, excavating, trenching or auguring within "root zone".

Compaction/driving over the "root zone" caused by heavy equipment or concentrated foot traffic which may significantly alter the soil conditions prior to construction.

Storage of any materials or vehicles within the "root zone".

Dumping of construction waste or materials (including liquids).

Unauthorized removal or relocation of woody plants.

Execution or pre-emption of pre-determined Consulting Arborist responsibilities.

Removal of tree protection barricades or construction fencing prior to completion of project.

Construction shall be conducted so as to minimize impacts on the existing tree root structure. Excavation within the drip-line of the tree itself shall be completed using hand tools only to excavate to depth of base material and design elevation as shown on project cross-sections and typical details.

Barrier Fence shall be used as shown on the plans and as directed by the Engineer for the protection of trees and other landscape features for the delineation of areas as shown on the Plans.

Prior to Construction, site work may not commence until the contractor meets on-site with the Resident Engineer and the Certified Arborist to complete a pre-construction walk through to review and map all construction and work procedures, access routes, storage and tree protection areas relating to the protection of trees marked "Save" or "Protect". Excavation measures beyond the protective fencing but within the drip-line area or TPZ shall be resolved.

All underground utilities and drain or irrigation lines shall be routed outside the Tree Protection Zone. If lines must traverse the protection area, they shall be tunneled or bored under the tree.

Prior to construction, unless otherwise directed by the Resident Engineer, the Contractor shall install physical barrier to remain until all site work has been completed that will consist of:

1. Installation of barrier fencing as detailed on the plans.
2. Installation of weather proof signage, minimum size of 8-1/2" x 11", which reads: "Trees are being protected. No unauthorized trespass is allowed."
3. Fences shall not be relocated or removed without the written permission of the Resident Engineer.
4. The Contractor shall assign an individual on site responsible to oversee continuous maintenance of protective fencing, signs, and to follow tree protection plan
5. If the fenced, tree protection zones are breached by the contractor or subcontractor, a cash fine shall be charged for each violation resulting in damage (this amount shall be determined by the Resident Engineer.)
6. Monitor the water needs of the trees during and after construction.

BRANCH PRUNING - Pruning should be performed to provide adequate clearance for the new sidewalk and for equipment and construction. Clearance during construction shall be identified in advance and approved by the Resident Engineer and the Certified Arborist. All pruning shall be in accordance with the International Society of arboriculture's Best Management Practices for tree pruning and the ANSI A300 Pruning Standard (American National Standard for Tree Care Operations) and adhere to the most recent edition of ANSI Z133.1.

ROOT PRUNING - The Certified Arborist and the Resident Engineer shall first inspect each tree marked "Save" or "Protect" to determine if the plant may tolerate root pruning considering tree species, age, crown size, site exposure, existing defects, vigor, and severity of necessary root pruning. Root pruning shall occur between the months of March and May. If possible, roots shall first be pruned to sever them cleanly since soil excavation equipment may pull, rip or shatters roots, causing unnecessary damage for some distance towards the tree.

Root pruning shall be completed by root pruning equipment specifically designed for that purpose including large circular saws used to cut concrete and rock saws. The saws must cut through the wood roots to the depth of the required excavation. Root pruning equipment designed primarily for curb and sidewalk repair may cut only 8 to 12 inches deep. Where excavation must occur very close to trees, digging the soil away with a shovel may be necessary, and then cut the exposed root with a saw. Before grading, excavation for gravel base, or trenching, trees (as indicated on plan) shall be root pruned 1 foot outside the tree protection zone by cutting all roots cleanly to a depth of 24 inches, or to a depth of base material indicated on cross-sections or the typical details for the project. Roots shall be cut by manually digging a trench and cutting exposed roots with a saw, vibrating knife, rock saw, a narrow trencher with short blades, or other approved root-pruning equipment.

The following procedure is recommended.

1. Stake the edge of excavation.
2. Root pruning shall be done with a stump grinder where possible. Do not use trenchers or backhoes, which may rip the roots closer to the root collar than the intended cut. If a stump grinder cannot be used, roots shall be exposed by hand excavation. All roots 1" or greater in diameter shall be cut with a hand saw or chain saw. Cuts shall be made clean with no tearing of the roots.
3. If it is determined by the Resident Engineer and the Certified Arborist that root pruning equipment cannot be used, dig a trench along the staked line. Equipment such as a backhoe can be used until roots larger than 1 inch in diameter are encountered. Then, dig with a shovel.
4. When a root is encountered, expose it by removing soil by hand, and cut it cleanly with a saw at the outside edge of the trench (towards the tree). Do not paint the cut root end.
5. Replace soil in the trench.
6. Depth of root pruning is typically the same as the depth of excavation, up to 24" depth.

CONSTRUCTION PHASE

When excavation is to be performed near trees or shrubs labeled "Save" or "Protect" on the plans, then the following root protection procedure shall be observed. Contractor shall immediately contact the Resident Engineer or Certified Arborist, should roots larger than 1"

be exposed, for inspection and root pruning. Failure to communicate promptly could result in 100% damage assessment of fines.

1. All roots 4" or greater in diameter shall be left intact and trenches shall be completed by excavating under the root, unless otherwise directed by the Resident Engineer or Certified Arborist.

2. All roots 1" or greater in diameter shall be cut with a hand saw or chain saw. Cuts shall be made clean with no tearing of the roots.

3. All trees affected by construction activity and marked "Save" or "Protect" shall be irrigated on a schedule to be determined by the Resident Engineer and the Certified Arborist. Each watering shall wet the soil within the tree protection zone to a depth of 8 inches unless otherwise directed by the Resident Engineer.

4. Any roots damaged during grading or construction shall be exposed to sound tissue and cut cleanly with a saw.

5. Care shall be taken to avoid breaking tree limbs and branches with construction equipment.

6. If a tree is damaged and not repairable (as determined by the Engineer with assistance from the Certified Arborist) due to the Contractor's negligence, then the Contractor shall replace (at the Contractor's expense) the tree with the same tree of equal value, or two or more trees with a total value equal to that of the damaged tree.

7. If a tree is damaged and repairable, a determination shall be made by the consulting arborist. The tree(s) will be repaired by a Certified Arborist at the contractor's expense. Liquidated damages for trees damaged by construction operations shall be the equivalent of the replacement cost for the damaged tree or shrub plus \$100.00 each to cover administrative costs.

8. If encroachment causes the destruction of a tree(s), as determined by the Resident Engineer and Certified Arborist, the Contractor shall replace the tree(s) with trees of equal trunk diameter. For example, if a 10" diameter tree is destroyed, it shall be replaced with two 5" diameter trees or five 2" diameter trees, etc. The owner may elect to receive a settlement equal to the value of these trees in lieu of planting.

9. The Diameter Breast High (DBH) or Caliper of trees removed shall be the guide for the number of trees to be planted. For example if the

total DBH removed is 30" then ten (10) 3" caliper trees shall be planted. A settlement equal to the value of the trees in lieu of planting may be an option for replacement.

10. Any grading, construction, demolition, or other work expected to encounter tree roots shall be monitored by the Certified Arborist as recommended by the Resident Engineer.

METHOD OF MEASUREMENT. The quantity of Tree Protection to be measured for payment will be on a lump sum basis in the complete and accepted work.

BASIS OF PAYMENT. The accepted quantity of Tree Protection will be paid for at the Contract lump sum price. Payment will be compensation for all tree protection measures including providing and installing barrier fence, branch and root pruning, watering, and all incidentals necessary to complete the work. Partial payments will be made as follows:

- (a) The first payment of 25 percent of the lump sum price will be paid upon installation of all required barrier fence;
- (b) The second payment of 50 percent of the lump sum price will be paid upon completion of 50 percent of the work under the Contract;
- (c) The third payment of 25 percent of the lump sum price will be paid upon removal of all barrier fence.

Payment will be made under:

<u>Pay Item</u>	<u>Pay Unit</u>
900.645 Special Provision (Tree Protection)	Lump Sum

From: Vincent Comai <vcomai@burlingtonvt.gov>
Sent: Tuesday, December 27, 2022 2:45 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Cc: Michael Schramm <mschramm@burlingtonvt.gov>
Subject: Re: Updated DPW tree maintenance plan

Maintenance projects should require a site specific plan as this type of work is typically scheduled well in advance to allow for the development and implementation of a plan. However I can see where there could be instances where projects might be considered 'emergency maintenance' in which case a site specific plan would not be needed. As I emphasized with James, what is most important is that the city arborist or one of my crew of certified arborists in my absence, is consulted prior to and/or during work of any type to ensure that proper steps are being take to protect trees within the work zone to the extent possible. V.J.

Department of Permitting & Inspections

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

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: January 3, 2023
RE: ZP-22-611; 834-922 North Avenue

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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: RCO-RG Ward: 4N

Owner/Applicant: City of Burlington / Michael Schramm

Request: After-the-fact tree cutting associated with emergency stormwater outfall repair.

Applicable Regulations:

Article 5 (Citywide General Regulations)

Background Information:

The applicant is seeking approval after-the-fact for tree cutting associated with an emergency stormwater outfall replacement done in November 2022. A zoning permit is required because the pertinent tree maintenance plan has expired. A new tree maintenance plan is being sought under separate application.

The affected area is at the northeast corner of the intersection of North Avenue and Route 127. An emergent and worsening gully associated with a failing stormwater outfall necessitated emergency replacement of the outfall and associated tree cutting required to perform the work.

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

I. Findings

Article 5: Citywide General Regulations

Sec. 5.5.4, Tree Removal

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

(1) Grounds for approval

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

A. Removal of dead, diseased, or infested trees;

Not applicable.

B. Thinning of trees for the health of remaining trees according to recognized accepted forestry practices;

Not applicable.

C. Removal of trees that are a danger to life or property; or,

Not applicable.

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

The tree cutting included in this application was associated with development. In this case, the development, as noted above, was emergency replacement of a failing stormwater outfall. Given the location of the outfall and the wooded conditions of the site, clearing of the trees was required to perform the work. The site has been stabilized for the winter months with regeneration of vegetation expected in the springtime. **(Affirmative finding)**

(2) Grounds for denial

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be denied if existing healthy trees are known to be:

A. Providing a significant privacy or aesthetic buffer or barrier between properties;

Not applicable.

B. Providing stabilization on slopes vulnerable to erosion;

The presence of vegetation around the outfall likely moderated the amount of erosion that may have otherwise occurred. As noted above, the site has been stabilized for the winter months and will revegetate in the warmer months. **(Affirmative finding)**

C. Located within a riparian or littoral buffer;

Not applicable.

D. Provide unique wildlife habitat;

Not applicable.

E. A rare northern Vermont tree species as listed by the Vermont Natural Heritage Program; or,

Not applicable.

F. A significant element or, or significantly enhances, an historic site.

Not applicable.

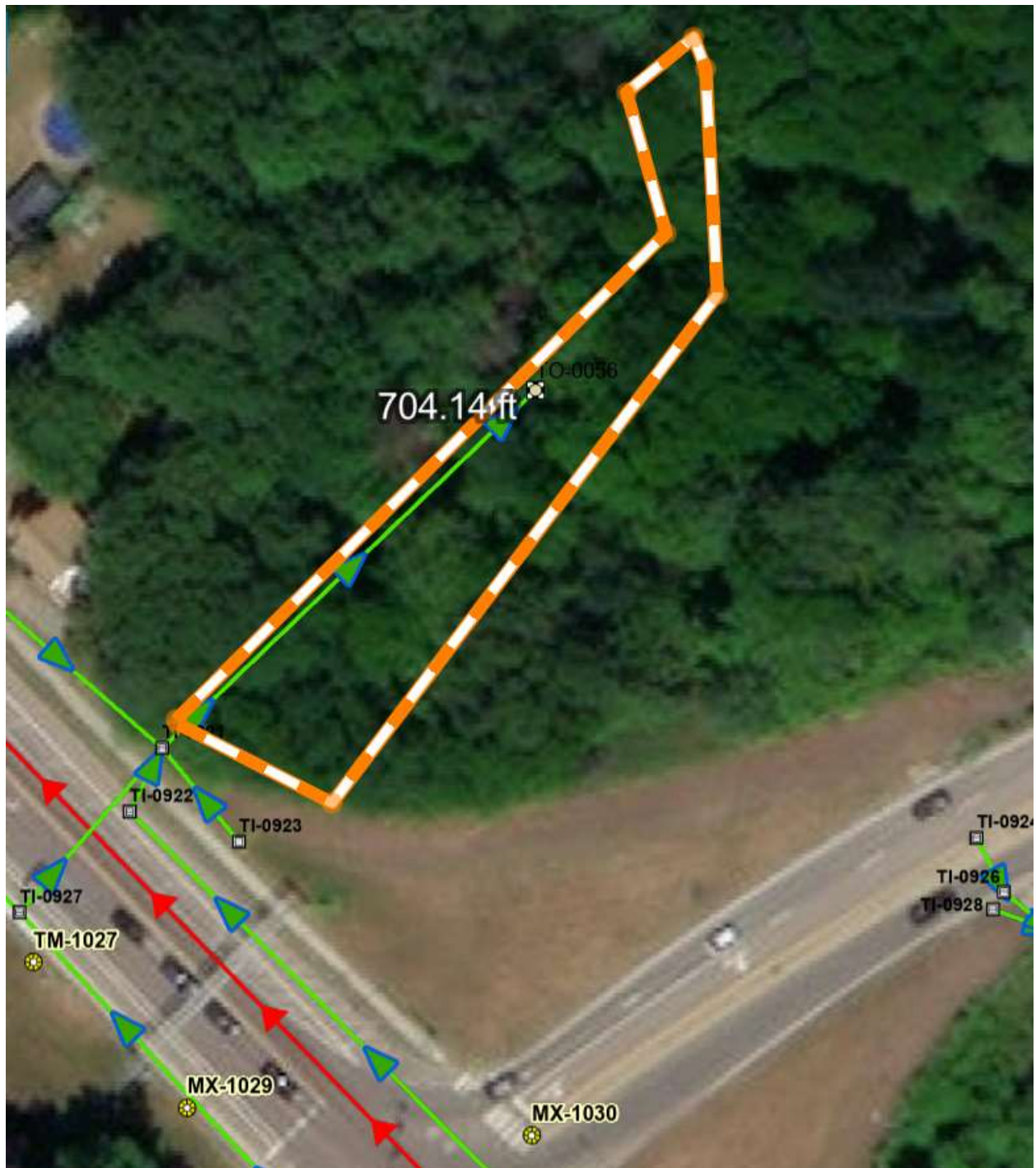
II. Conditions of Approval

1. Standard permit conditions 1-15.

Emergency Repairs to North Avenue Stormwater Outfall

Location: North of intersection of VT Route 127 On/Off Ramp and North Avenue

Approximate Limits of Tree Cutting – November 2022



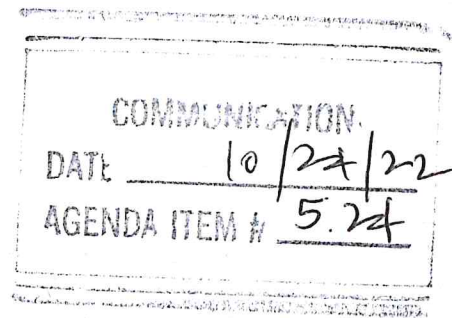












MEMORANDUM

TO: Board of Finance and City Council

FROM: Megan Moir, Division Director – Water Resources
Mike Schramm, Water Resources Engineer

DATE: October 24, 2022

CC: Chapin Spencer, Director of Public Works

RE: Request for Approval to Execute Contract for Emergency Repairs to North Avenue Stormwater Outfall

At their meeting of 10/24/22
the Burlington City Council voted to
approve the motion
Attest: *Jac Oliver*
Wiffen

REQUEST

The Department of Public Works (DPW) seeks approval and authorization from the Board of Finance and City Council to execute an agreement for up to \$324,200 for the emergency repair of an outfall pipe system at the intersection of North Avenue and VT-127 and to use up to \$324,200 of Stormwater Enterprise fund balance to fund the project.

BACKGROUND

Recent Events

The City owns a larger diameter (30") outfall that serves as the drainage point for North Avenue from approximately Saratoga Avenue south to the peak of the hill next to the high school property as well as for all of Saratoga Avenue. A section of the pipe has failed causing a sinkhole to form which, with recent additional erosion, is now approximately 80 feet from edge of North Avenue.

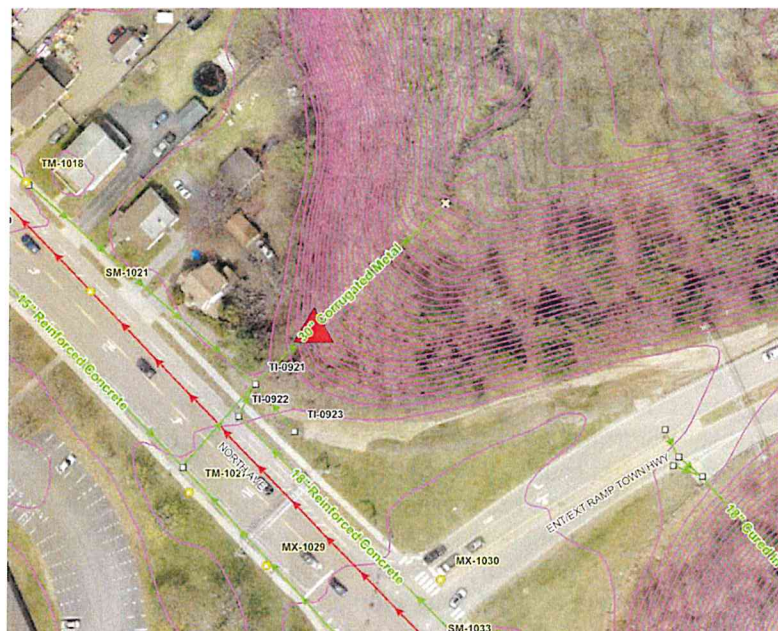


Figure 1: Location of sinkhole (red triangle)

This sinkhole was originally documented with a site visit by Water Resources Division (WRD) stormwater personnel on 9/30/22 after it was reported via See Click Fix on 9/29/2022. A follow up occurred the next week on 10/7 to do further assessments with the assigned Water Resources Engineer and a representative of the DPW Technical Services team given its proximity to North Avenue. The original size of the sinkhole was estimated to be approximately (30' long x 15' wide x 12' deep).

Given the severity of the issue, Water Resources immediately began reviewing the technical capabilities and likely availability of the excavation contractors in the area to propose a field-based design and perform the construction work. Based on our experience with previous outfall failures and repair, the Water Resources engineering group determined that given the steep slopes and other design considerations that at least one field design alternative should involve fusion welded HDPE pipe which allows for pipe to lay on the surface of a slope vs. additional excavation with buried plastic pipe or other options. Ultimately, while other alternatives were reviewed, the fusion welded pipe is indeed the preferred alternative.

We reached out to the local contractors who have fusion welded HDPE pipe capabilities. While both Engineers Construction Inc. (ECI) and S.D. Ireland (SDI) have the capability to do 30" diameter pipe, SDI would not be available to start construction until at least December, whereas ECI is prepared to mobilize and complete this work starting as soon as possible. We believe prompt mobilization is imperative given that the sinkhole has grown since discovery. We have experience with ECI on previous outfall projects such as the outfall repair at 33 North Avenue and ECI is one of the contractors on our Emergency On-Call list. We are familiar with their capabilities and quality of their work and often hire them for projects involving significant and more challenging excavation work. WRD performed a site visit with ECI on 10/14. ECI submitted an initial draft scope of work for a lump sum price of \$225,000 on 10/18. The day prior to that, WRD learned that a large diameter tree had fallen near the sinkhole and confirmed via a site visit that the sinkhole had increased in size and in a westerly direction towards North Avenue – exacerbating the need to act promptly.

Based on WRD staff comments, the revised current total proposed lump sum cost for the failed outfall repair is \$245,000 with two add alternatives that WRD engineering staff believe should be advanced.

- The first will address some of the additional downstream erosion that had been originally noted in the outfall inspections and involves an additional \$45,000 for the extension of the pipe 125' from the current outlet location to get the stormwater flow past an area of significant erosion. Staff are recommending implementation of this alternative as it is more cost effective to perform at this time when a contractor is already mobilized.
- The second is an additional \$4,200 to rehabilitate the stormwater structure at the top of the bank. Staff are recommending this work be performed as this will be the initial anchor point for the new pipe and it is important that this structure be in good condition.

Overall this results in a current lump sum cost of \$294,200. We are also recommending a ~10% contingency for this authorization of \$30,000 to allow for any additional City directed scope additions, for a total requested authorization of up to \$324,200.

Larger Context

This outfall, like a number of other eroding outfalls that discharge on the steeper, sandy slopes along the Intervale and the Winooski River and which were constructed of corrugated metal pipe, has been on our higher risk outfall list since our last round of outfall inspections in 2019 and 2020. These outfall locations are more risky due to the instability and erodability of steep sandy slopes – that is, all it takes is one leak in a pipe and supporting soils can quickly wash away around a pipe and then contribute to further pipe failure. Furthermore, in the last 5-10 years, we are finding more and more corrugated metal pipe (a frequent material for the stormwater systems installed in the 1980s when sewer separation was occurring) sections that are highly corroded on the bottom due to the snow and ice fighting salt

concentrations found in winter melt water and spring rains. This corrosion makes it extremely difficult to fully video the pipe without risking the loss of our robotic video equipment.

At the time of the last round of inspections this outfall was #4 on the list, behind an eroded outfall off of Manhattan Drive¹ and two eroded outfalls on Riverside Avenue. Previous findings were focused on the significant visible erosion in the outfall channel downstream of the outfall discharge point – and at the time of last inspection there was no noted erosion on the slope itself. Given that the pipe was a large diameter corrugated metal pipe on a slope in close proximity to a roadway this pipe was scheduled to be relined as part of our larger Citywide collection system relining project – with a planned completion date of no later than next summer. Addressing the outfall channel erosion further down was planned as part of a larger effort to address these higher risk outfalls proactively using low-interest Vermont State Revolving Fund (SRF) loan sources. Recently, we had been working on finalizing a scope of work with our engineering consultant to perform the preliminary engineering work that is necessary to access that SRF construction funding pathway. Unfortunately, given the appearance of this sinkhole on a steep slope and in close proximity to a major arterial roadway, North Avenue, this has now become an emergency project. Additionally, given that this was not a planned project for FY23, funding the project will require an FY23 budget amendment to program use of Stormwater Fund (245) fund balance.

Ultimately, this is an unfortunate example of how deferred capital investment on our system can result in increased costs for our rate payers. Had this corrugated metal outfall pipe been relined as planned before it failed, it would have cost approximately \$21,000. Instead, the emergency costs for the replacement of the existing outfall infrastructure (\$245,000) are over **11 times** the cost of proactive capital investment.

Procurement and Pricing Review

As discussed above, given the emergent nature and timing of this project, standard procurement is not possible for this project. Water Resources engineers reviewed the list of contractors with whom we have done similar work and who have previously submitted qualifications under our Emergency On-Call Repair List request for qualifications process (2020). Of these, only two (ECI and S.D. Ireland) have the capability to perform fusion welding of HDPE pipe but only ECI is able to mobilize within the required time frame.

The WRD Engineering team has carefully reviewed the scope of work to ensure that all technical requirements have been met and to secure the longevity of the investment while also reviewing the lump sum cost to ensure as fair a pricing as possible for the City's ratepayers. Thus far, there is consensus among WRD technical staff that the current price of \$245,000 for the outfall repair is reasonable for this emergency project. The pricing for the add alternative work also has been reviewed and appears reasonable given the cost of materials.

We considered the following data points in our review:

- The contractor has established an approximate project duration of 3 weeks for the existing outfall portion of the project (15 days). A cost of \$16,300/day of labor and materials, including a precast energy dissipation structure and anchoring materials, (or \$245,000) for a large construction crew installing significant infrastructure on a slope of this nature, including HDPE pipe costs, is not unreasonable in the current economic environment.
- The final construction cost for the outfall pipe repair at 33 North Avenue was \$175,000. That involved a shorter section of pipe and less access challenges. Additionally, it was not emergency work.

Authorization for this work is being treated as a stand-alone contract as it is outside the typical magnitude of the emergency work performed under the on-call contract process. However, please note that WRD will be returning in November to increase the maximum limiting amounts on the main agreement for some

¹ We have been finalizing the design and bid documents for repair of the highest risk outfall system (from the 2019/2020 inspections) that is off of Manhattan Drive.

of the on-call contractors like ECI in order to ensure that we have sufficient emergency authorization for this winter through the expiration of those agreements on October 31, 2023.

Also note that some additional work may remain for the eroded outfall channel downstream of the area currently being worked on as part of this emergency repair. The add alternative involving the extension of the pipe will address some of the worst erosion, but depending on future assessment work, work further downstream may still be necessary. WRD will evaluate this area as part of the preliminary engineering review using SRF loan funds at a later date.

Funding

There is not currently sufficient funding in the FY23 Stormwater (Fund 245) capital budget for this work, especially given the recent unplanned expense of North Avenue structure replacements (approved by Council on 9/19/2022). Pending a final review of our FY23 workplan against the remaining FY23 funds and available carry forward funds from unspent FY22 Stormwater Capital funds (which are carried forward in accordance with the FY23 Budget Resolution) it is likely that this project will need to amend the FY23 245-19-000.9500 Capital expense line using up to \$324,200 from the Stormwater Fund 245 fund balance. As of the end of FY21 Fund 245 had \$2.202 M of cash on hand available. While the audit for FY22 has not yet closed, end of FY22 analysis indicates that revenues exceeded expenses, even after capital carry forward and reserve contributions. The current FY23 annual operating and debt servicing expenses are \$1.467M, so conservatively there are at least \$735,000 in available funds.

MOTION

Board of Finance:

1. "To approve and recommend that the City Council authorize the Director of Public Works to execute a contract with Engineers Construction Inc. for emergency outfall repair work to the North Avenue stormwater outfall for an amount not to exceed \$324,200, subject to the prior review and approval of the City Attorney."
2. To approve and recommend that the City Council authorize CAO Schad to execute a budget amendment to increase the FY23 GL 245-19-000.110 by an amount not to exceed \$324,200 using Fund 245 fund balance.

City Council:



1. "To approve and authorize the Director of Public Works to execute a contract with Engineers Construction Inc. for emergency outfall repair work to the North Avenue stormwater outfall for an amount not to exceed \$324,200, subject to the prior review and approval of the City Attorney."
2. To approve and authorize CAO Schad to execute a budget amendment to increase the FY23 GL 245-19-000.110 by an amount not to exceed \$324,200 using Fund 245 fund balance.

Thank you for your consideration of this request.

Department of Permitting & Inspections

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

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Planning Technician
Ted Miles, Code Compliance Officer
Vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: January 3, 2023
RE: ZP-22-596; 170 Park Street

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

Zone: RM Ward: 3C

Owner/Applicant: Iryna Poberezhniuk

Request: Variance for additional lot coverage.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a variance from the applicable lot coverage limit. The subject property is located within the Residential – Medium Density zone. Per Table 4.4.5-3: *Residential District Dimensional Standards*, the lot coverage limit within this zone is 40%. Sec. 4.4.5 (d) 2, *Lot Coverage, Exceptions for Accessory Residential Features*, allows an additional 10% lot coverage for open air amenities such as decks, patios, and walkways. Parking areas and driveways are not included in this additional 10% allowance. They are counted within the standard 40% limit.

The most recent site plan approval for the property (ZP-22-505) depicts exactly 40% standard lot coverage and 4.7% for open air amenities. There is another pending application (ZP-22-598) for additional walkway and patio work that increases the 4.7% open air amenity coverage to 8.3% but leaves the standard 40% lot coverage unchanged.

The site plan originally associated with this variance application depicted an additional 71 square feet (+1.3%) of proposed standard lot coverage for expanded parking area behind the house. A revised site plan was submitted December 27, 2022 that depicts a smaller expansion of 48 square feet. The total number of parking spaces remains 3 as approved in ZP-22-505. This additional area results in 40.9% standard lot coverage, a 0.9% increase over the maximum permissible lot coverage. While the revised site plan depicts a smaller expansion, it still results in nonconforming lot coverage exceeding the maximum permissible in this residential district.

Previous zoning actions for this property are as follows:

- 12/12/22, Approval of rear yard parking area modifications
- 7/21/20, Approval of rear yard shed
- 10/14/16, Approval for paver system parking space

Recommendation: Variance denial as per, and subject to, the following findings and conditions:

I. Findings

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The subject lot is rectangular in shape, is 5,445 sf in size, and has 33' of street frontage. There is no unusual topography – the lot is flat. The lot is very similar to the rest of the properties along this stretch of Park Street.

The applicant cites a shared driveway as a unique circumstance that forces the need to park behind the house and to necessitate the excess lot coverage. Shared driveways are not rare or otherwise unique, particularly in Burlington's Old North End. Onsite parking is typically limited. A compliant site plan with 3 rear parking spaces is possible and has even been approved as part of ZP-22-505. **(Adverse finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As noted above, there are no unique physical conditions or circumstances precluding a compliant site plan for this property. **(Adverse finding)**

(c) The unnecessary hardship has not been created by the applicant.

The applicant wishes to have additional lot coverage for larger parking spaces. As noted above, the property has an approved, compliant site plan. There is no unnecessary hardship. **(Adverse finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance would enable additional lot coverage behind the house. It would not likely alter the essential character of the neighborhood or the residential district in which it is located. It would not impair the appropriate use or redevelopment of adjacent properties, nor would it impact renewable energy resources or be detrimental to the public welfare. **(Affirmative finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested variance results in 48 sf of lot coverage over the permissible limit; however, there is no hardship beyond the applicant's control creating the need for any excessive lot coverage.

(Adverse finding)

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

The variance would result in a noncomplying situation with excessive lot coverage. It would not enable the initiation of a nonconforming use of land. **(Adverse finding)**

II. Reasons for Denial

1. Per the adverse findings above.

Variance requested: grant 71' of impervious lot coverage extension for safe parking in the back, based on the criteria listed below.

Special circumstances All properties on my block have private driveways, except for mine at 170 Park St. Since my neighbors at 166 Park St don't have the driveway of their own, they are using my driveway to get to their garage and the additional gravel parking space that they have in the back. I have attached legal documents describing the easement on the shared driveway. Said driveway stretch between our houses takes over 7% of my property lot but unfortunately, is not something I can change or use for parking, so we are forced to park the cars in the back. Otherwise, we could be parking cars in the driveway like our neighbors do at 172 Park St, as it is long enough for three cars. Since this is not an option and this shared driveway takes a significant part of my property lot, I would like to put in a request for the lot coverage credit of 71' to provide for the needed backup space for the parking area in the back (see ZAP-22-5).

Similar variances exist elsewhere in the community I can see that my immediate neighbors have approximately 90% lot coverage, plus they are using my lot as a driveway. At least three properties bordering with mine have structures put in without the 5ft setback, and so on. Since those properties all were able to receive a variance or zoning exception, I believe so should my property, given the special circumstances of mine and my neighbors' property plans. All we are asking for is to let us keep the cars safely off the street, which is ultimately good for the City and the community. Please consider this application based on the five separate statutory criteria below.

1. Unique features: Unlike other properties on my street with private driveways, my driveway is used by the neighboring house, with shared part taking over 7% of my property lot. Close proximity of the neighbors' garage makes it even harder to maneuver. 2. No possible way to develop: Because of the above, shared driveway can't be used for parking. 3. Existing hardship: The current parking layout is extremely tight and unsafe with insufficient backup space, especially in winters. 4. Character preservation: The essential character of the neighborhood or district will not be altered. 5. Minimum impact: Requesting lot coverage credit of 71' (1.3%) to compensate for the above with the safe parking area in the back.

Variance Application ZP-22-596 - Applicant's report

- **This variance, total of 47.5 sq ft (only 0.8% of the total lot size) will:**

- 1) Allow the residents of a four-bedroom duplex park their vehicles safely off street, leaving more on-street parking available for those who need it;
- 2) Provide the ability to reverse the vehicles safely in the back and avoid backing out into the busy traffic area. This will eliminate the risk of hitting one of the structures or one of the cars while backing out with limited visibility and space;
- 3) Eliminate the risk of any further property damage (see attached photos for the damage caused) and dangerous driving conditions;
- 4) Save the tree that is in the way of a currently approved parking plan;
- 5) Finally, remove the need for the unnecessary earth disturbance of apx. 600 sq ft to otherwise satisfy City's lot coverage requirements (replacing the asphalt in the shared driveway with a ribbon driveway).

- **Parking Extensions and Gravel**

Gravel that was deposited into the parking area is scheduled to be removed on January 2 (prior to this hearing). The parking spot extensions do not have to be filled with gravel if that is the City's decision factor in order to grant this variance. Gravel, as a material, should not shift the focus away from the main point of this variance application which is: **a safety issue due to very tight and unsafe parking and driving conditions, that have been causing property damage to at least two buildings and pose a high risk of more damage, including house crashes and car crashes.**

- **Variance requested:** Grant 47.5 sq ft of impervious lot coverage extension (only 0.8% of the total lot size) for safe parking in the back, based on the criteria listed below.

Special circumstances

All properties on my block have private driveways, except for our driveway at 170 Park St which is shared with 166 Park St (see Legal documents and Easements attached). Said driveway leads to a large garage belonging to 166 Park St, which is only 8ft away from my property - directly on the property line, without a setback. This placement makes it very difficult to get in and out of the tight parking area directly behind my house, especially in wintertime.

Similar variances exist elsewhere in the community

Properties bordering mine have excess lot coverage, have structures put in without the required 5ft setback, and so on. Since those properties all were able to receive a variance or zoning exception, I believe so should my property, given the unsafe conditions caused by the special circumstances of mine and my neighbors' property plans. All we are asking for is to let us keep the cars safely off the street, which is ultimately good for the City and the community. Please consider this application based on the five separate statutory criteria below.

1. Unique features: Unlike other properties on my street with private driveways, our driveway is shared with the neighboring house but mainly located on my property lot. The shared

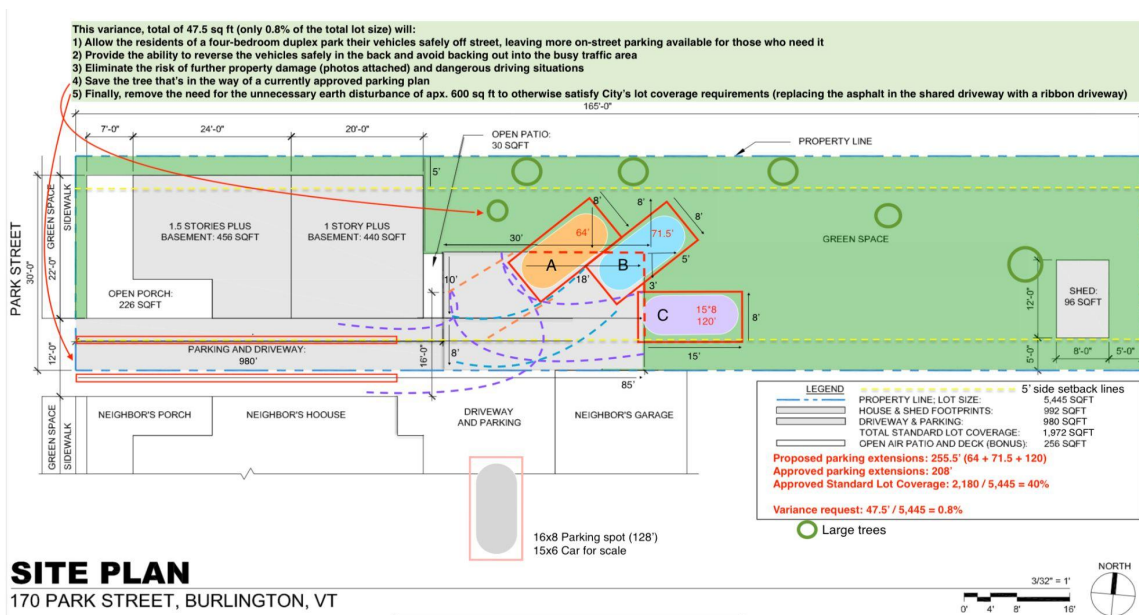
part is taking over 7% out of 40% allowed standard lot coverage (leaving only 33% for the house and all other structures). Lack of setbacks and extremely close proximity of the neighbors' garage make it even harder for the vehicles to safely maneuver, especially in wintertime.

2. No possible way to develop: Because of the above, shared driveway cannot be used for parking. Garage cannot be moved out of the way. Neighbors' vehicles' path of travel cannot be blocked.

3. Existing hardship: Because of the above, vehicles parked directly behind my house currently have to back out into the main driveway (and into the busy main road) via a narrow passage, under a very challenging angle. We have experienced hardship using the parking area safely. The current parking layout is extremely tight and unsafe with limited visibility and insufficient backup space, especially in local weather conditions. Significant property damage has been occurring for many years. Both houses get constantly hit by the service vehicles or moving trucks.

4. Character preservation: The essential character of the neighborhood or district will not be altered.

5. Minimum impact: Requesting standard lot coverage credit of 47.5 sq ft (only 0.8% of the total lot coverage) to compensate for the above with the safe parking area in the back. Without this variance, the only way to achieve this result with under 40% lot coverage, would be to remove asphalt from the shared driveway (which is in good condition and will last for many more years) and replace it with a ribbon driveway. This would be an unnecessary earth disturbance of apx. 600 sq ft only to satisfy City's lot coverage requirements. Most houses on my street have ribbon gravel driveways, where gravel can spill into the main road, and we are trying very hard to avoid that. In addition, this variance will allow us to save a tree that otherwise will have to be removed (see Site plan below).



NORTH
▲

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

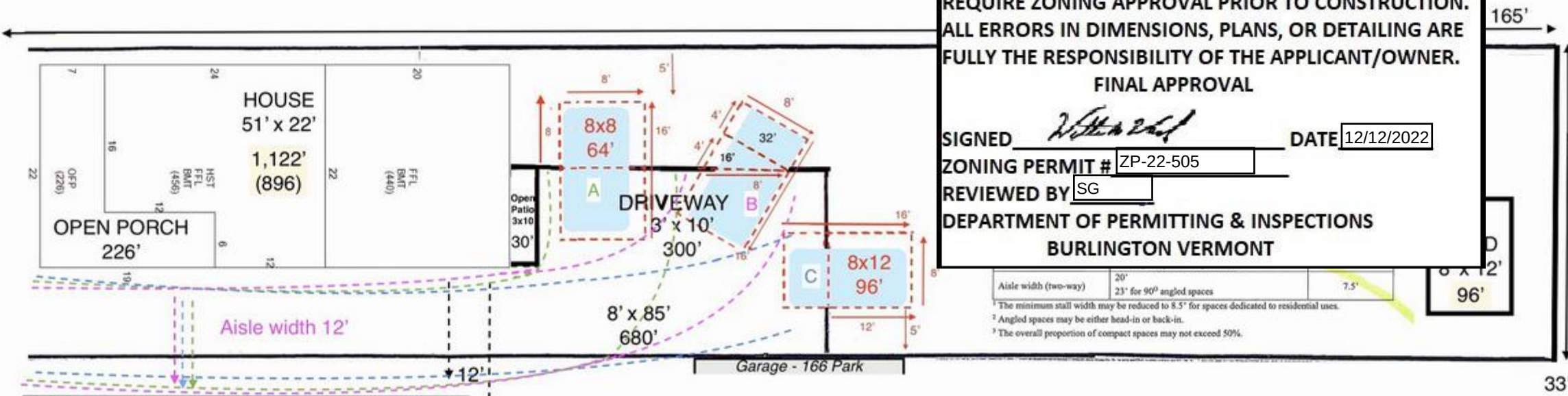
FINAL APPROVAL

SIGNED *[Signature]* DATE 12/12/2022

ZONING PERMIT # ZP-22-505

REVIEWED BY SG

**DEPARTMENT OF PERMITTING & INSPECTIONS
 BURLINGTON VERMONT**



Existing Impervious Lot Coverage:

- House 896'
- Shed 96'
- Driveway 980'
- Paver 90'

Total: $2,062 / 5445 = 37.8\%$

Existing Pervious Lot Coverage:

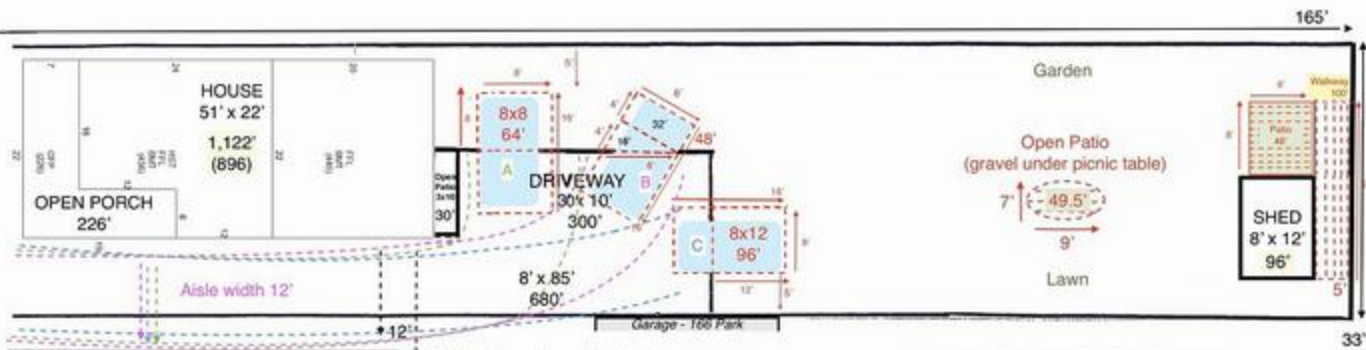
- Open Porch 226'
- Open Patio (House) 30'

Total: $256 / 5445 = 4.7\%$

Proposed Gravel $64 + 48 + 96 = 208'$
 Removed Paver -90'
 New Lot Coverage $118'$

Total Proposed Standard Coverage
 $2,062 + 118 = 2,180 / 5445 = 40\%$

Aisle width (two-way)	20'	23' for 90° angled spaces	7.5'
¹ The minimum stall width may be reduced to 8.5' for spaces dedicated to residential uses. ² Angled spaces may be either head-in or back-in. ³ The overall proportion of compact spaces may not exceed 50%.			



Existing Standard Lot Coverage:

House 896'
Shed 96'
Driveway 980 (680 + 300)
Parking extensions 208 (64 + 48 + 96)

Total: $2,180 / 5445 = 40\%$

Existing Open Amenities Lot Coverage:

Open Porch 226'
Open Patio (House) 30'

Total: $256 / 5445 = 4.7\%$

Proposed Open Amenities Lot Coverage:

Open Porch 226'
Open Patio (House) 30'

Open Patio (Lawn) 49.5'
Open Patio (Shed) 48'
Walkway 100'
Total: $453.5 / 5445 = 8.3\%$

NORTH
▲

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

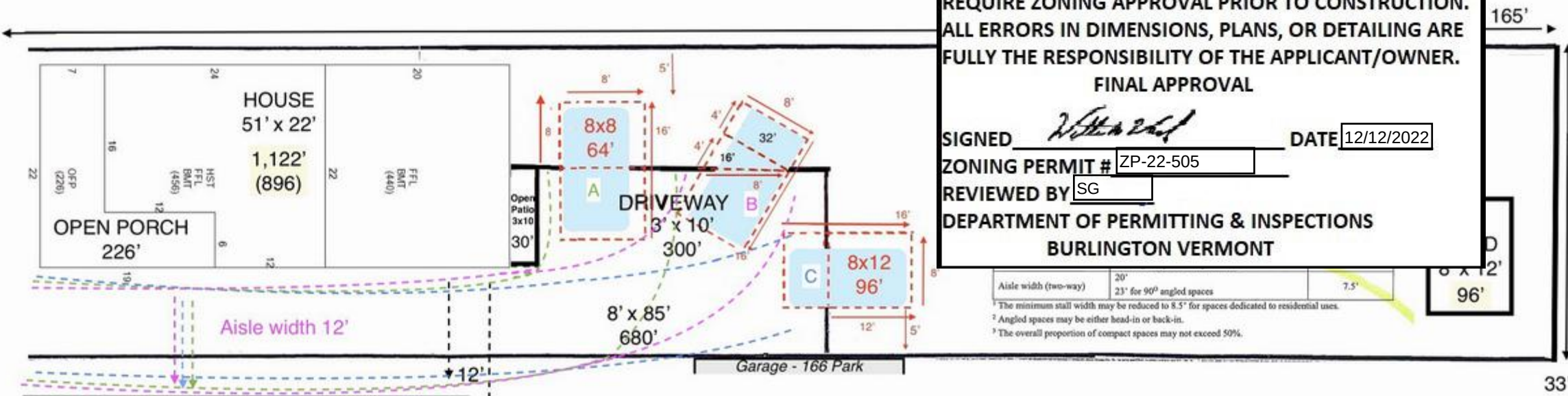
FINAL APPROVAL

SIGNED *[Signature]* DATE 12/12/2022

ZONING PERMIT # ZP-22-505

REVIEWED BY SG

**DEPARTMENT OF PERMITTING & INSPECTIONS
 BURLINGTON VERMONT**



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- House 896'
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¹ The minimum stall width may be reduced to 8.5' for spaces dedicated to residential uses. ² Angled spaces may be either head-in or back-in. ³ The overall proportion of compact spaces may not exceed 50%.			









ATTORNEY'S REPORT AND OPINION ON TITLE

RECORD OWNERS:

Emily Hoang

ADDRESS OF PROPERTY:

170 Park Street, Burlington, Vermont

PROPERTY DESCRIPTION:

Being all and the same land and premises conveyed to Emily Hoang by Warranty Deed of Thomas A. Henck dated October 15, 2014 and recorded on October 16, 2014 in Volume 1260 at Page 488 of the Land Records of the City of Burlington and described further as follows:

A lot of land with a building thereon situated on the easterly side of Park Street, the dwelling house thereon being known and designated as No. 170 Park Street, and said lot having a frontage thereon of about 2 rods and a depth of about 10 rods. Being Parcel No. 2 described in a Quitclaim Deed from Bernard Lisman to Anna E. Hennigan and Thomas M. Brennan, dated January 29, 1971, and recorded in Volume 203, Page 179, of the City of Burlington Land Records.

Property is subject to and benefits from a right of way over the shared drive lying between houses known as #166 Park Street and 170 Park Street, said driveway having frontage on Park Street and extending easterly to said garage on the land herein conveyed, said driveway to be used in common by and between the owners of 166 Park Street and 170 Park Street.

Being lands and premises commonly known and designated as 170 Park Street, Burlington, Vermont.

Reference is hereby made to the above instruments and to the records and references contained therein in further aid of this description.

The following opinion and report on the title of the record owner to the above described property is based on an examination of the appropriate records of the City of Burlington. It is furnished in connection with a proposed sale to Iryna Poberezhniuk for the purchase price of \$350,000.00 and a proposed mortgage to New England Federal Credit Union, as security for a loan

of \$332,500.00 and is for the sole use and benefit of Iryna Poberezhniuk and any mortgagee above named and is not transferable.

Based on such examination and the assumption that the records examined are currently and correctly indexed in the general indices, it is my opinion that, except as set forth below, on the effective date of this report the title of the record owner is a marketable title in Fee Simple free and clear of encumbrances, except as noted below.

1. MUNICIPAL CHARGES:

(Unless otherwise indicated, these are based on oral verification or written summaries furnished by the appropriate municipal officer or department and is reported as given by such department or officer.)

a. Assessed Valuation - \$182,000.00

b. City of Burlington taxes for current fiscal period -

- (1) Unadjusted Annual Tax: \$5,350.00
- (2) Less State Payment: None.
- (3) Adjusted Annual Tax: \$5,350.00
- (4) Net Installment Amounts: \$1,337.59
- (5) Tax due dates: August 12, November 12, March 12, June 12
- (6) Date of last installment paid: November 12, 2019
- (7) Delinquent taxes: None.

c. Village taxes for current fiscal period -

- (1) Unadjusted Annual Tax: None.
- (2) Less State Payment: None.
- (3) Adjusted Annual Tax: None.
- (4) Net Installment Amounts: None.
- (5) Tax due dates: None.
- (6) Date of last installment paid: None.
- (7) Delinquent Taxes: None.

d. Parcel Identification Number: 044-1-094.000

e. SPAN Number: 114-035-14558

f. Other Municipal Charges: Final reading required for closing. No liens of record.

NOTE: The property tax bill may be sent by the City of Burlington to the person who owned the property as of April 1st. As a result, Iryna Poberezhniuk must contact the City of Burlington for a copy of the tax bill if they did not obtain title to the property by April 1st. Failure to receive a copy of the tax bill may result in inadvertently failing to pay property taxes on time and interest/penalty charges. The undersigned shall not be responsible for interest/penalty charges resulting from the failure to obtain a copy of said tax bill and pay property taxes on time.

NOTE: If the property will be occupied by Iryna Poberezhniuk as a primary residence, Iryna Poberezhniuk must file a Homestead Declaration (HS-122) with the Vermont Tax Department on or before April 15th. The Homestead Declaration will allow the property to be taxed at the homestead property tax rate and is one of the requirements to qualify for a Property Tax Adjustment. The undersigned is not responsible for the filing of Homestead Declarations. A Homestead Declaration may be filed online at secure.vermont.gov/hd/index.

2. CONDOMINIUM/HOMEOWNERS ASSOCIATION FEES AND CHARGES:

(Unless otherwise indicated, based upon oral verification by property manager or association representative and reported as given by such manager or representative.)

Not applicable.

3. MORTGAGES/LIENS/ATTACHMENTS:

(The following mortgages/liens/attachments are to be paid off, discharged, released and/or subordinated.)

A mortgage from Emily Hoang to New England Federal Credit Union dated October 15, 2014 and recorded on October 16, 2014 in Volume 1260 at Page 491 of the Land Records of the City of Burlington in the original principal amount of \$180,000.00.

4. EASEMENTS, COVENANTS, RESTRICTIONS AND OTHER EXCEPTIONS OF RECORD:

(The following exceptions to title shall remain of record following closing.)

- a. Property is subject to and benefits from a right of way over the shared drive lying between houses known as #166 Park Street and 170 Park Street, said driveway having frontage on Park Street and extending easterly to said garage on the land

herein conveyed, said driveway to be used in common by and between the owners of 166 Park Street and 170 Park Street.

5. LEASE LAND RENT:

Not applicable.

6. MUNICIPAL PERMITS:

This Report on Title is not intended to be a complete or full report on various regulatory matters affecting the property. Such a report would require inspections of the property and opinions by professionals in the engineering, survey and construction fields, all of which are not part of the Title Report. However, we have examined the applicable municipal records, all applicable municipal land use permits (24 V.S.A. 4303(11)) appear to have been issued, and we have found nothing which appears of record in the City of Burlington Land Records or the applicable and available municipal public records which would constitute a defect in marketable title arising from any violation of municipal regulations, unless enumerated hereinbelow. The Property is subject to the following municipal land use and permit requirements:

City of Burlington Zoning Permit #82-134 (repair front porch) dated July 21, 1982.

7. STATE LAND USE AND ENVIRONMENTAL PERMITS:

A. Wastewater System and Potable Water Supply and Act 250 Land Use Permits:

The Property is subject to the following state permits:

The undersigned has not found evidence of any State of Vermont Wastewater System and Potable Water Supply Permits, Subdivision Permits, Act 250 Land Use Permits, or other related permits applicable to the subject property. As of midnight on December 31, 2006, the property was deemed to be in compliance with Vermont's Wastewater and Water Supply Rules effective September 29, 2007 (the "Rules") as set forth under section 1-304(a)(1) of the Rules, better known as the "clean slate exemption."

The property will remain in compliance with Vermont's Wastewater and Water Supply Rules effective September 29, 2007 (the "Rules") until such time that either the wastewater or potable water supply systems fail (defined under section 1-201(a)(24) and section 1-201(a)(25) of the Rules) or any event or action is taken that triggers a requirement for a permit under Section 1-303 of the Rules. A jurisdictional determination of whether or not the property is in compliance with Vermont land use development laws and/or Vermont

Environmental Protection Rules can only be made by a Licensed Designer after performing a physical inspection of the property. Such a determination cannot be made by an attorney and it is beyond the scope of this Report or Opinion on Title. Further, a notice of violation might be known by the State of Vermont but the information has not yet been posted to a public forum. If there are any questions or concerns as to compliance, or if there are plans to further develop the subject property, it is recommended that a licensed designer, engineer, or other appropriate specialist be retained to ensure compliance with the Rules.

The undersigned has not physically inspected the property to determine compliance with any state permit requirement. However, the undersigned has examined the applicable records and found nothing which appears of record in the City of Burlington Land Records or the applicable and available State of Vermont public records which would constitute a defect in marketable title arising from any violation of applicable State of Vermont regulations except as follows:

None.

B. Vermont Shoreland Protection Act ("Act"): Effective July 1, 2014, the Vermont General Assembly has passed shoreland protection legislation that apply to activities within 250 feet of the mean water level of all lakes greater than 10 acres in size ("Shoreland District"). The Shoreland Protection Act (Chapter 49A of Title 10 §1441 et seq) establishes a new state regulation for guiding shoreland development. If you are purchasing or refinancing a property that is or may be located in an affected area, the components of the Act could affect your present or future plans and or require extensive permitting. The Shoreland Protection Act recognizes that many shoreland properties in Vermont are already developed or are small lots that cannot meet the new standards. Developed properties are "grandfathered" until the owner proposes redevelopment. Additionally, certain activities are exempt from the Act, certain activities require that you "register" your proposed activity with the State, and certain activities pertaining to re-development of existing developed shorelands or the development of undeveloped shorelands will require extensive permitting. Please note that unless the State has delegated regulatory authority to the Town where your property is located, you must obtain a State permit in addition to any Town permit. The link provided below to the Shoreland Protection webpage will provide you with additional information. We recommend that you contact an engineer, surveyor or other qualified specialist with this area of permitting before any activity within the Shoreland District takes place.

http://www.anr.state.vt.us/dec/waterq/permits/htm/pm_shoreland.htm

8. RECORDED UNDERGROUND TANK NOTICES:

None of record.

9. FLOOD ZONE:

No certification made as to flood zone.

10. OBJECTIONS TO TITLE/REMARKS:

The information in this Certificate pertaining to any delinquent taxes, water or sewer charges, etc., was obtained from the appropriate municipal official or department and is reported as given by such department or official. The writer not having personally examined these records, certifies only to the extent of information which was reported and is not responsible for incorrect information provided by such authorities.

This property is a 4 bedroom duplex.

11. EXCEPTIONS:

This report does not cover and this opinion is subject to:

- a. Unrecorded mechanics' liens, attachments or other encumbrances not indexed, improperly indexed or not of record;
- b. Any facts which would be disclosed by a physical survey or inspection of the premises. This Opinion makes no certification as to the location of the boundaries or acreage of the property;
- c. Except where indicated, Probate, Bankruptcy, and other Court records of birth, death, marriage and divorce;
- d. Special assessments or liens, if any, not shown of record;
- e. Federal and state taxes or liens against any of the parties in the chain of title not shown of record;
- f. Transfers challenged and/or subsequently voided as being fraudulent or preferential under applicable bankruptcy or state laws;

- g. Federal and state environmental cleanup or "superfund" liens against any of the parties in the chain of title not shown of record;
- h. Any right or claim of parties in possession or not in possession and not shown of record, including but not limited to any right of possession or claim for damages relating to the land, which has been or may be asserted of record or not, by or on behalf of any Native American or Native American tribe;
- i. This Opinion does not address the feasibility of any contemplated or prospective use other than as set forth herein. Applicable statutes, ordinances and regulations of governmental entities, including but not limited to, environmental, land use, zoning, subdivision, state and/or federal wetlands regulations, as well as other building and use restrictions may significantly limit or prevent certain use of the property;
- j. Any untrue, inaccurate or misleading statements contained or referred to in any recorded documents or public record;
- k. Rights of way, water, pipeline and riparian rights, utility and other easements not recorded in the Land Records of the town/city in which the property is located, or which may exist in fact upon the premises;
- l. No certification is made as to compliance or noncompliance with lead paint abatement, removal, disclosure or other statutes;
- m. Any facts which would render the above property subject to Act 250 jurisdiction under the Vermont Supreme Court ruling set out in: In Re: Eastland, Inc., 151 Vt. 497 (1989). No search of town/city records of other towns/cities within the appropriate Environmental District was conducted to determine whether a State Land Use (Act 250) and/or State Wastewater Permit is/are required;
- n. No determination is made as to the location of the property in a flood zone;
- o. No certification beyond a review of the applicable Land Records and the current use of the property is made as to compliance with the terms and conditions of protective covenants.
- p. The undersigned does not make any representation, or certification, as to whether or not the above-described lands and premises constitute "wet lands" as such may be protected or regulated by Title 10, Vermont Statutes Annotated.

- q. Liens and title deficiencies resulting from the subdivision or improvement of land without lawful authority, which liens or title deficiencies are not disclosed by the records that were searched in preparing this Opinion.
- r. No opinion or certification is made as to the existence of any so-called "ancient roads", mapped or unmapped, which may traverse the subject Property and could give rise to claims by the public for access over and upon such roadways. Determining the existence of "ancient roads" would require significant additional research beyond the scope and Period of Search and require the services of other professionals. Please advise the undersigned if you wish to authorize such additional work.

PERIOD OF SEARCH: This report and opinion refer to and apply only so far back as forty years and is effective down to December 27, 2019 at 8:00 a.m.

BAUER GRAVEL FARNHAM

By: _____

Jonathan M. Stebbins, Esq.

401 Water Tower Circle
Suite 101
Colchester, VT 05446
Tel.: 802.879.6323
Fax: 802.657.3566
JMS/hmc

EXHIBIT A / SCHEDULE A - PROPERTY DESCRIPTION

Being all and the same lands and premises conveyed to Iryna Poberezhniuk by Deed of Emily Hoang of approximate even date herewith and to be recorded in the City of Burlington Land Records. Said lands and premises being more particularly described as follows:

Being all and the same land and premises conveyed to Emily Hoang by Warranty Deed of Thomas A. Henck dated October 15, 2014 and recorded on October 16, 2014 in Volume 1260 at Page 488 of the Land Records of the City of Burlington and described further as follows:

A lot of land with a building thereon situated on the easterly side of Park Street, the dwelling house thereon being known and designated as No. 170 Park Street, and said lot having a frontage thereon of about 2 rods and a depth of about 10 rods. Being Parcel No. 2 described in a Quitclaim Deed from Bernard Lisman to Anna E. Hennigan and Thomas M. Brennan, dated January 29, 1971, and recorded in Volume 203, Page 179, of the City of Burlington Land Records.

Property is subject to and benefits from a right of way over the shared drive lying between houses known as #166 Park Street and 170 Park Street, said driveway having frontage on Park Street and extending easterly to said garage on the land herein conveyed, said driveway to be used in common by and between the owners of 166 Park Street and 170 Park Street.

Being lands and premises commonly known and designated as 170 Park Street, Burlington, Vermont.

**WARRANTY DEED**

044-1-094-000

KNOW ALL PERSONS BY THESE PRESENTS THAT EMILY HOANG, of Burlington, Vermont, Grantor, in the consideration of Ten dollars and other good and valuable consideration, including Grantor's initial leg of a section 1031 tax deferred exchange, paid to her full satisfaction by IRYNA POBEREZHNIUK, of Burlington, Vermont, Grantee, by these presents, do freely, GIVE, GRANT, SELL and CONFIRM unto the said Grantee, IRYNA POBEREZHNIUK, and her heirs and assigns forever, a certain piece of land in the City of Burlington, in the County of Chittenden, and State of Vermont, described as follows, viz:

Being all and the same lands and premises conveyed to Emily Hoang by Warranty Deed of Thomas A. Henck dated October 15, 2014 and recorded in Volume 1260, Page 488 of the City of Burlington Land Records.

A lot of land with a building thereon situated on the easterly side of Park Street, the dwelling house thereon being known and designated as No. 170 Park Street, and said lot having a frontage thereon of about 2 rods and a depth of about 10 rods. Being Parcel No. 2 described in a Quitclaim Deed from Bernard Lisman to Anna E. Hennigan and Thomas M. Brennan, dated January 29, 1971, and recorded in Volume 203, Page 179, of the City of Burlington Land Records.

Property is subject to and benefits from a right of way over the shared drive lying between houses known as #166 Park Street and 170 Park Street, said driveway having a frontage on Park Street and extending easterly to said garage on the land herein conveyed, said driveway to be used in common by and between the owners of 166 Park Street and 170 Park Street.

This conveyance includes and is subject to all easements, conditions, covenants, restrictions, agreements, appurtenant benefits, and rights of way as referenced in the aforementioned deeds and of record.

Being lands and premises commonly known and designated as 170 Park Street, Burlington, Vermont.

This Conveyance is being made directly by Grantor to Grantee at the request of, and under the exclusive control of Tax Deferred Exchange Services, Inc., a Washington corporation, who is acting as a Qualified Intermediary in this transaction.

Reference is hereby made to the instruments and plans referred to above and the records thereof, and the instruments and plans referred to therein and the records thereof, in further aid of this description.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantee, IRYNA POBEREZHNIUK, and her heirs and assigns, to their own use and behoof forever; and I, the said Grantor, EMILY HOANG, for myself and my heirs, executors, and administrators, do covenant with the said Grantee, IRYNA POBEREZHNIUK, her heirs and assigns, that until the ensealing of these presents I am the sole owner of the premises and have good right and title to convey the same in manner aforesaid, that she is FREE FROM EVERY ENCUMBRANCE except as aforementioned and of record; and I hereby engage to WARRANT AND DEFEND the same against all lawful claims whatever, except as aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 30th day of December, 2019.

Emily Hoang, by Elizabeth Demas
her attorney-in-fact

EMILY HOANG by Elizabeth Demas
Her Attorney in Fact.

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Colchester, in said County and State, this 30th day of December, 2019, personally appeared, Elizabeth Demas, Attorney in Fact for Emily Hoang, and she acknowledged the foregoing instrument by her sealed and subscribed, to be her free act and deed and the free act and deed of Emily Hoang.

Before me: _____

Notary Public

Commission Expires: 01/31/2021

Jonathan M. Stebbins, Esq.

Notary Public

State of Vermont

My Commission Number: 0003375

My Commission Expires: 1/31/2021

Vermont Property Transfer Tax
32 V.S.A. Chap 231
-ACKNOWLEDGEMENT-
Return Received This Even Date

Received for Record at City of Burlington, VT
On Jan 02, 2020 at 12:02P
Beth Anderson, CAO

November 28, 2022

Dear City of Burlington Department of Zoning,

Myself, Aislinn O'Connor, and my two roommates, Tessa Davis and Jennifer Clemente, are writing on behalf of our landlord, Iryna Poberezhniuk, in support of extending the gravel in the parking area in the back of our apartment. We currently can only safely fit two cars in our parking lot, and even with two cars parked, there is little maneuvering room for the car parked closest to our neighbor's garage when trying to back out of the driveway into oncoming traffic. This parking situation is currently unsafe, and with winter approaching and anticipated snowbanks, it will further increase the likelihood of an accident occurring either to the other vehicle parked in the lot, the house, or the garage next to us. If the parking spaces are deeper in the back, toward the shed of our house and to the side, it would allow for much more room to maneuver safely in the parking area, especially when it starts to snow. With four tenants in one house, a third parking space is a necessity, given that we have more than enough room in the yard to accommodate another vehicle in the parking area in the back. Tessa, Jennifer, and I (Aislinn) are in support of application numbers ZAP-22-5 and ZP-22-596. However, the application we are in the most support of and that we think is most essential to vehicle and home safety is the approval of variance plan ZP-22-596. This plan allows three vehicles to backup and park with ample room to do so safely and prevent damage to our home and other vehicles.

Thank you so much for your time when considering the appeal of ZAP-22-5 and we look forward to meeting with you and discussing this further.

Warm regards,

Aislinn O'Connor, Tessa Davis, and Jennifer Clemente

Residents of 170 Park St. #1, Burlington, VT 05401

Daisy Vaughn & Joshua Dillon
Owners of the property at
166 Park St Burlington VT 05401

November 29, 2022

Development Review Board
Permitting & Inspections
645A Pine Street
Burlington, VT 05402-0849

Comment in support of Zoning Applications ZAP-22-5 & ZP-22-596

We support the additional parking spaces for 170 Park Street.

Michael Ross
166 Park St
Burlington VT 05401

November 27, 2022

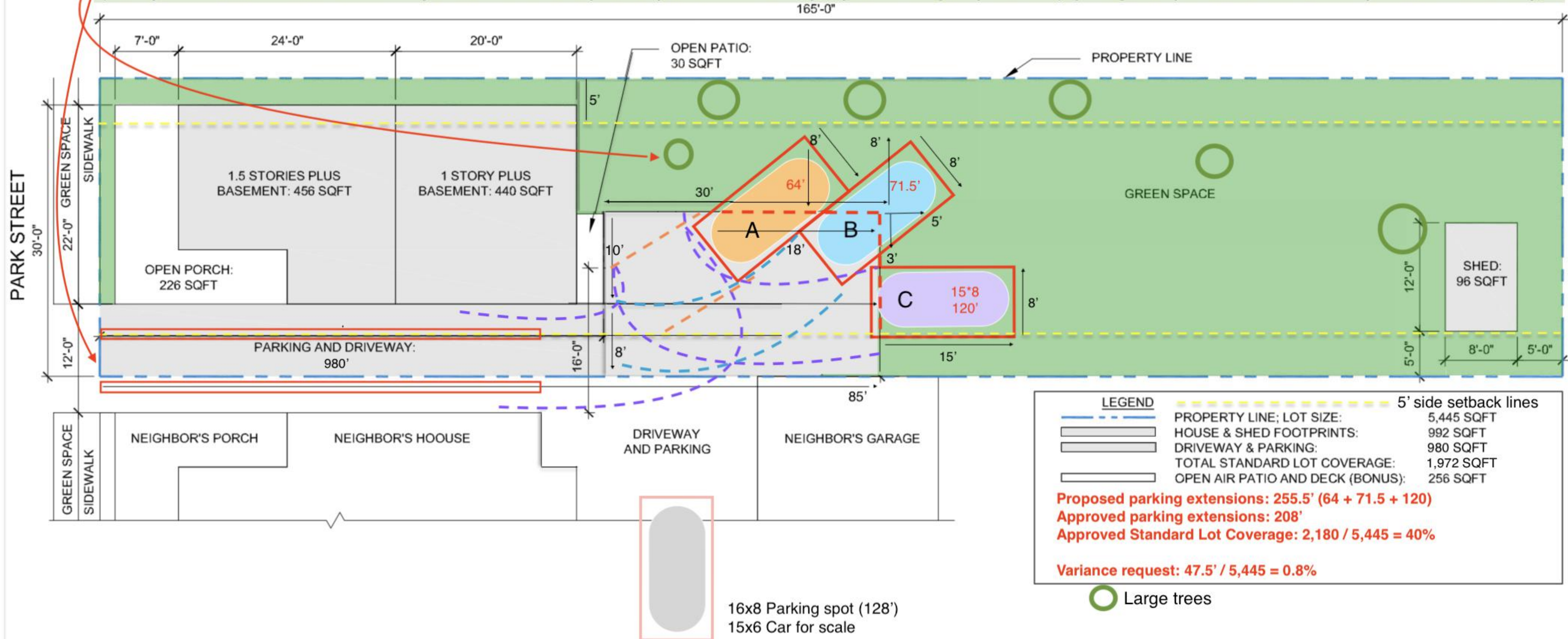
Development Review Board
Permitting & Inspections
645A Pine Street
Burlington, VT 05402-0849

Comment in support of Zoning Applications ZAP-22-5 & ZP-22-596

I have looked at Iryna's plans, and I support it. I think it would be beneficial for making a safer space for all neighbors involved in our shared driveway.

This variance, total of 47.5 sq ft (only 0.8% of the total lot size) will:

- 1) Allow the residents of a four-bedroom duplex park their vehicles safely off street, leaving more on-street parking available for those who need it
- 2) Provide the ability to reverse the vehicles safely in the back and avoid backing out into the busy traffic area
- 3) Eliminate the risk of further property damage (photos attached) and dangerous driving situations
- 4) Save the tree that's in the way of a currently approved parking plan
- 5) Finally, remove the need for the unnecessary earth disturbance of apx. 600 sq ft to otherwise satisfy City's lot coverage requirements (replacing the asphalt in the shared driveway with a ribbon driveway)



SITE PLAN

170 PARK STREET, BURLINGTON, VT







08 Pond

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x

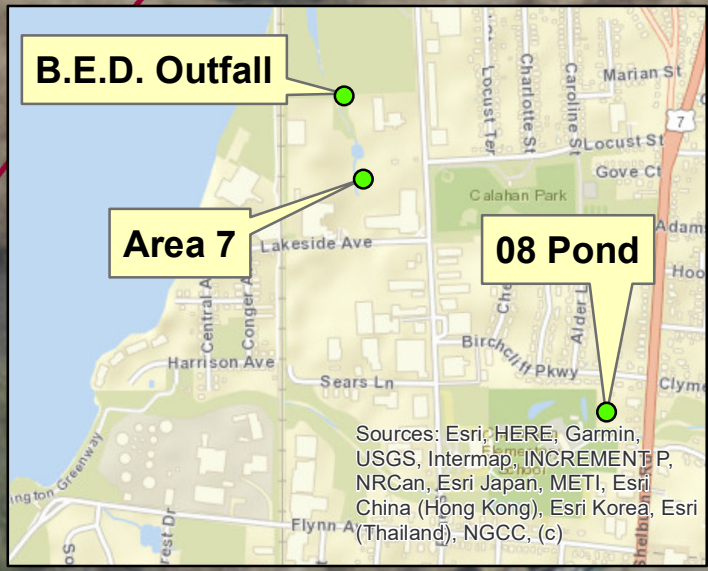
8 9 10

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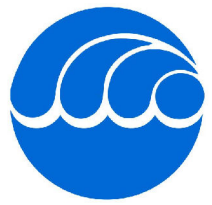
1

08 Forebay



Legend

- "#" - Sediment Depth Measurement Location
- Fenceline Vegetation Clearing Area



Stormwater Dredging RFP

08 Pond and Forebay

CITY OF BURLINGTON, VT

DRAWN: JAS
DATE: 6/10/2021



SCALE 1:600

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Department of Permitting & Inspections

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

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: January 3, 2023
RE: ZP-22-608; 800 Pine Street

=====

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

Zone: RL Ward: 5S

Owner/Applicant: Burlington School District / James Sherrard

Request: After-the-fact tree cutting associated with ongoing maintenance of stormwater pond.

Applicable Regulations:

Article 5 (Citywide General Regulations)

Background Information:

The applicant is seeking approval after-the-fact for tree cutting associated with an emergency stormwater outfall replacement done in November 2022. A zoning permit is required because the pertinent tree maintenance plan has expired. A new tree maintenance plan is being sought under separate application.

The tree cutting occurred along the fence line north of the stormwater pond behind Champlain Elementary School. An aerial image depicting the area of tree cutting and a photo of the site after it was cleared have been provided. Other than mentioning that the tree cutting was associated with maintenance of the stormwater pond, there is no information in the application as to why the cutting was necessary and how many trees were cleared. Lacking such information, the application cannot be assessed per the applicable criteria in Sec. 5.5.4, *Tree Removal*.

Recommendation: Continue review until missing information is provided.

I. Findings

Article 5: Citywide General Regulations

Sec. 5.5.4, Tree Removal

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

(1) Grounds for approval

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

A. Removal of dead, diseased, or infested trees;

Not applicable.

B. Thinning of trees for the health of remaining trees according to recognized accepted forestry practices;

Not applicable.

C. Removal of trees that are a danger to life or property; or,

Not applicable.

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

The application notes that the tree cutting was done in association with stormwater pond maintenance. No other detail has been provided as to why it was necessary and how it relates to maintenance of the nearby pond. **(No finding possible)**

(2) Grounds for denial

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be denied if existing healthy trees are known to be:

A. Providing a significant privacy or aesthetic buffer or barrier between properties;

B. Providing stabilization on slopes vulnerable to erosion;

C. Located within a riparian or littoral buffer;

D. Provide unique wildlife habitat;

E. A rare northern Vermont tree species as listed by the Vermont Natural Heritage Program; or,

F. A significant element or, or significantly enhances, an historic site.

Lacking application details, the above criteria A – F cannot be assessed. **(No finding possible)**

II. Conditions of Approval

If application materials sufficient to demonstrate compliance with the criteria of Sec. 5.5.4 are provided prior to close of Board review, standard zoning permit conditions are recommended.

1. Standard permit conditions 1-15.

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
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(802) 865-7195 (FAX)

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vacant, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: January 3, 2023
RE: ZAP-22-5; 170 Park 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: RM Ward: 3C

Owner/Appellant: Iryna Poberezhniuk

Request: Appeal of zoning application denial ZP-22-505 to install gravel extension to existing driveway and rear parking lot.

This appeal was heard by the Development Review Board on December 6, 2022. The public hearing was continued to January 3, 2023 to allow review of a revised site plan provided by the appellant. That revised site plan was reviewed, and the denial of zoning permit ZP-22-505 for driveway work was reversed with an approval on December 12, 2022. The appeal of the denial is now moot.

As the public hearing remains open, the Development Review Board should close the hearing and dismiss the appeal as moot.

- Jan 3, 2023 at 10:15 am

James Sherrard

[@Scott Gustin](#) , apologies for the delayed response. There were 6-8 trees that were 8" + in diameter. Some of these were girdled as their original supports were never removed. When I arrived on site I asked the tree workers to keep the last remaining girdled tree even though they thought it wouldn't survive. There were many shrub trees (3" -) that were also removed, and I just don't have a good count. I would estimate a few dozen given the length of the clearing performed.

Since this is after the fact, I can't be 100% certain about the exact dimensions and count, but to the best of my knowledge at the moment these numbers seem realistic. Come the spring, or if the snow holds off, I can always go out and count stumps on site if needed.

Burlington Development Review Board

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

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



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, January 3, 2023, 5:00 PM

AMENDED AGENDA

In Person (at 645 Pine Street) Meeting

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Public Hearing**

- 1. **ZP-22-596; 170 Park Street (RM, Ward 3C) Iryna Poberezhniuk**
Variance for additional lot coverage. (Project Manager, Scott Gustin)

Deny

- 2. **ZAP-22-5; 170 Park Street (RM, Ward 3C) Iryna Poberezhniuk**
Appeal of zoning application denial ZP-22-505 to install gravel extension to existing driveway and rear parking lot. (Project Manager, Scott Gustin)

Appeal moot

- V. Certificate of Appropriateness**

- 1. **ZP-22-608; 800 Pine Street (RL/E-LM, Ward 5S) City School Department / James Sherrard**
After-the-fact tree cutting associated with ongoing maintenance of a stormwater pond. (Project Manager, Scott Gustin)

Approve

- 2. **ZP-22-611; 834-922 North Avenue (RL, Ward 7N) City DPW / Michael Schramm**
After-the-fact tree cutting associated with emergency stormwater outfall repair. (Project Manager, Scott Gustin)

Approve

- VI. Master Plan**

- 1. **ZP-22-617; 53 Lavalley Lane (RCO-RG, Ward 5S) City DPW Water/Wastewater Department / Michael Schramm**
DPW Citywide Tree Maintenance Plan. (Project Manager, Scott Gustin)

Approve

- VII. Executive Session**

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

VIII. Adjournment

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

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Burlington Development Review Board

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Brooks McArthur
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Sean McKenzie, (Alternate)
Emily O'Hara (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, January 3, 2023, 5:00 PM MINUTES

In Person (at 645 Pine Street) Meeting

Board Members Present: All members were in person. AJ LaRosa, Caitlin Halpert, Geoff Hand, Brooks McArthur, Brad Rabinowitz, and Leo Sprinzen

Board Members Absent: Chase Taylor, Sean McKenzie and Emily O'Hara

Staff Members Present: Scott Gustin, Mary O'Neil, and Joseph Cava

- I. Agenda
- II. Communications
- III. Minutes
- IV. Public Hearing

1. **ZP-22-596; 170 Park Street (RM, Ward 3C) Iryna Poberezhniuk**
Variance for additional lot coverage. (Project Manager, Scott Gustin)
Iryna Poberezhniuk, Carol Czina: Sworn in.

AJ LaRosa: Scott, can you clarify this?

Scott Gustin: The appeal item was heard by the DRB about a month ago, and the hearing was continued to allow time to review the revised site plan submitted by the applicant. That site plan was reviewed, and the denied zoning permit was reversed with an approved site plan based on the revised site plan. The applicant initially requested withdrawal of the appeal but then requested leaving it pending. So, the DRB does have an appeal item pending tonight in addition to the variance.

Iryna Poberezhniuk: The proposed site plan before you has had all the gravel removed, and the site is being leveled and seeded as we speak. Beyond the gravel, we're trying to resolve the unsafe parking conditions. The concern presented in this site plan is the driveway, where most driveways in the neighborhood are private, this driveway is shared. This makes it tight for the movement of vehicles. As proposed now, Car A is closest to the existing residence which causes safety risks for the movement of vehicles. The property damage is evident from insufficient safe passage space. There have been a couple of iterations to the site plan over the years to create more favorable lot coverage. If the variance doesn't get approved, then the alternative is to remove the existing driveway and replace with a ribbon driveway, which would be too costly.

AJ LaRosa: Scott, didn't a previous site plan address this?

Scott Gustin: Yes.

Iryna Poberezhniuk: On paper, the site plan makes sense.

Brad Rabinowitz: So the revised site plan presented makes the movement of vehicles better?

Iryna Poberezhniuk: Yes, the goal is to retain as much existing vegetative material without disturbing more than 600 sq. ft. of good asphalt.

AJ LaRosa: We have high standards for granting variances. Essentially, if the shed in the backyard didn't exist, the site plan in relation to lot coverage wouldn't be an issue.

Iryna Poberezhniuk: The revised site plan proposes expanding the depth of Car C's parking space, but this puts the property over allowable lot coverage. By increasing the depth of Car C, Cars A and B have greater maneuverability to back out of the driveway. What else could be the rationale for the 40% lot coverage rule?

AJ LaRosa: The rationale for lot coverage is to maintain a certain percentage of impervious versus pervious surfaces.

Brad Rabinowitz: I get the hairpin turn presented in this plan, but we are bound to reviewing what complies with the existing zoning ordinance.

AJ LaRosa: A thought is what provisions in the zoning ordinance give us the ability to approve this?

Iryna Poberezhniuk: I made a mistake dumping the gravel in the first place, which is classified as unsustainable for climate change purposes. It is as if the City would rather have asphalt poured than utilize a solution that will satisfy everyone involved.

Leo Sprinzen: Are the neighboring property owners supportive of this parking extension?

Iryna Poberezhniuk: Yes, the neighbors have a higher lot coverage with more wiggle room to back out of their driveways.

AJ LaRosa: Does anyone from the audience wish to speak?

Carol Czina: I live on Myrtle St. and I have a concern that the exhaust and fluids from the vehicles in this proposal will leach into the soil and poison the composted soils and vegetative growths that we have spent years building up. This includes our vegetable garden and apple tree.

AJ LaRosa: Can you point out where the apple tree is located?

Carol Czina: Yes, the tree is located on the abutting property line. I am happy to hear that there is less gravel, and I have been disturbed by the way that this whole process has come about.

AJ LaRosa: I am going to request that the testimony be constrained to the application in front of us. The applicant has made a good faith effort.

Iryna Poberezhniuk: I don't own an automobile, but I am thinking about investing in an electric vehicle. If the depth of Car C was approved, this would be reserved for an electric vehicle to minimize the impact caused to neighboring residents. Clearly, Carol's point is a matter of taste, and being harassed on my own property isn't fair.

AJ LaRosa: Please, keep this testimony to the application in front of us. Hearing no additional comment I move we close the public hearing on this item.

AJ LaRosa: Motioned to deny variance, Geoff Hand 2nd. Vote 5-1. Motion carries.

2. ZAP-22-5; 170 Park Street (RM, Ward 3C) Iryna Poberezhniuk

Appeal of zoning application denial ZP-22-505 to install gravel extension to existing driveway and rear parking lot. (Project Manager, Scott Gustin)

Geoff Hand: Motioned to dismiss the appeal as moot, Caitlin Halpert 2nd. Vote 6-0. Motion carries.

V. Certificate of Appropriateness

1. ZP-22-608; 800 Pine Street (RL/E-LM, Ward 5S) City School Department / James Sherrard

After-the-fact tree cutting associated with ongoing maintenance of a stormwater pond. (Project Manager, Scott Gustin)

James Sherrard: Sworn in.

Geoff Hand: I am recused on this.

AJ LaRosa: Can you tell us about this project?

James Sherrard: This property is a city school department property, but this is a stormwater management project. The fence shown in the application, is the stormwater division's responsibility to maintain. Vegetative buildup has led to a need to dredge the stormwater pond to remove the built up sediment.

Brad Rabinowitz: Is a tree maintenance plan not required for this type of venture?

James Sherrard: The tree maintenance plan needed to be updated to address this maintenance.

AJ LaRosa: Scott, has the supplemental information been provided that was absent in the staff report?

Scott Gustin: This evening is a chance to address this information. The tree clearing requires DRB review under Article 5, but it is up to James to address how much the stormwater division wants to discuss.

AJ LaRosa: The pond goes through upgrades and improvements, but does this clearing require zoning approval?

Scott Gustin: Yes, correct.

James Sherrard: The fence is an integral part of the pond to create a buffer with the neighbors.

AJ LaRosa: Is there any ability to reinstitute some of this growth that has since been cleared?

James Sherrard: Yes, we avoided clearing some of the mature trees and have taken recommendations from the City Arborist to return some of the plantings after the new fence is constructed.

AJ LaRosa: Were any of the tree species significant?

James Sherrard: We encourage the retention of the red maples that were planted as part of the pond's initial construction.

Leo Sprinzen: Did the City arborist have any other recommendations on planting the site?

James Sherrard: The arborist recommended staggered plantings but had no specific feedback.

AJ LaRosa: Hearing no additional comments or questions, I move we close the hearing on this item.

AJ LaRosa: Motioned to approve, with the condition of instituting a replanting plan, Brad Rabinowitz 2nd. Vote 5-0. Motion carries.

- 2. ZP-22-611; 834-922 North Avenue (RL, Ward 7N) City DPW / Michael Schramm**
After-the-fact tree cutting associated with emergency stormwater outfall repair. (Project Manager, Scott Gustin)
Michael Schramm, Linda Bassick: Sworn in.

Geoff Hand: I am recused on this.

AJ LaRosa: Scott, this was recommended for consent approval. Do any members of the board have an issue with this? Hearing none, Mr. Schramm, did you have anything to add?

Michael Schramm: No.

AJ LaRosa: Any questions or comments from the public?

Linda Bassick: I was just curious what's going on, but it seems straightforward.

AJ LaRosa: Hearing no additional questions or comments, I move we close the public hearing on this item.

AJ LaRosa: Motioned to approve, Brad Rabinowitz 2nd. Vote 5-0. Motion carries.

VI. Master Plan

- 1. ZP-22-617; 53 Lavalley Lane (RCO-RG, Ward 5S) City DPW Water/Wastewater Department / Michael Schramm**
DPW Citywide Tree Maintenance Plan. (Project Manager, Scott Gustin)
Michael Schramm: Sworn in.

Geoff Hand: I am recused on this.

AJ LaRosa: Scott, the last tree maintenance plan was approved in 2016?

Scott Gustin: Yes, the tree maintenance plan is valid for five years.

Michael Schramm: The need to renew the plan came to our attention while dealing with the sinkhole failures that occurred near North Avenue. The new plan addresses emergency repairs/replacement projects on page five.

AJ LaRosa: Are there any questions from the board?

Michael Schramm: The old plan included a short list of arborists.

James Sherrard: The City Arborist or designee are referred to in the maintenance plan.

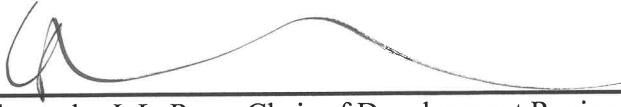
AJ LaRosa: Hearing no additional feedback, I move we close the public hearing on this item.

AJ LaRosa: Motioned to approve, Caitlin Halpert 2nd. Vote 5-0. Motion carries.

VII. Executive Session

VIII. Adjournment

Hearing closed at 6:35 PM.



Alexander J. LaRosa, Chair of Development Review Board

1-9-23

Date



Joseph H. Cava, Permitting & Inspections Permit Technician

1-9-23

Date

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