

## Staff Report

**To:** Development Review Board  
**From:** Michael Giguere, City Planner  
**Meeting Date:** March 26<sup>th</sup>, 2026  
**Subject:** Design review for the new residential construction at 40 Maple Street in the Residential 2 (R2) district by Ron Bushey, owner.  
**File:** SP# 6.2025.2

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### **PROJECT DESCRIPTION:**

The property owner has constructed a new home based on the DRB approval from August 2025, replacing the previous single-family home that was demolished. Upon conducting the Certificate of Occupancy inspection, staff noted several discrepancies between the submitted site plans and elevations and the as-built structure. This project is located within the Design Review Overlay (DRO) zoning district, which requires architectural review and approval by the Development Review Board (DRB).

### **EXISTING CONDITIONS AND GENERAL INFORMATION**

Project Location	40 Maple Street, Essex Junction, VT 05452
Project Area Size	6,534 square feet
Lot Frontage	157 feet
Existing Land Use	Residential
Surrounding Land Use	Residential
Zoning District	Residential 2 (R2)
Minimum Lot Size	7,500 square feet
Proposed Lot Coverage	36.2%
Lot Coverage Maximum	40% (total), 30% (buildings)

### **SECTION 619: RESIDENTIAL 2 (R2)**

#### A. Purpose

*"To provide areas for high-density single family residential development and accessory uses."*

#### B. Lot Size/Lot Coverage

The existing lot size of 6,534 square feet is an existing non-conformity below the minimum district lot size requirement of 7,500 square feet. This matter is discussed below in Section 803.

### C. Setback Requirements

The home appears to generally comply with the minimum setback requirements of the R2 district (15 feet front, 8 feet side, 25 feet rear for principal structures, 15 feet rear for accessory structures) although these cannot be precisely verified as a professional boundary survey was not required.

Setback compliance of the as-built structure is discussed further below in Section 620.

#### Note about Window Wells

The as-built structure includes basement egress windows and associated window wells (5' 9" x 5') that were not shown on the previously approved elevations or site plan. Based on field measurements, the window wells appear to be located less than 8 feet from the side property line, placing them within the minimum side setback.

Staff considered whether the window wells constitute a "structure" subject to setback requirements under Section 201.C of the LDC, which defines a structure as *"the assembly or placement of any materials for occupancy or use."* The window wells include wooden bracing and are designed to serve as emergency egress, which could support a finding that they meet this definition. However, staff note several countervailing considerations:

- The LDC does not explicitly address window wells in the context of setback requirements.
- Some peer municipalities explicitly exclude window wells from setback requirements.
- The window wells are wood-braced and arguably distinct from the concrete foundation.
- A comparable situation arose at the PUD at 41 Maple Street (Robin Way), where egress window wells were not shown on the site plan and the City did not treat their omission as a violation at the time.

Based on these considerations, staff are not recommending that the DRB treat the window wells as a setback violation at this time. Staff do recommend that the LDC be clarified to define and regulate window wells in a future amendment. The DRB may, however, make its own determination on this question.

### D. Maximum Number of Dwelling Units

The proposed home meets the maximum R2 district requirement of four (4) dwelling units per lot.

### E. Permitted and Conditional Uses

The as-built residential structure is a single-family dwelling, which is a permitted use in the R2 district. The applicant is applying for a separate zoning permit to convert this home into a duplex by finishing the basement into a separate unit. A two-family home is a permitted use in the R2 district.

### F. Parking Requirements

The application meets the minimum parking requirement of one (1) space per dwelling unit via a paved driveway.

#### G. Building Height

*"...building heights shall not exceed three (3) stories or thirty-five (35) feet, whichever is less."*

The proposed height of two (2) stories and thirty-two (32) feet meets district requirements.

#### H. Special Standards

The special standards for a street-facing pedestrian entrance and driveway width maximum of Section 619.H have been met.

#### **SECTION 620: DESIGN REVIEW OVERLAY DISTRICT (DRO)**

This property falls within the Design Review Overlay District. Section 620 provides guidance on evaluation criteria for design review, including but not limited to:

1. Building mass relative to the size of a person
2. Architectural details at the front façade harmonizing with those of the Village Center District
3. Street edge consistency and maintenance of sidewalk/pedestrian space
4. Site features to promote cycling, walking, transit, and recreation

On August 2025, the DRB approved a site plan application for the construction of a single-family dwelling at the property, subject to Conditions of Approval. The conditions require, among other things:

1. That the structure be built according to the submitted plans within a dimensional tolerance of  $\pm 2$  for all design features apart from building height and footprint; and
2. That the building height and footprint precisely match the approved plans.

#### Deviation from August 2025 Approved Plans

Construction is now generally complete, and the owner has requested a Temporary Certificate of Occupancy. Upon staff inspection, it was determined that several as-built features are not within a 2% dimensional tolerance of what was drawn on the approved plans. These discrepancies are consistent with the limitations inherent in hand-drawn, non-engineered elevations. A side-by-side comparison of submitted plans and as-built photographs can be seen below in Figures 1-4. Discrepancies include:

- Second-floor porch:
  - Approved: 6' x 16', right-justified on the rear elevation
  - Built: 5' 9" x 11' 6", centered on the rear elevation
- Rear door: shown as double; constructed as single.
- Missing second-story window at the northeast corner.
- Incorrectly-sized first-story window installed on the western side.

- Addition of basement egress windows and 5' 9" x 5' window wells that were not shown on the approved elevations or site plan.

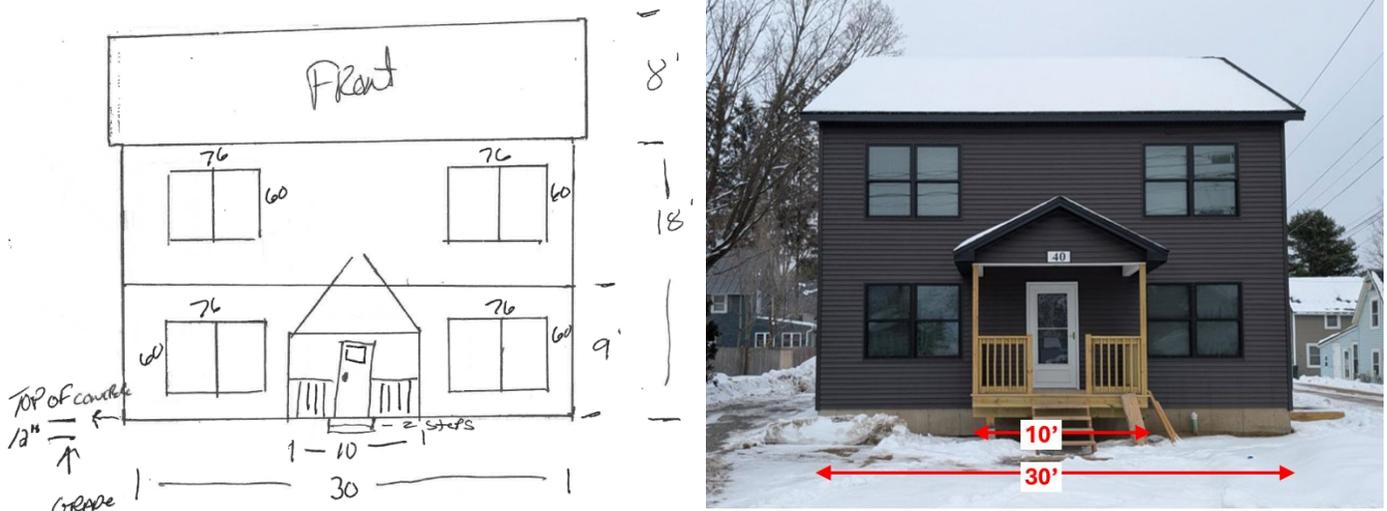


Figure 1: South elevation. Left: Submitted site plan; Right: As-Built Photograph.

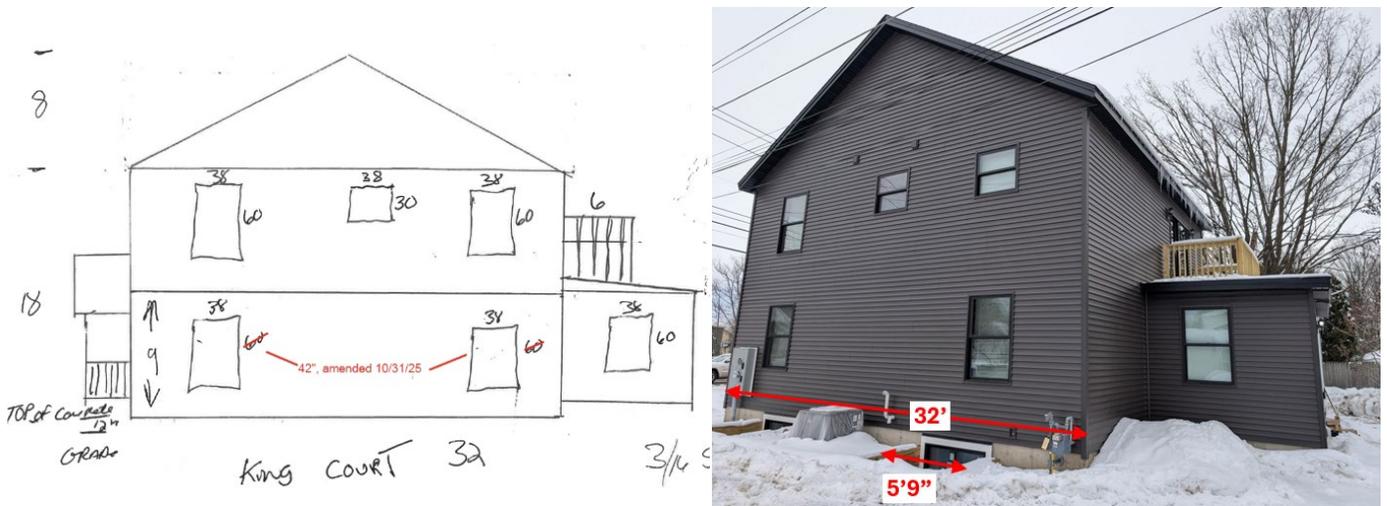


Figure 2: East elevation. Left: Submitted site plan; Right: As-Built Photograph.



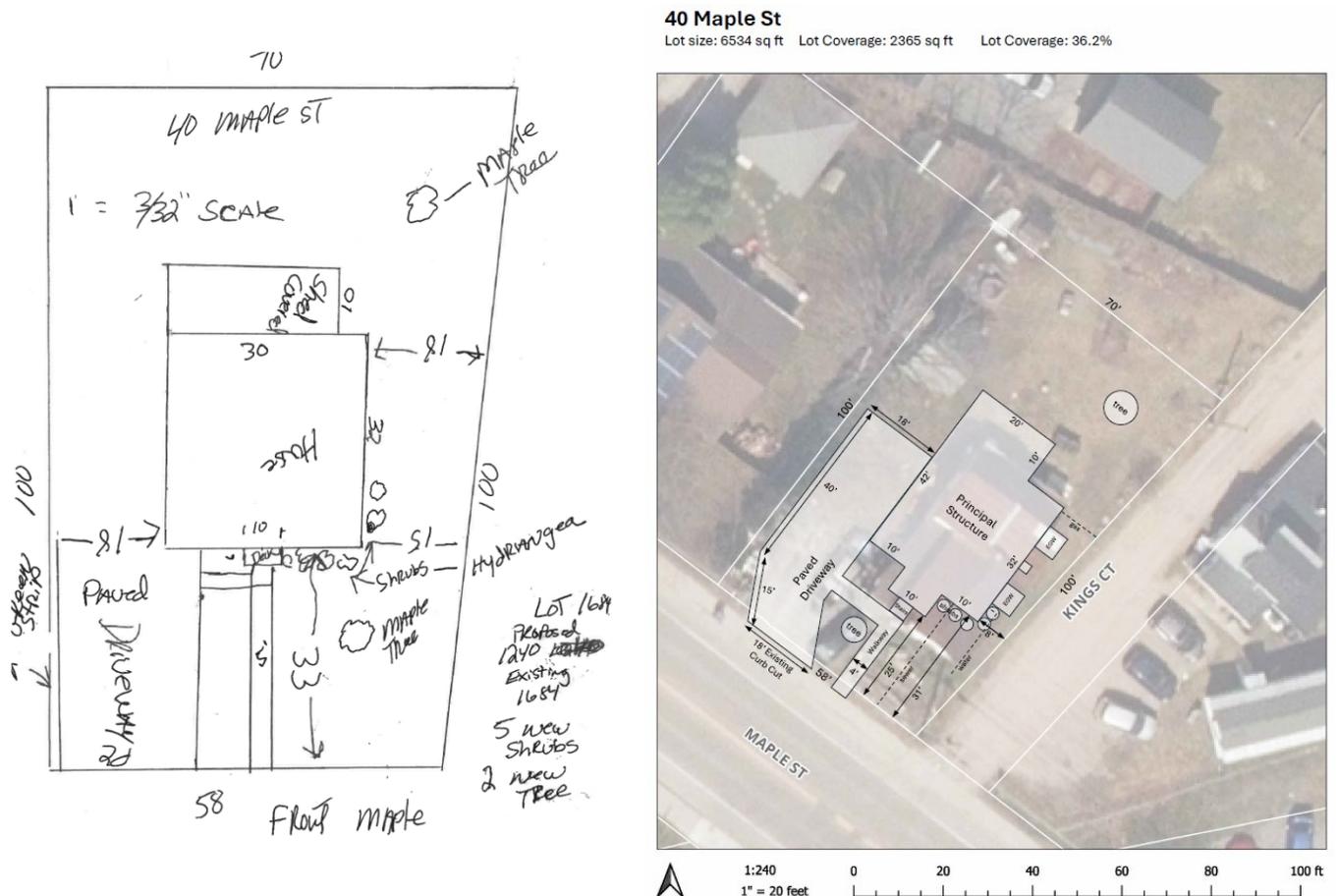


Figure 5: Top-down site plan. Left: Submitted site plan; Right: Amended Site Plan based on as-built measurements. Note: Driveway, walkway, and landscaping have not been completed.

Separately, there are outstanding items that will need to be resolved regardless of DRB action, including:

- Installation of rear steps.
- Landscaping has not yet been planted and has been adjusted to avoid utility conflict.
- Exterior light fixtures are not currently dark-sky compliant.
- Heat pump unit is not shown on the site plan (affecting lot coverage calculations).
- Driveway and walkway are not yet paved; the applicant proposes paving in the spring when hot mix asphalt is available and has reconfigured the proposed driveway orientation.

Staff have issued a Temporary Certificate of Occupancy, valid until Summer 2026, that clearly states that all outstanding zoning permit requirements and DRB-related discrepancies must be resolved prior to issuance of a permanent CO.

Staff's intent is to respect the DRB's prior decision and authority over the Design Review approval, while also recognizing that the structure appears capable of being approved as built and that occupancy could

reasonably occur while the Board considers the outstanding matters and before landscaping and paving are completed in late spring.

**The DRB should review the as-built plans and determine whether to approve the deviations from the August 2025 plans.**

**SECTION 719: LANDSCAPE AND TREE PLANTING REQUIREMENTS**

The August 2025 approval included a condition of approval requiring the applicant to work with staff to determine the location of the shade tree to be planted along Maple Street. In consultation with the Tree Advisory Committee (TAC), the proposed shade tree was relocated on the plans to be placed west of the front walkway to avoid conflict with existing utility lines. Additionally, the TAC recommended Japanese lilac, Donald Wyman crabapple, or paperbark maple as shorter tree species that would minimize future conflict with overhead utility lines.

**SECTION 803: EXISTING SMALL LOTS**

Section 803 of the Land Development Code (LDC) allows for development activity to occur on lots that are below the district minimum lot size provided that the property was subdivided or otherwise established prior to the adoption of the zoning bylaw.

Given that the existing home was built prior to the adoption of zoning bylaws in Essex Junction, staff find this section applies to the property in question and allows for development activity to occur despite the lot's failure to meet R2 minimum lot size requirements.

**Site Plan Recommendations:**

Staff recommend the Development Review Board review the proposed site plan application pending a determination of the following item:

- The Development Review Board should determine whether the proposed application amendment using as-built plans meets the Design Review requirements of Section 620 of the LDC.

**Recommended Motion:**

I move that the DRB approve the site plan application for a two-family home at 40 Maple Street by Ron Bushey, owner, with conditions as proposed or as discussed.

**Proposed Conditions:**

1. All construction shall conform to the approved site plans.
2. All construction shall be completed by August 1<sup>st</sup> as required by the Temporary Certificate of Occupancy agreement.
3. Any additional modification deemed by staff to substantially change the building's appearance, character, or compliance with the requirements of the LDC shall be referred to the Development Review Board for reconsideration prior to construction.
4. All exterior light fixtures shall be downward-shielded and Dark Sky compliant as required by Section 714 of the LDC.
5. Tree location shall be determined with consultation with City staff.

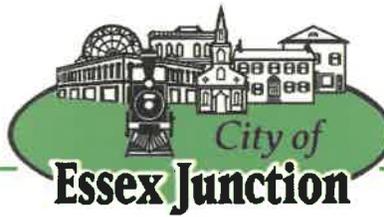
# 40 Maple St

Lot size: 6534 sq ft Lot Coverage: 2365 sq ft Lot Coverage: 36.2%



1:240  
1" = 20 feet





## TEMPORARY CERTIFICATE OF OCCUPANCY AGREEMENT

40 Maple Street – Essex Junction, Vermont

This Temporary Certificate of Occupancy Agreement (“Agreement”) is entered into by and between the City of Essex Junction (“City”) and Ron Bushey (“Owner”), owner of the property located at 40 Maple Street, Essex Junction, Vermont (the “Property”).

### RECITALS

1. On August 21, 2025, the Development Review Board (“DRB”) approved a site plan application for construction of a single-family dwelling at the Property, subject to conditions of approval.
2. The DRB’s Decision and Conditions of Approval require, among other things:
  - o That the structure be built according to the submitted plans within a dimensional tolerance of  $\pm 2\%$  for all design features apart from building height and footprint; and
  - o That the building height and footprint precisely match the approved plans.
3. Construction of the dwelling is substantially complete. The Owner has requested issuance of a Temporary Certificate of Occupancy (“Temporary CO”).
4. The structure, as constructed, contains deviations from the approved plans and there remain certain outstanding zoning-related items to be completed.
5. The City is willing to issue a Temporary CO in reliance upon the Owner’s agreement to complete the items listed below and to comply with any additional action required by the DRB.

NOW, THEREFORE, in consideration of the issuance of a Temporary CO, the Owner agrees as follows:

### 1. Outstanding Items to Be Completed

The Owner shall complete or resolve the following items:

1. **DRB Review of As-Built Conditions**  
Participate in DRB review of the as-built plans and comply with any amendments, conditions, or modifications imposed by the DRB.
2. **Landscaping**  
Install all required landscaping, including required trees and shrubs, in accordance with the approved plans or as amended by the DRB. Permissible street tree species include Japanese Lilac, Donald Wyman Crabapple, or Paper Bark Maple.
3. **Exterior Lighting**  
Replace or modify exterior light fixtures to ensure compliance with Section 704 of the Land Development Code (Dark Sky requirements).

**4. Driveway and Walkway Paving**

Complete paving of the driveway and front walkway once hot mix asphalt becomes seasonally available.

**2. Term of Temporary Certificate of Occupancy**

The Temporary Certificate of Occupancy shall expire automatically on **August 1, 2026**, consistent with the maximum one-year validity permitted under the Essex Junction Land Development Code.

A permanent Certificate of Occupancy shall not be issued until all outstanding items listed above are completed to the satisfaction of the City and any required DRB approvals have been obtained.

**3. Failure to Comply**

Failure to complete the items listed in Section 1 prior to expiration of the Temporary CO may result in:

- Expiration of the Temporary CO without issuance of a permanent Certificate of Occupancy;
- Initiation of enforcement action pursuant to the Essex Junction Land Development Code and applicable Vermont law; and/or
- Referral to the Development Review Board for further action.

Issuance of the Temporary CO does not constitute approval of the as-built deviations from the DRB-approved plans.

**4. Binding Effect**

This Agreement is binding upon the Owner and the Owner's successors and assigns until a permanent Certificate of Occupancy is issued.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

**Owner:**

  
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Ron Bushey

Date: 3-3-26

**City of Essex Junction:**

  
\_\_\_\_\_

Chris Yuen

Administrative Officer

Date: March 3, 2026