

**CITY OF ESSEX JUNCTION  
DEVELOPMENT REVIEW BOARD  
PUBLIC HEARING AGENDA (REVISED)  
SEPTEMBER 21, 2023  
6:30 P.M.**

*This meeting will be held in-person at 2 Lincoln Street and remotely. Available options to watch or join the meeting:*

- **WATCH:** The meeting will be live-streamed on [Town Meeting TV](#).
- **JOIN ZOOM MEETING:** [Click here to join the meeting](#)
- **JOIN CALLING:** Join via conference call (*audio only*): 1(888) 788-0099 (toll free) | Conference ID: 839 2599 0985 Passcode: 940993
- **PROVIDE FULL NAME:** For minutes, please provide your full name whenever prompted.
- **MUTE YOUR MIC:** When not speaking, please mute your microphone on your computer/phone.

**I. Additions or Amendments to Agenda**

**II. Public to be Heard**

**III. Minutes**

- A. Regular Meeting – July 20, 2023

**IV. Public Hearing**

- A. Appeal of Administrative Officer’s enforcement decision at 8 Taft Street in the R-1 District, by Stephen and Sharon Wille Padnos, adjoining residents.
- B. Conceptual site plan to construct **4-story** 39 unit residential building with parking at 8 Railroad Street in the VC District, by Franklin South, LLC, owner.
- C. Conceptual site plan to remove existing structures and construct 4-story 18 unit residential building with parking at 132 Pearl Street in the HA District by Paroline Real Estate, LLC.

**VI. Other Development Review Board Items**

**VII. Adjournment**

Members of the public are encouraged to speak during the Public-To-Be-Heard agenda item, during a Public Hearing, or, when recognized by the Chair, during consideration of a specific agenda item. Public comments are limited to a three minute rule unless waived by the Development Review Board Chair.

This meeting will be held in the conference room of the Essex Junction municipal building at 2 Lincoln St., Essex Jct., VT and on Zoom at the link above. Reasonable accommodations will be provided upon request to the City, 802-878-6950, to assure that City meetings are accessible to all individuals regardless of disability.

For information please contact the Community Development Department from 8 – 4:30 at 802-878-6950 or the website [www.essexjunction.org](http://www.essexjunction.org).

**CITY OF ESSEX JUNCTION  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
JULY 20, 2023  
DRAFT**

**MEMBERS PRESENT:** John Alden, Chair; Robert Mount, Vice Chair; Cristin Gildea, Maggie Massey, Dylan Zwicky.

**MEMBERS ABSENT:** None

**ADMINISTRATION:** Chris Yuen, Community Development Director

**OTHERS PRESENT:** Greg Barrett, Michelle Bolz, Marcus Certa, Brian Currier, Mary Jo Engel, Gabe Handy, Eric Hanko, Dan Heil (O’Leary-Burke Civil Associates) Cristine Kusmider, Scott & Vicki Wolinsky, Yuning Liu

**1. CALL TO ORDER**

Mr. Alden called the meeting to order at 6:30 PM. Mr. Yuen noted that this is a hybrid meeting, and that staff are present at the City offices to ensure public participation. While efforts will be made to accommodate remote public participants, in-person participation is the only legally mandated form of public participation.

**2. ADDITIONS OR AMENDMENTS TO AGENDA**

No additions or amendments.

**3. PUBLIC TO BE HEARD**

None.

**4. MINUTES**

**a. Regular Meeting – May 18, 2023**

**MOTION by ROBERT MOUNT, SECOND by CRISTIN GILDEA, to approve the minutes. The motion passed 5-0.**

**5. PUBLIC HEARING**

Chair Alden swore in all individuals who intended to speak during this hearing under the following oath:

“I hereby swear that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury.”

**a. Variance application for one story addition constructed 1.5 – 8.5 feet from side property line at 50 West Street in the R-2 District, by Scott and Vicki Wolinsky, owners.**

Mr. and Mrs. Wolinsky said that they would like to add an additional bedroom to their home, and that the most desirable location to do such would require a variance. Mr. Wolinsky noted that his immediate neighbor has indicated that they are amenable to this project. Mr. Alden said that he has looked at the property outline and said that it is extremely narrow. Mr. Yuen said that the proposed addition is 1.5 feet of the western side boundary, near the driveway of another property. Mr. Alden said that this is an existing non-conforming lot.

The DRB went through each of the following standards of review:

1. “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 these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.” All agreed.
2. “Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.” All agreed.
3. “Unnecessary hardship has not been created by the appellant.” All agreed.
4. “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, or be detrimental to the public welfare.” All agreed.
5. “The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.” All agreed.

Mr. Alden requested public comment, none was given.

**Motion by DYLAN ZWICKY, second by ROBERT MOUNT to approve the variance. Motion passed 5-0.**

**b. Conceptual site plan to construct 3-story mixed-use building with commercial on 1<sup>st</sup> floor and 34 residential units with parking at 8 Railroad Street in the VC District, by Franklin South, LLC, owner.**

Mr. Heil, of O’Leary-Burke Civil Associates, said that this property will have a four-story front section, with the remainder as a three-story building. Mr. Yuen reviewed the site plan, and said that he had spoken with the City Attorney to determine where the fifteen-foot buffer would apply, noting that if it applies, it would have to begin at the edge of the 8 Railroad lot. Mr. Alden said that Gaines Court functions as a street, however it is private property. Gaines Court is also not in the Village Center (VC) zoning district, while the 8 Railroad Street project is. Multi-Family uses that are adjacent to a single-family use also within the VC district are not required to provide a buffer. In other districts, a buffer would be required between a single-family home and a multi-family home. Ms. Kusmider asked who will be responsible for moving utility poles on Gaines Court, Mr. Yuen said that the applicant will work with GMP to bury the current lines. Mr. Hanko said that fire trucks and utility vehicles are unable to make their way down the road, and asked if the road would be widened and the City take ownership. Mr. Yuen said that there are no plans for the City to take over the road.

Mr. Heil said that keeping the fifteen-foot buffer would make this project very difficult to execute. Mr. Yuen said that the buffer would not need to apply to the front, as another multi-family residence is in that location. Mr. Alden said that zoning district lines are odd, noting that Gaines Court is essentially surrounded by the VC. He said that the DRB needs to establish their concerns, and the paths to overcome these concerns, including the possibility of a waiver.

The DRB began a review of the plan. Mr. Heil noted that the property would be fully residential, with some common spaces for resident use (i.e., laundry, gym, etc.). He also said that the fourth floor was added so that the building did not go as far back as previously presented. Mr. Mount said that he liked the façade change. Mr. Alden said that this design is a significant improvement over the last time this project was presented. Mr. Heil described efforts to vary the screening with fencing and landscaping. Mr. Alden said that he was concerned that the outdoor concrete features near the driveways would be hit by parking vehicles, and Mr. Heil said that the goal of these is to provide protection for pedestrians. Mr. Alden said that he liked the elevation and that this building would represent a strong addition to the area.

Mr. Alden requested public comment. Ms. Engel said that she supported the changes to this project, and that they add elegance to the project. She said that the information online still mentioned 1600 square feet of commercial space and asked for clarification. She asked if Gaines Court would have access to this property, and asked what the cost of underground wires would be to the residents of Gaines Court. Mr. Handy said that the site plan has not been updated yet and that he will be covering the cost of the underground utilities. He said that this project would not affect utility service on Gaines Court. Only two out of the four of the poles on Gaines Court will be removed, and one will be moved. Mr. Alden requested more information on the utility impact the next time this project is presented. Mr. Hanko said that the overall look of the building is very attractive but expressed concerns about the buffer area.

Mr. Yuen said that DRB may waive the screening and buffering requirements in the VC district if it is determined that this will not have an undue adverse effect on the surrounding properties. Mr. Alden said that the DRB needs to address landscaping requirements, buffer, pedestrian access, and fencing/landscaping before moving forward. Ms. Gildea requested an updated plan to reflect the changes that have been made as well as a visual rendering of the power lines. Mr. Heil said that the viability of the project depends on the buffer determination, and asked if the DRB could give him a sense of how they felt on the issue. The DRB discussed potential solutions. Mr. Yuen said that the DRB would need to determine if the lack of buffer would have an adverse impact on the Gaines Court property or not and Mr. Alden discussed balancing the needs of the single-family residences on Gaines Court vs. necessary new housing stock.

Mr. Alden requested public input. Mr. Hanko said that he wanted to see this project go through but that he must consider the code requirements for a fifteen-foot buffer. Mr. Alden said that the Gaines Court properties are not currently in a zoning district for single-family homes, even though this street currently has single-family homes. He said he was unsure if the code referred to current use or allowable use. Mr. Yuen said that it referred to current use. Ms. Massey said that she does not believe that a waiver would be appropriate in this situation. Mr. Hanko suggested that Gaines Court be widened to create more of a buffer area. Mr. Yuen suggested shifting the location of the building, and Mr. Heim said that this would result in the number of units being reduced from 34 to 19. He also expressed concern with the useability of a building with an altered shape. Mr. Yuen suggested moving the fourth story backwards to maximize the space, and Mr. Heim said that it could be considered.

The majority of the DRB said that they do not feel comfortable waiving the 15-foot buffer requirement due to its impact on the adjacent single-family homeowners. Ms. Engel said that she likes the project in its current form and that she would support a compromise on the buffer. Mr. Hanko said that it would be helpful to get a rendering of what the building would look like from Gaines Court. Mr. Zwicky said that if both Mr. Hanko and Ms. Engel said that they do not feel that the buffer is required he would feel



comfortable approving it, as they are the properties that would be the most impacted. Mr. Yuen said that the DRB could continue the hearing to see what changes/additional work could be made, or approve or deny the conceptual site plan. Mr. Handy indicated that he would like the DRB to close the public hearing and issue a decision. Mr. Hanko requested that the applicant provide the images from his home prior to him deciding on whether or not he supported the current rendering. Mr. Zwicky asked Mr. Hanko if he would see the lack of a buffer as an adverse effect on his property. Mr. Hanko said that he is in favor of the project in principle but that it would create an adverse effect. Mr. Yuen said that, if the hearing is closed and the application denied, the applicant would need to submit a new site plan application to be heard by the DRB again in the future. If it is continued this would not be the case.

**CRISTEA GILDEA made a motion, seconded by DYLAN ZWICKY to close the hearing. Motion passed 5-0.**

Mr. Alden said that the DRB will need to vote to approve or deny the conceptual plan.

**MAGGIE MASSEY made a motion, seconded by ROBERT MOUNT to deny the conceptual site plan on the grounds that the DRB does not approve a waiver of the fifteen-foot buffer requirement. Motion passed 5-0.**

## **6. PUBLIC MEETING**

### **a. Sketch plan for a two lot subdivision; Lot 1 to retain existing single family dwelling, Lot 2 to be single lot at 2 River Street in the R2 District by Yuning Liu, owner**

Mr. Mount said that he lives in the project neighborhood, but that he does not feel that he needs to recuse himself. All agreed. Mr. Currier, of O'Leary Burke Civil Associates, presented on behalf of the applicant. This project proposes a two-lot subdivision, creating two single-family residences. Mr. Yuen said that this property meets the width to length ratio required. He said that River Street does not currently have a sidewalk, but that this road is the main access to Global Foundries from Essex Junction. Mr. Currier said that a sidewalk would be a financially onerous requirement to include in a two-lot subdivision. Mr. Alden said that it is important to include more connectivity everywhere, all DRB members agreed. Mr. Liu said that the construction of sidewalks would displace the underground utilities.

Mr. Yuen said that the DRB can waive this requirement should there be an equal or superior option for pedestrian access proposed. River Street is not planned to have sidewalks in the Official Plan. Ms. Massey said that the requirement of putting in a sidewalk seems silly given that it would only be a short segment, but that she does not feel that a better alternative has been presented. Mr. Alden requested public input. Mr. Barrett said that he lives behind the property on Silverbow Terrace. He suggested that a sidewalk be on the opposite side of the road due to additional multi-family homes on this side. Mr. Yuen asked if it meant sense to widen the shoulder on this roadway. He noted that this property would be eligible for as many as four units, however this would require site-plan approval. A duplex would not require a site plan.

Mr. Alden said that the DRB is in a difficult position, as installing a sidewalk would not make sense, however it is a requirement of the LDC. Mr. Barrett asked for clarification on property lines, Mr. Currier said that a survey will be conducted. He also asked about the maximum size requirements of the property. Mr. Alden asked staff to confer with the Village Engineer and public works to see if there would be any easement or anything else required to do so.

**Motion by JOHN ALDEN, seconded by DYLAN ZWICKY to approve the subdivision, and that the applicant work with staff to determine any possible pedestrian accommodations. Motion passed 5-0.**

**7. OTHER DEVELOPMENT REVIEW BOARD ITEMS**

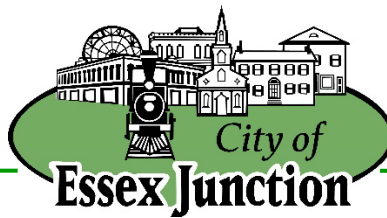
Mr. Alden asked if recent construction work in Essex Junction is related to the recent flooding; Mr. Yuen said that it was not directly related. Mr. Alden said that S. 100, a new state of Vermont regulation, has been passed. He requested that Mr. Yuen put together a memo explaining its impact on Essex Junction. Mr. Yuen said that four-plexes are now allowed in all areas where single-family homes and explained the new density bonus for affordable housing. Ms. Gildea asked what the process going forward is for the applicant that was denied at this meeting. Mr. Alden said that he will need to follow one of the paths forward provided by the DRB, including reconfiguration, or speaking with the neighbors.

**8. ADJOURNMENT**

**MAGGIE MASSEY made a motion, SECONDED by CRISTIN GILDEA, to adjourn the meeting. The motion passed 5-0.**

The meeting was adjourned at 8:35 PM.

Respectfully submitted,  
Darby Mayville



## MEMORANDUM

**To:** Development Review Board

**From:** Christopher Yuen, Community Development Director

**Hearing Date:** September 21, 2023

**Subject:** Appeal of Administrative Officer's enforcement decision on 8 Taft Street

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**Issue:** A neighboring resident has filed an appeal of the Administrative Officer's zoning bylaw enforcement decision at 8 Taft Street, in the R-1 Residential District. This property is currently being used for outdoor cannabis cultivation and for raising ducks.

### Discussion:

Please note that Christopher Yuen, the author of this memorandum, is the City's Administrative Officer.

Stephen Padnos, resident at 6 Taft Street, represented by William B. Towle, Esq., is appealing the Administrative Officer's decision not to enforce the Land Development Code's prohibition of Agriculture and Cannabis Cultivation in the R-1 District, where the subject property is located.

The Administrative Officer's reasoning for not enforcing the land-use restriction centers around the preemption of state statute over municipal zoning bylaw, particularly as specified in 24 V.S.A. § 4413, which lists specific topics municipalities are prohibited from regulating. City Staff's interpretation of state statute is that the Municipality does not have the authority to prohibit agricultural and outdoor cannabis cultivation from the subject property. A full overview of the Administrative Officer's position is available in the attached memorandum dated July 20, 2023, with subject line "8 Taft Street Farm Determination and Cannabis Cultivation".

The appellant brings a novel interpretation of 24 V.S.A §4413.(d)(1) and argues that the city does indeed have the authority to regulate against such land uses, and that the City is obligated to do as written in the Land Development Code. An overview of the appellant's position is available in the attached letter from Ward & Towle Law to the Development Review Board, dated August 4, 2023.

### Recommendation:

The Development Review Board should consider the facts and determine if the City of Essex Junction has the authority to apply the Land Development Code to "farms" and to "cannabis cultivator establishments" and should uphold or overturn the Administrative Officer's decision accordingly.

### Recommended Motion:

If the DRB determines that the City does not have the authority to apply the Land Development Code to "farms" and to "cannabis cultivator establishments":

*"I motion that the Development Review Board uphold the Administrative Officer's enforcement decision on the cannabis cultivation and agricultural uses at 8 Taft Street, in the R-1 Residential District".*

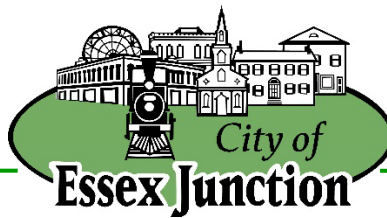
If the DRB determines that the City does not have the authority to apply the Land Development Code to "farms" and to "cannabis cultivator establishments":

*"I motion that the Development Review Board overturn the Administrative Officer's enforcement decision and require that the resident at 8 Taft Street cease to operate a "farm" and "cannabis cultivator establishment" on 8 Taft Street, in the R-1 Residential District."*

**Attachments:**

Appendix A: Memorandum to File dated July 20, 2023, with subject line "8 Taft Street Farm Determination and Cannabis Cultivation"

Appendix B: Letter from Ward & Towle Law to the Development Review Board, dated August 4, 2023.



**MEMORANDUM**

**To:** 8 Taft Street File  
**From:** Christopher Yuen, Community Development Director  
**Date:** July 20, 2023  
**Subject:** 8 Taft Street Farm Determination and Cannabis Cultivation

The intent of this memo is to clarify jurisdictional questions and enforcement avenues around the uses at 8 Taft St: ducks and outdoor cannabis cultivation. These questions have come from both the property owner, neighbors and City Council; therefore, this memo to file is being provided to all parties.

1. Agriculture at 8 Taft Street

The City is aware that Jason Struthers, resident of 8 Taft Street has been raising ducks on the property. On May 4, 2023, the Vermont Agency of Agriculture issued a determination that the activities at 8 Taft Street, Essex Junction meet the definition of a farming operation subject to the State’s [Required Agricultural Practices \(RAPs\)](#).

[Section 4413\(d\) of Title 24 \(Municipal and County Government\) of Vermont Statutes Annotated \(V.S.A.\)](#) limits the application of municipal land use regulations on farm operations regulated under the RAP rules. 24 V.S.A. § 4413 states that:

*(d)(1) A bylaw under this chapter shall not regulate:*

*(A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;*

...

*(2) As used in this section:*

*(A) “Farm structure” means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.*

...

*(3) A person shall notify a municipality of the intent to build a farm structure and shall abide by setbacks approved by the Secretary of Agriculture, Food and Markets. No municipal permit for a farm structure shall be required.*

While Table 622 of the City’s Land Development Code (our zoning bylaws) attempts to limit agriculture as a permitted use to the Planned Agriculture (PA) District, it conflicts with 24 V.S.A. § 4413, which prohibits municipalities from regulating agriculture through zoning bylaws. When municipal bylaws conflict with state statute, state statute prevails. As such, it is the understanding of Staff that the City cannot enforce the Land Development Code’s prohibition of agriculture outside of the PA zone, if the subject activity meets the State’s definition of a farming operation. This understanding is consistent with the 2013 “Moore

Accessory Structure Permit and Use” Vermont Supreme Court Case, which upheld the non-applicability of local zoning regulation to farm structures<sup>1</sup>.

In the future, the sections of the Land Development Code that regulate agriculture should be revisited and amended to be consistent with State Statute.

The City recognizes that agricultural activities occurring within an urbanized neighborhood can result in nuisance impacts on neighbors. While 24 V.S.A. § 4413 limits municipal authority over farm operations, the State’s Required Agricultural Practices (RAPs) do regulate environmental impacts, and some nuisances. For example, Section 6.02 of the RAPs regulate the storage of agricultural wastes and agricultural inputs. Section 6.08 of the RAPs regulate the management of animal mortalities, requiring that burial or compost sites be located a specified distance from property lines.

**More information on the RAP enforcement process, including how to make an anonymous complaint, can be found on the Agency of Agriculture’s webpage:**

<https://agriculture.vermont.gov/water-quality/enforcement-compliance>

It is important for all parties involved to clearly understand what a farm determination does and does not do. It is not a free pass to do whatever the operation pleases. An affirmative farm determination means that the operation is regulated by the RAPs, but doesn’t negate other applicable rules and regulations – such as [animal control](#) (crossing property boundaries and the humane treatment of animals) or the prevention of [public health hazards](#). The RAPs also do not regulate non-agriculture activities. Additionally, while enforced by the state instead of the City, the RAPs require that most farm structures meet local setback requirements.

## 2. Cannabis cultivation at 8 Taft Street

The City is aware that Jason Struthers, a resident at 8 Taft Street, has been cultivating cannabis outdoors over the past several years. In accordance with the state’s cannabis statute (Sec. 6. 7 V.S.A. § 869 (d)), cannabis cultivators are required to comply with Sections 6, 8, and 12 of the Required Agricultural Practices. These sections regulate issues such as material discharges, the storage of agricultural wastes and inputs, the management of manure, and buffer zones. Cannabis cultivation is also required to comply with the State of Vermont Cannabis Control Board’s rules, which regulate aspects of outdoor cannabis cultivation such as fencing requirements, site security, and lighting. The operation, d.b.a. TrichomeVT received a State License for Tier 1 (0-1,000 sq ft canopy size) outdoor cannabis cultivation from the Vermont Cannabis Control Board in July 2022. The license needs to be renewed annually.

In September 2022, the City incorporated cannabis establishments into its Land Development Code (LDC) and established a Local Cannabis Control Board. Therefore, cannabis establishments in Essex Junction will need to comply with the LDC and get a Local Cannabis Control Board license. In this circumstance, the Use Table in Chapter 6 of the City’s LDC currently limits Cannabis Cultivation to the Planned Agriculture (PA) zoning district. 8 Taft Street is not located within the PA zoning district. At first glance, it may appear that the outdoor Cannabis Cultivation is in contravention of local regulations and should not be allowed;

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<sup>1</sup> In Moore Accessory Structure Permit And Use, 194 Vt. 159, No. 12–305 (2013), the court cited the following: “Certain buildings on farm used to process timber into lumber qualified as “farm structures” exempt from local zoning regulation, where statute placing limitations on municipal bylaws exempted from local zoning regulation buildings used for **carrying out “practices associated with” farming**, and processing lumber from timber harvested on site and using it for farm related purposes were practices long and intimately associated with farming in Vermont. 24 V.S.A. § 4413(d)(1).”

however, state statute limits municipal authority to enforce these rules. During the 2023 legislative session, the State House and Senate passed H.270, which amends cannabis regulation statewide.

Under H.270, 7 V.S.A. § 869(f) has been amended such that all licensed outdoor cannabis cultivators shall be regulated in the same manner as “farming” and not as “development” for the purposes of permitting, and shall “*not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A)*”.

This means that the City cannot regulate outdoor cannabis cultivators any more than it can regulate agriculture. Issues, such as the height of structures, and lighting, when applied to outdoor cannabis cultivation, are beyond the municipal authority of the City, and fall under the jurisdiction of the State’s Cannabis Control Board.

Furthermore, H.270 amends 7 V.S.A. § 863 Regulation by Local Government, to state that:

*“The [Local cannabis control commission] may condition the issuance of a local control license upon compliance with any bylaw adopted pursuant to 24 V.S.A. § 4414 [zoning statute] or upon regulating signs or public nuisances adopted pursuant to 24 V.S.A. § 2291, except that ordinances may not regulate public nuisances as applied to outdoor cultivators that are regulated in the same manner as the Required Agricultural Practices under subdivision 869(f)(2) of this title.”*

As a result, municipalities now have limited authority to create and enforce ordinances that attempt to regulate the public nuisances, such as odor, or light, resulting from outdoor cannabis cultivation.

Furthermore, the purview of the Local Cannabis Control Board is limited and can be overturned by the VT Cannabis Control Board if they feel a municipality has overreached.

Notwithstanding the City’s limited authority to regulate both the farming operation, and cannabis cultivation directly, these uses are subject to the applicable rules and regulations of the Agency of Agriculture and Cannabis Control Board. Therefore, enforcement of issues associated with this property should be directed to:

1. For issues related to the ducks, if there appears to be a potential violation of the [Required Agricultural Practices \(RAPs\)](#)<sup>2</sup>, reports to the Agency of Agriculture can be made through [this website](#)<sup>3</sup>. Issues such as the storage of agricultural waste and inputs, the use of manure, and the handling of animal mortalities, are regulated by the RAPs.
2. For issues related to the outdoor cannabis cultivation, if there appears to be a potential violation of the applicable [Required Agricultural Practices \(RAPs\)](#), or other [Cannabis Control Board Rules](#)<sup>4</sup>, reports to the State of Vermont Cannabis Control Board can be made through the [Adult-use Program](#) Complaint process.
3. For issues related to the ducks and their humane treatment, sanitary conditions, or their crossing of property boundaries, reports can be made to the City’s [Animal Control](#) officer, at [epd.aco@essex.org](mailto:epd.aco@essex.org) or at 802-878-8331.
4. For issues related to public health hazards, reports can be made to the City’s Health Officer, at [ffoley@essexjunction.org](mailto:ffoley@essexjunction.org) or 802-878-6944 x 1609.

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<sup>2</sup> <https://agriculture.vermont.gov/rap>

<sup>3</sup> <https://agriculture.vermont.gov/water-quality/enforcement-compliance>

<sup>4</sup> <https://ccb.vermont.gov/laws-rules-and-regulations>

**Attachments:**

Appendix A: Excerpts from the Required Agricultural Practices

Appendix B: Excerpts from the State of Vermont Cannabis Control Board Rule 2: Regulation of Cannabis Establishments

Some sections in the attachments are highlighted for emphasis.



VERMONT

**REQUIRED AGRICULTURAL PRACTICES RULE**

**FOR**

**THE AGRICULTURAL NONPOINT SOURCE POLLUTION  
CONTROL PROGRAM**

(Effective November 23, 2018)



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**AGENCY OF AGRICULTURE, FOOD & MARKETS  
WATER QUALITY DIVISION**

116 STATE STREET  
MONTPELIER, VERMONT 05620-2901  
phone: (802) 828-2431; fax (802) 828-1410  
[AGR.RAP@Vermont.gov](mailto:AGR.RAP@Vermont.gov)

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(6) standards for nutrient management including nutrient management planning.

(b) Large Farm Operations, Medium Farm Operations, and Certified Small Farm Operations shall obtain four hours of approved training at least once in every five years. This requirement will commence upon notice from the Secretary.

(c) The Secretary may approve training offered by other entities upon request of the entity providing the training. All requests for training approval shall be provided to the Secretary at least 30 days prior to the scheduled training dates. The entity will be required to submit information about the training and attendees in a manner requested by the Secretary.

## **Section 6. Required Agricultural Practices; Conditions, Restrictions, and Operating Standards**

### **6.01 Discharges**

(a) Farms shall not create any discharge of agricultural wastes to surface waters of the State through a discrete conveyance such as, but not limited to, a pipe, ditch, or conduit without a permit from the Secretary of ANR.

(b) Production areas, barnyards, animal holding or feedlot areas, manure storage areas, and feed storage areas shall utilize runoff and leachate collection systems, diversion, or other management strategies in order to prevent the discharge of agricultural wastes to surface water or groundwater.

### **6.02 Storage of Agricultural Wastes and Agricultural Inputs**

(a) All agricultural wastes shall be managed in a manner to prevent runoff or leaching of wastes to waters of the State or across property boundaries.

(b) All components of a waste management system, including waste storage facilities, shall be managed and maintained so as to prevent structural or mechanical failures.

(c) Waste Storage Facilities maintenance and construction shall ensure:

(1) Vegetation is managed so that the facility maintains structural integrity and prevents leaks or overflows at all times.

(2) Waste Storage Facilities are managed to provide adequate volume in order to prevent overflows at all times.

(3) All waste storage facilities constructed, expanded, or modified after July 1, 2006 are designed and constructed according to the United States Department of Agriculture's Natural Resources Conservation Service (USDA NRCS) standards and specifications or an equivalent standard certified by a professional engineer licensed in the State of Vermont. Waste Storage Facilities shall be managed and maintained consistent with the requirements of the Operation and Maintenance Plans for the facility.

(d) The Secretary may require, on a case-by-case basis, that the owner or operator of a waste storage facility certify compliance with standards established by the USDA NRCS for waste storage facilities, or an equivalent standard certified by a professional engineer licensed in the State of Vermont.

(e) Field stacking of manure or other agricultural wastes on sites not approved consistent with USDA NRCS standards, or otherwise approved by the Secretary:

(1) shall consist of a stackable material that is no less than 20% solids and be able to stack four feet high; and

(2) shall be prohibited on lands in a floodway or subject to annual flooding; and

(3) shall be prohibited on exposed bedrock; and

(4) shall not be sited within:

(A) 200 feet of the top of bank of surface water;

(B) 200 feet of a public or private water supply;

(C) 100 feet from a property line;

(D) 100 feet from a ditch or conveyance to surface water;

(E) areas subject to concentrated runoff; or

(F) 100 feet of subsurface tile drainage;

(f) The Secretary may authorize site-specific standards other than those listed in Section 6.02(e)(4)(A)-(F) when the Secretary determines that a manure stacking or piling site, fertilizer storage, or other nutrient storage will not have an adverse impact on groundwater quality or surface water quality but in no case shall unimproved manure stacking sites be located less than 100 feet from a private water supply or the top of the bank of surface water.

(g) Over a three-year period, field stacked agricultural wastes shall be land applied consistent with the nutrient management plan requirements of Section 6.03, actively managed as a compost, or moved to a suitable alternative location.

(h) Fertilizer shall be stored consistent with the Vermont Fertilizer and Lime Regulations Section XIII. Fertigation and chemigation equipment shall be operated with an adequate anti-siphon device between the system and the water source.

(i) Pesticides shall be used in accordance with 6 V.S.A. Chapter 87 (Control of Pesticides) and all regulations promulgated thereunder.

### 6.03 Nutrient Management Planning

(a) All Certified Small Farm Operations as defined in Section 4 of this rule and all permitted Medium and Large Farm Operations managing manure, agricultural wastes, or fertilizer for use as nutrient sources shall implement a field-by-field

(i) Exceptions to the required vegetative buffer zone widths, including the requirements of Section 6.05(f), may be considered upon request on a site-specific basis according to standards approved by the Secretary, but in no case shall a buffer zone be less than 10 feet in width. Site-specific buffer zones may be approved based on field characteristics such as a determination that a conveyance has the potential to transport significant wastes or nutrients to surface water, field contours, soil types, slopes, proximity to water, nutrient management plan requirements, and other relevant characteristics when the Secretary determines that the proposed site-specific buffer zones are adequately protective of surface waters.

6.08 Animal Mortality Management Requirements

(a) Animal mortalities shall be properly stored, handled, and disposed of within 48 hours, so as to minimize adverse water quality impacts.

(b) Animal mortalities buried on farm property shall be sited so as to be:

(1) a minimum of 150 feet from property lines and the top of the bank of surface waters;

(2) a minimum of three feet above the seasonal high water table and bedrock;

(3) covered with a minimum of 24 inches of soil;

(4) a minimum of 200 feet from public or private drinking water supplies; and

(5) not located on lands in a floodway or subject to annual flooding.

(c) Animal mortalities composted or otherwise disposed of on farm property on unimproved sites shall be prohibited on lands in a floodway or subject to annual flooding, and shall be sited so as to be:

- (1) a minimum of 200 feet from property lines;
- (2) a minimum of 200 feet from the top of the bank of surface waters;
- (3) a minimum of 200 feet from public or private drinking water supplies not owned by the farm;
- (4) a minimum of 300 feet from neighboring residences or public buildings;
- (5) a minimum of 100 feet from a ditch or conveyance to surface water; and
- (6) not upon areas of exposed bedrock.

(d) Other site-specific standards may be authorized by the Secretary, but in no case shall unimproved sites be located less than 100 feet from a private water supply, property boundary, or the top of the bank of surface water.

#### 6.09 On-Farm Composting of Imported Food Processing Residuals

(a) All on-farm composting facilities importing less than 1,000 cubic yards per year of food processing residuals shall be sited so as to be at a minimum:

- (1) 200 feet from the top of bank of surface water;
- (2) 200 feet from a public or private water supply not owned by the farm;
- (3) 300 feet from a neighboring residence or public building;
- (4) 200 feet from a property line;
- (5) 100 feet from a ditch or conveyance to surface water;

(6) not within floodways, areas subject to annual flooding or concentrated runoff; and

(7) not upon areas of exposed bedrock.

(b) Other site-specific standards may be authorized by the Secretary, but in no case shall unimproved sites be located less than 100 feet from a private water supply, property boundary, or the top of the bank of surface water.

#### 6.10 Stabilization of Banks of Surface Waters

(a) The areas from the top of a bank of surface water to the edge of the surface water shall be left in their natural state except as allowed by State statute including, but not limited to, 10 V.S.A. § 1021, and the standards established for the pasturing of livestock consistent with Section 7 of this rule.

(b) Stabilization of farm field banks of surface waters, when allowed under Section 6.10(a) of this rule, shall be constructed in accordance with the USDA NRCS standards and specifications or other standards approved by the ANR and the Agency that are consistent with policies adopted by the Secretary of Natural Resources to reduce fluvial erosion hazards.

### **Section 7. Exclusion of Livestock from the Waters of the State**

(a) Adequate vegetative cover shall be maintained on banks of surface waters by limiting livestock trampling and equipment damage to protect banks of surface waters to minimize erosion.

(b) Crossings and watering areas need to be maintained so as to minimize erosion and be adequately protective of surface waters.

(c) Livestock shall not have access to surface water in production areas or immediately adjacent to production areas, except:

(1) at livestock crossings or watering areas;



(7) review testing results and site evaluations to determine if changes in water quality data are the result of changes in activities or natural site conditions.

(h) The Secretary may require the owner or operator of a waste storage facility to modify the facility to meet the USDA NRCS or an equivalent standard for the facility or to implement additional management measures if the facility poses a threat to human health or the environment as established by an exceedance of the State's Groundwater Quality Standards.

(i) For the purpose of assessing whether a waste storage facility is violating the State's Groundwater Quality Standards, the Secretary shall pay for the initial costs to conduct groundwater monitoring. When the Secretary has made a determination that a waste storage facility is violating the State's Groundwater Quality Standards, the Secretary shall provide notification to the Department of Health and the Agency of Natural Resources. This notification shall occur within 21 days and include the location of the facility and the name of the owner or operator. When the Secretary makes a determination that a waste storage facility no longer poses a threat to human health or the environment, the Secretary shall provide notification of the revised determination to the Department of Health and the ANR.

## **Section 9. Construction of Farm Structures**

### **(a) Siting**

(1) Prior to construction of farm structures, the farmer must notify the zoning administrator or the town clerk of the town in which the farm structure is proposed, in writing, of the proposed construction activity. The notification must contain a sketch of the proposed structure including the setback distances from adjoining property lines, road rights-of-way, and adjacent surface water.

(2) Local setbacks and setbacks designed by this rule shall be observed unless the Secretary has approved a farmer's written request for other reasonable setbacks for the specific

farm structure being constructed or maintained in accordance with Section 9(b).

(3) Construction of farm structures in Flood Hazard Areas and River Corridors are required to obtain a Flood Hazard Area and River Corridor permit from the ANR or its designee unless otherwise exempt (refer to Appendix A). Fences through which floodwater may flow are not structures which represent an encroachment in a floodway area.

(4) Construction of new farm structures, specifically buildings and other farm structures that disturb one or more acres of land must obtain authorization from the ANR before commencing with land disturbance or construction activities.

(5) Existing Production Areas

Farm structures, with the exception of replacement structures built to occupy existing structural footprints, shall be constructed so that a minimum distance of 50 feet is maintained between the top of the bank of adjoining surface waters and the farm structure.

(A) Such structures do not include those solely constructed for irrigation, drainage, fencing, or livestock watering,

(B) Such structures do not include water quality conservation practices where the site is the best available site on the farm, as approved by the Secretary, for the purposes of protecting ground water quality or surface water quality.

(C) Such structures do not include waste storage facilities if the site is the best available site on the farm, as approved by the Secretary, for the purposes of protecting ground water quality or surface water quality and the waste storage facility is designed by a licensed engineer.

(6) New Production Areas

(A) Farm structures, excluding waste storage facilities, shall be constructed so that a minimum distance of 50 feet is maintained between the top of the bank of adjoining surface waters and the farm structure.

(i) Such structures do not include those solely constructed for irrigation, drainage, fencing, or livestock watering,

(ii) Such structures do not include water quality conservation practices where the site is the best available site on the farm, as approved by the Secretary, for the purposes of protecting ground water quality or surface water quality.

(B) The following setbacks shall apply to all new waste storage facilities proposed on sites where no waste storage facility or production area previously existed:

(i) 100 feet from the centerline of a public road;

(ii) 100 feet from any abutting property line;

(iii) 200 feet from the top of the bank of any surface water; and

(iv) 200 feet from public or private water supplies.

(b) Setbacks Approved by the Secretary

Local setbacks or no build areas for wetlands, River Corridors, and other setbacks applicable to all development in a local zoning bylaw established by the municipality shall be maintained, unless upon written request of the person, consistent with the procedures found in Appendix A, the Secretary has approved other reasonable setbacks for the specific farm structure being constructed. The Secretary may authorize the siting of a waste storage facility within 200 feet of

a surface water or private water supply if the site is the best available site on the farm for the purposes of protecting ground water quality or surface water quality and the waste storage facility is designed by a licensed engineer to meet USDA NRCS standards and specifications or an equivalent standard. If an equivalent design standard is used, the design and construction shall be certified by the Secretary, or a licensed professional engineer operating within the scope of his or her expertise. The Secretary may consider the following in rendering a decision regarding alternative setbacks:

- (1) unique existing physical conditions or exceptional topographical or other physical constraints peculiar to the particular property that would prevent development in accordance with this rule;
- (2) because of such physical conditions or constraints, there is no possibility that the property can be developed in conformity with the provisions of this rule and that the approval of an alternative setback is therefore necessary to enable the reasonable operation of the farm;
- (3) the alternative setback, if approved by the Secretary, will be the site that is the best available on the farm for the purposes of protecting ground water quality or surface water quality; and
- (4) the setback, if approved by the Secretary, will represent the minimum alternative setback necessary to allow for reasonable operation of the farm.

## **Section 10. Custom Applicator Certification**

(a) Custom applicators of manure or other agricultural wastes shall be certified by the Secretary in order to operate within the State and shall comply with all applicable requirements of the Required Agricultural Practices Rule, Medium Farm Operations Rule and Permits, and Large Farm Operations Rule and Permits.

**STATE OF VERMONT  
CANNABIS CONTROL BOARD**

**RULE 2: REGULATION OF CANNABIS ESTABLISHMENTS**

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  - 2.1.2 Scope and Purpose
  - 2.1.3 Definitions
  - 2.1.4 Applicability
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  - 2.1.6 Severability
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- 2.15 Confidentiality
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may supply Cannabis to the regulated market, and Cannabis grown for personal use must not be entered into the Inventory Tracking System.

## **2.4 Regulations Applicable to Outdoor and Mixed Cultivators**

The requirements in this section apply to Cannabis Establishments with an outdoor or mixed cultivator license.

### **2.4.1 Outdoor Security Management Practices**

The Board deems the following to be Outdoor Security Management Practices:

- (a) fencing;
- (b) video surveillance system with unobscured views of area;
- (c) alarm system;
- (d) photographic surveillance;
- (e) motion activated flood-light, which may face away from the plant canopy;
- (f) security services, which may include the physical presence of a security guard; and
- (g) controlled point of access.

### **2.4.2 Standards For Outdoor Security Management Practices**

- (a) Fencing must be sufficient to prevent unauthorized entry to any cultivation areas.
- (b) Electronic security measures and security services, if applicable pursuant to section 2.4.3, must be operating for no less than the three-week period preceding a harvest, as well as while drying, curing, or storing a harvested crop.
- (c) Video and photographic surveillance equipment must:
  - i. retain footage for a minimum of 30 days;
  - ii. include date and time stamps on images without significantly obscuring the images;
  - iii. be capable of producing usable images in the lighting conditions in which it is placed;
  - iv. be placed in a way that allows for the clear and certain identification of any persons or activities at or in the immediate vicinity of any Cannabis or Cannabis Product, provided that video recordings may be motion-activated; and
  - v. be exportable and transferrable to standard computing equipment and have a resolution of 720p or greater or the equivalent of such a resolution.

### **2.4.3 Minimum Outdoor Security Management Practices**

Outdoor cultivators and the outdoor portion of a mixed cultivator's crop must implement Outdoor Security Management Practices to the extent required in this section unless they apply to the Board for a variance from the fencing requirement, which the Board will consider on a case-by-case basis.

- (a) Tier 1 outdoor cultivators and mixed cultivators must utilize at least 1 of the Outdoor Security Management Practices in section 2.4.1.



- (b) Tier 2 outdoor cultivators must utilize at least 2 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (c) Tier 3 outdoor cultivators must utilize at least 3 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (d) Tier 4 outdoor cultivators must utilize at least 4 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (e) Tier 5 outdoor cultivators must utilize at least 5 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (f) Tier 6 outdoor cultivators must utilize all of the Outdoor Security Management Practices in section 2.4.1.

#### 2.4.4 Visibility From a Public Road

If a crop would be visible from a public road, as defined in 24 V.S.A. § 4303(33), a physical barrier of concealment must be created such that the crop is not visible from the public road. Such barriers may include, but are not limited to, fencing, hedges, or building structures.

#### 2.4.5 Additional Requirements

- (a) At the Board's discretion, a physical site of operations may be inspected by a Board designee to determine security risks and visibility from a public road either before or after the Board has granted a license. The Board retains the right to require additional Outdoor Security Management Practices or barriers subsequent to such an inspection.
- (b) If a Cannabis Establishment experiences more than one incident of theft in a one-year time period, additional Outdoor Security Management Practices may be required at the Board's discretion.

#### 2.4.6 Security for Drying, Curing, and Storage

Security for Cannabis drying, curing, and storage must meet the requirements of section 2.5.1 of this rule.

#### 2.4.7 Allowance for Winter Indoor Storage

Mother plants, Cannabis plant-seeds, and clones in propagation or vegetation phase of development may be kept indoors during winter months when outdoor cultivation is not possible, provided that outdoor cultivation licensees may not cultivate Cannabis indoors.

### **2.5 Regulations Applicable to Indoor and Mixed Cultivators**

The requirements in this section apply to Cannabis Establishments with an indoor or mixed cultivator license.

# WARD & TOWLE LAW

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August 4, 2023

*Via Hand Delivery*

Susan McNamara-Hill  
Clerk / Treasurer  
City of Essex Junction  
2 Lincoln Street  
Essex Junction, VT 05452-3154

Development Review Board  
Secretary  
City of Essex Junction  
2 Lincoln Street  
Essex Junction, VT 05452-3154

Dear City of Essex Junction:

I represent Stephen Wille Padnos and Sharon Wille Padnos of 6 Taft Street, Essex Junction. The Wille Padnos live adjacent to Jason Struthers of 8 Taft Street.

I write to file notice of appeal of the non-enforcement decision regarding Jason Struther's illegal duck and cannabis growing operation at 8 Taft Street. 24 V.S.A. § 4465.(a). This decision was memorialized in Community Development Director Chris Yuen's memo of July 20, 2023 and distributed to the Wille Padnos via email on July 26, 2023.

This neighborhood is in the RESIDENTIAL 1 (R-1) zone. The purpose of R-1 is "To provide areas for large lot single family residential dwellings and accessory uses."

Jason Struthers is:

- 1) Raising "Livestock or Other Domesticated Farm Animals" as defined in the Land Development Code by raising commercial quantities of ducks. "Agriculture" is defined in the Land Development Code as the "use of property or structures for common farming-related activities necessary for crop and animal production." "Agriculture" is not permitted in zone R-1 the Land Development Code. P. 132; and
- 2) Raising commercial quantities of cannabis which is prohibited in the R-1 zone both as "Cannabis Cultivator Establishment" and as "Agriculture". P. 132.

These facts are admitted by Struthers and known to the City of Essex Junction.

These operations are interfering and inconsistent with the single family residential neighborhood in this R-1 zone on Taft Street due to offensive odors and noises coming from the duck and cannabis commercial operations.

The City of Essex Junction believes it is powerless to apply its Land Development Code to “farms” and to “cannabis cultivator establishments.” This belief – if true – would lead to the shocking result that farms and cannabis cultivation is allowed in *every single zone in every single city and town in Vermont – that there is no place that municipalities can prohibit duck raising or commercial pot farming*. This is based on a misunderstanding of the law, albeit a common one. It is understood that many municipalities mistakenly believe they cannot regulate farms at all although no statute or Supreme Court cases says this.

Municipalities are restricted from zoning in certain subject areas. Specifically, 24 V.S.A. § 4413 contains a list of about thirteen topics which municipalities are prohibited from regulating. Some of these restrictions are described in very broad terms -- such as “churches” or “hospitals.” 24 V.S.A. §4413.(a)(1)(C) and (D). Some of the restrictions are very specific, such as certain restrictions on replacements of electrical distribution poles that are no more than 10 feet taller than the pole it replaces. 24 V.S.A. §4413.(h)(1)(B)(ii).

Many of the restrictions on municipal zoning are plainly directed at avoiding “double regulating” certain areas. For example, municipalities are prohibited from regulating regional solid waste facilities, hazardous waste facilities, electric generation facilities, and energy storage facilities as these types of facilities are already under state regulation and control. See 24 V.S.A. §4413.(a)(1)(E)(F), §4413.(b). Likewise, municipalities are prohibited from regulating hunting, fishing, and trapping as the state of Vermont already regulates hunting, fishing, and trapping. See 24 V.S.A. §4413.(e). In these areas, the state of Vermont does not want municipalities to issue double or conflicting regulation into areas that the state of Vermont already regulates.

24 V.S.A. § 4413.(d)(1)(A) is the section of this statute that restricts municipalities from double regulating the following areas relevant to this appeal:

**Required Agricultural Practices (the RAP rules) and construction of farm structures.**

The relevant section of the statute reads as follows:

24 V.S.A. § 4413.(d)(1) A bylaw under this chapter shall not regulate:

(A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

(B) accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or

(C) forestry operations. Emphasis added.

This statute does not contain a blanket restriction on regulating farming. The only restriction on zoning farms is municipalities shall not also regulate “required agricultural practices” (RAP rules) and “construction of farm structures” (the farm structure part of the statute is not relevant to this appeal). In sum, municipalities are not allowed to issue duplicate or promulgate contrary RAP rules applying to farms.

What are the RAP rules? The RAP rules are more formally known as the “Required Agricultural Practices Rule for the Agricultural Nonpoint Source Pollution Control Program” and these are State of Vermont agricultural water quality rules. They do not regulate farming generally or in any other way. They do not regulate care of animals or the handling of crops or traffic or density or noise, or anything else that is not related to water quality. The RAP rules are not zoning rules.

The State of Vermont explains the RAP rules as follows:

These standards are intended to improve the quality of all Vermont’s waters by reducing and eliminating erosion, sediment losses, and nutrient losses through improved farm management techniques, technical and compliance assistance, and where appropriate, enforcement. The RAPs establish nutrient, manure, and waste storage standards, make recommendations for soil health, and establish requirements for vegetated buffer zones and livestock exclusion from surface water. In addition, the RAPs establish nutrient management planning standards, and standards for soil conservation. <https://agriculture.vermont.gov/rap>

The rules, currently 45 pages long, are solely about agricultural water quality. The state of Vermont does not want municipalities to also regulate agricultural water quality. For example, RAP Rule 6.05(a) states “Manure or other agricultural wastes shall not be applied between December 15 and April 1.” Having developed these rules, the state of Vermont under 24 V.S.A. § 4413(d)(1)(A) prohibits municipalities from developing conflicting water quality rules. Under 24 V.S.A. § 4413(d)(1)(A) a municipality would not be permitted to pass a local ordinance which prohibits the application of manure from December 1 and April 15 – as that would conflict with the state regulations on this. This makes sense – why would the State of Vermont, having developed detailed water quality rules, allow a municipality to issue contradictory or duplicative rules about the same topic? This statute reminds towns and cities that they may not double regulate water quality issues on farms.

The Vermont Agency of Agriculture, Food & Markets (VAAFMM) makes determinations about whether the RAP rules apply to an applicant. VAAFMM’s RAP farm determination is not a grant of blanket immunity from all municipal regulations related to farming – VAAFMM is simply deciding whether the 45 page RAP rule book should apply to the applicant’s water quality activities. VAAFMM does not ask if an applicant is complying with local zoning. VAAFMM asks very little of an applicant. VAAFMM’s determination is simply an agency casting a wide net over operations it believes should be forced to comply with the RAP water quality rules and (not surprisingly) even a low level of agricultural activity will pull an applicant under the RAP rules. You do not even have to have a farm. VAAFMM will willingly declare you under the RAP rules even if you only have a “plan” to farm but have not actually farmed or sold any products. VAAFMM’s

farm determination is only and solely about whether you have to comply with the RAP water quality rules. It does not make a “farm” or a “farmer” – it only means the applicant’s water discharges are now regulated under the RAP.

The plain language of 24 V.S.A. § 4413(d)(1)(A) does not prohibit municipalities regulating agriculture generally. It is instead a narrow prohibition on regulating water quality specifically.

The limited scope of the statute can be seen by comparing how the statute handles agriculture versus forestry. The legislature is presumed to act intentionally and purposely when it includes language in one section of a statute but omits it in another. See [https://www.law.cornell.edu/wex/statutory\\_construction](https://www.law.cornell.edu/wex/statutory_construction). In the statute, the legislature in the same section demonstrates its intent to prohibit municipalities from regulating in any way forestry operations. The statute plainly and broadly states municipalities shall not regulate “(C) forestry operations.” Emphasis added. This precludes any municipal regulation of the entire area of “forestry operations.” By using the word “operations”, the legislature demonstrated the broadest possible carve out.

If the legislature had similarly intended this section to prohibit municipal regulation of the entirety of “agricultural operations” the legislature would have said so by saying “agricultural operations”. But instead of saying “agricultural operations” using the broad word “operations” the legislature instead carved out a very narrow area – that of “*required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets.*” This means if the RAP rules or “construction of farm structures” are defined or regulated by the Secretary of Agriculture, Food and Markets, then the State has eliminated those two narrow areas from municipal regulation. But everything else is open for regulation. Including zoning agriculture generally (except for water quality and farm structures).

The existing City of Essex Junction regulations which places agriculture into permissible and impermissible zones *are not regulations about water quality or farm structures* and therefore are legitimate expressions of municipal zoning.

The analysis for cannabis is identical. The recent H. 270 amendments do not alter the result for cannabis. Instead, it is the *same* analysis. Indeed, the new cannabis statute, 7 V.S.A. § 869, merely pulls cannabis into the identical RAP rule restriction – municipalities cannot regulate water quality on cannabis operations either. The statute specifically says that “Required Agricultural Practices are not regulated by a municipal bylaw.” So, the analysis is the same – cannabis can be zoned but not regulated for water quality.

Farms and cannabis can be zoned – but they cannot be RAPed. That is what the statutes say.

It is acknowledged that VAAFMs website and certain guidance from Vermont League of Cities and Towns (VLCT) can be read to support the idea of blanket farm immunity from zoning regulations. The VLCT (from their website) “is a nonprofit, nonpartisan organization that was founded in 1967 with the mission of serving and strengthening Vermont local government.” This group provides general guidance to municipalities. VLCT are not a part of government nor

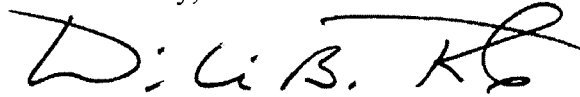
are they part of the judiciary. The Agency of Agriculture, Food & Markets is not authorized to expand any authority granted to them by statute. To the extent these organizations imply blanket farm immunity, this is incorrect and not supported by the plain language of the statutes.

This office believes 24 V.S.A. §4413 is the only binding authority on this topic. This office believes there are no relevant Supreme Court decisions on this topic. In the only reported Supreme Court decision on this section of the statute and the only Supreme Court cases cited in the instant July 20, 2023 memo, *In Moore Accessory Structure Permit and Use*, 2013 VT 54, 194 Vt. 159, the Supreme Court did not examine whether municipalities were restricted from broadly regulating farming. Instead, the Court examined the narrow question of whether the forestry operations in that case were part of “farming” on the site such that the logging structure would not need a municipal permit. *In Moore Accessory Structure Permit and Use* does not address the questions of whether farming operations are entirely outside the scope of municipal regulation.

The state law stands as the statutes are written. The City’s Land Development Code is clear. There are no Vermont Supreme Court decisions invalidating either the state laws or the City’s code. The DRB should enforce the code as written.

For these reasons and others which we will develop at the DRB hearing, we ask for immediate enforcement of the Land Development Code.

Sincerely,

A handwritten signature in black ink, appearing to read "W. B. Towle", with a stylized flourish at the end.

William B. Towle

cc:

Clients

Chris Yuen, Community Development Director

Regina Mahony, City Manager

Terry Hass, Assistant Zoning Administrator

Claudine Safar, Attorney for City of Essex Junction

Jason Struthers

C:\Users\Will\Ward Law, PC Dropbox\Sta\_38\Client Docs\Padnos Stephen\Neighbor Dispute - File 15-23\General\230803 notice of appeal.wpd

Development Application

SP# \_\_\_\_\_

Planned Development: Minor _____ Minimal _____ Major _____
Conceptual _____ Preliminary _____ Final <input type="checkbox"/>
Site Plan: Minor _____ Major _____ Conceptual <input checked="" type="checkbox"/> Final _____
Subdivision: Sketch _____ Preliminary _____ Final _____ Variance: _____ Conditional Use: _____

Property description (address) for application 8 Railroad Street, Essex Junction, VT, 05452

General Information

Applicant Franklin South LLC Day Phone# \_\_\_\_\_

Address 124 College Parkway, Colchester, VT, 05446

Owner of Record (attach affidavit if not applicant)

Name Franklin South LLC Day Phone# \_\_\_\_\_

Address 124 College Parkway, Colchester, VT, 05446

Applicant's agents

Name O'Leary-Burke Civil Associates Day Phone# (802) 878-9990

Address 13 Corporate Drive, Essex, VT, 05452

Property information

Zoning District Village Current Use \_\_\_\_\_ Tax Map# 29 Lot# 49 Lot size sf 23,087

Other Information Center

Street frontage (public or private) 66 feet Proposed number of stories & height 4 Stories, < 45'

Estimated completion date Late 2024/2025 Landscape cost TBD

Proposed Parking Spaces 28 Required spaces N/A

Lot coverage (include all structures and impervious surface)

Existing (sq ft.) 12,000 plus proposed (sq .ft.) 5,400 equals 17,400 total sq .ft. divided by 21,400 lot s.f. equals 81.3 percent lot coverage

**Submit two (2) full size copies, a PDF copy, GIS and supportive documentation required by the Code and the appropriate completed checklist for initial review by Staff. After Staff determines the application is complete attach two (2) full size copies and eight (8) 18" x 24" copies of your proposal, forty-five (45) days prior to a scheduled meeting. Applications that are not complete cannot be accepted for review.**

Briefly describe your proposal (attach separate sheet if necessary) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe all waiver requests (if applicable) \_\_\_\_\_  
\_\_\_\_\_

**I certify that the information on this application is true and correct. I agree to abide by all the rules and regulations as specified in the land development code and any conditions placed upon approval of this application. In accordance with the Essex Junction City Council Policy for Funding Engineer Plan Review and Inspections, the applicant by signing this form agrees to pay for the actual cost of engineering plan review and construction inspections by the City Engineer.**

  
Applicant

9/8/2023  
Date

\_\_\_\_\_  
Land Owner (if different)

\_\_\_\_\_  
Date

**Staff Action**

Date received \_\_\_\_\_

Meeting date: \_\_\_\_\_

Commission /Board Action    Approved \_\_\_\_\_ Denied \_\_\_\_\_ Date: \_\_\_\_\_

Other approvals /conditions \_\_\_\_\_

---

**\*\* Fee based on s.f. of improved area per current Fee Schedule**

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

Fee Amount \_\_\_\_\_  
\*\*

Fee Verified \_\_\_\_\_





# O'Leary-Burke Civil Associates, PLC

CIVIL ENGINEERING | REGULATORY AND PERMIT PREPARATION | LAND SURVEYING | CONSTRUCTION SERVICES | LAND USE PLANNING

September 12, 2023

Chris Yuen  
Community Development Director  
City of Essex Junction  
2 Lincoln Street

RE: Conceptual Plan Application – Franklin South, LLC  
8 Railroad Street  
Essex Junction, VT

Dear Chris:

We are writing on behalf of Franklin South, LLC c/o Gabriel Handy as a follow up to our previously reviewed conceptual plan of a proposed 3 story multi-family building at 8 Railroad Street in the City of Essex Junction. The building proposes a total of 39 units with 18 one-bedroom / studios and 21 two-bedroom units.

We are submitting a conceptual application for the review of the updated architectural drawings as well as a shift in the building footprint which meets the 15' residential buffer requirement.

Please find the following information attached. If you have any questions or need additional information, please let us know.

- 1) Updated Signed Planning and Zoning Application;
- 2) Sewer Allocation Request with Basis of Design;
- 3) Updated drawings.

Sincerely,

Shawn Cunningham, EI





④ Perspective West Elevation



③ View to Southwest



② View to Northeast



① Perspective South Elevation

No.	Description	Date
-----	-------------	------

Gabe Handy

Railroad St

3D Views

Project number :	2022002
Date :	9 August 2023
Drawn by :	DLG
Checked by :	DLG
Project Phase :	Zoning Permit

A500

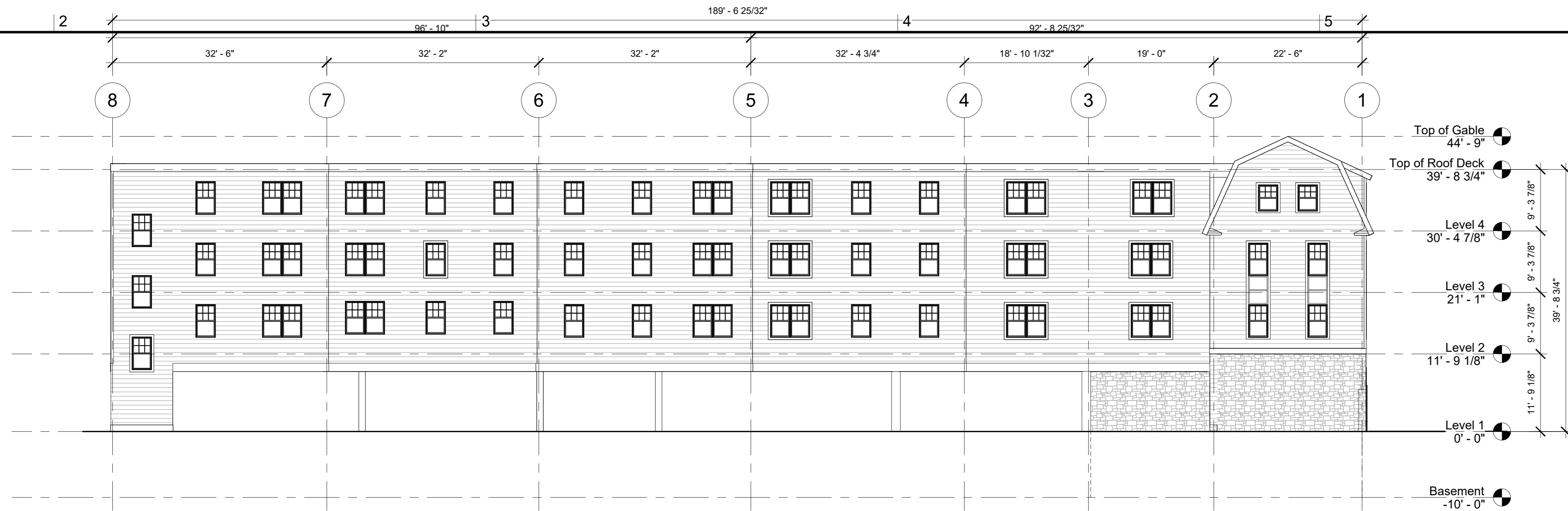
Scale :



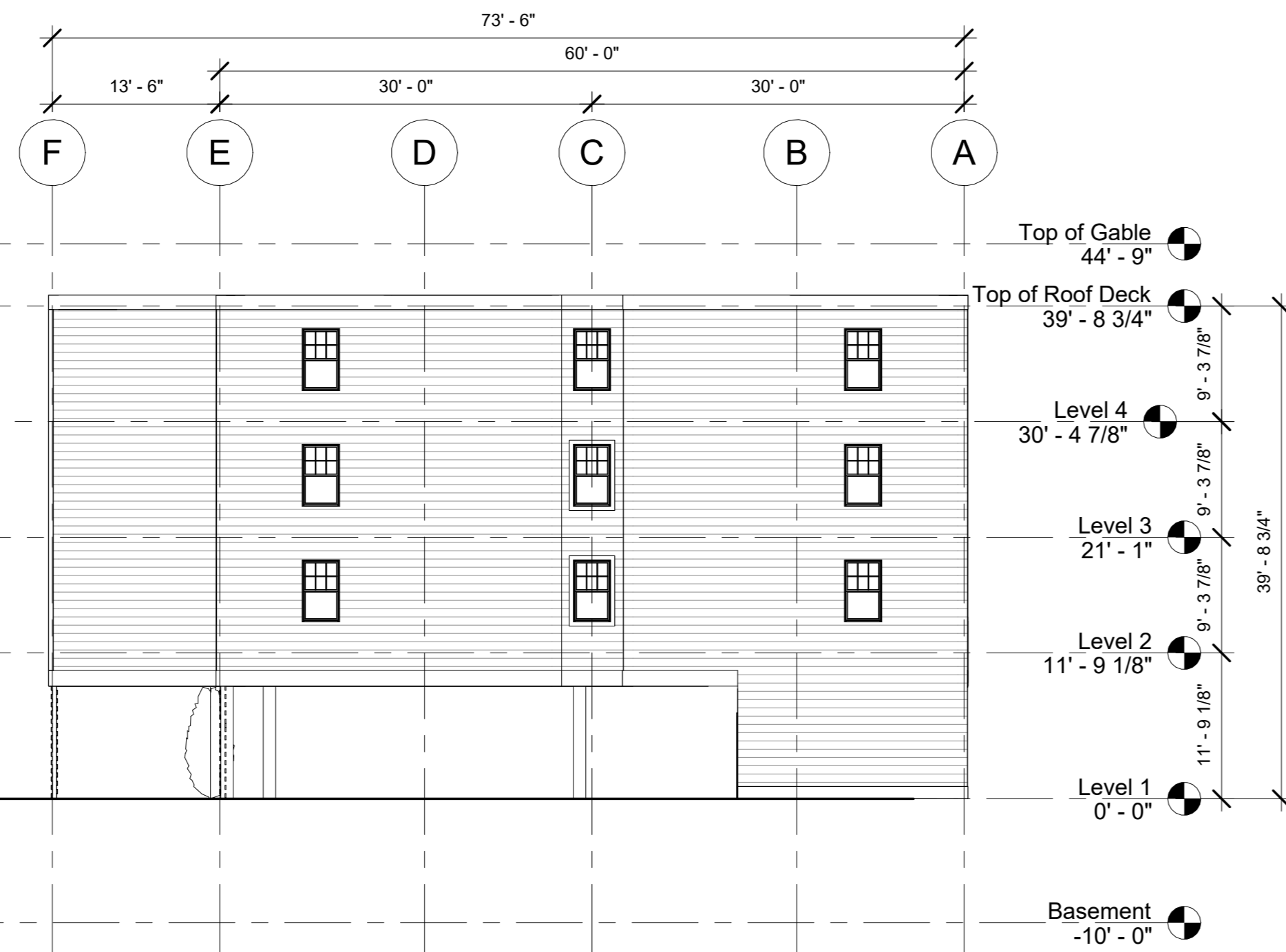


Daniel Goltzman Design & Development

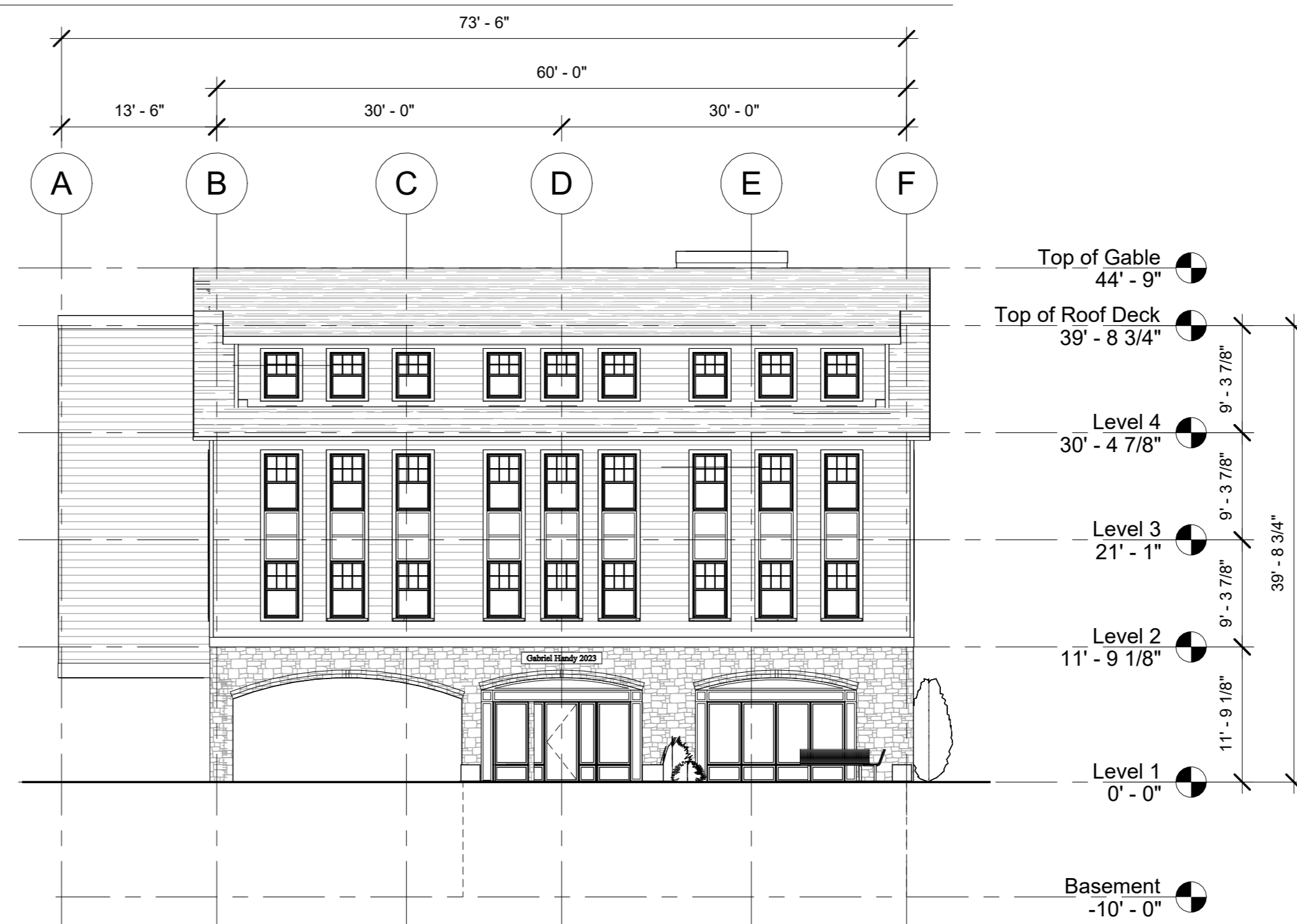
119 Caroline Street  
Burlington, Vermont 05401  
646-957-4248



1 North  
3/32" = 1'-0"



3 East  
3/32" = 1'-0"



2 West  
3/32" = 1'-0"



4 South  
3/32" = 1'-0"

No.	Description	Date
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Gabe Handy

Railroad St

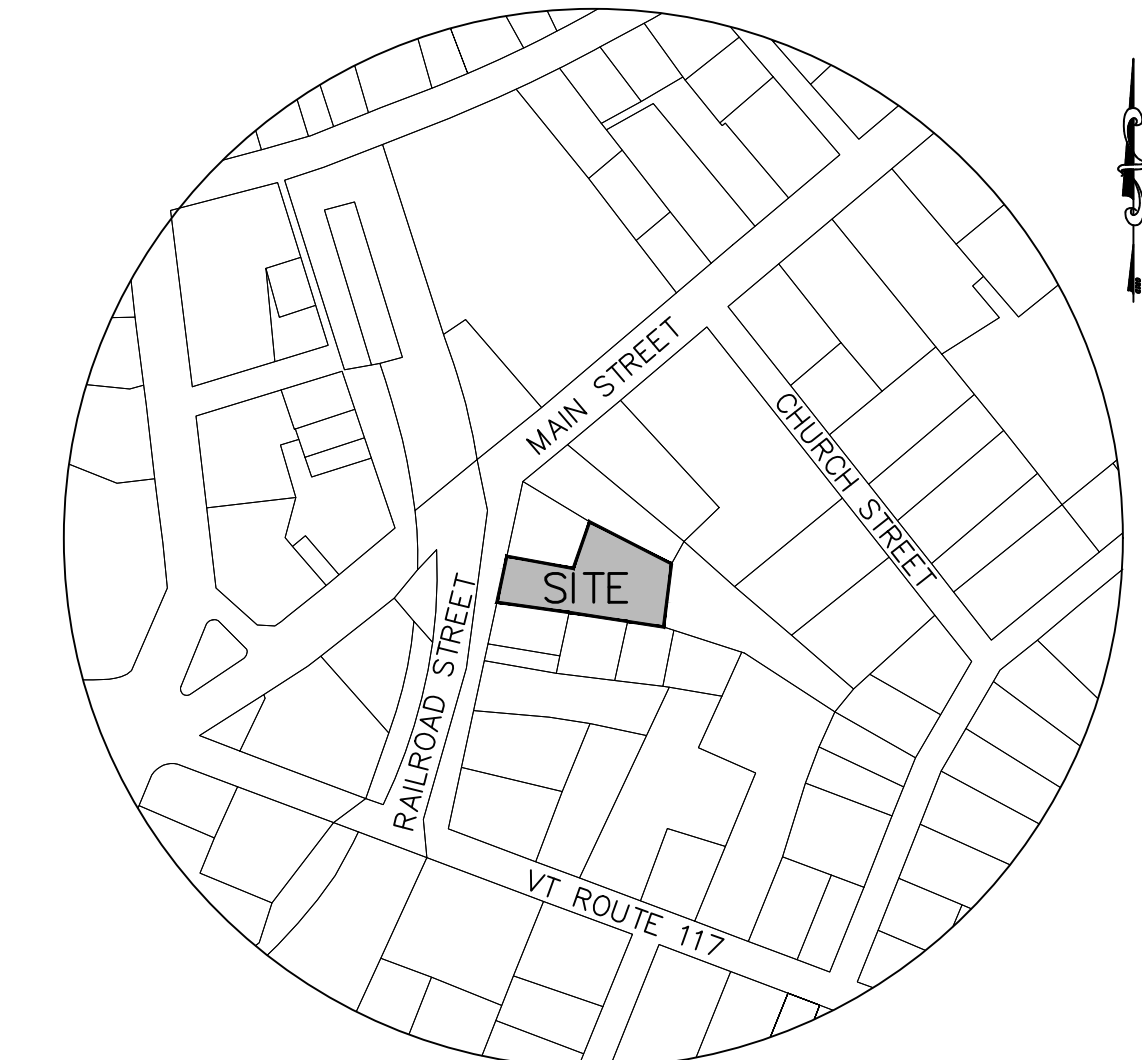
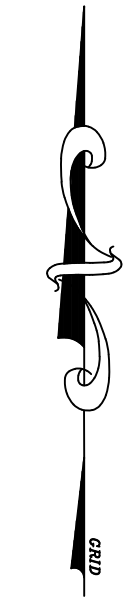
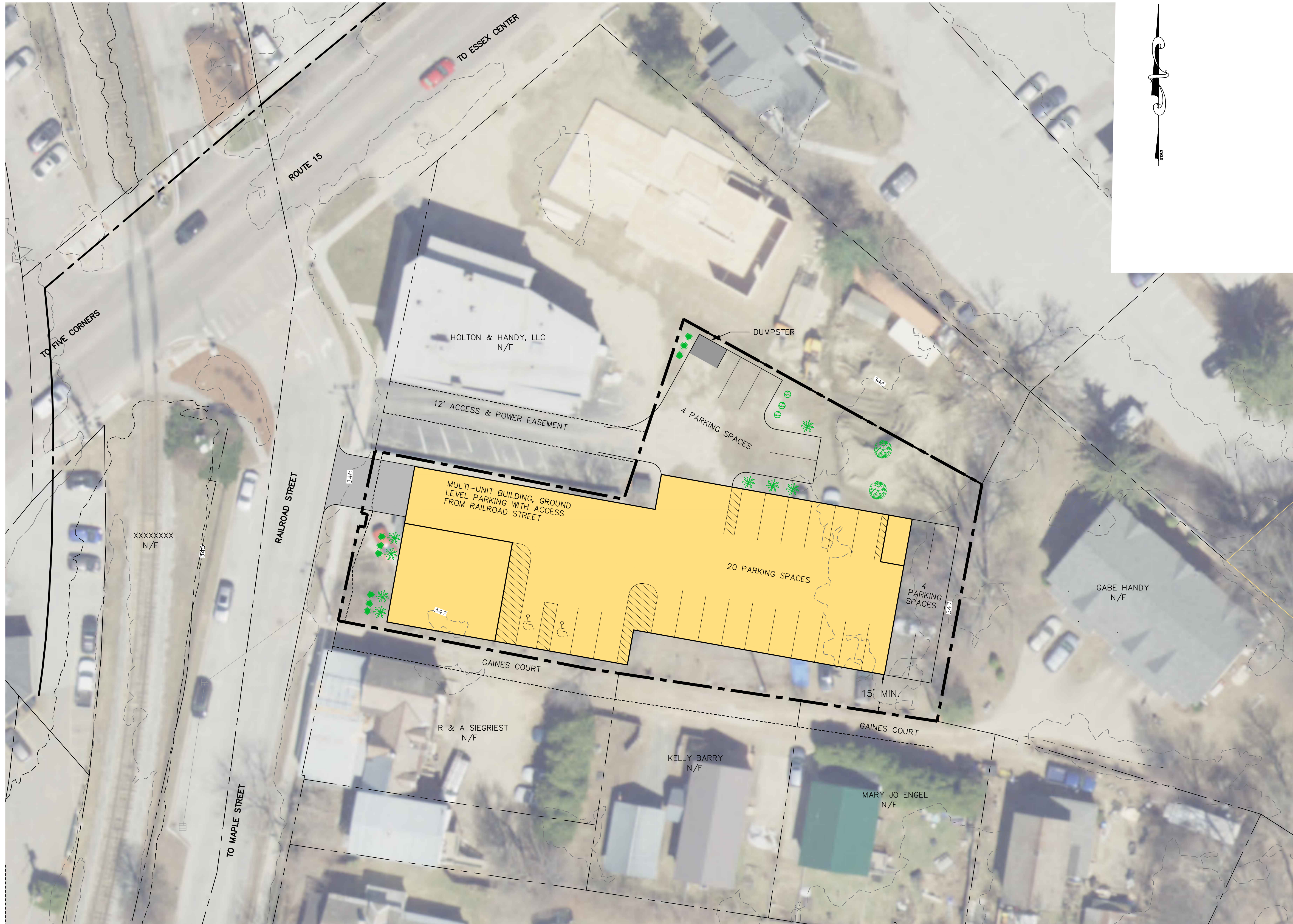
Elevations

Project number: 2022002  
 Date: 13 September 2023  
 Drawn by: DLG  
 Checked by: DLG  
 Project Phase: Zoning Permit

A200

Scale: 3/32" = 1'-0"





Location Map

Scale: 1" = 500'

**ZONING INFORMATION**

PARCEL ID: 1029049000 (0.53 ACRES±);  
SPAN ID: 207-066-10891  
ZONED: VILLAGE CENTER

**DIMENSIONAL REQUIREMENTS**  
MINIMUM LOT AREA: 5,000 S.F. CONVENTIONAL  
MINIMUM LOT FRONTAGE: N/A  
MAXIMUM ALLOWED COVERAGE: N/A

**SETBACKS:**  
FRONT: N/A  
SIDE: N/A  
REAR: N/A

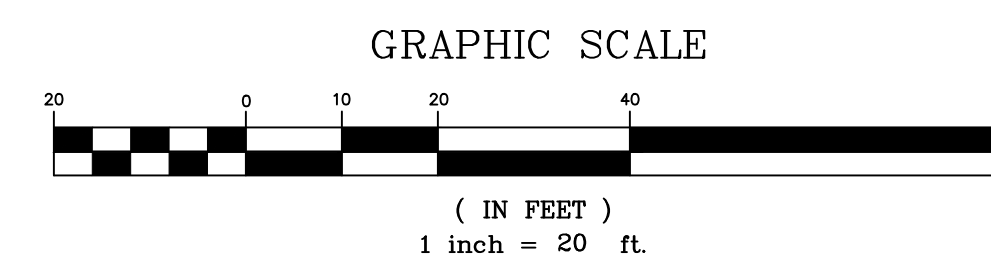
**PARKING COMPUTATIONS**

TOTAL PARKING PROPOSED: 34 SPACES  
(INCLUDES 2 HANDICAP SPACES)

**NOTES:**

- 1) THIS PLAN IS NOT TO BE USED FOR PROPERTY CONVEYANCE PURPOSES. SEE PROPERTY PLAT FOR PROPERTY CONVEYANCE PURPOSES.

THE CONTRACTOR SHALL NOTIFY "DIGSAFE" AT 1-888-DIG-SAFE PRIOR TO ANY EXCAVATION.



DATE	REVISION	BY
SURVEY	<input type="checkbox"/> RECORD DRAWING <input type="checkbox"/> PRELIMINARY	DATE
DESIGN	<input type="checkbox"/> FINAL <input checked="" type="checkbox"/> SKETCH/CONCEPT	8/2/23
DRAWN		2022-48
CHECKED		FILE
SCALE		2022-48-S4
1" = 20'		PLAN SHEET #
		1

**O'LEARY-BURKE CIVIL ASSOCIATES, PLC**

13 CORPORATE DRIVE  
ESSEX JCT., VT  
PHONE: 878-9589  
FAX: 878-9589  
E-MAIL: ooleary@olearyburke.com

FRANKLIN SOUTH, LLC.

8 RAILROAD STREET ESSEX JUNCTION, VT

CONCEPT PLAN



8 Railroad Street

**39-Unit Multi-Use Building**

9/8/2023

Design Water & Sewer Flows

18 One-Bedroom / Studio Units

(140 GPD \* 18 Bedrooms)

= 2,520 GPD WW & WS

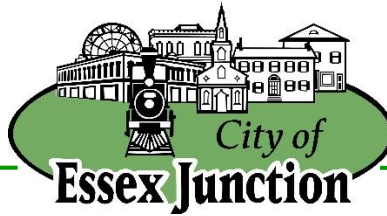
21 Two-Bedroom Units

21 \* (210 GPD WW & 280 GPD WS)

= 4,410 GPD WW & 5,880 WS

**= 6,930 GPD WW & 8,400 GPD WS**





## Staff Report

**To:** Development Review Board

**From:** Christopher Yuen

**Meeting Date:** 09/21/2023

**Subject:** 8 Railroad Street –Conceptual Site Plan Review for proposed 39-unit residential apartment building

**File:** SP# 6.2023

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The City of Essex Junction Development Review Board held a Public Hearing on July 20<sup>th</sup>, 2023, to review the conceptual site plan for a multi-family residential building located at 8 Railroad Street, filed under Site Plan SP#2.2023. At this hearing, the DRB heard public comment, closed the hearing, and provided feedback to the applicant. The DRB rejected the conceptual site plan on the grounds that the proposal does not meet the 15-foot buffer requirement in Section 708.B. The DRB also found that the proposed development would result in an undue-adverse impact on adjacent properties and therefore does not meet the conditions for a waiver of this 15-foot buffer requirement under Section 708.B.5.

The current site plan application, SP#6.2023 is a modified submission with significant changes in the following areas: a new proposal for a facade, and a change in the building footprint to provide an increased buffer space from adjoining single-family residential properties.

### EXISTING CONDITIONS AND GENERAL INFORMATION

**Project Location:** 8 Railroad Street

**Project Area Size:** 21,400 sf

**Lot Frontage:** 66 feet

**Existing Land Use:** Residential

**Surrounding Land Use:** Residential and Commercial

**Zoning District:** Village Center (VC)

**Minimum Lot Size:** 5,000 sf

**Lot Coverage:** 56% (Existing); 81.3% (Proposed); Permitted % To be determined by DRB as a part of Site Plan Review

### **Project Description:**

Conceptual plan review of a proposed zero-lot-line **4 story** apartment building at 8 Railroad Street in the City of Essex Junction. The building proposes a total of 39 units comprised of 18 one-bedroom / studios and 21 two-bedroom units and 28 parking spaces.

**Section 604: Village Center (VC)**

A. Purpose.

To provide for a compact commercial center, having a mix of commercial, governmental, cultural and residential uses, and which reflects and reinforces the existing architecture, design and layout. It is the intent of this district to allow as new structures only those structures which are designed and constructed to be visually compatible with the historic character of the Village Center and similar to existing structures.

The proposed four-story building is in line with the intent of the VC District to provide for a compact, commercial center providing a mix of uses. A previous version of the conceptual site plan application included a brick façade and a flat roof throughout the entire building. The current version includes a “barn-style” façade on the front, and a brick style walls and a flat roof throughout the rest of the building. This attempts to emulate existing architecture and design in the area, although the driveway entrance through the front of the building is not a not a common feature of nearby mixed-use buildings, many of which were constructed before the automobiles became prevalent.

B. Density/Lot Coverage.

The existing lot size of 21,400 sf exceeds the minimum lot size of 5,000 sf.

The maximum allowable density is determined by the ability to meet the LDC standards including but not limited to parking, setbacks, coverage, and building height. See below for further discussion regarding these standards.

Section 604.B.2 states that “The maximum total lot coverage shall be determined by the Development Review Bard as part of Site Plan Review”

C. Setback Requirements.

There are no setback requirements applicable to multi-family building in the Village Center District. However, buffer and screening requirements may apply. See Section 708 below for details.

The applicant proposes a 12-foot front setback and no setback on the sides.

D. Permitted and Conditional Uses.

A multi-family dwelling is a permitted use in the VC District.

E. Design Review and Historic Preservation

1. Purpose.

*“The purpose of this section is to protect those buildings listed or eligible for the State or Federal Register of Historic Places while accommodating new and appropriate infill and redevelopment*



*supporting increased density and multi-modal development. Infill and redevelopment brings opportunities to protect existing historic resources and provide new sources of architectural and urban design for the 21st century while increasing density, activity and economic opportunity in the Village Center District. ...New buildings and modifications to existing ones shall be subject to design review."*

## 2. Applicability

The Historic Preservation requirements are not applicable to this site as the existing building is not listed or eligible for the State or National Register of Historic Places. Design Review requirements are applicable this site.

## 4. District Design Requirements.

Section 604.E.4 requires that: *The Planning Development Review Bard shall review all development applications in the Village Center for compliance with the criteria listed below*

*(i) The relationship of building mass and architectural detail to open space and to the relative size of a person shall be reviewed by the Development Review Bard in this District.*

*(ii) The predominant direction of structural shape, of placement of openings and architectural details at the front façade shall be harmonious with the core principles of a designated Village Center District.*

*(iii) Buildings shall generally have no setback from the street and be at least two stories in height to create a consistent street edge and sense of enclosure. Additional building setback to provide for an expansion of the sidewalk or active pedestrian space such as sidewalk cafes or display areas may be allowed and in some cases encouraged.*

*(iv) The proposed height of structures may be limited to within ten (10) percent of the average height of existing adjacent buildings on predominately residential streets where necessary to protect the residential character of adjacent residential structures. The height limit shall not apply in predominantly commercial and mixed-use areas.*

More than 50% of the properties fronting Railroad Street within the subject block is commercial or mixed-use. As such, the 10 percent limit does not apply.

*(v) The following architectural elements or features shall be harmonious with existing buildings and significant, predominant or established patterns in the district:*

*(aa) The relationship between the width to height of the front elevation of the building.*

*(bb) The relationship of width to height of windows and doors.*

*(cc) The rhythmic relationship of openings to solid areas in front façades.*

*(dd) The spaces between the proposed structure or structural alteration.*

*(ee) The relationship of entranceways to buildings and porches.*

*(ff) The materials, textures, and colors, including primary and accent or trim colors.*

*(gg) Proposed architectural details (such as lintels, arches, chimneys).*

*(hh) Proposed roof shapes and lines.*

*(ii) Proposed enclosures, including fences, brick walls, stone walls, evergreen hedgerows and building facades, which are also continuous and cohesive with existing walls in the district.*

*(jj) Proposed landscaping shall be compatible with existing quality and quantity of landscaping in the vicinity, with consideration given to existing landscape mass and continuity.*

*(kk) The proposed ground cover shall be compatible with the predominant ground cover in the district.*

*(ll) Storage areas, service areas, trash receptacles, accessory structures and parking areas shall be screened from view from the street and adjoining properties.*

**The DRB should review the updated site plan according to design review criteria in Section 604.E**

**F. Parking Requirements.**

*Section 604.F states that “No minimum parking requirements are established in the VC District. However, the Development Review Board may require parking as a part of any Site Plan approval. The Development Review Board shall use the parking standards of Chapter Seven as a guide to determine reasonable parking. If on-site parking is required, it shall be placed on the side or rear of the building, not in front. If parking is placed on the side, it shall not take up more than thirty (30) percent of the linear frontage of the lot. The Development Review Board may waive this requirement due to site constraints. Below grade parking or structured parking may also be approved by the Development Review Board.”*

The unconventional parking layout necessitated by the unique building footprint results in excessive parking aisle width at the western half of the building. While not currently proposed, it may be possible to providing additional parking capacity by striping some spaces for tandem parking. Tandem parking spaces are double-length spaces for two vehicles from the same household.

The site plan depicts 28 parking spaces, some of which are on the ground floor, below the building. With 18 one bedroom and 21 two-bedroom units proposed, the on-site parking ratio would be 0.72. While rental housing in a central location often attracts low-car or car-free household, the parking ratio on this site is remarkably low and mitigative measures should be considered. Some potential mitigative measures include:

- Adding some tandem parking spaces, where possible
- Creating a shared parking agreement with nearby properties owned by the applicant.

- Transportation Demand Management (TDM) measures may also be helpful, but the DRB should note that unlike some neighboring municipalities, the City of Essex Junction does not have formal TDM standards or a process for developers to enter formalized TDM agreements with the municipality. Examples of these measures include:
  - Unbundling the cost of parking from leases, either by leasing parking spaces separately from housing units, or with discounts for car-free renters.
  - Perpetually offering GMT Transit Passes to residents for free, or at a deep discount.

The LDC currently does not specifically require electric vehicle charging and the applicant does not indicate any electric vehicle charging stations in the parking area. The State of Vermont currently offers some incentives through the Electric Vehicle Supply Equipment Grant Program for Level 2 and Level 3 charging equipment.

**The DRB should consider if planned parking is acceptable in to Section 604.F.**

G. Building Height.

The LDC allows for building heights of up to 4 stories, or 58 feet, whichever is less. The proposal for a **four-story, 45 ft tall building** falls well within these limits.

**Section 703: Parking and Loading**

C. Off-Street Parking Requirements.

The LDC requires parking spaces with a minimum of 9 feet wide and 18 feet long with a minimum 24-foot-wide aisle to allow for two-way travel. The proposed vehicular entrance under the building is less than 20' in width, which is below the specified minimum in the LDC, but likely workable for a small, urban parking lot with limited traffic volume.

K. Other Parking Standards and Applicability

7. Setbacks

The LDC requires that "All parking spaces shall meet the setback standards for the District in which it is located." Since there are no specific setback requirements, in the Village Center district, this does not apply.

8. Screening

The screening requirements of Section 708 shall apply to the perimeters of all parking lots. See Section 708 for further discussion.

10. Pedestrian Access

Section 703.K.10 requires pedestrian access:

*"The design of all parking lots shall incorporate measures to minimize safety hazards to pedestrians. Pedestrian paths shall be designated and clearly marked. Separation of vehicle and pedestrian traffic shall be included in all parking lot*

*plans where possible. The Development Review Board may waive this requirement due to unique characteristics of the lot such as small lots, underground parking or innovative alternative designs.”*

Pedestrian access paths have not been indicated on submitted plans. However, the applicant has previously indicated that a residential pedestrian entrance will be available the front of the building, as well from the parking lot. No dedicated pedestrian space is proposed along the 19'-11" wide vehicular entrance.

**The DRB should determine whether the proposed pedestrian access is sufficient to meet the requirements of Section 703.K.10.**

#### 14. Joint Parking Facilities

The LDC requires that *“Joint parking arrangements may be approved by the Development Review Board, provided that the applicant has submitted legal documentation to guarantee continued long-term availability of said parking.”*

The applicant does not propose joint parking arrangements.

#### 16. Waivers

The Development Review Board may waive some or all parking requirements and may place conditions on a waiver as necessary to guarantee adequate parking.

#### L. Bicycle Parking and Storage Standard and Applicability

The LDC, prescribes bicycle parking minimums of 1 long-term bike parking space per unit and 1 short-term bike parking space per 10 units. Specific requirements for type, location and placement of bike parking facilities are available in Section 703.L.

**The applicant has not included bicycle parking in the conceptual plans. This will be required as a part of the final site plan review. The bicycle storage room will need capacity and racking to store and lock at least 38 bicycles.**



Figure 1: Example of compact indoor bike parking racking

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**Section 705: Curb Cut and Access to Public Streets**

The project would maintain the existing location of a curb cut, and widen it to match a proposed driveway width of approximately 19 feet. This is narrower than the 24 feet for 2-way curb cuts and driveways as specified in the LDC.

The LDC requires curb cuts to be 25' from the property line, unless joint access is proposed with the adjacent property.

Given the curb cut locations are existing, and the dimensional constraints of the site, staff recommends the DRB grant an exception with regard to curb cut location in this instance per Section 705.D.7.

The proposed access easement on the north side is 12 ft in width, which is generally considered wide enough for one-way travel. However, the applicant has indicated that *"Garbage trucks are intended to use the 12' access easement to go both in and out of the site. Whether the truck turns around on site to leave in a forward direction or backs out, the easement will need to be used for in-and-out purposes."*. With limited space to turn around, garbage trucks may have to make extended reverse maneuvers onto Railroad Street, which involve elevated risk to other road users, particularly to pedestrian and cyclists.

**Staff recommends that the DRB require the access easement through 2 Railroad St indicated on the site plan, to be acquired by the applicant for access by garbage trucks and for oversized vehicles.**

**We also recommend that the DRB discuss with the applicant the potential for an additional access easement for traffic to exit north of the 4 Railroad Building, to improve safety by eliminating the need for garbage trucks to back out into traffic on Railroad Ave.**

**Section 707: Fences**

Fencing is not depicted in the conceptual plans and diagrams. For final site plan submission, the applicant should ensure that any proposed fence does not interfere with visibility by motorists exiting Gaines Court.

**Section 708: Screening/Buffering**

The Site Plan depicts proposed landscaping around the front parking area. Section 708.B of the LDC states that:

*3. Any multi-family use located adjacent to a single-family use shall provide a buffer zone of not less than fifteen (15) feet. The buffer zone shall be landscaped in such a manner as to minimize impact on the adjoining single-family use. The Development Review Board may require the placement of an opaque fence and/or hedge to screen the multi-family structure from adjoining single family dwellings. **Any multi-family development in the Village Center District that is adjacent to a single family use that is also in the Village Center District shall not be required to provide a fifteen (15) feet buffer zone.***

5. *Waivers. The Planning Development Review Board may waive the screening and buffering requirement in the Village Center District if it determines that the encroachment will not have an undue adverse impact on adjacent properties.*

While the adjacent 10 Railroad St property is within the Village Center (VC) zoning district, some properties to the south of the subject site are currently used as single-family homes, and are located in the Multi-Family-3 (MF-3) zoning district (and therefore outside of the VC district). Staff has confirmed with the city attorney that when a 15-foot buffer is required, it should begin at the 8 Railway property line.

The applicant has provided building elevation diagrams from the all sides of the building, as well as depictions of the screening and landscaping proposed between the ground-level parking lot and Gaines Court. The rear half of the proposed building is shaped such that a 15 foot buffer is generally maintained against residential properties. However, a small portion of the building remains within the 15-foot buffer of the 1 Gaines Court property.

The proposed structure, with the offset layout at the rear of the building, largely meets the buffer requirements of Section 708.B.3. **The DRB should consider whether the remaining portion of the building that encroaches into the 15-foot buffer will result in undue-adverse impact on adjacent properties and determine if the conditions for a waiver under Section 708.B.5 are met.**

### **Section 718: Performance Standards**

#### G. Visual Impact

*Section 718.G states:*

*The Development Review Board may review visual impact of any proposed development located in any Commercial or Industrial District. The Development Review Board may place conditions on any approval or may require the alteration or relocation of any proposed structure which in its opinion would significantly alter the existing character of the area.*

*1. Factors for Evaluation. Visual impact shall be evaluated through analysis of the following factors and characteristics:*

- (a) Conformance to all regulations and standards as specified herein.*
- (b) Selection and appropriate use of materials.*
- (c) Harmony and compatibility of architectural character with surrounding structures.*
- (d) Exterior space utilization in regard to efficient use of site and existing significant natural or man-made features.*
- (e) Circulation - vehicular and pedestrian.*
- (f) Height, size and bulk of proposed and adjoining buildings.*
- (g) Creativity.*

**The DRB should evaluate the proposed building's relationship to the site and adjoining areas, building design, architecture, and finishes to ensure compliance with Section 718.G.**

**Section 719: Landscape and Tree Planting Requirements**

The conceptual landscaping plan indicates where landscaping may be located. The applicant will have to provide a full landscaping plan in accordance with the requirements of Section 719 for final site plan review.

**Technical Review / Other sections of the LDC**

The conceptual site plan review process focuses only on basic land-use and dimensional and aesthetic design aspects of the proposal. A full technical review of this application has not been conducted by City staff. Additional requirements of the LDC are applicable and will be reviewed during Final Site Plan Review.

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### **Recommendations**

Staff recommends the DRB consider the approval or denial of the proposed development based on a determination on the following LDC standards:

- The DRB should review the site plan according to Design Review criteria in Section 604.E
- The DRB should confirm if the proposed parking provision is acceptable given the local context in the Village Center District in accordance with Section 604.F.
- The DRB should confirm whether the proposed pedestrian access is sufficient to meet the requirements of Section 703.K.10.
- The DRB should consider requiring an access easement through 2 Railroad St to be acquired by the applicant for access by garbage trucks and for oversized vehicles.
- The DRB should discuss with the applicant the potential for an additional access easement for traffic to exit north of the 4 Railroad Building, to improve safety by eliminating the need for garbage trucks to back out into traffic on Railroad Ave.
- The DRB should consider whether additional fences or landscaping is necessary in accordance with the screening requirements in Section 708.
- The DRB should consider whether the remaining portion of the building that encroaches into the 15-foot buffer will result in undue-adverse impact on adjacent properties and determine if the conditions for a waiver under Section 708.B.5 are met.
- The DRB should evaluate the proposed building's relationship to the site and adjoining areas, building design, architecture, and finishes to ensure compliance with Section 718.G.

### **Proposed Stipulations**

- 1) Final site plan should be modified in accordance with staff and DRB comments during Conceptual Review
- 2) Final site plan will be reviewed based on all requirements of the LDC, including technical details not addressed in the Conceptual Plan Review.
- 3) Applicant is advised to review the amended Land Development Code, approved by the City Council.
- 4) Proposed building elevation views should be provided for all four sides.
- 5) Proposed grading should be provided for the parking area and project site to confirm the proposed drainage pattern and compliance with the LDC requirements.
- 6) Appropriate drainage calculations per the LDC should be provided.
- 7) Bicycle parking should be provided in accordance with the requirements of the Section 703.
- 8) Lighting shall be provided in accordance with Section 704.D.1 for the access drive, parking, and sidewalk areas.
- 9) The applicant should provide confirmation that any heating, ventilation, and/or air conditioning equipment will comply with the LDC requirements of Section 706.C.4.
- 10) Additional information regarding the dumpster area should be provided to ensure compliance with the LDC requirements of Section 706.J.
- 11) An erosion prevention and sediment control plan should be provided, with associated details, describing erosion prevention and sediment control measures to be implemented during and after construction to stabilize the site.



- 12) Details regarding the building design, architecture, and finishes should be provided to ensure compliance with Section 718.G.
- 13) The applicant should provide information on the total estimated construction cost for the project to determine the landscape requirements per the LDC.
- 14) A proposed landscaping plan should be provided per Section 719 of the LDC.

Development Application

SP# \_\_\_\_\_

Planned Development: Minor \_\_\_\_\_ Minimal \_\_\_\_\_ Major X  
 Conceptual X Preliminary \_\_\_\_\_ Final \_\_\_\_\_  
 Site Plan: Minor \_\_\_\_\_ Major \_\_\_\_\_ Conceptual X Final \_\_\_\_\_  
 Subdivision: Sketch \_\_\_\_\_ Preliminary \_\_\_\_\_ Final \_\_\_\_\_ Variance: \_\_\_\_\_ Conditional Use: \_\_\_\_\_

Property description (address) for application 132 Pearl ST

General Information

Applicant Robert Paroline Day Phone# 802-872-8555

Address 33 Mansfield Ave EJ VT 05452

Owner of Record (attach affidavit if not applicant)

Name Paroline Real Estate Inc Day Phone# 802-871-5546

Address 33 Mansfield Ave EJ VT 05452

Applicant's agents

Name GOV Day Phone# 802-862-9631

Address 289 S Union St Burlington VT 05401

Property information

Zoning District HA Current Use 3 unit Tax Map# 35 Lot# 24 Lot size sf 13,329.3

Other Information

Street frontage (public or private) 100.05 feet Proposed number of stories & height 4 / 48'

Estimated completion date 2025 Landscape cost \$25,000

Proposed Parking Spaces 19 Required spaces 19

Lot coverage (include all structures and impervious surface)

Existing (sq ft.) 2,700 plus proposed (sq .ft.) 6,315 equals 9,015 total sq .ft. divided by 13,329 lot s.f. equals 67.65 percent lot coverage

Submit two (2) full size copies, a PDF copy, GIS and supportive documentation required by the Code and the appropriate completed checklist for initial review by Staff. After Staff determines the application is complete attach two (2) full size copies and eight (8) 18" x 24" copies of your proposal, forty-five (45) days prior to a scheduled meeting. Applications that are not complete cannot be accepted for review.

Briefly describe your proposal (attach separate sheet if necessary) Remove existing structures. Construct 8 Residential Rental Units wood frame construction with non-combustible over concrete & steel platform

Describe all waiver requests (if applicable) ONE parking space in set back. New Building maintaining current Building set backs.

I certify that the information on this application is true and correct. I agree to abide by all the rules and regulations as specified in the land development code and any conditions placed upon approval of this application. In accordance with the Essex Junction City Council Policy for Funding Engineer Plan Review and Inspections, the applicant by signing this form agrees to pay for the actual cost of engineering plan review and construction inspections by the City Engineer.

Robert Paroline

Applicant

8-17-23

Date

Land Owner (if different)

Date

**RECEIVED**

**Staff Action**

**AUG 17 2023**

Date received City of Essex Junction

Meeting date: 9/21/23

Commission /Board Action Approved \_\_\_\_\_ Denied \_\_\_\_\_ Date: \_\_\_\_\_

Other approvals /conditions \_\_\_\_\_

**\*\* Fee based on s.f. of improved area per current Fee Schedule**

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

Fee Amount _____
**
\$165.00

Fee V <b>PAID</b>
<b>AUG 21 2023</b>
<b>City of Essex Junction</b>

## **Pearl Place Narrative Conceptual review**

### Existing conditions:

Three units in 2 structures. Paved entrance to gravel parking areas, connection through RR property at back to parking lot to the south is always open. Current buildings encroach into setbacks on South and North.

### Proposed project:

Remove existing buildings. Construct new buildings with two parking spaces on the East Side and the others located mostly under the proposed new structure. The two parking spaces along the East edge of the property are located in the existing parking area.

New building to consist of 18 units with six studios, six 1-bedroom, three 2-bedroom and three 3-bedroom units. Side setbacks will be per current zoning for the building. New structure will use the existing building footprints which are several feet into the front and rear setbacks. One parking space (#1) is proposed to encroach within the south setback which is 5' less than current gravel parking encroachment.

To achieve the affordability and energy goals we plan to install solar panels for power and hot water. Stormwater treatment areas on site will slow flows to the infrastructure already on route 15.

Environmental concerns also add to the quality of life of the anticipated residents in the form of heating comfort, outdoor spaces for recreation and relaxation, stormwater treatment through the use of pervious paved patios, sandbox filtration and water garden plantings. The covered parking also protects vehicles from weather and reduces the possibility of toxic materials in the storm water runoff.

Proposed building height of 48' to top of the stair tower.

The small site does not allow for a lot of plantings. Existing hedgerow to the East will be trimmed and maintained. Existing hedges and shrubs along the west property line will be removed to allow for construction. New plantings and a 6' high fence will be installed along the west line.

Existing curb cut and driveway will be maintained and not altered.

Common property for the use of tenants include: the parking areas, interior bike storage, lobby, laundry rooms on each floor and an on-grade patio in the SW corner of the lot. Plus an additional green space is to be located on the SE corner of the lot.

Pearl Street is a bus route with an existing bus stop located in front of the building.

Bicycle lanes are found on both the Easterly and Westerly directions of Pearl Street.

Traffic according to the latest ITE 11th Edition Trip Generation data, the estimated average weekday trip ends for the proposed project is 126 vte/day, with the am peak hour being 8 vte/hour and pm peak of 10 vte/hour.

Sewer and Water for the 18 unit housing will be based on the Vermont Flows values.

Existing sewer design flows: Front Building: one - 4 bedroom unit @210 gpd/unit = 210 gpd

and one - 1 bedroom unit @140/gpd/BR = 140 gpd

Rear Building: one - 3 bedroom unit @ 210 gpd/unit = 210 gpd

Existing Total = 560 gpd

Proposed sewer design flows: Twelve - 1 bedroom units @140 gpd/unit = 1,680 gpd

Three - 2 bedroom units @140 gpd/BR = 420 gpd

Three- 3 bedroom units @210 gpd/BR = 630 gpd

Proposed Total = 2,730 gpd

Anticipated additional sewer allocation required = 2,730 gpd - 560 gpd = 2,170 gpd additional flow

---

Existing water design flows: Front Building: one 4 bedroom @ 360 gpd/unit = 360 gpd

and one - 1 bedroom unit @ 140 gpd/BR = 140 gpd

Rear Building: one - 3 bedroom unit @ 360 gpd/unit = 360 gpd

Existing Total = 860 gpd

Proposed water design flows: Twelve - 1 bedroom units @ 140 gpd/BR = 1,680 gpd

Three - 2 bedroom units @ 250 gpd/BR = 750 gpd

Three - 3 bedroom units @ 360 gpd/BR = 1080 gpd

Proposed Total = 3,510 gpd

Anticipated additional water allocation required = 3,510 gpd - 860 gpd = 2,650 gpd additional flow

Existing neighboring properties include 9 unit residential to the west, fast food to the east and the Fairgrounds across Pearl Street.

Signage will be building mounted. Street address currently shown on building is 18" high lettering mounted 28' above grade.

Stormwater will be collected on the flat roof and piped into storm water system in the street. Sloped roofs will drain to the North where water will percolate into the soils as it does currently.

Drainage from paved areas will be directed across the lawn along west, south and east to percolate into the soils as it does currently. Due to the size of the proposed flat roof where stormwater is collected, less roof and pavement stormwater will charge the soils.

Waivers per zoning regulations Section 601-G.3(a):

We are requesting a Waiver for Lot Coverage. Cost of development inhibits construction of affordable housing. Using this lot to its fullest potential allows us to keep costs lower and provide rental units that can be more easily afforded. Waiver is to increase coverage from 65% to 67.65%.

We are requesting a waiver for one of the parking spaces (#1) that falls within the setback that is adjacent to the Railroad Easement. The property to the south is a paved Railroad easement stripe of unused land.





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NOTES:

Pearl Place

132 Pearl Street, Essex Junction, Vermont

GUILLOT VIVIAN VIEHMANN ARCHITECTS, INC. Burlington, VT 802-862-9631

DATE: 07 SEP 23  
REVISION:

SCALE:  
1/4" = 1'-0"

DRAWING:  
NE Corner

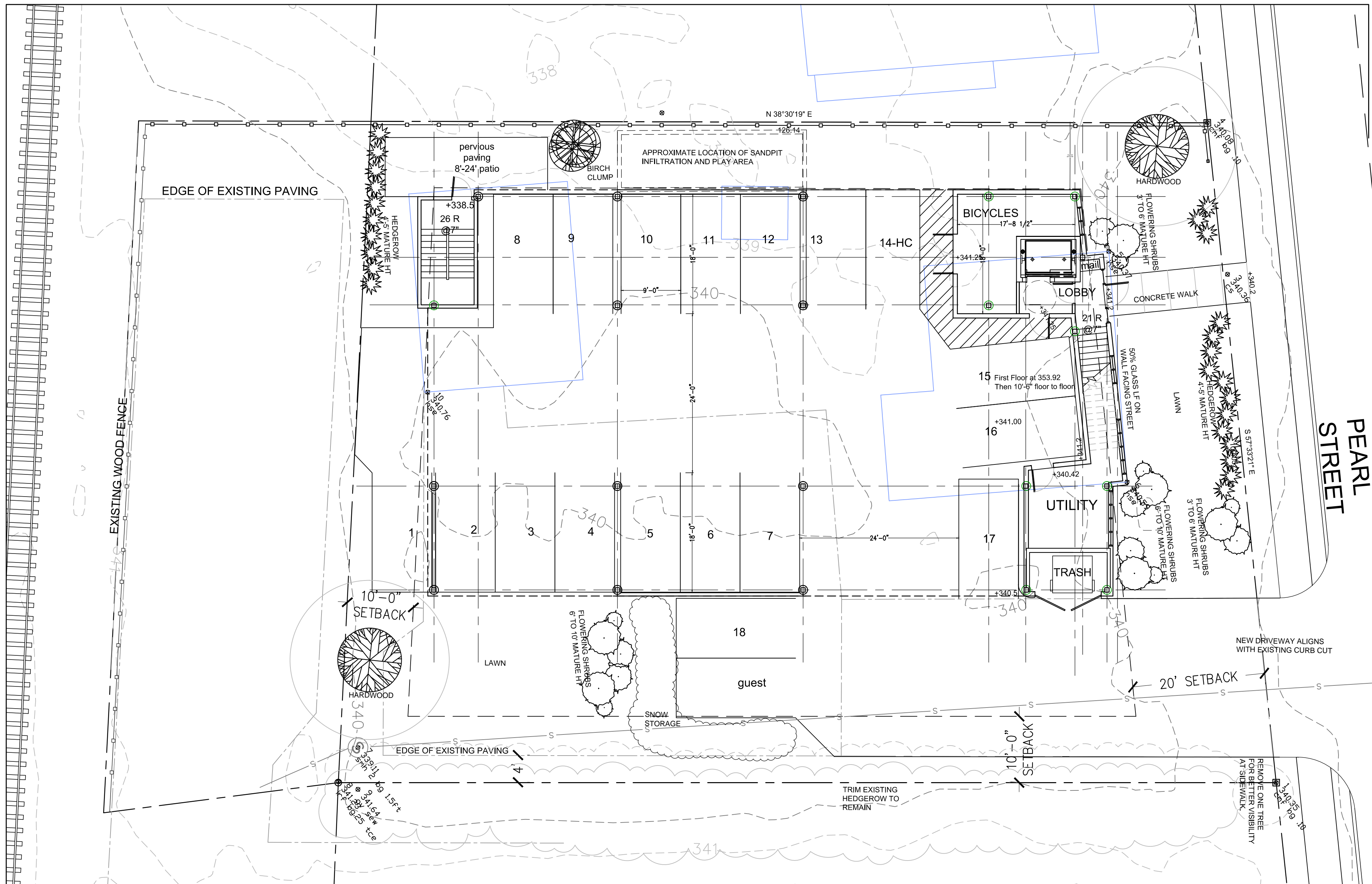
SHEET:  
A9.0



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PLANT LIST	VALUE
2" SUGAR MAPLE (2)	± \$ 2500
BIRCH CLUMP (1)	± \$ 1800
EVERGREEN HEDGE (32)	± \$ 4000
FLOWERING SHRUB (18)	± \$ 4500
INFILTRATION GARDEN PLANTINGS (100sf)	± \$ 1000

PEARL PLACE

**Pearl Place**  
 132 Pearl Street, Essex Junction, Vermont  
 GUILLOT VIVIAN VIEHMANN ARCHITECTS, INC. Burlington, VT 802-862-9631

DATE: 17 AUG 23  
 REVISION:

SCALE:  
 1" = 10'-0"

DRAWING:  
 SITE PLAN

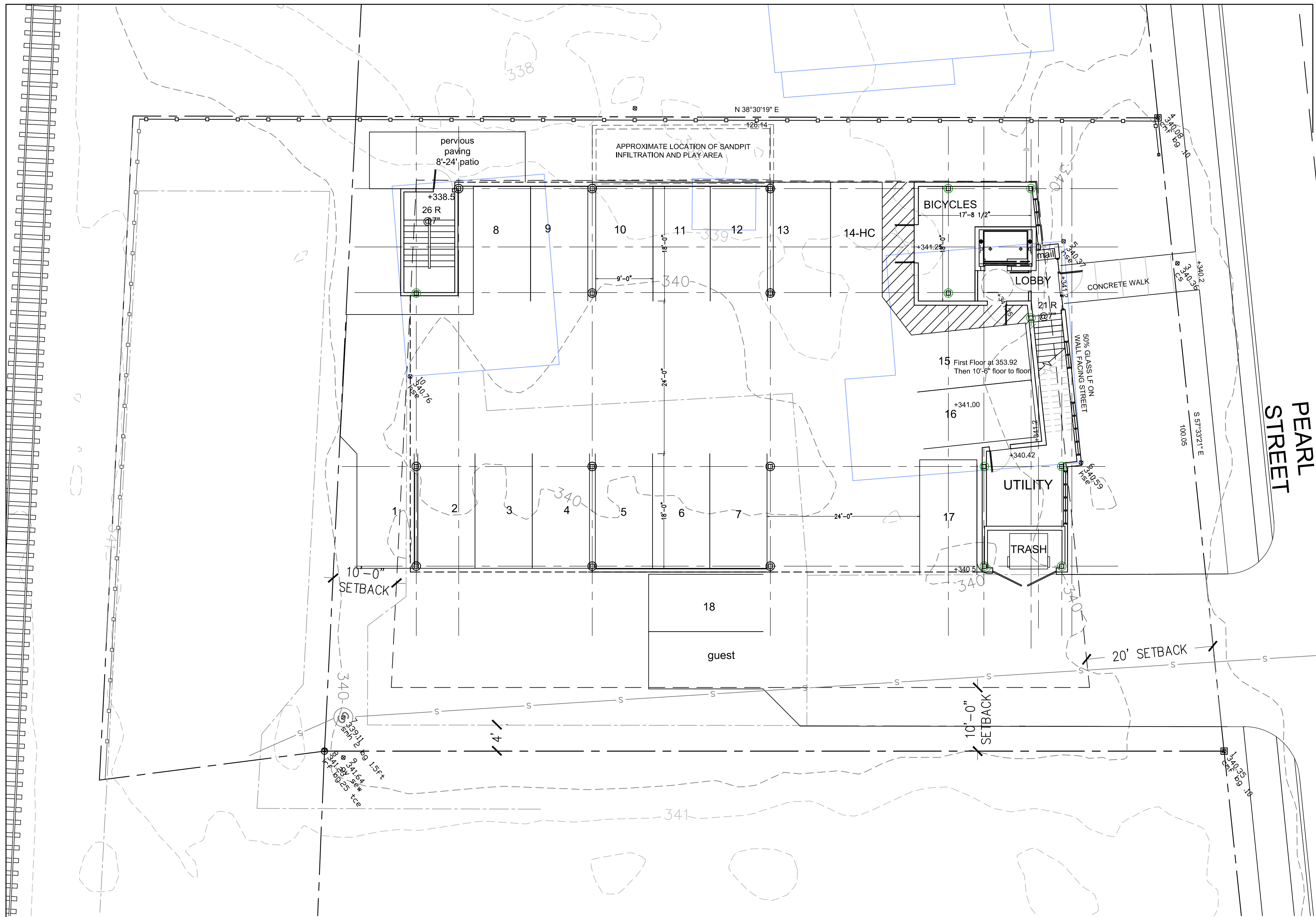
SHEET:  
**LS.1**



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**SITE DATA:**

AREAS	EXISTING	PROPOSED
LOT AREA	13,329 sf (0.3 acres) - 100.0%	
Parking/Decks/Walks	6,126 sf (45.9%)	2,700 sf (20.25%)
Buildings	1,965 sf (14.7%)	6,315 sf (47.4%)
TOTAL COVERAGE	8,091 sf (60.7%)	9,015 sf (67.65%)

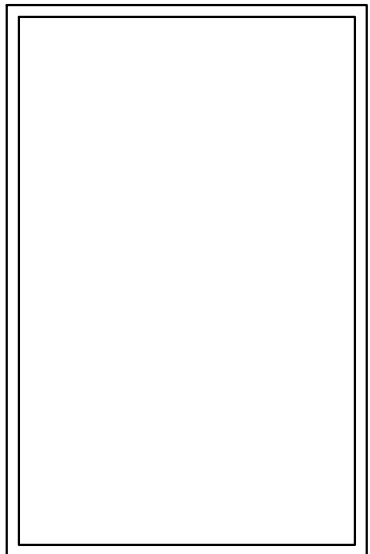
**PROPOSED CONSTRUCTION: NEW APARTMENT BUILDING**

- 3 - 3 BEDROOM
- 3 - 2 BEDROOM
- 6 - 1 BEDROOM
- 6 - STUDIOS
- 18 UNITS (3 STORIES OVER PARKING)
- FULL SPRINKLER SYSTEM
- 6,315 SF FOOTPRINT
- 19,915 SF TOTAL BUILDING AREA

**PROPOSED PARKING**

TOWN REQUIRES  
 1 space/unit + guest = 19 SPACES

PROJECT IS ON BUS ROUTE AND WALKABLE TO AMENITIES such as groceries, pharmacy, entertainment. In-house laundry.



**Pearl Place**

132 Pearl Street, Essex Junction, Vermont

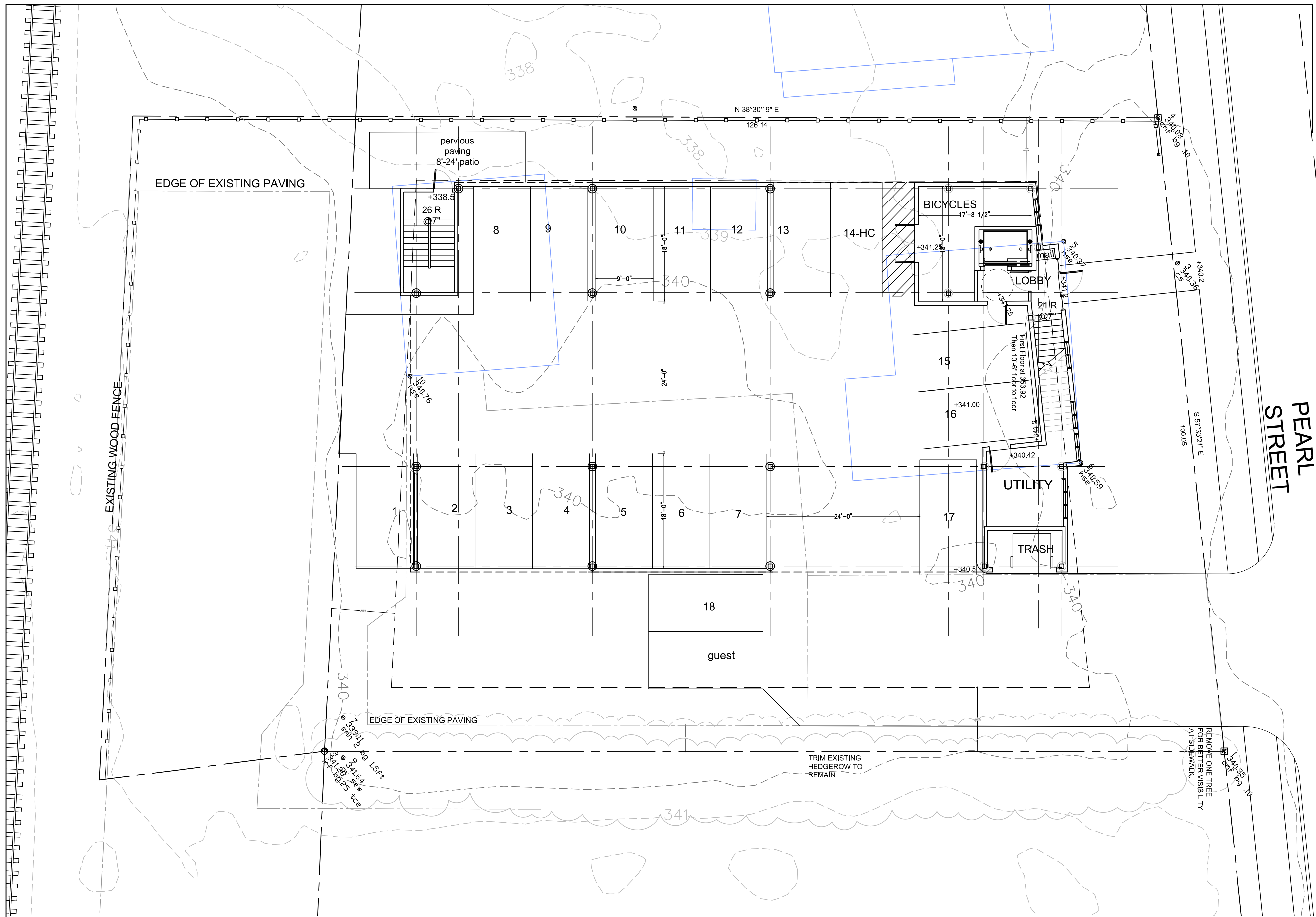
GUILLOT VIVIAN VIEHMANN ARCHITECTS, INC. Burlington, VT 802-862-9631

DATE:	11 AUG 23
REVISION:	
SCALE:	1" = 10'-0"
DRAWING:	SITE PLAN
SHEET:	A.0

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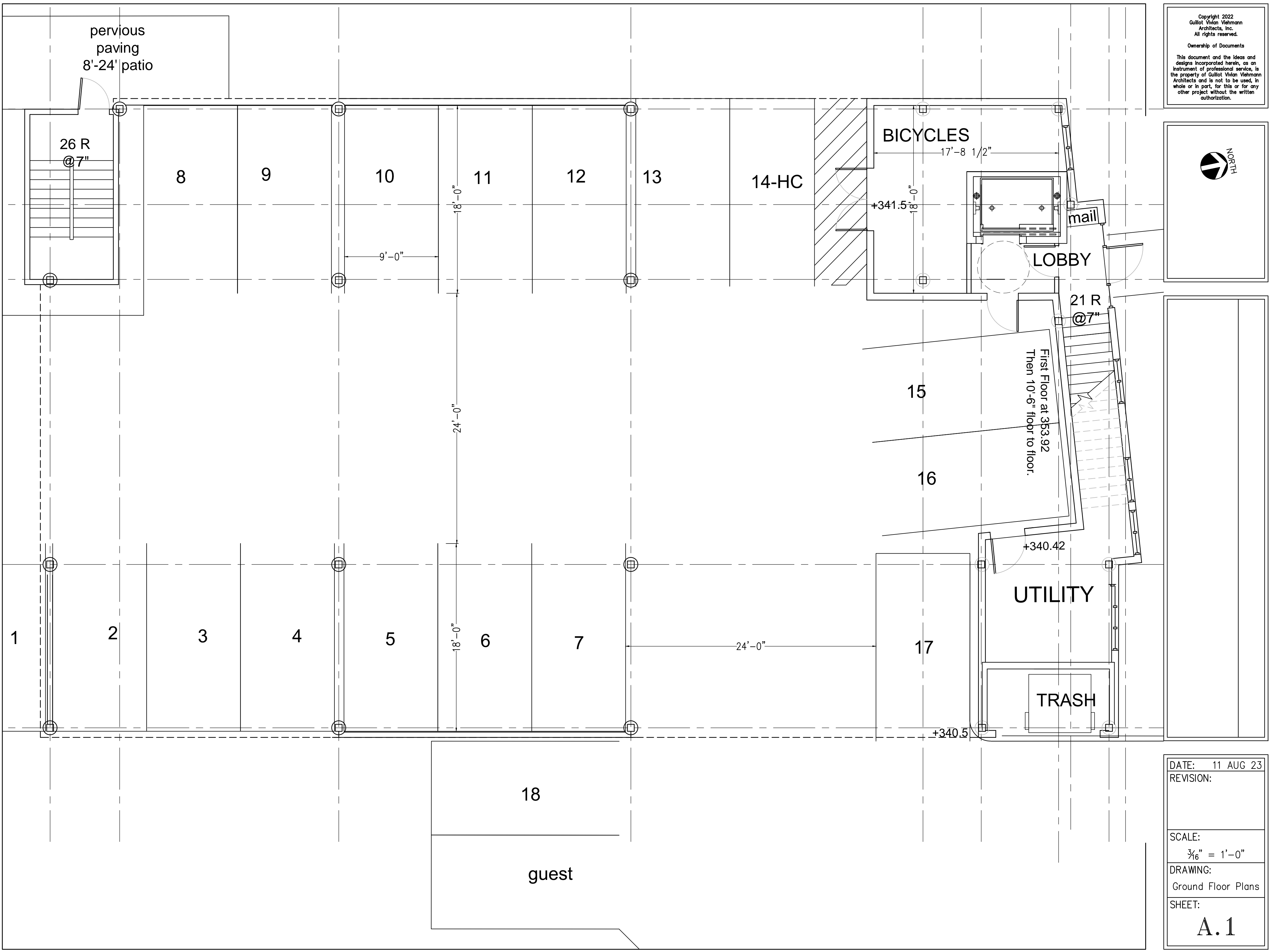
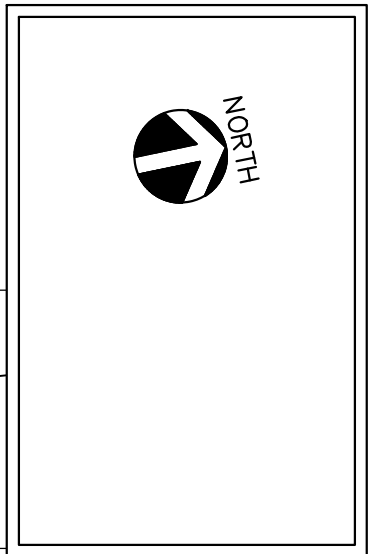
DATE: 11 AUG 23  
 REVISION:

SCALE:  
 1" = 10'-0"

DRAWING:  
 SITE PLAN

SHEET:  
 A.0

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 authorization.



DATE:	11 AUG 23
REVISION:	
SCALE:	$\frac{3}{16}'' = 1'-0''$
DRAWING:	Ground Floor Plans
SHEET:	<b>A.1</b>

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NOTES:



# Pearl Place

132 Pearl Street, Essex Junction, Vermont

GUILLOT VIVIAN VIEHMANN ARCHITECTS, INC. Burlington, VT 802-862-9631

DATE: 14 AUG 23  
REVISION:

SCALE:  
 $\frac{3}{16}'' = 1'-0''$

DRAWING:  
Upper Floor Plans

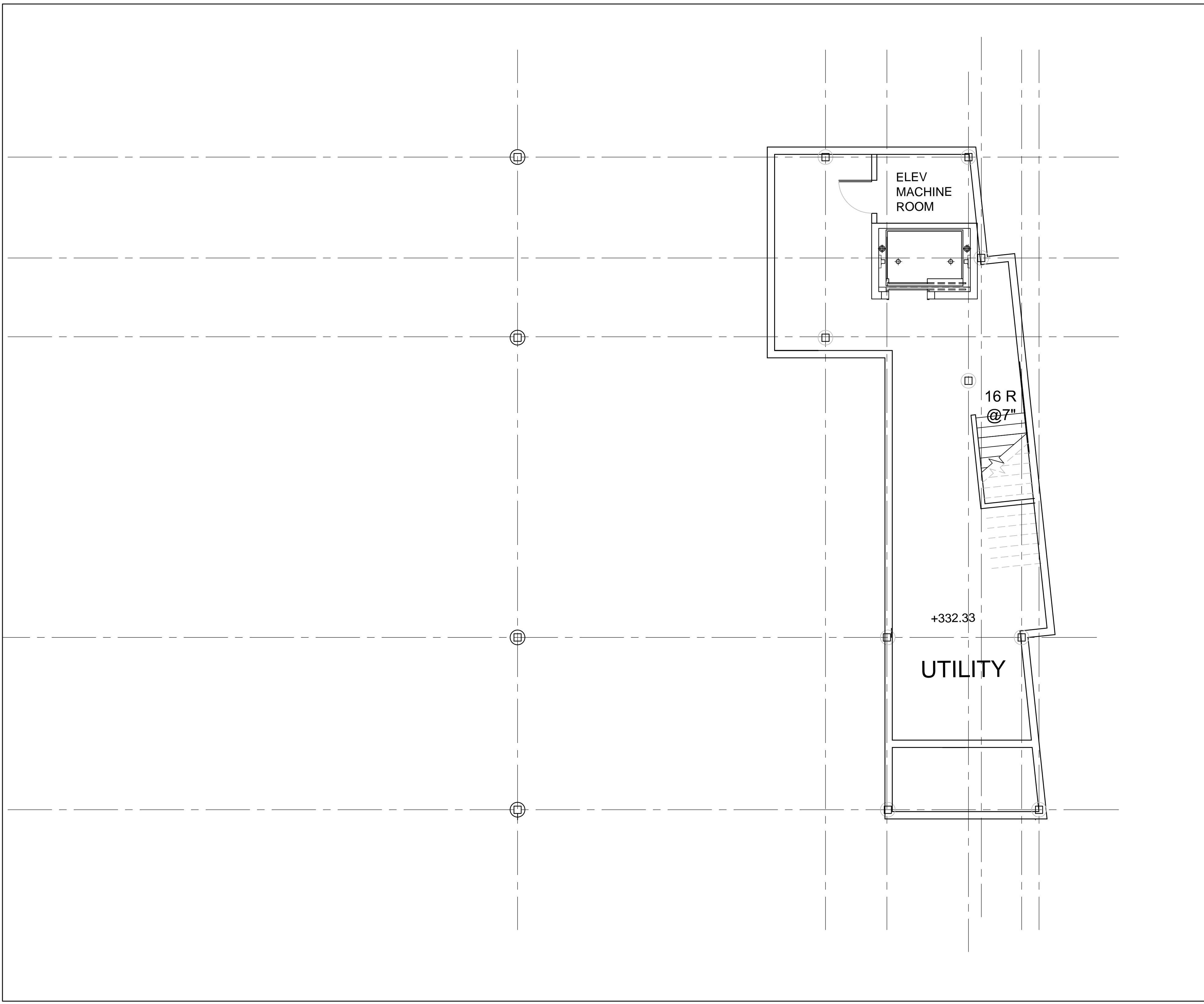
SHEET:  
**A.2**

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NOTES:



Pearl Place

132 Pearl Street, Essex Junction, Vermont

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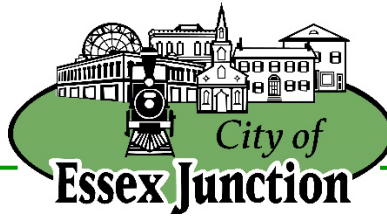
DATE: 11 AUG 23  
REVISION:

SCALE:  
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DRAWING:  
BASEMENT PLAN

SHEET:  
**A.1.1**





## Staff Report

**To:** Development Review Board  
**From:** Jennifer Marbl, City Planner  
**Meeting Date:** 09/21/2023  
**Subject:** Conceptual Plan Pearl Street Place by GVV Architects Inc., for Robert Paroline, Owner, in the Highway Arterial District for a Planned Unit Development.  
**File:** SP#7.2023

---

### EXISTING CONDITIONS AND GENERAL INFORMATION

**Project Location:** 132 Pearl St.  
**Project Area Size:** 19,915 sq.ft.  
**Lot Frontage:** 100.05 feet  
**Existing Land Use:** Residential  
**Surrounding Land Use:** Mixed-use  
**Zoning District:** Highway Arterial (HA)  
**Minimum Lot Size:** 10,000 sq.ft.  
**Permitted Lot Coverage:** 65% which may be increased to 80% with a waiver.  
**Proposed Lot Coverage:** 67.65%

**Project Description:** Applicant proposes to remove the existing structures on the site and construct a four-story building with 18 residential apartments (six studios, six 1-bedrooms, three 2-bedrooms, and three 3-bedrooms) with a total of 19 parking spaces. The building is four stories tall, with three stories over a parking area.

- A waiver has been requested for the new building to be located within the front and rear setbacks – this waiver is only available if the project is evaluated as a Planned Unit Development (PUD).
- A waiver has been requested for the one parking space proposed to encroach within the rear setback.
- A waiver has been requested for the building to occupy more than the maximum lot coverage. This increase would be from 65% to 67.65%.

### Section 605: Highway-Arterial District (HA)

#### A. Purpose

To provide areas for retail, wholesale, commercial, residential, service, and professional businesses while minimizing negative impacts due to increased traffic.

B. Density/Lot Coverage

1. The minimum lot size shall be ten thousand (10,000) square feet. The Highway Arterial District shall not have a maximum allowable density. The maximum number of dwelling units shall be determined by the ability to meet the standards of the Land Development Code including, but not limited to, parking, setbacks, lot coverage and building height.

**The subject lot is 19,915 sf, which is larger than the minimum lot size requirements.**

2. The maximum total lot coverage shall be sixty-five (65) percent, the sixty-five (65) percent lot coverage may be increased up to eighty (80) percent through a waiver process granted by the Planning Commission using the same criteria outlined in Section 601. G.3., listed below:
  - a) Unique physical characteristics of the site proposed for development.
  - b) Superior building design, lot layout and landscaping design.
  - c) Provision of public open spaces or superior bicycle and pedestrian access.
  - d) Joint or combined vehicular access with adjoining properties.

**This proposed lot coverage is 67.65%, which would require a waiver. The Development Review Board should decide whether these criteria for the waiver have been met.**

C. Setback Requirements. Overhangs or eaves on buildings may encroach into the setback up to two (2) feet.

1. The minimum front yard setback shall be twenty (20) feet.
2. The minimum side yard setback shall be ten (10) feet.
3. The minimum rear yard setback shall be ten (10) feet.

**The proposed building is exceeding the front and rear setbacks. Setback requirements could only be waived with a variance under Section 1703, or if the project is evaluated as a Planned Unit Development (PUD) under Section 511.**

D. Permitted and Conditional Uses. Multi-unit dwelling is a permitted use in the HA district as per the Use Chart in Section 622.

E. Parking Requirements. Off-street parking requirements are as specified in Section 703 of this Code.

F. Building Height. Building height shall not exceed four (4) stories or fifty-eight (58) feet, whichever is less.

**The building is four stories, with a height of 53'9". This is within the limits of in Section 605.F**

G. Planned Unit Development. The Planning Commission may approve a Planned Unit Development in the Highway Arterial District. In connection with such PUD approval, the Planning Commission may authorize the construction of structures and facilities to accommodate any of the uses allowed in the Highway Arterial District. Any application for proposed development in the

Highway Arterial District may, at the applicant's request, be reviewed as a Planned Unit Development. Refer to Section 511.B. I-3 for general and specific review standards in addition to waiver information for a PUD.

### **Section 511: General Review Procedures for Planned Unit Developments**

- A. Purpose: To provide a procedure for the timely and efficient review by the Commission of any proposals for Planned Unit Developments. Planned Unit Development review is intended to combine subdivision and site plan review into a unified process.
3. Waivers. The Commission may waive requirements for lot coverage, setbacks, parking and height based upon the merits of the specific proposal. Waivers shall be based upon the following criteria and may include specific conditions.
- i. Unique physical characteristics of the site proposed for development.
  - ii. Superior building design, lot layout and landscaping design.
  - iii. Provision of public open spaces or superior bicycle and pedestrian access.
  - iv. Joint or combined vehicular access with adjoining properties.
  - v. Waiver of building height in Light Industrial District only.

**The DRB may evaluate this application as a Planned Unit Development. Refer to Section 723 for the required design considerations and associated waivers for PUDs.**

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

A. Purpose

The purpose of the Design Review Overlay District is to expand the design review standards used in the Village Center District into the trunk routes of Main Street, Lincoln Street, Pearl Street, Park Street and Maple Street as called for in the Comprehensive Plan; thereby recognizing the economic importance and unique historic qualities of the existing buildings and neighborhoods. The purpose of these standards is to:

1. Enable infill and redevelopment that brings opportunities to protect existing historic resources and provide new sources of architectural and urban design for the 21st century while increasing density, activity and economic opportunity.
  2. Carryout the concepts of the Design Five Corners Plan which are to accommodate infill development while calming traffic and reclaiming more space for people.
  3. Establish a pedestrian friendly atmosphere from the surrounding neighborhoods into the Village Center.
- D. Design Review Standards
- The Development Review Board shall review applicable development applications in the Design Review Overlay District for compliance with the criteria listed below and in accordance with the character of the underlying district as defined by the Essex Junction Comprehensive Plan.
1. The relationship of building mass and architectural detail to open space and to the relative size of a person shall be reviewed by the Development Review Board in this District.



2. The predominant direction of structural shape, of placement of openings and architectural details at the front façade shall be harmonious with the core principles of a designated Village Center District.
3. Building setback and height requirements of the underlying zoning district shall apply. However, variation along the frontage may be permitted by the Development Review Board to:
  - a. Create a consistent street edge and sense of enclosure.
  - b. Provide for an expansion of the sidewalk or active pedestrian space such as sidewalk cafes or display areas.
4. Bicycle paths which connect neighborhoods shall be constructed in accordance with planned facilities mapped in the Comprehensive Plan on Map 6: Non-Motorized Transportation, or in conformity to a Bicycle Plan as approved by the Development Review Board.
5. Site features and design shall promote cycling, walking and transit as a viable means of transportation and recreation for residents, consumers, visitors, and employees. As appropriate to the location of the application, features shall include at least two or more of the following, or similar amenity with approval from the Development Review Board:
  - a. Pedestrian access directly from the building to the public sidewalk;
  - b. Pocket park with benches or similar amenities between the public realm and the private building (see image box for examples to help clarify the intent of this requirement);
  - c. Public art, murals or interactive games;
  - d. Covered bus shelter; and
  - e. Shade trees.
6. The following architectural elements or features shall be harmonious with existing buildings and significant, predominant or established patterns in the district:
  - a. The relationship between the width to height of the front elevation of the building.
  - b. The relationship of width to height of windows and doors.
  - c. The rhythmic relationship of openings to solid areas in front façades.
  - d. The spaces between the proposed structure or structural alteration.
  - e. The relationship of entranceways to buildings and porches.
  - f. The materials, textures, and colors, including primary and accent or trim colors.
  - g. Proposed architectural details (such as lintels, arches, chimneys).
  - h. Proposed roof shapes and lines.
  - i. Proposed enclosures, including fences, brick walls, stone walls, evergreen hedgerows and building facades, which are also continuous and cohesive with existing walls in the district.
  - j. Proposed landscaping shall be compatible with existing quality and quantity of landscaping in the vicinity, with consideration given to existing landscape mass and continuity.

- k. The proposed ground cover shall be compatible with the predominant ground cover in the district.
- l. Storage areas, service areas, trash receptacles, accessory structures and parking areas shall be screened from view from the street and adjoining properties.

**The Proposed Development is located in the Design Review Overlay District. The DRB should determine whether the proposal meets the design review criteria in Section 620.D.**

#### **Section 621: Historic Preservation Overlay District (HRO)**

##### 1. Purpose

The purpose of this section is to protect those buildings listed or eligible for the State or Federal Register of Historic Places while accommodating new and appropriate infill and redevelopment supporting increased density and multi-modal development. Infill and redevelopment brings opportunities to protect existing historic resources and provide new sources of architectural and urban design for the 21st century while increasing density, activity and economic opportunity in the Village Center District. ...New buildings and modifications to existing ones shall be subject to design review.

##### 2. Applicability

**The Historic Preservation requirements are not applicable to this site as the existing building is not listed or known to be eligible for the State or National Register of Historic Places. Design Review requirements are applicable to this site.**

#### **Section 703: PARKING**

##### C. Off-Street Parking Requirements.

Section 703.C.2 requires a minimum of 1 parking space per residential unit.

**The proposed building is composed of 18 units with a corresponding 19 on-site parking spaces. One of these spaces is accessible, the extra spaces is designated for a guest. This meets the minimum requirement in the LDC. If it is necessary or desirable to increase parking provision, it may be possible to include tandem parking spaces (double-length spaces for two cars from the same household).**

1. All required parking spaces, with the exception of parallel parking spaces, shall have a minimum width of nine (9) feet and a minimum length of eighteen (18) feet.

All proposed standard parking spaces are a minimum of 9 feet wide and 18 feet long with a minimum 24-foot-wide aisle to allow for two-way travel. **However, the accessible parking space (marked as 14-HC) is 8 feet wide, which meets the requirements for accessible parking spaces for the state of Vermont, but not the above section. It should be noted that the city requirement exceeds the state level requirements. The DRB should determine if the 8 foot wide accessible space can be waived under Section 708.K**

##### K. Other Parking Standards and Applicability

1. Accessible provisions. All parking lots shall provide hard-surfaced accessible spaces which are clearly designated, marked, and signed for accessible use only. For sites with 1-25 total parking spaces, the minimum quantity is 1 space.
  
8. Screening  
The screening requirements of Section 708 shall apply to the perimeters of all parking lots. See Section 708 for further discussion.

**The LDC currently does not specifically require electric vehicle charging and the applicant does not indicate any electric vehicle charging stations in the parking area. The State of Vermont currently offers some incentives through the Electric Vehicle Supply Equipment Grant Program for Level 2 and Level 3 charging equipment.**

L. Bicycle Parking and Storage Standards and Applicability

The LDC, amended as of June 14, 2023, prescribes bicycle parking minimums of 1 long-term bike parking space per unit and 1 short-term bike parking space per 10 units. Specifics requirements for type, location and placement of bike parking facilities are available in Section 703.L.

**The applicant has not included bicycle parking specifics in the conceptual plans. This will be required as a part of the final site plan review. The bicycle storage room will need space, capacity and racking to store and lock at least 18 bicycles.**



*Figure 1: Example of compact indoor bike parking racking*

**Section 704: LIGHTING**

A lighting plan has not been provided but will be necessary during Final Site Plan review. Any future plans shall provide all the required documentation needed to comply with the requirements of Section 704 of the Land Development Code.

**Section 705: CURB CUT AND ACCESS TO PUBLIC STREETS**

The proposed development intends to use existing curb cuts, shown to be 24 feet in width on the site plan, which is in line with the requirements of the Section 705.C.2.

**Section 706: ACCESSORY USES AND STRUCTURES**

C. Set-back Exceptions

4. Heating, ventilation and air conditioning equipment. Equipment for heating, ventilation or air conditioning which encroaches into a setback by not more than twelve (12) inches shall not be deemed to violate this Code. Equipment placed upon the roof of any commercial or residential structure shall not be deemed a violation of this Code if:
  - (a) It extends less than two (2) feet above the roof;
  - (b) It occupies no more than eight (8) square feet of area; and
  - (c) It generates no additional sound discernable at the adjoining property line.

**As the proposed building is very close or encroaching into surrounding setbacks, HVAC equipment extending from the building will necessarily extend into these setbacks. This should be acceptable as long as it complies with the above requirements.**

J. Dumpsters or Other Trash Containers:

No dumpster or trash container shall be located or used in any District except in conformance with these standards or approval of a Site Plan.

1. All dumpsters or trash containers located within any District shall be screened from view from the public right-of-way by a nontransparent fence and/or landscaping materials to a height of six (6) feet.

**The type of fence closing off the trash enclosure is not specified. A compliant enclosure would be nontransparent and extend to a height of 6 feet.**

**Section 707: FENCES**

E. Standards

Any fences placed or located on any property shall meet the following standards:

- e. Any nontransparent fence located in a front yard shall not exceed twenty-nine (29) inches in height unless it meets the front yard setback for the Zoning District in which it is located.

**The proposed building plans include a six-foot tall fence along the northwest and southwest edges of the property, with some portions extending into the front setback. The example of the type of fence intended for use can be considered transparent due to its spacing, therefore meeting the above requirements.**

**Section 708: SCREENING/BUFFERING**

A. Purpose

To provide sufficient screening and buffering to mitigate the potential negative impact of adjoining incompatible land uses.

B. Standards

4. Parking lots located adjacent to public streets shall be screened to minimize glare and vehicle light encroachment on the street. Screening may include berms and landscaping.

**Two parking spaces are located outside of the main building, facing the main street. All other parking spaces are screened from view from the street.**

**Section 710: VISIBILITY TRIANGLES**

- C. Driveways At a point where any driveway intersects with a public street, no fence, wall, screen, sign, structure or foliage shall be erected, placed, constructed, planted, or allowed to grow in such a manner as to encroach upon the Visibility Triangles on either side of the driveway.

**The proposed driveway's visibility triangle is clear of obstructions.**

**Section 718: PERFORMANCE STANDARDS**

- G. Visual Impact

Section 718.G states:

The Development Review Board may review visual impact of any proposed development located in any Commercial or Industrial District. The Development Review Board may place conditions on any approval or may require the alteration or relocation of any proposed structure which in its opinion would significantly alter the existing character of the area.

1. Factors for Evaluation. Visual impact shall be evaluated through analysis of the following factors and characteristics:
  - a) Conformance to all regulations and standards as specified herein.
  - b) Selection and appropriate use of materials.
  - c) Harmony and compatibility of architectural character with surrounding structures.
  - d) Exterior space utilization in regard to efficient use of site and existing significant natural or man-made features.
  - e) Circulation - vehicular and pedestrian.
  - f) Height, size and bulk of proposed and adjoining buildings.
  - g) Creativity.

**The DRB should evaluate the proposed building's relationship to the site and adjoining areas, building design, architecture, and finishes to ensure compliance with Section 718.G.**

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**Section 719: Landscaping**

## E. Landscaping

## 1. Landscape Plan:

## a. Preliminary Site Plan

- i. A general concept of the landscaping and GSI/LID (if applicable), in both written and graphic form.
- ii. A list of existing vegetation, with the location, type, and size of existing trees of six (6) inches or greater in caliper.
- iii. A written plan to preserve and protect significant existing vegetation during and after construction. Such plan will be sufficient detail that the City of Essex Junction will be able to inspect the site during construction to ensure that the existing vegetation is protected as per plan.
- iv. The location of existing natural features, such as streams, wetlands, and rock outcroppings.

**The proposal has included a conceptual landscaping plan showing the type and location of new landscaping. This site plan lacks existing vegetation or designations for preserving any significant existing vegetation. The applicant will be required to submit a full landscaping plan during the final site plan review.**

**Section 723: Planned Unit Development (PUD)**

**The applicant has not asked that this proposal be evaluated as a PUD. However, since PUD rules would potentially offer some flexibility with setback regulations, this section is included for reference.**

## B. Design Considerations and Associated Waivers

The Development Review Board may waive requirements of the underlying Zoning District for lot coverage, setbacks, and parking if needed to achieve the objectives of the PUD, Height may be waived only in accordance with sub-section 4 below. Waivers shall be based upon the following criteria and may include specific conditions.

1. Superior building design, lot layout and landscaping design. To be granted the flexibility permitted under these regulations, the PUD must demonstrate a level of design and amenity exceeding that typical of conventional development. The proposal shall include all the following except for (e) if not applicable:
  - a. Landscaping. Landscape plan development by a licensed landscape architect
  - b. Private open space. Each residential unit shall include a private outdoor open space (yard, deck or similar), of not less than seven hundred and fifty (750) square feet.
  - c. Common open space. At a minimum, up to fifteen (15) percent of the gross PUD area shall be developed with passive and active amenities.
  - d. Building Massing. Varied building massing or other measure to reduce monotony in design.
  - e. Land Use Intensity Transition.

While it may be possible to meet the requirements of 723.B.1.A, C, and D, the proposed development lacks private open spaces (b) and it would likely be impossible to create the required 750 square feet of outdoor private outdoor with balconies. The DRB should consider whether the proposal meet the requirements for a setback waiver as a PUD under Section 723.B.

### **Section 802: NON-COMPLYING STRUCTURES**

#### **B. Maintenance, Repair and Expansion**

2. A non-complying structure may be enlarged or expanded provided that the following conditions are met:
  - a) The enlargement or expansion, itself, conforms to all provisions of this Code except setbacks.
  - b) The structure, as enlarged, does not diminish any required yard or setback areas except a setback line encroachment equal to the existing building line.
  - c) The expansion does not exceed any maximum density, lot coverage, intensity or height limitations.

**The applicant has pointed out in the narrative that the existing structures on the lot are more non-compliant than the proposed structure in terms of encroachment into setbacks. If the DRB considers the demolition of the existing structure and new construction to be an expansion of the existing non-complying structure, this development would likely meet the requirements of 802.B. The site plan shows that the proposed building reuses a portion of the existing buildings' footprint. It should be noted that staff is not aware of any recent development application that has been approved to build within setbacks with this argument.**

**Alternatively, the applicant may apply for a variance to address encroaching into setbacks. These requirements are listed below, in Section 1703.**

**The DRB should consider whether the proposal to build within the front and rear setbacks meets the requirements of Section 802.B.**

### **SECTION 1703: REQUESTS FOR VARIANCES FROM THE REQUIREMENTS OF CHAPTERS 6 and 7**

The applicant has not applied for a variance but has indicated that if the DRB determines that the proposal does not meet the requirements of Section 802.B, he will apply for a variance.

#### **C. Standards of Review**

In accordance with Section 4469 of Title 24, Chapter 117, of Vermont Statutes Annotated, the Board may grant Variances if it finds that all of the following standards of review are met and such findings are included in its written decisions.

1. 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

these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
3. Unnecessary hardship has not been created by the appellant.
4. 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, or be detrimental to the public welfare.
5. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

**If necessary, the DRB should consider whether the proposal would meet the standards for the approval for a variance under Section 1703.**

#### **Section 1102: SEWER ALLOCATION**

The Wastewater department has granted preliminary approval for the required wastewater capacity allocation for this proposed development. Allocation and connection fees may apply.

#### **Technical Review / Other sections of the LDC**

The conceptual site plan review process focuses only on basic land-use and dimensional and aesthetic design aspects of the proposal. A full technical review of this application has not been conducted by City staff. Additional requirements of the LDC are applicable and will be reviewed during Final Site Plan Review.

#### **Recommendations:**

Staff recommends the DRB consider the approval or denial of the proposed development based on a determination on the following LDC standards:

- This proposed lot coverage is 67.65%, which would require a waiver. The Development Review Board should decide whether these criteria for the waiver have been met.
- The Proposed Development is located in the Design Review Overlay District. The DRB should determine whether the proposal meets the design review criteria in Section 620.D.
- The DRB should determine if the 8 foot wide accessible space can be waived under Section 708.K
- The DRB should evaluate if the long-term bicycle parking room is of adequate size to accommodate storage of 18 bicycles.
- The DRB should determine if proposed screening is sufficient to meet the requirements of 708.B.
- The DRB should evaluate the proposed building's relationship to the site and adjoining areas, building design, architecture, and finishes to ensure compliance with Section 718.G.



- The DRB should consider whether the proposal meet the requirements for a setback waiver as a PUD under Section 723.B.
- The DRB should consider whether the proposal to build within the front and rear setbacks meets the requirements of Section 802.B.
- If necessary, the DRB should consider whether the proposal would meet the standards for the approval for a variance under Section 1703.

**If the DRB finds that further adjustments to the application are necessary before it can be approved, the DRB may choose to continue the hearing during the scheduled DRB meeting in October.**

**Proposed Stipulations**

- 1) Final site plan should be modified in accordance to staff and DRB comments during Conceptual Review
- 2) Final site plan will be reviewed based on all requirements of the LDC, including technical details not addressed in the Conceptual Plan Review.
- 3) Proposed grading should be provided for the parking area and project site to confirm the proposed drainage pattern and compliance with the LDC requirements.
- 4) Appropriate drainage calculations per the LDC should be provided.
- 5) Temporary bicycle parking shall be provided in accordance to the requirements of the Section 703.
- 6) Lighting shall be provided in accordance with Section 704.D.1 for the access drive, parking, and sidewalk areas.
- 7) The applicant should provide confirmation that any heating, ventilation, and/or air conditioning equipment will comply with the LDC requirements of Section 706.C.4.
- 8) Additional information regarding the dumpster area should be provided to ensure compliance with the LDC requirements of Section 706.J.
- 9) An erosion prevention and sediment control plan should be provided, with associated details, describing erosion prevention and sediment control measures to be implemented during and after construction to stabilize the site.
- 10) Details regarding the building design, architecture, and finishes should be provided to ensure compliance with Section 718.G.
- 11) The applicant should provide information on the total estimated construction cost for the project to determine the landscape requirements per the LDC.
- 12) A proposed landscaping plan should be provided per Section 719 of the LDC.