

## Department of Planning and Zoning

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Burlington, VT 05401  
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*Scott Gustin, AICP, Senior Planner*  
*Mary O'Neil, AICP, Senior Planner*  
*Nic Anderson, Zoning Clerk*  
*Elsie Tillotson, Department Secretary*



**TO:** Development Review Board  
**FROM:** Scott Gustin   
**DATE:** September 17, 2013  
**RE:** 14-0044CA; 500 South Prospect Street

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

Zone: I                      Ward: 6  
Owner/Appellants: Prospect Venture, Lp / Pike Porter & Ashley Adams

**Request:** Appeal of zoning permit 14-0044CA issued to relocate existing fence along southern boundary with associated landscaping changes.

### **Overview:**

The appellants are appealing a zoning permit issued to the property owner to relocate an existing fence several feet to the south. The relocated fence was to be lengthened, and associated landscaping changes were also included.

**Recommendation:** Uphold issuance of zoning permit based on the following findings:

### **I. Findings:**

On August 7, 2013, zoning permit 14-0044CA was issued to relocate an existing stockade fence several feet to the south with associated landscaping changes. The relocated stockade fence was also to be lengthened. An existing chain link fence was to be removed altogether. The landscaping changes included transplanting 40 existing cedars and installing 40 new cedar trees alongside the fence.

On August 21, 2013, an appeal of the zoning permit was filed by an abutting neighbor to the south. The appeal was filed within the 15 day appeal period.

The appeal asserts that the fence permit should have been handled as a COA Level III (i.e. subdivision)/major impact/conditional use permit. The argument behind this assertion is that the fence was installed as part of the 81-unit Redstone Apartments planned residential development approved in 1991. The appeal asserts that Redstone Apartments was approved, in part, because the developer agreed to install the fence to buffer impacts on the neighboring property. Indeed, there is a condition of approval (II, G) that requires fencing from South Prospect Street to the UVM soccer fields. Curiously, the fence is not depicted on the approved project site plan. In any event, the permit subject to this appeal merely allows relocation and extension of this required fence. It in no way runs counter to the original condition of approval. Minor changes to Planning

Commission (now DRB) approved projects, such as relocating and extending the fence, can be approved administratively.

The appeal further asserts that moving the fence closer to the mutual property line will enable people living in the Redstone Apartments to throw trash into the neighboring property. Littering is not regulated by the Comprehensive Development Ordinance; it is regulated under Section 14-21 of the Burlington Code of Ordinances and more broadly under 24 VSA, Sec. 2201. Furthermore, there is nothing in the appeal to substantiate the claim that a relocated fence will somehow affect the amount of litter that appears alongside it.

The appeal states that the relocated fence will require the removal of existing vegetation and create an unsafe situation with increased shadows. Indeed, relocation of the fence will affect existing vegetation. Much of it (40 cedars) will be transplanted again alongside the relocated fence, and an additional 40 cedars (8' tall at planting) will be installed as well. Substantial vegetative screening will remain. As for increased shadows, there is nothing in the appeal to substantiate the claim that moving the fence some 3' or 4' to the south will generate additional shadow impacts. Existing lighting on the Redstone Apartments property will remain unchanged.

The appeal requests a refund of the appeal fee. All fees are nonrefundable as noted in writing in the Department of Planning & Zoning's duly adopted Fee Schedule.

The appeal also states that stormwater management should be considered. However, as with assertions above, there is nothing in the appeal to substantiate how relocating a fence and transplanting/planting 80 cedars will affect stormwater dynamics onsite. Impervious surface will remain unchanged as will existing drainage conditions and stormwater infrastructure. There is nothing in the project that triggers post-construction stormwater management review under Sec. 5.5.3, *Stormwater and Erosion Control*, of the CDO and, by way of reference, Chapter 26: Wastewater, Stormwater, and Pollution Control.

Lastly, the appeal submission also contains a violation complaint. This complaint has been forwarded to the Code Enforcement Office.

In sum, the approved permit allows for a modest project consisting of relocating and expanding an existing fence and installing/transplanting 80 cedars. There is nothing in the appeal that demonstrates how some prior zoning permit approval or pertinent CDO provision would prohibit the project as approved or how it was approved. The zoning permit should be upheld as issued.

## **II. Recommended Motion:**

Uphold the issuance of zoning permit 14-0044CA as conditioned.

**Description of decision under appeal:**

Remove existing landscaping and relocate fence.

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AUG 21 2013

DEPARTMENT OF  
PLANNING & ZONING

**Description of property subject to the appeal:**

500 South Prospect Street: Redstone Apartments, 544 South Prospect Street.

**Reference to the regulatory provisions applicable to the appeal:**

As a COA Level III development subject to major impact review and conditional review standards, the DRB should review and approve any changes to the project. This application should also be a modification of the original COA S90-026A and associated documents. The zoning administrator cannot administratively overrule a court decision or the DRB decision, especially without considering the zoning history. Sec. 1.1.2 (a); Sec. 3.2.7; Sec. 3.5.6; Sec. 5.5.4; Sec. 6.2.2; Sec. 6.3.2.

**Relief requested by the appellant:**

Deny the application request and refund the appeal fee of \$250.

**Alleged grounds why such requested relief is believed proper under the circumstances:**

The fence was installed in its current location in order to minimize the impact of Redstone Apartments on the Adams's residence and the project was approved in part because the developer agreed to install the fence in its current location, move a parking lot light further from the Adams's house, plant additional screening and retaining existing screening. Of these four conditions, UVM complied only with installing the fence. Moving the fence will necessitate removing additional vegetation, making the impact of the project all the worse for our family. Even with a very unrealistic maintenance buffer of 2' to install and maintain the fence, UVM will need to cut a 4' swath through the existing vegetation. Doing so would violate the projects conditions of approval, which conditioned maintaining vegetation, and which specified a hedge on the southern boundary, not a fence.

The Redstone Apartments project is student housing and the impact on its neighbors is much greater. ANR indicated the project would impact 544 South Prospect Street and needed additional monitoring and Judge Bryan in his 1992 decision indicated that the project would have a unique and adverse impact on the Adams's property. The UVM police logs, and the attached picture of trash thrown by students over the fence, reveal that a fence just 2' away from the property line is not far enough away. Among other intrusions, our yard will become the trash dump for the irresponsible student.

Moreover, moving the fence further from the lights, moving the hedges and their shadows further into darkness, at the edge of a parking lot, at the edge of the University is a very poor, irresponsible safety choice. As UVM Security Chief David Richard notes in his May 23, 1990 memo, he and Burlington Police Chief Kevin Scully found, "the physical barrier between the wooded area and the parking lot is an excellent safety measure." It is not hard to see how the proposed change would be a large impediment to the safety of anyone using the parking lot at night. UVM recently removed a berm between University Heights and Robinson Parkway because it created a place where predators could hide. UVM police logs can be found here:

<http://www.uvm.edu/police/?Page=reports/report.php&file=crimelog/2013-07.htm>

As a modification to a major development, this request should not have been approved administratively. Instead, the application should have been submitted to DRB, and we should have been warned. Consequently, we think it is appropriate to refund the appeal fee. The zoning file COA S90-026A for this property indicates that storm water run-off and management should also be considered when modifying the topography, and removing trees and vegetation planted to mitigate storm water run-off; and UVM should resubmit a plan with the required 5' contour lines, as required in the fence checklist.

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PLANNING & ZONING

# The University of Vermont

DEPARTMENT OF SECURITY SERVICES  
590 MAIN STREET  
BURLINGTON, VERMONT 05405-0048  
TEL. (802) 656-2027



May 23, 1990

**RECEIVED**  
AUG 21 2013

Linda Seavey  
Senior Executive Assistant  
Administrative and Facilities Services  
109 So. Prospect Street

DEPARTMENT OF  
PLANNING & ZONING

RE: South Prospect Street Housing

Dear Ms. Seavey:

I have reviewed the above project from both a security and safety perspective involving lighting, fencing, landscaping, traffic movement, lock systems and controls:

**LIGHTING:** The perimeter lighting scheme as well as the facility lights are more than adequate for both vehicular movement and pedestrian safety. Each system overlaps the other in all the critical areas. The designer should be commended for the lighting plan.

**FENCING:** This physical barrier between the wooded area and the parking lot is an excellent safety measure. The proposed landscaping should not be an impediment for the tenants safety. Periodic maintenance to control growth should be addressed with the owners.

**TRAFFIC MOVEMENT:** The concept to provide two direct means of access to the area (from a UVM Lot and So. Prospect Street) will improve the ability of both UVM and Burlington Police to provide regular patrols in this area.

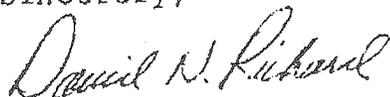
**LOCK SYSTEMS/CONTROLS:** The proposed lock systems are acceptable within the industry standards for this complex. The locking of common areas is an excellent idea.

Chief Kevin Scully and I have reviewed these plans and we both concur that the security and safety issues of concern to us have been addressed with lighting exceeding our expectations.

My expertise in these matters has evolved through 11 years as Director of Security Services at UVM and ten additional years in the law enforcement field. I have also consulted on related issues for the University of Maine, Bryant College, Hamilton College and St. Mary's College of Maryland.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



David N. Richard  
Director  
Security Services

cc: Kevin Scully, Chief of Police

DNR/md

June 13, 1990

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FROM: Novarr-Mackesey Development Company  
and University of Vermont

DEPARTMENT OF  
PLANNING & ZONING

RE: Student Housing Project  
Response to Neighborhood Concerns at Planning Commission  
Meeting May 24, 1990

NEIGHBORHOOD CONCERNS:

Response to "Findings and Recommendations...." May 24, 1990

Conclusion and Recommendation #1:

"The University and the City have both failed to seek direction from citizens on issues affecting the future of their neighborhood. A completed Master Plan and the final project plan were both presented to neighbors, but the neighbors have not been involved in a continuing planning process nor have they had input to the Campus Parking Plan and the Campus Transportation Plan."

"That the University and the City immediately seek neighborhood involvement in the review of this project and all other recent projects and plans of the University and obtain and consider neighborhood ideas and concerns prior to submission of the Final Plat for this project."

Since the fall of 1988, the University of Vermont has made considerable effort to seek neighborhood involvement in its planning process through Ward 6's Neighborhood Planning Association.

Please see attached "Two Year History of UVM Issues and the Public Process." In addition, this project has already under gone four public meetings including two with the Zoning Board, one with Design Review, and one with the Planning Commission. There will be several more Planning Commission meetings as the city process continues, as well as, State Act 250 Hearings. These are, in fact, public forums for the exchange of ideas and input by concerned citizens.

Conclusion and Recommendation #2:

"Open space will be reduced within the neighborhood by construction on the property."

Although open space would be reduced by any project built on the site, the proposed plan maintains large open areas and preserves distance views by spacing buildings along South Prospect Street.

Conclusion and Recommendation #3:

"No resident parking permit program has been implemented on South Prospect Street to minimize the parking impact from the project."

"That a resident parking permit program be instituted for South Prospect Street prior to obtaining a Certificate of Occupancy and that the resident parking permit program be enforced by the Burlington Police Department."

In their past three Parking Plans, the University has recommended this to the city. The city is developing the plan at present. Since this project has no authority over this matter, the issuance of the Certificate of Occupancy should not be of contingent on the parking permit programs implementation.

Conclusion and Recommendation #4:

"This project will result in a new curb cut where it is not "absolutely necessary to provide access to the property."

"That the new curb cut be restricted to emergency vehicles and that a locked gate be place at the entrance."

The new curb cut is requested for three reasons:

1. Police Protection Access: Dave Richard of UVM Security Services and Chief Scully of the Burlington Police Department have indicated their desire to keep this access open. Free, unencumbered access is require in order to provide police protection, which the neighborhood has also requested. Dave Richard will address this issue at the June 14th meeting.
2. Fire Protection Access: on four separate occasions John Vincent, the City Fire Marshall has requested this access. He is preparing a letter which the Planning Commission should have shortly.
3. To provide a separate identifiable entry for the project. This is deemed necessary to enhance the image that while the project is close to campus, it is a independent living situation separate from other University housing.

Both UVM's traffic study and Don Morely of Burlington Public Works indicate that the access is safe in terms of sight lines. Don Morely gave verbal approval to the cut in March prior to the first Zoning Board hearing. He has promised to supply a letter to the Planning Commission.

Conclusion and Recommendation #5:

"This project will not result in a reduction of traffic volumes on South Prospect Street; at the PM Peak Hour traffic from the project will represent 8% of the northbound traffic and 3% of the southbound traffic."

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"The Preliminary Plat hearing should be recessed in order for interested parties to review the project traffic study and other traffic studies for the area. The University of Vermont should provide the Department of Planning and Zoning with a complete copy of the University Traffic and Transportation Study. The City Department of Public Works should make available other studies on traffic in this area."

The Traffic Study by Resource Systems Group which was sent to Mary Gade and Don Morely on March 22, 1990 indicates that traffic from this project will not have an adverse effect on the neighborhood. The University also submitted their annual University Campus Parking Plan on March 1, 1990.

Resource Systems Group concluded from their analysis that "the proposed 81 unit student housing development will have, at worst, a minimal impact on the traffic circulation on South Prospect Street and at the intersection of Main Street/South Prospect Street. With the introduction of a campus shuttle system serving both this project the Redstone campus area, there are likely to be net reductions in South Prospect Street traffic levels."

The Neighbors also added:

"From our reading of the UVM Campus Master Plan, the Campus Parking Plan, and the project application file there are several projects underway or proposed that would help achieve a successful internal circulation plan, including:

- the intracampus shuttle system
- a connector bridge for bicycles and pedestrians over Main Street
- other Main Street improvements, including those at the intersection of Main and South Prospect Streets and the installation of pedestrian islands."

Conclusion and Recommendation #6:

"The Final Plat hearing should not be scheduled until receipt by the University of Vermont of their air quality permit."

The University's application and submission for their Air Quality Permit is on schedule and in process.

Conclusion and Recommendation #7:

"The Certificate of Occupancy should not be issued until the following transportation improvements are in place:

- the intracampus shuttle system
- a connector bridge for bicycles and pedestrians over Main Street
- other Main Street improvements, including those at the intersection of Main and South Prospect Streets."

The University has committed to having the shuttle bus in service by the opening date of this project in the Fall of 1991. Burlington Public Works has given approval for the Shuttle Bus to cross at Main Street until the Bridge can be completed. Design work is underway for this bridge.

...there is not appreciable increase in traffic from this project. Therefore a delay in the issuance of a Certificate of Occupancy on the basis of traffic concerns is unwarranted.

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See Attached Comments On Management

FROM: Planning Commission Notes  
May 24, 1990

DEPARTMENT OF  
PLANNING & ZONING

"Howard Allen, South Prospect Street and member of Burlington Country Club, stated the Burlington Country Club Board has not approved the drainage plan as mentioned by the developers as of this afternoon."

"Walter Adams expressed concern with drainage, noise and invasion of privacy."

ISSUE #1, DRAINAGE:

There have been several meetings between Novarr-Mackesey, UVM and the Burlington Country Club to discuss issues and approaches to solving an already problematic drainage situation. Gary Sweeney has also been meeting with Burlington Country Club Engineers and the project has been reviewed by their Course Architect. At present, the Country Club is in agreement in principal with the approach. Work is being done on final layout and details. A letter from Fred Auletta representing the Country Club, has been written and will be sent to the Planning Commission shortly.

ISSUE #2, NOISE AND INVASION OF PRIVACY:

Considerable effort has been made to shield Mr. Adams sister-in-law's house including: a solid wood fence, additional screening and moving sharp cut off light forward away from the house and retaining existing screening vegetation along the southern border of the project.

Re: Act 250

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AUG 21 2013

Findings of Fact and Conclusions  
of Law and Order  
#4C0895  
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DEPARTMENT OF  
PLANNING & ZONING

- include an outlet device to control peak flows at the 10-year storm and all lesser storms. These stormwater management facilities will reduce the peak flow from the South Campus to approximately 25 CFS, an overall reduction of approximately 47 percent. Both detention ponds will be fenced. (Exhibit #6 and testimony of applicant)
11. A Draft Discharge Permit has been issued, which the Commission accepts as evidence that the project complies with applicable Department of Environmental Conservation Regulations. (Exhibit #85)
  12. The Burlington Country Club (BCC) owns land immediately to the south of the project and the proposed stormwater management facilities. The discharge from the two stormwater ponds will flow through a rip-rap pad and then directly onto BCC land and eventually through a 15 inch culvert under a portion of the golf course. (Testimony of applicant and Exhibit #38)
  13. The 15-inch drainage pipe is inadequate to handle current peak flows from the University Campus. Even though the stormwater management facilities proposed by the University will reduce peak flows, the pipe will still be inadequate to handle the reduced flows from the University's property. Because of this, the Country Club has requested that the University replace the 15-inch drainage pipe with a 30-inch pipe.
  14. The Commission finds that since this project will not increase the discharge of stormwater onto the Country Club property, there is no justification for requiring the installation of the 30" pipe requested by the Country Club.
  15. The University has a no-salt policy, which will be followed by the owner of the apartment complex, Novarr-MacKeseey. Sand will be used on roads, parking and walks for pedestrian/vehicular safety. Salt may be used in extreme weather conditions only if pedestrian and vehicular safety cannot be assured using sand alone. (Testimony of applicant)
  16. During the winter months, snow will be piled in the areas of catch basins that will drain to the stormwater management facilities. In the event of excessive snow piles, snow will be trucked away from the project site.

## Violation Complaint

According to an aerial photograph UVM submitted into evidence at trial in March, Redstone Apartments has 152 parking spaces. This is a violation of the COA and Land Use Permit, which allows for 136 parking spaces. Nine of these un-permitted spaces are in the far south-west corner of the property, where there should be a bump-out to help mitigate the impact of the project on the Adams's residence. The other seven un-permitted spaces are near the management office and Davis Road.

There were 80 existing parking spaces when Redstone Apartments was built. There are now 233.

I'm requesting that the zoning department notice UVM and Redstone Apartments of the violation and require they restore the bump-out and plant hedges within 60 days.

Please let me know the results of this violation complaint.

Thanks.



Pike Porter

544 South Prospect Street  
Burlington, VT 05401

pikeporter@gmail.com  
802.233.2600

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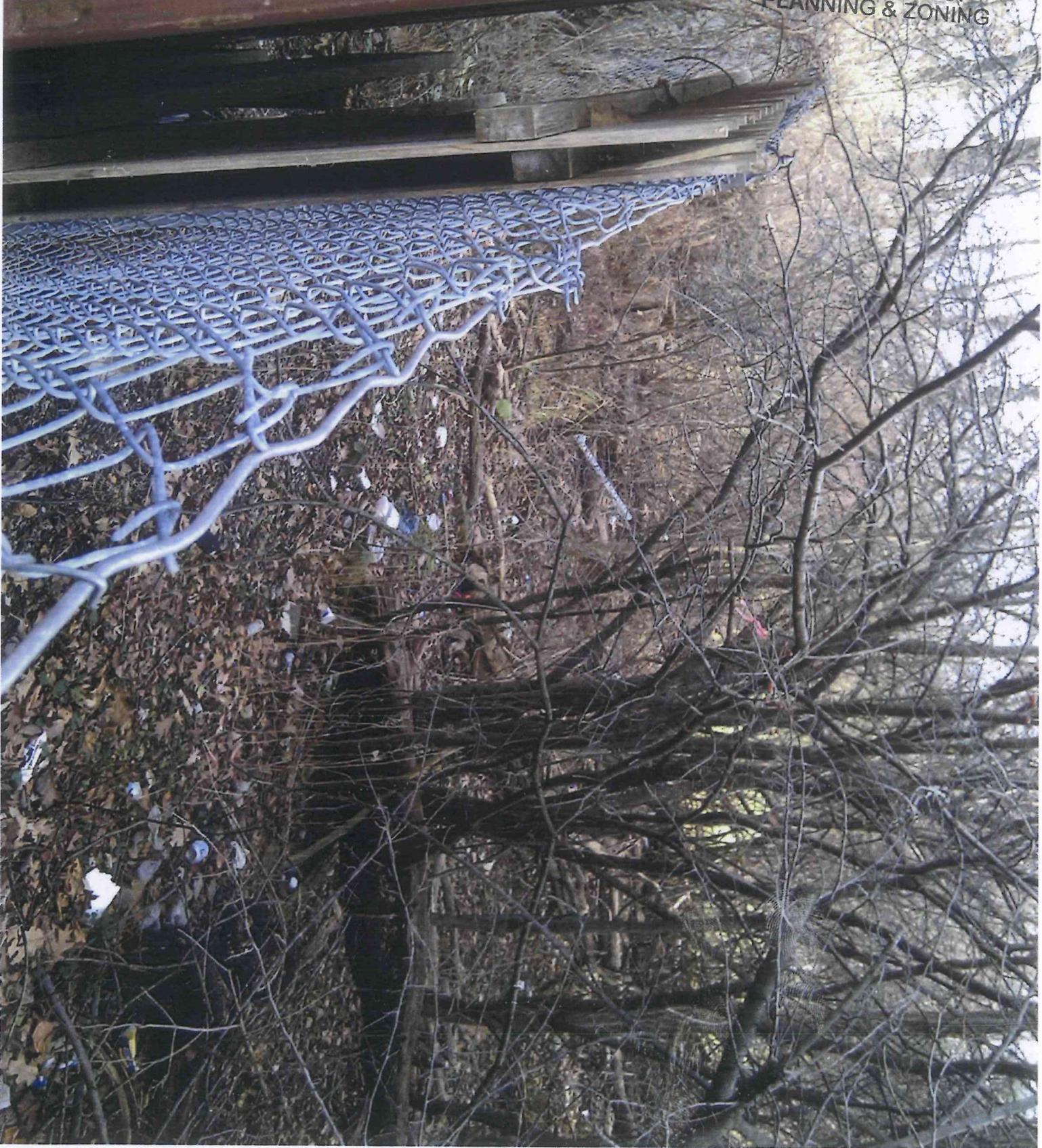
AUG 21 2013

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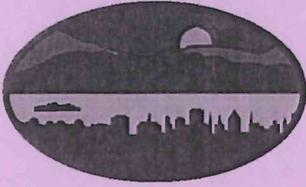
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**ZONING PERMIT  
 CERTIFICATE OF APPROPRIATENESS**  
 City of Burlington, Vermont  
 Department of Planning and Zoning

Application Date: 7/9/2013

Appeal Expiration Date: ~~8/22/2013~~

**Project Location: 500 SOUTH PROSPECT STREET**

District: I/RL

Owner: Prospect Venture Lp  
 Address: 1001 West Seneca Street  
 Ithaca, NY 14850

Ward: 6

Tax ID: 050-4-098-001

Project Type: Residential - Site Imp/Landscaping/Parking/Fence

Project Description: Relocate existing fence along southern boundary with associated landscape changes.

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

Zoning Permit #: 14-0044CA

Decision By: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Decision Date: August 7, 2013

Project File #: NA

Zoning Administrative Officer

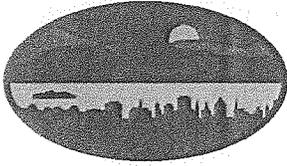
*An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on August 22, 2013.*

Fee Type	Amount	Paid in Full	Balance Due:	\$0.00
Application Fee:	\$80.00	Yes	Date Paid:	_____
Development Review Fee:	\$0.00	NA	Check #	_____
Impact Fee:	Not Applicable			

Building Permit Required: **Yes**

Permit Received by: \_\_\_\_\_

Date: \_\_\_\_\_



# Zoning Permit - COA Level I – Conditions of Approval

ZP #: 14-0044CA

Tax ID: 050-4-098-001

Issue Date: August 7, 2013

Decision: Approved

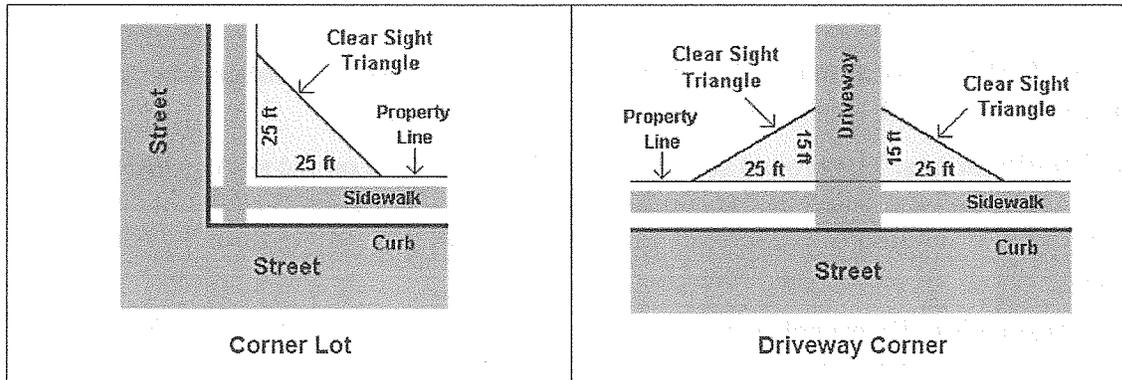
City of  
Burlington, Vermont  
149 Church Street

Property Address: 500 SOUTH PROSPECT STREET

**Description:** Relocate existing fence along southern boundary with associated landscape changes.

## Project Permit Conditions:

1. It is proposed that the fence alignment may be modified due to existing vegetation (ie. To go around an existing tree). This is considered appropriate provided that the alignment at no point goes closer to the boundary than the 2ft proposed setback, as noted in the application, pursuant to condition 2 below.
2. The proposed fence shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property, in accordance with Sec. 6.2.2(m) of the City of Burlington Comprehensive Development Ordinance.
3. Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3-feet in height above the curb in order to provide safe sight distances for pedestrians and vehicles in accordance with the following diagrams from Sec. 6.2.2(m) of the City of Burlington Comprehensive Development Ordinance:



4. No portion of the fence shall extend beyond the subject property line onto the neighboring property. Any placement of any portion of the fence onto the neighboring property shall be removed at the expense of the owner or applicant.

## Standard Permit Conditions:

1. **Other City, State or Federal Permits.** The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions.

**Note:** All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from Department of Public Works-Inspection Services Division (DPW-ISD). All construction permits must be closed out by way of approved inspections by DPW-ISD before issuance of a Unified Certificate of Occupancy (UCO) by the Code Enforcement Office as per Condition 3, below.

2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced by **August 7, 2014**. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) by **August 7, 2015**, or be subject to enforcement actions.

These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).

3. **Unified Certificate of Occupancy (UCO):** It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a UCO.

**If the project is partially completed**, meets “prior to issuance of a UCO” conditions of approval, meets all health and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. **Upon completion of the project**, applicant shall request and obtain a Final UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. **Failure to obtain a certificate of occupancy** places the property in violation of the CDO and is subject to enforcement.

In addition, **Failure to obtain a UCO within the time limits above is subject to** “after the fact” fees ranging from \$75 - \$1500 (in addition to the UCO fee).

4. **Project Modifications.** The project shall be completed as shown on the plans, which have been stamped “approved” and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.
5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final UCO.
6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.
7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or

other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.

8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.
9. **Transfer of Ownership. All zoning permits run with the land.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.
10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to one hundred dollars (\$200) per day, municipal tickets, and/or additional permitting fees.
11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City. If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.
13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.
14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

**Redstone Apartments**

**500 So. Prospect St., Burlington, VT**

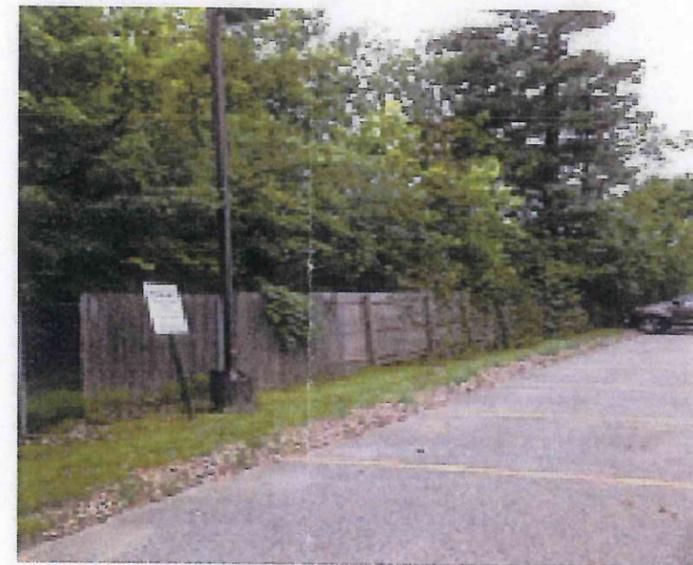
**Relocation of Existing Fence:**



Existing fence and portion of plantings and lawn looking east. University property line is to the right (south) of the existing fence line shown.



Existing fence looking south from Redstone Apartments parking lot



Existing fence looking west from Redstone Apartments parking lot

**RECEIVED**

JUL 09 2013

DEPARTMENT OF  
PLANNING & ZONING

**-- NOTE --**

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

**FINAL APPROVAL**

SIGNED [Signature] DATE 7/22/13  
PLANNING & ZONING DEPARTMENT  
BURLINGTON, VERMONT  
8-7-13  
[Signature]



The UNIVERSITY of VERMONT UVM

University of Vermont  
CAMPUS PLANNING  
209 COLLEGE STREET  
BURLINGTON, VERMONT 05405  
(802) 656-2014  
Contact: Linda Seavey

CIVIL ENGINEER  
K&L  
Krebs & Lansing Consulting Engineers, Inc.  
164 Main Street, Suite 201  
Colchester, VT 05446  
T: (802) 878-0375  
F: (802) 878-9618  
email@krebbsandlansing.com



FOR PERMIT REVIEW ONLY

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DEPARTMENT OF PLANNING & ZONING

Project:  
UVM Redstone Apartments

Project No. 13125  
Scale 1" = 10'  
Drawn by HKW/RAW  
Checked by  
Date 5/29/2013

Revisions:  
No. Date

Drawing Title  
Fence Site Plan

Drawing No.  
C-1

The University of Vermont and State Agricultural College  
Parcel 4  
"Buell 1921 Tract"  
Volume 148, Page 248  
March 29, 1956

N/F  
Ashley Adams  
Volume 1050, Page 99  
Plan - Volume 110,  
Page 630

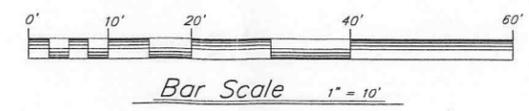
Burlington Country Club Corp.  
June 26, 1945  
City of Burlington Land Records

NOTE  
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FINAL APPROVAL  
SIGNED [Signature] DATE 7/2/13  
PLANNING & ZONING DEPARTMENT  
BURLINGTON, VERMONT

- Legend
- ⊕ G01 Survey control point
  - Iron pipe found
  - Iron pipe (rebar) with aluminum cap LS #639
  - Concrete monument set
  - Concrete monument found
  - △ Calculated point (no monumentation set)
  - ☆ Existing light pole
  - Existing property line
  - - - Approximate property line
  - Existing 6' high stockade fence
  - x - x - Existing wire fence
  - - - Limits of topographic survey
  - New fence
  - Existing bush
  - Existing hardwood tree
  - Existing deciduous tree
  - Existing tree location at base of trunk with approximate drip edge
  - Existing row of cedars

- Notes:
- Existing topographic information is from a field survey completed by Krebs & Lansing in March of 2013.
  - Elevations are based on the NAVD 88 vertical datum.
  - This is not a boundary survey. Property lines shown outside the survey limits are based on information provided by the University of Vermont and should be considered approximate other than the property line from Mon-122 to Mon-122B.
  - The linework outside the topographic survey limits, depicting roads, buildings, parking spaces, etc., is shown for illustrative purposes only. This data was taken from Orthophotography provided by the University of Vermont and State Agricultural College. Krebs and Lansing does not warrant the completeness or accuracy of this orthographic data.



SOUTH PROSPECT ST

MON-122  
4x4 conc. mon. found 12" below ground

concrete sidewalk

Approximately 2 feet

Remove existing fence

New fence



Location Map  
not to scale



Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
Phone: (802) 865-7188
Fax: (802) 865-7195

www.burlingtonvt.gov/pz

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DEPARTMENT OF PLANNING & ZONING

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS: 500 South Prospect St.

PROPERTY OWNER\*: University of Vermont

OWNER'S REPRESENTATIVE: Redstone

\*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS: 109 So Prospect St.

POSTAL ADDRESS: 210 College St.

CITY, ST, ZIP: Burlington, VT 05405

CITY, ST, ZIP: Burlington, VT 05401

DAY PHONE: 802-656-0215

DAY PHONE: 802-343-4648

EMAIL: linda.seaveny@uvm.edu

EMAIL: jwilliams@redstonevt.com

SIGNATURE: Linda Seaveny Director

SIGNATURE: [Signature]

I am the owner and I duly authorize the owner's representative (if applicable) to act on my behalf for all matters pertaining to this zoning permit application.

Description of Proposed Project: see attached description.

Existing Use of Property: [ ] Single Family [X] Multi Family: # \_\_\_ Units [ ] Other: \_\_\_

Proposed Use of Property: [ ] Single Family [X] Multi Family: # \_\_\_ Units [ ] Other: \_\_\_

Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes [ ] No [X]

For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes [ ] No [X]

Are you proposing any work within or above the public right of way? Yes [X] No [X]

Estimated Construction Cost (value)\*: \$ 4000

- Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit).
- A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire.
- Please ask for assistance if you have any questions about filling out this form. Call the Planning and Zoning at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Zone: \_\_\_ Eligible for Design Review? \_\_\_ Age of House \_\_\_ Lot Size \_\_\_
Type: SN \_\_\_ AW \_\_\_ FC \_\_\_ BA \_\_\_ COA 1 \_\_\_ COA 2 \_\_\_ COA 3 \_\_\_ CU \_\_\_ MA \_\_\_ VR \_\_\_ HO \_\_\_ SP \_\_\_ DT \_\_\_ MP \_\_\_
Check No. \_\_\_ Amount Paid \_\_\_ Zoning Permit # \_\_\_

1490 780 14-0044CA August 2012

500 South Prospect Street  
Burlington, VT

**Relocation of Existing Fence**  
**Project Description:**

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DEPARTMENT OF  
PLANNING & ZONING

The project is the relocation of an existing fence and the installation of new matching fence as required to provide a new fence line as shown on the attached Site Plan. The existing fence is a 6' high stockade style wood fence as shown in the attached pictures. The fence alignment may be modified during installation to avoid impacting existing vegetation, at the University's discretion. The fence will be relocated as close to the University's south property boundary while maintaining a 2' wide space along the length of the south side of the fence line for the purpose of maintenance.

The project includes the relocation of approximately 40 existing cedar trees and the installation of an equal number of new 8' high cedar trees along the relocated fence line.

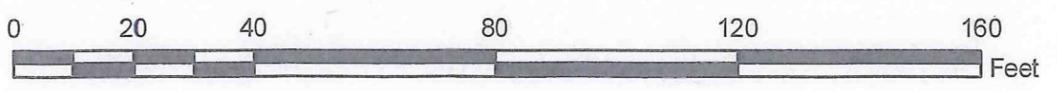
2004  
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DEPARTMENT OF  
PLANNING & ZONING



UVM MAIN CAMPUS: 2004 ORTHO-PHOTO  
Produced by UVM Campus Planning Services  
11/03/2011



2010\_UVM\_BOUNDARY  
BURLINGTON PARCELS



ZONING PERMIT/CERTIFICATE OF APPROPRIATENESS  
Burlington, Vermont

Application Date: 02/25/91  
Appeal Exp. Date: 05/10/91

Project Location: <sup>500</sup> ~~174~~ <sup>LMC</sup> SO PROSPECT ST Zone: UC Ward: 6

Owner/Applicant Name: Univ. of Vermont/Novarr-Mackesey  
Address: 109 South Prospect Street  
Burlington, VT 05405  
Telephone: 802-656-3208

*applicant changed*

Project Description: Final plat approval to construct 81 residential units (student housing) under Planned Residential Development regulations.

Estimated Cost of Construction: \$4650000.00

Lot Size: 200376 Net New Sq.Ft.:  
Net New # of Housing Units: 81

Existing % Lot Coverage: 0 Existing # of Parking Spaces:  
Proposed % Lot Coverage: 28 Proposed # of Parking Spaces: 100  
Required # of Parking Spaces: 136

Zoning Permit #: 91-331

Application Fee: \$1650.00 Y

*Kenneth L...*  
.....  
Zoning Administrator

COA #: S90-026A Level of Review: III

Development Review Fee: \$18725.00 Y

*Mark T. Eldridge*  
.....  
Planning Director

Decision: awc Decision Date: 04/25/91

Decision: awc Decision Date: 04/25/91

An interested person may appeal a decision of the Zoning Administrator to the Zoning Board of Adjustment within 15 days of final action.

An interested person may appeal a decision of the Planning Commission to the Chittenden Superior Court within 30 days of final action.

ZBA #: ZBA Decision Date: 03/27/90

Conditions: See attached conditions of approval.

Applicant Signature: *Wanda Seavey for the University of Vermont*

BURLINGTON PLANNING COMMISSION  
Thursday, April 25, 1991, 6:30 P.M.  
Contois Auditorium, City Hall

CONDITIONS OF APPROVAL - FINAL PLAT  
COA S90-026A; 474-544 South Prospect Street (UC)

Approved April 25, 1991 - Modified May 9, 1991

Project approved as presented subject to the following conditions:

I. PLANNING

- A. The final plat shall be filed within 90 days from the date of approval and shall include all legal requirements and certifications as stipulated in the Subdivision Regulations Section 28-6. Failure to file shall render the final plat approval void.
- B. The final plat approval includes a parking waiver for 36 parking spaces. These spaces shall be indicated as "future" spaces on the final plat. In the event the Planning Commission determines that there is a demand for such spaces, they shall be provided from the inventory of "future" spaces at the developer's expense.
- C. The developer shall participate in any overall solution to the storm-water run-off problem regarding quality and quantity effecting Englesby Ravine. This will include participation in any special assessment district that may be established.
- D. Stormwater drainage. In order to insure successful operation of the drainage plans, a certificate of insurance or other proof of insurance shall be provided annually.
- E. A "no salt/deicing compound" policy for the development shall be implemented. Salt or other deicing compounds will not be utilized in parking lots except for entrances and exits as required for safety or in the case of severe icy conditions where deicing may be utilized in the driving lanes for safety purposes.
- F. Occupancy of the units shall not occur until the University has obtained approval of the recently requested air quality permit and implemented any conditions of such.
- G. A traffic survey/analysis of vehicular utilization of the proposed curb cut at South Prospect Street intersection, after full occupancy of the proposed project, shall be conducted by a consultant engaged by the Planning Department in consultation with Public Works and the applicant. The cost of such shall be paid by the developer and shall not exceed \$3,000. If the analysis indicates an unacceptable level of service, mitigation measures, including but not limited to a limited access gate or closing of the curb cut, shall be proposed by the consultant and based upon recommendations to the Planning Commission implemented by the developer.
- H. All reported incidents and violations of law including, but not limited to, violations of the City noise ordinance, parking and traffic violations, on and in the vicinity of the site, shall be reported to the University administration. This provision shall be written into leases at the proposed project.
- I. Vehicles that are permitted to park in the parking lots associated with the proposed development shall not be issued permits to park at any other University lots on campus. This provision shall be enforced by the University and shall be written into leases at the proposed project.
- J. Standard permit conditions 1-13.

## II. DESIGN REVIEW

- A. Undergrounding existing overhead utility lines along the South Prospect Street frontage shall be undertaken in consultation with Burlington Electric Department.
- B. Final siding materials and building colors shall be subject to review and approval by Design Review Board.
- C. The caliper of all trees shall be increased to 2.5" to 3" from the proposed 2" to 2.5". Also substantial trees (ash, oaks, elms, etc.) shall be added along the roadway between the units in the middle of the development. The final landscaping plan subject to review and approval by staff.
- D. Sidewalks shall be concrete on South Prospect Street rather than asphalt.
- E. Add sidewalk from South Prospect Street to main building.
- F. The applicant shall provide a solution to the icing problem at the proposed curb cut as this may create a hazardous situation. The final solution is subject to review and approval by staff in conjunction with Department of Public Works.
- G. Fencing shall extend from South Prospect Street to U.V.M. soccer fields.

## III. PUBLIC WORKS

- A. A final plat utilities plan must be prepared and stamped by a licensed engineer and must clearly indicate size of proposed water and sewer mains as well as location of valves, manholes, and all other appurtenances to City infrastructure.
- B. The project will be subject to all applicable sewer impact fees as outlined in Chapter 26 of the Burlington Code of Ordinances.
- C. The project is subject to an impact fee as determined by the City Engineer to make improvements to the City's water system to improve its ability to provide long term fire protection flow.
- D. Since the water lines on this site are and will be privately owned, the developer shall be responsible for notification to the Department of Public Works of any leaks or other problems and Department of Public Works shall provide access and location information (as-built plans) at all times. Costs associated with repairs incurred by the City would be reimbursed by the developer.
- E. The developer shall provide Department of Public Works with a seven-day water pressure chart per instructions and with equipment provided by Department of Public Works staff.
- F. The developer shall provide an analysis of sewage collection and stormwater in manholes M3.55 and M31413.05 per instructions by Department of Public Works staff and provide any and all mitigation measures that may be required, subject to Department of Public Works review and approval at their expense.
- G. The developer shall submit design details of stormwater run-off mitigation measures for review and approval by Department of Public Works staff; specifically, the actual sizing of the two proposed detention ponds and the details of their outfall and orifice design, and assurances of system maintenance on the site.
- H. The developer shall schedule a mutually agreeable walk of the site after construction begins and prior to occupancy with Public Works staff.

IV. PARKS AND RECREATION

- A. The developer shall be responsible to pay the \$850/unit impact fee for each unit being constructed or as otherwise determined by the Superintendent of Parks.

V. FIRE DEPARTMENT

- A. The water system shall be looped and adequate flows shall be available for fire protection to the satisfaction of the Burlington Fire Marshall.
- B. A call box system or alternative satisfactory to the Fire Marshall shall be installed by the developer.
- C. If the central pedestrian way serves as an emergency access, it shall be maintained as such.
- D. An impact fee of .5% of the construction cost shall be paid to the Fire Department or as otherwise determined by the Fire Marshall.

VI. SCHOOL DEPARTMENT

- A. The developer shall be responsible for a school impact fee for units not leased to students as determined by the School Department.

VII. GENERAL AND SPECIFIC REVIEW CRITERIA

- A. Conditions I. (C) (D) (E) (F) and III. (G) will insure no adverse impact on water and air quality. No adverse impact on noise is anticipated.
- B. As conditioned, there should be sufficient water as per conditions III. (A) (C) (E) and V. (A).
- C. As conditioned, there should be no impact on the City's water supply and distribution system as per conditions III. (A) (C) (D) (E) and V. (A).
- D. Conditions I. (C) (D) and III. (G) will insure no adverse impact on the ability of the land to hold water.
- E. The developer has submitted a traffic study that addresses related impacts. Conditions I. (G) and (I). insure there will be no significant adverse effects from the proposed development regarding traffic. In addition, the University has instituted a shuttle system that has greatly reduced the potential for inner-campus vehicles.
- F. Condition VI. (A) will mitigate adverse effects on the school system.
- G. As conditioned, there are no expected unreasonable burden on municipal services.
- H. This project has been reviewed by the Design review Board and Conditions II. (A-F) specifically address the project design.
- I. No undue adverse impact on the City's future growth patterns nor on the City's fiscal ability to provide services is expected.
- J. The project is a University residential development in a University campus Zoning District which specifically allows such residential uses.
- K. The project must comply with either the inclusionary zoning or housing replacement ordinances and, therefore, can be found not to have an undue adverse effect on the City's housing needs.
- L. Condition V. (A) provides mitigation to insure that there will be no adverse impact upon the park and recreation needs of the City.

C:CS90026A.CON

RECEIVED  
MAR 11 1992  
CITY LEGAL OFFICE

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

CHITTENDEN COUNTY COURT  
FILED IN CLERKS OFFICE  
FEB 28 1992  
DIANE A. LAVALLEE  
CLERK

RECEIVED

MAR 04 1992

IN RE: APPEAL OF  
HOWARD A. ALLEN, JR.

DEPT. OF  
PLANNING & ZONING

CHITTENDEN SUPERIOR  
DOCKET NO. S697-90CnC

IN RE: COAS90-026A;  
474-544 SOUTH PROSPECT STREET UC

CHITTENDEN SUPERIOR  
DOCKET NO. S974-91CnC

ROBERT A. DANIELS, ET AL.

CHITTENDEN SUPERIOR  
DOCKET NO. S989-91CnC

VS.

UNIVERSITY OF VERMONT;  
NOVARR-MACKESEY; and  
CITY OF BURLINGTON.

OPINION AND ORDER

A hearing was held on December 17, 18, and 31, 1991, in connection with the above actions. Appellants, Howard A. Allen, et. al., and Robert V. Daniels, et. al., were represented by Harvey D. Carter, Jr. Appellant Burlington Country Club Corporation was represented by Peter Collins of Paul, Frank & Collins. Appellees, UVM and Novarr-Mackesey, were represented by Spencer R. Knapp of Dinse, Erdmann & Clapp. The City of Burlington was represented by Kenneth Schatz, Assistant City Attorney. Based upon the credible evidence introduced at the hearing, exhibits, requests to find, and memoranda of law, we issue the following findings of fact, conclusions of law, and order:

1. The above actions involve appeals from zoning and planning commission decisions of the City of Burlington, approving the construction of a student apartment complex and a stormwater drainage system at the southern end of the University of Vermont's (UVM) Redstone Campus between 474 and 544 South Prospect Street (Project).

2. The first action, In Re: Appeal of Howard A. Allen, et. al., Docket No. S697-90CnC (Allen Appeal) is an appeal from the May 8, 1990, Burlington Zoning Board of Adjustment (ZBA) decision unanimously granting conditional use approval for the Project. Appellants are a group of residents who live in the vicinity of the Project who are members of the neighborhood group called Citizens For Responsible Planning (CFRP).

3. The second action, In Re: COAS90-026A, Docket No. 974-91CnC, involves an appeal by the Burlington Country Club Corporation from the decision of the Burlington Planning Commission on April 25, 1991, granting site plan approval and final plat approval for the Project.

4. The third action, Daniels, et. al. v. UVM, Novarr-Mackesey and City of Burlington, Docket No. S989-91CnC, involves a separate appeal from the decision of the Burlington Planning Commission by CFRP.

5. The Project consists of two components: (a) construction of an 81 unit student apartment complex; and, (b) construction of adjacent stormwater management facilities to control run-off from the South Campus.

6. The apartment complex will be located on 4.5 acres of UVM owned land, on the east side of approximately 500 South Prospect Street, Burlington, Vermont.

7. The apartment complex will consist of 81 units. It will house approximately 214 students, consisting of primarily upper classpersons and graduate students. It will include a mixture of one, two, three, and four bedroom units.

8. The Project will be configured in two quadrangles with grassy interiors. A parking lot will be constructed on the south side of the building and will be separated from the building by a hedge. One hundred (100) new parking spaces will be constructed in the south lot. The zoning requirements require the construction of 136 new spaces, but the City has waived the requirement of 36 additional spaces at this time. Only students who reside in the apartment complex will be permitted to park in these spaces. Those students that live in the apartment complex will not be permitted to park in any other lots on campus.

9. The land on which the Project will be located is zoned University Campus (UC). UVM will retain ownership of said land. UVM will lease said land to Novarr-Mackesey for a term of 35 years. Novarr-Mackesey will finance, construct, and manage the apartment complex. Novarr-Mackesey is a development company based in Ithica, New York, which presently manages more than 750 student apartments in the Ithica area.

10. In an area zoned UC, 40% coverage and 25 units per acre density are permitted. The Project will equal 28% coverage. The 4.5 acres of land on which

the Project will be located would permit a density equal to 115 units; the Project will have 81 units.

11. Mrs. Adams' residence is the only private residence in the area of the Project which may be affected by the construction of the Project. Mrs. Adams' residence is located immediately to the south of the site of the Project. Her property fronts on South Prospect Street. At present, Mrs. Adams' residence has approximately 186 feet of property in common with UVM. A portion of the new parking lot will border this common property, the north boundary line of Mrs. Adams' property.

12. The ground lease between UVM and Novarr-Mackesey provides UVM with the option to purchase the apartment complex from Novarr-Mackesey. UVM will also have the right of first refusal if Novarr-Mackesey chooses to sell the apartment complex to a third party. Appellees' Supp. Requests, Appendix C at Article 15.

13. The ground lease will also contain the following provision to address neighborhood concerns about the enforcement of the University's drug and alcohol policy at the apartment complex:

Compliance With University Drug and Alcohol Policies. Novarr-Mackesey agrees to cause all University students who occupy apartments in the Project to execute lease agreements which include the following provision:

Compliance with Law: University Drug and Alcohol Policies. The Tenant agrees to comply with and to abide by all laws, ordinances, regulations, etc. of any and all governmental authorities which may affect the premis-

es. In addition, Tenants who are students of the University of Vermont and State Agricultural College (the "University") further agree that the policies, rules, and regulations of the University regarding the use of drugs and alcohol shall apply to and govern activities and conduct of such Tenants in and on the premises to the same extent as any other part of the University Campus or University-owned property. Such Tenants further agree to comply with and abide by all such policies, rules and regulations with regard to activities and conduct of the Tenant in and on the premises to the same extent as conduct or activities of University students in or on any other part of the University Campus or University-owned property.

The University agrees that University students who have executed lease agreements containing such provisions shall be subject to the University's drug and alcohol policies to the same extent as to students who occupy University residence halls.

Appellees' Supp. Requests, Appendix C at Article 3.

14. Article 3, Section 3.4, of the draft ground lease states:

Subtenants. NOVARR-MACKESEY may allow permitted tenants to sublease their interest in accordance with any applicable conditions of this lease and the City of Burlington Permits and Ordinances.

Exhibit D to the ground lease defines "permitted tenants." Exhibit D states that the apartments will be leased to "full time Junior, Senior or Graduate Students as defined by University rules and regulations." It further states that upon a surplus of unrented units, Novarr-Mackesey, with the permission of UVM's Department of Residential Life, may rent these units, in the following order of priority, to:

1. Students at other area institutions of higher education who have achieved the status of Junior, Senior or Graduate Student as defined by the University of Vermont requirements or their equivalent.

2. Other Tenants, but in no event shall they be college or University freshman or sophomores; except students subletting who have completed their sophomore year may rent as tenants.

15. The second component of the Project consists of the construction of storm water management facilities which include: one for the apartment complex itself; and, the other for the remainder of the University's South Campus.

16. These proposed storm water retention facilities are part of UVM's Campus Master Plan (Master Plan). The Master Plan includes a comprehensive stormwater management plan for UVM's campus to be implemented in four phases. The present Project involves the third phase. The third phase consists of the construction of two storm water detention ponds on South Campus. The first detention pond will be situated to the east of the proposed apartment complex and will incorporate the use of catch basins, swales, and pipes, to collect and route water run-off resulting from the construction of the apartment complex. The detention pond will include an outlet device which will control peak flows at the 10 year storm and all lesser storms.

17. The second detention pond will be located to the north of the first pond and will be slightly larger in size. It will collect and rout the run-off from the rest of South Campus. The second pond will also include an outlet device to control peak flows at the 10 year storm and all lesser storms.

18. The PR55 method, developed by the Soil Conservation Service, is the standard method used to determine storm water run-off. At present, during a ten year 24 hour storm event, the total storm water run-off from the 4.5 acres desig-

nated for construction of the apartment complex equals 7 CFS (cubic feet per second). After construction of the apartment complex, and without the impact of the new drainage systems, the run-off would increase by 2 CFS to 9 CFS. Upon construction and implementation of the storm drainage system, the run-off will be reduced by 2 CFS to 7 CFS, equal to the run-off prior to the construction of the apartment complex.

19. At present, the storm water run-off from UVM's entire South Campus, approximately 40 acres, equals 47 CFS. In the 1950's and 1960's, run-off from South Campus equaled approximately 30 - 35 CFS. Upon completion of the construction of the proposed second storm water pond on South Campus, the run-off will be reduced to approximately 25 CFS.

20. The proposed storm water retention ponds will also improve the water quality, by trapping sediments and removing pollutants. Estimates are that the retention ponds will remove approximately 60% of Suspended Sediments, 20-40% of Total Phosphorus, Nitrogen, and Oxygen Demand, and 40-60% of Trace Metals. The ponds will be maintained, which will include regular cleaning.

21. The two detention ponds will drain into a riprap, located approximately 20 feet north of the Burlington Country Club (Club) boundary line. There is an existing 15" culvert on the Club property which carries the flow of the run-off from UVM's South Campus over the Club's property. The 15" culvert is insufficient to adequately handle current run-off flow and it has been insufficient since the early 1960's when it was originally installed. A 30" culvert would adequately contain the

flow over the Club's property; however, we find that installation of a 30" culvert would adversely impact the property owners downstream from the club because of the increase in velocity of the water flow. Currently, and for many years, the velocity of the water has been retarded and spread as it crosses club property.

22. In a study conducted by the City of Burlington, six samples of water were tested for contamination in the Englesby Ravine. Two of the six sites were two ponds located on the Country Club property. One of such ponds, the north pond, receives run-off from the South Campus. Five samples were taken from the north pond: one sample showed the *possibility* of animal/human contamination; the other four samples showed the *possibility* of animal contamination only.

23. There will be two entrances to the apartment complex: 1) The existing Redstone Driveway off South Prospect Street; 2) A new entrance on South Prospect Street located approximately 30 feet to the south of the Overlake Condominium driveway. The sight distance from each entrance equals 330' plus in each direction, which exceeds the applicable standards.

24. The traffic that would be generated from the project is estimated to be 13 A.M. peak hour trips and 52 P.M. peak hour trips. A trip consists of either one trip in or out of the driveways. This estimate does not include the likely reduction in trips because of use of the campus shuttle by students.

During the p.m. peak hour, traffic from the apartment complex would represent 8% of South Prospect Street traffic north of the Redstone Driveway and 3% to the south.

25. There is a uniform grading system, A to F, by which to grade traffic congestion. "A" represents no congestion and "F" represents an amount of traffic arriving at that intersection which exceeds its capacity and will not clear until the time period passes and the incoming traffic lessens. "D" is the minimum desirable level, based on the 30th highest hour of the year.

Based on the peak 15 minutes, of the 30th highest hour in the year, the level of service at the intersection of South Prospect and the Redstone Driveway as of 1990 was a grade of "A." The level of service would remain at a grade of "A" in 1995, after construction of the apartment complex.

26. The intersection of South Prospect Street and Main Street was also graded. There are conflicts in the testimony regarding the proper grades. UVM's and Novarr-Mackesey's expert, Mr. Adler, testified that the level of service as of 1990, in the "no build" case<sup>1</sup>, is at a level between "C" and "D". The level of service in 1995, for the "no build" case will be a "D." The 1995 "build" case will involve a slight increase in delay of .6 seconds for each vehicle at the intersection, but the level of service will remain a "D." Vehicles traveling to and from the apartment complex will increase the Main Street intersection traffic levels by at most 1%. These estimates assume that the City of Burlington will adjust the timing mechanisms of the traffic lights to best meet the needs of the intersection.

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<sup>1</sup> The term "build" refers to the traffic conditions that will exist at the intersection following the construction of the project. The term "no build" refers to the traffic conditions that will exist without construction of the project.

Appellant's expert, Mr. Alexander, testified that in a 1990, "no build" or "build" case, the overall level of service at the intersection was a "D." This conclusion was based on three determinations; 1) The east-west flow of traffic on Main Street is a "C" grade; 2) The northbound traffic flow on South Prospect Street is a "F" grade; 3) The south bound traffic on South Prospect Street is an "E" grade. Next, Mr. Alexander determined that both the "no build" and "build" 1995 grade would be an "E." The overall intersection delay in the "no build" scenario would be 48 seconds; however, unexplainably, the delay would decrease to 47.7 seconds in the "build" scenario. This conclusion was also based on two determinations: 1) The east-west flow of traffic on Main Street would equal an "E" grade; 2) Both the northbound and southbound traffic on South Prospect Street would equal an "F" grade. Mr. Alexander's determinations were based on the assumption that the present timing mechanisms would remain in place, and not be adjusted by the City.

We find that the traffic, resulting from the Project, will increase the traffic at the intersection of Main Street and South Prospect Street by, at most, one percent. The City of Burlington has long been aware of the traffic problems associated with the intersection and has taken measures, and continues to take measures, to deal with the problems. The possible one percent increase in traffic stemming from the Project will have a de minimis affect on the traffic through the intersection.

CONCLUSIONS OF LAW

A. Stipulations:

1. The parties stipulated and agreed at the hearing on December 17, 1991, that the only issues in dispute regarding the Project under the applicable zoning and planning criteria are: a) Whether stormwater run-off from the apartment complex will "result in undue water . . . pollution." (Exh. 3C, Burlington Zoning Code § 30(D)(1));

(b) Whether the apartment complex will "cause unreasonable traffic congestion or unsafe conditions with respect to the use of highways." (Exh. 3C, Burlington Zoning Code, § 30(D)(3));

(c) Whether the Project is "in substantial conformance with the [1985 City of Burlington's] municipal development plan." (Exh. 3C, Burlington Zoning code § 30(D)(10)).

The parties also addressed the issue of UVM's role in the governance of student conduct in the apartment complex. Appellees objected to the introduction of testimony in regard to this issue.

2. The parties stipulated, since these hearings are de novo, that all approvals and conditions not contested at trial may be incorporated by reference in this Opinion and Order, as if tried anew to this court.

3. Appellees, UVM and Novarr-Mackesey, and Appellant Burlington Country Club have stipulated that adequate fencing will be provided by appellees along the southern boundary of UVM's South Campus and the northern boundary

of the Country Club, to continue through the wooded area and out to the UVM UVM soccer field, located to the east.

**B. Project is Undergraduate and Graduate Housing:**

4. We conclude that the proposed apartment complex, to be located on University owned property in a district zoned UC, constitutes "student housing." As such, approval for construction of the apartment complex is appropriate as a conditional use under § 11(B)(1)(e) of the Burlington Zoning Code. Section 11(b)(1)(e) provides that a conditional use includes:

College-owned or-directed activities and related activities of any nonprofit educational institution conducted in structures owned or operated by any such institution including . . . [t]he shelter and feeding of the faculty, students and staff of any such institution.

Appellees, UVM and Novarr-Mackesey, argue that the appropriate Burlington Zoning Code provision under which the apartment complex should be approved is § 11(B)(3). We disagree. Section 11(B)(3) permits as a conditional use in the UC district, "Apartments, provided that . . . each unit has (2) exposures . . . [and] each unit has two [exits]." Here, the apartment complex will be located entirely on University owned property. Further, the apartment complex is designed to provide and will provide housing for students. As such, it is clearly housing for the students of UVM under § 11(B)(1)(e), as distinguished from apartments in the UC district, constructed on non-University owned land, and designed to house primarily nonstudents.

5. As discussed herein, as student housing in the UC zone, all Rules and

Regulations of UVM that govern on campus activities are appropriate and applicable to the Project. The proposed housing is part of the UVM campus; it is not just a community apartment complex.

C. Fair Housing Laws:

6. Following discussion at the hearing, Appellant CFRP's counsel raised the issue of the Project's compliance with the Fair Housing Laws in its Post-Trial Memorandum asserting that there may be a violation.

Student housing is not in itself exempt from Vermont's fair housing law, 9 V.S.A. § 4503. Section 9 V.S.A. § 4503(a)(1) provides:

It shall be unlawful for any person:

(a) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

Housing preference on the basis of a person's "student" status is not, in itself, a violation of 9 V.S.A. § 4503(a)(1). Consequently, we conclude that the proposed construction of the student apartment complex is not in violation of Vermont's fair housing law. Novarr-Mackesey and UVM will be required, similar to any other landlord of a nonexempt dwelling, to adhere to the requirements of 9 V.S.A. § 4503 when leasing the apartments to students.

**D. Subleasing:**

7. At the conclusion of the hearing, the court ordered that appellees submit a copy of the current draft ground lease with its post-trial memorandum. Upon review of the draft ground lease, CFRP's counsel, in its Post-Trial Reply Memorandum, noted that Article 3, Section 3.4, and Exhibit D of the draft ground lease permits Novarr-Mackesey and tenants of the Project to sublease to non-UVM students.

As stated before, the Project constitutes student housing. As such, we conclude that the student apartments may only be leased to a tenant whose purpose for living in the Project is generally related to University purposes. All tenants must be subject to the University's Rules and Regulations applicable to on campus activities. The wording of the lease, however, appears appropriate. UVM could probably provide housing for area schools and colleges by leasing current dormitories, should they have excess space.

Throughout the hearing, Appellant CFRP expressed considerable concern regarding the potential noise and alcohol-related disturbances that may result from students living in the Project. Appellees have addressed these concerns by agreeing to include a provision in all tenants' leases subjecting each tenant to the University's drug and alcohol policies. Appellant now appears to object to the possibility of nonstudents living in the Project and the possibility of corresponding fair housing concerns. As stated before, this Project as planned presents no fair housing concerns, nor will the possible inclusion of non-UVM students in the

Project present fair housing concerns as long as appellees comply with 9 V.S.A. §

4503. Further, the lease provides that only in the case of a surplus of nonrented units, may Novarr-Mackesey, as a last resort, rent to nonstudents. Such subleases are also subject to UVM's approval. Any remaining concerns of appellant should be adequately addressed by the application of all of the University's Rules and Regulations to all tenants, students and nonstudents, living in the Project.

E. Water Run-off:

8. We conclude that construction of the Project will "not result in undue water . . . pollution." Burlington Zoning Code, § 30(D)(1). The stormwater management facilities will substantially reduce the stormwater run-off from the University's South Campus. This will benefit both the Burlington Country Club and all other property owners downstream from South Campus.

The Burlington Country Club wants UVM to guarantee a dry #1 fairway for golfers during and immediately following a rain storm. The Club's First Hole has never been dry under these conditions and UVM does not need to make it so now. Furthermore, the proposed stormwater management facilities should substantially improve the conditions on the fairway. Water run-off will be reduced, and the 15" culvert will more likely handle the flow in most conditions.

Finally, the stormwater management facilities will also have a beneficial impact on the water quality. The facilities will trap sediments and remove pollutants.

9. We conclude that appellants have failed to demonstrate that UVM

should be required to conduct studies to determine whether existing stormwater run-off contributes significantly to contamination downstream. In a study conducted by the City of Burlington, six samples of water were tested for contamination in the Englesby Ravine. Two of the six sites were two ponds located on the Country Club property. One of such ponds, the north pond, receives run-off from the South Campus. Five samples were taken from the north pond: only one sample showed the *possibility* of animal/human contamination; the other four samples showed the *possibility* of animal contamination only. This evidence is insufficient to support a finding that the University be required to conduct a contamination study prior to approval.

F. Blasting:

10. We conclude that there is no evidence to support appellants request that the court order that an independent qualified professional either participate in the development of UVM's blasting plan or such plan be subject to his/her approval. Pursuant to the stipulation, failure to introduce evidence or brief the issue adequately constitutes a waiver by the appellants.

G. Traffic:

11. We conclude that the construction of the Project will "not cause unreasonable congestion or unsafe conditions with respect to the use of highways . . . ." Burlington Zoning Code, § 30(D)(5). Appellants state that the evidence has established that the Project will generate eight percent of the traffic proceeding

~~north on South Prospect from the point of the Redstone Driveway and the total~~

traffic passing through the South Prospect - Main Street intersection will be increased by one percent. Thus, appellants argue that the Project will result in unreasonable congestion. Appellants rely on In Re Pilgrim Partnership, 153 Vt. 594, 572 A.2d 909 (1990), for the principle that under Vermont law, the addition of any traffic to an intersection that is already failing violates the standard of reasonableness.

In In Re Pilgrim Partnership, the Vermont Supreme Court affirmed the denial of an Act 250 permit, in part because appellant had failed to meet the criteria of 10 V.S.A. § 6086(a)(5) (criterion 5), which is identical to § 30(D)(5) of the Burlington Zoning Code. The court concluded that a demonstrated increase in traffic of 5% per day would contribute to the traffic problem presently existing and thus, criterion 5 was not met.

Appellants are correct that the evidence presented establishes that eight percent of traffic traveling north on South Prospect Street from the Redstone Driveway will consist of traffic from the Project. There was no evidence presented, however, which establishes that there would be an eight percent increase of traffic traveling north on South Prospect Street through the intersection of South Prospect Street and Main Street. In fact, the evidence establishes only that there would be at most a one percent increase of traffic through that intersection.

We conclude that this estimated one percent increase in traffic will not cause "unreasonable congestion or unsafe conditions" with respect to the intersec-

tion of South Prospect Street and Main Street. The intersection is a major artery

for traffic entering Burlington. The City and citizen's groups have held many meetings to formulate appropriate plans for alteration to the streets in the area. Compared to other changes in traffic flow that affect the intersection, and will continue to do so, the affect of this project is minuscule. No credible evidence suggests that the project will have anything but a de minimis affect on the traffic for that intersection. By exercising its responsibility to periodically retune the traffic control signalization as it deems most appropriate to ensure the most efficient and safe passage through the intersection, the City can adequately compensate for the minor increase in traffic from the project.

12. The parties stipulated at the hearing that there is no issue for adjudication as to the traffic impact of the Project at the intersection of the Redstone Driveway and South Prospect Street.

#### H. Municipal Development Plan:

13. We conclude that the Project is "in substantial conformance with the city's municipal development plan," except to the extent that UVM and Novarr-Mackesey did not intend to extend each of the University's Rules and Regulations and the enforcement of said Rules and Regulations to the student apartment complex. See Burlington Zoning Ordinance § 30(D)(3). The parties stipulated at the hearing that the City of Burlington's 1985 Municipal Development Plan (1985 Plan) governs the Project.

First, the Project does not infringe on the 1985 Plan's goal, "That established neighborhoods be maintained as predominantly residential and be protected from incompatible land intrusions." 1985 Plan at I-3. The area of the proposed construction is zoned UC, University Campus. As set forth in § 11(B)(1)(e) of the Burlington Zoning Code, student housing is a conditional use permitted in the UC district. The area surrounding the site of the proposed student apartments consists of: 1) The neighbors to the east side of South Prospect Street, which are all UVM student dormitories; 2) The neighbors to the west side of South Prospect Street, which are the Overlake Condominiums and other private residences on an already busy street. In addition, the area on which the Project will be constructed is zoned to permit 25 units per acre density, which is more than the approximate density of the Project. Consequently, we conclude that the construction of the student apartments is not an incompatible land intrusion; the student apartments will have no significant impact on the residential character of that neighborhood.

Second, construction of the Project is consistent with the 1985 Plan's goal that, "The vitality and quality of life and the character of existing neighborhoods should be preserved, protected, and enhanced." 1985 Plan at IV-3. Appellants argue that the quality of life of the residents will be changed because of the concentration of density. Appellants, however, failed to offer any persuasive evidence as to how the permitted density would actually affect most of the residents' quality of life.

~~Evidence was presented as to the affect of the construction of the Project~~

on Mrs. Adams, a resident immediately to the south of the Project. As to her residence, there is a potential adverse impact because of the increase in traffic and activities in the new parking lot and the proximity of this new student housing. We conclude that UVM must ensure that there will be a substantial hedge to serve as an adequate buffer between the parking lot and Ms. Adams' residence, in order to decrease noise from the parking lot and the student housing. Upon appellees compliance with this Opinion and Order, we conclude that there should be minimal potential adverse impact on Mrs. Adams' residence.

Third, the construction of the Project is consistent with the 1985 Plan's recommendation that the City encourage the University's retention of open space. 1985 Plan at IV-8. The area in which the Project will be constructed permits 40% coverage. The Project will equal only approximately 28% coverage and is thus consistent with the 1985 Plan. The 1985 plan encourages retention of open space; we conclude that it does not, however, incorporate a "no growth" policy.

Fourth, we conclude that the neighborhood surrounding the site of the Project was sufficiently involved in the study and review of the proposed development of the Project and related planning proposals. 1985 Plan at IV-24, IV-25. The evidence establishes that there were numerous public meetings regarding the Project, which were well attended. There were approximately five or six meetings between UVM and the local Neighborhood Planning Assemblies (NPA). Further,

~~Upon compliance with this Order, the proposed apartment complex will be~~

deemed to be in conformance with the 1985 Plan. The court should review the final version of the ground lease to ensure that it complies with the requirements of this opinion and is available to the parties for the purposes of review.

I. Waiver:

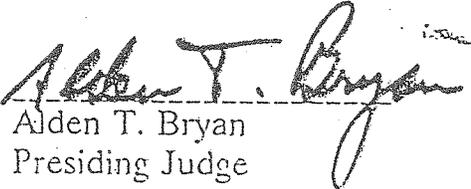
14. As stated above, the parties stipulated at the beginning of the hearing that the only issues in dispute were: traffic congestion and safety; stormwater discharge and water quality; and, conformance of the Project with the 1985 Plan. Prior to the conclusion of the evidence, appellants raised the issues of the electrical utility lines and sewage lines in relation to the Project. Appellants were given the opportunity to present evidence on these issues, but upon consideration, chose not to do so. Consequently, we conclude that appellants have waived these issues on appeal from the decision of the Burlington ZBA and Burlington Planning Commission and are subject to the parties' prior stipulation.

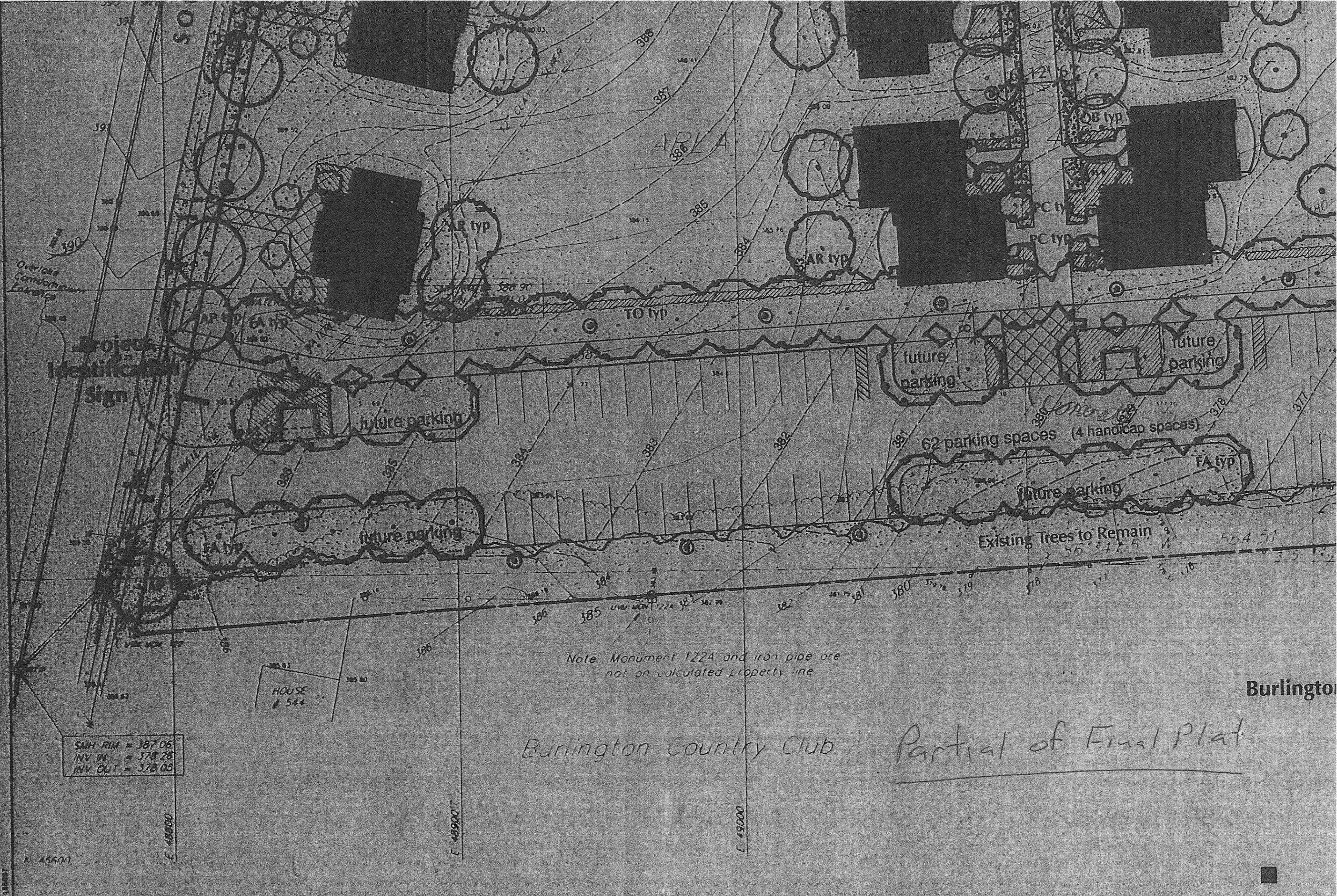
Order

We hereby grant final plat and site plan approval under the Planned Residential Development Regulations, consistent with the Burlington Planning Commission's April 25, 1991, Decision, for the Project and conditional use approval to UVM and Novarr-Mackesey to construct the Project, consistent with the Burlington Zoning Board of Adjustment's May 8, 1990, Decision. This approv-

al is subject to the court's review of the final ground lease, executed between  
UVM and Novarr-Mackesey, which must comply with this Opinion and Order.

Dated in Burlington, Vermont, this 28<sup>th</sup> day of February, 1992.

  
Alden T. Bryan  
Presiding Judge



Project Identification Sign

SAND RIM	= 387.05
INV. IN	= 378.28
INV. OUT	= 378.05

HOUSE # 544

Note Monument 122A and iron pipe are not on calculated property line

Burlington

Burlington Country Club

Partial of Final Plat