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MEMORANDUM

To: Development Review Board
From: Ken Lerner
Date: October 15, 2013
RE: ZP 14-0333CU, 92 Brookes Avenue

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

File: ZP 14-0333CU
Location: 92 Brookes Ave.
Zone: RL **Ward**: 1
Date application accepted: September 17, 2013
Applicant/ Owner: Dean Corren & Cindy Wolkin
Request: Conditional use for one bedroom bed and breakfast. Parking waiver required for one space.

Background:

- **Zoning Permit request 10-1129CA**; Replace novelty siding on south and east sides of garage with new beveled wood clapboards. Approved 06/28/10.
- **Zoning Permit 11-0619CA;** Enclose porch, new windows, replace window, relocate back entrance, extend back porch and remove shed. Approved 02/24/11.

Overview: The applicant wishes to convert one bedroom to bed and breakfast use. There exists a single width driveway at present that meets the two (tandem) parking space requirement. An additional space is required for the proposed B&B use, thus a single space parking waiver is required.

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

I. Findings

Article 3: Applications, Permits and Project Reviews

Part 5: Conditional Use and Major Impact Review

Sec. 3.5.6 (a) Conditional Use Review Standards

1. Capacity of existing or planned community facilities.

The change of use to a bed and breakfast appears to pose no identified impact to the capacity of existing or planned community facilities. **Affirmative finding**

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

2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan.

This is an existing, developed residential neighborhood. The conversion of one bedroom in a low density residential neighborhood to rental lodging may have some impact on traffic and circulation, but not noticeably greater than a family with multiple drivers. **Affirmative finding**

3. Traffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to complementing the flow of traffic and/or parking needs; if not in a commercial district, the impact of customer traffic and deliveries must be evaluated;

The proposed rental of one bedroom has the potential of introducing at least one more vehicle to the parking demand, which already has a requirement for 2 parking spaces for the existing single family residential use. The change of use will likely increase traffic and circulation from the present residential demand of this parcel, however not noticeable so as to affect the overall neighborhood. **Affirmative finding**

4. Any standards or factors set forth in existing City bylaws and city and state ordinances;

The application and resultant change in use will be required to meet all bylaws and city and state ordinances in effect at the time of decision. **Affirmative finding as conditioned.**

5. The utilization of renewable energy resources;

The proposed use is of an existing bedroom and there will be no change in energy utilization, renewable or otherwise. **Affirmative finding**

and,

In addition to the General Standards specified above, the DRB;

6. shall consider the cumulative impact of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible;

A Bed and Breakfast is a special category residential use. As proposed the use is in an existing house/room thus cumulative impacts are expected to be minimal. **Affirmative finding as conditioned.**

7. in considering a request relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, RL-W, RM and RM-W districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green space standards must be observed.

Not applicable to the subject request.

8. may control the location and number of vehicular access points to the property, including the erection of parking barriers.

No change to existing. **Not applicable**.

9. may limit the number, location and size of signs.

No signage is proposed. Any future request will require a separate permit, and will be limited by the standards for this zoning district. **Not applicable**.

10. may require suitable mitigation measures, including landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

None expected with the proposed B&B use. **Affirmative finding as conditioned.**

11. may specify a time limit for construction, alteration or enlargement of a structure to house a conditional use.

No construction is proposed. However, some life safety improvements may be required. The applicants are responsible to comply with any such requirements. **Affirmative finding**

12. may specify hours of operation and/or construction to reduce the impact on surrounding properties.

B&B's typically are 24 hour/day and up to a 7 days a week operation. If approved, arrivals are recommended to commence after 7:00 am and cease after 10:00 pm to preserve characteristic neighborhood quiet. **Affirmative finding as conditioned.**

13. may require that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.

Footnote #4 in Appendix A informs that not more than 3 rooms may be let for that purpose in the RL district. One room as proposed is within this limitation, however, if in the future any additional bedrooms are proposed, the applicant is required to return to the Board for further review and consideration. Previous permit reviews have illustrated that parking limitations have functionally limited consideration of additional room rentals. **Affirmative finding as conditioned.**

14. may consider performance standards, should the proposed use merit such review.

Not applicable to the subject permit request.

15. *may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

As proposed and conditioned it does not appear that any additional conditions are necessary. **Affirmative finding as conditioned.**

Sec. 4.4.5 (c) Permitted and Conditional Uses

A Bed and Breakfast is a Conditional Use in the RL zoning district.

Appendix A – Use Table has 2 footnotes for Bed and Breakfast Use:

Footnote #4 *….no more than 3 rooms permitted to be let in the RL district.*
The application proposes one bedroom.
Footnote #6: *Must be owner occupied.*
The owner applicants live at the subject property.
Affirmative finding

Article 5: Citywide General Regulations
Sec. 5.1.1 Uses
(d) Conditional Uses
A conditional use is listed in any district where denoted by the letters "CU" in Appendix A – Use Table. Such uses may be permitted by the DRB only after review under the conditional use provisions provided in Article 3, Part 5, such further restrictions as the DRB may establish and such additional requirements as may be established by this ordinance such as but not limited to dimensional and intensity imitations, performance and design standards, and parking requirements.
A Bed and Breakfast is a Conditional Use in Appendix A, Use Table, for the RL District. The project meets the two footnote requirements; see Sec. 4.4.5(c), above. The subject parcel, however, does not at present meet the parking requirements for the proposed use; however, as proposed with what is in effect "valet" parking the proposal can be approved. **Affirmative finding as conditioned.**

Sec. 5.2.7, Density and Intensity of Development Calculations
The application is for a change-of-use to a specialty residential use. It is viewed the same as a single dwelling unit for density/intensity purposes.
Affirmative finding

Article 7: Signs
No signs proposed. Any signage will require a separate sign permit. Any signage will be required to meet the standards of this article and specific standards of the zoning district.
Affirmative finding as conditioned.

Article 8: Parking
Sec. 8.1.1 Purpose
It is the purpose of this article to:

(a) Ensure there are adequate parking and loading facilities to serve the use or uses of the property;
(b) Ensure that parking facilities are designed to provide proper circulation, reduce hazards to pedestrians, and protect the users of adjoining properties from nuisance caused by the noise, fumes, and glare of headlights which may result from the operation of vehicles parking off the street;
(c) Reduce congestion in the streets and contribute to traffic safety; and
(d) Encourage alternate modes of travel that will reduce dependence upon the single-occupancy automobile.

Table 8.1.8-1 Minimum Off-Street Parking Requirements
Required parking is three spaces as follows:

Single family residential use (Neighborhood Parking District) requires 2 parking spaces.
Bed and Breakfast (per room, in addition to single-family residence) 1 per room; 1 required.

Total parking requirement: 3 parking spaces.

Provided parking: 2 spaces are provided on-site (in tandem in the single-lane driveway.) Thus a one space waiver is required to account for the third space.

Waiver: The applicant includes several reasons for mitigation of the parking demand/requirement. As no more than two spaces in tandem are counted toward the three space requirement, the only reasonable factor in granting the waiver is to require "valet" parking. That is, as proposed, when the additional (third) car is parked in the driveway the car's keys are made available in the house and that the owners are present to facilitate shuttling vehicles.

The on street residents only parking proposal and consideration of the ownership of one vehicle are not practical, reasonable or enforceable provisions to grant a parking waiver. No on street parking in any manner can be allocated to a specific individual use and resident only parking could be discontinued at any time by DPW and the BPD. In addition, during snow periods no on street parking is allowed. As for the one vehicle ownership, it is not possible to determine if and when another vehicle is purchased or whether a future owner would only have one car. Further, if the (current or future) resident family grows or the owners' children return from college, it would be very difficult to limit or know how many vehicles are owned. Thus, conditioning the "valet" system proposal can be used to support the granting of the waiver. This precedent has been acceptable in previous review: See 204 South Willard Street, ZP 1209942CU. As the bed and breakfast will only operate while the owners are present, stacked parking per Sec. 8.1.14 is acceptable. A written guarantee must be filed with the Planning & Zoning Department ensuring that an attendant will always be present when the parking area is in operation.
Affirmative finding as conditioned.

Article 13: Definitions
Bed and Breakfast: *An owner-occupied residence, or portion thereof, in which short-term lodging rooms are rented and where only a morning meal is provided on-premises to guests.* The proposal did not indicate whether a morning meal would be provided. However, if it is the applicants are responsible to meet any health requirements for food handling. **Affirmative finding as conditioned.**

II. Conditions of Approval

1. This approval is for a one bedroom Bed and Breakfast use. The applicant will allow Code Enforcement to periodically confirm that the use is limited to the one bedroom rental limitation. This may include review of web-based advertising, posted guest comments, or response to neighborhood complaint.
2. The Bed and Breakfast must be, and remain, owner occupied.
3. This approval includes a one space waiver allowing acceptance of a 3-vehicle stacked parking arrangement. A written guarantee must be filed with the Planning & Zoning Department ensuring that an attendant will always be present when the parking area is in operation.
4. It is recommended that guests' arrival and departures be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.

5. All guest parking shall be on-site and off-street.
6. Any signage will require a separate sign permit. The applicant is advised to consult with the Office of the Assessor with regards to the Business Personal Property requirements.
7. If a morning meal is provided the applicants are responsible to meet any health requirements for food handling.
8. The applicant shall consult with the Office of the Assessor with regards to the Business Personal Property requirements.
9. The applicant shall provide documentation that they have contacted the Business Tax Section of the Vermont Department of Taxes regarding the requirements for rooms & meals taxation. For further information the applicants should refer to http://www.state.vt.us/tax/pdf.word.excel/legal/regs/Final%20MR%20regs.2010.pdf

Standard Permit Conditions 1-15.

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 within one year of approval. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a building permit was not required) by within two years od approval, 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 two 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.

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Description to Accompany Conditional Use Permit Application

Conditional Use Permit for B&B

92 Brookes Avenue

Owner/occupiers: Dean Corren & Cindy Wolkin

Proposed Use:

To occasionally rent a spare bedroom in our house to an individual or couple.

This use is expected to be occasional, typically on the weekend, but could be for as long as a week or two. Probable usage would be 6 to 12 weekends per year.

This is a fairly large owner-occupied house, and we can easily accommodate the guests. Our children have moved away or are in college.

Guests will be pre-screened and required to follow appropriate rules so that there is no noise or other untoward indication of the presence of our guests. We will be present to ensure that there are no negative impacts on our neighbors, just as we would wish for ourselves.

The owner-occupiers would host the guests, with no employees.

Compliance with Burlington Comprehensive Development Ordinance Sec. 3.5.6:

This proposed use will comply with the applicable review criteria as follows.

- The proposed use requires no enlargement or alteration of the house.
- The occupancy of the house will still be far below its capacity.
- The character of the house, yard, and area will be unaffected from the present residential purpose.
- The area of the spare bedroom is 140 square feet, as shown in the floor plan in Figure 1. (Shaded areas are not available to guests.)
- The impact of extra traffic, typically, one or two additional car trips on the street, usually during off-hours on a weekend, will be insignificant.
- There will be no signage. The house has a street number that is visible from the street, and guests will be clearly directed to the house and its driveway to avoid any confusion.
- Parking:
    - Figure 2 shows the existing lot plan and driveway.

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- There is a driveway suitable for parking that can easily accommodate at least 4 cars for off-street parking, as shown in Figure 2, below.
- There is also a one-car garage.
- The owners' car (with its resident parking sticker) can also be parked on the street.
- We own one car, and neither uses a car to get to work. Our car is not used on most days.
- With a guest couple, there would typically be one guest car, so with our existing car, the typical maximum total number would be two. In the case the guest couple arrives in two cars, there would be three total.
- In any case, we would require that any car keys are left in house available to us so we could move cars if necessary.

→ • If a parking waiver would be required in this case, this is intended to serve as a parking management plan for a waiver application.

- Table 8.1.8-1, Minimum Off-Street Parking Requirements, appears to require one parking space per room for a bed and breakfast use, or in this case, one additional space beyond the owners' required two spaces for a total of three.
- In practice, this would typically be two spaces total, since the owners only own one car, and are dedicated to that limit.
- The owners can park their (resident permit sticker) car on the street, so typically only one car will actually need to be in the driveway.
- Three parking spaces (actually up to five) can be easily accommodated in tandem, as shown in Figure 2, along with our plan to require that the keys be available in the house, and to shuttle the cars ourselves if it becomes necessary. This statement is intended to serve as our written guarantee (in accordance with the Comprehensive Development Ordinance Sec. 8.1.14) that we will always be present when there is more than a single car in the driveway, and thus a chance of needing to shuttle vehicles.

Owners: Dean Corren Cindy Wolkin

Date: 9/17/13

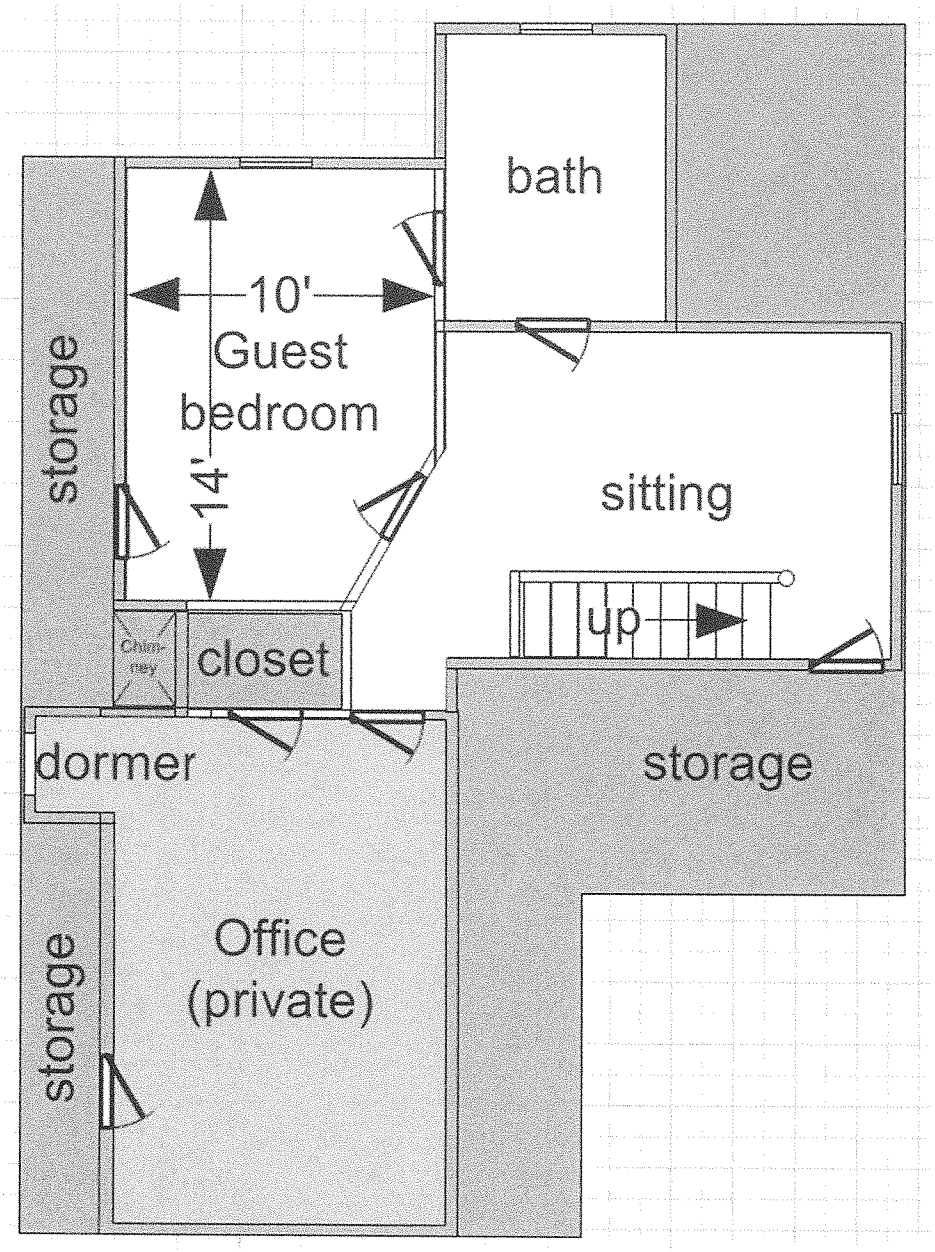

Figure 1. Floor Plan of Proposed Guest-Use Rooms at 92 Brookes Ave.

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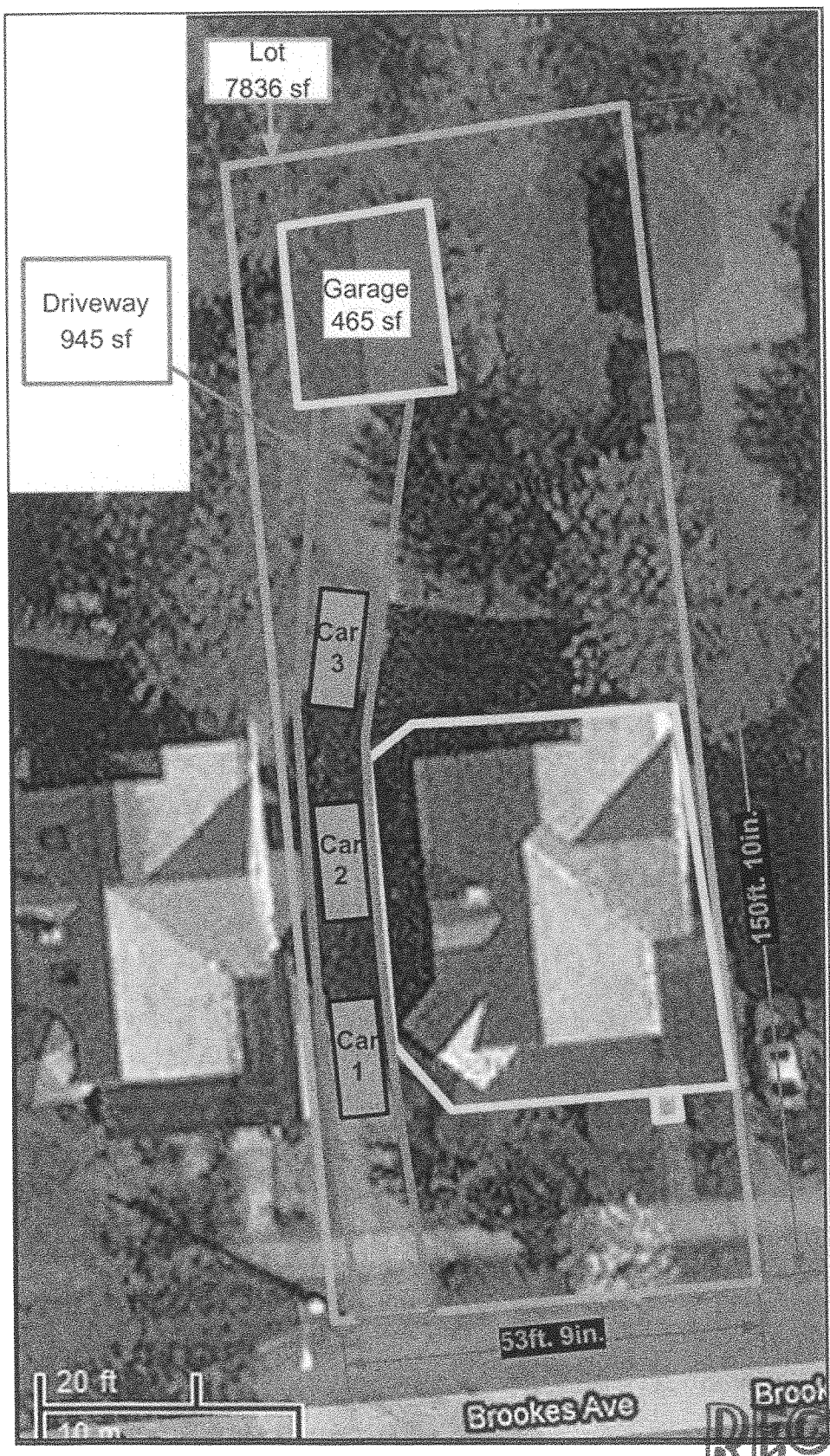

Figure 2. Lot Plan of 92 Brookes Ave.

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