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June 15, 2010

Mr. Ken Lerner, Zoning Administrator
City of Burlington, Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

Re: Request for Extension of 05-401MA/CA; 237 North Avenue (Packard Lofts)

Dear Ken,

Please consider the following information regarding the Hartland Group's request to extend the permit referenced above and in response to a number of issues raised by those that oppose the project and in the staff comments issued on June 11, 2010.

1. **The time limit to request an extension has not already expired.**

Contrary to Mr. Bjerke's interpretation of §4449(a)(3), it is not a legislative overruling of the *Preseault* decision and in fact it has no reasonable relationship to Hartland's request. §4449(a)(3) sets the time a permit becomes valid and is aimed at ensuring that construction of a development does not occur before an appeal period expires, or in the event of an appeal, providing an opportunity to obtain a stay or injunction of the permit. Extensions of permits are governed under §4.1.8 1994 BZO.

2. **Preseault has not been overruled.**

I will discuss in more detail below how Hartland Group's rights have vested in the 1994 BZO and the permit issued under it. It should be noted that *Preseault* is still good law and has been repeatedly cited by the Vermont Supreme Court, including in the recent decision of *In re: Keystone Development Corp.*, 2009 VT 13 (April 21, 2009). *Preseault* concerned balancing the developer's rights to develop according to the terms of a heavily litigated permit with a municipality's rights to regulate land use and to change land use regulations over time. The factual situation in *Preseault*, as in the present case, did not present the question of when the permit first became effective or valid; it raised the question of how long after that date the permit remained valid so that the developer still had the right to pursue the project that was originally permitted. The law in the State of Vermont is clear:

[W]here a valid permit is issued for a specified period, and where actual construction is delayed by litigation ... *a permittee otherwise proceeding in good faith is entitled to reissuance of that permit*, even where the zoning was meanwhile changed so that the project is nonconforming.

In re: Keystone Development Corp., 2009 Vt. 13, _ (April 21, 2009) citing *Preseault* (emphasis added). The evidence demonstrates that the Hartland Group has proceeded to develop this project in good faith and is entitled to a permit extension.

3. DRB's review of Hartland's request is limited by the lack of standards for substantive review in BZO permit-extension regulation.

It is also important to note that the provisions for permit extension in the 1994¹ BZO provide no guidance to the permittee or the DRB regarding substantive standards or criteria to apply to permit-extension requests. The 1994 provision simply states that the zoning permit is valid as long as “work or action authorized” by the permit commences within one year, and is complete within two years of the date of issuance “unless an extension of time not to exceed one (1) year is approved in advance after public hearing by the [DRB].” § 4.1.8 (1994). Thus, if any work or action occurred, the DRB’s authority is limited: it must approve the extension in advance of the expiration of the two-year time limit after holding a public hearing.

The only question here is whether *any* work or action has occurred, not *how much* work or action. Indeed, beyond the issue of whether any work or action occurred, there is no substantive standard in the BZO to apply to a review of an extension request. The BZO defines work to include “conducting of *physical operations of any kind* in preparation for or in pursuance of construction.” §4.1.10 1994 BZO (Emphasis added). “Action” is not defined in the 1994 BZO, but the Vermont Supreme Court has found that acts demonstrating a developer has proceeded in “good faith” under a permit include incurring “architectural, surveying, and legal expenses.” *Preseault v. Wheel*, 132 Vt. 247, 253 (1974). I’ve attached photos and other documentation showing some of the work and action the Hartand Group has conducted to advance this project.

The Vermont Supreme Court has clearly stated that allowing a zoning board to make decisions that are not guided by proper standards raises three constitutional issues: first, an unconstitutional delegation of legislative power to administrative officials; second, equal protection of the law; and third, due process. *In re Handy*, 171 Vt. 336, 345-46 (2000). In *Handy*, the Court concluded that the statute failed to provide the proper standards and thus ran afoul of all three constitutional problems. *Id.* at 346-49. More recently, the Supreme Court addressed the problem of standardless zoning bylaws in *In re Appeal of JAM Golf, LLC*, 2008 VT 110, ¶ 13. In *JAM Golf*, the Court emphasized the due process concerns that flow from such bylaws, and expressed the test for evaluating whether a zoning ordinance provides proper guidance:

Zoning ordinances must “specify sufficient conditions and safeguards” to guide applicants and decisionmakers. *Town of Westford v. Kilburn*, 131 Vt. 120, 122,

¹Similarly, §3.2.9 2008 BZO contains no standards.

300 A.2d 523, 525 (1973). We will not uphold a statute that “fail[s] to provide adequate guidance,” thus leading to “unbridled discrimination” by the court and the planning board charged with its interpretation. *Id.* at 125, 300 A.2d at 526; see also *In re Handy*, 171 Vt. 336, 348-49, 764 A.2d 1226, 1238 (2000); *State v. Chambers*, 144 Vt. 234, 239, 477 A.2d 110, 112-13 (1984).

Id.

Similarly, in *JAM Golf*, *Handy* and other cases, the Court has rejected attempts by the lower courts or the municipal planning bodies to create standards that are not expressed in the relevant statute or regulations. In *Handy*, the Environmental Court had interpreted the relevant statute to create two standards: one that would apply to zoning applications filed after public notice, but before adoption, of new zoning bylaws, and another for zoning applications filed after the town’s adoption, but before the effective date, of new bylaws. 171 Vt. at 337. The Supreme Court rejected the Environmental Court’s interpretation of the relevant statute as unsupported by the plain language of the statute, 171 Vt. at 341, and concluded that the “statute can be construed only to give selectboards unfettered discretion,” *id.* at 344. Importantly, because the statute did not contain the appropriate guidance, the Court stated that it did not have the power to “create the necessary standards that would contain discretion.” *Id.* Creation of the standards by the Court would “offend all three of the reasons why a standardless delegation is unconstitutional” just as much as leaving the standardless discretion in the hands of the planning boards would. *Id.* at 349.

Two conclusions regarding BZO’s permit-extension provision arise from the *Handy* and *JAM Golf* line of case law. First, the DRB’s decisions regarding permit extension provisions must be guided by only those criteria that are contained within the bylaw itself. If the DRB reaches beyond the criteria provided by the ordinance and attempts to evaluate substantive aspects of the developer’s project or existing permit, the result will be a violation of the property owner’s due process rights. As the *Handy* court warned, “a grant of flexibility to the municipality is constitutional only if it is accompanied by some ability of landowners to predict how discretion will be exercised and to develop proposed land uses accordingly. Flexibility cannot be a synonym for ad-hoc decision making that is essentially arbitrary.” In short, the only criteria that may guide the DRB in the Hartland Group’s permit extension request are whether *any* work or action on the project commenced. The terms of the provision do not qualify how much work or action must be carried out under the permit, thus the DRB does not have the discretion to create some threshold amount of work or action that must be carried out in order for a permit to be eligible for an extension.

4. The DRB has no authority to impose the conditions recommended by Planning and Zoning staff or Mr. Bjerke.

The staff recommendation and Mr. Bjerke’s recommendation to place conditions on approval of the permit extension request must be rejected because the DRB has no authority to impose these conditions in its decision regarding the permit-extension request.

The staff recommendation to set a condition requiring the zoning permit fee to be paid by July 1, 2010 is an impermissible attempt to alter the existing permit condition attached to the

permit in which Hartland's rights have vested. In addition, there is no basis to conclude that the timing of the payment of the fee is "reasonable" or "necessary to implement" the zoning bylaws or municipal plan, or that it is reasonably related to protecting the public health, safety, or general welfare.

By statute, the DRB's authority to impose conditions is limited. It "may attach additional reasonable conditions and safeguards" to a decision in favor of an applicant, "as it deems necessary to implement the purposes of this chapter [Chapter 117. Municipal and Regional Planning and Development] and the pertinent bylaws and municipal plan then in effect." 24 V.S.A. § 4464(b)(2). Additionally, because all zoning authority is derived from the state's police powers, any exercise of zoning authority must be "reasonably related to public health, safety, morals or general welfare." *Galanes v. Town of Brattleboro*, 136 Vt. 235, 240 (1978).

In this case, no connection exists between requiring the Hartland Group to pay a fee by a certain date and the City's implementation of §4.1.8 BZO (1994). Indeed, the Hartland Group is already required to pay the fees under its existing zoning permit, and there is no reasonable connection between a proper exercise of the City's police power and requiring that these tasks be completed by July 1. Imposing this timeframe will not serve any authorized purpose. The condition to pay the fee is already part of the Hartland Group's permit, and the July 1 date would be merely an arbitrary—and therefore unauthorized—exercise of the DRB's authority to impose reasonable permit conditions. It would also amount to an attempt to place a new condition on the existing permit – a permit in which Hartland's rights have vested.

Similarly, Mr. Bjerke's condition request should be rejected because the 1994 BZO contained no authority for the DRB to require a bond as a condition on a permit.² As is discussed in more detail below, Hartland's rights in the 1994 BZO and the permit issued there under have vested, and the DRB may not subject this project to the 2008 BZO.

5. The DRB is barred from evaluating the project under any substantive criteria contained in the 1994 or the 2008 Burlington Zoning Ordinances.

Hartland's request to extend the existing zoning permit is not a new zoning application and the Hartland Group has a vested right to develop the project in accordance with the 1994 Burlington Zoning Ordinance. Further, because this project's compliance with the 1994 ordinance has been fully litigated and there is a final decision on the merits, any attempt to evaluate the substance of the project under the 1994 ordinance would violate the principles of law of the case, *res judicata*, and collateral estoppel and unlawfully undermine the decisions of the Vermont Environmental Court and Vermont Supreme Court.

a) Vested Rights.

The doctrine of vested rights dictates that the DRB cannot reapply any of the substantive use or site plan criteria of the 1994 BZO or apply 2008 BZO standards to the Hartland Group's zoning permit for the North Avenue development. Vested rights doctrine in property law concerns the question of when a developer has acquired a right "to complete a development

² The only reference to Performance Bond in the 1994 BZO is in the definitions section of the ordinance.

conceived before [a] proposed or actual change in regulations.” Delaney, J., *Vesting Verities and the Development Chronology: A Gaping Disconnect?*, 3 Wash. U. J.L. & Pol’y 603, 606-07 (2000). “A vested right to use private property is a right that is immune to the governmental exercise of its police power.” Hanes, G. P. & Minchew, J. R., *On Vested Rights to Land Use and Development*, 46 Wash. & Lee L. Rev. 373, 375-76 (1989). In Vermont, a developer acquires a vested right to develop property in accordance with a certain set of zoning regulations, or other law governing development, at the time the developer submits a complete permit application to the relevant permitting authority. *Smith v. Winhall Planning Comm’n*, 140 Vt. 178, 181-82 (1981). Once the application is submitted, then the developer’s rights to develop in accordance with the current zoning ordinance are vested, and subsequent changes to the zoning ordinance will not be applied to the permit application.

It would violate Hartland’s vested rights to now attempt to reevaluate the project’s conformance with the 1994, or attempt to apply the 2008, BZO because the permit was applied for, and granted, under the 1994 ordinance (as amended). Thus, the Hartland Group has a vested right to complete the project according to the 1994 ordinance’s substantive criteria as applied in the initial permit decision and subsequent litigation. Given that the Hartland Group’s permit application was submitted and complete in 2005, there is no argument that the 2008 BZO could apply to the development.

In sum, because the Hartland Group submitted its full and complete permit application under the 1994 BZO, it has a vested right to complete its development in accordance with the substantive provisions of that ordinance, as already applied in the initial permit decision. The permit-extension request cannot be construed as a new zoning application because doing so would involve an incorrect interpretation of the permit-extension provision of the BZO.³

b) *Law of the Case.*

The law-of-the-case doctrine entails that a court’s decision as to a rule of law in a given case “continue[s] to govern the same issues in subsequent stages in the same case.” *Gardner v. Jefferys*, 2005 VT 56, ¶ 14, 178 Vt. 594 (quotations omitted). For example, if a court decides that a certain interpretation of the law is appropriate in a summary judgment proceeding, then that same interpretation will apply to the case if it proceeds to trial (though a court retains the power to revisit legal issues if appropriate). Similarly, when the Supreme Court remands a case back to a trial court, the Supreme Court’s conclusions about all legal issues are “the law of the case on the points presented throughout all the subsequent proceedings.” *State v. Gomes*, 166 Vt. 589, 591 (1996). Additionally, where no new evidence is taken, factual questions are also resolved by the law-of-the-case rule. *Coty v. Ramsey Assocs., Inc.*, 154 Vt. 168, 171 (1990).

³ It would contravene several tenets of statutory interpretation to construe the permit-extension request under the applicable provision of the BZO as a new zoning permit application. If permit-extension requests were treated as new zoning permit applications, then the extension provision would be redundant because it would serve no separate and independent purpose. Courts will not interpret statutes or regulations in ways that render certain provisions redundant or superfluous. E.g., *State v. Fisher*, 167 Vt. 36, 44 (1997); *Committee to Save the Bishop’s House v. Med. Center Hospital of Vt.*, 137 Vt. 142, 153 (1979).

The legal issues of compliance with the applicable zoning criteria concerning the Hartland's permit have been decided by the courts, and those decisions continue to govern this zoning permit. The purpose of the law-of-the-case rule is to provide a conclusive end to legal issues and to avoid the situation where "there would be no end to the litigation until the ability of the parties or the ingenuity of their counsel were exhausted." *Id.* (internal quotation omitted). Thus, to the extent any of the parties to the prior litigation attempt to turn the permit-extension-request proceedings into a continuation or relitigation of the substantive matters that were settled in the zoning decision and subsequent appeals, these attempts should be rejected under the law-of-the-case rule.

c) Res Judicata and Collateral Estoppel.

The related doctrines of res judicata and collateral estoppel bar any other parties to the prior litigation from raising issues with the zoning permit that were actually settled, or could have been raised and settled, in the 2005 zoning decision and the litigation that followed. These principles are "based upon requirements of justice and public policy which reflect the consideration that there be an end to litigation after each party has had a full and fair opportunity to present all pertinent facts." *In re Shelburne Supermarket, Inc.*, 2010 VT 30, ¶ 19 (quotation omitted).

Collateral estoppel is the principle that prevents parties from relitigating any issues that have been actually litigated in a previous proceeding. The criteria for applying collateral estoppel, or issue preclusion, are:

- (1) preclusion is asserted against one who was a party in the prior action;
- (2) the same issue was raised in the prior action;
- (3) the issue was resolved by a final judgment on the merits;
- (4) there was a full and fair opportunity to litigate the issue in the prior action; and
- (5) applying preclusion is fair.

In re Hartland Group North Ave. Permit, 2008 VT 92, ¶ 7.

Res judicata operates to prevent the litigation or relitigation of a broader universe of claims than collateral estoppel does because it bars not only those issues that were actually raised and decided in previous proceedings, but also all issues that could have been raised. *In re Tariff Filing of Central Vt. Pub. Serv.*, 172 Vt. 14, 20 (2001); see *Bain v. Hofmann*, 2010 VT 18, ¶ 9 (stating that res judicata bars parties from litigating issues that could have been raised in prior proceedings). Under the rule of res judicata, also known as claim preclusion, "a final judgment in previous litigation bars subsequent litigation if the parties, subject matter, and cause(s) of action in both matters are the same or substantially identical." *Faulkner v. Caledonia County Fair Ass'n*, 2004 VT 123, ¶ 8, 178 Vt. 51.

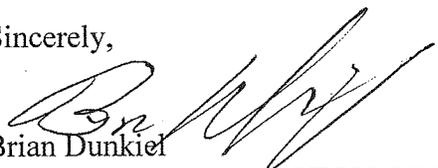
It is important to recognize that res judicata is a fundamental principle of our judicial system, which serves multiple important policy goals, and is therefore applied strictly when the criteria for its application are satisfied. See *Faulkner*, 2004 VT 123, ¶ 10. The policies served by claim preclusion are:

(1) to conserve the resources of courts and litigants by protecting them against piecemeal or repetitive litigation; (2) to prevent vexatious litigation; (3) to promote the finality of judgments and encourage reliance on judicial decisions; and (4) to decrease the chances of inconsistent adjudication.

Id. ¶ 9 (quotation omitted). As both the Vermont and the United States Supreme Courts have stated, enforcement of res judicata “ ‘is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked if conclusiveness did not attend the judgments of such tribunals.’ ” *Id.* (quoting *Nevada v. United States*, 463 U.S. 110, 129 (1983)). Given these strong statements from the state’s and the nation’s highest courts, the DRB should be aware of the importance of recognizing the application of this doctrine to the present matter, and it should respect the finality of the Vermont Supreme Court’s decision in establishing the validity of the Hartland Group’s zoning permit for the North Avenue project.

Thank you for considering these issues. Please do not hesitate to contact me if you have any questions.

Sincerely,



Brian Dunkiel

SHEMS DUNKIEL RAUBVOGEL & SAUNDERS PLLC
Attorneys for the Hartland Group

Enclosures











Miro Weinberger

From: Joel Page [joel@scottpartners.com]
Sent: Monday, January 05, 2009 9:18 AM
To: Miro Weinberger
Subject: RE: Packard Lofts - Middle Building Plans
Attachments: Packard Lofts - Middle Options.pdf

Miro:

Attached are some options for the middle building showing elevator and stair reconfigurations to meet exiting requirements. I thought these had been sent earlier. Drawing 1 shows the original design. Adding doors to this stair will not work from an exiting stand point. Drawing 2 shows a shift in location for the elevator and stair. This will have an impact on that face of the building due to the stair well protruding out toward the street. Drawing 3 also shifts the stair and elevator and has the least impact on the original design. It seems to work well.

Please call if there are any questions.

Thanks

Joel R. Page, AIA

Scott + Partners, Inc.
20 Main Street
Essex Junction, VT 05452
p: 802.879.5153
f: 802.872.2764

From: Miro Weinberger [mailto:Miro@hartlandgroup.biz]
Sent: Friday, January 02, 2009 5:16 PM
To: Joel Page
Subject: RE:

thanks Joel. I will get back to you with further thoughts.

I don't think I have been given the alternate middle stair layouts yet, have i? Last I heard tyler was going to look at whether putting doors on the stairs solved the vestibule issue.

Miro Weinberger
Hartland Group
Community Developers and Consultants, LLC
299 College Street
Burlington, VT 05401
P: 802-865-6991
F: 802-660-8018
www.hartlandgroup.biz

From: Joel Page [mailto:joel@scottpartners.com]
Sent: Tuesday, December 30, 2008 2:33 PM
To: Miro Weinberger
Cc: 'SCOTT PARTNERS Scott, Tyler'
Subject:

Miro:

Attached is an updated marketing plan for your review. The changes we discussed have been made. Please let me know if there are other changes to be made. Do you anticipate having a project logo at some point? If so we can add it to the sheets.

Have you made a determination on the desired middle building stair elevator layout?

Have a happy new year.

Joel R. Page, AIA

Scott + Partners, Inc.
20 Main Street
Essex Junction, VT 05452
p: 802.879.5153
f: 802.872.2764

Internal Virus Database is out-of-date.
Checked by AVG.
Version: 7.5.552 / Virus Database: 270.9.16 - Release Date: 12/9/2008 12:00 AM

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.552 / Virus Database: 270.10.2/1874 - Release Date: 1/4/2009 4:32 PM



Date: July 7, 2008
Project: 237 North Avenue
Burlington, Vermont

Schematic Outline Specifications

DESIGN DEVELOPMENT NOTES – These items are not addressed within the Schematic Estimate.

- S+P to confirm that not having an ADA accessible, affordable unit will not be a code or Zoning issue (may require a minimum of 5% and or 1 unit, whichever is greater).
- Café equipment specifications.
- Fire Hydrant flow tests to confirm if fire pump is required.
- Power service entrance needs to be reviewed to see if pole mounted transformers will provide adequate power to facility.
- Reuse of existing water service into building should be considered as cost saving measure.
- Reuse of existing sanitary exit pipe should be explored as cost saving measure.
- Provisions required for trash and recycle storage and management.
- Thermal breaks at the cold and warm roof junctures of the parking garage roof will need to be explored.
- Confirmation of how mechanical & electrical "chase way" between the three buildings will occur.
- Provide consideration for long-life "ceramic" or "self-cleaning" paint at painted brick facades
- S+P to confirm 3/4" plywood at cold parking garage roof is acceptable as underlayment for roofing membrane.
- Explore green alternatives to PT rafters – there are some interesting new products.
- Confirm interior window trim detail.
- Explore thermal envelope requirements to meet Energy Star (Grade 1 installation of minimum IECC 2004 R-values). Optional LEED points for exceeding R-val requirements of 2004 IECC by at least 5%. For Climate Zone 6, there were some discrepancies in the info I found on-line but min requirements appear to be R-49 ceilings (but "commercial roof with all insulation above deck" is only R-20 so need to confirm what applies to us), R-21 walls (or R-15 cavity + R-5 sheathing), R-30 floors, R-10 (continuous) or R-13 (stud bay only) for basement walls, and R-10 slabs (to 4' deep). S+P should confirm.
- Options for R-21 Exterior walls:
 - R-21
 - R-21 batts
 - R-19 batts plus R 2.5 sheathing
 - R-15 batts plus R-5 sheathing
 - Spray-foam R-13 plus R-7.5 sheathing
 - Spray-cellulose R-13 plus R-7.5 sheathing
 - SIP walls
 - Insulated Concrete Forms

- All insurances (general liability, workman's comp, etc.) are included.
- Excludes Builder's Risk Insurance - To be provided by Owner.

02000 DEMOLITION

- Existing structure to be removed complete to west line of "East" building.
- Internal walls and roof of existing "East" building to be removed.
- Removal of existing utilities as noted on plans.
- Parapet cap at existing south wall to be salvaged for new wall.
- An allowance of seven thousand five hundred dollars (\$7,500) is carried for the removal of the 2nd slab (discovered during exploratory demolition).
- An allowance of five thousand dollars (\$5,000) is carried for temporary shoring of exterior walls of the remaining east building during demolition and reconstruction.
- Allowance for asbestos abatement of fifteen thousand dollars (\$15,000) and buried tank(s) removal of fifty thousand dollars (\$50,000).

02000 SITEWORK

- Shallow foundation design for parking garage with rigid insulation and 12" gravel base.
- Four foot (4'), insulated frost walls, 8" gravel base and slab on grade for West Building.
- Shallow internal footings for wood exterior walls and central steel columns in East Building.
- Storm water collection and retention via 3 tank design as indicated.
- Street lighting is carried as an allowance of twenty thousand dollars (\$20,000).
- Utility connections.
 - > Power, phone & cable via overhead across North Avenue to pole on SE corner with pole mounted transformers; underground to building; re feed house across road via underground. Re-feed home on SW end via overhead from Lakeview Terrace. An allowance of thirty thousand dollars (\$30,000) is carried for B.E.D. phone and cable installation fees.
 - > Water via new 6" line and tapping sleeve. Allowance of eighteen thousand dollars (\$18,000) is carried for City to do the work and remove existing (2) services
 - > Sanitary via new run beneath garage from central and east buildings, out to Manhole on North Avenue - Potential to reuse existing to be assessed during demolition. West building will be piped to Lakeview Terrace.
 - > Gas via Vermont Gas Systems. One central meter for the entire facility and an additional meter for the café are assumed.
- New city sidewalk as indicated on north side of Berry Street.
- Street crossing and ADA indicators.
- New curbing, as noted on plans.
- Resurface Berry Street entirely.
- New "bump outs" as indicated including across from Convent Square.
- Entrance walkways and stairs with metal rails (east end of building)
- Street lighting as indicated.
- Miscellaneous pavement markings, signage, etc. as noted on plans.
- Dumpsters to be provided by others.
- Erosion, safety & traffic control measures as noted on plans.
- Landscaping & Hardscapes

- Metal deck rail allowance of \$100 PLF installed.
- Curved canopy at West building entrance allowance of \$15,000
- Metal infilling of openings in south façade, east of Central Building, as per permit drawings.

Upgrade Options:

- Light weight deck canopies and "sun shade" allowance of \$45 PSF (per square foot, not per linear foot) installed.
- Screening of garage openings on south façade, west of central building.
- Vine climbing "mesh" at west building, south façade

06000: WOOD & PLASTICS

Structure:

- 2x6 wood, panelized exterior walls with OSB sheathing per exterior wall section #2 or #3. Pressure treated lumber at all wood to concrete connections.
- 2x4 pre-manufactured wood truss with metal mesh gussets at 24" O/C, depth as required for spans and ceiling variations.
- 1 1/8" "Advenice" decking, screwed and glued for all upper floor levels.
- 2x4 interior walls at stairs, corridors, common, unit interiors, etc. with OSB sheathing as required for shear.
- Party walls are double 2x4, individual plates and OSB sheathing between for shear & sound.
- 3/4" plywood at exposed garage roof as underlayment for roofing membrane.
- Carpet grade, pre-manufactured wood stairs throughout.
- Blocking as required for cabinets, handrails, door stops and miscellaneous accessories.

Exterior:

- Exterior decks via pressure treated lumber and 5/4" x 6" treated decking, stained.
- Rails as noted in STRUCTURAL

Interior Millwork:

- Brosco WM412 (3 1/2") casing for doors, painted.
- Brosco B688 (4 1/2") baseboard, painted.
- Windows to be drywall returns with natural finished birch hardwood sills and painted aprons.

Upgrade Options:

- 2x4 metal, panelized exterior walls per exterior wall section #1 (it is unclear how this will work structurally).
- Roof access (stairs, atrium glass, etc.) for roof top patios at West Building (3 private and 1 common) including metal rail system (\$100 PLF allowance) and roof patio pavers.
- Roof access (stairs, atrium glass, etc.) for roof top patio at Central Building (1 common) including metal rail system (\$100 PLF allowance) and roof patio pavers.
- Exterior deck surface of 5/4" x 6" composite decking
- Exterior deck surface of tongue and groove PVC or Mahogany (maintenance required) decking.

07000: THERMAL & MOISTURE

Roofing:

- EPDM ballasted system at all areas.
- Tapered insulation at all warm roofs, R-38 nominal

Siding:

- Access panels as required.

Windows & Glazing:

- Windows are priced with an allowance of \$20 PSF which assumes a reasonable quality (Harvey or equal), white, vinyl, double hung, fixed and casement windows with low E insulated glass, argon gas (U-value of 0.28 to 0.3) and screens.
- Door glazing as needed.
- 36" x 42" eased edge mirrors in all bathrooms.

Upgrade Options:

- Fiberglass windows (allowance).
- Metal clad, wood windows (allowance).
- Thermally-broken aluminum windows and deck sliders (allowance)
- West building entrance atrium (allowance)

09000 FINISHES

Drywall & Suspended ceilings:

- Single layer 5/8" on all walls and ceilings except at CMU locations and unless noted otherwise.
- Moisture resistant drywall at all bathroom & "damp" locations.
- Single layer 5/8" with 650 grid @ insulated portion of garage ceiling.
- Dual layer 5/8" for 2 hour rated assemblies (stairwells, etc.)
- Resilient channel @ all drywall ceilings and corridor walls.

Flooring:

- Per allowance as follows:
 - "A" - \$5.50 PSF.
 - "B" - \$3.75 PSF
 - "C" - \$2.50 PSF
- No flooring assumed in café.

Painting:

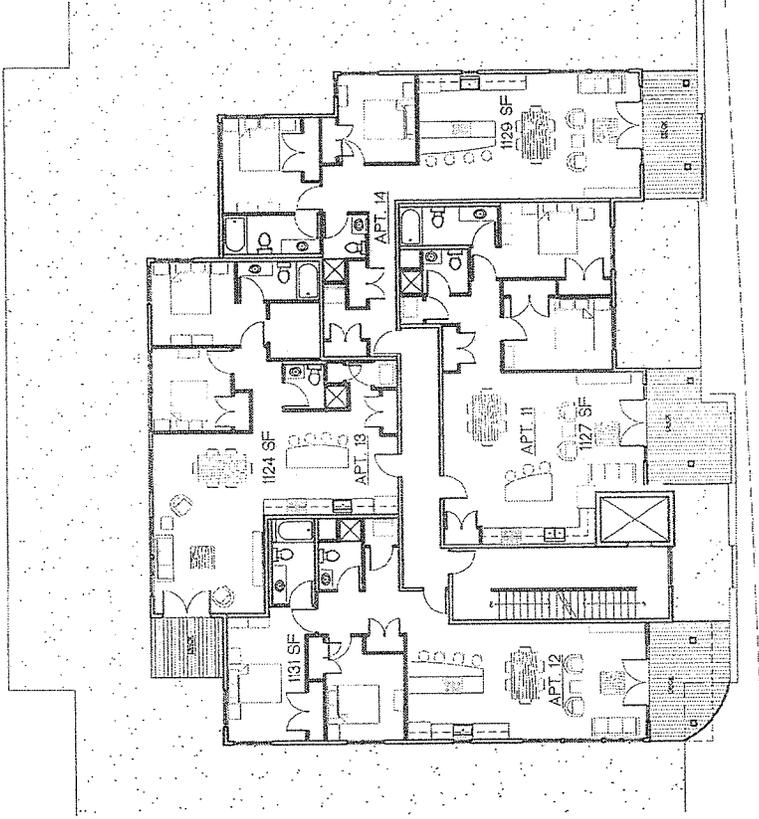
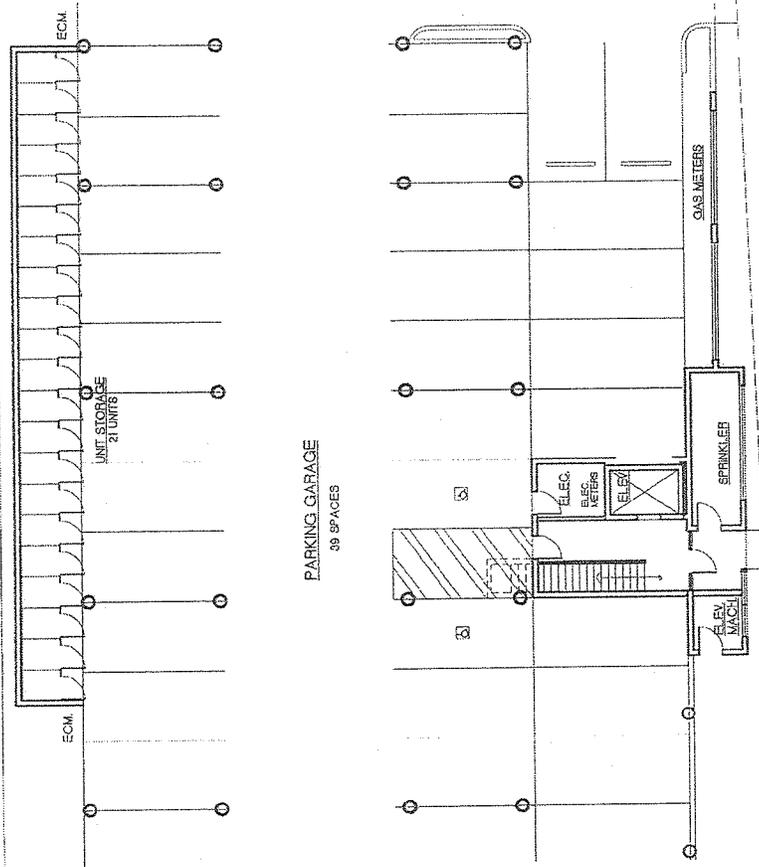
- Walls – one coat primer and two coats satin finish; single color but will not match ceiling.
- Ceilings – one coat primer, two coats flat, white or off white finish.
- Trim – window aprons, door casings, base board and interior doors are pre primed and painted with semi gloss paint to match interior walls.
- Window sills (stools) and miscellaneous wall caps are clear sealed hardwood.
- Common areas to receive three (3) color variations in addition to ceiling and trim colors.
- Exterior assumes five (5) colors.
- All paint to be Sherwin Williams "Harmony", Benjamin Moore: "Pristine Eco-Spec" and other coatings per LEED standards below.

Upgrade Options:

- Utilize vibration isolation clips for resilient channels to improve vertical STC rating.

10000 SPECIALTIES

- Fire Department lock box (assume 3).
- Fire extinguishers and cabinets in common corridors, parking garage & mechanical spaces to meet 75' maximum travel requirement.
- Fire extinguishers (1 each) in units
- 3 Centralized mail stops (one in each entry).



MIDDLE BUILDING - ENTRY STAIR CHANGES
ORIGINAL DESIGN

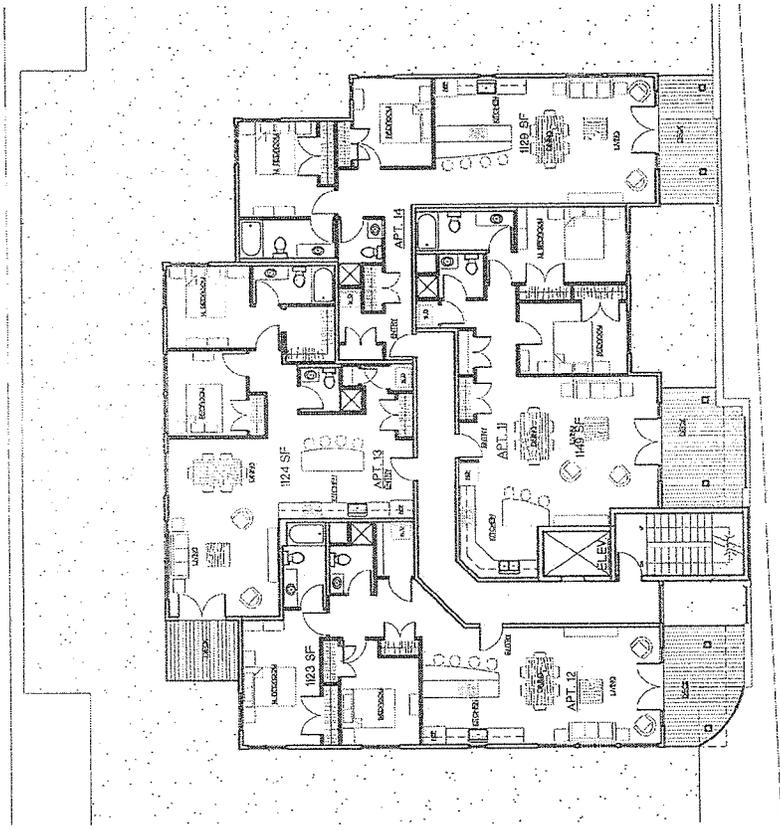
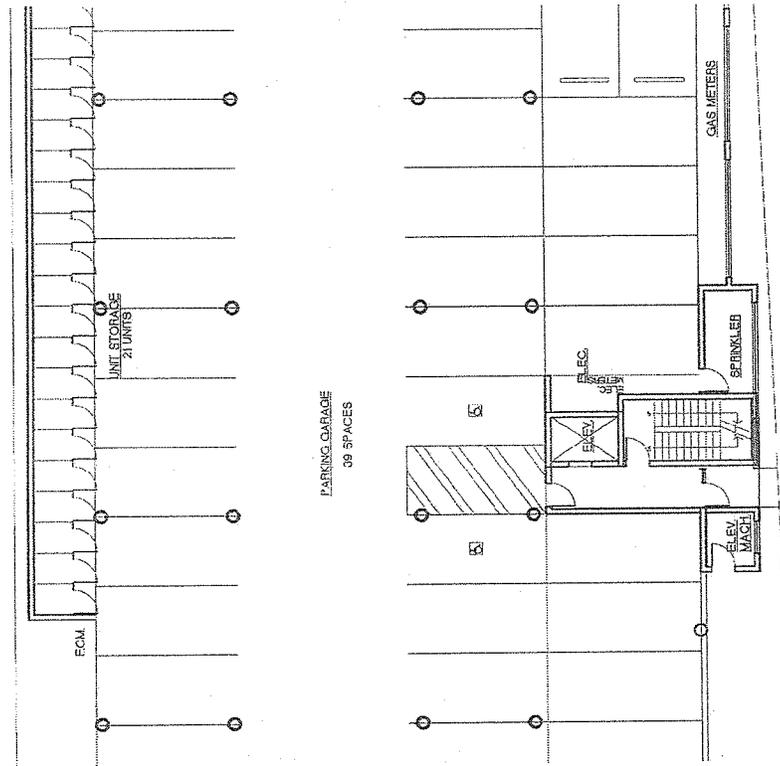
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237 NORTH AVENUE RENOVATION PROJECT
BURLINGTON, VERMONT

12/18/06



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ARCHITECTS

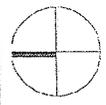
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MIDDLE BUILDING - ENTRY STAIR CHANGES
OPTION A

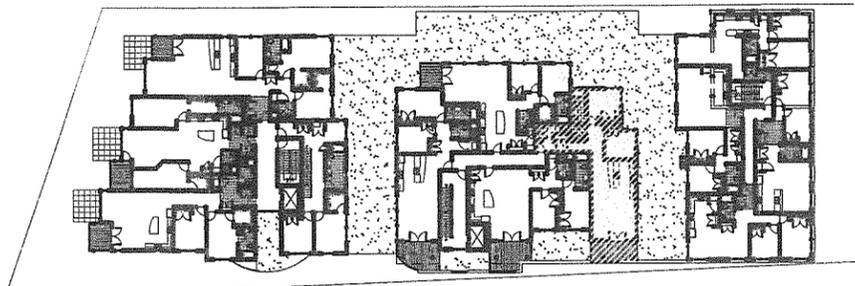
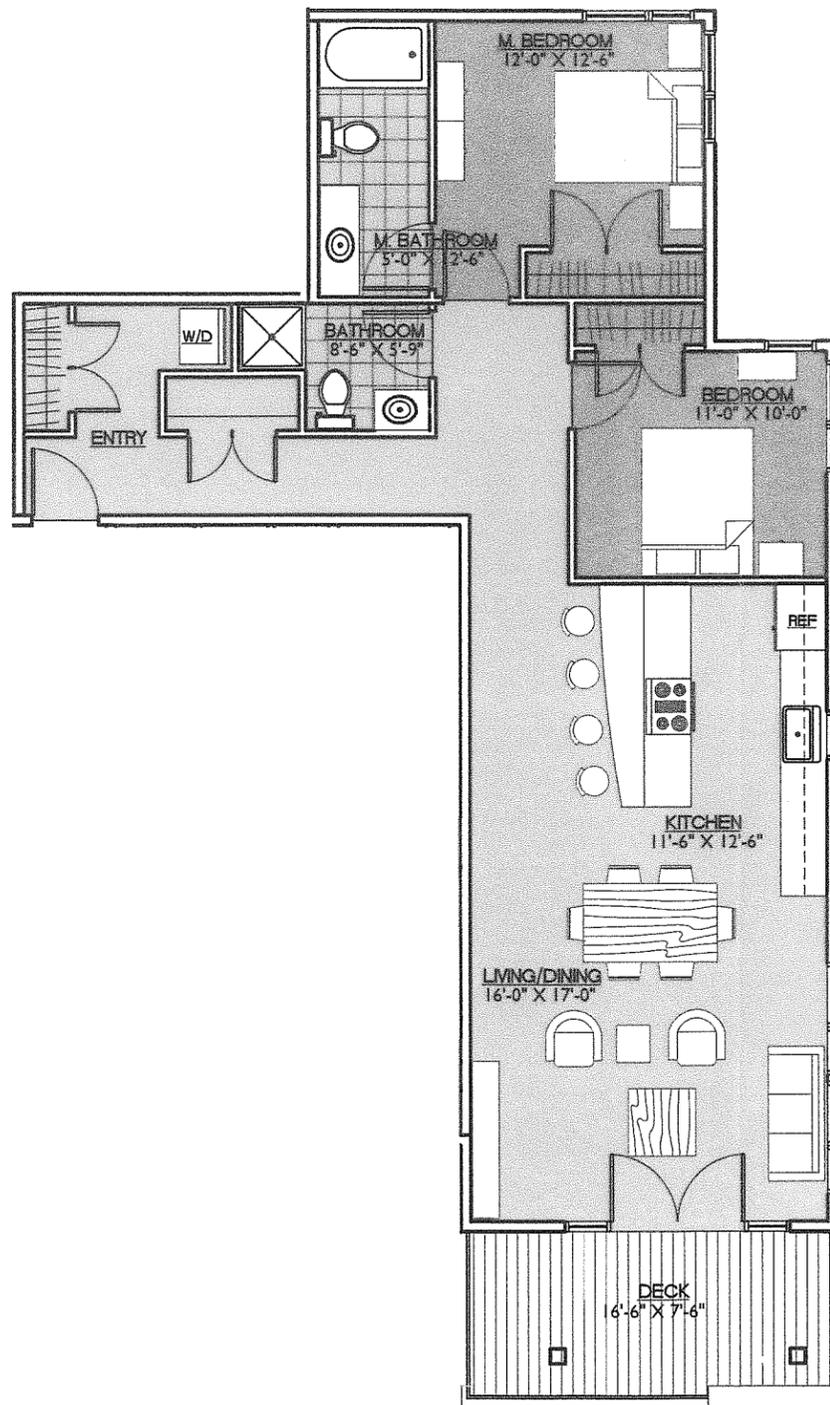
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APARTMENT 14
PROPOSED FLOOR PLAN

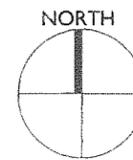
SECOND FLOOR

SQUARE FOOTAGE: 1129 SF

PACKARD LOFTS

BURLINGTON, VERMONT

02/05/09



DRAWING IS NOT TO SCALE AND SUBJECT TO CHANGE.

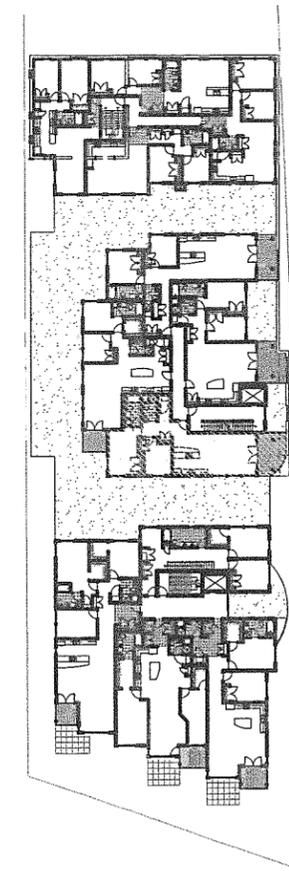
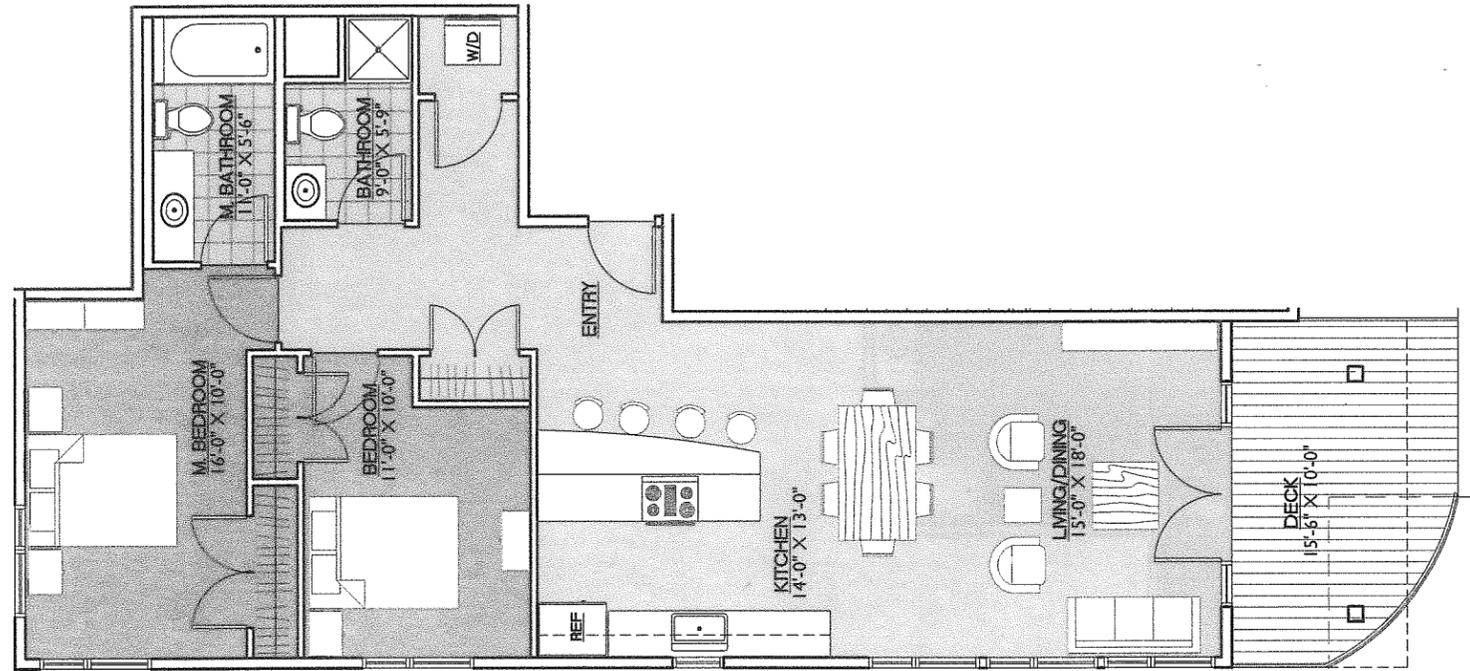
KEY PLAN

SCOTT + PARTNERS

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APARTMENT 12
PROPOSED FLOOR PLAN

SECOND FLOOR

SQUARE FOOTAGE: 1131 SF

PACKARD LOFTS

BURLINGTON, VERMONT

02/05/09



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KEY PLAN

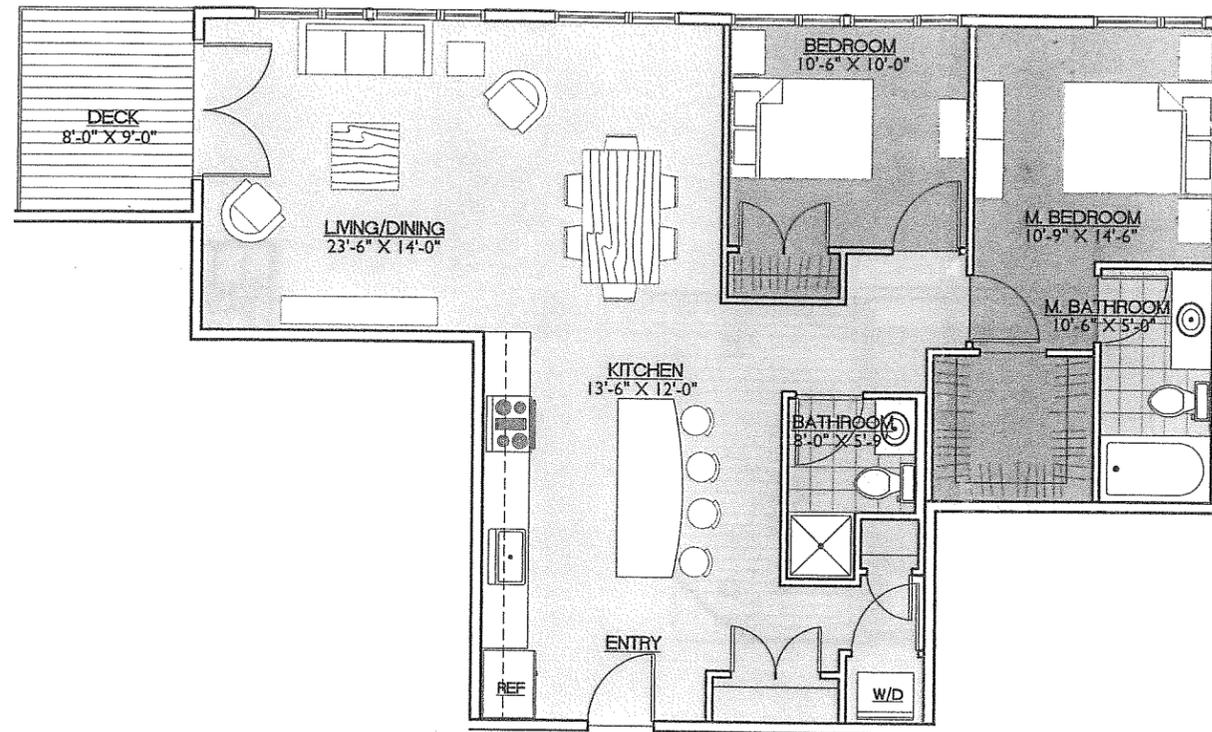
SCOTT + PARTNERS

ARCHITECTS

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 planning
 interiors



APARTMENT 13
PROPOSED FLOOR PLAN

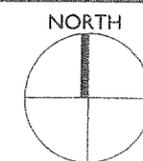
SECOND FLOOR

SQUARE FOOTAGE: 1124 SF

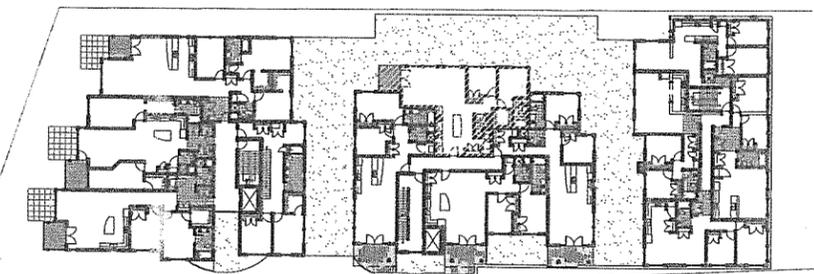
PACKARD LOFTS

BURLINGTON, VERMONT

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KEY PLAN

SCOTT + PARTNERS

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