

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

David White, AICP, Director
Ken Lerner, Assistant Director
Sandrine Thibault, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Associate Planner
Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



MEMORANDUM

TO: Development Review Board
FROM: Ken Lerner, Zoning Administrator 
DATE: October 4, 2011
RE: 12-0264AP; 125 Lakeside Ave.

Regarding the referenced appeal of staff's administrative determination, the appellant does not disagree with staff's position. Rather this is an attempt to provide affirmation from the Board that the interpretation is consistent with the CDO and thus to provide confirmation and assurance of this determination. The CDO provides for the administrative officer to refer questions of interpretation to the DRB under Section 2.3.3 (a) as follows:

The administrative officer may refer questions of interpretation to the DRB if it is determined that the answer to the question has a bearing upon the jurisdiction of the DRB. Any such referral shall be considered an appeal of a decision of the administrative officer.

While staff did not refer the interpretation to the Board as the applicant agreed and understood the determination, the applicant filed a request as an appeal in order for this item to be heard by the DRB.

This is acceptable with the understanding that this, or any, decision of staff and the Board can only provide a determination based on current regulations. No guarantee regarding potential use of this property can be assured as, not only is there no specific project being proposed, but future zoning regulations that effect use of this property very well may change.

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DEPARTMENT OF
PLANNING & ZONING

VIA HAND DELIVERY

August 26, 2011

Mr. David E. White
Director of Planning
Burlington Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

**Re: GP Burlington South, L.L.C.
0 Lakeside Avenue, Burlington, Parcel ID: 053-2-009-000**

Dear David:

As you know we represent GP Burlington South, L.L.C. which owns property on the south side of Lakeside Avenue currently used as a parking lot. As discussed, pursuant to Section 2.3.3(a) of the Comprehensive Development Ordinance (CDO), we would like to have the Development Review Board (DRB) review and uphold the determinations made by you regarding the property in your letter dated August 3, 2011, a copy of which is attached. We understand that the sole means for a referral to the DRB for such a review is an appeal of your determination. While we do not disagree with your determinations, we would like to ensure that your determinations are consistent with the DRB's interpretations of the facts and the CDO, and that there are no misunderstandings regarding the potential uses of the property in the future. The factual background and request are set forth in our letter to you dated July 25, 2011, which is attached.

Enclosed is the Notice of Appeal and check for \$135.

Please let me know if you need anything further. We request that this matter be heard at the earliest possible meeting of the DRB.

Very truly yours,



Liam L. Murphy, Esq.
lmurphy@mskvt.com

Enclosures

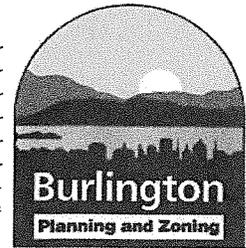
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c.c.: Molly Stolmeier
Robert Gagliardi

Department of Planning and Zoning

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www.ci.burlington.vt.us/planning

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Mary O'Neil, AICP, Associate Planner
Nic Anderson, Planning & Zoning Clerk
Elsie Tillotson, Administrative Assistant



Wednesday, August 03, 2011

Liam L. Murphy, Esq.
Murphy Sullivan Kronk
P. O. Box 4485
275 College Street
Burlington, Vermont 05406-4485

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DEPARTMENT OF
PLANNING & ZONING

RE: 125 Lakeside Ave, GP Burlington South. L.L.C., Parcel ID: 053-009-000

Dear Mr. Murphy,

This comes in response to your letter dated July 25, 2011 requesting an administrative determination regarding zoning requirements for the above referenced parcel.

It is important to point out that it is impossible for us to offer any long-term or absolute assurances regarding permitting requirements given the hypothetical nature of the request, the uncertainty of your timeline, and extremely limited information we have to work with. Additionally as you are aware the ordinance requirements themselves are subject to change by the City Council which could at any time affect the process and options provided. However, the City has long been a very active supporter and partner in the redevelopment of properties such as these in the City's Enterprise District through its adopted policies, ordinances, and ongoing programs. Therefore it would appear very unlikely that this will change to your client's disadvantage in any significant way. With that said, this review and determination of the property per your request finds the following:

1. While it appears this property has not been granted a specific permit for the current use, the permit files through past applications and decisions recognize the principle use of this property as a pre-existing surface parking lot that appears to pre-date zoning requirements. Surface parking lots are currently allowed as a Conditional Use in the Enterprise-Light Manufacturing (E-LM) District. As a result, continuation of this use would not require a separate permit and corresponding Conditional Use Review in and of itself.
2. The subdivision of the property as you suggest would however require review and action by the DRB after a public hearing under the Subdivision requirements of the CDO (Art. 10). As such, a zoning permit is required for both parcels.
3. In addition to any redevelopment of a portion of the site, the required subdivision and site plan review process would necessitate some site improvements to the remaining undeveloped parcel including but not limited to:
 - demonstration of required access to a public street and necessary internal circulation;
 - no increase in the existing non-conforming lot coverage for either parcel; and,
 - establishment of a required yard setback (5-feet from parking areas) along the new parcel boundary line being created.



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RE: 125 Lakeside Ave, GP Burlington South. L.L.C., Parcel ID: 053-009-000

DEPARTMENT OF
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Otherwise the site plan for the remaining parcel could remain largely as-is preserving a majority of the existing parking. These spaces could be made available to nearby development as its principle use would remain a surface parking lot.

You have specifically requested referral of this matter to the DRB pursuant to Burlington CDO Sec. 2.3.3(a). Such a referral takes place in the form of an appeal of this Administrative Determination in accordance with the provisions of CDO Sections 2.7.11 and 12.2.2. Therefore I have included a copy of the necessary administrative form which will need to be returned to this office along with the associated fee in order to place this matter before the DRB and provide proper public notice. For the DRB to consider this matter at their first available meeting (6 September), this form and fee must be received by this office no later than 10 August.

Please feel free to contact me should you have any further questions.

Sincerely,



David E. White, AICP
Director of Planning & Zoning

CC: Ken Schatz, Burlington City Attorney
Kim Sturtevant, Asst. Burlington City Attorney

July 25, 2011

Mr. David E. White
Director of Planning
Burlington Department of Planning and Zoning
149 Church Street
Burlington, VT 05401

Re: GP Burlington South, L.L.C.
0 Lakeside Avenue, Burlington
Parcel ID: 053-2-009-000

Dear David:

Thank you again for meeting last Thursday regarding the above-referenced matter. As you know, I represent GP Burlington South, L.L.C. which owns a 6.32 acre parcel of land on the south side of Lakeside Avenue as outlined on the attached aerial photo and shown on the attached plat as "Parcel 3" (the "Property").

The Property is currently used for a parking lot and such use has been in existence for at least half a century. Review of the zoning records indicate that no permit exists for such parking lot and it is assumed that such use pre-existed the adoption of zoning regulations in Burlington. The current use as a parking lot is a permitted conditional use under the current Burlington Zoning and Subdivision Ordinance (Adopted January 7, 2008, as most recently amended September 1, 2010) (the "Current Zoning Regulations").

As we discussed, my client would like to receive assurances in the form of a written decision of the "administrative officer" (as defined by 24 VSA 4448 and pursuant to Section 2.3.2 of the Current Zoning Regulations) that in the event that my client were to subdivide the Property into two lots, with each lot conforming to the Current Zoning Regulations, and one of the lots were developed in manner conforming to the Current Zoning Regulations, that the remaining undeveloped lot could continue to be used as a parking lot without the requirement of any permit or approval from the City.

To further provide assurance, my client requests a referral to the Development Review Board under Section 2.3.3(a) so that such determination of the administrative officer could

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DEPARTMENT OF
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not be later challenged as being beyond his/her power to permit land development which is not in conformance with the Current Zoning Regulations.

We recognize that any such determination is only binding to the extent that the Current Zoning Ordinance is not amended in a manner which would affect the decision being requested.

We appreciate your prompt response to this request.

Very truly yours,



Liam L. Murphy, Esq.
lmurphy@mskvt.com

Enclosure

c.c.: Molly Stolmeier
Robert Gagliardi

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MSK | MURPHY
SULLIVAN
KRONK

Map References

- 1. Plat of the City of Burlington, Vermont, for the subdivision of the land owned by the City of Burlington, Vermont, into lots, blocks and streets, as shown on the plat of the City of Burlington, Vermont, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202.
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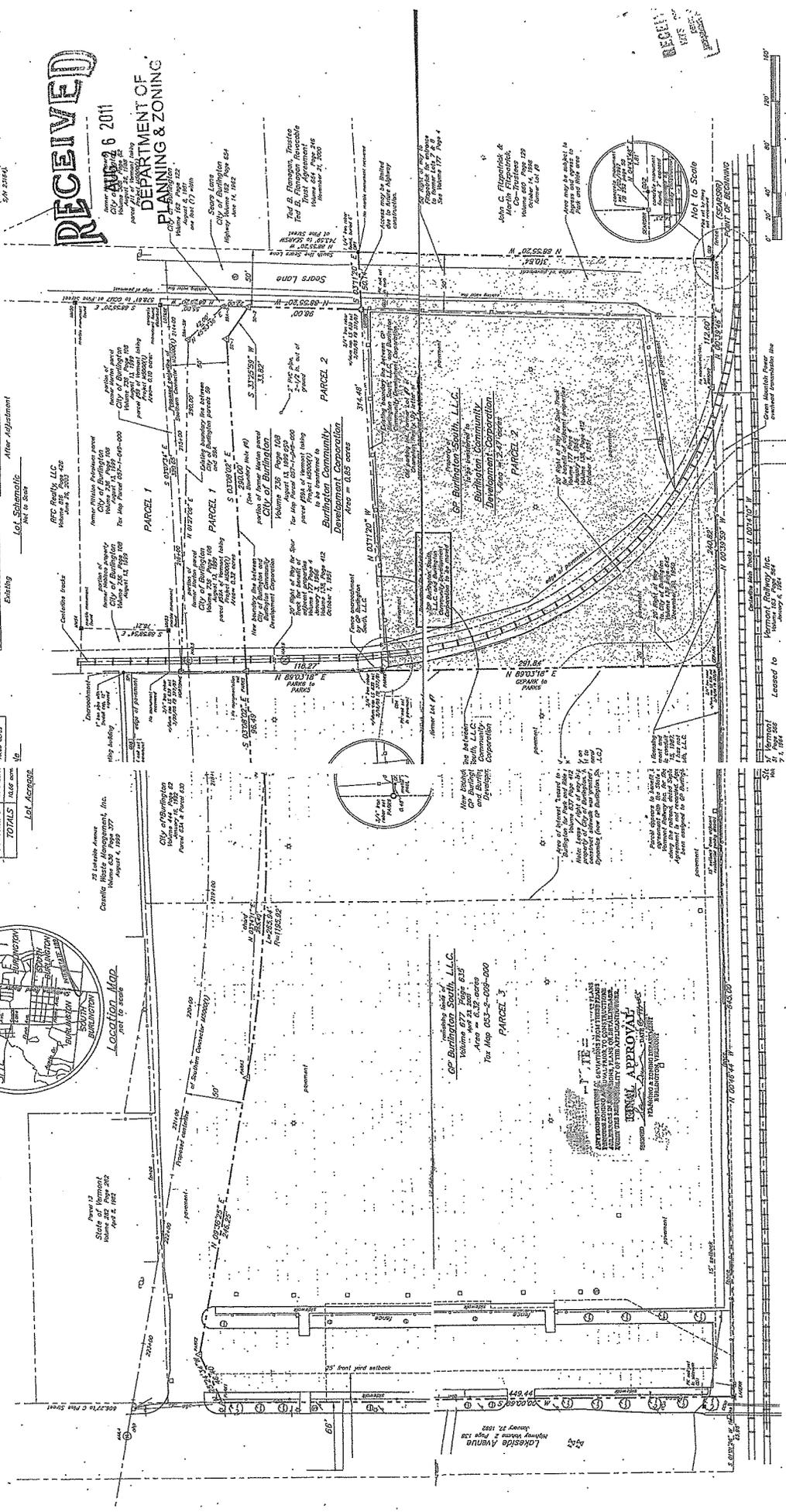


Parcel	Area (Acres)	Area (Sq. Feet)
PARCEL 1	0.78	3,39,000
PARCEL 2	1.71	7,420,000
PARCEL 3	1.72	7,450,000
TOTALS	4.21	18,260,000



Survey Notes:

1. The boundary lines shown on this plat were derived from a survey conducted by the City of Burlington, Vermont, in 1987, and are shown on the plat of the City of Burlington, Vermont, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202.
2. The boundary lines shown on this plat were derived from a survey conducted by the City of Burlington, Vermont, in 1987, and are shown on the plat of the City of Burlington, Vermont, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202.



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Boundary Line Adjustment
 GP Burlington, L.L.C.
 Burlington Community Development

Certification:
 I, the undersigned, being a duly qualified and licensed Professional Engineer, do hereby certify that the above is a true and correct copy of the original survey as shown on the attached plat, and that the same was prepared by me or under my direct supervision and in accordance with the laws of the State of Vermont.

Boundary Notes:

1. The description of these lands and the adjoining lands and interests therein, as shown on the plat, is taken from the original plat of the City of Burlington, Vermont, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202, dated and recorded in the Office of the State Register and Recorder, State of Vermont, in Volume 100, Page 202.
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4. Any dispute as to the validity of the boundary lines shown on this plat shall be determined by the courts of the State of Vermont.

Legend

- Survey control point
- Iron pipe (1/2")
- Iron pipe (3/4")
- Concrete or masonry monument (round)
- Concrete post
- Iron pipe (1/2" or 3/4" of Southern Connecticut)
- Property line or edge of city
- Unsurveyed corner
- City boundary
- Street

Deed References

Book	Page	Date
114,223	5/24/96	5/24/96
117,178	5/26/98	5/26/98
114,024	2/22/95	2/22/95
117,024	10/10/98	10/10/98
117,024	5/24/98	5/24/98
117,024	4/27/98	4/27/98
117,024	11/29/99	11/29/99

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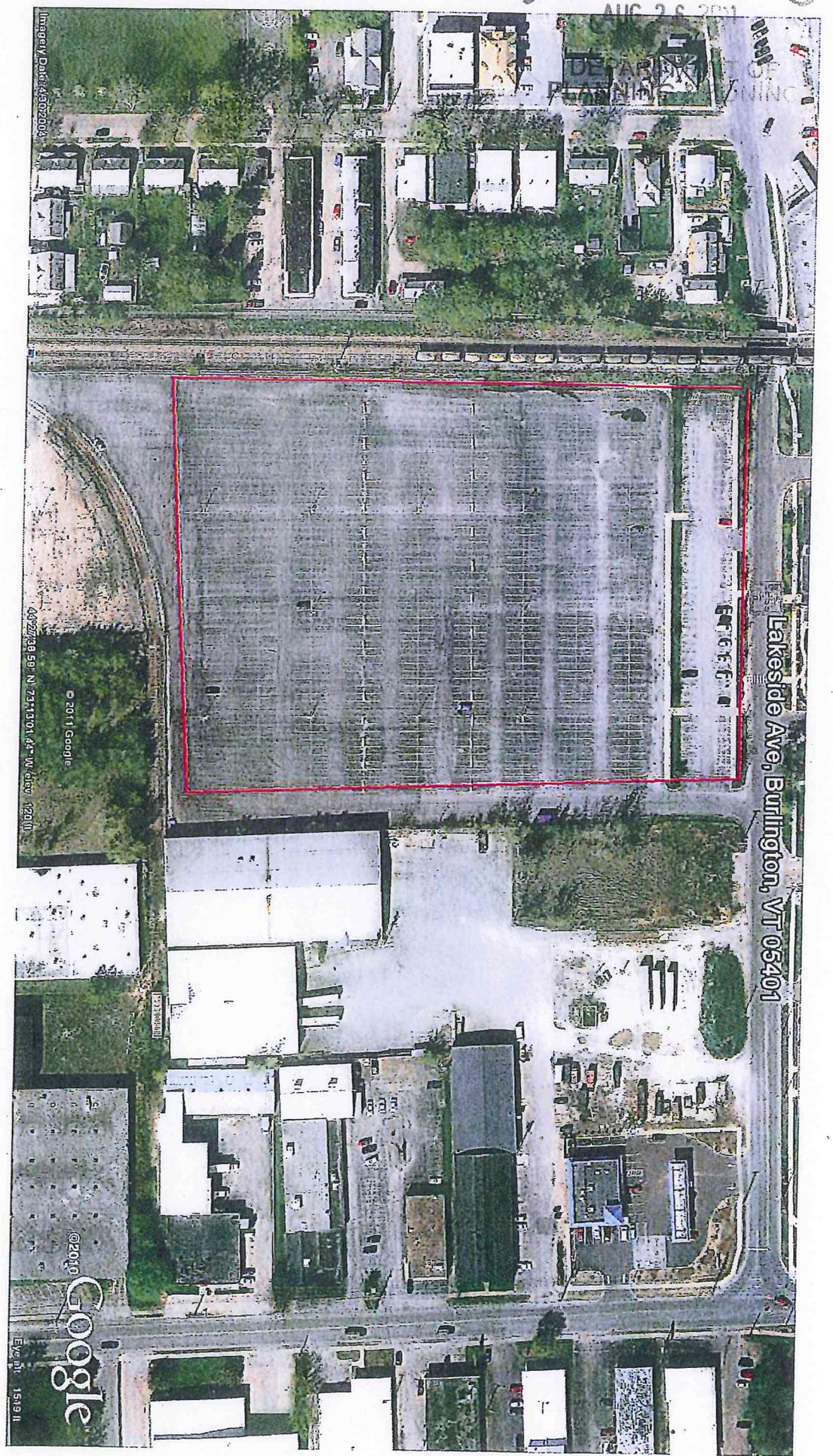
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OFFICE OF THE ATTORNEY GENERAL



Imagery Date: 4/30/2004

44°27'38.59" N 73°13'01.44" W elev: 320.0

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