

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
<http://www.burlingtonvt.gov/PZ/>
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Sandrine Thibault, AICP, Comprehensive Planner
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Vacant, Zoning Clerk
Elsie Tillotson, Department Secretary



MEMORANDUM

To: Development Review Board
From: Kern Lerner *[Signature]*
Date: June 2, 2015
RE: ZP15-0955CA/AP; 27 Fletcher Place

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: ZP15-0955CA/AP Appeal

Location: 27 Fletcher Place

Zone: Institutional (I) **Ward:** 1E

Date appeal accepted: May 1, 2015

Date of administrative decision: April 17, 2015

Date of application: April 6, 2015

Appellant/Owner: Robert & Susan Butani (Lisa Shelkrot, Attorney for Appellants)/F. & E. VonTurkovich

Request: Appeal of Administrative approval of zoning permit 15-0955CA for the change of use from single family residential to duplex, modify two existing windows.

Background:

- December 3, 1968 Variance approved to erect a carport within three feet of the property line.
- August 1981 Zoning permit approved for window replacement.
- April 21, 2015 Subject site was included in the sketch plan review (15-0896SP) for a proposed future planned unit development for 79 apartment units in three story building with above ground and underground parking.
- April 7, 2015 No-applicability determination 15-0959NA to install dryer hookups on 2nd floor. Upgrade wiring to meet code. Upgrade plumbing to meet code. No change in use.
- April 17, 2015 Zoning permit (15-0055CA) approved to change use from single family residential to duplex, modify two existing windows. Subject of Appeal.

• Overview:

- The zoning application (subject of this appeal) was **approved** April 17, 2015 with the following conditions:

1. Vermont Residential Building Energy Standards apply to this project. Compliance with the standards is the Owner's responsibility. Prior to requesting a Certificate of Occupancy, a

copy of a completed Vermont Residential Building Energy Standards Certificate shall be submitted with a Certificate of Occupancy (final or temporary) request, and filed in the Land Records located at the Clerk/Treasurers office in City Hall (149 Church Street). For more information, see http://publicservice.vermont.gov/topics/energy_efficiency.

2. Duplexes are a permitted use in the 'I' zone.
3. Two parking spaces required; one per unit in the shared use parking district. The existing spaces at the side of the house will accommodate the two required spaces.
4. No increase in lot coverage or additional habitable space is proposed or approved.

And 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 **April 17, 2016**. 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 **April 17, 2017**, 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.

Appellant Statement

The appellant has provided a statement addressing why the permit should be denied. See attached "Appeal of Zoning Permit to 27 Fletcher Place" dated May 1, 2015 (Exhibit A).

Relief requested. The appellant contends that there should be a denial of the requested parking facilities; should require all renovation to meet minimum VRBES standards; require any new unit to meet minimum housing standards and should impose conditions to protect appellants from impacts of such intensive use so close to their home.

Grounds why relief is proper. Number of proposed parking spaces exceeds maximum number of spaces under ordinance; parking spaces are too far from the property to comply with ordinance. The spaces are not properly accessible to the property. It is not clear how the parking spaces will be accessed as the driveway serving them appears to be outside the property.

The creation of a second dwelling unit is an expansion of the use of a non-conforming structure that is inside the required setbacks.

The application does not indicate that the dwelling unit created will satisfy minimum habitable space requirements: minimum space, light and ventilation requirements.

Staff Response

The VRBES standards are addressed in the conditions of approval; Condition #1. It is the responsibility of Planning & Zoning to notify the applicant of the requirement but it is the applicant's responsibility to file the necessary certifications. The relief regarding conditions from impacts resulting from an intense use is not specifically indicated thus unable to respond to this contention.

The property lies within a "Shared Use" Parking District as per the adopted Map 8.1.3 -1. The parking requirements for "Shared Use" are two spaces per unit; four total. Thus, the appellant is correct regarding the parking – it appears that the wrong requirement was included in the conditions of approval, thus the rear parking area is needed to provide two of the four spaces.

The distance from the rear parking are approximately 75-100 feet and are located on the subject property itself. In comparison the standard for off-site spaces in "Shared Use" is 1,000 feet from the use (Sec. 8.1.12 (a) 2). The rear parking area is accessed from an old farm road. According to the applicant this road is accessible from Colchester Avenue (as per site plan submitted).

The parking is existing; with the gravel lot in the rear yard and two spaces adjacent to the house in the driveway and under the carport. If four spaces are required the maximum allowed would be five. The rear parking area could be reconfigured to accommodate two or three spaces thus with the two in the driveway bringing the total parking to four or five spaces; below the maximum parking.

Regardless if a structure is non-complying, the proposed duplex use is a permitted use in the Institutional Zone. Thus there is no increase in non-compliance. The remainder of the concerns; satisfy minimum habitable space requirements: minimum space, light and ventilation requirements; are not the purview of zoning permits but will be given consideration upon issuance of a building permit by Inspection Services at DPW. Minimum housing standards for rental units will be met through the Code Enforcement Minimum Housing program.

Recommendation: Deny the appeal and **uphold the administrative approval** of ZP 15-0955CA for the reasons as stated above. Suggest that additional conditions be included to reconfigure the rear parking area to accommodate up to three spaces with an edging around the perimeter to contain the gravel. A walk way may also be in order for aces from the lot to the building. The details of these changes should be subject to review and acceptance by staff.

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MAY - 1 2015

DEPARTMENT OF PLANNING & ZONING

Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

SUBJECT LOCATION ADDRESS: 27 Fletcher Place

Subject Property Owner: Francis J. Von Turkovich

Appellant: Robert & Susan Butani

Agent/Representative: Lisa B. Shelkrot, Esq.

Mailing Address: 210 College Street, PO Box 721

City, St, Zip: Burlington, VT 05402

Day Phone: 802-864-0217 Email: lshelkrot@langrock.com

Appellant Signature: [Handwritten Signature] Date: 5/1/15

In order for your request to be considered complete, ALL of the following information must be provided, as applicable:

- Checked boxes: The Appeal fee of \$250; Description of the decision under appeal; Description of the property subject to the appeal; Reference to the regulatory provisions applicable to the appeal; Relief requested by the appellant; Alleged grounds why such requested relief is believed proper under the circumstances.

Office Use Only:

Check No. 17373 Amount Paid 250.- Zoning Permit # 15-0955CA

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MAY - 1 2015

Appeal of Zoning Permit to 27 Fletcher Place

DEPARTMENT OF
PLANNING & ZONING

Description of the decision under appeal

The Zoning Administrator approved an application to convert the home to a 2-unit duplex by turning the second floor into a separate apartment; and to add four parking spaces on the current lawn area.

Description of the property subject to the appeal

27 Fletcher Place is a small single family house. It currently has three bedrooms. It is on a small residential dead-end street, and is very close to the appellants' property.

Regulatory provisions applicable to the appeal

Burlington Zoning Ordinance Sections 8.1.8, 8.1.9, 8.1.12; 5.2.5, 5.3.4, 5.3.5; 4.4.4; Burlington Code of Ordinances Ch. 18.

Relief requested by appellant

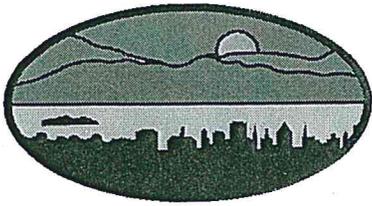
The DRB should deny the requested change of use; should deny approval of the requested parking facilities; should require all new renovation to meet the minimum standards for the VRBES; should require any new unit to meet minimum housing standards; and should impose conditions to protect the appellants from impacts of such intensive use so close to their home.

Grounds why relief is proper

The number of proposed parking spaces exceeds the maximum number of spaces under the ordinance; the parking spaces are too far from the property to comply with the ordinance (or at least it is not possible to tell from the application that they are close enough to the property). The parking spaces are not properly accessible to the property. It is not clear how the parking spaces will be access, as the driveway serving them appears to be outside the applicant's property.

The creation of a second dwelling unit is an expansion of the use of a non-conforming structure that is inside the required setbacks.

The application does not indicate that the dwelling unit that will be created will satisfy minimum habitable space requirements; minimum space, light and ventilation requirements;



**ZONING PERMIT
CERTIFICATE OF APPROPRIATENESS**

City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 04/06/2015

Appeal Expiration Date: 05/02/2015

Project Location: 27 FLETCHER PLACE

District: I

Owner: Edward B. von Turkovich

Ward: 1E

Address: 462 HEGEMAN AVE
COLCHESTER VT 05446

Tax ID: 046-2-006-000

Project Type: Residential - Change of Use

Project Description: Change of use from single family residential to duplex, modify two existing windows.

Construction Cost:	\$5,000	Lot Size (Sq Ft):	36,575
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 #: 15-0955CA

Decision By: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Decision Date: April 17, 2015

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 May 2, 2015.

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: _____

PARKING PLAN - DUPLEX

27 FLETCHER PL, BURLINGTON, VERMONT

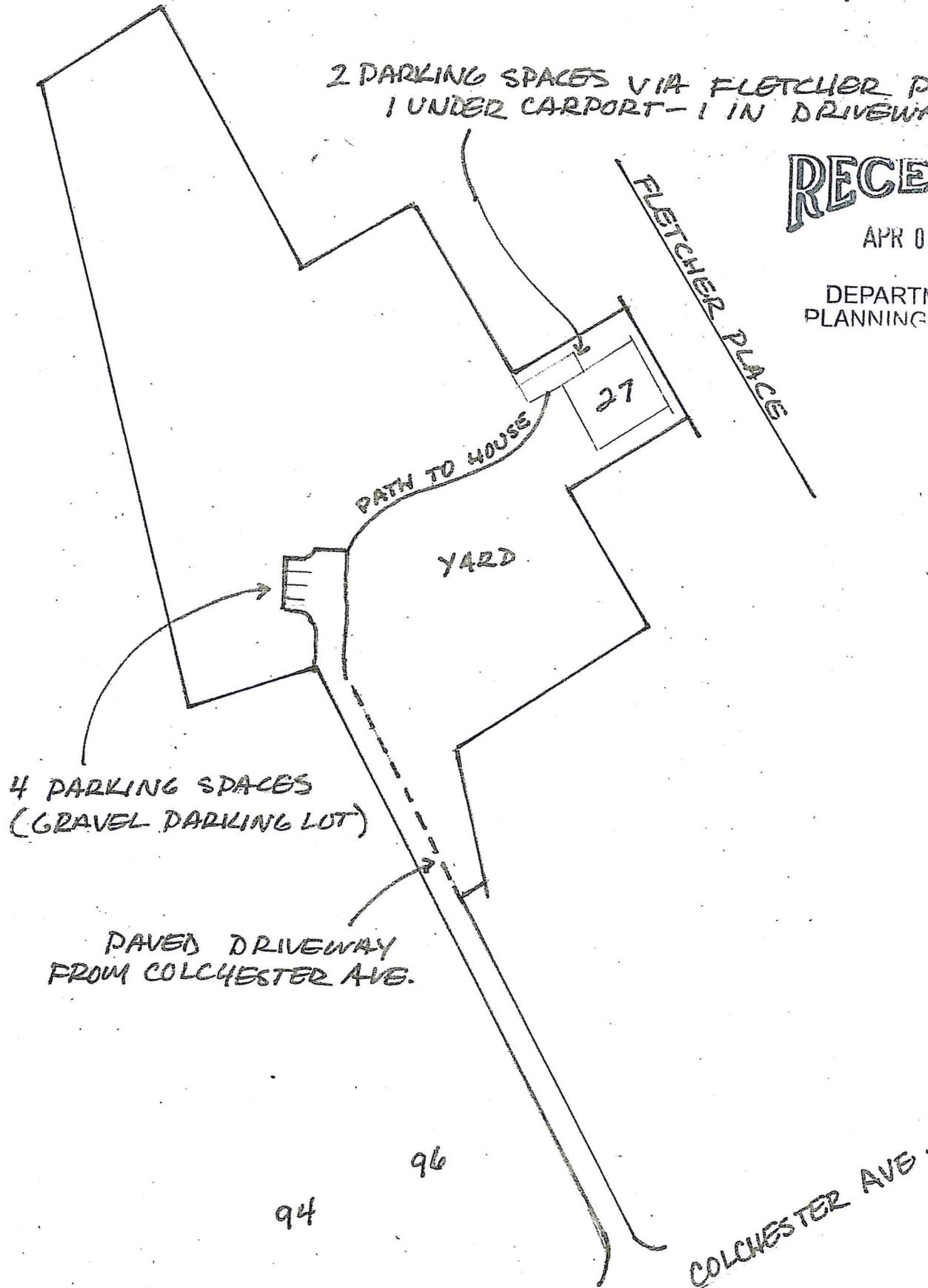
3/11/2015

2 PARKING SPACES VIA FLETCHER PLACE
1 UNDER CARPORT - 1 IN DRIVEWAY

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APR 06 2015

DEPARTMENT OF
PLANNING & ZONING

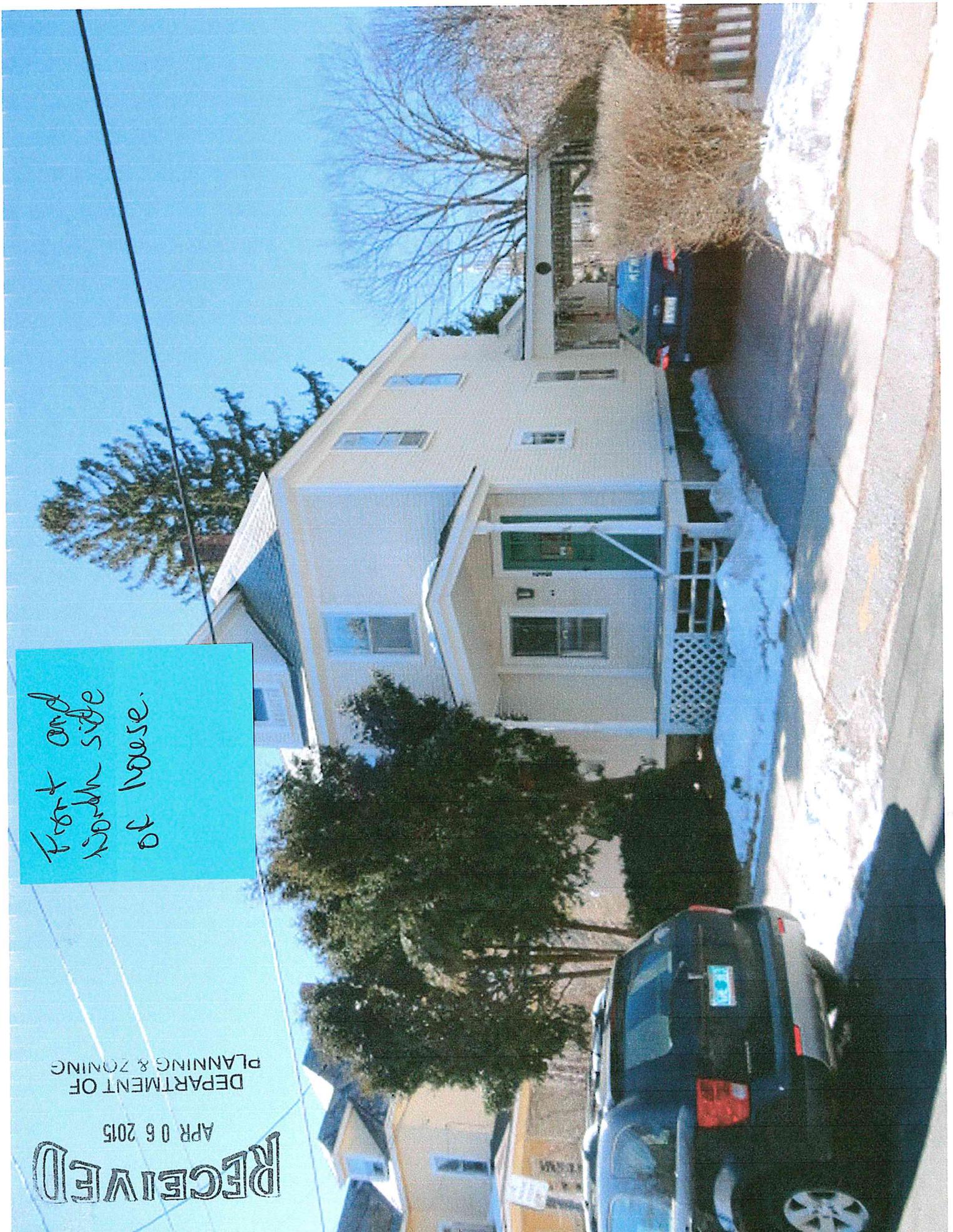


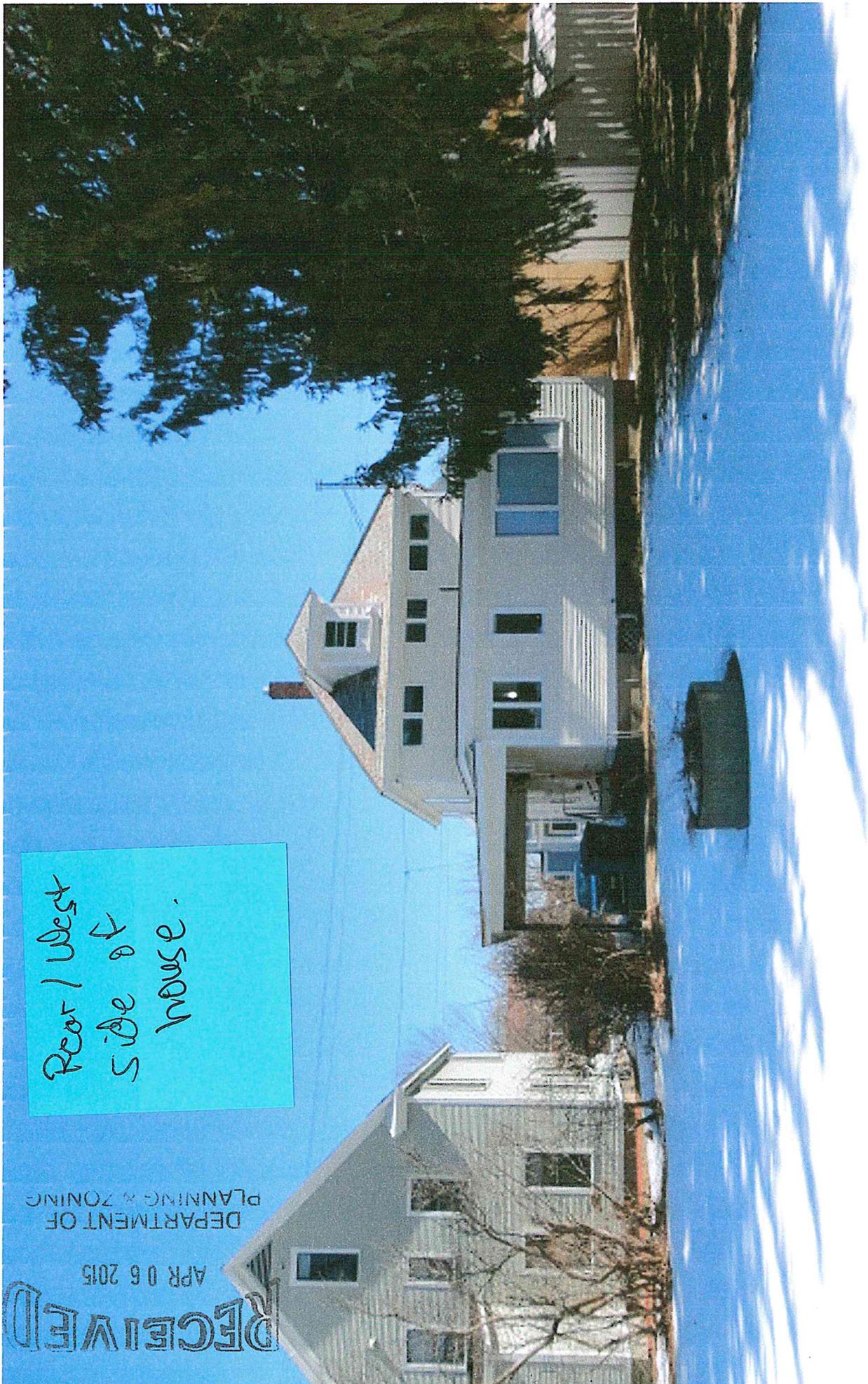
Front and
North side
of house.

DEPARTMENT OF
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APR 06 2015

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Rear / West
side of
house.

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