



December 4, 2021

City of Burlington
Development Review Board
149 Church Street
Burlington, VT 05401

Re: Repair of Existing Approved Fire Escape, 48-50 Greene Street
Building Permit 2020 28919200000 BP; ZAP 21-17 (Original permit ZP 21-639)
On-Point Properties, LLC, Owner and Applicant.

Gentlepersons,

The matter before the board concerns work done to improve the safety of an existing approved fire escape at 48-50 Greene Street.

The pre-existing approved fire escape is shown on the next page in a 1984 City Assessor's photo of the building. The current fire escape is shown in the December, 2021 photo on the next following page.

On his own volition, the owner determined that he wished to make the existing approved fire escape safer by repairing or replacing the existing decades old wood. He discussed what permits were required with the City Building Inspector and obtained a Building Permit for "*Repair and Replace portions of the fire escape with matching materials in the same footprint. Not a replacement of the entire staircase*". See Exhibit 1.

There is no dispute that the fire escape was repaired with matching materials except two items as shown on the 2021 photo below:

1. The addition of structural post beneath the staircase to improve stability of the fire escape
2. The addition of a beam on the side of the staircase to improve stability of the fire escape.

The staff asserts a zoning permit is required because the two additions were beyond the scope of the Building Permit and that such zoning permit needs to be reviewed in accordance with the standards of Section 5.4.8 of the Burlington Land Use Regulations (Historic Buildings and Sites) because the building is on the Vermont Register of Historic Places.

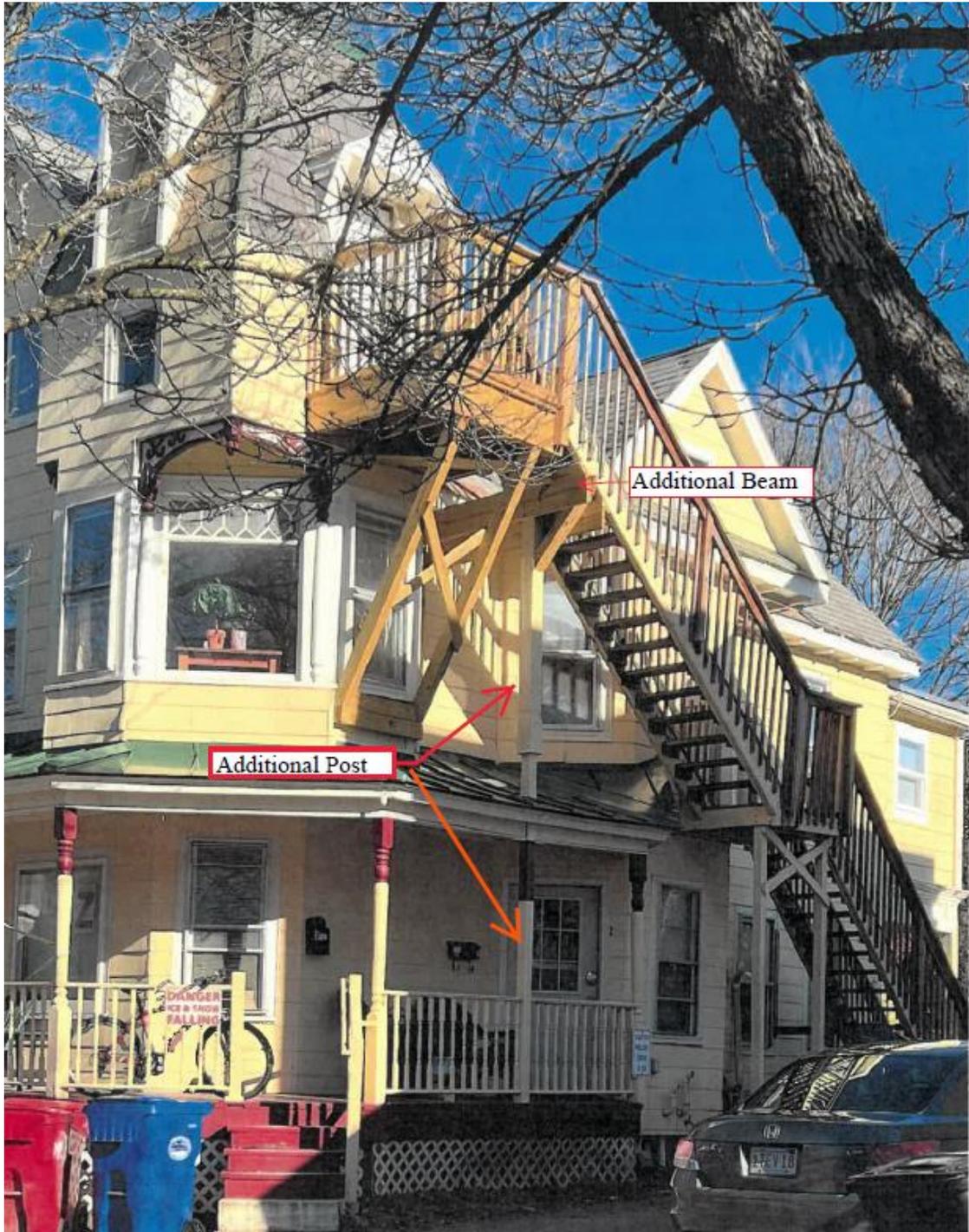
The applicant asserts that the two additional items installed to improve the structural integrity of the fire escape does not change or adversely affect the existing historic character of the building. The existing fire escape was approved by the City and installed in 1984 prior to the ownership of the applicant. The applicant acknowledges that the existing approved fire escape may affect the

historic character of the building, but such existing fire escape was approved the city and has been in place for over 35 years and there is no question can legally remain in place.



**1984-85 Assessor Revaluation photograph
Stairs were newly built at that time**

MSK
ATTORNEYS



2021 Photo of stairs with additional structural supports

MSK
ATTORNEYS

275 College Street, PO Box 4485 | Burlington, VT 05406-4485 | phone 802 861-7000 | Fax 861-7007 | mskvt.com

The issues before the board are:

- A. Whether the two structural additions are beyond the scope of the Building Permit?
- B. If so, do the structural additions require a zoning permit?
- C. If a zoning permit is required, do the additions comply with requirements of 5.4.8?

If the Board decides that such additions do require a zoning permit and do not meet the requirements of 5.4.8, then the applicant will remove the two additions and seek another means to add stability to the fire escape using “matching materials within the same footprint” of the existing approved fire escape. With such removal no zoning permit would be required and the Building Permit should be then be able to be closed.

Despite the relative straight forward and minor nature of the issues before the Board, the staff had attempted to unduly complicate the appeal.

Instead of focusing on the two structural additions and whether such trigger the need for a zoning permit and whether such additions may comply with the requirements of the Land Use Regulations, the Staff has tried to assert that there should not be any fire escape because the third floor unit has not been approved as a dwelling unit (even though staff acknowledges that it has existed since at least 1975).

The staff’s discussion of an alleged unapproved unit and alleged addition of a new staircase is unnecessary and unsupported. The current owner purchased the property as an existing three unit building in the mid-1980s long after the acknowledged conversion of the property to a three unit in the 1970s and after the construction of the fire escape in 1984. The staff appears to be trying to re-litigate the applicability to use violations of the 15 year statute of limitation under the so-called “Bianchi” statute of limitations which was settled two years ago in *In re 204 North Avenue* 2019 VT 52, 117. Further this is not a case of discontinuance for more than 60 days as recently decided in *In re 15-17 Weston Street NOV* 2021 VT 85.

Since most of the items raised by staff are irrelevant to the matters before the Board, the applicant is not going to respond to most of the issues raised in the staff memo. However, the applicant would note the staff memo attempts to portray the applicant as seeking to add a new staircase to the building to serve an unapproved dwelling unit. Such assertion is entirely factually inaccurate. The third unit has been in the building since the 1970s and as can be seen in the photos, the fire escape has been in existence since at least 1984. Further, in the 35+ years Applicant has owned the property, it has been inspected numerous times by Code Enforcement and no issues have been ever raised about the alleged violations claimed by staff or about the fire escape in particular. We further note that staff was selective in listing the permits obtained by the applicant for work on the building since there are many permits obtained which were omitted from the list in the memo.



Finally, it appears that the staff is attempting to leverage a voluntary application to upgrade the safety of an element of the building into an effort to undermine and seek the discontinuance of pre-existing non-conforming uses and other uses protected by law. Such approach, if upheld by the Board, will send a strong message to the landlord community—the City of Burlington will punish you if you try to improve your property even for safety reasons. The result will be that landlords will just not improve their properties and the quality of the housing stock will be diminished.

We trust the Board will focus on the issues raised by the applicant’s efforts to merely improve the safety of the existing permitted fire escape on his building.

We look forward to discussing these issues further with you at the hearing

Stay well.

Sincerely,

/s/ Liam L. Murphy

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

c: On Point Properties





Department of Public Works

Permit No: 20 20 289192 00000 BP

BUILDING PERMIT

645 Pine Street, Suite A
P.O. Box 849, Burlington, VT 05402
Telephone (802) 863-9094/ Fax (802) 863-0466

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Fees	
	\$119.00
Admin Fees	\$0.00
Recording Fees	\$15.00
	\$134.00

Issue Date: 06/05/2020

Street Address: 48-50 GREENE STREET

Estimated Cost: \$14,000.00

Construction Starting Date: 06/05/2020

Owner On Point Properties Inc.
PO BOX 81
COLCHESTER VT 05446

No: 802-316-7219 (Primary)

Owner/Contractor On Point Properties Inc.
PO BOX 81
COLCHESTER VT 05446

No: 802-316-7219 (Primary)

DESCRIPTION OF WORK:

CODE ID: Repairs

Specific to VT Fire & Building Safety Code: Repair and replace portions of fire escape with matching materials in same footprint. Not a replacement of entire escape.

Signature below represents
Certificate of Completion

CONDITIONS OF PERMIT: All work performed by the applicant shall comply with the codes and ordinances of the City of Burlington. This permit authorizes the applicant to proceed with the work described above in accordance with the codes. This permit shall not be construed as authority to violate, cancel or set aside any of the provisions of the codes. The applicant must contact the department to schedule inspections of the work and obtain final project approvals.

APPLICANT SIGNATURE _____

LICENSE #: _____

- CALL FOR FOUNDATION INSPECTION
- CALL FOR ROUGH FRAMING OR ROUGH-IN INSPECTION
- CALL FOR FINAL INSPECTION
- BUILDING CERTIFICATE OF OCCUPANCY IS REQUIRED
- ZONING CERTIFICATE OF OCCUPANCY IS REQUIRED
- LEAD SAFE PRACTICES REQUIRED

Inspector Chase

Date _____

