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*Via Email*

8/16/2021

2751 North Miami Ave., LLC  
C/o Mark Brodsky, Esq.  
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Washington, DC 20036  
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**Re: Development of Four Parcels on Elbow St. and North Ave Ext. in Burlington, VT  
95 Elbow Street, 105 Elbow Street, 3131 North Ave, 3135 North Ave**

Dear Mark:

We are writing to summarize our review of the development potential of the four parcels of land owned by 2751 North Miami Ave., LLC (the “LLC”) in Burlington, Vermont. There are two developed lots with addresses of 95 and 105 Elbow Streets (the “Developed Lots”) and two vacant lots with addresses of 3131 and 3135 North Avenue Extension (the “Vacant Lots”); together the Developed Lots and Vacant Lots being jointly referred to as the “Lots”).

We believe each of the Lots are legally developable for a single unit of housing, and each may potentially have an accessory unit as well.

However, each of the Lots have challenges to address the myriad of overlapping zoning and land use requirements of Burlington and the State of Vermont. To determine whether such Lots are developable from a practical viewpoint, we suggest that you will need an architect or land planner to lay out a development plan for each of the Lots in order to determine whether a structure, parking and access fit onto such Lot given the specific development regulations. We are encouraged by the fact that the adjacent Furland/Benoit property was able to obtain a permit from the City of Burlington to develop for a single family home with an accessory unit (the Furland/Benoit Permit).

#### DISCUSSION

In aid of this discussion, we refer to the attached Boundary Plat and Site Plan: “Plan of Lands of 2751 North Miami Avenue LLC, Boundary Plat” prepared by Lamoureux & Dickinson Consulting Engineers, Inc., dated October 14, 2016 and revised November 7, 2016 and “2751 North Miami Avenue Site Plan,” prepared by Lamoureux & Dickinson Consulting Engineers, Inc. and dated October 21, 2016. We also attach excerpts of the Burlington Comprehensive Development Ordinance (“CDO”) and “The Vermont Shoreland Protection Act: A Handbook for Shoreland Development.”

While all of the lots are owned by the LLC, we believe that such lots should be considered legally separate lots. The four Lots are:

Vacant Lots

- **Lot 1: 3135 North Ave** (Lot # 066 on tax map #045-1 & #044-1)  
4,103 square feet/0.094-acre; vacant
- **Lot 2: 3131 North Ave** (Lot # 068 on tax map #045-1 & #044-1)  
4,302 square feet/0.099-acre; existing garage foundation and gravel driveway

Developed Lots

- **Lot 3: 105 Elbow Street** (Lot # 003 on tax map #045-1)  
10,090 square feet/0.232-acre; existing gravel parking area, shed, and part of dwelling overlapping boundary with Lot 4
- **Lot 4: 95 Elbow Street** (Lot # 002 on tax map #045-1)  
10,654 square feet/0.245-acre; existing dwelling and part of dwelling overlapping boundary with Lot 3

**Lots in Separate and Individual Ownership:**

Each of the Lots are shown on the City's tax map as separate lots and each Lot is taxed separately.

Under the Burlington Comprehensive Development Ordinance ("CDO"), the Lots are located in the City of Burlington's Waterfront Residential – Low Density ("RL-W") Zoning District. Within the WR-L district, the minimum lot size is 6,000 square feet for a single family residence and 10,000 square feet for a two-family residence or above. While the Developed Lots meet the minimum lot size, the Vacant Lots do not. However, under CDO § 5.2.1, the Vacant Lots should qualify as "Existing Small Lots" which, though undersized, may be developed for the purposes permitted in this district, because they were of record as of April 26, 1973 and are no less than 4,000 square feet in area, with a minimum width and depth dimension of forty (40) feet. We would note that the Furland/Benoit Permit involved a 4,263-square foot lot which was also less than required minimum lot size of 6,000 square feet.

**Principal Development Restrictions Under the CDO (Burlington Zoning).**

Each Lot Limited to One Dwelling Unit:

The maximum density is 7 units/per acre (or 1 unit per 0.285-acre). Therefore, none of the Lots on its own can support a duplex. Each Lot may, however, be developed with a single family residence, subject to the terms discussed below. In addition, an accessory dwelling unit would may be allowed on each Lot, if adequate parking can be fit on the lot. The principal requirements for an accessory unit are: must be accessory to an owner occupied single family limited to efficiency or one bedroom, wastewater capacity; the unit does not consist of more than 30 percent of the total habitable floor area of the building; applicable setback and coverage requirements are met; and one additional parking space. CDO § 5.4.5(a).

Fire Access to the Developed Lots:

We believe that it is critical to determine whether Lots 3 and 4 will be approved for re-development based on access off of the existing Elbow Street, due to the narrowness of this private gravel drive. Unfortunately, the Fire Department has pretty unlimited powers in regard to determining whether there is adequate fire access. The Fire Department may be more willing to allow the redevelopment of the lots without a widened access because these lots are already developed, especially if steps are taken to improve emergency accessibility and/or by agreeing to install sprinklers. One other option for greatly improving accessibility would be to incorporate a right of way across Lot 1 and/or Lot 2, similar to the gravel drive that currently exists on Lot 2. This would allow vehicles to cross directly from North Avenue Extension to Lots 3 and 4. The challenge this presents is that it detracts from the available lot coverage for building and may make setback compliance more complicated on the small Lots 1 and 2.

Again, we suggest that you will need an architect or land planner to lay out a development plan for each of the Lots in order to determine whether access can be developed to satisfy the Fire Department.

Setbacks, Lot Coverage, Height. The applicable dimensional requirements are

**Table 4.4.5-3: Residential District Dimensional Standards**

Zoning District	Max. Lot Coverage <sup>1</sup>	Setbacks <sup>1, 3, 4, 5, 6</sup>				Max. Height <sup>1</sup>
		Front <sup>2</sup>	Side <sup>3</sup>	Rear	Waterfront	
RL; WRL	35%	<b>Min/Max:</b> Ave. of 2 adjacent lots on both sides +/- 5-feet	<b>Min:</b> 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides <b>Max required:</b> 20-feet	<b>Min:</b> 25% of lot depth but in no event less than 20'  <b>Max required:</b> 75-feet	<b>Min:</b> 75' feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet

The analysis of the setbacks will be different for the Developed and Vacant lots because the Developed Lots already contain pre-existing non-complying structures and such structures can maintain their non-conformity but cannot increase the degree of nonconformance. By contrast, the Vacant Lots are less than the normal minimum lot size of 6,000 square feet but there may be flexibility with the setbacks given such small size.

Because compliance with setback requirements will require careful design, our recommendation is to engage an architect to evaluate what can fit onto each Lot. We note that there is some uncertainty as to how the front yard setback would be measured for Lots 1 and 2, given they each have frontage on both North Avenue and Elbow Street. Elbow Street is certainly a private road. North Avenue also appears to be a private road, however, it was treated as a public road in the Furland/Benoit project, which is likely be a helpful reference in evaluating Lots 1 and 2.

Lot coverage is limited to 35% in the W-RL, though an additional 10% coverage is available for certain accessory features listed in CDO § 4.4.5-3(d)(3)(A) (including pervious pavement, which could be used for driveways or the emergency access contemplated in the Access section above).

Lot Frontage

Although the Lots do not satisfy the required lot frontage of 60 feet, all 4 Lots are nonetheless developable as nonconforming lots.

Natural Resource Overlays

The development of each Lot will need to include consideration of the Natural Resource Overlay of CDO § 4.5.4. All four Lots are within the **Wetland Buffer Zone**, and Lots 3 and 4 are within the **Riparian and Littoral Conservation Zone**. Within both of these zones, construction is subject to Conditional Use review under Article 3, Part 5, by which the Development Review Board considers whether the proposed development will have an undue adverse effect on six general criteria, relating to public facilities, character of the area, traffic, nuisance impacts of the



use (noise, odor, dust hear, etc.), renewable energy resources, and any other standards in the City ordinances. Given the nature of surrounding residential development and the success of the Benoit/Furland project, we would expect proposed residential development to be reviewed favorably under the Conditional Use criteria.

In addition to the Conditional Use review, for each Lot, the Wetland Buffer review will require a wetland determination, a report addressing any wetland impacts, and a stormwater management, erosion prevention and sediment control plan. For the Developed Lots, the Riparian and Littoral Conservation Zone will likewise require a stormwater management, erosion prevention and sediment control plan.

### **Shoreland Permitting.**

The Developed Lots are subject to Shoreland Permitting, a program administered by the Vermont Department of Environmental Conservation (“DEC”), which regulates development within 250 feet of Lake Champlain. While Shoreland Permitting places particularly strict limitations on development within 100 feet of the Lake (the “Lakeside Zone”) and other limitations on development in the area between the Lakeside Zone and up to 250 feet from the Lake (the “Upland Zone”), planning development with the Shoreland Permitting criteria in mind should allow for standard development of the Developed Lots.

Within the Lakeside Zone, impervious surfaces are limited to 100 square feet (and must be at least 25 feet from the Lake). Because these lots are already developed and contain sufficient area within the Upland Zone, any additional impervious surface beyond 100 square feet will be required to be placed within the Upland Zone. For either Lot, total impervious surfaces cannot account for more than 20% of the parcel area, unless the owner demonstrates use of Best Management Practices (“BMPs”) for erosion control.<sup>1</sup>

We would note that Shoreland Permitting does allow for the reconstruction of existing impervious areas without increasing or changing the current footprint. Therefore, the existing building footprints of the two dwellings and the shed on the Developed Lots may be utilized under this provision.

Shoreland Permitting also looks at clearing of vegetation and the percentage slope of the parcel to be developed. In this case, it appears that both of the Developed Lots were nearly entirely cleared well before the effective date of Shoreland Permitting (July 2014). In addition, the slope of the Developed Lots is very gentle and therefore unlikely to be affected by the slope limitations of Shoreland Permitting.

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<sup>1</sup> We are unable to predict whether the DEC will allow for additional impervious surface in exchange for BMPs.

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## **Conclusion**

While there are a number of aspects to consider in permitting the Lots, we believe that by engaging an architect or site planner, an applicant should be able to prepare plans that will satisfy the requirements of the CDO and, in the case of the Developed Lots, the requirements of Shoreland Permitting. Please let me know if you need a recommendation for an architect or land planner.

Very truly yours,

Liam L. Murphy  
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Enclosures