

Description Amendment: We are seeking a variance from the current applicable height requirements for the house we are planning to build on the vacant lot at 120 Depot St. We are asking for a variance that allows us to utilize a design with a height not to exceed the 60 ft. indicated in Article 4.4.5 Height Exception for Waterfront RM District. The site has a steep slope covering the majority of the lot with access only from Depot St. at the bottom of the slope. The newly updated height requirement will necessitate a significant portion of the living levels be underground . This application is an attempt to restart the permitting process after the original effort was derailed by the change in requirements for calculating the height of the building during the original application process.

# Steve & Andrea Trombley

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RE: Height Variance Request

We are seeking a variance from the current applicable height requirements for the house we are planning to build on the vacant lot at 120 Depot St. We are asking for a variance that allows us to utilize a design with a height not to exceed the 60 ft. indicated in **Article 4.4.5 Height Exception for Waterfront RM District**. The site has a steep slope covering the majority of the lot with access only from Depot St. at the bottom of the slope. The newly updated height requirement will necessitate a significant portion of the living levels be underground. This application is an attempt to restart the permitting process after the original effort was derailed by the change in requirements for calculating the height of the building during the original application process.

Prior to purchasing the property, we did our due diligence to make certain it was possible to build a house that would meet our needs and vision for the project. I have included, with our submittals, a time line (see attached Doc # 12) of events to help clarify the sequence of events during our original application process that led to our current situation. (A summary is included at the end of this document.)

## **Topics we would like to be part of the deliberations regarding the merits of our request.**

1. To achieve a design that provides a home of sufficient size to accommodate our family, a majority of the structure will be below ground level if no accommodation is made. (See attached sketches Doc# 13)
2. Lowering the overall height of the structure necessitates moving the solar panels from the roof to separate solar pedestals on the upper level of the lot. These in my opinion are much less desirable from an aesthetics perspective.
3. Significantly reduced passive solar gain in the lower profile.
4. Substantial reduction in the percentage of natural slope retained, from nearly complete to very little (see attached sketches.Doc # 13, 14 & 15)
5. There were many opportunities for the folks at **Planning and Zoning** to notify me that there were pending updates that would affect our project, beginning with my first meeting with Scott Gustin that occurred the day prior to the first public hearing on the changes to the height ordinance.
6. The change in the regulations leaves no mechanism for addressing a sloped lot like ours.
7. The additional excavation required creates a whole new level of challenges and expense to accommodate the design change.
8. Article 4.4.5 Height Exception for Waterfront RM District (See Doc # 10)
9. Article 6.6.2 Supporting the use of Renewable Energy Resources (See Doc # 11)

## Sec. 12.1.1 Variance Responses

*(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.*

The lot is steeply pitched with the slope beginning very close to the west edge of the property. The West side of the property (along Depot St) is the only access. The original design presented allowed for much of the natural slope to be maintained, significant passive solar exposure, high enough elevation to allow solar panels on the roof, a pleasant living space and met the height regulations that were in place at the time of application. To meet the new regulations and maintain a comparable design would require a significant portion of the building to be underground (see attached sketches). Underground to such an extent as to be as much an underground bunker as a traditional home design on Burlington's Waterfront. The variance is requested to allow for a building design that is primarily above ground, has sufficient living space to accommodate our family, allows for reasonable solar exposure, natural light and a pleasant living environment rather than the underground bunker. The owners did their reasonable due diligence prior to purchasing the property (see attached notes), verifying the ability to build a house that would suit the location and the owner's needs.

*(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.*

At the time of the application, the regulations in effect made allowances for designing a house on a steep slope, the new regulations do not. The new regulations necessitate that a similar design be substantially underground (see attached sketches Doc # 13). We submit that the requirement that the house be substantially underground is not reasonable.

*c) The unnecessary hardship has not been created by the applicant.*

The hardship relative to the new height regulations vs the regulations in place when we submitted our application is not a hardship created by the applicant.

*(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.*

The variance from the new height calculation requirement would not alter the essential character of the neighborhood or district in which the subject property is located. The proposed design is similar in design approach to the new condo complex at 85North Ave.

*(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.*

The requested height variance allows for a reasonable building envelope, minimizes encroachment into the steep slope on the property, allows for sufficient living space above ground and provides the minimum height necessary for solar panels to be mounted on the roof rather than the pedestal mounted style indicated on attached sketches along with the resolving the other issues mentioned above.

*(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.*

The variance from the new height requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single-family home.

**Summary of events beginning with pre-purchase efforts:**  
**(See enclosed Doc #12 Timeline for details)**

I met with Scott Gustin on 21June21 to discuss our plans and get his feedback on the viability of our plan. He stated that he was very familiar with the property due to several other folks that had made efforts to develop the lot. At that time, he indicated that “the design was appropriate to the location”. Unbeknownst to me, there was a public hearing scheduled for the next evening to discuss proposed changes to the height calculations that would affect our lot and other similar sites. Uncertain as to why Scott did not share such relevant information with me at that time.

From 29June21 thru 4Aug21 I had further discussions with Scott Gustin and Mary O’Neil regarding the project and met with Caleb Mana from the DPW to get his insights regarding the requirements, from his perspective, for developing the lot. From these discussions, it seemed reasonable to move forward.

On 4Aug21 we received a setback variance that was needed in order to make it possible to build on the site. Once we had received this variance, we felt confident moving forward with the purchase.

19Aug21 we closed on the property.

26Aug21 Received Z-card for building permit.

[At no time during these discussions did anyone from Planning and Zoning inform me about the pending changes to the height ordinance or even that I should monitor your website for potential changes.](#)

From Aug21 thru May22 Completed Architectural drawings, worked on engineering structure and various permits for utilities. Completed submittals for Building Permit Application 16May22.

6July22 thru 8Aug22 worked with Ryan Morrison and DAB to refine application for submittal to DRB. 8Aug22 Ryan indicated application was ready for DRB

9Aug22 notified by Ryan that height regulations had changed and design would not meet code.

9Aug thru 12Aug Several discussions with Ryan. He indicated that the date of a completed application rather than the initial date of application was used to determine the codes to be applied. He also indicated that I would likely not be successful using a variance to address the height issue. Ryan also mentioned that I could request the application be sent to the DRB since the final decision was their call and they had the discretion to allow the design or not.

6Sept22 Online DRB meeting. Significant portion of the meeting involved discussion of issues that were not relevant to the agenda (storm drainage, traffic/pedestrian concerns). I didn’t do a particularly good job of presenting my “case”. (I am more effective working with folks in person) There seemed to be very little discussion during the deliberative session. Based on the minimal discussion, I was anticipating the application to be tabled with a request for more information and was dismayed to have the application rejected outright.