

## Burlington Development Review Board

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Brad Rabinowitz  
AJ LaRosa  
Geoffrey Hand  
Brooks McArthur  
Kienan Christianson  
Caitlin Halpert  
Chase Taylor  
Sean McKenzie (Alt.)



## Burlington Development Review Board

### Findings of Fact Deliberative Hearing Tuesday, August 2, 2021

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**In RE:** 21-508; 31 North Avenue (Ward 3C, RM) (Tax Lot No. 043-3-188-000)

**Owner/Applicant:** Wendy Hakken / Steve Trombley

**Request:** Variance from front yard setback on existing vacant lot.

**Members Present:**

Brad Rabinowitz  
Geoff Hand  
Brooks McArthur  
Kienan Christianson  
Chase Taylor  
Sean McKenzie

**Evidence Presented:**

The Board examined the materials submitted in support of this request.

## I. FINDINGS

**Background Information:**

The applicant is seeking a variance from the applicable front yard setback on an existing vacant lot. The subject property fronts on Depot Street, but all of its neighboring properties front on both North Avenue and Depot Street. The buildings on these neighboring properties are set close to North Avenue and relatively far from Depot Street and, therefore, create a prohibitive front yard setback requirement for the subject property.

No development is included in this application. The variance is sought as a precursor to a potential single family home to be filed under separate permit application if the variance is granted.

An identical variance was approved in 2014. It was extended and ultimately expired without any subsequent development of the property.

Previous zoning actions for this property are as follows:

- 10/24/14, Approval of variance from front yard setback

- 12/18/97, Application for, and subsequent withdrawal of, permit to construct home

## **Article 12: Variances and Appeals**

### **Sec. 12.1.1 Variances**

*(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 small at just 4,180 sf and 44' of road frontage. The lot is also steeply pitched except for the upper, easternmost end. The requested variance, however, does not relate to these particular characteristics. The subject property is the only one along the eastern side of Depot Street that does not also front on North Avenue. The buildings on these other properties are set close to North Avenue with relatively deep setbacks from Depot Street. The variance is requested because of the way the front yard setback is calculated per Table 4.4.5-3: *Residential District Dimensional Standards*. The front yard setback is based on the average of 2 adjacent lots on both sides of the subject lot, +/- 5'. In this case, the front yard setback is based on the average of three properties at 33, 55, and 1 North Avenue. These properties all have two front yards – on North Avenue and on Depot Street. Their front yard setbacks along Depot Street are 63', 56', and 116', respectively. The average of these setbacks is 78'. A 78' (+/- 5') on a 95' – 114' deep lot, combined with a rear yard setback of 25% results in an unbuildable lot. Compliance with the front yard setback is impossible. **(Affirmative finding)**

*(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.*

As noted above, a 78' (+/- 5') front yard setback combined with a 25% rear yard setback results in virtually no building envelop. Compliance with the front yard setback is impossible. **(Affirmative finding)**

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

The hardship relative to the front yard setback is related to the fact that front yard setback requirements are based on neighboring properties. It is not a hardship created by the applicant. **(Affirmative finding)**

*(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 requirements of the front yard setback would not alter the essential character of the neighborhood or district in which the subject property is located. The variance

would enable the construction of a single family home on a vacant lot located within the waterfront medium density residential zone. **(Affirmative finding)**

*(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 10' front yard setback allows for a reasonable building envelope and minimizes encroachment into the steep slope on the property. **(Affirmative finding)**

*(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 front yard setback 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. **(Affirmative finding)**

## **II. MINUTES**

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

## **III. MOTION**

### **Motion: Kienan Christianson**

I move that the Board grant approval for a variance from the front yard setback on an existing vacant lot at 31 North Avenue based on the findings in Section I above and subject to the following conditions:


1. This variance approval is for relief from the front yard setback requirement of Table 4.4.5-3, *Residential District Dimensional Standards*.
2. No development is included in this approval. All development is subject to a separate zoning permit and must meet all other dimensional requirements.
3. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

**Seconded: Brooks McArthur**

**Vote: 6-0-0, motion carried**

Dated at Burlington, Vermont, this 4th day of August, 2021

Respectfully Submitted,

  
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Brad Rabinowitz, Development Review Board Chair

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**Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.**