

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: December 6, 2016
RE: ZP 16-1400LL

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: ZP16-1400LL

Location: 80 Colchester Avenue

Zone: I **Ward:** 1E

Date of Application: June 6, 2016

Date application approved: September 23, 2016

Date appeal accepted: October 7, 2016

Applicant/ Owner: Randall Miller & Frank Von Turkovich

Appellants: Robert and Susan Butani, represented by Lisa Shelkrot Esq.

Request: Appeal of a lot line adjustment between 80 Colchester Avenue, 27 Fletcher Place and 49 Fletcher Place. (Zoning permit appealed was specifically for 80 Colchester Avenue parcel.)

Background:

- **Zoning Permit 17-0388MA/CA**, Construct 3 story residential building containing 75 apartments units. Combine and reconfigure surface parking areas. Project currently in review.
- **Zoning Permit 16-1400LL**; lot line adjustment with 27 and 49 Fletcher Place. September, 2016.
- **Sketch Plan Review ZP16-0904SP**; Sketch Plan Review for 66, 72, 80, 94 and 96 Colchester Avenue; 27 and 49 Fletcher Place, Construct 2 three story buildings containing 78 apartment units with above-ground and underground parking. April 2016.
- **Sketch Plan Review 16-0746SP**; Sketch Plan review for proposed three story, two building multi-residential building complex with associated parking. December 2015. (Design Advisory review.)
- **Sketch Plan Review ZP16-0393SP**, Construct 79 apartment units in 3 story building with underground and above-ground parking facilities. November 2015.
- **Sketch Plan Review 15-0896SP**, construct 79 apartment units in 3 story building with underground and above-ground parking facilities, April 2015.

- **Zoning Permit 15-0390SN**; install new freestanding sign for Hillel. Approved October, 2014.
- **Zoning Permit 15-0042CA/CU**, change of use from office to membership club; exterior staircase and install bike rack. Approved August 2014.
- **Zoning Permit CU 2004-016**; application for use by UVM affiliated Center for Children, Youth and Families Administrative offices. Approved with conditions, January 2004.
- **Zoning Permit 01-389**; installation of an externally illuminated freestanding sign for the existing medical (chiropractic) office. Approved April 2001; not pick up and confirmed expired in 2011.
- **Zoning Permit CU 2001-035**; change of use of first floor space from office to medical chiropractic office. Removed from agenda as determined that the proposed conversion from a medical billing office to a chiropractic office on the first floor does not require conditional use review. February 2001.
- **Zoning Permit 00-516**; refurbish existing side porch to allow ramping of deck for handicapped accessibility to the existing medical office. No increase in footprint. December, 2000.
- **Zoning Permit 99-277**; removal of slate roofing material, replacing with asphalt shingles for the existing medical office. Approved December 1998.
- **Zoning Permit 92-123**; construction of ten additional parking spaces for a total of sixteen for the existing medical office and residential unit. Existing curb cut to be eliminated, with joint use of adjacent property's (medical office / 94 Colchester Avenue) curb cut. Approved September 1991.
- **Zoning Permit CU92-011 / COA 92-025**; eliminate curb cut and driveway from #80 and utilize widened drive at traffic light at #94. Remove existing garage, change configuration and size of paved parking area. No change to use of #80 as office and apartment. Approved with conditions September 1991.
- **Request for Conditional Use Permit** to construct a private parking lot. July 1990. Application withdrawn by applicant.
- Notice of appeal to the Zoning Board of Adjustment seeking a special exception to erect a 16' x 16' addition to the northeast corner of existing doctor's office. Approved July 1968.

Overview: On June 6, 2016 the applicant submitted three applications to adjust the shared property boundaries between three parcels; 80 Colchester Avenue, 27 Fletcher Place and 49 Fletcher Place. All three applications were signed by property owners, and given individual zoning permit numbers. After assurance for compliance with parking requirements and setbacks, all three applications were simultaneously administratively approved September 23, 2016. The appellants have filed an appeal of one permit; that associated with 80 Colchester Avenue.

Recommendation: Denial of the appeal and uphold the administrative decision relative to adjusted boundary lines for 80 Colchester Avenue, per the following findings:

I. Findings

Article 3: Applications, Permits and Project Review

Section 3.2.4 Application Forms and Fees

(a) Any application shall be deemed incomplete until such time as all applicable application fees are paid.

The appellants have filed a single appeal for a lot line adjustment that was integral to boundary line adjustments of three lots. An operative appeal of the boundary line decisions must include all three permits, requiring appeal application and fees for three permits. The appeal is deficient in appropriate application fees, as only one appeal fee was provided for a single permit, when boundary line adjustments involve more than one property and three parcels were involved. **Adverse finding.**

Section 3.2.5 Completeness of Submission, Administrators Action

An application for a zoning permit shall not be complete until all submission requirements have been provided to the satisfaction of the administrative officer. The administrative officer shall take action with regard to a complete application within 30 days. Such action shall be to issue a decision on the application pursuant to the authority granted in Sec 3.2.7 of this Article, or by making a referral to the DRB.

Only one appeal was submitted for a single permit (16-1400LL) within a three-permit decision. Associated permits were issued for 27 Fletcher Place (ZP16-1398) and 49 Fletcher Place (ZP16-1399.) Although each parcel was issued a permit, the decisions were not only interrelated but interdependent. The property lines on one parcel cannot be altered without a corresponding permit for a property line adjustment for the affected neighbor. Similarly, an appeal of a single boundary line adjustment cannot be successful without an appeal of the other involved parcel(s). Failure to appeal the 2 other modified properties (27 Fletcher Place and 49 Fletcher Place) renders the single permit appeal imperfect. **Adverse finding.**

Should the administrative officer fail to take any such action, a permit shall be deemed issued on the 31st day pursuant to 24 VSA 4448(d). Modifications to a pending application by an applicant shall restart any applicable time limits, commencing upon the modification date.

On June 20, 2016 the application was placed on “hold” while the applicant worked with his engineering consultants to amend the plat to reflect required parking for the 27 Fletcher Place parcel, to confirm setbacks for the same, and to add the required language to the provided plat. Notes in the electronic project folder state: *Revised and amended plans received Friday morning, 9/23/2016.* The new material restarted the review period. With the revised plans, all three parcels were found to be compliant, and all three permits were approved on that date.

Affirmative finding.

Article 4: Zoning Maps and Districts

Section 4.4.4 Institutional District

(b) Dimensional Standards and Density

Table 4.4.4 -1 Dimensional Standards and Density

Districts	Max. Intensity	Max. Lot Coverage ¹	Building Setbacks ¹ (feet)			Max. Height ¹ (feet)
			Front ²	Side ³	Rear ³	
Institutional⁴	20 du/ac (24 du/acre with inclusionary req.)	40% (48% with inclusionary req.)	<u>Minimum:</u> 15-feet	10% of lot width <u>Min:</u> 5-ft <u>Max required:</u> 20-feet	25% of lot depth <u>Min:</u> 20-feet <u>Max required:</u> 75-feet	35'
80 Colchester Avenue ZP16-1400LL	No change to existing intensity of use.	7.5%	No change	Meets 5' minimum setback required for accessory structure	75' max achieved	No change

1 –Measurement of and exceptions to coverage, setback and height standards are found in Art 5.

2 –The calculation of the front yard setback shall be a percentage of lot width and depth or as defined and described in Art 5.

3 – Maximum allowable lot coverage, setbacks and building height in portions of this district may be modified by the provisions of the Institutional Core Campus Overlays in Sec. 4.5.2

Affirmative finding.

(c) Permitted and Conditional Uses

Not applicable. Permit application was to reorganize the property boundaries with adjacent parcels, not alter use(s).

Article 5: Citywide General Regulations

Part 2: Dimensional Requirements

Section 5.2.1 Existing Small Lots

Not applicable.

Section 5.2.2. Required Frontage or Access

No change to frontage or principal access was included in the boundary line adjustment. Frontage remains as existing on Colchester Avenue; access via existing shared-use driveways serving 72 Colchester Avenue and 94 Colchester Avenue. The boundary line adjustment appended a portion of the rear of 27 Fletcher Place and 49 Fletcher Place. An existing access from Colchester Avenue between 96 and 106 Colchester Avenue formerly part of the 27 Fletcher Place parcel has been joined to the 80 Colchester Avenue parcel. **Affirmative finding.**

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.4-1, above. **Affirmative finding.**

Section 5.2.4 Buildable Area Calculation

Although the property exceeds 2 acres (147,528 sq. ft.), it is not within the RCO, WRM, RM, WRL or RL zoning district. Not applicable.

Section 5.2.5 Setbacks

(b) Exceptions to Yard Setback Requirements

4. Accessory Structures and Parking Areas. Accessory structures no more than fifteen (15) feet in height, parking areas, and driveways may project into a required side and rear yard setback provided they are no less than five (5) feet from a side or rear property line where such a setback is required.

See Table 4.4.4-1, above. **Affirmative finding.**

Section 5.2.6 Building Height Limits

Not applicable.

Section 5.2.7 Density and Intensity of Development Calculations

The application included no change to the intensity of use. As 80 Colchester Avenue increased in size by the boundary line adjustment, there was no threat of new non-conformity for density.

Affirmative finding.

Part 3: Non-Conformities

Not applicable.

Section 5.4.8 Historic Buildings and Sites

No changes were proposed to the historic structure with the re-arrangement of property boundary lines. Not applicable.

Section 5.4.9 Brownfield Remediation

Not applicable.

Part 5: Performance Standards

Section 5.5.1 Nuisance Regulations

There is no identified conflict with this standard by relocation of property lines of 80 Colchester Avenue. **Affirmative finding.**

Section 5.5.2 Outdoor Lighting

Not applicable.

Section 5.5.3 Stormwater and Erosion Control

No development or ground disturbance was included with the lot line adjustment. Not applicable.

Section 5.5.4 Tree Removal

Not applicable.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

These standards apply to all development subject to the provisions of this ordinance found in Article 10 Subdivisions or Article 11, Planned United Development involving the subdivision of land or an adjustment or reconfiguration of lot lines.

Section 6.1.2 Review Standards

a) *Protection of Important Natural Features*

No changes are proposed to natural features. The permit is to reassign the property parameters in conjunction with that of adjacent neighbors. Not applicable.

b) *Block size and arrangement*

No changes to the street blocks are included with the lot line adjustment. Not applicable.

c) *Arrangement of lots*

The size and arrangement of new lots shall reflect and perpetuate the existing development pattern of the surrounding neighborhood.

No new lots are being created. The lot line adjusted the shared boundary lines of adjacent parcels at 27 and 49 Fletcher Place.

Lots shall be created in such a way as to enable their development pursuant to the requirements of this ordinance, and ensure a clear transfer of title.

No new lot is created by the lot line adjustment. The required recording of the final plat/mylar will assure clear transfer of title.

Interior lot lines extending from a street should be perpendicular or radial to the street right-of-way line to the greatest extent feasible. Flag lots and through lots are discouraged, and shall be allowed only to the extent where topography and existing block and lot arrangement allow no suitable alternative. In such cases, a minimum frontage for access of 20-feet shall be required.

The existing interior lot lines begin perpendicular to the street; however, the overall land area and existing property lines prove irregular within the interior. The lot line adjustment of 80 Colchester Avenue absorbs the random and irregular interior property lines of 27 Fletcher Place, and create greater consistency with rear property line for lots fronting Fletcher Place. **Affirmative finding.**

d) *Connectivity of streets within the city street grid*

The lot line adjustment does not alter the connectivity of streets within the city street grid. **Affirmative finding.**

e) *Connectivity of sidewalks, trails and natural systems.*

The established sidewalk network shall be maintained and extended to the extent possible. Trail networks and uninterrupted corridors of greenspace outside of the established street grid should be maintained and extended wherever possible. All sidewalks shall be in conformance with applicable street design & construction details as provided by the department. of public works, and shall be dedicated to the city.

The lot line adjustment of 80 Colchester Avenue will not alter the connectivity of sidewalks, trails or natural systems. The uninterrupted greenscape north of 80 Colchester Avenue will not be impacted by the realignment of perimeter boundary lines of that lot.

Affirmative finding.

Article 7: Signs

Not applicable.

Article 8: Parking

The boundary line adjustment did not include any changes to the existing parking configuration for the building at 80 Colchester Avenue or the existing parking count; nor did it spur any increased parking requirement.

The two additional parking spaces approved by the DRB for the duplex use at 27 Fletcher Place, accessed via the applicant-owned access on Colchester Avenue were relocated to the Fletcher Place parcel as part of the boundary line adjustment (ZP16-1398LL.) [That permit for a change of use to a duplex is currently under appeal to the Vermont Superior Court, Environmental Division. The boundary line adjustment was configured conservatively to be compliant with parking requirements of 27 Fletcher Place whether the appeal is upheld or denied by that body.]

Affirmative finding.

Article 10: Subdivision Review

Section 10.1.5 Lot Line Adjustments

The intent of this section is to provide for an abbreviated review and approval process for the realignment of lot boundary lines between existing adjacent lots, including the merger of lots, where no additional lots are being created. In addition, a lot line adjustment shall include the addition and subtraction of vestigial alleys, as defined in Article 13, when being combined with an adjacent lot. A lot line adjustment shall not constitute a subdivision.

The request included three adjacent parcels, and three parcels remained after the lot line adjustment. No new lots were created. **Affirmative finding.**

Lot Line Adjustment Submission Requirements:

An applicant requesting review of a lot line adjustment shall submit the following documentation to the administrative officer:

- (1) A complete application form pursuant to the provisions of Art. 3 and signed by the property owner;*
- (2) A letter requesting review and approval of a lot line adjustment, giving the names and address of property owners;*
- (3) The applicable application fee; and,*
- (4) Two (2) copies of a lot line adjustment plat which shall include the following:*

The plat shall be prepared by a Vermont licensed land surveyor and indicate all lots that are proposed to be modified as a result of the proposed lot line adjustment. The survey shall be sufficient to clearly indicate the area, metes, bounds, and ties of each of the affected lots.

The survey shall include all structures and site improvements and delineate all building/structure setbacks, lot coverage, parking spaces and any other details as may be specified by the Administrative Officer.

The following additional language shall be printed on the plat:

“Approval of this lot line adjustment plat does not constitute the creation of a separate parcel or lot. It adjusts the physical location of the common boundary of the adjoining parcels or lots.

This lot line adjustment has been approved by:”

City of Burlington Administrative Officer/ Assistant Administrative Officer

Date: _____ Zoning Permit # _____

The application for a lot line adjustment included all of the above required submission documents for each of the involved parcels. The required language was added to the Boundary Line Adjustment Plat. **Affirmative finding.**

Completeness of Submission:

Upon receipt of a complete application, the administrative officer shall have no more than thirty (30) days to render a decision on the lot line adjustment application pursuant to the provisions of Section 3.2.5.

See Section 3.2.5, above.

Lot Line Adjustment – Administrative Decision:

The administrative officer shall have the authority to approve to deny an application for a Lot Line Adjustment as follows:

1. An application may be denied for good cause based upon substantial evidence including but not limited to:

A. Such cases where the proposed adjustment will result in a new lot being created;

No new lots were created by the lot line adjustment of 80 Colchester Avenue.

B. Such cases where the proposed adjustment will result in the creation of a non-conforming parcel or non-conforming buildings or structures or yard areas or any non-conforming dimensional standard;

The proposed alignment does not create any non conforming parcel or non-conforming building or structures or yard areas or any non-conforming dimensional standard.

and,

- C. Such cases where the proposed adjustment does not adequately address the applicable Land Division Design Standards of Art. 6.*

No proposed Land Division occurred as part of the lot line adjustment.

- 2. Provided the adjustment does not create a non-conforming parcel, structure or nonconforming yard area or other dimensional non-conformity, or upon the issuance of a variance by the DRB, and upon submission of a plat per subsection (b) above, the administrative officer shall approve the proposal as presented or as modified.*

The administrative approval was based on compliance with the above standards.

All appeals of an administrative officer's decision shall be made pursuant to the applicable provisions of Article 12.

This application seeks to overturn the administrative decision, pursuant to Article 12.

Article 12: Variances and Appeals

Part 2: Appeals

Sec. 12.2.2 Appeals of Administrative Officer Decisions

(a) Notice of Appeal:

An appeal must be taken within fifteen (15) days after the date of decision or act appealed from, and is taken by filing a written notice of appeal with the administrative officer and the DRB.

The appeal was submitted to the Planning and Zoning Office within 15 days of the date of decision.

Such notice shall include:

- 1. The name and address of the appellant;*
The appellants' names are listed, but only the address for their counsel is provided.
- 2. A brief description of the property with respect to which the appeal is taken;*
The properties identified as 80 Colchester Avenue, 27 Fletcher Place and 49 Fletcher Place. The permits for the last two were not appealed.
- 3. A reference to the regulatory provisions applicable to that appeal;*
The appeal references Article 10.1.5., which is actually **Section** 10.1.5, Lot Line Adjustments.
- 4. The relief requested by the appellant;*
The appeal requests that the lot line adjustments be denied. No supporting reason or argument for the requested relief was provided, and therefore the appeal is deficient.

And

5. *The alleged grounds why such requested relief is believed proper under the circumstances.*

The appeal narrative asserts that the property owner is attempting to avoid the bearing of a potential zoning district change for 27 Fletcher Place. This assertion is irrelevant to issuance of the zoning permit, and makes reference to a differing property than the one subject to the appeal (80 Colchester Avenue.)

(b) Hearing within 60 Days:

The DRB shall set a date and place for a public hearing of an appeal under this ordinance, which shall be within sixty (60) days of the filing of the notice of such appeal with the administrative officer pursuant to (a) above. The board shall give public notice of the hearing in accordance with Section 2.6.2 hereof.

Staff reached out to the appellants to signal the lack of completeness of the appeal, giving opportunity to file paired appeals for the remaining involved permits (ZP16-1398 and ZP16-1399.) The action of the appellants to list the other property addresses on the appeal form suggested intent to include those properties. No further applications/appeals or fees were provided to the Planning and Zoning office. Staff then scheduled the DRB hearing date for December 6, 2016; within 60 days of the date of appeal: October 7, 2016.

Public notice of the hearing has been met. **Affirmative finding.**

Section 12.2.5 Finality

Upon the failure of any interested person to appeal to the DRB or to the environmental court, all interested persons affected shall be bound by such decision or act of such administrative officer, such provisions or such decisions of the DRB, as the case may be, and shall not thereafter contest, either directly or indirectly, such decision or act, such provision, or such decision in any proceeding, including without limitation, any proceeding brought to enforce this ordinance.

The boundary line adjustment for 80 Colchester Avenue (ZP16-1400LL) was intricately and undisputedly involved with the boundary line adjustments of 27 Fletcher Place (ZP16-1398) and 49 Fletcher Place (ZP16-1399.) The latter 2 permits were not appealed; the boundary lines are now altered from their previous location. Per this standard, finality rules.

The boundary lines of 80 Colchester Avenue cannot be reverted or manipulated without affecting 27 Fletcher Place and 49 Fletcher Place, who now have final re-aligned boundaries. The appeal of the boundary line adjustment to Colchester Avenue cannot therefore overturn the administrative officer's decision relative to 27 or 49 Fletcher Place and ultimately, 80 Colchester Avenue.

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