

# Exhibit A1



**WATERBURY MUNICIPAL OFFICE**  
802.244.7033 OR 802.244.5858  
FAX: 802.244.1014  
28 NORTH MAIN ST., SUITE 1  
WATERBURY, VT 05676  
WATERBURYVT.COM

Permit Application # 004-23  
Tax Map # 09-281.000  
ZA Action Date: February 27, 2023  
Action Effective Date: March 15, 2023

## ZONING PERMIT DENIAL NOTICE

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**Applicant:** Francine & Donald R. Chittenden,  
(mail Trustees, Chittenden Living Trust  
address) P.O. Box 369  
Waterbury Center, VT 05677

**Landowner:** (same)

**Project:** Proposed Single-Family Dwelling

**Project** 35 Sunset Dr.  
**Location:** Waterbury Center, VT

Your application for a zoning permit has been reviewed by the Assistant Zoning Administrator. The proposal, to construct a single-family house, as represented in the attached application and supporting documents, does not conform to the minimum 20-foot access right-of-way width requirements of 24 V.S.A. § 4412(3) and the Waterbury Zoning Regulations Section 413(b), Driveways and Curb Cuts as amended on May 16, 2016, and is hereby denied.

24 V.S.A. § 4412(3) requires frontage on, or access to, public roads, class 4 town highways, or public waters. Land development may be permitted on lots that do not have frontage either on a public road, class 4 town highway, or public waters, provided that access through a permanent easement or right-of-way has been approved in accordance with standards and process specified in the bylaws. This approval shall be pursuant to subdivision bylaws adopted in accordance with section 4418 of this title, or where subdivision bylaws have not been adopted or do not apply, as in Waterbury, through a process and pursuant to standards defined in bylaws adopted for the purpose of assuring safe and adequate access. Any permanent easement or right-of-way providing access to such a road or waters shall be at least 20 feet in width.

Your site plan indicates you only have a 12-foot-wide right-of-way for access to the property identified as 35 Sunset Drive, and the deeds in your chain of title for the subject parcel, including the Warranty Deed to Edward S. Funsten from Edward S. Funsten and De Lancey M. Funsten, dated March 10, 1961, and recorded in Book 61, Page 196 and the survey recorded in Book 61, Page 196a, all of the Waterbury Land Records, also reference a 12-foot wide right-of-way for access to the property. Further, the property does not have frontage on, or access to a public road. Therefore, pursuant to 24 V.S.A. § 4412(3) and the Waterbury Zoning Regulations Section 413(b), Driveways and Curb Cuts as amended on May 16, 2016, the requirement of a minimum 20-foot-wide right-of-way to provide access to a public road has not been met.

For these reasons, I must deny your application. If you do not agree with this determination, you may appeal it in writing, within 15 days of the Assistant ZA Action dated above, to the Municipal Clerk and by filing a copy with the Assistant Zoning Administrator and payment of the requisite appeal filing fee pursuant to Zoning Regulations Section 307(a). It is also important to note that any land development activities, as defined in the Zoning Regulations, including building construction, that has already started in connection with this application is in violation of the Regulations and could result in legal action and fines of up to \$200 per day.

ZONING APPLICATION DENIED BY:

A handwritten signature in black ink, appearing to read 'Neal Leitner', written in a cursive style.

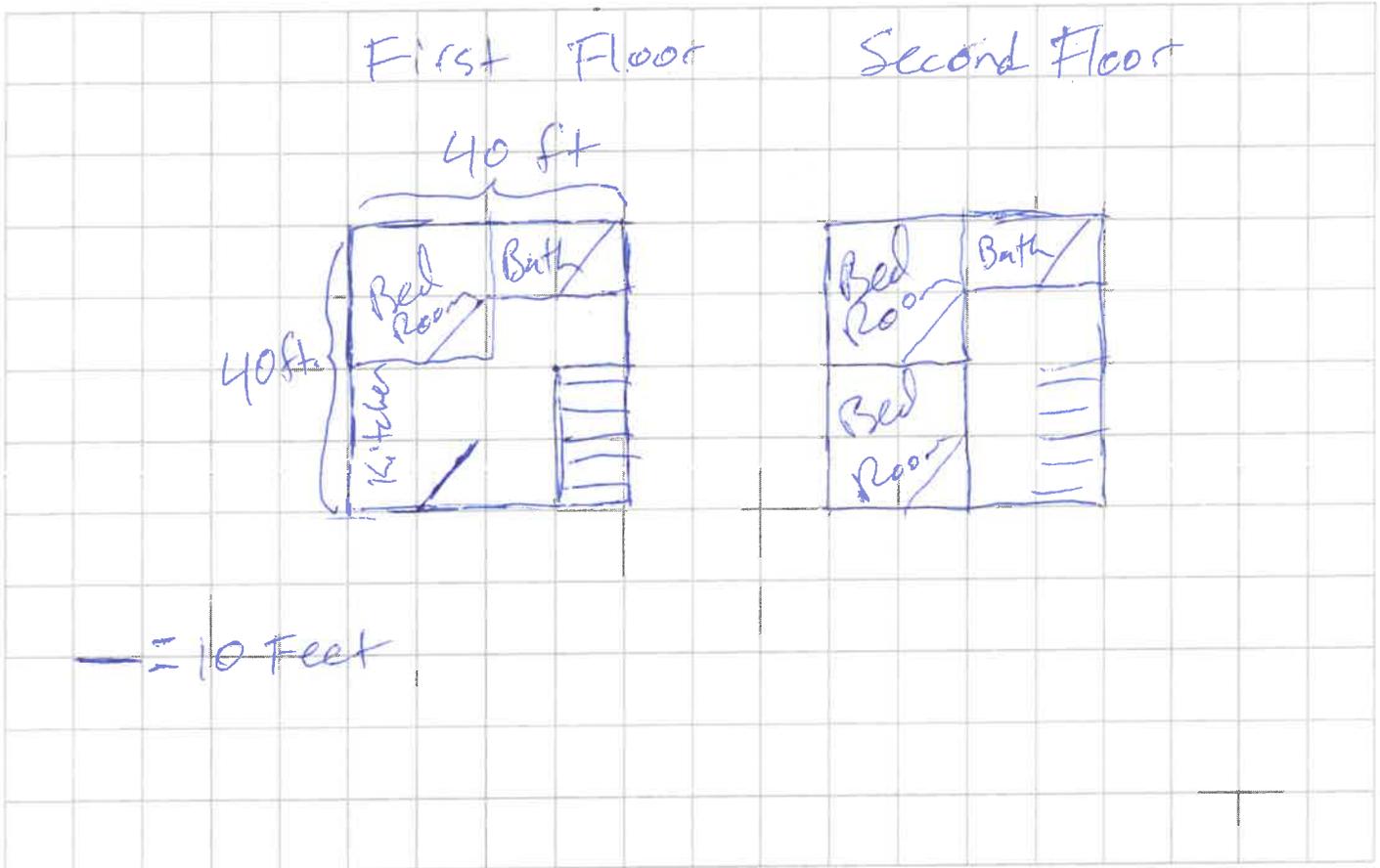
Neal Leitner, Assistant Zoning Administrator

***Appeal of Rights:*** Pursuant to 24 V.S.A. §4465(a), you have a right to appeal this administrative action to the Development Review Board within 15 days of the date of this letter by filing a written notice of appeal with the Town Clerk with a filing fee of \$50.00. A copy of the notice of appeal shall be filed also with the Zoning Administrator at: Town of Waterbury / Attn: Zoning Administrator / 28 N. Main Street / Waterbury, VT 05676.

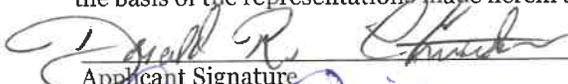


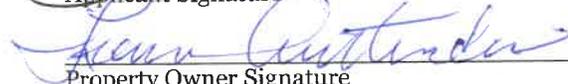
# Exhibit B2

**SKETCH PLAN** Please include a sketch of your project, drawn to scale, with all required measurements - see *Zoning Permit Application Instructions*. You may use the space below or attach separate sheets. For plans larger than 11"x17" please provide a digital copy (pdf. file format) in addition to a paper copy.



**SIGNATURES** The undersigned hereby applies for a Zoning Permit for the use described in this application to be issued on the basis of the representations made herein all of which the applicant swears to be complete and true.

 1/18/2023  
 Applicant Signature date

 1/18/2023  
 Property Owner Signature date

**CONTACT** Zoning Administrator Phone: (802) 244-1018  
 Mailing Address: Waterbury Municipal Offices, 28 North Main Street, Suite 1, Waterbury, VT 05676  
 Municipal Website: www.waterburyvt.com

OFFICE USE ONLY	
Zoning District/Overlay: <u>CNS</u>	REVIEW/APPLICATIONS:
Review type: <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> DRB   Public Warning Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Conditional Use <input type="checkbox"/> Waiver
DRB Referral Issued (effective 15-days later): _____	<input type="checkbox"/> Site Plan
DRB Mtg Date: _____ Decision Date: _____	<input type="checkbox"/> Variance
Date Permit issued (effective 16-days later): _____	Subdivision:
Final Plat due (for Subdivision only): _____	<input type="checkbox"/> Subdv. <input type="checkbox"/> BLA <input type="checkbox"/> PUD
Remarks & Conditions: <u>Application denied by assistant ZA</u>	Overlay:
Authorized signature: _____ Date: _____	<input type="checkbox"/> DDR <input type="checkbox"/> SFHA <input type="checkbox"/> RHS <input type="checkbox"/> CMP
	<input type="checkbox"/> Sign
	<input type="checkbox"/> Other _____
	<input type="checkbox"/> n/a

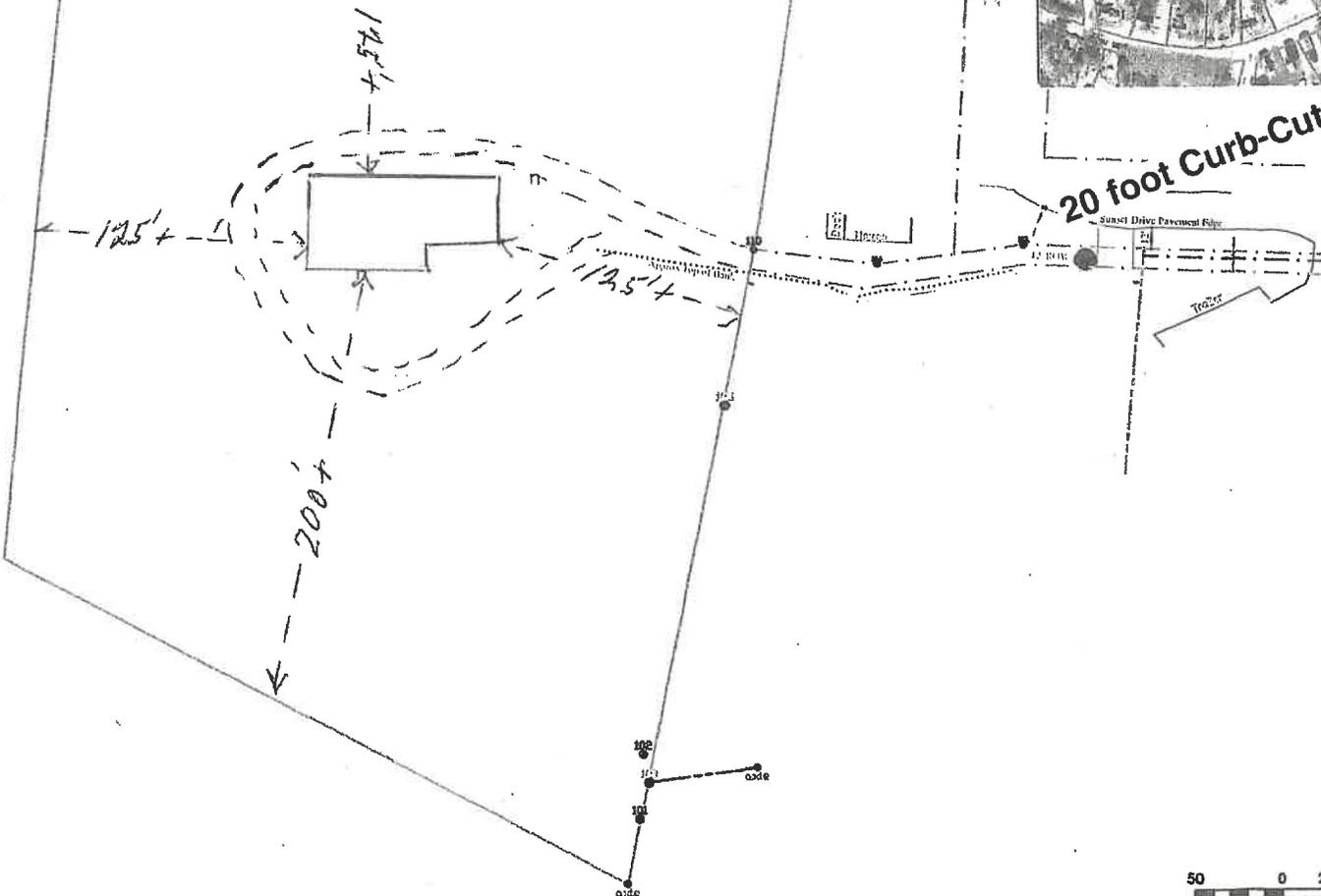
# Exhibit B3

**D.R. Eric & Francine Chittenden**

**35 Sunset Drive**

0 100 200 300

1 inch = approximately 100 feet



**20 foot Curb-Cut**

50 0 25 50 100 200

**Notes:**

1. Orientation is based on Vermont Grid North.
2. This is not a boundary survey.  
Boundary information shown is based on Reference #1.

**Reference(s):**

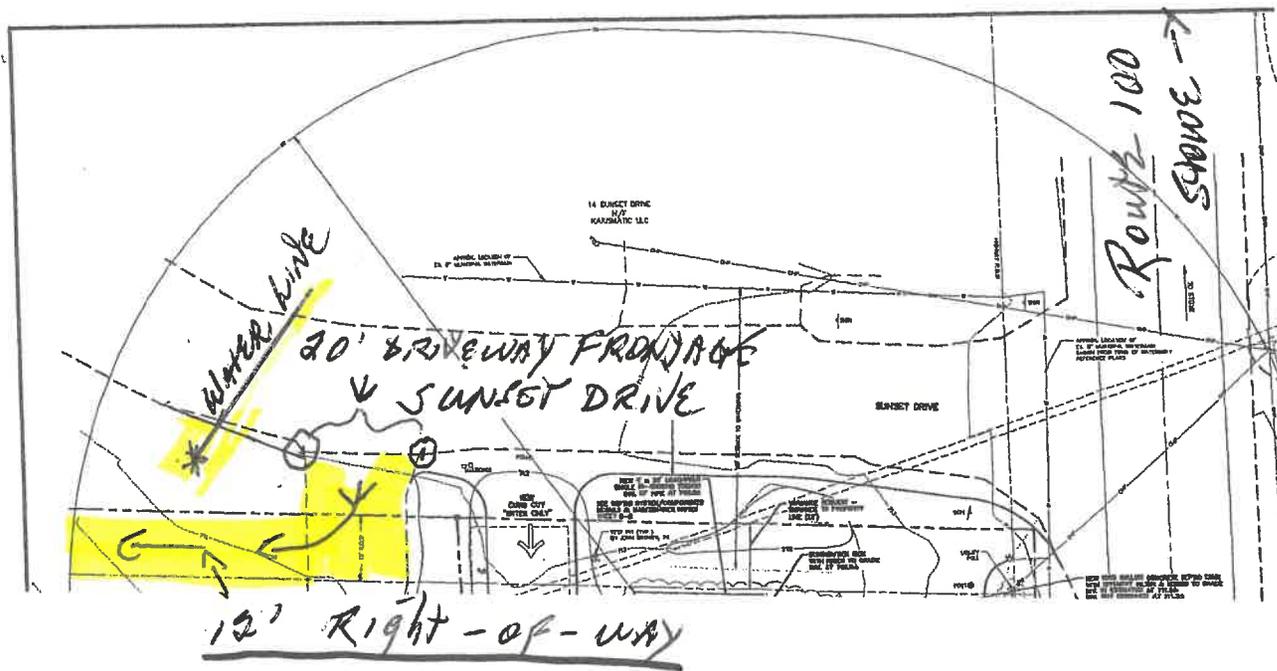
1. Funsten Property, Waterbury Ctr, Vermont, by Paul Elgelow, April 1858
2. Property of R & L Country Store, Inc, by Keller and Lowe, Inc., April 1975, Job #1218-178
3. Sunset Drive, Waterbury Center, Vermont, by Paul Elgelow, last revised June 1868, MB 1, P 17A

F:\Jobs\14\1401\Site Plan\Funsten 2022-1.dwg

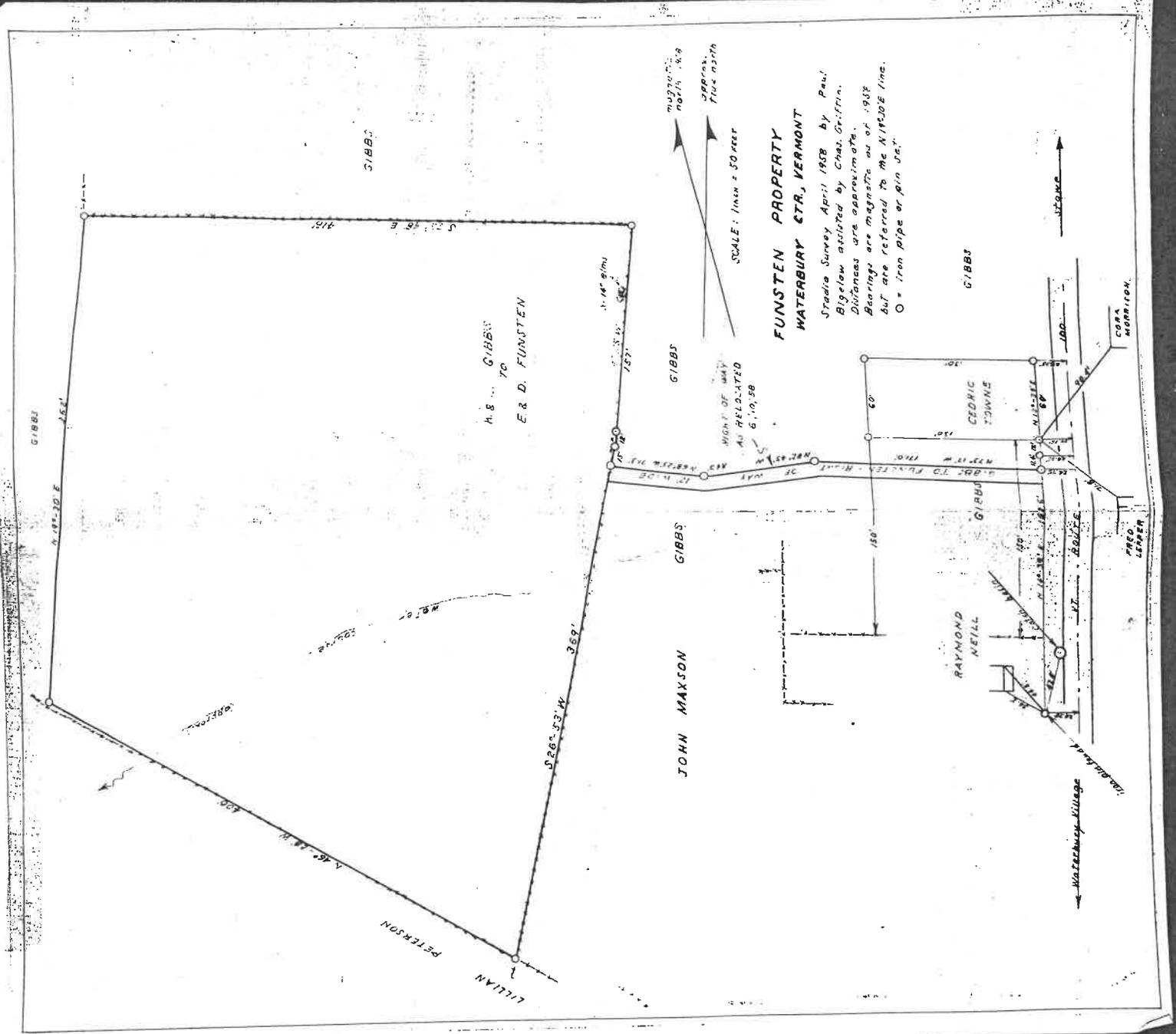
Planning Plan		SCALE: 1" = 50'	
Funsten Parcel		DRAWN BY: PSK	
<b>Land Of</b>		CHECK BY:	
<b>D. "Eric" and Francine Chittenden</b>		DATE: May 2022	
Sunset Drive		JOB: 14011	
Waterbury Center, Vermont			
SHEET 1 OF 1	<p><b>Little River</b> Survey Company, L.L.C.</p> <p>P.O. Box 1208, 3033 Parker Street Stowe, Vermont 05672 Tel: (802) 253-8214 Fax: (802) 253-2029</p>		

# Exhibit B4

20' FRONTAGE FOR ACCESS TO  
35 SUNSET DRIVE,  
CHITTENDEN REVOCABLE LIVING TRUST



3/11/64



**FUNSTEN PROPERTY  
WATERBURY CTR., VERMONT**

Strade Survey April 1908 by Paul Bigelow assisted by Chas. Griffin. Distances are approximate. Bearings are magnetic as of 1908 but are referred to the N. 19° 20' E line. O = iron pipe or pin etc.

SCALE: 1 inch = 50 FEET

magnetic north  
approx. true north

HIGH OF WAY  
AS RELOCATED  
6.10.58

Waterbury Village

FRANK  
LAWREN

COP.  
HARRISON

VT. ROUTE

GIBBS

JOHN MAXSON

GIBBS

GIBBS

M. S. GIBBS  
TO  
E. & D. FUNSTEN

GIBBS

S 21° 46' E

157'

114° 21' 30"

S 26° 53' W 359'

GIBBS

N 47° 30' E

452'

111'

111'

111'

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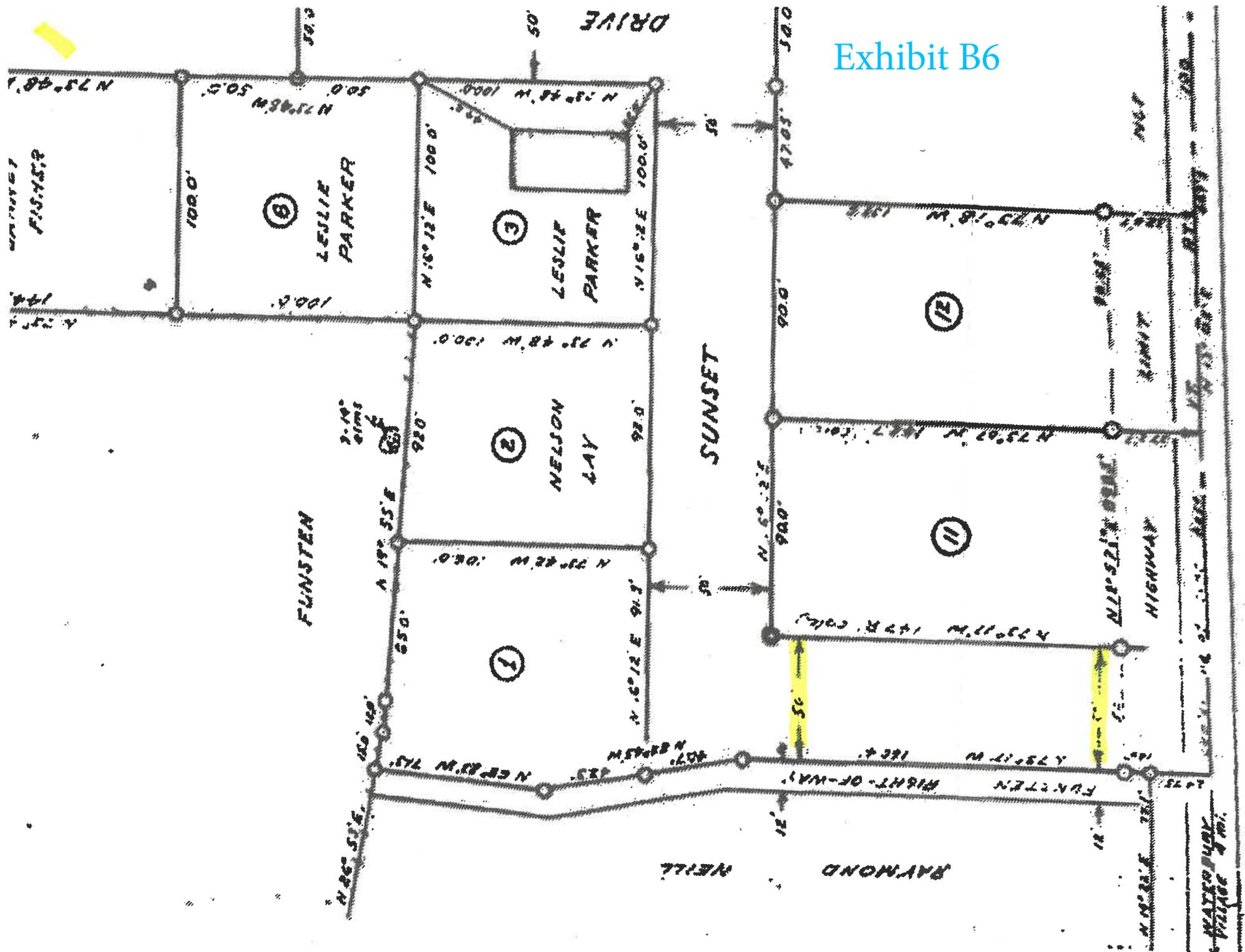
111'

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Exhibit B5

Exhibit B6



⑥  
LESLIE  
PARKER

③  
LESLIE  
PARKER

②  
NELSON  
LAY

①

⑪

⑫

FUNSTEN

SUNSET  
DRIVE

HIGHWAY

RAYMOND  
NEILL

FISHER

WATERWAY  
1/4 mi.

50'

50'

1000'

N 16° 12' E 1000'

N 16° 2' E 1000'

N 16° 12' E 920'

N 16° 12' E 920'

N 19° 55' E 650'

N 37° 42' W 1000'

N 6° 12' E 913'

N 50° 22' E 900'

N 73° 07' W 142 R. (CALC.)

N 73° 07' W 1417' (CALC.)

N 73° 18' W 1581'

N 73° 48' W 1000'

N 75° 46' W 500'

N 75° 46' W 500'

N 75° 48' W 1000'

N 75° 48' W 1000'

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1020

# Exhibit C1

52

Fee \$65.00 - Date Paid August 24, 2022  
(Includes \$15.00 recording fee)

Application # 05-22C

## TOWN/VILLAGE OF WATERBURY ACCESS/CURB CUT PERMIT

Applicant: Chittenden Revocable Living Trust Phone No. (802) 244-8683

Physical Address: 3865 Waterbury - Stone Rd

Mailing Address: P.O. Box 369

The Applicant requests an Access Permit to allow MUNICIPAL CONTRACTOR SERVICES (contractor) to construct an access in accordance with Vermont Agency Transportation and Town/Village of Waterbury standards to serve the property located on the Town/Village Road/Street named Sunset Drive and numbered 35 (Town roads only).

The Parcel number is 145-0035 and the curb cut will be located as shown on the attached plan. A sketch plan drawn approximately to scale is required unless waived by the Town/Village Authorized Agent. The plan must show the location of the access point and distance along the road to the nearest property line.

The Applicant agrees to maintain said access and adhere to the directions, restrictions, and conditions which are part of this permit.

<u>Donna R. Chittendon</u> Applicant's Signature	<u>8/19/22</u> Date
<u>SAME</u> Landowner's signature (if different than Applicant)	<u>8/19/22</u> Date

\*\*\*\*\*

### ACCESS PERMIT

**NOTICE:** This permit is issued in accordance with V.S.A. Title 19, §43, relative to all highways within the control and jurisdiction of the Town/Village of Waterbury. The issuance of this permit does not release the Applicant from any requirements of statutes, ordinances, rules, and regulations administered by other governmental agencies. The permit will be effective upon compliance with all of these requirements which are applicable and continue in effect for as long as the present land use continues. Any change from the present land use will require a new permit. This permit is issued subject to the applicant following the attached sketch plan and the directions, restrictions, and conditions listed below. Violations are subject to the penalties set forth in V.S.A. Title, §43, and fined not less than \$100 nor more than \$10,000 for each violation.

Directions, Restrictions, and Conditions: NO CURB CUT NEEDED

Construction must be completed by 11-15-22 unless an extension is authorized in writing.

<u>Paul Wooduff</u> Town/Village Authorized Agent	<u>PWD</u> Title	<u>9-1-2022</u> Date
--	---------------------	-------------------------

- cc: Highway Supervisor (if not Authorized Agent)
- Listers
- Zoning Administrator
- Landowner

WATERBURY TOWN CLERK'S OFFICE  
RECEIVED FOR RECORD  
Sept. 1, A.D. 2022  
AT 11 O'CLOCK 00 MINUTES A M  
AND RECORDED IN BOOK 508 PAGE 52  
RECORDS OF Deeds  
ATTEST Carla Lawrence  
TOWN CLERK

1963 3/11/64

Exhibit C2

EDWARD S. FUNSTEN AND deLANCEY FUNSTEN

TO

EDWARD S. FUNSTEN

EDWARD S. FUN de LANCY FUNSTEN

KNOW ALL MEN BY THESE PRESENTS: THAT EDWARDS S. FUNSTEN and De LANCEY M. FUNSTEN, his wife, of the City, County and State of New York, Grantors, in consideration of the sum of Ten dollars (\$10.00) and other good and valuable consideration paid to their full satisfaction by EDWARDS S. FUNSTEN, of the City, County, and State of New York, Grantee, by these presents, do freely GIVE, GRANT, SELL, CONFIRM and CONFIRM unto the said Grantee, EDWARD S. FUNSTEN, and his heirs and assigns forever, all our right, title and interest in and to that certain peice of land situated in the Town of Waterbury, in the County of Washington and State of Vermont, described as follows, viz:

It being a part of the land and premises heretofore conveyed to Keith H. Gibbs and Colleen R. Gibbs, husband and wife, by deed of Floyd and Fannie Fuller and located near and westerly of the public highway running between the Village of Waterbury and Stowe and in that part of the Town of Waterbury known as Waterbury Center; the part thereof hereby conveyed being more particularly described as a five-sided plot of land bounded as follows: Commencing at a southwesterly corner of land owned by Maxson which is also a corner of land owned by Keith H. Gibbs and Colleen R. Gibbs, husband and wife, to be conveyed hereby and which is also a point in the boundary line of land owned by Lillian Peterson as it borders land of Maxson and Keith H. Gibbs and Colleen R. Gibbs, husband and wife, thence running N 46° 28' W a distance of 400 feet along the boundary line between land of Lillian Peterson and land of Keith H. Gibbs and Colleen R. Gibbs, husband and wife, to be conveyed hereby, thence turning an angle to the right and running N 19° 30' E a distance of 362 feet to an iron pin, thence turning an angle to the right and running S 19° 55' W 157 feet to an iron pin, thence continuing in the same direction 369 feet to the point of beginning.

Also conveyed hereby is a right of ingress and egress to and from the lot of land hereby conveyed over land of Keith H. Gibbs and Colleen R. Gibbs, husband and wife, not hereby conveyed; said right of way to be over a strip of land 12 feet wide and bounded on the northerly side thereof by the following described bound: Commencing at the iron pin in the above description between the 15 ft. bound and the 369 ft bound in The line having a bearing of 26° 53' W, thence running S 68° 23' E 71.3 feet to an iron pin, thence running S 82° 45' E 84.0 feet to an iron pin, thence running S 73° 17' E a distance of 171.0 feet to an iron pin in or near the westerly highway limit of the public highway designated as Route No. 12.

Also conveyed hereby is the right to lay, relay, repair and maintain a pipe line within the bounds of said right of way for the purpose of providing water service to any buildings to be erected upon the lot of land hereby conveyed.

Also conveyed hereby is the right to set poles within said right of way limits to which wires for electric and telephone service may be attached serving the lot of land hereby conveyed and any buildings to be erected thereon. Also conveyed hereby is the right to run overhead electric and telephone wires over land of Keith H. Gibbs and Colleen R. Gibbs, husband and wife, not hereby conveyed and outside the limits of said right of way.

Being the same premises heretofore conveyed to Edwards S. Funsten and deLancey M. Funsten, by Keith H. Gibbs and Colleen R. Gibbs, husband and wife, by deed dated June 16, 1958, and recorded on July 30, 1958, in Book 57, page 103 (Map on page 106) of the Town of Waterbury Land Records.

Reference is hereby made to the foregoing deeds and to the deed dated August 13, 1957, made by Keith H. Gibbs and Colleen R. Gibbs, husband and wife, to Edward S. Funsten and deLancey M. Funsten, which deed was recorded in Book 56, page 394 of the Town of Waterbury Land Records, records thereof, references therein, the Town of Waterbury Land Records and to a stadia survey plan entitled "Funsten property Waterbury Ctr., Vermont" dated April, 1958, which plan is attached hereto, recorded herewith and made by Paul Bigelow with the right of way indicated thereon as having been relocated on June 10, 1958, which plan is attached hereto, recorded herewith and made a part hereof; all references being in aid of this description.

deLancey M. Funsten, one of the Grantors herein, hereby relinquishes and releases all of her inchoate rights of dower in the within premises pursuant to the pertinent statutes of the State of Vermont.

TO HAVE AND TO HOLD said granted premises, with the privileges and appurtenances thereof to the said Grantee, EDWARD S. FUNSTEN, his heirs and assigns, to their own use and behoof forever; AND we, the said Grantors, EDWARD S. FUNSTEN and deLANCEY M. FUNSTEN, for ourselves and our heirs, executors and administrators, do covenant with the said Grantee, EDWARD S. FUNSTEN, his heirs and assigns, that until the unsealing of these presents we are the sole owners of the premises, and have good right and title to convey the same in manner aforesaid, that they are free from every encumbrance; and we hereby engage to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 10 day of March A. D. 1961.

In Presence of:

VIVIAN FLAMHAFT

RALPH C. GOLDMAN

EDWARD S. FUNSTEN (L.S.)

deLANCEY M. FUNSTEN (L.S.)

STATE OF NEW YORK ) ss. : At New York City this 10th COUNTY OF NEW YORK ) day of March A. D., 1961





Date:	<u>3/13/23</u>	Application #:	<u>014-23</u>
Fees Paid:	<u>35</u>	+ \$15 recording fee =	<u>50</u>
Parcel ID #:	<u>145-0035</u>		
Tax Map #:	<u>09-281.000</u>		

## TOWN OF WATERBURY NOTICE OF APPEAL

All information requested below must be completed in full. Failure to provide the requested information on this notice will result in rejection of your application and delay in the review of the appeal before the Development Review Board.

### APPELLANT CONTACT INFORMATION & PROPERTY DESCRIPTION

Name: D. R. Eric & Francine Chittenden

Mailing Address: PO Box 369

Home Phone: 8022448683 Work/Cell Phone: 8025980388 Email: eric\_chittenden@hotmail.com

Physical Address of property at issue in this appeal: 35 Sunset Drive, Waterbury Center, VT 05677

Brief description of property at issue in this appeal: This is a 3.4 acre grandfathered lot located at 35 Sunset Drive, where we wish to be issued a permit to build a single-family residence.

### NATURE OF APPEAL

What action of the administrative officer are you appealing? We are appealing the ZOA's refusal to issue us a frontage/access at 35 Sunset Drive a permit to build and have a the ability to build single family residence on this building lot.

What provisions of the land development regulations are applicable to this appeal, if any? 24 V.S.A 4412(3) minimum 20' wide access easement.

What relief do you want the Development Review Board to grant? We want to be issued a 20-foot wide frontage/access in the same location as our town-issued curb-cut off of Sunset Drive; and a permit to build a single-family residence. We believe that our property complies with all land use regs needed such as set-backs, frontage, curb-cut, and driveway width.

Why do you believe that the relief requested (as in your response above) is proper under the circumstances? Because our existing driveway, which was created nearly 65 years ago, and 3.4 acre building lot comply with State and Local adopted Regulations.

I understand:

- the presentation procedures required by State Law (§4468 of the Planning & Development Act);
- that the Development Review Board holds regular meetings twice a month;
- that a legal advertisement must appear a minimum of fifteen (15) days prior to the hearing on my appeal;
- I agree to pay the required fee to offset the cost of the hearing on my appeal.

**SIGNATURE** I hereby certify that all the information requested as part of this notice of appeal has been submitted and is accurate to the best of my knowledge.

*D. R. Eric & Francine Chittenden*  
Signature of Appellant(s)

3/13/2023  
Date

**Note: Notification of Adjoining Property Owners-** Notification of adjoining property owners, in accordance with 24 V.S.A. § 4464(a) and Section 307 of the Waterbury Zoning Regulations, is the responsibility of the appellant. After deeming a request complete the Administrative Officer will provide the appellant with a draft meeting agenda or public hearing notice and sample certificate of service. The sworn certificate of service shall be returned to the Town prior to the start of any public hearing.



WATERBURY MUNICIPAL OFFICE

802.244.7033 OR 802.244.5858

FAX: 802.244.1014

28 NORTH MAIN ST., SUITE 1

WATERBURY, VT 05676

WATERBURYVT.COM

Permit Application # 014-23  
 Tax Map # 09-281.000  
 Referral Issuance Date: March 16, 2023  
 Referral Effective Date: March 31, 2023

## REFERRAL OF APPEAL NOTICE

Appellant: Eric & Francine Chittenden  
 (mail address) P.O. Box 369  
 Waterbury Center, VT 05677

Landowner: (same)

Project: Appeal of Assistant Zoning  
 Administrator denial of zoning permit  
 #004-23 to build a single-family house  
 at 35 Sunset Drive.

Subject 35 Sunset Drive  
 Property Waterbury Center, VT  
 Location: 05677

Your appeal for a zoning permit has been reviewed by the Zoning Administrator. An appeal of a decision or act of the Zoning Administrator is heard by the Development Review Board (DRB). Your Notice of Appeal has been referred to the DRB to conduct a public hearing as described below. If you do not agree with this referral determination, you may appeal it in writing to the DRB within 15 days of the Referral Issuance Date above. Your public hearing has been scheduled as follows:

Date/Time: **Wednesday, April 5, 2023 at 6:30 p.m.**

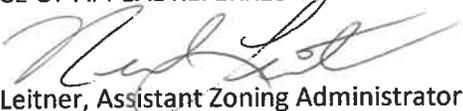
Place: **Note: This meeting will take place at the Steele Community Room located at 28 North Main St. and will also be conducted via ZOOM and conference call. Look for details on the DRB agenda published prior to the meeting at [www.waterburyvt.com](http://www.waterburyvt.com).**

Purpose: **Appeal of Assistant ZA denial of zoning permit #014-23 to construct a single-family house at 35 Sunset Drive.**

The enclosed Hearing Notice poster must be posted on the Subject Property at least 15 days prior to the scheduled hearing date and remain posted until the DRB renders its decision. Adjoining landowners must receive notice at least 15-days prior to the scheduled meeting date. The Town will notify adjoining landowners of the Appeal hearing and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

Any action or building construction started in connection with the appealed permit is in violation of the *Waterbury Zoning Regulations* and could result in legal action and fines. If you have any questions regarding the appeal referral and hearing process, please contact the Assistant Zoning Administrator.

NOTICE OF APPEAL REFERRED BY:

  
 Neal Leitner, Assistant Zoning Administrator

Enclosures: **▪ Public Hearing Notice poster;**  
**▪ Instructions for notifying adjacent landowners**

D.R. Eric Chittenden  
P.O. Box 369  
3865 Waterbury-Stowe Road  
Blue Heron Cove Drive  
Waterbury Center, VT 05677  
H: 802-244 8683; C: 802-598-0388  
E-mail: [eric\\_chittenden@hotmail.com](mailto:eric_chittenden@hotmail.com)

**35 Sunset Drive Right-of-Way Frontage/Access**  
**D.R. Eric & Francine Chittenden**

3/29/2023

To Whom This Concerns:

A building permit for our 35 Sunset Drive, 3.4 acre lot has been denied based on a "Right-of-Way Frontage/Access" requirement based on language in the 2004 "Land Use Education & Training Collaborative."

We feel that our permit should have been issued for the cost of the permit alone. About \$200. Instead, this has already cost us 1000's of dollars. If we lose this round and need to go before the Environmental Board and the Supreme Court, it could cost 10's of 1,000's of dollars. Simply because someone has mis-read the guidelines. We would much rather put our efforts into environmental causes that are important to us.

We are very confident that our 3.4-acre lot and 66-year-old 12-foot-wide driveway comply in every way when it comes to the issuance of a building permit, and that we should be issued a permit to build without further exhausting the resources of the DRB and town offices.

We have done what we can do to deliver well-thought-out responses:

1. The 1st paragraph of our denial asserts that we do "not conform to the minimum 20-foot access right-of-way requirements of 24V.S.A. / 4412(3)." **THIS IS AN INCORRECT STATEMENT!** While most of us think of a driveway when we hear "right-of-way," in this case the only thing it refers to is a "Frontage/access right-of-way," just as the heading of the paragraph states. We have 200+ feet of Frontage where our driveway abuts Sunset Drive – enough for several right-of-way Frontage/Accesses, and probably more Frontage abutting a town road or street than almost anyone else in Waterbury. Instead, we have been told that we need a 20-foot-wide driveway that goes all the way out to our 3.4-acre lot.
2. Also in this 1st paragraph it states that we could find reference to the minimum 20-foot access non-conformity in the Waterbury Zoning Regulations Section 413(b), titled "Driveways and Curb Cuts" as amended on May 16, 2016. THIS IS AN INCORRECT STATEMENT! Attached is Section 413(b) from the May 16, 2016 Zoning Regulations. There is no mention of the 20-foot access right-of-way in this Regulation.
3. The 2<sup>nd</sup> "Denial" paragraph strongly implies that we do not have Frontage on, or Access to, a public road, and that we do not have Access of at least 20 feet. **THESE ARE INCORRECT STATEMENTS !** We have the 200+ feet along Sunset Drive, a public highway. All the town has to do is to recognize that they have already approved our "Access/Curb-Cut."

4. The 3<sup>rd</sup> "Denial" paragraph states that we only have a "mere" 12-foot-wide driveway. **THIS IS AN INCORRECT STATEMENT!** Throughout the entire State of Vermont highway permitting system, the minimum width for a driveway leading onto a State highway, such as Route 100, is 12 feet. **That minimum 12-foot driveway leading onto State highways reaches from the Massachusetts border to the Canadian border.** See the attached V-TRANS B-71A residential driveway diagrams. This means that our 12 foot driveway width is in sync with the state recommendatios. Our 12-foot width is normal. At the very least, "mere" is a slam. **At the worst it is an attempt to sway the DRB.**
  
5. See #3 above. The 3<sup>rd</sup> "Denial" paragraph states that "the property does not have Frontage on, or access to a public road."**THIS IS AN INCORRECT STATEMENT!** Clearly, 200+ feet of our driveway abuts Sunset Drive, just like the new marijuana dispensary driveway, and the driveway for the log cabin. These are identical frontage/access/Curb-Cuts to what we have on the very same road, and the very same location on Sunset Drive. In fact, 31 Sunset Drive and 35 Sunset Drive (Our Access) share the same Frontage/Access/Curb-Cut. **Additionally, our driveway existed many years before the Gas Station/food mart, the marijuana dispensary or log cabin existed.**
  
6. Our driveway and Sunset Drive are uniquely "connected" to each other, since we share every surveying pin for the first 200+ feet off Route 100. There is no space beteen Sunset Drive and our driveway – only an imaginary line. **Also, on September 1, 2022, we were issued an Access/Curb-Cut Permit, which covers the necessary Road Frontage/Access, as required in Chapter 117 (4412(3)). There is no reason for us, or the DRB, to be spending any time, energy or money on this. We already possess what we are being asked to provide!**
  
7. Our land and right-of-way existed long before zoning. That fact alone should be enough for the requested permit, as outlined in the 2004 Zoning Collaborative. Our 12-foot-wide driveway was created in 1958 to avoid a landlocked parcel. The wording was very detailed, and continues to be apropos. Sunset Drive was created in 1961 – 3 years later.

We understand the need for our town leaders to monitor and oversee permits and other requests. On a professional level, the denial that we received was disappointing at best. Even though our "Denial" letter was approved by the town lawyers, we feel that their interpretation is incorrect.

Zoning is serious business! Zoning laws are some of the most exercised laws in the country. They affect nearly every single one of us, and are often referred to as a "form of policing." We wonder how many of our fellow Waterbury citizens have been similarly hurt over the years.

Please look at the V-TRANS B-71A diagram which clearly shows the minimum residential driveway widths.

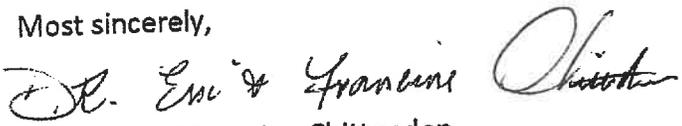
We feel that the town has mis-interpreted the 20-foot driveway width that is being required of us. **V-TRANS does not require a 20-foot minimum driveway width off any State highway for a single family residence.** We googled the zoning regulations for over 30 municipalities. Not one of them required more than a 12 foot right-of-way for a single-family residence. Waterbury had no mention of "minimum Frontage/Access" or "driveway width" in our zoning regulations. Again, see the attached sheet titled Driveway & Frontage By-laws Minimum Width – Single Family Residence.

The first place that a local citizen looks when they need to apply for a zoning permit is the latest version of amended zoning regulations. Unfortunately, we quickly found that we could not trust Waterbury's May 16, 2016 Zoning Regulations.

The Zoning Collaborative that we were given to follow was issued in November 2004, 19 years ago. Every municipality that we looked up had updated their minimum frontage to a minimum of 20 feet, except Waterbury. The same goes for minimum driveway widths. There's no blame game here; the ZAO's job is a lot to manage, and legalese can be difficult to interpret. Unfortunately, these changes did not get into the May 16, 2016 Zoning Regulations.

I want to leave you with this. In denying permits such as ours, the town of Waterbury has directly quoted from the **Vermont Land Use Education and Training Collaborative** (Zoning – Required Provisions & Limitations), using it as if it were part of our community's Zoning Regulations. There are adopted State Statutes that we need to acknowledge, but that does not mean that we can ignore updating the Zoning Regulations. *The Collaborative is strictly designed to be guidance for municipalities as the town navigates the process of creating and updating zoning bylaw regulations.*

Most sincerely,

  
D.R. Eric and Francine Chittenden



We put this at the beginning of our Defense Response because this town Curb-Cut permit is all we need to be issued a building permit. If our 20-foot curb-Cut is not wide enough, the town could instantly issue us a 50-foot Curb-Cut. This is not just our opinion; we have spoken to, visited with, had site visits with, and written numerous, perhaps 50, town and State officials, including ZAO's, 2 VT senators, V-TRANS officials, and Zoning Collaborative folks. Not one of them could understand why we are not being issued a permit. The most recent was a visit by 2 District 6 V-TRANS officials who sat with us and read all of these documents, after which they did a site visit with us. They did this because if we do not get a permit, they now know what they need to address. They will do everything they can to encourage the town to issue a building permit using this Sunset Drive access/Curb-Cut that we have been issued.

Fee \$65.00 - Date Paid August 24, 2022  
(Includes \$15.00 recording fee)

Application # 05-22C

TOWN/VILLAGE OF WATERBURY  
ACCESS/CURB CUT PERMIT

Applicant: Chittenden Revocable Living Trust Phone No. (902) 244-8683

Physical Address: 3865 Waterbury - Straw Rd

Mailing Address: P.O. Box 369

The Applicant requests an Access Permit to allow MUNICIPAL LANDFILL CONTRACTOR SERVICES (contractor) to construct an access in accordance with Vermont Agency Transportation and Town/Village of Waterbury standards to serve the property located on the Town/Village Road/Street named Sunset Drive and numbered 35 (Town roads only).

The Parcel number is 145-0035 and the curb cut will be located as shown on the attached plan. A sketch plan drawn approximately to scale is required unless waived by the Town/Village Authorized Agent. The plan must show the location of the access point and distance along the road to the nearest property line.

The Applicant agrees to maintain said access and adhere to the directions, restrictions, and conditions which are part of this permit.

Donald R. Chittendon Applicant's Signature Date 8/19/22  
same Landowner's signature (if different than Applicant) Date 8/19/22

ACCESS PERMIT

NOTICE: This permit is issued in accordance with V.S.A. Title 19, §43, relative to all highways within the control and jurisdiction of the Town/Village of Waterbury. The issuance of this permit does not release the Applicant from any requirements of statutes, ordinances, rules, and regulations administered by other governmental agencies. The permit will be effective upon compliance with all of these requirements which are applicable and continue in effect for as long as the present land use continues. Any change from the present land use will require a new permit. This permit is issued subject to the applicant following the attached sketch plan and the directions, restrictions, and conditions listed below. Violations are subject to the penalties set forth in V.S.A. Title, §43, and fined not less than \$100 nor more than \$10,000 for each violation.

Directions, Restrictions, and Conditions: NO CURB CUT NEEDED

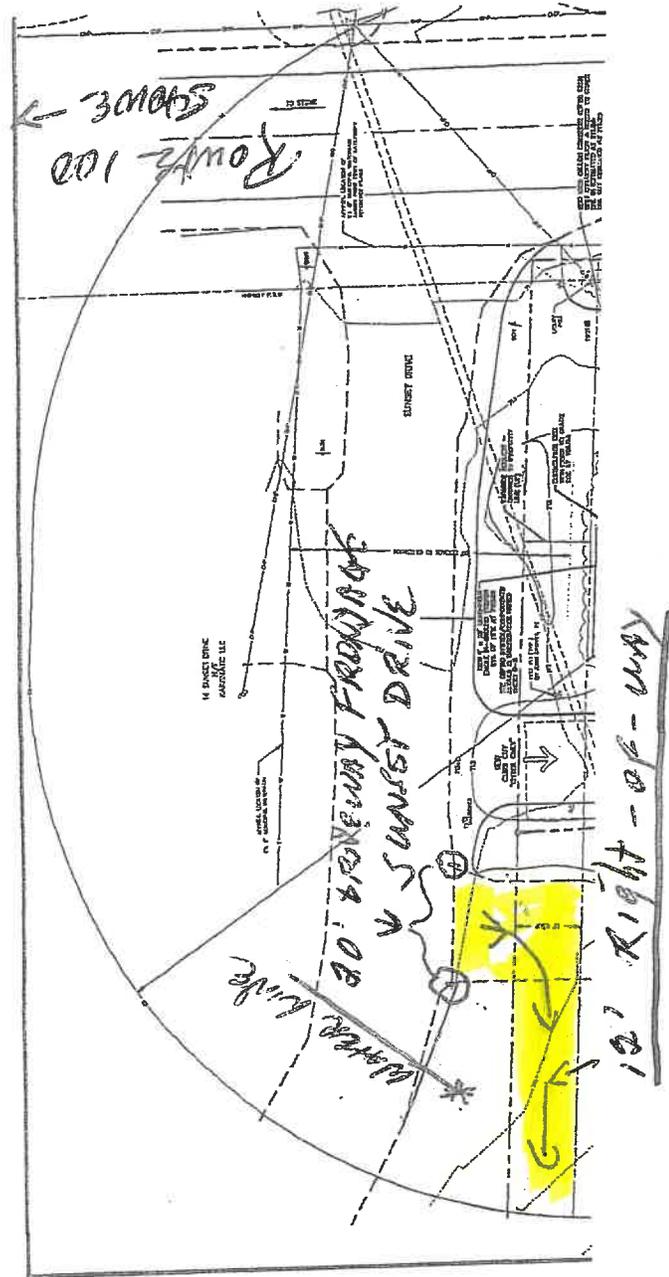
Construction must be completed by 11-15-22 unless an extension is authorized in writing.

Paul Woodruff Town/Village Authorized Agent Title PWD Date 9-1-2022

- cc: Highway Supervisor (if not Authorized Agent)
- Listers
- Zoning Administrator
- Landowner

WATERBURY TOWN CLERK'S OFFICE  
RECEIVED FOR RECORD  
Sept. 1, A.D. 2022  
AT 11 O'CLOCK 00 MINUTES A M  
AND RECORDED IN BOOK 508 PAGE 52  
RECORDS OF Deeds  
ATTEST Carla Lawrence  
TOWN CLERK

20' FRONTAGE FOR ACCESS TO  
 35 SUNSET DRIVE,  
 CHITENDEN REVOCABLE LIVING TRUST



**DRIVEWAY & FRONTAGE BY-LAWS MINIMUM WIDTH – SINGLE FAMILY RESIDENCE**  
**Random Vermont Municipalities**

8

<u>Town / City</u>	<u>Minimum driveway width</u>	<u>Minimum Frontage Access (See *** foot note):</u>
Waterbury	Not in the zoning regs	Not in the town zoning regs
Fairfield	12'	20'
Thetford	12'	Not mentioned
Norwich	12'	20'
Woodstock	8'	20'
Arlington	No minimum (So stated)	50
Essex Town	10'	25
Underhill	12'	20
Winooski	12'	40'
Chester	12'	20'
Charlotte	14'	20'
Georgia	12'	20'
Bennington	10'	50'
Bridgewater	Not in the regs	20'
Stowe	12'	Per V-TRANS

\*\*\* During our research we discovered that "Frontage Accesses" are also referred to as: Access, Access Width, Access Point, Entrance Width, Entrance Cut, Cut Entrance, Curb Cut, Shoulder Width, Curb Entry, Open Road Frontage, Road Surface Cut, Drive Access, Throat Width. I'm sure there are many more.

One of the comments that sticks out with us is that there seem to be no requirements for private driveway widths, unless they are defined in town zoning by-laws. Such a landowner would only need to verify that they had a deeded Curb-Cut, and a right-of-way access from the municipality to cross onto the town road.

We started by calling V-TRANS, because our ZAO was adamant that a minimum driveway width of 20' was needed to satisfy State of Vermont law regarding Road Frontage/Access. What we quickly learned from 2 different State sources is that V-TRANS does not have any jurisdiction regarding private driveways that lead onto a town road. The 20-foot requirement referred to in the 2004 Zoning Collaborative is not for a Lot Frontage, unless the lot abuts the town road. It is for a Right-of-Way Frontage/Access onto a Town Road, Street or Property. **The Town has issued us that Access, along with a 20-foot-wide Curb-Cut.**

All,

The information below is very important to our Frontage & Driveway access widths. V-TRANS is saying that there is a push for narrower traffic lanes in relatively heavily used urban areas - Annual Average Daily Traffic (AADT) than 2,000 or less vehicles per day. 10 foot wide lanes are becoming more common because they have been determined to be safer. Our 12-foot-wide driveway will likely average 10 to 20 cars a day, a long way from 2,000. To get this V-TRANS info on roads, streets and highways, google "complete streets: a guide for vermont communities". There is a lot of great information that could be very helpful to your DRB work.

*EMU*

**Complete Streets: A Guide for Vermont Communities**

(Google the above to bring up the above information)

**Roadway Width**

Recalibrating the balance between the motor vehicles and other users is a primary goal of complete streets, and it can sometimes be achieved simply through a reallocation of the right-of-way width. The benefits of narrower travel lanes on community streets are significant:

- • More space within any given right of way for other non-vehicular modes and activities (including place making and parking);
- • The streets are easier, safer, and faster to cross (crossing streets is often the single greatest impediment to good pedestrian circulation); and
- • Vehicular traffic generally travels at lower speeds.

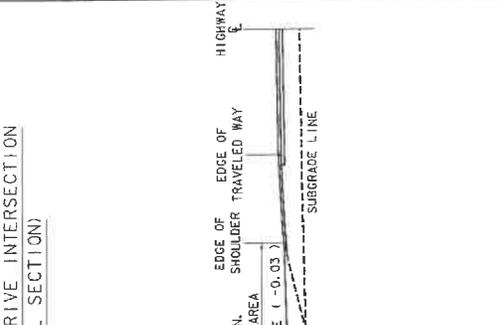
There are two levers by which the width of the vehicular way is modified: lane width and number of lanes.

**Lane width**

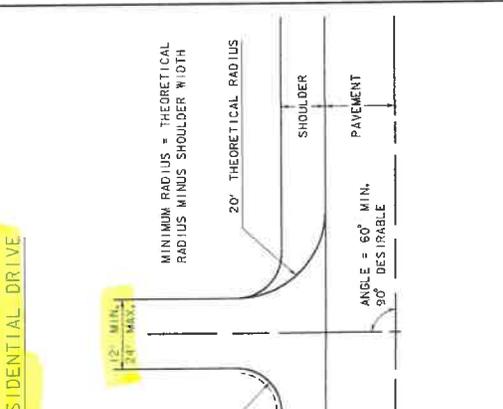
In the past, it was fairly common to think of the "basic" traffic lane as 12 feet wide, and many of Vermont's roads and streets have this lane width. However, this is the basic interstate lane, and is far more expansive than necessary in downtown and/or constrained conditions. Passenger cars are generally around 6 feet wide, and a typical tractor trailer is 8 feet 6 inches wide, so narrower lanes can provide more than adequate room for traffic, as long as the speeds are lower.

**lane width:** A typical lane width is 11 feet, particularly in more built-up village areas. However, 10-foot lanes are permitted by VTrans in many circumstances, including in heavily built-up urban areas where truck traffic is low and on rural collectors with Annual Average Daily Traffic (AADT) of less than 2,000 vehicles per day.

**RESIDENTIAL DRIVE**



**DETAIL B: PROFILE OF DRIVE INTERSECTION (FILL SECTION)**



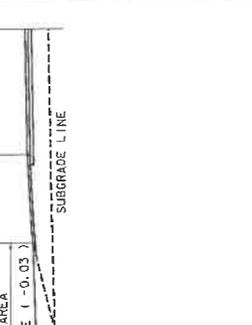
**DETAIL C: PROFILE OF DRIVE INTERSECTION (CUT SECTION) SHOWING 5" DEPRESSION**



**DETAIL D: DRIVE SIDE SLOPES TABLE**

LOCATION OF SLOPE	SLOPE RATE
DESIGN SPEED > 40 MPH	1:6 OR FLATTER
URBAN AREAS OR DESIGN SPEED < 40 MPH	1:4 DESIRABLE 1:2 ALLOWABLE
OUTSIDE CLEAR ZONE	1:2 OR FLATTER

- THIS SHEET IS INTENDED FOR USE BY DESIGNERS ON HIGHWAY PROJECTS OF UNIFORM OR NON-UNIFORM CROSS SECTION PERMIT AND INDICATED ON THIS SHEET SHALL BE THE RESPONSIBILITY OF THE APPLICANT AND IS SUBJECT TO THE APPROVAL OF THE TRANSPORTATION AGENCY ON PROJECT SHEETS. THIS SHEET IS INTENDED TO BE A GUIDE FOR THE DESIGNER CONCERNING DRIVE WIDTHS, HORIZONTAL, VERTICAL AND GEOMETRIC CHARACTERISTICS.
- DEPTH OF SUBBASE AND PAVEMENT TO BE THE SAME AS HIGHWAY OR AS SHOWN IN DETAIL D WITHIN THE LIMITS OF THE HIGHWAY RIGHT-OF-WAY.
- VEHICULAR ACCESS FROM PARKING AREAS TO THE RIGHT-OF-WAY AT OTHER THAN APPROVED ACCESS POINTS WILL BE PREVENTED BY THE CONSTRUCTION OF CURBING OR OTHER SUITABLE PHYSICAL BARRIER.
- IF CURB IS PRESENT, SEE APPROPRIATE CURB DETAIL STANDARD.
- CIRCULAR DRAINAGE CULVERTS UNDER DRIVES SHALL HAVE A MINIMUM INSIDE DIAMETER OF 15" UNLESS OTHERWISE SHOWN ON THE PLANS. THE MINIMUM INSIDE DIAMETER SHALL HAVE A MINIMUM INSIDE CROSS-SECTIONAL AREA EQUIVALENT TO THAT PROVIDED BY A 15" CIRCULAR PIPE. IF A CULVERT LARGER THAN NEW CULVERT IS INSTALLED UPSTREAM OF THE EXISTING CULVERT, THE UPSTREAM CULVERT, AT A MINIMUM, MATCH THE SIZE OF THE EXISTING CULVERT.
- THE OFFSET BETWEEN THE PROPERTY LINE AND THE EDGE OF THE DRIVE SHALL BE CONSIDERED. LOCAL ZONING LAWS OR DRIVEWAY WIDTH RESTRICTIONS SHOWN PERTAIN ONLY TO THE AREA WITHIN THE HIGHWAY R.O.W. OR THE END OF THE TURNING RADIUS WHICHEVER IS GREATEST.
- DRIVEWAY GRADES STEEPER THAN THOSE SHOWN MAY BE ALLOWED AS LONG AS A 20' APPROACH AREA IS ACHIEVED FOR THE VEHICLE TO PAUSE BEFORE ENTERING THE HIGHWAY.
- THIS STANDARD APPLIES TO FIELD DRIVES, LOGGING DRIVES, AND RESIDENTIAL ACCESSES SERVING UP TO TWO SINGLE FAMILY HOMES. SUBDIVISIONS AND LARGER RESIDENTIAL DEVELOPMENTS SHALL BE DESIGNED TO MEET THE REQUIREMENTS OF THE TRANSPORTATION STANDARD 8-71B.
- INTERSECTION SIGHT DISTANCES AND STOPPING SIGHT DISTANCE, PROVIDED IN BOTH DIRECTIONS FOR ALL DRIVES ENTERING ON PUBLIC HIGHWAYS, UNLESS OTHERWISE APPROVED BY THE AGENCY OF TRANSPORTATION, INTERSECTION SIGHT DISTANCE IS MEASURED FROM THE POINT OF VIEW OF THE ADJACENT ROADWAY AND MEASURED FROM A TRAVELED WAY OF THE DRIVE TO A HEIGHT OF 3.5 FEET ON THE ROADWAY. STOPPING SIGHT DISTANCE IS MEASURED FROM THE POINT OF VIEW OF THE ADJACENT ROADWAY AND MEASURED FROM A TRAVELED WAY OF THE DRIVE TO AN OBJECT HEIGHT OF 2.0 FEET ON THE ROADWAY.
- FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE TRANSPORTATION STANDARD 8-71B. FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE TRANSPORTATION STANDARD 8-71B. FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE TRANSPORTATION STANDARD 8-71B.



THE ABOVE VALUES ARE TAKEN FROM THE 2011 AASHTO "A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS & STREETS."

FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE TRANSPORTATION STANDARD 8-71B.

FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE TRANSPORTATION STANDARD 8-71B.

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**RESIDENTIAL DRIVES**



FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE TRANSPORTATION STANDARD 8-71B.

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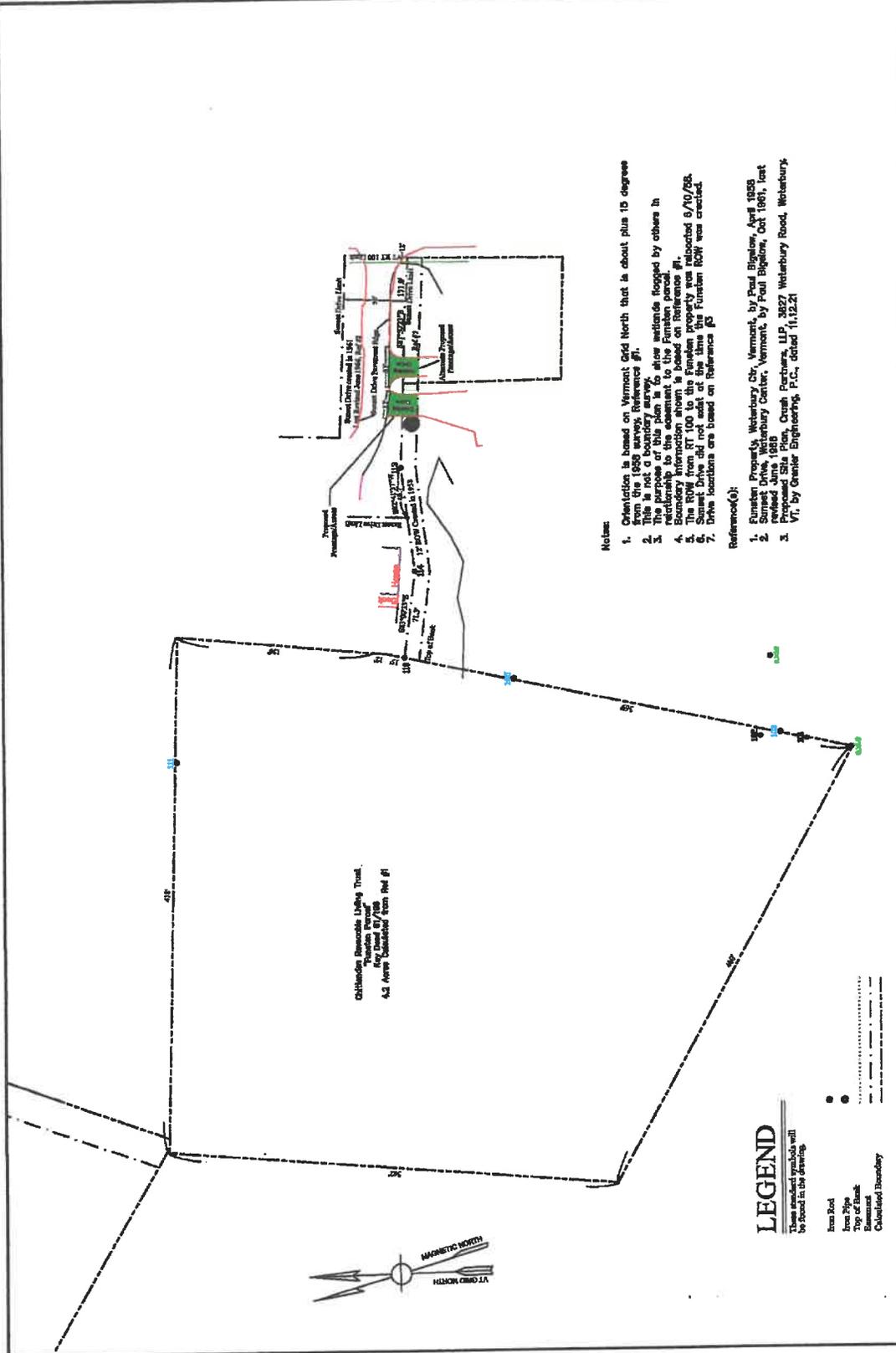
**STANDARD B-71A**

**RESIDENTIAL DRIVES**

REV.	DATE	DESCRIPTION
0	JUL 17, 2019	ORIGINAL APPROVAL
OTHER STANDARDS REQUIRED:		

FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE TRANSPORTATION STANDARD 8-71B.

11



Chittenden Renewable Living Trust,  
 4.3 Acres Subdivided from Ref #1

**LEGEND**

- These standard symbols will be found in the drawings:
- Iron Rod
- Iron Pipe
- Flag of Iron
- Calculated Boundary



- Notes:**
1. Orientation is based on Vermont Grid North that is about plus 15 degrees from the 1898 survey, Reference #1.
  2. This is not a boundary survey.
  3. The purpose of this survey is to show the location of the monument to the Vermont parcel.
  4. Boundary information shown is based on Reference #1.
  5. The ROW from RT 100 to the Farnham property was relocated 9/10/08.
  6. Summit Drive did not exist at the time the Farnham ROW was created.
  7. Drive locations are based on Reference #1.
- Reference(s):**
1. Farnham Property, Waterbury Ctr, Vermont, by Paul Bigelow, April 1938
  2. Farnham Property, Waterbury Center, Vermont, by Paul Bigelow, Oct 1939, text dated June 1938
  3. Proposed S&A Plan, Crush Parkers, LLP, 3827 Waterbury Road, Waterbury, VT, by Greater Engineering, P.C., dated 11.12.21

Plan Showing Decided Easement  
 Farnham Parcel  
**Land of  
 D. "Eric" and Francine Chittenden**  
 Street Drive  
 Waterbury Center, Vermont

SCALE: 1" = 60'  
 DRAWN BY: PKC  
 CHECKED BY:  
 DATE: 10/10/2023  
 PAGE: 1/01

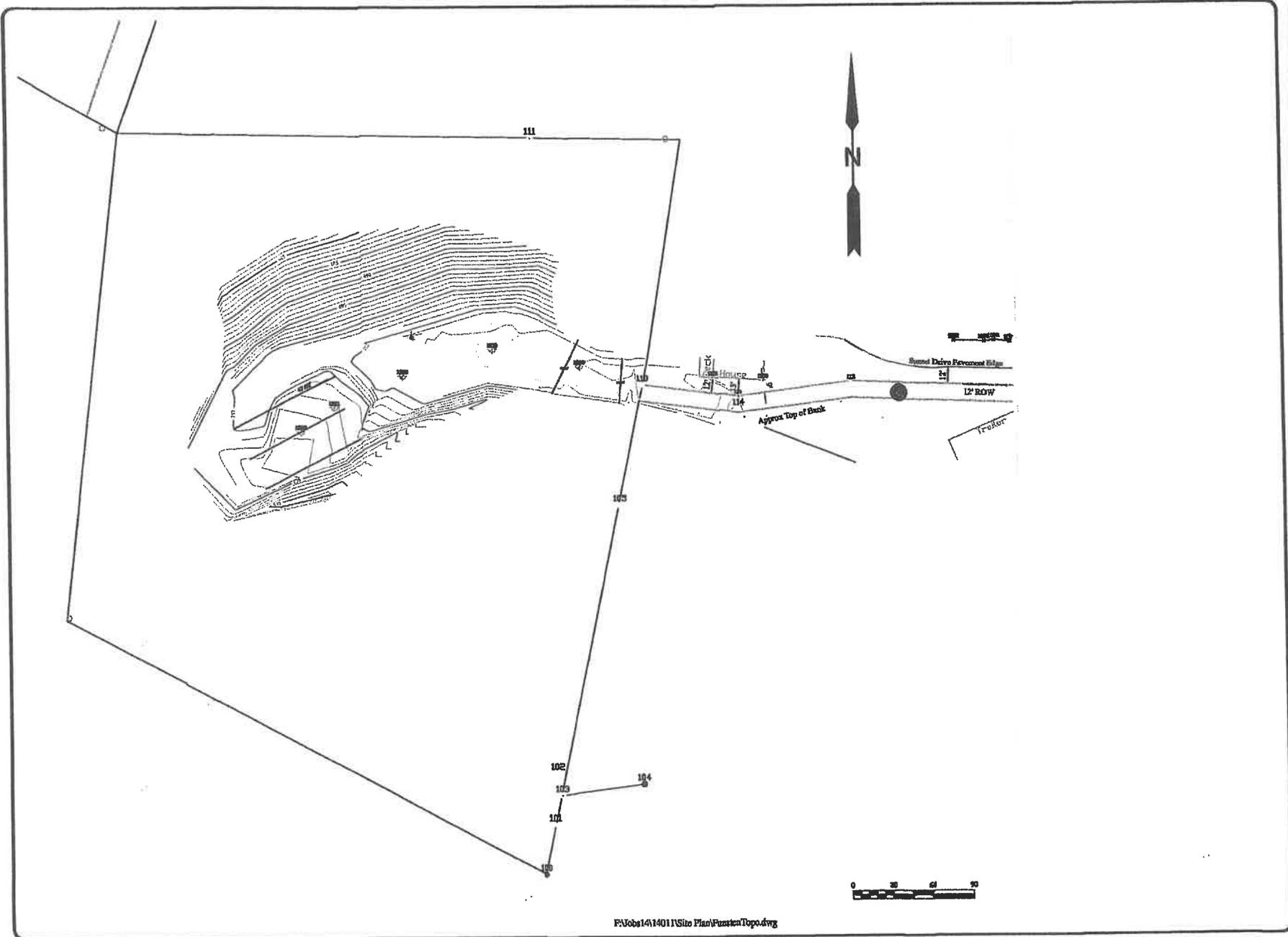
**PRELIMINARY**

SHEET 1 OF 1

**ZACHRY ENGINEERING, L.L.C.**  
 100 North Main Street  
 Waterbury, Vermont 05671  
 Phone: 802.244.1111  
 Fax: 802.244.1112

Project: A1401.VP.WROW along Street.DWG





FA\Jobs\14\14011\Site Plan\Fusion\Topo.dwg

**Little River**  
 Survey Company LLC  
 1000 North Main Street  
 Suite 1000  
 Vermont, USA  
 Telephone: 802-244-0000

**WORKSHEET**  
 FOR  
**Eric and Frenchie Chittenden**  
 Fusion Parcel  
 Ferrisburgh Center, Vermont

REVISIONS

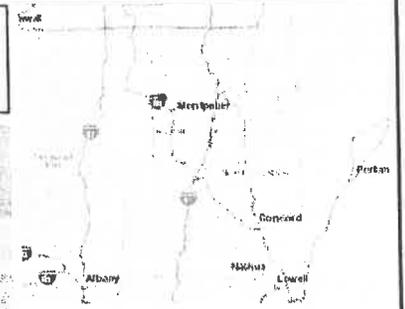
SCALE  
 HORIZ 1"=50'  
 VERT 1"=10'  
 DRAWN BY PER  
 CHECKED BY PER  
 DATE Aug 28, 2014  
 JOB 14011



# Chittenden Parcel, Waterbury Ctr., Vermont

Vermont Center for Geographic Information

vermont.gov



- LEGEND**
- Building footprints
  - Parcel polygons
  - Inactive parcels
  - Airports
  - Rail Lines
  - Town Boundaries
  - County Boundaries
  - Buildings
  - Village Boundaries
  - Areas above 2500 ft
  - VT State Boundary



1:2,318  
April 4, 2023



0.07 0 0.04 0.07 Miles

1" = 193 Ft. 1cm = 23 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
© Vermont Center For Geographic Information

**DISCLAIMER:** This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. VCGI and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

**NOTES**

This map was created with the VT Interactive Map Viewer.

D.R. Eric Chittenden  
P.O. Box 369  
3865 Waterbury-Stowe Road  
Blue Heron Cove Drive  
Waterbury Center, VT 05677  
(c) 802-598-0388; (land) 802-244-8683  
e-mail: [eric\\_chittenden@hotmail.com](mailto:eric_chittenden@hotmail.com)

## ZONING COLLABORATIVE "MUST" STATEMENTS

4/4/23

Dear DRB Members,

All of the following statements are from the 2004 Zoning Collaborative that the last ZAO gave to us to be used as a guide and reference. It also contains the sentence that he has quoted as the reason that he could not issue us a building permit.

To make our comments easy to follow, we have numbered and highlighted areas that we have drawn from.

1. "... bylaws **must** address how "grandfathered" uses, structures and lots ... certain public and private uses is also limited by statute to ensure that local bylaws do not ... unduly restrict the use of private property."
2. "... the grandfather clause ... is intended to **protect landowners** who may own a property that does not comply with newly imposed standards."
3. "Bylaws – most importantly zoning – **must protect the rights of property owners** whose property does not conform to standards adopted after a parcel or use was established." It is our opinion that our 3.4a parcel is grandfathered in, and also complies with our current zoning regulations.
4. "**Required Frontage/Access to Public Roads or Waters**". This is the heading of the paragraph from which our denial is quoted. Everything in this paragraph refers back to the heading – Frontage/Access. We are confident that this language has been mis-interpreted.
5. This entire paragraph has to do with Frontage/Access. "**Road Frontage**" is referred to, and "Frontage" is combined with "Access" to create **Frontage/Access** in the heading.

The first 3 above statements are "must" statements, not "maybe", not if we are feeling generous that day – "must" can only be interpreted one way – "must". And this is all taken directly from the 2004 Zoning Collaborative that was given to us by the ZAO to use as the ultimate answer to what we had to comply with.

**Our 3.4acre lot fits the exact definition of a pre-existing, "grandfathered" lot!** Therefore, all easements and rights-of-way carefully spelled out in our deed, must be honored, recognized and protected. Not one word in our original deed has been altered. Yes, it is the perfect example of "grandfathered", and "must" be honored.

**Section 413(b) in the May 16, 2016 Zoning Regulations states that development may be permitted by the ZAO without DRB approval, on lots that have (Frontage on a public road, aka, Road Frontage, or finds that the access by permanent easement or right-of-way, is at least (minimum) fifty feet in width.**

Almost always, width requirements will have a "minimum" width (commonly 12 feet) for single or double residence permits. Above 20-foot widths are usually labeled "maximum" widths. See the attached diagrams for V-TRANS and the town of Essex. We have never seen a 50-foot requirement for anything less than 5 residences, and even then, they are almost always 24 feet or less. See "V-TRANS B-71A" diagram sheet (12 minimum and 24 foot Maximum) – for the entire State of Vermont highway system, and "ESSEX DRIVEWAY WIDTHS" diagram sheet (10 foot minimum) for a single residence. We highly recommend that Waterbury adopt a version of this diagram.

We have given this our best shot. We have performed exhaustive research, made many phone calls, had site visits with State officials, including V-TRANS personnel, local citizens who know zoning, created posters, graphs, and much more. It's difficult to imagine anyone else doing the homework that we have done. We do not know how much more we can do. We have not left many stones unturned. However, even after all this preparation, we still have trepidation. Francine and I have done a lot during our lifetime. If we can still feel angst, it is a given that less seasoned townspeople may be intimidated out of the permitting process, or face expensive professionals to represent them.

**When all is said and done, we have a 20-foot Access/Curb-Cut permit that was issued to us last August, and could be expanded to a 50-foot-wide Access/Curb-Cut. We have over 200 feet of Frontage onto Sunset Drive. It would take about 15 minutes to expand it to 50-feet, which would empower the ZAO to approve our permit.**

This has been a very expensive and time-consuming application process that we feel could have been approved by the ZAO. We simply want the same rights to utilize our property that everyone else in the Sunset Drive neighborhood has. After 9 years of being verbally told that a permit could not be issued, we are looking forward to getting this behind us. Please approve our permit without conditions.

And thanks for the opportunity to express our take on this matter.

***D.R. Eric & Francine Chittenden***

**D.R. Eric & Francine Chittenden**



# VERMONT LAND USE Education & Training Collaborative

## Zoning - Required Provisions and Limitations

### Background

Municipalities have broad discretion under Chapter 117 to tailor bylaws to meet local needs and circumstances. In exercising this discretion, however, bylaws must address how "grandfathered" uses, structures and lots that don't comply with newly adopted standards are to be regulated. The authority to regulate certain public and private uses is also limited by statute to ensure that local bylaws do not circumvent a greater public interest, exclude certain types of development, or unduly restrict the use of private property.

Most of Chapter 117's "required provisions and prohibited effects" and "limitations" pertaining to bylaws are contained in two sections - §4412 and §4413. These provisions, most of which existed in some form before Act 115 took effect, were revised as follows:

"Equal treatment of housing" provisions were revised to address multi-family and multiunit housing, individual mobile home park sites, and new accessory dwelling requirements. The occupancy of residential care or "group homes" also was increased from six to eight residents. This topic is addressed in more detail in *Bulletin #6 Equal Treatment of Housing*.

- The statutory merger requirement for pre-existing small lots in contiguous ownership was eliminated. Bylaws must now specify whether lot merger will be required.
- The standard for evaluating the effect of home occupations on the character of the surrounding area or neighborhood was changed to include a determination of "undue adverse effect."
- Provisions on how "nonconformities" are to be addressed were restructured by separately defining nonconforming uses, structures and lots, thereby overriding recent case law.

- Procedural requirements for approving development on pre-existing lots that lack frontage on public roads and/or waters was clarified by requiring that they be specified in local bylaws.
- The authority of municipalities to regulate certain public uses and utilities was clarified, and in some cases further restricted.
- State agency referral requirements were eliminated, except for flood hazard area review.

### Grandfathering

"Grandfathering" is the granting of an exception that allows a pre-existing situation to remain as is, despite a change to the contrary in subsequently adopted rules. It's often used as the verb "to grandfather" or to describe a "grandfather clause." The term has its roots in "Jim Crow" laws that were passed in southern states at the turn of the 20th century to prevent blacks from voting. In 1870 the 15th Amendment -granting former slaves the right to vote - was ratified. In response, southern states passed laws providing that anyone allowed to vote before the Civil War, and any of their descendants, were exempt from poll taxes and/or supposed "literacy" tests required at the time. In effect, if your grandfather could vote, you could vote (remember, your grandmother could not vote in most states until the 19th Amendment was ratified in 1920). In zoning, the grandfather clause has a much more benign meaning. Rather than being used to deny rights to a particular group or individual, it is intended to protect landowners who may own a property that does not comply with newly imposed standards.

### Required Provisions & Prohibited Effects [§4412]

Bylaws - most importantly zoning - must protect the rights of property owners whose property does not conform to standards adopted after a parcel or use was established.

"Nonconformities," as now defined in statute, include nonconforming uses, structures and lots. Municipalities, however, may regulate changes to nonconformities through their bylaws, and discourage their perpetuation or expansion. Chapter 117 limits the extent to which bylaws may restrict the use of private homes for certain nonresidential uses. There are also limitations on regulating public facilities and utilities that serve the public good, though such uses may be carefully controlled. The following summarizes the required provisions, as recently revised by Act 115:

**Existing Small (Nonconforming)**

**Lots.** Chapter 117 ensures that a parcel (lot) in existence prior to the adoption of zoning may be developed even if it no longer complies with minimum lot size standards. A municipality, however, may prohibit development of a lot that is less than one-eighth acre in area, or has a width or depth dimension of less than 40 feet. Contiguous small lots in common ownership that do not have functioning wastewater systems and potable water supplies (as defined in Chapter 117) are no longer required to be merged. A municipality may require such merger, as provided in its bylaw, in accordance with specified statutory criteria [§4412(2)].

**Required Frontage/Access to Public Roads or Waters.**

Chapter 117 [§4412(3)] provides the means to allow development on lots that lack the minimum road (or surface water) frontage required by a bylaw - in particular to protect the ability to access, and therefore make use of, nonconforming lots. Development may be permitted on any lot lacking necessary frontage, provided that the approval is granted in accordance with a process and standards specified in the bylaw. Where subdivision regulations do not apply, another review process and related standards must be established in the bylaw for this purpose. Such standards should assure safe and adequate access, and in no case may allow access over a deeded easement or right-of-way of less than 20 feet. An important consideration for communities drafting regulations is the extent to which road frontage should be used to regulate the linear densities of development, e.g. access management and utility line extensions. As well, the bylaw should address whether the creation of new - as opposed to pre-existing - nonconforming frontage lots should be allowed and, if so, under what circumstances.

**Protection of Home**

**Occupations.** A bylaw may not prevent a resident from using "a minor portion of a dwelling unit for an occupation which is customary in residential areas and which does not have

an undue adverse effect upon the character of the residential area in which the dwelling is located" (emphasis added) [§4412(4)]. This provision was revised from the prior standard that a home occupation "does not change the character of" a residential area. Many communities are choosing to establish different categories, or levels, of home-based businesses in order to allow home occupations, as defined in statute, as a permitted or exempted use, while subjecting larger, more intensive home businesses to one or more development review procedures.

**Home Child Care Facilities.** A "family child care home" or facility is a type of accessory use to a single-family dwelling that is granted separate protection from that given to

**Family Day Care Home**

**V.S.A. 33 §4402(3)**

According to Vermont statute, a family day care home is a day care facility which provides for care on a regular basis in the caregiver's own residence for not more than ten children at any one time. Of this number up to six children may be provided care on a full-time basis and the remainder on a part-time basis. For the purpose of this subdivision, care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver; except:

- these part-time school-age children may be cared for on a full-day basis during school closing days, snow days and vacation days which occur during the school year; and
- during the school summer vacation, up to 12 children may be cared for provided that at least six of these children are school age and a second staff person is present and on duty when the number of children in attendance exceeds six. These limits shall not include children who are required by law to attend school (age 7 and older) and who reside in the residence of the caregiver.

home occupations. Bylaws must treat the care of up to six (6) children on a full time basis within a single-family dwelling as a permitted use of the dwelling, but may require site plan approval for facilities that care for up to six (6) full time children and four (4) part time children. This provision only applies to facilities where the owner or operator is required to be licensed or registered by the state (see sidebar).

**Heights of Certain Structures.**

Height requirements for antenna structures, wind turbines (with blades less than 20 feet in diameter), and roof-top solar collectors less than 10 feet high, which are mounted on complying structures, may only be regulated if the bylaw provides specific standards for their regulation. If a zoning bylaw imposes height standards (e.g., by zoning district), but remains silent on how these structures are to be treated, the structures are by statute exempted from these standards.

**Nonconformities**

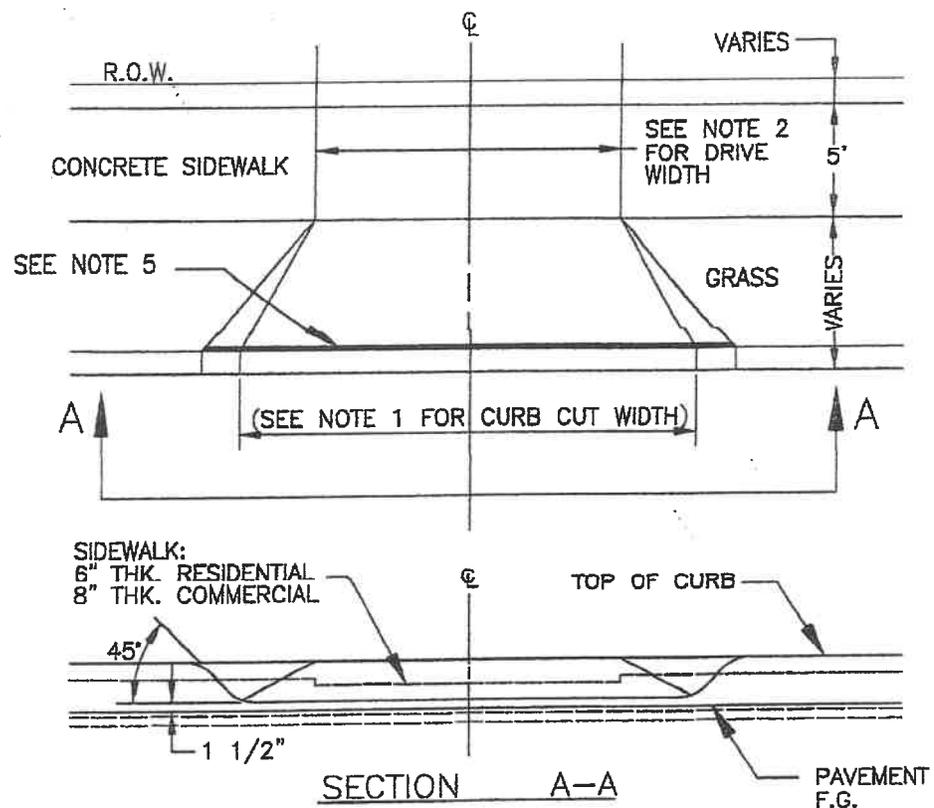
**(Grandfathered Uses, Structures & Lots).** Bylaws are required to specify how "nonconformities" are regulated [§4412(7)]. As noted, three categories of nonconformity are now defined: nonconforming uses, nonconforming structures, and nonconforming lots (addressed under existing small lots). Under this provision, bylaws may specify:

- a time period for determining the abandonment or discontinuance of a nonconforming use (the time period may not be less than six months);
- the extent to which, and circumstances under which, a nonconformity may be maintained or repaired;
- the extent to which, and circumstances under which, a nonconformity may be changed or expanded;
- standards for the relocation or enlargement of structures containing nonconforming uses;
- circumstances in which a nonconformity that is destroyed may be rebuilt; and
- other appropriate circumstances in which nonconformity must comply

THIS ENTIRE PARAGRAPH REFERS TO FRONTAGE / ACCESS

# ESSEX "DRIVEWAY WIDTH"

"I think this would be a nice diagram for Waterbury to adopt."  
It's Clear, Concise, and does not require a lawyer – Eric 3/29/23

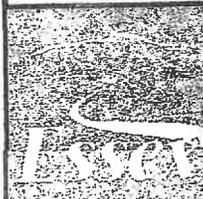


### NOTES :

- 1) CURB CUT WIDTHS SHALL BE AS FOLLOWS
 

SINGLE DRIVE:	15 FEET (MIN.)
DOUBLE DRIVE:	20 FEET (MAX.)
COMMERCIAL DRIVE:	45 FEET (MAX.)
  
- 2) DRIVE WIDTHS SHALL BE AS FOLLOWS
 

<b>SINGLE DRIVE:</b>	<b>10 FEET (MIN.)</b>
DOUBLE DRIVE:	15 FEET (MAX.)
COMMERCIAL DRIVE:	40 FEET (MAX.)



TOWN OF ESSEX  
PUBLIC WORKS  
81 MAIN STREET  
ESSEX JCT., VT  
05452

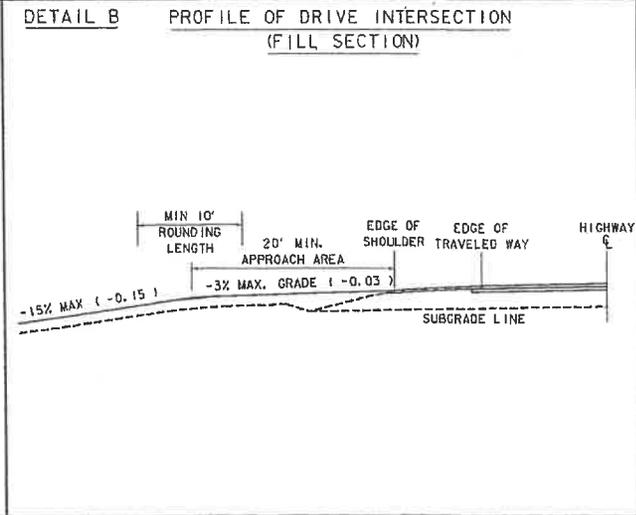
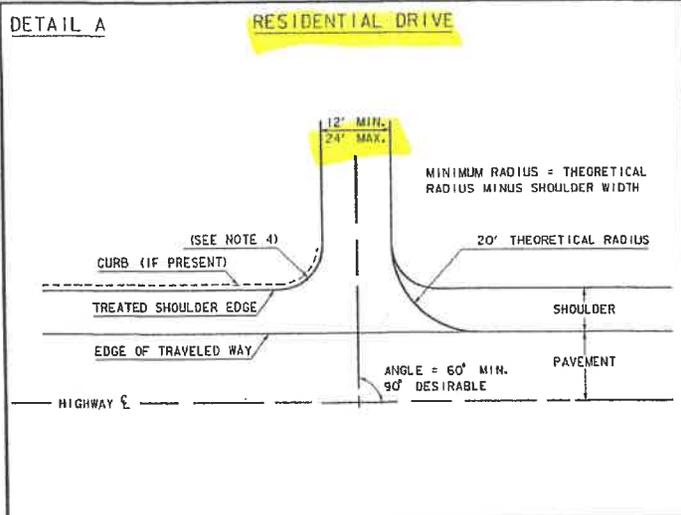
P: 802 878-1344  
F: 802 878-1355  
E: www.essex.org

TOWN OF ESSEX, VERMONT  
STANDARD SPECIFICATIONS FOR CONSTRUCTION

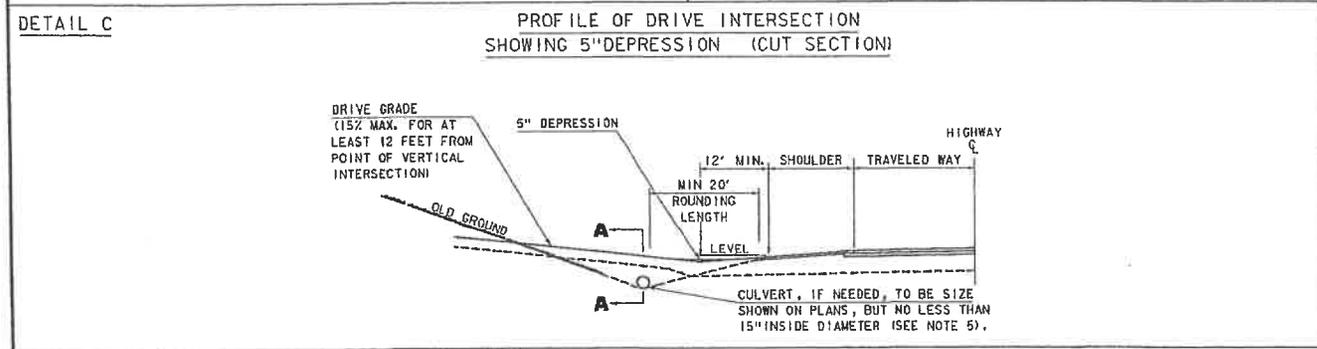
## DRIVEWAY

Detail No: 100.08  
Scale: NOT TO SCALE  
Date: JAN. 2017

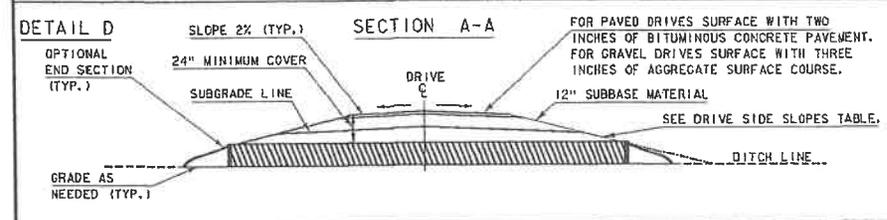
# A-8



1. THIS SHEET IS INTENDED FOR USE BY DESIGNERS ON HIGHWAY PROJECTS AND IN CONJUNCTION WITH A PERMIT FOR WORK WITHIN HIGHWAY RIGHTS OF WAY. ALL CONSTRUCTION REQUIRED BY THE PERMIT AND INDICATED ON THIS SHEET SHALL BE THE RESPONSIBILITY OF THE APPLICANT AND IS SUBJECT TO THE APPROVAL OF THE VERMONT AGENCY OF TRANSPORTATION. WHEN USED WITH THE PLANS FOR A HIGHWAY CONSTRUCTION PROJECT, THIS SHEET IS INTENDED TO BE A GUIDE FOR THE DESIGNER CONCERNING DRIVE WIDTHS, HORIZONTAL, VERTICAL AND GEOMETRIC CHARACTERISTICS.
2. DEPTH OF SUBBASE AND PAVEMENT TO BE THE SAME AS HIGHWAY OR AS SHOWN IN DETAIL D WITHIN THE LIMITS OF THE HIGHWAY RIGHT-OF-WAY.
3. VEHICULAR ACCESS FROM PARKING AREAS TO THE RIGHT-OF-WAY AT OTHER THAN APPROVED ACCESS POINTS WILL BE PREVENTED BY THE CONSTRUCTION OF CURBING OR OTHER SUITABLE PHYSICAL BARRIER.
4. IF CURB IS PRESENT, SEE APPROPRIATE CURB DETAIL STANDARD.
5. CIRCULAR DRAINAGE CULVERTS UNDER DRIVES SHALL HAVE A MINIMUM INSIDE DIAMETER (I.D.) OF 15" OR AS OTHERWISE SHOWN ON THE PLANS. PIPE ARCHES USED UNDER DRIVES SHALL HAVE A MINIMUM INSIDE CROSS-SECTIONAL AREA EQUIVALENT TO THAT PROVIDED BY A 15" CIRCULAR PIPE. IF A CULVERT LARGER THAN 15" IS LOCATED UPSTREAM OF THE PROPOSED CULVERT THEN THE NEW CULVERT SHALL, AT A MINIMUM, MATCH THE SIZE OF THE UPSTREAM CULVERT.
6. THE OFFSET BETWEEN THE PROPERTY LINE AND THE EDGE OF THE DRIVEWAY MAY BE GOVERNED BY LOCAL ZONING LAWS. DRIVEWAY WIDTH RESTRICTIONS SHOWN PERTAIN ONLY TO THE AREA WITHIN THE HIGHWAY R.O.W. OR THE END OF THE TURNING RADIUS WHICHEVER IS GREATEST.
7. DRIVEWAY GRADES STEEPER THAN THOSE SHOWN MAY BE ALLOWED AS LONG AS A 20' APPROACH AREA IS ACHIEVED FOR THE VEHICLE TO PAUSE BEFORE ENTERING THE HIGHWAY.



8. THIS STANDARD APPLIES TO FIELD DRIVES, LOGGING DRIVES, AND RESIDENTIAL ACCESSES SERVING UP TO TWO SINGLE FAMILY HOMES OR A DUPLEX. FOR LARGER RESIDENTIAL DEVELOPMENTS, SUBDIVISIONS AND OTHER COMMERCIAL ACCESSES SEE VTRANS STANDARD B-71B.
9. INTERSECTION SIGHT DISTANCES, AND STOPPING SIGHT DISTANCE, EQUAL TO OR GREATER THAN THOSE SHOWN BELOW, SHOULD BE PROVIDED IN BOTH DIRECTIONS FOR ALL DRIVES ENTERING ON PUBLIC HIGHWAYS, UNLESS OTHERWISE APPROVED BY THE AGENCY OF TRANSPORTATION. INTERSECTION SIGHT DISTANCE IS MEASURED FROM A POINT ON THE DRIVE AT LEAST 15 FEET FROM THE EDGE OF TRAVELED WAY OF THE ADJACENT ROADWAY AND MEASURED FROM A HEIGHT OF EYE OF 3.5 FEET ON THE DRIVE TO A HEIGHT OF 3.5 FEET ON THE ROADWAY. STOPPING SIGHT DISTANCE IS MEASURED FROM AN EYE HEIGHT OF 3.5 FEET TO AN OBJECT HEIGHT OF 2.0 FEET ON THE ROADWAY.
10. FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE "VERMONT AGENCY OF TRANSPORTATION ACCESS MANAGEMENT PROGRAM GUIDELINES" LATEST REVISION.



**DRIVE SIDE SLOPES TABLE**

LOCATION OF SLOPE	SLOPE RATE
DESIGN SPEED > 40 MPH	1:6 OR FLATTER
URBAN AREAS, OR DESIGN SPEED < 40 MPH	1:4 DESIRABLE 1:2 ALLOWABLE
OUTSIDE CLEAR ZONE	1:2 OR FLATTER

**SIGHT DISTANCE TABLE**

POSTED SPEED OR DESIGN SPEED (MPH)	MINIMUM STOPPING SIGHT DISTANCE (FT)	MINIMUM INTERSECTION SIGHT DISTANCE (FT)
25	155	280
30	200	335
35	250	390
40	305	445
45	360	500
50	425	555
55	495	610

THE ABOVE VALUES ARE TAKEN FROM THE 2011 AASHTO "A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS & STREETS."

REV.	DATE	DESCRIPTION
0	JUL. 1, 2019	ORIGINAL APPROVAL

OTHER STANDARDS REQUIRED:

**RESIDENTIAL DRIVES**



**STANDARD B-71A**

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