VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 20-ENV-00004

In re: 9 George Street
(Suzanne Marcia Blain and Gregory J. Pajala, Appellants)

DECISION ON THE MERITS

Suzanne Marcia Blain and Gregory J. Pajala ("Applicants") own a lot at 9 George Street in Winooski, Vermont that is already developed with a single-family home, a shed, an adjoining deck, and driveway in which one or two vehicles can park. They wish to further develop their property with a separate two-story cottage that would include a bedroom, kitchen, living area and bath. Most recently, when the City of Winooski Development Review Board denied their application for conditional use approval of their proposed cottage development, Applicants filed a timely appeal with this Court.

After Applicants gave notice of their appeal, several of their George Street neighbors entered appearances in this matter: George and Betty Perrotte entered appearances as self-represented litigants and Doug and Claire Weston, Randy and Tammy Castle, Don and Betty Lacharite, and Paul and Valerie Guilmette also entered their appearances, through their attorney, James A. Dumont, Esq. [1]

Where the neighbors make common representations or legal arguments, we refer to them commonly as "Neighbors." Where they have made individual representations, we refer to them by their individual names.

[1] Attorney Dumont first entered a Limited Appearance for his clients on October 19, 2020, and then filed a subsequent Notice of Appearance for all his clients, without limitation, on April 9, 2021.

Marie Miller, who previously appeared through Attorney James A. Dumont, Esq., withdrew her appearance on April 22, 2021.

The City of Winooski also entered its appearance, through its attorney, Robert S. DiPalma, Esq. Applicants are assisted in these appeal proceedings by their attorney, Jeremy S. Grant, Esq.

The parties immediately engaged in exchanging discovery inquiries and responses. While they conducted sincere private settlement efforts, they concluded that further discussion, including with the assistance of an independent mediator, would not be fruitful. The Court abided by their joint request and did not direct the parties to engage a mediator. The Court then discussed the scheduling of a site visit and trial.

The Court completed a site visit with the parties on July 26, 2021, and then conducted its bench trial on the following two days: July 27 and 28, 2021. At the close of the trial, the parties requested the opportunity to submit post-trial briefs, proposed findings, and conclusions of law. Those filings were completed on October 11, 2021. This matter thereafter went under advisement. Other responsibilities caused the Court to delay its review, research, and writing of this Merits Decision, for which the Court offers its apologies to the parties and their attorneys.

Based upon the credible evidence presented at trial, including that which was put into context by the site visit, the Court renders the following Findings of Fact, Conclusions of Law, and the Judgment Order that accompanies this Merits Decision.

Findings of Fact

a. George Street neighborhood

1. George Street is a relatively short street in a neighborhood that is north of downtown Winooski and immediately south of the Winooski High School. There are about a dozen homes along George Street.

2. George Street is not a through street. Its easterly end begins at its intersection with Franklin Street. At its westerly end, George Street abuts an entrance to an auxiliary parking lot for the Winooski High School that contains about a dozen public parking spaces. Many area school children, teachers, and staff use George Street on their way to and from the High School.

3. Due to the fact that George Street is not a through street, the traffic on George Street has been relatively light and is limited to its residents and the occasional groups of school children, teachers, and staff that use George Street as an access way to the High School at the beginning and end of each academic day. Traffic on George

Street increased somewhat after the installation of the High School's auxiliary parking lot at the western end of George Street, but the credible evidence revealed that the foot and vehicular traffic on George Street remained relatively light.

4. Historically, parking has occurred on either side of George Street. The parking on George Street is not often at capacity: open parking spaces are often available on George Street, as was evidenced by credible testimony and photographs admitted at trial. See Applicants' Ex. Z at 1–15. However, when vehicles were parked on George Street, particularly when they were immediately adjacent to a driveway, residents sometimes found it difficult to enter and exit their driveways, especially when they were attempting to back out of their driveways. When roadway snowbanks build up in the winter time, garbage trucks and other service vehicles have on several occasions had difficulty maneuvering along George Street, especially when vehicles are parked along both sides of the Street.

5. In response to some of the difficulties in travelling along George Street, the City of Winooski ("City") had specific parking spaces denoted with painted lines on either side of George Street. These parking lines encouraged drivers to park their vehicles at least five feet away from the end of driveways to make it easier and safer for residents to enter and exit those driveways.

6. All of the Neighbors who have appeared in this appeal live along George Street, including Doug and Claire Weston, who own the property at 7 George Street, and Randy and Tammy Castle, who own the property at 11 George Street. The Westons' property abuts Applicants' property to the east and the Castles' property abuts Applicants' property to the west.

7. The existing developments along George Street help guide our determination, in part, about the character of the area surrounding Applicants' property. We look to the George Street neighborhood, as well as the area and improvements immediately surrounding the George Street residences. We also look to the purpose provisions for the zoning district

8. Most all of the properties along George Street consist of small lots. Many appear to be of a size similar to Applicants' property, which is 50-feet wide, 103-feet or more deep, and therefore is just over 5,000 square feet in size.

9. Because the lots are small, the houses on those lots are relatively close to each other. Several Neighbors have expressed concerns about their privacy being infringed

upon, due to the closeness of the residences, including the planned additional residence on Applicants' property.

10. All George Street properties have been developed as residences. In addition to a main home and driveway, many properties have accessory structures, including garages, sheds, decks, or a cottage or some other accessory structure that serves as an additional dwelling unit.

11. We were aided in our understanding of the character of this area by the written memorandum Applicant Blain presented at trial, which we found, together with her testimony, to be very thorough and credible. A copy of Ms. Blain's memorandum was admitted at trial as Applicants' Exhibit J. Based upon Ms. Blain's testimony and memorandum, which were not substantially or credibly contested, we came to determine the following characteristics about these George Street properties:

a. 192 Franklin Street: This property is on the corner of Franklin and George Streets, abuts the property at 7 George Street, and is part of the George Street neighborhood. In addition to its main house, which includes an addition, this property contains three outbuildings, a pool and attached deck, and three carports. No calculation of lot coverage was provided to the Court, but the photos contained in Ms. Blain's memorandum convince the Court that the structures and driveway on this lot cover much more than 50% of the lot.

b. 7 George Street: This property abuts Applicants' property to the east. It contains a relatively large home that includes two additions (one on the front of the house and one on the back) that increase the visibility and presence of the home from the Street. The property also includes a shed on the rear of the lot, a driveway that appears to be two vehicles wide, and a garage and carport that appear to be larger than the Cottage that Applicants propose. No calculation of lot coverage was provided to the Court, but the photos contained in Ms. Blain's memorandum convince the Court that the structures and driveway on this lot cover much more than 50% of the lot.

c. 11 George Street: This property abuts Applicants' property to the west. The property contains a main house and what appears to be a small shed. The driveway extends nearly to the boundary of easterly property line (abutting Applicants' property) and is wide enough to accommodate two vehicles, parked side by side. There is also a dirt parking area in front of the house that accommodates one vehicle.

d. 15 George Street: This property is the next property west of 11 George Street. 15 George Street contains a relatively large home, a shed and hoop-house garage. The owners also use the rear yard for boat and RV storage. In the winter, the RV is sometimes stored on the front lawn, as depicted in Exhibit J at 17. No calculation of lot coverage was provided, but the photos contained in Ms. Blain's memorandum convince the Court that the

structures, driveway, and storage areas on this lot cover much more than 50% of the lot.

e. 17 George Street: This property contains a relatively large, three-story house and a 20-foot by 30-foot, two-story garage that includes housing on the second floor. It appears that one of the occupants of this lot may be a contractor, since they park a large pickup truck and job trailer on the front lawn. The paved driveway abuts the property line with 15 George Street and is about two vehicles wide. The occupants sometimes park a large RV on the driveway, as depicted in Exhibit J at 13. No calculation of lot coverage was provided, but the photos contained in Ms. Blain's memorandum convince the Court that the structures, driveway, and storage areas on this lot cover much more than 50% of the lot.

f. 19 George Street: This property is at the end of George Street; to its west is the auxiliary High School parking lot. 19 George Street contains a large multi-family dwelling unit with a parking lot that has open frontage on George Street. The photos included in Ms. Blain's memorandum at page 15 show the parking lot hosting four vehicles. This property also contains a large shed, which appears similar in size to the cottage that Applicants propose. While no lot coverage calculations were provided for this property, the photo provided convince the Court that the structures and parking area appear to far exceed 50% coverage of the lot.

g. 20 George Street: This property is across the Street from 19 George Street. It contains a moderately-sized dwelling with an 8-vehicle paved parking lot on the front lawn, allowing unfettered street access, as depicted on Exhibit J at 19.

h. 16-18 George Street: This combined parcel appears to be one lot, but contains two homes, one in front of the other. The homes and joint driveway appear to cover the majority of the lot. See Exhibit J at 16.

i. 14 George Street: This property has a main house and a second dwelling in a detached cottage, to the rear of the lot. There appears to be a single driveway used for both dwellings. See Exhibit J at 14.

j. 12 George Street: This property includes a house and garage; the garage appears to be attached to the house, on a jog, such that the garage is accessible by a driveway that runs along the westerly side of the house. There is also a second driveway on the opposite side of the house.

k. 10 George Street: This property is directly across the Street from Applicants' property. It includes a main dwelling and several outbuildings, including a gazebo, a hoop-house garage, and a shed that is similar in size to the cottage that Applicants are proposing. The lot also contains a wide driveway, approximately wide enough to accommodate two side-by-side parked vehicles.

l. 8 George Street: This property contains a main dwelling and several outbuildings, including a shed and a hoop house garage. It also includes a driveway that appears to be wide enough to accommodate two vehicles parked side by side; the driveway is paved and nearly runs the whole depth of the lot.

12. From Ms. Blain's credible calculations, the Court finds that about 86% of the properties on George Street have back yard structures that are similar or larger in size to the cottage that Applicants propose, and that nearly 30% of the George Street properties contain multi-family uses.

13. Mr. Weston has lived on George Street for 45 years. He testified that George Street traffic used to be very light, but that it "picked up considerably" 12 to 15 years ago when the High School authorities installed an accessory parking lot that is accessed via George Street. Once completed, this parking lot included an area that could accommodate about a dozen vehicles. We are uncertain from the testimony presented whether these spaces are used for parents and others who were just dropping off or picking up school children or were dedicated to teaches, staff, and others for day-long use.

14. While we have no doubt that the operation of the High School and its accessory parking lot adds traffic to George Street (particularly at the beginning and end of the school day), we believe that the more credible testimony, particularly from both Applicants, is that George Street enjoys relatively light traffic. No party offered specifics about daily traffic counts or how the George Street traffic compares to the traffic on other similar area streets.

15. Mr. Weston did not offer credible testimony about how he believed the improvements that Applicants proposed for 9 George Street would measurably increase the traffic or congestion along George Street.

16. Mr. Weston also suggested that there are future plans to expand the school parking lot at the end of George Street to accommodate more vehicles, especially those being operated by teachers and staff. There was some suggestion that this expanded accessory school parking could accommodate up to 35 additional spaces, although we were not provided with specific plans, nor when or how certain this expansion may be completed. Mr. Weston did advise that he chose not to offer objections when the permit application for the High School parking lot expansion was being considered.

17. The George Street neighborhood, including Applicants' property at 9 George Street, is located in the Residential B Zoning District ("R-B District") under the City of Winooski Unified Land Use and Development Regulations, effective August 7, 2017,

(hereinafter "Regulations"), which were the zoning regulations in effect at the time that Applicants submitted their final application.[2]

b. Applicants' Property and Proposed Development

i. Applicants' existing development

18. Applicants own the property at 9 George Street that is already developed with a single-family residence, a shed, an attached deck, and a driveway on which one to two cars may be parked (one behind the other, as the existing driveway is just slightly wider than the width of one vehicle).

19. Applicants' residence is a two-story house with just under 900 square feet of livable interior space. Their deck and shed are just under 300 square feet in size.

20. Applicants purchased this property in 2018. They do not use the property as their principal residence, but rather rent it out to others for residential use.

21. Applicants have completed extensive renovations on their property.

22. Several Neighbors expressed concerns about the number of vehicles that Applicants have allowed their past tenants to keep on the property. At one point, the tenants at 9 George Street may have allowed up to eight vehicles to be parked on the property or on the street in front of the property. We were not told during trial how frequently this number of vehicles were on or in front of 9 George Street.

23. Since those concerns were raised, Applicants have made efforts to restrict the number of vehicles their tenants park on or in front of 9 George Street, including inserting language in their residential leases that limit the number of vehicles that their tenants may bring onto the rental property.

ii. Applicants proposed development

24. These proceedings were initiated because Applicants proposed to construct and maintain a second residence on their property. Their efforts have a somewhat long procedural history, since their application, and subsequent revised applications, for conditional use approval were denied three times by the City of Winooski Development Review Board ("DRB"). Applicants appealed the third denial to this Court.

25. Each time Applicants submitted their initial application and the subsequent revisions to the DRB, Applicants made some changes to their proposed development.

[2] These Regulations have since been amended. Those Amended Regulations took effect in 2021, but do not govern these proceedings.

They asserted that the changes they proposed were made to address the concerns expressed in the prior DRB proceedings. We summarize Applicants initial proposal and subsequent revisions below.

26. In their first application, which Applicant Pajala prepared and presented himself (i.e., without assistance from an engineer or attorney), Applicants proposed to construct a two-story cottage as an accessory structure in the rear of their property, which would be just north of the existing residence and near their rear boundary, which abuts the High School baseball field. The initial site plan represents that the proposed cottage would be 28 feet in width and 24 feet in depth, resulting in approximately 672 of square footage on each floor and 1,344 square feet total for the proposed two floors.

27. Mr. Pajala prepared a hand-drawn site plan to depict the proposed cottage. That application, including the site plan, was admitted at trial as Applicants' Exhibit B. His site plan references "Approx. Prop. Line[s]," but does not detail the direction or distances of those boundary lines. Id. at 3. Mr. Pajala represented that his proposed cottage would respect "setbacks [of] approx 5' or as required." Id. It does not reference that the depictions are drawn to scale. It shows the existing driveway but does not depict any additional driveway or parking areas on the site for the proposed cottage. The site plan also is silent as to the percentage of the lot that would be covered by both the existing and proposed developments.

28. Applicants' initial proposal called for a one-bedroom studio apartment to be within the proposed cottage, with one and a half baths, and kitchen and living areas. Id. at 2.

29. The DRB responded to Applicants' first application with a decision dated October 28, 2019. By that Decision, the DRB advised Applicants that their application had been denied. A copy of the DRB's 2019 decision was admitted at trial as Applicants' Exhibit D.

30. The DRB generally found that Applicants proposed development conformed to the Zoning District and conditional use standards found in Regulations § 6.7. Applicants' Ex. D at 3–4. In addition, the DRB noted that "[d]etached cottages present an opportunity for affordable housing to be incorporated into the existing development pattern. The city has identified a need for more affordable housing to be established in the community." Id. at 3.

31. In its findings concerning the character of the area and the proposed development's impact upon it, the DRB noted that "George Street is primarily developed with small lots that generally have single family homes. The detached cottage would be similar in nature to other [area] properties that have accessory structures such as sheds or garages. Although they can be slightly larger, the detached cottage would generally fit in with this development pattern." Id.

32. However, the DRB concluded that it must deny this first application and provided the following explanations:

> 1. Insufficient information was presented to determine adequate parking was available for both the existing single-family home and the detached cottage to ensure independent parking was available for each dwelling to meet or exceed the parking requirements of the [Regulations]. A parking plan that identifies sufficient parking off site to meet the minimum requirements of the City's [Regulations] would be needed to ensure parking can be accommodated for the development on the property.
> 2. The site plan provided did not include adequate detail to ensure lot coverage maximums were not being exceeded. A site plan prepared by a design professional indicating existing and proposed uses; parking; buffering or screening; and lot coverage calculations would be necessary to conduct a more thorough review of the project.
>
> Id. at 4–5.

33. No party appealed the DRB's October 28, 2019, findings and conclusions.

34. Instead, Applicants chose to submit a second application for their proposed accessory cottage, incorporating some changes to the proposed development. That second application was submitted to the DRB on February 21, 2020; a copy of the second application was admitted at trial as Applicants' Exhibit E.

35. In their second application, the location of the proposed cottage remained the same, thus respecting the minimum side- and rear-yard setbacks.

36. Applicants engaged an engineering firm to prepare the site plan attached to their second application. It appears that Mr. Pajala completed the other parts of the second application himself, but that, in addition to the site plan, his engineer prepared a description of the project and the changes made from the first application.

37. Specific changes from the first application included the following:

> a. The proposed cottage was reduced in size to now measure 20 feet by 24 feet, thereby resulting in 480 square feet per floor, with a total area in the two-story cottage of 960 square feet. See Applicants' Ex. E at 5.

b. Details of the proposed cottage are depicted in Exhibit E on pages 9 through 12. As depicted, there would be dormers on the front and back built into the second-floor roof, with windows that would face the front and back of the lot.

c. The engineer's site plan is drawn to scale, with a reference of a specific ¼" to 1'-0" scale and includes specific calculations of after-development lot coverage of 43%.

d. The reduction in planned lot coverage was also accomplished by Applicants proposing to remove the existing deck, thereby reducing the developed lot coverage area by 144 square feet.

e. The entrances to the existing home and the proposed cottage were relocated to the front of each structure, so as to make way for the proposed new driveway and parking areas. Flagstone walkways would be added from the driveway areas to the front doors of each structure. Id. at 8.

f. Applicants propose to remove the existing concrete driveway on the easterly side of the existing residence and replace it with an expanded driveway and parking area, as depicted on the site map. Id. The proposed driveway/parking area would now contain crushed gravel and be expanded to the west, to abut the existing home. To accomplish this, planters and stairs that are now on the easterly side of the existing home would be removed. A single parking space would abut the existing home and would be dedicated to use by the cottage residents.

g. The replacement gravel driveway would encroach into the easterly 5-foot side yard setback by two feet, which would be one foot more than the existing concrete driveway. The proposed gravel driveway would be shorter than the existing concrete driveway, so that the new driveway would stop just below the overhang on the existing home. Applicants also proposed to install two, two-foot-wide strips of gravel that would extend 36 feet from the northerly end of the new driveway, as depicted on the site map. Id. These strips would be surrounded by grass and would be used by the tenants of the existing home to park up to two vehicles.

h. Applicants' engineer also determined that their lot was actually 104 feet deep on its easterly side and 103 feet deep on its westerly side, not the 100 feet on each side that was originally represented. This correction increased the calculated total lot size to 5,190 square feet. See Applicants' Ex. E at 8.

38. The DRB reviewed Applicants' second application at their hearing on April 16, 2020. In the decision issued on May 1, 2020, (a copy of which was admitted at trial as Applicants' Exhibit G) the DRB noted that Applicant Pajala and some of his Neighbors offered testimony. Once the DRB completed receiving testimony and other evidence, it deliberated and decided to deny Applicants' second application.

39. The DRB concluded that "the proposed use is consistent with the [Regulation standards] related to size, location, setbacks, and lot coverage, [and] there are no identified conflicts." Applicants' Ex. G at 4–5.

40. However, the DRB denied conditional use approval, concluding that "the proposed use would cause an undue adverse impact on the character of the neighborhood and negatively impact the traffic in the surrounding area." Id. at 5. The DRB did not detail how the proposed development would adversely or negatively impact the neighborhood's character or its traffic.

41. No party appealed the DRB's May 1, 2020, findings and conclusions.

42. Instead, Applicants chose to submit a third application for their proposed cottage, incorporating some further changes to the proposed development. That third application was submitted to the DRB on June 18, 2020; a copy of the third application was admitted at trial as Applicants' Exhibit H.

43. Specific changes from the second application included the following:

a. Applicant Blain was now the signor on the third application. See Applicants' Ex. H at 2.

b. The proposed cottage would now have only one dormer on the rear of the structure. Applicants explained at trial that they had removed the front dormer to respond to some Neighbors' concerns regarding privacy. The thought was that with no second-floor windows on the front of the proposed cottage, its tenants would be less likely to be able to view the Neighbors' activities. The revised design with only one dormer is depicted on Exhibit H on pages 9 through 13.

c. In addition, Applicants revised the interior layout of the proposed cottage, so that both the kitchen and bedroom were located in the rear of the cottage. Applicants believe that this interior revision would improve the occupants' respect for the privacy of their neighbors. Applicants also reduced the size of some of the windows to be installed in the proposed cottage, in an effort to respond to the Neighbors privacy concerns.

d. The existing shed, as well as its adjoining deck, would be removed, so as to reduce the lot coverage and development on the lot by about 300 square feet in total.

e. Applicants also revised the proposed driveway and parking plans, as depicted on Exhibit H on pages 6 through 8. The new proposal offers a revised design that can accommodate up to five parked cars within the lot. Id.

f. As noted above at ¶ 11, Ms. Blain prepared and presented to both the DRB and this Court a detailed analysis of the existing development of neighborhood properties and a detailed description of the revisions to Applicants' proposed development plans. See Applicants' Ex. J. In

particular, Ms. Blain chose to replace the existing concrete driveway with a gravel driveway. The existing driveway is impervious, whereas the proposed driveway would be pervious and thereby reduce stormwater runoff from the exiting site. Id. at 3.

g. Further, due to the fact that the proposed parking spaces will include grassed areas beside and in between the two-foot-wide gravel slots for vehicle tires, these parking areas will have a grass/yard look to them when the parking spaces are not in use.

h. Some Neighbors continued to express concerns about the impacts of on-street parking, both in terms of what has occurred in the past and what may occur as a consequence of the proposed development. We note that neither Applicants' revised site plan nor their presentation before the DRB or this Court proposed that on-street parking will be utilized for the residents of the existing home or the proposed cottage to be at 9 George Street.

44. After completing the receipt of testimony and other evidence, the DRB conducted its deliberations, which it noted were "wide-ranging" and "significant." See Applicants' Ex. N at 3 (DRB August 4, 2020 Decision). The DRB decided "[t]o deny the conditional use request for the detached cottage at 9 George Street because the application currently before the Board is not substantially different from the prior one." Id.

45. Applicants thereafter filed a timely appeal of the August 4, 2020 DRB decision with this Court.

46. At our trial, Applicants also offered a further alternative to the parking plan included in the site plan that they last offered to the DRB. Specifically, Applicants attempted to address Neighbors' continuing concerns about parking by the occupants at 9 George Street, including that the occupants may park within the 10-foot front yard setback or be encouraged to park along George Street.

47. The Applicants' alternative parking plan presented at trial is shown on Applicants' Exhibit P. Specifically, that parking plan no longer identifies a parking space for the proposed cottage occupants that would be along the driveway, near the easterly side of the existing dwelling. Since parking would no longer be designated in this area, there is no proposal that may lead to a tenant parking within the 10-foot front yard setback. Compare Ex. P with Ex. H at 6.

48. As a consequence, the proposed new driveway will be narrower than previously planned. See Ex. P. The proposed new driveway will be paved, and its easterly boundary would respect the limits of the existing concrete driveway. The new

driveway will continue beyond the northern terminus of the existing driveway along two, two-foot-wide strips, with grassed areas on either side of these travel lanes. Id. These parking strips will continue northerly, directly north of the existing driveway, and at the same distance from the side yard boundary, in a manner similar to that shown on Exhibit H. In addition, two new parallel strips will angle westerly and in front of the proposed cottage, so as to provide an additional parking space. This revised plan will result in a total of four parking spaces, all located in the rear of 9 George Street. This plan will allow for the parked vehicles at 9 George Street to be less visible from George Street than would be the case in the prior parking plan.

49. It did not appear that any of the revisions proposed by Applicants satisfied the Neighbors' concerns. The Neighbors continued to express concerns about traffic, privacy, and unspecified adverse impact to their neighborhood.

Conclusions of Law

As the Appellants, Applicants set the parameters for the legal issues we must address in this appeal. V.R.E.C.P. 5(f) (requiring that only legal questions presented by an appellant in a statement of questions may be raised in an appeal). Thus, the parameters of the legal issues that may be raised in this appeal were set by Applicants in the Statement of Questions that they filed on September 18, 2020. Applicants' Statement lists ten total Questions, but we believe it appropriate to address those Questions slightly out of order, for the following reasons.

a. The Successive application doctrine (Statement of Questions 8, 9, and 10)

Because of the successive applications that Applicants filed, and for the reasons stated by the DRB when it denied Applicants' third application, we first address the legal issue of whether it is appropriate to allow Applicants to submit their third application for review. Applicants' Questions 8, 9, and 10 address this legal issue.

As Neighbors correctly note, our analysis of this legal issue begins with reference to the "finality rule" of 24 V.S.A. § 4472(d), which directs that, upon the failure of any interested party to file a timely appeal, "all interested persons affected shall be bound by that decision . . . and shall not thereafter contest, directly or indirectly, the decision . . . in any proceeding . . . ."

This appeal, and the DRB proceedings below, present a challenging analysis of the finality rule. Here, we have two prior DRB proceedings, neither of which were

appealed by any interested party. Thus, all interested parties have waived the right to challenge the decision and determinations made in those prior proceedings. That legal reality presents some challenges to the Neighbors who were interested persons in those prior proceedings, since while the DRB ultimately denied the application, the DRB also rendered specific legal conclusions that "the proposed use is consistent with the [Regulation standards] related to size, location, setbacks, and lot coverage, [and] there are no identified conflicts." Applicants' Ex. G at 4–5.

Perhaps more problematic for Applicants, of course, is that the DRB denied their first and second applications. But it would be too simplistic to leave our legal analysis at that. Rather, the finality rule of § 4472(d) applies to the project design and application that was previously presented to the DRB. In presenting the legal issues in their appeal of the DRB's August 4, 2020 decision on their third application, Applicants assert that they made changes to their project design in response to the criticism offered in that DRB proceeding, and that those changes were sufficiently substantial as to regard their third application as not violative of the successive application doctrine. The Neighbors disagree; they assert that the DRB correctly concluded that the changes offered by Applicants from their second to third application were "more of degree than of kind, and they are insufficient to overcome the adjoining property owners' interest in the finality of this Board's decisions." Ex. N at 4. The DRB therefore concluded that Applicants' third revised application is barred by the successive application doctrine. Neighbors join in that assessment.

Since this is a *de novo* appeal, we are directed to hear evidence anew and render our own legal determinations, without regard to the determinations appealed from. V.R.E.C.P. 5(g). We therefore render our own legal determination, based upon the credible evidence presented at trial, as to whether Applicants' third application violates the successive application doctrine and must be denied.

The successive application doctrine has as its foundation the general notion that completed litigation must be respected for its finality. "[P]rinciples of res judicata and collateral estoppel generally apply in zoning cases as in other areas of the law." In re Application of Carrier, 155 Vt. 152, 158 (1990) (citing Kollock v. Sussex County Board of Adjustment, 526 A.2d 569, 572 (Del.Super.Ct.1987)). The Carrier Court went on to explain that

> [A] planning commission (or a court acting as a planning commission) may grant a second application for site plan approval when the application has been substantially changed so as to respond to objections raised in the original application or when the applicant is willing to comply with conditions the commission or court is empowered to impose.

Id.

Additional precedent from our Supreme Court helps clarify what can be meant by the term "substantial change." See In re Jolly Associates, 2006 VT 132, ¶ 12, 181 Vt. 190. The Jolly Court explained that "[o]ne change in conditions sufficient to allow for consideration of a successive application is 'when the application has been substantially changed so as to respond to objections raised [about] the original application . . . .'" Id. (quoting Carrier, 155 Vt. at 158). This precedent from both Jolley and Carrier are of particular relevance to the facts presented here.

Neighbors here assert that Applicants are procedurally prohibited from filing their third application for two reasons. First, Neighbors assert that the applicable zoning provision requires that if an applicant wishes to submit new facts in support of an application that has been denied, they must do so within 30 days from the denial of their prior application. The Neighbors cite to Regulations § 6.9.C as the foundation for their claim. But this is a misreading of that regulatory provision, which provides that a "request for reconsideration of a DRB decision may be submitted to the DRB by an interested party within 30 days of the date of the decision. The request must include new information that the DRB had not previously considered." See Applicants' Ex. A at 77 ("Regulations"). We note that this provision provides that such a request "*may be* submitted . . . within 30 days . . ." and therefore regard the direction as permissive, not mandatory. Id. (emphasis added). We also regard this ordinance provision as inapplicable to Applicants' third application, since they were not filing a reconsideration request. Given the changes proposed in their third application (which we discuss below), Applicants chose to submit a whole new application, which was their right.

Second, Neighbors assert that Applicants' third application should be barred because the changes Applicants presented in their third application could have been submitted in the prior proceeding. While Neighbors accurately quote the legal precedents from our Supreme Court (see In re Application of Lathrop Ltd. P'ship I,

2015 VT 49, ¶ 58, 199 Vt. 19; see also Carrier, 155 Vt. at 158), their argument presumes that Applicants could have foretold their Neighbors' grievances about their prior application. Afterall, the DRB concluded that their prior application was "consistent with the [Regulation standards] related to size, location, setbacks, and lot coverage, [and] there are no identified conflicts." Applicants' Ex. G at 4–5. In that prior application, Applicants also proposed three interior parking spots for the existing home and proposed cottage, which met the minimum parking requirements and did not rely upon on-street parking. With these affirmative findings, we are left to wonder how Applicants would be able to successfully predict that Neighbors would still object to their development proposal.

Instead, once Applicants learned of their Neighbors' continued objections during the second DRB hearing, they responded with a third application that they believed sufficiently addressed their Neighbors' concerns. It is for these reasons that we reject the Neighbors' procedural arguments for why Applicants' revised application should not be entitled to review.

Our rejection here is only upon the Neighbors' procedural arguments. So, we now turn to whether the credible facts presented satisfy the directives of Carrier and its progeny for a successive application that is allowed for review. 155 Vt. at 158.

This Court, and perhaps Applicants, has had some difficulty in determining what shortcomings the DRB saw in Applicants' third application, since the DRB decision lacks specific reference to the factual foundations for its denial, other than a general determination that the application is not sufficiently different from the prior application. The DRB did note that the Neighbors continued to express "concerns regarding on-street parking and concerns related to lot density that may be compounded by additional dwellings along George Street." Applicants' Ex. N at 3, ¶ 6.

The DRB decisions as to Applicants' second and third applications both noted that the proposed detached cottage would generally be consistent with the area development patterns, since other cottages or accessory structures exist on all other lots in the neighborhood. Id. at 3, ¶ 7; Applicants' Ex. G at 3, ¶ 6. The DRB further noted that the proposed configuration of Applicants' property meets the minimum standards of the zoning regulations for a detached cottage, including required parking and maximum lot coverage. Compare Applicants' Ex. N at 3, ¶ 7 (the DRB's August 4, 2020 decision) with Applicants' Ex. G at 3–5 (the DRB's May 1, 2020 decision). We

received some guidance from the DRB's May 1, 2020 determination that "the proposed use would cause an undue adverse impact on the character of the neighborhood and negatively impact the traffic in the surrounding area." Applicants' Ex. G at 5. But neither that decision nor the later one issued on August 4, 2020, provided any specific foundation for these legal conclusions.

Applicants responded to these and other concerns by their Neighbors by significantly changing the design of their project in the following ways:

a. Applicants removed the front dormer on the second floor of the proposed cottage and moved the kitchen and bedroom to the rear of the cottage, thereby limiting intrusions on the Neighbors' privacy by the cottage's occupants being able to view the Neighbors' activities from inside the cottage.

b. They proposed to install smaller windows in the cottage in areas that faced the Neighbors' properties.

c. They also agreed to remove the existing shed and deck in their back yard, thereby reducing the lot coverage and development on the lot.

d. They reaffirmed that the occupants of the proposed cottage would be prohibited from parking on George Street by way of a restriction in their lease.

e. They revised the parking plan for inside their lot to accommodate up to four parked vehicles, which is more than the three vehicles required under the applicable Regulations.

f. At our trial, Applicants proposed three further revisions to their parking plan, in response to their Neighbors' continued concerns that Applicants' proposed development would encourage on-street parking. Their new plan, provides for up to four vehicles to be parked inside of Applicants' lot.[3] Applicants' Ex. P.

All these changes were in response to the Neighbors' specific concerns and the DRB's identified deficiencies in their prior application. We conclude that Applicants substantially changed their application to respond to objections raised about the original application, and as such, conclude that the revised plan that Applicants presented at trial is not barred by the proper application of the successive application doctrine, as codified in Carrier, 155 Vt. at 158, Lathrop, In re Armitage, 2006 VT 113,

[3] Applicants asserted at trial that their revised parking plan could accommodate up to seven parked vehicles inside their lot, provided that they were allowed to further encroach into the side yard setback by another foot, reducing the actual side yard setback along the easterly side of their driveway to two feet. We address the setback implications below on pages 20–22 of this decision. For our analysis here, we rely upon Applicants' proposed parking plan that would not further encroach into the side-yard setback.

¶ 4, 181 Vt. 241, and In re 1472 Maple St. ZBA Appeal, No. 73-7-18 Vtec, slip op. at 5 (Vt. Super. Ct. Envtl Div. May 15, 2019) (Durkin, J.).

Applicants presented us with various legal issues concerning the applicability of the successive application doctrine in their Questions 8, 9, and 10. In light of our legal conclusions here, we answer those Questions as follows:

In response to Applicants' Question 8, we conclude that because of the manner in which Applicants modified their proposed project (as detailed *supra*, Findings of Fact at ¶¶ 43(a)–(h), 46–48) in response to concerns expressed by some Neighbors, the modified project presented at trial was sufficiently changed to address those concerns and criticisms as to be allowed under the successive application doctrine. Because of these conclusions, we answer Applicants' Question 8 in the affirmative.

In response to Applicants' Question 9, we conclude that the manner in which Applicants modified their proposed project, specifically by addressing criticisms from the DRB and some of their Neighbors, the changes Applicants made in their proposed project (detailed above) were sufficient enough to constitute a substantial change of conditions. Because of these conclusions, we answer Applicants' Question 9 in the affirmative.

Lastly on this legal issue, we note that in their Question 10, Applicants asks "[d]id the DRB err in refusing to consider Applicants' application . . . ?" We first note that we do not agree with this characterization of the DRB's August 4, 2020, decision. Although the DRB decision is succent, it contained the following legal conclusions:

> 3. The project, as proposed does not qualify as an accessory dwelling unit since it does not meet the standards outlined in Section 5.1 of the [Regulations], and therefore must be reviewed as a detached cottage under the conditional use standards.
>
> 4. The property at 9 George Street is developed with a single-family home and is large enough to accommodate the proposed detached cottage being built on a portion of the property without exceeding the maximum lot coverage; which the Regulations sets at no more than 50% of the lot area.
>
> 5. The ZA's memorandum to the DRB [Exhibit J in the DRB proceedings, a copy of which was admitted at our trial as Applicants' Exhibit C][4] establishes affirmatively

[4] The Zoning Administrator's three memoranda to the DRB were admitted at trial as Applicants' Exhibits C, F, and I, with the condition that the Court would not rely upon the

> that the five standards set forth in Section 6.7 of the [Regulations] have been addressed and provides information on how the proposed project relates to each of the standards

Applicants' Ex. N at 3, ¶¶ 3–5 (DRB's August 4, 2020 Decision).

However, since the City of Winooski has chosen to have us conduct our review of their municipal land use determinations on a *de novo* basis, we are not authorized to consider whether the municipal panel below committed an *error* in their review. Rather, we are directed to ignore their determinations and render our own findings of fact and conclusions of law, based upon the evidence presented at our trial. See Chioffi v. Winooski Zoning Bd., 151 Vt. 9, 11 (1989) ("A de novo trial 'is one where the case is heard as though no action whatever had been held prior thereto.'"). We therefore regard this legal issue posed by Applicants in their Question 10 as **MOOT**.

We now move to addressing the remaining legal issues that Applicants raise in their Statement of Questions.

b. Applicants' Question 1

In Question 1, Applicants ask whether "Appellants' project to build a detached cottage on [their] existing lot . . . compl[ies] with the standards set forth in the" Regulations. Applicants' Statement of Question at, ¶ 1 (filed Sept. 18, 2020). While Applicants do not refer us to specific provisions from the Regulations, we understand that when Applicant is referring to "standards," they are referring to the standards set for this specific zoning district: the R-B District.[5]

We are also aided in arriving at our determinations here by looking to the purpose provision for R-B District, as detailed in the Regulations, which provide that "[t]he purpose of the Residential B district is to accommodate a safe, livable, and pedestrian friendly residential neighborhood with moderately higher density development than R-A [district] and an inviting streetscape." Regulations § 2.7(A).

The standards for all zoning districts are set forth in the table contained in Regulations § 2.5. We first note that Applicants' lot does not conform to the minimum

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opinions expressed therein by the Zoning Administrator. We only rely here on the legal determinations expressed by the DRB.

[5] While the DRB concluded that the proposed development "is consistent with the [Regulation standards] related to size, location, setbacks, and lot coverage, [and] there are no identified conflicts," Applicants' Ex. G at 4–5, we review those standards in detail here for sake of clarity and to respond in detail to Applicants' Question 1.

lot size and frontage for the R-B District. However, this deficiency is not a barrier to further development of Applicants' lot because it is recognized as a preexisting lot. We conclude that it complies with the requirements for development of nonconforming lots. See Regulations § 4.9(B) (authorizing development of lots which predate the Regulations, provided that the lot is at least 1/8th of an acre in size, and at least 40 feet wide and deep). Such nonconforming lots may "be further developed and used in accordance with the standards of the district in which it is located." Regulations § 4.9(C)(2). Thus, Applicants' lot satisfies the requirements for further development of an undersized lot.

Applicants' proposed development, as presented at trial, conforms to the minimum standards for lot depth, front and rear setback, and westerly side-yard setback. The proposed development will add further development coverage to the lot, but it will not exceed the maximum lot coverage of 50%. See Regulations § 2.5 (concerning the dimensional requirements in the R-B District).[6]

Applicants' existing development, specifically its existing driveway, encroaches into the easterly side-yard setback (which requires a minimum five-foot setback from the side yard boundary) by one to two feet—i.e., the distance between the existing driveway's easterly edge is three to four feet from the nearest side yard boundary. Since that driveway is preexisting, it may be maintained and continued to be used.

Even when a property owner proposes to construct a new driveway to serve "not more than three dwellings," encroachment into the five-foot setback may be allowed, under certain conditions. Regulations § 4.2(E). The parties here dispute whether § 4.2(E) is applicable to Applicants' proposed new development. We note that Neighbors assert that § 4.2(E) only provides relief for completely new driveways for lots "that lack any driveway." Neighbors' Post-Trial Mem. at 1 (filed Sept. 30, 2021). But this language is not contained in § 4.2(E) and, for the reasons stated below, that provision and our precedent for interpreting zoning regulations does not support the reading that Neighbors suggest.

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[6] The DRB concluded that Applicants' proposal should be regarded as a detached cottage, and no party challenged that determination. A detached cottage is defined in Article IX, which provides that a detached cottage must satisfy the requirements established for an accessory dwelling unit, including conformance with the "[s]etback, coverage, and off-street parking requirements specified in the" Regulations. Regulations § 5.1(A)(3).

Our Supreme Court has repeatedly emphasized that "land use regulations are in derogation of private property rights and must be construed narrowly in favor of the landowner." In re Champlain Oil Co. CU Application, 196 Vt. 29, 31 (2014) (citing In re Toor, 2012 VT 63, ¶ 9, 192 Vt. 259; In re Weeks, 167 Vt. 551, 555 (1998)). We understand that this precedent reinforces a common-sense notion that when a property owner is trying to understand how her property may be regulated, they should be able to rely upon clearly stated restrictions in an ordinance when attempting to determine what they can and cannot do with their property.

With this directive in mind, we note that Applicants here propose a new driveway, extended from the end of their existing driveway, that will be used by the occupants of both their existing residence and the new cottage dwelling that they propose. As shown on Applicants' Exhibit P, they propose to have three parking areas on the interior of their lot that would accommodate up to four vehicles, including two side-by-side parking areas. All the parking areas that Applicants propose would be off-street, as required by the Regulations. See Regulations §§ 5.1(A)(3), 3.6(C).

Applicants have acknowledged that their proposed cottage must satisfy the conditions applicable to accessory dwellings, pursuant to §§ 5.1(A)(3), which include that an accessory dwelling (and cottage by reference) must comply with all "[s]etback, coverage, and off-street parking requirements." Id. We have already addressed compliance with lot coverage, which will be less than the 50% maximum stated in Regulations § 2.5. Applicants propose no on-street parking for the occupants of their proposed cottage and propose that two of the four new off-street parking spaces would be devoted to the cottage occupants. Per the minimum requirements detailed in Regulations § 3.6(C), the one-bedroom cottage that Applicants propose need only provide for one off-street parking space.

Our initial analysis notes that Applicants' existing and proposed driveway and parking plan encroaches into the five-foot easterly side yard setback, seemingly in conflict with the side yard setback minimum requirements established in Regulations § 2.5. However, a proposed residential development is allowed to encroach into a side yard setback, provided the requirements of Regulations § 4.2(E) are met.

Applicants have revised their parking plan so as not to encroach any further into the five-foot side-yard setback than the existing driveway already does (no more than two feet, thereby respecting a setback of at least three feet). This encroachment

into the easterly side-yard setback is necessary because of the narrowness of Applicants' lot, the need to make off-street parking available, the location of the existing residence, and the encroachment of the existing driveway. Nearly all of the neighborhood lots are developed with main homes and accessory structures, including some structures that are used as secondary dwellings. Were we to deny Applicants' proposed cottage, it would likely become the only lot in the neighborhood without an accessory structure or cottage and most likely would have the least lot coverage in the neighborhood. The driveways for several of the nearby properties fully encroach into a side-yard setback. These characteristics are not definitive by the language of the Regulations, but help us have some perspective of how these Regulations have been previously interpreted or enforced in this zoning district.

Regulations § 4.2(E) allows further encroachment into a side-yard setback, provided certain provisions are met, and either the DRB, or this Court on appeal, approves such encroachment. Regulations § 4.2(E)(3). We approve of Applicants' one- to two-foot encroachment into the easterly side yard setback because their proposal satisfies those regulatory provisions as follows:

a. As noted above, the proposed driveway will only encroach into the side yard setback so as to align with the existing driveway, which is necessary due to the narrowness and size of the lot, the location of the existing residence, and the need for Applicants to provide for off-street parking on their lot. We received no credible evidence that Applicants' proposed development would adversely impact upon drainage, safety, light and air, and protection of a neighboring side yard.[7]

b. The proposed encroachment into the easterly side yard setback is the minimum necessary to provide for an adequate driveway extension to serve the proposed cottage and provide the necessary parking for both the existing residence and proposed cottage. The proposed driveway extension and parking plan shown on Applicants' Exhibit P is the only way that adequate on-site parking can be configured on this lot.

c. Given these conclusions, we approve the proposed one- to two-foot encroachment into the easterly side yard setback and conclude (pursuant to Regulations § 4.2(E)(3)(c)) that Applicants' lot shall not be considered nonconforming due to this proposed easterly side-yard setback.

d. There is no parking proposed within the front yard setback, since Applicants eliminated that parking proposal when they revised the

[7] We provide a more detailed analysis below of the proposed development's impacts under the applicable conditional use criteria under Regulations § 6.7.

> development plan after hearing the criticisms from their Neighbors and the DRB during the April 16, 2020, hearing on their second application.

Thus, we conclude that Applicants have satisfied all the requirements for residential driveways contained in Regulations § 4.2(E) and do hereby approve the easterly side yard setback encroachment of one- to two-feet, thus satisfying the approval requirement contained in Regulations § 4.2(E)(3).

Neighbors present a further challenge to Applicants' assertions that they have satisfied all applicable standards for this project. Specifically, Neighbors assert that Applicants' driveway and four individual parking spots must conform to the requirements for parking areas, loading zones, and service areas. See Regulations § 4.12. We note that these ordinance provisions do not specifically reference individual residences or their accessory structures. On that basis alone, we do not believe that these provisions apply to individual residences and their accessory structures. See, e.g., Regulations § 4.12(A) (stating the intent of these parking standards as "encouraging shared parking" and "[m]aximizing on-street parking where available").

Nonetheless, we note that Applicants' proposed cottage does comply with many of the provisions contained in Regulations § 4.12. The revised parking plan will provide a minimum of four parking spaces, which is greater than the minimum three parking spaces required by § 4.12(C)(1). Their development will respect a 10-foot-wide front yard setback, as required by § 4.12(E)(1). The driveway and parking spaces that they propose will be located along the side or behind the existing residence, as required by § 4.12(E)(2). Applicants' front yard is already landscaped, which satisfies a portion of § 4.12(E)(4). We cannot understand the logic of requiring further landscaping in their front yard, since the driveway and parking spaces are behind and beside the existing residence.

Additional language in § 4.12(E)(4) appears to require the landscape buffer to serve as "a safety barrier between parked cars and pedestrians on the public sidewalk." Id. This requirement helps us conclude that Neighbors' insistence that § 4.12 is applicable to driveways and parking spaces for individual residences is misplaced. No such barrier serves a purpose for residential developments for individual homes and their accessory structures where the parking spaces are located behind or beside the residence. Rather, we believe that these regulatory provisions are

clearly more applicable to developments with multi-unit residential buildings, commercial developments, and civic enterprises, as cited in § 4.12(A)(1).

Neighbors reproduced Figure 7, depicted in Regulations § 4.2(E)(5). See Neighbors' Post-Trial Mem. of Law at 11 (filed Sept. 30, 2021). This figure depicts a parking lot containing 10 parking spaces, including a handicap parking space. While such a parking lot may be applicable to a commercial, civic, or multi-unit residential development, it is in no way germane to a single residence with an accessory cottage. We therefore conclude that Regulations § 4.12 was not intended to govern developments such as Applicants propose.

In light of these determinations, we conclude that Applicants' proposed cottage and related improvements comply with all applicable standards, particularly those found in Regulations §§ 5.1(A)(3), § 4.2(E), and § 2.5. We therefore answer Applicants' Question 1 from their Statement of Questions in the affirmative.

c. Applicants' Question 2.

By their Question 2, Applicants' ask whether "the Project satisf[ies] the first standard for evaluating an application for conditional use under the [Regulations] because the City of Winooski has adequate service and facility capacity to accommodate the Project?" Applicants' Statement of Questions at 1.

Pursuant to the Regulations § 2.4, a detached cottage is allowed in the R-B District, but only if it receives conditional use approval. We therefore must determine whether Applicants' proposed cottage and related improvements conform with the applicable conditional use criteria. By this Question, Applicants ask whether their proposal conforms with the requirement that an applicant show that the City "has adequate service and facility capacity to accommodate the Project." Applicants' Statement of Questions at 1. This Question succinctly states the first general standard established in Regulations § 6.7(C)(1). Specifically, this and the other general standards direct that the DRB in the first instance, and this Court on appeal, may only grant conditional use approval "upon finding that the proposed development shall not result in an undue adverse effect on any of the" stated general standards. Regulations § 6.7(C).

Our analysis here is made more succent because, at trial, the parties stipulated "that there were sufficient municipal services and facilities to accommodate Applicants' proposed development." Merits Hr'g at 2:32:50–33:50 (July 27, 2021).

Regardless of the parties' stipulation, we conclude that Applicants' proposed cottage and related improvements will not have an undue adverse effect upon the capacity of the City's existing and planned community services and facilities, especially because of the minor impacts that the addition of this one-bedroom dwelling unit will bring to this community. The adverse impacts will not be undue and are likely to be negligible.

We therefore answer Applicants' Question 2 in the affirmative.

d. Applicants' Question 3.

By their Question 3, Applicants asks "[b]ecause the proposed detached cottage is similar in nature to other properties in the affected area that have accessory structures such as detached cottages, sheds, or garages, does the Project satisfy the second standard for evaluating an application for conditional use under the" Regulations? Applicants' Statement of Questions at 1.

The Regulations' second conditional use standard requires us to determine whether the proposed development will "result in an undue adverse effect on . . . the character of the area affected . . . ." Regulations § 6.7(C)(2). That provision provides further guidance by directing us to "consider the location, scale, type, density and intensity of the proposed development in relation to the character of the area affected, as defined by zoning district purpose statements and specifically stated and relevant policies and standards of the Winooski Municipal Development Plan." Id.

As noted previously, the purpose provision for the R-B District offers that the "purpose of the Residential B district is to accommodate a safe, livable, and pedestrian friendly residential neighborhood with moderately higher density development than R-A and an inviting streetscape." Regulations § 2.7(A).[8]

The credible and generally uncontested evidence presented at trial is that the George Street neighborhood currently exists as a safe, livable, and pedestrian friendly residential development. In fact, all the development in this neighborhood is residential. Its proximity to the High School brings a relatively small but consistent flow of school children, staff, and teachers walking to the school, especially since George Street provides convenient entrance from the south to the High School that is perhaps safer than the main front entrance to the School from its main access off of

[8] For reference purposes, we note that the purpose provision for the Residential-A Zoning District encourages "low density development." Regulations § 2.7(A).

Route 7. We were provided with no evidence that the existing George Street area is unfriendly to pedestrians.

Given the consistently small lots along George Street, all of which have been individually developed, there is a higher density of development in this neighborhood.

The modest addition of a cottage with a single bedroom to the back of Applicants' property will not change the characteristics and character of the George Street neighborhood. All of the George Street lots have main homes and multiple accessory structures. In fact, the addition of Applicants' proposed cottage will bring their property more in line with the development characteristics of the other George Street properties.

Neighbors have consistently asserted that Applicants' proposed development will have an adverse impact upon the character of their neighborhood and its traffic. But they did not provide the Court with credible evidence that would allow the Court to reach its own determination in line with their assertions.

We conclude that Applicants' proposed cottage and related improvements will not have an undue adverse effect upon the character of this area. In light of this conclusion, we see no need to consider mitigation measures that Applicants should employ, other than the revisions to their development plans that they have already incorporated into their most recent revised development plan.

For all these reasons, we answer Applicants' Question 3 in the affirmative.

e. Applicants' Question 4.

By their Question 4, Applicants ask whether their proposed development, including their proposed increase for off-street parking "satisf[ies] the third standard for evaluating an application for conditional use" approval? Applicants' Statement of Questions at 1.

The third conditional use standard requires us to determine whether a proposed development will "result in an undue adverse effect . . . [on t]raffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, [or] contributing to congestion . . . ." Regulations § 6.7(C)(3).

We received scant specific evidence on the increased traffic that the proposed development will cause. But evidence, such as traffic projections or traffic counts, is not necessary, or even possible, when the proposed development consists of a single

dwelling that will only have one bedroom. The existing traffic along George Street is relatively mild, due to the fact that it is a short, dead-end street. Even at the beginning and end of the school day, the credible evidence convinced us that the flow of traffic is light and does not result in measurable congestion. We received no evidence concerning wait times at the intersection of George and Franklin Streets, or for that matter, even at the individual driveway curb cuts.

A single, one-bedroom dwelling being added to this neighborhood will not measurably increase the traffic or congestion in this neighborhood. We reached this conclusion, even when recognizing that the occupants of the proposed cottage may regularly bring two vehicles to the 9 George Street property.

We regret that Applicants and their tenants occupying the existing residence did not show more discipline in keeping the number of vehicles parked on or in front of 9 George Street to a reasonable level. The fact that there were, at times, up to eight vehicles brought on to or in front of 9 George Street caused reasonable concerns to some Neighbors. In response, Applicants have pledged to include a term in their lease agreements that limits the number of vehicles that the occupants of the proposed cottage or the existing house may regularly bring onto the property. We do not recall any testimony that the excessive number of vehicles continued after the Neighbors expressed their concerns.

The proposed cottage will bring an increased demand for parking spaces to Applicants' lot. Their plans call for an increase from one off-street parking space to four, without the need to encroach further into the front or easterly side yard setbacks. Because the four proposed spaces will be more than the three spaces that the Regulations require, there will be no need for Applicants or their tenants to use the on-street parking spaces available all along both sides of George Street. Their development proposal does not call for the use of on-street parking, even though there was no credible evidence presented that even a majority of the on-street spaces are regularly used.

For all these reasons, we conclude that Applicants' proposed cottage and related improvements, as revised and presented at trial, will not cause an undue adverse effect upon area traffic, particularly since the increased demand for parking that it may cause will be minor. The proposed cottage and related improvements will not measurably increase traffic during peak commuter hours, adversely impact safety,

or contribute to congestion. Since we reach these conclusions of no adverse impact, we also conclude that conditions concerning mitigation are unnecessary.

We therefore answer Applicants' Question 4 by stating that Applicants' proposed project satisfies the third conditional use standard, as detailed in Regulations § 6.7(C)(3).

f. Applicants' Question 5.

By their Question 5, Applicants ask whether their proposed development "satisf[ies] the fourth standard for evaluating an application for conditional use" approval? Applicants' Statement of Questions at 2.

The fourth conditional use standard requires us to determine whether a proposed development "complies with all municipal bylaws and ordinances in effect at the time of application, including other applicable provisions of these regulations and the Municipal Development Plan. No development shall be approved in violation of existing municipal bylaws and ordinances." Regulations § 6.7(C)(4).

Our analysis of this Question is made more succinct because of the detailed analysis we have already conducted of the Regulation provisions that are applicable to this development proposal.

We have already concluded that the proposed project complies with the requirements for development of nonconforming lots, pursuant to Regulations § 4.9(B) (Applicants' property is an undersized lot); and that it conforms to the minimum standards for lot depth, front and rear setback, and westerly side-yard setback, as well at lot coverage maximums, all of which are established in Regulations § 2.5 concerning the dimensional requirements in the R-B District. See supra, subsection *b. Applicants' Question 1*, at 19–20.

Applicants' existing driveway encroaches into the easterly side-yard setback by one to two feet, and Applicants intend to extend the existing driveway along that same easterly line to the rear of the lot, so as to accommodate extra parking spaces. Regulations § 2.5 requires a minimum five-foot setback from side yard boundaries. However, we concluded that Applicants have satisfied all the necessary conditions contained in Regulations § 4.2(E)(3), such that they are allowed to encroach into the side yard setback for the purpose of accommodating their new driveway and parking spaces. See supra, subsection *b. Applicants' Question 1*, at 20–21.

As a detached cottage, Applicants' proposed development must satisfy the requirements contained in Regulations § 5.1(A)(3), which include that it must comply with all "[s]etback, coverage, and off-street parking requirements." Regulations § 5.1(A)(3). We concluded that the proposed cottage and related improvements conform to all requirements of Regulations § 5.1(A)(3). See supra, subsection *b. Applicants' Question 1*, at 24.

Lastly, we addressed Neighbors' assertion that Applicants' proposed development must conform to a separate set of requirements governing parking areas, loading zones, and service areas. See Regulations § 4.12. We concluded that those provisions are not applicable to individual residential developments, such as Applicants' proposed cottage, but rather are more applicable to multi-unit residential, commercial, and civic developments. See supra, subsection *b. Applicants' Question 1*, at 23–24.

We were not presented with assertions that other municipal bylaws and ordinances are applicable to Applicants' proposed development, and our own independent review of all provisions within the Regulations did not reveal further applicable provisions. Therefore, because we found that Applicants' proposed development complies with all applicable bylaws and ordinances in effect at the time that the application was deemed complete, we conclude that the proposed development conforms to Regulations § 6.7(C)(4). We therefore answer Applicants' Question 5 in the affirmative.

g. Applicants' Question 6.

By their Question 6, Applicants ask whether their proposed project "satisf[ies] the fifth standard for evaluating an application for conditional use" approval? Applicants' Statement of Questions at 2.

The fifth conditional use standard requires us to confirm that the proposed development does "not interfere with the sustainable use of renewable energy resources, including access to, or the direct use or future availability of such resources." Regulations § 6.7(C)(5).

Our analysis here is made more succinct because, at trial, the parties stipulated that Applicants' proposed development will not interfere with the utilization of renewable energy resources. Merits Hr'g at 2:32:50–33:50 (July 27, 2021). This stipulation is understandable, given the nature of this development: a relatively minor

residential development, consisting of a one-bedroom dwelling with no more than 960 square feet, to be constructed on an already developed lot. There was no evidence presented that the proposed development would interfere with the sustainable use of renewable energy resources, and given its character, we cannot imagine any such interference. We therefore conclude that the proposed development conforms with Regulations § 6.7(C)(5). We answer Applicants' Question 6 in the affirmative.

h. Applicants' Question 7.

By their Question 7—the last of Applicants' Questions that we need to address—we are asked to address whether the project is consistent with the specific standards made applicable to all development in the City. See Regulations § 6.7(D). We are advised that we "may consider the [certain] standards and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development" upon the interests such standards are meant to protect. Applicants' Question 7 specifically references the performance standards itemized in Regulations § 4.13.

Section 4.13(A) identifies the following "nuisance standards" which appear designed to protect from adverse impacts from a proposed development. We note that no evidence was presented that even suggested such adverse impacts may occur. Nonetheless, we provide the following legal conclusions:

1. Noise: There was no evidence presented that the proposed project would cause any regularly occurring noise that is excessive at the property line and represents a significant increase in noise levels in this area, so as to be incompatible with the reasonable use of the surrounding area. Regulations § 4.13(A)(1).
2. Vibration: There was no evidence presented that the proposed project would cause any clearly apparent vibration that, when transmitted through the ground, is discernible at property lines without the aid of independent instruments. Regulations § 4.13(A)(2).
3. Glare, Lights and Reflection: There was no evidence presented that the proposed project would cause any glare, lights, or reflection that would adversely affect other property owners or tenants that could impair the vision of a driver of any motor vehicle, or that are detrimental to public health, safety, and welfare. Regulations § 4.13(A)(3).
4. Fire, Explosives and Safety: There was no evidence presented that the proposed project would cause any fire, explosive, or safety hazard that would significantly endanger other property owners, or that results in a significantly increased burden on municipal facilities. Regulations § 4.13(A)(4).

5. Smoke, Fly Ash, Dust, Fumes, Vapors, Gases and Other Forms of Air Pollution: There was no evidence presented that the proposed project would create any emission that could cause any property damage, pose a hazard to the health of people, animals, or vegetation, or that can cause any excessive soiling at any point on the property of others. Regulations § 4.13(A)(5).

6. Heat, Cold, Moisture, Mist, Fog, or Condensation: There was no evidence presented that the proposed project would cause releases of heat, cold, moisture, mist, fog, or condensation that would be detrimental to neighboring properties and uses, or the public health, safety, and welfare. Regulations § 4.13(A)(6).

7. Liquid or Solid Waste and Refuse: There was no evidence presented that the proposed project will cause a discharge into any sewage disposal system or water course or lake, or into the ground, except in accord with standards approved by the state Department of Health, Department of Environmental Conservation or other regulatory department or agency, of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements. There also was no evidence presented that this project would cause an accumulation of solid wastes or refuse conducive to the breeding of rodents or insects. Regulations § 4.13(A)(7).

8. Electromagnetic Radiation: There was no evidence presented that the proposed project would operate, or cause to be operated, a planned or intentional source of electromagnetic radiation for any purpose. Regulations § 4.13(A)(8).

9. Radioactivity and Other Hazards: There was no evidence presented that the proposed project would cause any radioactive emission or other hazard that endangers public facilities, neighboring properties, or the public health, safety, or welfare, or that the proposed project results in a significantly increased burden on municipal facilities and services. Regulations § 4.13(A)(9).

For all these reasons, we conclude that Applicants' proposed project complies with all the performance standards contained in Regulations § 4.13. We therefore answer Applicants' Question 7 in the affirmative.

Conclusion

As detailed above, we have reached positive conclusions on all of the legal issues presented by Applicants in their Statement of Questions. When our positive conclusions are coupled with the positive legal conclusions reached by the DRB in both of their decisions, the first issued on October 28, 2019 and the second issued on May 1, 2020 (neither of which were appealed and therefore have become final), as well as the DRB's positive conclusions specified in its third decision that were not the subject of Applicants' Statement of Questions, the result is a determination that

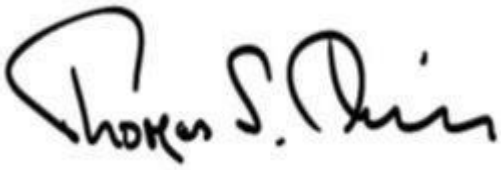
Applicants' proposed cottage and related improvements, as revised at trial, satisfies all the applicable provisions of the City of Winooski Land Use and Development Regulations, and is therefore entitled to conditional use approval.

Applicants' proposed project shall be constructed and used in accordance with the revised plans, first submitted to the DRB on June 18, 2020, and as revised at our trial (See Applicants' Exhibit P).

These proceedings are hereby remanded to the City of Winooski Zoning Administrator to complete the ministerial act of issuing the customary permit in accordance with this Merits Decision concerning Applicants' conditional use application.

This completes the current proceedings before this Court concerning this appeal.

Electronically signed at Newfane, Vermont on Wednesday, November 16, 2022, pursuant to V.R.E.F. 9(d).



Thomas S. Durkin, Superior Judge
Vermont Superior Court, Environmental Division