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DELIVERED ELECTRONICALLY AND VIA FED EX

Donna Jerry
Senior Health Policy Analyst
Green Mountain Care Board
144 State Street
Montpelier, VT 05602

**Re: Request for Jurisdictional Determination
Birchwood Terrace Rehab & Healthcare, 43 Starr Farm Road, Burlington, Vermont**

Dear Ms. Jerry:

This firm represents Birchwood Prop LLC and Birchwood Operations LLC d/b/a Birchwood Terrace Rehab & Healthcare (collectively, "Birchwood"). On behalf of Birchwood, we are requesting a jurisdictional determination from the Green Mountain Care Board (the "Board") with respect to two separate projects, a remodeling project and a parking remediation project. These projects are not related components of the same project as is evident from the following project descriptions.

Renovation Project

The proposed remodeling is designed to enhance and improve the environment within the facility for both residents and their visitors. Because the resident rooms are more updated than the common areas, the remodeling is focused primarily on the hallways, common rooms, and rehab space. The renovations include the replacement of flooring, replacing wall coverings, replacing light fixtures with LED fixtures, painting the exterior of the building, improving the entryway, and replacing furniture (for example the sofas and chairs in the common spaces and certain furniture in the dining room). The facility is extremely dated. These renovations are intended to create a warmer and more welcoming space that more resembles a home and less resembles an impersonal facility.

The project will cause minimal disruption for the residents, given that the vast majority of the work will take place in common areas and the exterior entryway and walls.

Exhibit A reflects the projected project costs, which are approximately \$1,219,294.55. This project will be a cost-plus agreement, allowing Birchwood more flexibility and transparency. In the event there are any unexpected discoveries in the remodeling project, then Birchwood is able to control the outcome. It will have the opportunity to return to the Board to complete a Certificate of Need application, as warranted, before going over budget and therefore over the jurisdictional limit of \$1,500,000.

Birchwood does not yet know the capitalized construction interest, but Birchwood's accountant has opined that they will not exceed \$25,000. There is ample room in this proposal should unexpected costs arise.

Parking Remediation

The current owners of Birchwood completed the purchase in December 2018. Under the previous ownership (Ventas Realty LP) of the real property (the "Property"), the City of Burlington issued a notice of zoning violation in May 2017 for expanding the parking area of the Property, primarily by parking on the lawn. This amounted to an increase of lot coverage without zoning approval. The owner appealed the violation, which included unrelated issues. In an apparent effort to avoid a protracted appeal, the City of Burlington and Ventas Realty LP reached an agreement on November 8, 2017. A copy of the Agreement is included as Exhibit B.

The previous Birchwood owner incurred the violation, but the current Birchwood owners must remedy it. Please see Exhibit C, Schedule 4.4(g) of the Disclosure Schedules to the Asset Purchase Agreement, Order or Conditions Affecting Facility Values. This document demonstrates that the zoning violation predated any involvement by the current ownership.

On January 8, 2019, the Burlington Development Review Board issued Findings of Fact, a copy of which is included as Exhibit D. The Development Review Board granted approval for the necessary parking expansion and parking space waiver at the Property.

The parking remediation project is projected to cost approximately \$217,691.05. See proposal from Parker Excavation attached as Exhibit E.

Separate Projects

The remodeling and the parking remediation are unrelated projects. Rule 4.207 of the Green Mountain Car Board's Certificate of Need Rule 4.0 provides factors to consider in determination whether proposed projects should be considered related projected components.

There is no structural interrelationship.

The remodeling is aimed at updating an outdated and worn-down facility. The only aspect of the remodeling that takes place outside the building is to paint the exterior and to beautify the entryway. The proposed changes for the parking remediation are mandated by what is needed to address the 2017 zoning violation. It is anticipated that this will include paving, repaving, adding lighting, landscaping to address the changes to paved areas and any demands from the City, and curbing per City mandate.

There is no financial interrelationship.

The parking remediation is being paid by funds on hand. The proposed remodeling will be financed.

Unrelated contractors will undertake the remodeling project and the parking remediation projects.

The actions are not directed at a single overall objective.

The parking remediation is directed solely to address the zoning violations. To the extent there are any actions aimed toward "curb appeal," (beyond the exterior painting and entryway beautification, which are wrapped into the remodeling project) these will be undertaken as a result of any changes to the parking footprint. In other words, if the changes to the parking footprint require any berms or plantings to address what the surrounding neighbors see, then this is something Birchwood will have to undertake. Such changes will be in response to negotiations with the City.

The proposed remodeling to the interior is not in response to any zoning violation. These enhancements are intended to improve the environment for both residents and their visitors and how facility staff deliver care. The interior is in need of updates to flooring, lighting, wall coverings, and furnishings.

The time frames for the two projects are unrelated.

Birchwood would like to undertake the interior remodeling immediately. The timing of the parking remediation is largely dependent on developing a plan that is acceptable to the City. There is an August 2019 deadline for the parking remediation that Birchwood is endeavoring to meet.

Even if the Board were to determine that these are related components of the same project (which they are not), the proposed project costs, when taken together, do not equal or exceed the jurisdictional limit.

Based on the forgoing, Birchwood seeks a determination that there is no certificate of need jurisdiction based on the two projects described herein. In the event the Board does not assert jurisdiction, Birchwood acknowledges its obligation to immediately notify the Board should any changes in the type or scope of either project arise, especially as to reaching the jurisdictional limit of \$1,500,000.

Thank you and the board for considering this request.

Respectfully submitted,



Shireen T. Hart

Enclosures

Exhibit A, Remodeling Project Projected Costs Spreadsheet

Exhibit B, Agreement between City of Burlington and Ventas Realty LP

Exhibit C, Schedule 4.4(g) of the Disclosure Schedules to the Asset Purchase Agreement, Order or Conditions Affecting Facility Values

Exhibit D, January 8, 2019 Burlington Development Review Board Findings of Fact

Exhibit E, Parking Remediation Project Estimate

EXHIBIT A



Burlington Proposal

	QTY	UOM	Cost Per Item	Total Item Cost	Labor Cost Per Item	Labor Cost
CORRIDOR						
Light Wall Prep And Repaint	3888	SF	NA	NA	\$2.00	\$8,942.40
Install Vinyl Wallpaper	3888	SF	\$1.20	\$4,898.25	\$2.75	\$12,294.22
Install Acrovyn on Lower Portion of Wall	156	SHTS	\$95.00	\$15,511.13	\$50.00	\$8,941.25
Removal Of Floor, Replace With LVT/Armstrong Striation Tile	7762	SF	\$3.00	\$24,449.04	\$4.25	\$37,934.82
Jonsonite Cove Base	1555	LF	\$0.90	\$1,469.48	\$1.25	\$2,235.31
Install new Drop Ceiling and Repaint Grid	7762	SF	NA	NA	\$4.50	\$40,166.28
Remove Lighting And Install LED 2X2 Recessed Fixture-Not Including Rebate	286	PC	\$50.00	\$15,015.00	\$50.00	\$16,445.00
Remove And Install New Artwork (W/ Security Hardware)	70	PC	\$220.00	\$16,170.00	\$35.00	\$2,817.50
Repair Existing Handrails	1555	LF	\$1.20	\$1,959.30	\$4.00	\$7,153.00
Install 2 New Custom Nurse Station	2	PC	\$12,000.00	\$25,200.00	\$1,500.00	\$3,450.00
Install 1 New Custom Nurse Station- Small	1	PC	\$4,000.00	\$4,200.00	\$1,000.00	\$1,150.00
Short Term Nurse Station	1	PC	\$12,000.00	\$12,600.00	\$1,500.00	\$1,725.00
Create Cove for Cart Storage	1	PC				
Install Spotlights Above Nurse Station	8	PC	\$35.00	\$294.00	\$60.00	\$552.00
Remove And Install New Signage	170	PC	\$45.00	\$8,032.50	\$10.00	\$1,955.00
Fire Safety Signs	30	PC	\$40.00	\$1,260.00	\$10.00	\$345.00
Vinyl Corner Guards 4'	38	PC	\$20.00	\$798.00	\$10.00	\$437.00
Vinyl Door Protectors Half Door	160	PC	\$65.00	\$10,920.00	\$30.00	\$5,520.00
Lightly Sand Doors & Jambs And Paint	160	PC	\$20.00	\$3,360.00	\$65.00	\$11,960.00
Tackboards	6	PC	\$260.00	\$1,638.00	\$25.00	\$172.50
Glass Led Exit Signs	20	PC	\$110.00	\$2,310.00	\$50.00	\$1,150.00
Misc Electric (New Outlet Covers , Switches)	1	PC	N/A	N/A	\$5,000.00	\$5,750.00
CORRIDOR TOTAL				\$150,084.69		\$171,096.28
TOTAL					\$321,180.97	
DAY ROOM (Existing OT in Short Term Area)						
Removal Of Floor, Replace With LVT Tile (Striation?)	484	SF	\$2.50	\$1,270.50	\$4.25	\$2,365.55
Removal Of Cove Base And Replace With Jonsonite Cove Base	92	LF	\$0.90	\$87.32	\$1.25	\$132.83
Paint 3 Walls	364	SF	NA	NA	\$2.00	\$837.20

Accent Wall	122	SF		\$2.20	\$281.82	\$2.75	\$385.83
LED Exit Signs	1	PC		\$110.00	\$115.50	\$50.00	\$57.50
Acrovyn Wall Protectors 3.5'X10'	10	SHTS		\$95.00	\$997.50	\$40.00	\$460.00
Install new Drop Ceiling and Repaint Grid	484	SF		NA	NA	\$4.50	\$2,504.70
Lightly Sand Doors & Jambs And Paint	1	PC		\$20.00	\$21.00	\$65.00	\$74.75
Remove And Install New Signage	2	PC		\$40.00	\$84.00	\$10.00	\$23.00
Vinyl Door Protectors Half Door	2	PC		\$65.00	\$136.50	\$30.00	\$69.00
Custom Window Valance	1	PC		\$475.00	\$498.75	\$35.00	\$40.25
Solar Shades	1	PC		\$190.00	\$199.50	\$25.00	\$28.75
Miscellaneous Electric	1	PC		N/A	N/A	\$600.00	\$690.00
Dining Room Tables,- 42" Round With Metal Base	0	PC		\$0.00	\$0.00	\$0.00	\$0.00
Chairs-Upholstered With Metal Frame	12	PC		\$190.00	\$2,394.00	NA	NA
2 Club Chairs and End Table	1	PC		\$2,200.00	\$2,310.00	\$120.00	\$138.00
Framed Artwork	2	PC		\$200.00	\$420.00	\$25.00	\$57.50
2x2 Lighting	9	PC		\$60.00	\$567.00	\$50.00	\$517.50
DAY ROOM TOTAL					\$9,383.39		\$8,382.35
TOTAL						\$17,765.74	
Sitting Lounge Near PT Room							
Removal Of Floor, Replace With LVT Tile (Striation?)	363	SF		\$3.00	\$1,143.45	\$4.25	\$1,774.16
Removal Of Cove Base And Replace With Jonsonite Cove Base with Profile	82	LF		\$0.90	\$77.49	\$1.25	\$117.88
Install Vinyl Wallpaper on all Walls	300	SF		\$2.20	\$693.00	\$2.75	\$948.75
Acrovyn Wall Protectors 3.5'X10'	8	SHTS		\$95.00	\$798.00	\$40.00	\$368.00
LED Exit Signs	1	PC		\$110.00	\$115.50	\$50.00	\$57.50
Paint Ceiling	363	SF		NA	NA	\$2.00	\$834.90
Lightly Sand Doors & Jambs And Paint	2	PC		\$20.00	\$42.00	\$65.00	\$149.50
Vinyl Door Protectors Half Door	2	PC		\$65.00	\$136.50	\$30.00	\$69.00
Chair Rail Moulding	82	LF		\$2.50	\$215.25	\$2.00	\$188.60
Miscellaneous Electric	1	PC		N/A	N/A	\$400.00	\$460.00
2 Club Chairs, Couch, and 2 End Tables	1	PC		\$1,800.00	\$1,890.00	\$200.00	\$230.00
Framed Artwork	2	PC		\$200.00	\$420.00	\$25.00	\$57.50
Spotlights	8	PC		\$50.00	\$420.00	\$50.00	\$460.00
ROOM TOTAL					\$5,951.19		\$5,715.79
TOTAL						\$11,666.98	
Activity Room Opposite PT Room							
Remove Floor, Install LVT/Centiva Tile	436	SF		\$3.50	\$1,600.83	\$4.50	\$2,254.23
Removal Of Cove Base And Replace With Johnsonite Cove Base	88	LF		\$0.90	\$83.16	\$1.25	\$126.50
Paint three Walls	528	SF		NA	NA	\$2.00	\$1,214.40
Install Wallpaper on One Wall	176	SF		\$2.20	\$406.56	\$4.80	\$971.52
Ceiling Flush Mounted 2X2 Fixtures	6	PC		\$110.00	\$693.00	\$80.00	\$552.00
Install new Drop Ceiling and Replace Grid	436	SF		NA	NA	\$5.75	\$2,883.05
Vinyl Door Protectors-Wood Pattern	1	PC		\$65.00	\$68.25	\$35.00	\$40.25
Strip Existing Doors and Paint	1	PC		\$20.00	\$21.00	\$260.00	\$299.00

Chairs-Upholstered With Metal Frame	10	PC	\$190.00	\$1,995.00	\$10.00	\$115.00
Chair Rail Moulding	88	LF	\$3.50	\$323.40	\$1.50	\$151.80
Exit Signs	1	PC	\$110.00	\$115.50	\$25.00	\$28.75
Solar Shades	3	PC	\$80.00	\$252.00	\$25.00	\$86.25
Sprinkler Work	1	PC	NA	NA	\$2,000.00	\$2,300.00
Furniture- Filing Cabinet, Custom Closets, Desk	1	PC	\$2,700.00	\$2,835.00	\$270.00	\$310.50
General Electric	1	PC	NA	NA	\$1,500.00	\$1,725.00
Tackboards	2	PC	\$50.00	\$105.00	\$20.00	\$46.00
Install Wall Mounted TV	1	PC	NA	NA	\$50.00	\$57.50
Framed Artwork	2	PC	\$185.00	\$388.50	\$25.00	\$57.50
ROOM TOTAL				\$8,887.20		\$13,219.25
TOTAL					\$22,106.45	
Main Dining Room Lobby Area						
Remove Floor, Install LVT/Centiva Tile	986	SF	\$3.50	\$3,623.55	\$4.50	\$5,102.55
Removal Of Cove Base And Replace With Johnsonite Cove Base	154	LF	\$3.40	\$549.78	\$1.25	\$221.38
Glass Work	1	PC	NA	NA	\$6,000.00	\$6,900.00
Extend Wall Going into Kitchen Corridor	1	PC	NA	NA	\$2,000.00	\$2,300.00
Prep Walls And Install Wallpaper	770	SF	\$2.20	\$1,778.70	\$4.80	\$4,250.40
Acrobyn Wall Protector On Lower Half	16	SHTS	\$ 95.00	\$1,596.00	\$ 40.00	\$736.00
New 2X2 LED Light Fixture	20	PC	\$120.00	\$2,520.00	\$75.00	\$1,725.00
Install New Drop Ceiling, Repaint Ceiling Grid	986	SF	\$1.25	\$1,294.13	\$3.50	\$3,968.65
Vinyl Corner Guards	8	PC	\$20.00	\$168.00	\$10.00	\$92.00
Exit Signs	1	PC	\$110.00	\$115.50	\$25.00	\$28.75
Repaint Skylights	72	SF	NA	NA	\$2.00	\$165.60
Repaint Existing Soffit	120	SF	NA	NA	\$2.00	\$276.00
General Electric	1	PC	NA	NA	\$1,500.00	\$1,725.00
Vinyl Door Protectors-Wood Pattern	6	PC	\$65.00	\$409.50	\$35.00	\$241.50
Lightly Sand Doors and Paint	2	PC	\$20.00	\$42.00	\$65.00	\$149.50
Chairs-Upholstered With Metal Frame	48	PC	\$190.00	\$9,576.00	\$10.00	\$552.00
Repaint Chair Rail Moulding	154	LF	\$2.00	\$323.40	\$2.00	\$354.20
Framed Artwork	6	PC	\$175.00	\$1,102.50	\$25.00	\$172.50
ROOM TOTAL				\$23,099.06		\$28,961.03
TOTAL					\$52,060.08	
Dementia Day Room Near Nurse Station (Split?)						
Removal Of Floor, Replace With LVT Tile (Striation?)	1083	SF	\$3.00	\$3,411.45	\$4.25	\$5,293.16
Removal Of Cove Base And Replace With Jonsomite Cove Base	143	LF	\$0.90	\$135.14	\$1.25	\$205.56
Paint Walls	453	SF	NA	NA	\$2.00	\$1,041.90
Accent Wall	250	SF	\$2.20	\$577.50	\$2.75	\$790.63
LED Exit Signs	2	PC	\$110.00	\$231.00	\$50.00	\$115.00
Corner Guards	10	PC	\$20.00	\$210.00	\$10.00	\$115.00
Acrobyn Wall Protectors 3.5'X10'	15	SHTS	\$95.00	\$1,496.25	\$40.00	\$690.00
Install new Drop Ceiling and Repaint Grid	975	SF	NA	NA	\$4.50	\$5,045.63

Lightly Sand Doors & Jambs And Paint	4	PC	\$20.00	\$84.00	\$65.00	\$299.00
Remove And Install New Signage	2	PC	\$45.00	\$94.50	\$10.00	\$23.00
Fire Safety Signs	1	PC	\$40.00	\$42.00	\$10.00	\$11.50
Vinyl Door Protectors Half Door	4	PC	\$65.00	\$273.00	\$30.00	\$138.00
Custom Window Valance- Triple Windows	3	PC	\$500.00	\$1,575.00	\$35.00	\$120.75
Custom Window Valance- Regular Windows	5	PC	\$275.00	\$1,443.75	\$35.00	\$201.25
Solar Shades- Triple Windows	3	PC	\$250.00	\$787.50	\$25.00	\$86.25
Solar Shades- Regular Windows	5	PC	\$100.00	\$525.00	\$25.00	\$143.75
Repaint Skylights	72	SF	NA	NA	\$2.00	\$165.60
Repaint Existing Soffit	120	SF	NA	NA	\$2.00	\$276.00
Miscellaneous Electric	1	PC	N/A	N/A	\$1,200.00	\$1,380.00
Chairs	32	PC	\$190.00	\$6,384.00	\$35.00	\$1,288.00
Framed Artwork	6	PC	\$200.00	\$1,260.00	\$25.00	\$172.50
2x2 Lighting	22	PC	\$60.00	\$1,386.00	\$50.00	\$1,265.00
Custom Storage Units- Books, etc.	4	PC	\$500.00	\$2,100.00	\$120.00	\$552.00
Replace Existing Kitchenette?						
Split Room with New Wall?						
DAY ROOM TOTAL				\$22,016.09		\$19,419.48
TOTAL					\$41,435.56	
Dementia Family Room						
Removal Of Floor, Replace With LVT Tile (Striation?)	300	SF	\$3.00	\$945.00	\$4.25	\$1,466.25
Removal Of Cove Base And Replace With Jonsonite Cove Base	72	LF	\$0.90	\$68.04	\$1.25	\$103.50
Paint 3 Walls	288	SF	NA	NA	\$2.00	\$662.40
Accent Wall	96	SF	\$2.20	\$221.76	\$2.75	\$303.60
LED Exit Signs	1	PC	\$110.00	\$115.50	\$50.00	\$57.50
Acrovyn Wall Protectors 3.5'X10'	8	SHTS	\$95.00	\$798.00	\$40.00	\$368.00
Install new Drop Ceiling and Repaint Grid	300	SF	NA	NA	\$4.50	\$1,552.50
Lightly Sand Doors & Jambs And Paint	1	PC	\$20.00	\$21.00	\$65.00	\$74.75
Remove And Install New Signage	1	PC	\$40.00	\$42.00	\$10.00	\$11.50
Vinyl Door Protectors Half Door	1	PC	\$65.00	\$68.25	\$30.00	\$34.50
Custom Window Valance	1	PC	\$400.00	\$420.00	\$35.00	\$40.25
Solar Shades	1	PC	\$150.00	\$157.50	\$25.00	\$28.75
Miscellaneous Electric	1	PC	N/A	N/A	\$600.00	\$690.00
12 Chairs	12	PC	\$190.00	\$2,394.00	\$35.00	\$483.00
Framed Artwork	2	PC	\$200.00	\$420.00	\$25.00	\$57.50
2x2 Lighting	6	PC	\$60.00	\$378.00	\$50.00	\$345.00
DAY ROOM TOTAL				\$6,049.05		\$6,279.00
TOTAL					\$12,328.05	
Long Term Shower Room						
Remove and Install Porcelain Floor Tile	265	SF	\$4.50	\$1,252.13	\$6.00	\$1,828.50
Remove Ceiling Lighting And Replace With Spotlight	10	PC	\$50.00	\$525.00	\$50.00	\$575.00
Prep Drywall Ceilings And Paint Ceiling	265	SF	N/A	N/A	\$1.75	\$533.31

Install Ceramic Wall Tile	668	SF			\$3,507.00	\$9.00	\$6,913.80
Lightly Sand and Paint Doors And Frames	1	PC		\$20.00	\$21.00	\$65.00	\$74.75
Install Lifted Grab Bars With Wall Blocking	6	PC		\$190.00	\$1,197.00	\$35.00	\$241.50
Remove Existing Wall Mounted Sink, Faucet Mirror,Vanity Lights, Toilet	1	PC		\$700.00	\$735.00	\$175.00	\$201.25
Reframe All Walls, Relocate Plumbing, Electric, Cementboard. Waterproofing, Mud Job, Floor Pitch, Demo Existing Walls	1	PC		\$32,000.00	\$33,600.00	NA	NA
SHOWER/TRAINING RESTROOM TOTAL					\$40,837.13	\$51,205.24	\$10,368.11
TOTAL							
Existing Storage Room/Converting to Shower Room							
Remove and Install Porcelain Floor Tile	170	SF		\$4.50	\$803.25	\$6.00	\$1,173.00
Remove Ceiling Lighting And Replace With Spotlight	8	PC		\$50.00	\$420.00	\$50.00	\$460.00
Prep Drywall Ceilings And Paint Ceiling	170	SF		N/A	N/A	\$2.00	\$391.00
Install Ceramic Wall Tile	384	SF		\$5.00	\$2,016.00	\$9.00	\$3,974.40
Lightly Sand and Paint Doors And Frames	1	PC		\$20.00	\$21.00	\$65.00	\$74.75
Install Lifted Grab Bars With Wall Blocking	2	PC		\$190.00	\$399.00	\$35.00	\$80.50
Remove Existing Wall Mounted Sink, Faucet Mirror,Vanity Lights, Toilet	1	PC		\$700.00	\$735.00	\$175.00	\$201.25
Reframe All Walls, Relocate Plumbing, Electric, Cementboard. Waterproofing, Mud Job, Floor Pitch, Demo Existing Walls	1	PC		\$26,000.00	\$27,300.00	NA	NA
SHOWER/TRAINING RESTROOM TOTAL					\$31,694.25	\$38,049.15	\$6,354.90
TOTAL							
Short Term Shower Room							
Remove and Install Porcelain Floor Tile	270	SF		\$4.50	\$1,275.75	\$6.00	\$1,863.00
Remove Ceiling Lighting And Replace With Spotlight	10	PC		\$50.00	\$525.00	\$50.00	\$575.00
Prep Drywall Ceilings And Paint Ceiling	270	SF		N/A	N/A	\$2.00	\$621.00
Install Ceramic Wall Tile	656	SF		\$5.00	\$3,444.00	\$9.00	\$6,789.60
Lightly Sand and Paint Doors And Frames	1	PC		\$20.00	\$21.00	\$65.00	\$74.75
Install Lifted Grab Bars With Wall Blocking	6	PC		\$190.00	\$1,197.00	\$35.00	\$241.50
Remove Existing Wall Mounted Sink, Faucet Mirror,Vanity Lights, Toilet	1	PC		\$700.00	\$735.00	\$175.00	\$201.25
Reframe All Walls, Relocate Plumbing, Electric, Cementboard. Waterproofing, Mud Job, Floor Pitch, Demo Existing Walls	1	PC		\$32,000.00	\$33,600.00	NA	NA
SHOWER/TRAINING RESTROOM TOTAL					\$40,797.75	\$51,163.85	\$10,366.10
TOTAL							
Guest Bathroom							
Remove, Prep And Install Porcelain Floor Tile	40	SF		\$10.00	\$420.00	\$5.00	\$230.00
Remove And Install Ceramic Wall Tile (Replace Sheetrock)	96	SF		\$5.00	\$504.00	\$9.00	\$993.60
Remove Wallpaper, Prep Wall And Paint	96	SF		N/A	N/A	\$4.50	\$496.80
Repaint Ceiling	40	SF		N/A	N/A	\$2.00	\$92.00
Lightly Sand Existing Doors & Jams And Paint	1	PC		\$20.00	\$21.00	\$65.00	\$74.75
Vanity Light	1	PC		\$150.00	\$157.50	\$50.00	\$57.50
Install Grab Bars With Wall Blocking	1	PC		\$25.00	\$26.25	\$35.00	\$40.25
Door Lever	1	PC		\$52.00	\$54.60	\$20.00	\$23.00
Toilet, Sink, Faucet, Dispensers and Mirror	1	PC		\$700.00	\$735.00	\$360.00	\$414.00

Install New Drop Ceiling	220	SF	NA	NA	\$4.25	\$1,075.25
Vinyl Chair Rails	66	LF	\$6.00	\$415.80	\$1.75	\$132.83
Scrape doors and Repaint	1	PC	\$20.00	\$21.00	\$130.00	\$149.50
Furniture	1	PC	\$2,400.00	\$2,520.00	\$300.00	\$345.00
Framed Artwork	2	PC	\$175.00	\$367.50	\$25.00	\$57.50
Miscellaneous Electric	1	PC	N/A	N/A	\$500.00	\$575.00
Solar Shades	1	PC	\$150.00	\$157.50	\$25.00	\$28.75
Custom Window Valance	1	PC	\$300.00	\$315.00	\$35.00	\$40.25
6" Spotlights	8	PC	\$50.00	\$420.00	\$50.00	\$460.00
Office Cost				\$5,337.15		\$5,691.35
TOTAL COST					\$ 11,028.50	
Staff Co-ordinator's (Fire Storage) Office						
Removal Of Floor, Replace With LVT/Armstrong Striation Tile	145	SF	\$3.50	\$532.88	\$ 4.50	\$750.38
Removal Of Cove Base And Replace With Jonsonite Cove Base	53	LF	\$ 0.90	\$50.09	\$ 1.25	\$76.19
Remove All Wallcoverings(Prep Walls) And Replace With Vinyl Wallpaper- 1 Wall	106	SF	\$1.80	\$200.34	\$4.50	\$548.55
Paint 3 Walls	318	SF	NA	NA	\$2.00	\$731.40
Install New Drop Ceiling	145	SF	NA	NA	\$4.25	\$708.69
Vinyl Chair Rails	53	LF	\$6.00	\$333.90	\$1.75	\$106.66
Scrape doors and Repaint	1	PC	\$20.00	\$21.00	\$130.00	\$149.50
Miscellaneous Electric	1	PC	N/A	N/A	\$500.00	\$575.00
Furniture	1	PC	\$850.00	\$892.50	\$150.00	\$172.50
Framed Artwork	1	PC	\$175.00	\$183.75	\$25.00	\$28.75
6" Spotlights	6	PC	\$50.00	\$315.00	\$50.00	\$345.00
Office Cost				\$2,529.45		\$4,192.61
TOTAL COST					\$ 6,722.06	
Conference(Gathering) Room						
Removal Of Floor, Replace With LVT Flooring	190	SF	\$4.25	\$847.88	\$3.50	\$764.75
Removal Of Cove Base And Replace With Johnsonite Cove Base	53	LF	\$3.40	\$189.21	\$1.25	\$76.19
Remove All Wallcoverings(Prep Walls) And Replace With Vinyl Wallpaper- 1 Wall	106	SF	\$2.20	\$244.86	\$4.80	\$585.12
Paint 3 Walls	318	SF	NA	NA	\$2.00	\$731.40
Central Chandelier	1	PC	\$800.00	\$840.00	\$150.00	\$172.50
Conference Table With Center WIFI Panel	1	PC	\$3,500.00	\$3,675.00	\$600.00	\$690.00
Miscellaneous Electric	1	PC	N/A	N/A	\$500.00	\$575.00
Artwork	1	PC	\$250.00	\$262.50	\$35.00	\$40.25
Conference Chairs	8	PC	\$ 250.00	\$2,100.00	\$ 30.00	\$276.00
6" Spots	6	PC	\$50.00	\$315.00	\$50.00	\$345.00
Conference Room Cost				\$8,474.45		\$4,256.21
TOTAL COST					\$ 12,730.65	
Director of Nursing						
Removal Of Floor, Replace With LVT/Armstrong Striation Tile	211	SF	\$3.50	\$775.43	\$ 4.50	\$1,091.93
Removal Of Cove Base And Replace With Jonsonite Cove Base	60	LF	\$ 0.90	\$56.70	\$ 1.25	\$86.25
Remove All Wallcoverings(Prep Walls) And Replace With Vinyl Wallpaper- 1 Wall	120	SF	\$1.80	\$226.80	\$4.50	\$621.00

Paint 3 Walls	360	SF	NA	NA	NA	\$2.00	\$828.00
Install New Drop Ceiling	211	SF	NA	NA		\$4.25	\$1,031.26
Vinyl Chair Rails	60	LF	\$6.00	\$378.00		\$1.75	\$120.75
Scrape doors and Repaint	1	PC	\$20.00	\$21.00		\$130.00	\$149.50
Furniture	1	PC	\$1,400.00	\$1,470.00		\$180.00	\$207.00
Miscellaneous Electric	1	PC	N/A	N/A		\$500.00	\$575.00
Framed Artwork	2	PC	\$175.00	\$367.50		\$25.00	\$57.50
Solar Shades	1	PC	\$150.00	\$157.50		\$25.00	\$28.75
Custom Window Valance	1	PC	\$300.00	\$315.00		\$35.00	\$40.25
6" Spotlights	8	PC	\$50.00	\$420.00		\$50.00	\$460.00
Office Cost				\$4,187.93			\$5,297.19
TOTAL COST						\$ 9,485.11	
Bookkeeping							
Removal Of Floor, Replace With LVT/Armstrong Striation Tile	176	SF	\$3.50	\$646.80		\$ 4.50	\$910.80
Removal Of Cove Base And Replace With Jonsonite Cove Base	56	LF	\$ 0.90	\$52.92		\$ 1.25	\$80.50
Remove All Wallcoverings(Prep Walls) And Replace With Vinyl Wallpaper- 1 Wall	112	SF	\$1.80	\$211.68		\$4.50	\$579.60
Paint 3 Walls	336	SF	NA	NA		\$2.00	\$772.80
Install New Drop Ceiling	176	SF	NA	NA		\$4.25	\$860.20
Vinyl Chair Rails	56	LF	\$6.00	\$352.80		\$1.75	\$112.70
Scrape doors and Repaint	1	PC	\$20.00	\$21.00		\$130.00	\$149.50
Furniture	1	PC	\$700.00	\$735.00		\$180.00	\$207.00
Miscellaneous Electric	1	PC	N/A	N/A		\$500.00	\$575.00
Framed Artwork	1	PC	\$175.00	\$183.75		\$25.00	\$28.75
Solar Shades	1	PC	\$150.00	\$157.50		\$25.00	\$28.75
Custom Window Valance	1	PC	\$300.00	\$315.00		\$35.00	\$40.25
6" Spotlights	6	PC	\$50.00	\$315.00		\$50.00	\$345.00
Office Cost				\$2,991.45			\$4,690.85
TOTAL COST						\$ 7,682.30	
Administrator's Offices							
Removal Of Floor, Replace With LVT/Armstrong Striation Tile	300	SF	\$3.50	\$1,102.50		\$ 4.50	\$1,552.50
Removal Of Cove Base And Replace With Jonsonite Cove Base	66	LF	\$ 0.90	\$62.37		\$ 1.25	\$94.88
Remove All Wallcoverings(Prep Walls) And Replace With Vinyl Wallpaper- 1 Wall	132	SF	\$1.80	\$249.48		\$4.50	\$683.10
Paint 3 Walls	396	SF	NA	NA		\$2.00	\$910.80
Install New Drop Ceiling	300	SF	NA	NA		\$4.25	\$1,466.25
Vinyl Chair Rails	66	LF	\$6.00	\$415.80		\$1.75	\$132.83
Scrape doors and Repaint	1	PC	\$20.00	\$21.00		\$130.00	\$149.50
Furniture	1	PC	\$2,100.00	\$2,205.00		\$180.00	\$207.00
Miscellaneous Electric	1	PC	N/A	N/A		\$500.00	\$575.00
Framed Artwork	2	PC	\$175.00	\$367.50		\$25.00	\$57.50
Solar Shades	1	PC	\$150.00	\$157.50		\$25.00	\$28.75
Custom Window Valance	1	PC	\$300.00	\$315.00		\$35.00	\$40.25
6" Spotlights	10	PC	\$50.00	\$525.00		\$50.00	\$575.00

EXHIBIT B

AGREEMENT

This Agreement is made and entered into this 8th day of November, 2017, by and between the City of Burlington, a Vermont municipal corporation (“City”), and Ventas Realty LP (“Owner”), owner of record of property known as 43 Starr Farm Road, Burlington, Vermont; tax lot number: 023-4-026-001 (hereinafter referred to as the “Property”).

WITNESSETH

WHEREAS, on May 25, 2017 a Notice of Violation (NOV) (Zoning Violation (ZV) #334328) was issued to Owner for expanding the parking area at the Property, placement of storage containers and increasing lot coverage without zoning approval, as well as the failure to obtain Certificates of occupancy for ZP 93-147, 93-084, 97-488, 01-227, 03-495 and 13-0177SN;

WHEREAS, Owner appealed ZV #334328 to the Burlington Development Review Board (DRB) and that appeal is currently pending (file no. 17-1267AP); and

WHEREAS, all parties agree it is in their mutual interest to resolve this matter without use of further DRB or judicial resources.

NOW THEREFORE IT IS AGREED, by and between the City and Owner as follows:

1. This Agreement upon execution resolves the issues cited in the above-referenced May 25, 2017, N.O.V. (ZV #334328) so long as the Owner is in compliance with this Agreement. If Owner breaches the Agreement through a missed deadline or otherwise, the City may enforce the Agreement through any and all available mechanisms.

2. Owner shall withdraw appeal no. 17-1267AP with a letter to the DRB by November 8, 2017.
3. Owner shall pay the City a fee as settlement of any fines or penalties and administrative costs relating to this matter, except for fines or penalties related to any violation of this Agreement or otherwise occurring subsequent hereto. This amount does not include any application/processing fees, certificate of occupancy and/or after the fact certificate of occupancy fees, and/or re-inspection/rental registration fees that might be due. The fee shall be derived as follows:
 - If Owner meets the deadlines of the Agreement, the Agreement fee shall be one thousand dollars (\$1,000.00) to be paid upon execution of the Agreement.
 - If Owner is late on any of the deadlines of the Agreement, there shall be an additional fee of fifty dollars (\$50.00) per day for each and every day after the deadline until the required action is completed.

Checks are to be made payable to the City of Burlington and delivered to the Burlington Code Enforcement Office, 645 Pine Street, Suite A, Post Office Box 849, Burlington, VT 05402-0849.

4. Parking beyond the approved 2003 site plan shall cease and desist by May 15, 2018. Any parking outside of the area approved for parking on the 2003 site plan after the date of this Agreement shall be considered as a late deadline, requiring an additional fee of fifty dollars (\$50.00) per day for each day that parking occurs outside of the 2003 site plan's approved parking area. If a new site plan is approved, then that site plan shall be controlling.

5. By May 15, 2018, Owner shall submit a parking enforcement policy for review and approval by the Code Enforcement Staff.
6. By May 15, 2018, Owner shall also submit an accurate floor plan indicating uses of the building(s) including number of beds, number of employees and average number of guests on a busy day.
7. Owner may seek zoning permit approval for modifications at the site to address the issues identified in ZV #334328. If approved, Owner will be subject to the timelines and conditions of that approval. If no request is approved by May 15, 2018, the property will need to come into compliance with the June 17, 2003 approved site plan on or before June 1, 2018.
8. Any and all grass/vegetation damaged by the expanded parking area shall be restored by June 1, 2018 consistent with the June 17, 2003 site plan unless another site plan has been approved, in which case it would be controlling and restoration would be required to be consistent with that approval. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows:
 - a. Sub-soils below new topsoil layer (i.e. – existing compacted soils) scarified/tilled at least 4”, with incorporation of upper material (so total depth of final un-compacted material = 8”. The entire surface should be scarified/loosened EXCEPT within drip line of trees (to protect roots).
 - b. Topsoil specifications:
 - i. Minimum 4” topsoil except where tree roots limit amendment incorporation

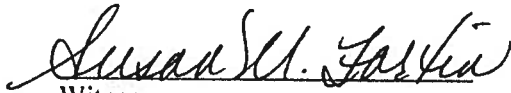
- ii. Topsoil shall have minimum 5% organic matter by dry weight (may need to add compost to achieve).
 - iii. Soil portion must be sand or sandy loam.
 - iv. Water or roll to 85% compaction.
 - v. Rake to level.
 - c. Seed and protect with erosion control matting (staked according to manufacturer's specifications).
 - d. Grass shall be maintained.
- 9. By June 1, 2018, Owner shall install concrete anchored curb stops with shrubs located no further than 1 foot behind them (or other suitable/equivalent barrier approved by planning and zoning staff) along the approved parking area at the Property. If a new site plan is not approved prior to installation, Owner shall submit either photographs or a drawing to demonstrate the location of the barriers, to be reviewed and approved by planning and zoning staff. Owner may include one section of the curb cut barriers without anchoring to allow for snow removal, however, if this curbing is relocated during the winter, it must be put back into its approved location by May 1st of each year.
- 10. It shall be the perpetual responsibility of the Owner to maintain the grassed areas required to be re-seeded, the landscaping installed and the barriers required to be installed. If the barriers become damaged or removed, Owner shall repair/replace them within ten (10) days with a barrier of the same style and height, unless modified by an approved zoning permit. If the landscaping becomes diseased or dies, Owner shall replace it with a similar species and size no later than within the first ten (10) days of the first available planting season.

11. Owner shall request a Certificates of Occupancy for ZP 93-147, 93-084, 97-488, 01-227, 03-495 and 13-0177SN by May 15, 2018. If any of the Certificate of Occupancy requests fail, Owners shall take the steps necessary to resolve the outstanding issues so that a final Certificate of Occupancy for each permit identified may be closed by no later than September 1, 2018 (Owner understands that after the fact fees shall be due as identified in the Burlington Planning and Zoning Fee Schedule).
12. The City shall file this Agreement, or a memorandum thereof in form and substance acceptable to the City (including but not limited to electronic indexing), in the City's Land Records. Owners shall provide the City with the recording fee therefore at the time of execution of this Agreement.
13. So long as Owner complies with the specific items as stipulated in this Agreement, the City shall not seek penalties for any of the referenced violations and/or this Agreement that it may be entitled to under State law and City regulations. Any non-compliance with the terms of this Agreement shall be considered a violation of zoning and is subject to all penalties, fines, etc. as allowed under 24 V.S.A. § 4451(a) in addition to any other sanctions provided by law.
14. If Owner or his heirs and/or successors and assigns wish to change or modify the use or physical exterior or interior of the property or any other changes to the Property in the future, the then current Owner(s) shall be responsible for obtaining any and all necessary municipal permits.

15. Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the work specified in this Agreement. If damage occurs, the Owners shall restore the property to a condition as good as or better than the condition of the property prior to such damage, at their own expense.
16. Any work or improvements described, authorized or required by this Agreement within the City's right of way does not diminish the City's ownership or authority regarding said right of way. Any work within or other use of the City's right of way shall only occur upon issuance of a license and/or other required approvals from the appropriate municipal authority.
17. This Agreement runs with the land and shall be specifically enforceable and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. In addition to all other available remedies, if the City is required to pursue legal action to enforce this Agreement, the City shall be entitled to recover from Owner their reasonable attorney's fees incurred in such action.
18. This Agreement refers only to the alleged violations referenced above, i.e. said May 25, 2017 zoning N.O.V. (ZV #334328) regarding expanding the parking area at the Property, placement of storage containers and increasing lot coverage without zoning approval, as well as the failure to obtain Certificates of occupancy for ZP 93-147, 93-084, 97-488, 01-227, 03-495 and 13-0177SN, it does not refer to any other zoning violations or violations of other codes or requirements including, but not limited to, building, minimum housing, or fire, etc.

IN WITNESS WHEREOF, this Agreement is executed as of the day and date first above written.

**OWNER OF THE PROPERTY
VENTAS REALTY LP**


Witness


Alecia DiMario, duly authorized

CITY OF BURLINGTON

Witness

By: _____
Jeanne Francis, Zoning Specialist and
Assistant Administrative Officer,
Code Enforcement Office
Duly Authorized

Witness

By: _____
David White, Zoning Administrative Officer
and Director, Department of Planning and
Zoning
Duly Authorized

EXHIBIT C

DISCLOSURE SCHEDULES

These Disclosure Schedules are made and given pursuant to that certain Asset Purchase Agreement by and between Kindred Healthcare Operating, Inc., a Delaware corporation (“*Kindred*”) and BM Eagle Holdings, LLC, a Delaware limited liability company (“*Purchaser*”), dated June 30, 2017 (the “*Agreement*”). Capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the Agreement.

The information contained in the Disclosure Schedules shall be deemed to qualify to the specific Section (or subsection, as appropriate) of the Agreement to which it corresponds, and shall be cumulative so that if the existence of the fact or item or its contents disclosed in any particular Schedule is relevant to any other Schedule, then such fact or item shall be deemed to be disclosed with respect to the other Schedule to the extent such relevance is reasonably apparent whether or not a specific cross-reference appears. The headings contained in the Disclosure Schedules are included for convenience only, and are not intended to limit the effect of the disclosures contained in such Schedule or to expand the scope of the information required to be disclosed in such Schedule. Descriptions of documents in the Schedules are summaries only and are qualified in their entirety by the specific terms of such documents. Matters reflected in the Disclosure Schedules are not necessarily limited to matters required by the Agreement to be reflected herein; additional matters are set forth for informational purposes and the fact that any item of information is disclosed in the Disclosure Schedules shall not be construed to mean that such information is required to be disclosed by the Agreement. Any information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the term “material” or other similar terms in the Agreement or constitute an admission that such items are required to be disclosed under the Agreement.

**Schedule 4.4(g)
Order or Conditions Affecting Facility Values**

1. Facility No. 559 – Kindred Transitional Care and Rehabilitation – Birchwood Terrace
 - Notice of violation on May 27, 2017 relating to:
 - an expansion of parking area without zoning approval;
 - placement of storage containers and increasing lot coverage without zoning approval;
 - failure to obtain a Certificate of Occupancy for ZP93-147, 93-084, 97-488, 01-227, 03-495 and 13-0177.
 - Fines may be imposed up to \$200/day.
 - A timely appeal was filed on June 9, 2017, counsel has been assigned and resolution is expected shortly.

2. See matters on attached chart.

EXHIBIT D

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

www.burlingtonvt.gov/PZ/Boards/Development-Review-Board

Phone: (802) 865-7188

Fax (802) 865-7195

*Brad Rabinowitz
AJ LaRosa
Austin Hart
Alexandra Zipparo
Geoffrey Hand
Samantha Tilton
Springer Harris
Jim Drummond (Alt.)
Zoraya Hightower (Alt)*



Burlington Development Review Board

Findings of Fact

Deliberative Hearing Tuesday, January 8, 2019

In RE: 19-0468CA; 43 Starr Farm Rd (Ward 4N, RL) (Tax Lot No. 023-4-026-001)

Owner/Applicant: Birchwood Prop LLC

Request: Parking expansion and related maximum parking space waiver.

Members Present:

Brad Rabinowitz
AJ LaRosa
Ali Zipparo
Geoff Hand
Zoraya Hightower

Evidence Presented:

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

I. FINDINGS

Background Information:

The applicant is seeking approval to construct additional surface parking. The extent of construction is fairly limited. A related waiver of the maximum parking limitation is sought. This application comes following a Code Enforcement action related to unpermitted yard parking. An agreement between the applicant and the city has been executed in an effort to resolve the matter.

Previous zoning actions for this property are noted below:

- 9/15/14, Approval to replace access ramp with new
- 8/13/12, Approval to replace sign
- 4/2/12, Approval to replace sign
- 10/19/10, Approval for wall-mounted LED light fixtures
- 8/13/10, Approval to construct courtyards, storage shed, gazebo, and fence
- 6/17/03, Approval to install emergency generator
- 4/3/02, Approval to construct pavilion
- 11/14/00, Approval to replace canopy
- 5/20/97, Approval to install sign

- 11/2/92, Approval of adult daycare
- 10/8/92, Approval to install storage shed and additional fencing
- 8/24/92, Approval to replace fencing
- 6/4/85, Approval to enclose covered entry
- 8/11/82, Approval to install chain link fence
- 7/30/82, Approval to replace flat roof with pitched roof
- 9/21/79, Approval to relocate dishwashing area
- 4/16/74, Denial to construct medical services building
- 4/17/73, Approval to construct a 50' X 59' addition
- 5/19/70, Approval to construct a 1,200 sf front entry addition
- 5/20/69, Approval to construct a 50-bed addition
- 10/15/68, Approval to construct a 100-bed addition
- 3/28/67, Approval to construct a 1,500 sf kitchen addition
- 10/19/65, Approval to construct a 48' X 90' addition
- 1/24/64, Amended approval to construct a nursing home
- 5/29/63, Approval to construct a nursing home

Article 2: Administrative Mechanisms

Sec. 2.7.8 Withhold Permit

The subject property has a number of older, expired zoning permits without their required certificates of occupancy. All of these expired zoning permits lacking certificates of occupancy must be closed out with final certificates of occupancy prior to closing out this new zoning permit with a certificate of occupancy. **(Affirmative finding as conditioned)**

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The subject property is located in the RL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes. Some other residential uses, such as this convalescent facility, are allowed as conditional uses. No change or expansion of use is proposed. **(Affirmative finding)**

(b) Dimensional Standards & Density

No change in residential density is proposed.

Lot coverage will increase to 40%. This coverage is allowable per the provisions of Sec. 4.4.5 (d) 7 B, which affords an additional 5% on top of the standard 35% allowable lot coverage for senior housing facilities.

Given the three street frontages, the property has three front yards and just one side yard. Two front yard setbacks, along North Avenue and Starr Farm Road, come in to play as does the side yard setback. The expanded parking area complies with the applicable front and side yard setbacks.

Building height remains unchanged. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The convalescent home is a conditional use in the RL zone. No change or expansion of use is proposed. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

No setback encroachments are sought. **(Not applicable)**

2. Height

No height bonuses are being sought. **(Not applicable)**

3. Lot Coverage

No lot coverage exceptions are being sought. **(Not applicable)**

4. Accessory Residential Structures and Uses

(Not applicable)

5. Residential Density

(Not applicable)

6. Uses

No neighborhood commercial use is included in this proposal. **(Not applicable)**

7. Residential Development Bonuses

See Sec. 4.4.5 (b) as to additional lot coverage allowance for senior housing.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

The subject property does not contain steep slopes or wetlands. The lot is composed entirely of buildable area. **(Affirmative finding)**

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion.
(Affirmative finding)

Sec. 5.5.2, Outdoor Lighting

New outdoor lighting is proposed and consists of pole-mounted fixtures to illuminate existing and expanded parking areas. Mounting heights are acceptable. Locations are noted, and cutsheets have been provided. The photometric plan depicts acceptable illumination levels throughout. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

An erosion control plan has been submitted as required. Given the relatively small expansion of impervious surface, only a stormwater management questionnaire is required. That, too, has been submitted. Both are subject to review and approval by the city's stormwater program staff.
(Affirmative finding as conditioned)

Article 6: Development Review Standards

Part 1, Land Division Design Standards

(Not applicable)

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The subject property contains no important natural features as defined in the Open Space Protection Plan. Much of the area to be paved is currently grassy lawn. Some existing landscaping will be removed, including several trees; however, a number of new trees and shrubs will be installed as noted in criterion (m) below. **(Affirmative finding)**

(b) Topographical alterations

The property is essentially flat and will remain so. **(Affirmative finding)**

(c) Protection of important public views

The subject property is not affected by any identified public view corridor. **(Affirmative finding)**

(d) Protection of important cultural resources

The property contains no known archaeologically significant features. **(Affirmative finding)**

(e) Supporting the use of alternative energy

This application contains no provision for alternative energy utilization, nor does it adversely affect potential for such utilization on the subject or neighboring properties. **(Affirmative finding)**

(f) Brownfield sites

The subject property is not an identified brownfield. **(Affirmative finding)**

(g) Provide for nature's events

See Sec. 5.5.3 for stormwater management.

Ample room remains onsite for seasonal snow storage. **(Affirmative finding)**

(h) Building location and orientation
(Not applicable)

(i) Vehicular access
Vehicular access will remain unchanged. Private driveways will provide access to the site.
(Affirmative finding)

(j) Pedestrian access
Pedestrian access remains unchanged. The building's primary entrance abuts the public sidewalk along Starr Farm Road. **(Affirmative finding)**

(k) Accessibility for the handicapped
Handicap accessibility features are present onsite. No changes to them are associated with this proposal. **(Affirmative finding)**

(l) Parking and circulation
See Article 8 below.

(m) Landscaping and fences
Trees to be cleared are noted. Proposed areas of new landscaping are noted on the site plan. An accompanying list of species notes the types and variety of new plantings. Much of the new landscaping will provide screening of the easterly parking area. **(Affirmative finding)**

(n) Public plazas and open space
No public plaza or open space is included or required in this proposal. **(Not applicable)**

(o) Outdoor lighting
See Sec. 5.5.2.

(p) Integrate infrastructure into the design
No new ground mounted mechanical equipment is included in the project plans. A new freestanding sign is included in the application materials. This sign, and any other, is subject to a separate sign permit. **(Affirmative finding as conditioned)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards
(Not applicable)

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located within the Neighborhood Parking District. Within that district, the minimum parking requirement for a convalescent/nursing home is 1 parking space per 4 beds. In this case, the facility is permitted for 160 beds and requires at least 40 parking spaces.

The property contains 54 parking spaces, and an additional 21 are proposed for a total of 75 spaces. Note that the existing parking numbers depicted on the site plan (54) do not match the numbers referenced in the parking analysis (68). This discrepancy needs to be corrected. **(Affirmative finding as conditioned)**

Sec. 8.1.9, Maximum Parking Spaces

This section limits surface parking to 125% of the Neighborhood Parking District minimum parking requirement. In this case, the maximum permissible parking for a 160-bed convalescent/nursing home is 50 spaces. Given that 75 spaces are proposed, a maximum parking waiver is required.

A. The applicant requesting the waiver shall also provide a peak demand parking study for two similar uses in the area; and,

A parking analysis has been provided. It includes the subject property and two other area nursing homes. The current parking ratio at the subject facility is 0.425. The expressed need is 0.6. The other two facilities, Starr Farm Nursing Center and Green Mountain Nursing have ratios of 0.66 and 0.932, respectively. **(Affirmative finding)**

B. The following additional criteria shall be addressed regarding how:

(i) The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses;

On-street parking is not allowed along Starr Farm Road or the nearby stretch of North Avenue. Most neighboring uses are single family homes. The nearby public school has its own parking challenges without surplus to share. **(Affirmative finding)**

(ii) The proposed development demonstrates that its design and intended uses will continue to support high levels off existing or planned transit and pedestrian activity;

The disparity between parking demand and parking availability contributes to a significant use of alternative transportation. The parking analysis asserts that 20% of employees already use transportation other than single occupancy vehicles. The property is served by public sidewalks, a nearby GMT bus stop, and onsite bike parking. The parking management plan recommends that the applicant formalize measures to encourage alternative transportation measures to lessen onsite parking demand. Recommended new measures include providing bus pass credits, incentivizing carpools, staggering work shifts and pursuing at least a 1-year membership with CATMA. Implementation of all recommendations per Sec. 8.0, Parking Management Plan, of the RSG parking analysis are prerequisite to the requested maximum parking waiver. **(Affirmative finding as conditioned)**

(iii) The site plan indicates where additional parking can be redeveloped to a more intensive transit supportive use in the future.

Transit supportive use is not a defined term in the city's Comprehensive Development Ordinance. Review of pertinent literature indicates that transit supportive use provides services or activities which are which are attractive and convenient to transit riders and pedestrians. Practically speaking, the facility is too small and too far removed from the city center to be heavily served by alternative means of transportation. As noted above,

some measures are in place already to encourage use of alternative transportation, and additional steps should be taken to formalize and broaden such measures. Insofar as this particular criterion is concerned, the site could be wholly or partially redeveloped in the future. Such redevelopment could conceivably include transit supportive uses. **(Affirmative finding)**

Sec. 8.1.10, Off-Street Loading Requirements
(Not applicable)

Sec. 8.1.11, Parking Dimensional Requirements

Parking spaces are striped at 9' X 18,' whereas 9' X 20' is the standard. Back up length of 22' is noted, whereas 24' is the standard. Parking spaces of 18' depth are commonly accepted as are back up lengths of 20' – 22.' Per Sec. 6.2.2 (1), the enlarged northeasterly parking area (i.e. the one near North Avenue) shall be bordered by concrete curbing or similar barrier to prevent parking on adjacent green spaces. **(Affirmative finding as conditioned)**

Sec. 8.1.12, Limitations, Location, Use of Facilities

(a) Offsite parking facilities
(Not applicable)

(b) Downtown street level setback
(Not applicable)

(c) Front yard parking restricted
The proposed parking expansion is compliant with applicable front yard setbacks as noted in Article 4 above. Given its placement between the building and the road, screening is required. Such screening will be provided as illustrated in the proposed landscaping plan. **(Affirmative finding)**

(d) Shared parking in the Neighborhood Parking Districts
(Not applicable)

(e) Single story structures in Shared Use Districts
(Not applicable)

(f) Joint use of facilities
(Not applicable)

(g) Availability of facilities
None of the proposed parking will be used for the storage or display of vehicles or materials by offsite users. Parking will be for employees and visitors. **(Affirmative finding)**

(h) Compact car parking

As noted above, the parking spaces are slightly sub-standard but are acceptable. The limitation on compact parking spaces pertains only to parking garages. **(Affirmative finding)**

Sec. 8.1.13, Parking for Disabled Persons

The site plan depicts several existing handicap parking spaces in close proximity to the building's main entrance. Associated striping is also shown. ADA compliance is administered via the city's building permit process. **(Affirmative finding as conditioned)**

Sec. 8.1.14, Stacked and Tandem Parking Restrictions
(Not applicable)

Sec. 8.1.15, Waivers from Parking Requirements / Parking Management Plans
(Not applicable)

II. MINUTES

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

III. MOTION

Motion: AJ LaRosa

I move that the Board grant certificate of appropriateness approval for a parking expansion and related maximum parking space waiver at 43 Starr Farm Road based on the findings in Section I above and subject to the following conditions:

1. All work associated with this project **shall be completed by August 1, 2019**, including restoration of green spaces damaged by lawn parking.
2. **Prior to release of the zoning permit**, the following items shall be addressed, subject to staff review and approval:
 - a. Obtain final approval of the EPSC and stormwater questionnaire from the city's stormwater program staff;
 - b. On a revised site plan, depict concrete curbing or similar barrier around the perimeter of the northeasterly parking area; and,
 - c. Resolve the discrepancy in existing parking numbers between the proposed site plan and the RSG parking analysis.
3. **Prior to issuance of a certificate of occupancy** for this zoning permit, all prior zoning permits issued for this property since July 13, 1989 shall be closed out with final certificates of occupancy.
4. Approval of the maximum parking space waiver per Sec. 8.1.9, *Maximum Parking Spaces*, is contingent on implementation of all seven (7) recommendations per Sec. 8.0, *Parking Management Plan*, of the RSG parking analysis (i.e. "Starr Farm Road Facility Parking").
5. All exterior signs are subject to separate zoning permits.

6. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
7. Standard permit conditions 1-15.

Seconded: Ali Zipparo

Vote: 6-0-0, motion carried

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

EXHIBIT E



Roger A Parker, Jr.
57A Parker Lane
New Haven, VT 05472

Phone 802-877-3434
Fax 802-877-3433

PROPOSAL

Alecia DiMario
Executive Director
Birchwood Terrace Rehab and Health Care
43 Starr Farm Road
Burlington Vermont

Re: Kindred Birchwood Terrace

4/16/2019

GENERAL SCOPES OF WORK

- | | |
|--|-------------|
| 1 General Conditions | \$10,050.00 |
| 2 Provide labor, material and equipment to construct add'l parking of approx. 4500 sft. , supply and install, fabric 1 foot of dense graded crushed stone, 6" of fine graded crushed gravel, graded and compact, pane with 3 1/2 of asphalt, and line stripe, (Phase I only), clear and grub total project | \$44,233.90 |
| 3 Provide labor, material and equipment to construct storm water infiltration system | \$31,447.25 |
| 4 Provide labor, material and equipment to install Phase I lighting consisting of 4 Light pole bases, poles and fixtures, and 8 up lighting fixtures with controls, conduit and tie into panels in building | \$40,051.50 |
| 5 Provide labor, material and equipment to install Phase II lighting consisting of 6 Light pole bases, poles and fixtures, conduit and tie into panels in building, separate lighting circuits | \$36,740.00 |
| 6 Provide labor, material and equipment to install landscaping, seed and mulch | \$46,800.00 |
| 7 Provide labor, material and equipment to install erosion control measures, project demarcation fencing, truck tracking pad | \$4,032.40 |

- 8 Provide labor, material and equipment to seed and mulch approx. 18,000 sft. of disturbed area, supply and install 7 Type III boulders along north edge of parking lot.

\$4,336.00

TOTAL: \$217,691.05

Exclusions and Notes

- 1 Excludes permits and fees
- 2 Excludes the removal of lighting owned by GMP/Burlington Electric
- 3 Assumes one mobilization for alls phases