

# Town of East Montpelier

# ZONING PERMIT

# NOTICE

[To Be Displayed on the Property in Full View of the Public Right-of-Way]

Date Issued: July 19, 2018

Effective Date: August 3, 2018

Location: 1420 North Street

Owner: Michael Bender

For: 20' x 12' Carport

Application # 18-024

Approved by: **C. Bruce Johnson, ZA**

Do not start project or commence use prior to the Effective Date. If this permit is based upon a Development Review Board approval, be advised that any appeal of that approval could affect the validity of this permit – do not start project or commence use until that DRB approval is final and clear of any state or local appeal process. This application is available for inspection at the Town Office. This poster must be displayed on the property in full public view for 15 days.

**APPEALS TO DRB:** A notice of appeal, including the \$150 fee, must be filed with the East Montpelier Town Clerk or Zoning Administrator at the Town Office by the listed Effective Date.

**WARNING:** State permits may be required for this project. Contact the state Permit Specialist, at (802) 505-5367, before beginning any construction.

# TOWN of EAST MONTPELIER

P.O. Box 157  
East Montpelier, VT  
05651-0157

C. Bruce Johnson, ZA  
eastmontadmin@comcast.net  
(802) 223-3313 ext. 204

July 19, 2018

Michael Bender  
1420 North Street  
Montpelier, VT 05602

Re: East Montpelier Zoning Application #18-024

Dear Mr. Bender:

Please find enclosed the written decision of the East Montpelier Development Review Board approving your setback variance request contained in application #18-024 as presented. You have the right to appeal the decision of the Development Review Board. 10 V.S.A. §8504, 24 V.S.A. §4471 and V.R.E.C.P. 5 provide guidance on appeals to the Environmental Division of the Vermont Superior Court, but should you wish to appeal you should seek the advice of an attorney to determine your rights and duties in this particular situation. Generally any appeal must be filed with the Environmental Division within 30 days of the issuance of the decision.

Based on the above-referenced DRB approval I have issued East Montpelier Zoning Permit #18-024 for the requested 20' x 12' carport to be attached to your house located at 1420 North Street.

Please feel free to contact me if you have any questions concerning this matter.

Sincerely,



C. Bruce Johnson  
East Montpelier Zoning Administrator

**TOWN OF EAST MONTPELIER  
DEVELOPMENT REVIEW BOARD**

**FINDINGS & DECISION**

In the matter of:       Michael Bender  
                                  1420 North Street  
                                  Parcel # 01-018.000   Tax Map # 07-00-24.000

East Montpelier Zoning Application #18-024

**INTRODUCTION & PROCEDURAL HISTORY**

1. On June 14, 2018, Michael Bender filed an application with the Town of East Montpelier for a 20' x 12' carport addition to the house on his property located at 1420 North Street.
2. The property in question lies in the Rural Residential/Agricultural District – Zone D, where the minimum front setback is 75 feet from the North Street centerline and the side/rear setback is 50 feet from abutting properties. The house is essentially entirely within the rear setback. The proposed location of the carport is on the side of the house toward the rear property line and as such the applicant is requesting an East Montpelier Land Use & Development Regulations Section 7.6 setback variance from the Development Review Board.
3. A public notice was duly published in the Times Argus on June 23, 2018 for a hearing, which was conducted on July 10, 2018.
4. The DRB conducted a site visit to the property on July 10, 2018 prior to the public hearing.
5. Owner/applicant Michael Bender, applicant associate Sharon Skye Forrest, abutting neighbor Erin O'Hara, and Zoning Administrator Bruce Johnson appeared and participated in the July 10, 2018 hearing. There was no additional public comment.
6. The Board members who voted on this issue at the July 10, 2018 hearing were Curtis, Kappel, Welch, Hill, Dworkin, and Cueto.

## FINDINGS OF FACT

1. Owner/Applicant Michael Bender proposes to construct a 20' x 12' carport attached to his house at 1420 North Street. The desired location is on the east (away from North Street) side of the house with access through the existing kitchen entry.
2. The property is located in Zone D – the rural residential & agricultural district, where the regulatory rear setback is 50 feet from the abutting Gidney property line. The existing house is located almost fully within the rear setback, with the leading edge about 24 feet from the property line, and as such the house is a Section 3.10 non-conforming structure. The house is also very close to the front setback, especially at the northern end. The parcel is a long, thin triangle with the base along the Montpelier line, the west leg running along North Street and the east leg running along the Gidney property line. The house is located at the northern end, which is the narrowest part of the triangle as the two legs run together at a point on North Street just above the house. Due to the triangular nature of the lot, there is no north side setback. The lot elevation drops from north to south, with the house accessed from the first floor for most of its length and from the basement level on the south end.
3. Applicant Bender suffers from a locomotor disability and requires crutches for walking. The existing garage on the property, also a Section 3.10 non-conforming structure sited almost on the Gidney property line, is not attached and is located to the south of the house on the walkout basement level. The original North Street curb cut serving the parcel brings vehicles to the garage/basement level. In 2015, in light of Mr. Bender's disability, the East Montpelier Selectboard approved a second curb cut on the north side of the house that allows parking at the first/main floor level. Mr. Bender would use this curb cut to access the proposed carport.
4. Currently there is no direct, weather protected, entry into the house. Due to his disability, Mr. Bender struggles with stairs, inconsistent terrain level, and wet/snowy/icy ground conditions, especially when carrying loads such as groceries. The intent of the carport is to provide direct, dry, handicap accessible access to the kitchen area of the house.
5. The carport cannot be permitted under the Section 3.14 setback waiver provision as its location requires more than a one-third decrease in the mandated rear setback.
6. Although there is no clear precedent in Vermont law, the Americans with Disabilities Act may require that zoning regulations reflect reasonable accommodation for accessibility.

## CONCLUSIONS

The standards for the issuance of a setback variance are set forth in Section 7.6 of the East Montpelier Land Use & Development Regulations. A variance from the zoning regulations can only be granted if the DRB determines that the proposal meets the five criteria set forth in state law (24 V.S.A. §4469(a)).

The DRB's conclusions with respect to each criterion follow:

Criterion 1: *There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographic or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.*

This criterion is met because the structure is non-conforming & predates existing zoning regulations and any addition would require a variance. (Vote: 6-0)

Criterion 2: *Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.*

This criterion is met because the only logical alternative would to subdivide and build new, but the property can't be subdivided in strict conformity with the regulations. (Vote: 6-0)

Criterion 3: *The unnecessary hardship has not been created by the appellant.*

This criterion is met because the need for the variance was not created by the applicant as the property and structure predate zoning. (Vote: 6-0)

Criterion 4: *The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.*

This criterion is met because the variance will not alter the essential character of the neighborhood. (Vote: 6-0)

Criterion 5: *The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.*

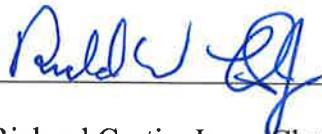
This criterion is met because the requested variance represents the minimum that will afford relief from the hardship and will represent the least deviation possible from these regulations and from the plan that will afford that relief. (Vote: 5-1)

## DECISION

By a vote of 5-1, the DRB approves a Section 7.6 setback variance to allow the construction of a 20' x 12' carport as presented in Zoning Permit #18-024.

**Warning:** State permits may be required for this project. The applicant or permittee retains the obligation to identify, apply for, and obtain relevant state permits for this project. Call (802) 505-5367 to speak to the state Permit Specialist before beginning any construction.

Dated this 19<sup>th</sup> day of July, 2018.



Richard Curtis, Jr. -- Chair  
East Montpelier Development Review Board

**Notice:** The applicant, appellant or other interested person who has participated in a regulatory proceeding of the DRB may appeal the decision rendered by the DRB within 30 days of the issuance of such decision, to the Environmental Division of the Vermont Superior Court, in accordance with 24 V.S.A. §4471.

1. "Participation" in a DRB proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
2. The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Division of the Vermont Superior Court and by mailing a copy to the East Montpelier Zoning Administrator, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

Permit # 18-024  
Zoning District D  
Overlays -

**ZONING PERMIT APPLICATION**  
**TOWN OF EAST MONTPELIER**  
PO Box 157, East Montpelier, VT 05651

Date Received: 6/14/18  
Parcel # 01-018.000  
Tax Map # 07-00-24.000

\*\*\*\*\*

- A. 1. Name of Landowner MICHAEL BENDER Phone No. 802.917.8222  
2. Address of Landowner 1420 NORTH ST., MONTPELIER, VT 05602  
3. Applicant (other than owner) Phone No. 802.223.9000  
4. Address of Applicant  
5. Location of Property

**B: Application is made (check appropriate boxes):**

- |   |  |  |
|---|--|--|
| To:   | For:   | For:   |
| <input checked="" type="checkbox"/> Construct | <input checked="" type="checkbox"/> One <input type="checkbox"/> Two-family dwelling | <input type="checkbox"/> Subdivision of land           |
| <input type="checkbox"/> Repair               | <input type="checkbox"/> Multi-family dwelling                                       | <input type="checkbox"/> Boundary adjustment           |
| <input type="checkbox"/> Alter                | <input type="checkbox"/> Accessory Structure   | <input type="checkbox"/> Extraction of earth resources |
| <input type="checkbox"/> Extend               | <input type="checkbox"/> Commercial / Business                                       | <input type="checkbox"/> Ground water withdrawal       |
| <input type="checkbox"/> Remove               | <input type="checkbox"/> Light Industrial  | <input type="checkbox"/> Landfilling                   |
| <input type="checkbox"/> Change use           | <input type="checkbox"/> Industrial  | <input type="checkbox"/> Other                         |

Describe work to be performed. Construct 20' x 12' carport on east side of dwelling

Request for setback variance

- C. Lot description:
- |   |  |
|---|--|
| 1. acreage <u>5.25</u>  | 4. depth side yards <u>5 100'</u> Ft. <u>No N Side</u> Ft. <u>(triangular lot)</u> |
| 2. road frontage <u>1,200'+</u> Ft.                               |  |
| 3. depth front yard <u>~80'</u> Ft. (Road centerline to building) | 5. depth rear yard <u>12'</u> Ft. (building to lot line)                           |

**Important** - Submit site location map which describes the property on which the proposed land development is to occur. The map should indicate the length in feet of each boundary, the location and dimensions in feet of the development within the property, the distance from that development to all adjacent property lines and the distance to the public road centerline. Each parcel created by land development should be clearly described.

**READ BELOW CAREFULLY AND SEE SECTION D ON PAGE 2 OF APPLICATION:**

In accordance with 24 V.S.A. §4446, no development or subdivision of land may begin in the Town of East Montpelier until all applicable municipal land use permits and approvals have been issued. The undersigned requests a zoning permit as described above, understanding that the permit will be voided and penalties imposed, if the land development is not completed as described. The permit will be voided if development is not substantially commenced within one year from date of issue. The undersigned hereby applies on the basis of the representations contained herein, and to the best of his/her knowledge believes them to be true. The undersigned acknowledges the Section D notices on page 2 of this application.

Landowner Michael Bender Date June 14, 2018  
Applicant \_\_\_\_\_ Date \_\_\_\_\_

\*\*\*\*\*

Zoning Permit Fee: \$ 185.00 Cash \_\_\_\_\_ Check \$ 1788 Date 6/14/18 Rec'd by D.S.  
DRB Hearing Fee: \$ \_\_\_\_\_ Cash \_\_\_\_\_ Check \_\_\_\_\_ Date \_\_\_\_\_ Rec'd by \_\_\_\_\_

Make checks payable to the "Town of East Montpelier"

**D. Warning:** State permits may be required for this project. The applicant or permittee retains the obligation to identify, apply for, and obtain relevant state permits for this project. Call (802) 505-5367 to speak to Peter Kopsco, our region's state permit specialist, before beginning any construction.

**Notice:** Your project may be subject to the state's residential or commercial energy code. For more information contact the Energy Code Assistance Center at 855-887-0673 or see the following web pages:  
Residential Building Energy Standards: [http://publicservice.vermont.gov/energy\\_efficiency/rbes](http://publicservice.vermont.gov/energy_efficiency/rbes)  
Commercial Building Energy Standards: [http://publicservice.vermont.gov/energy\\_efficiency/cbes](http://publicservice.vermont.gov/energy_efficiency/cbes)

**E. Action by Zoning Administrator:**

1.  Granted     Denied    Date ..... Reason.....

2. Appealed to Development Review Board ..... By .....  
Date

**Notice:** Appeal from a decision or act of the Zoning Administrator must be made in writing to the Development Review Board &/or Town Clerk within 15 days of the decision or act. The appeal fee is \$150.00.

3. Final Action: Permit # 18-024 Date Issued 07/19/18 Effective Date 08/03/18

**DO NOT start this project prior to the effective date, as the statutes require a 15-day appeal period. If this permit is based upon a Development Review Board approval, be advised that any appeal of that approval could affect the validity of this permit – do not start project or commence use until that DRB approval is final and clear of any appeal process.**

4. Permittee is required to submit a Certificate of Compliance form to the Zoning Administrator in accordance with East Montpelier Land Use & Development Regulations Section 7.4:

Yes (form included with permit)     No

  
.....  
Zoning Administrator


**F. Action by Development Review Board:**

1. Public Notice Date 6-23-18.....

2. Date(s) of Hearing 7.10.18.....

3.  Granted     Without conditions     With conditions (See written decision for conditions)

4.  Denied (See written decision for reasoning)

  
.....  
Chairman, Development Review Board

The DRB's written decision was issued on: July 19, 2018

The applicant, appellant or other interested person who has participated in a regulatory proceeding of the DRB may appeal the decision rendered by the DRB within 30 days of the issuance of such decision, to the Environmental Division of the Vermont Superior Court, in accordance with 24 V.S.A. §4471.

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# SKETCH/AREA TABLE ADDENDUM

**SUBJECT**

Property Address \_\_\_\_\_

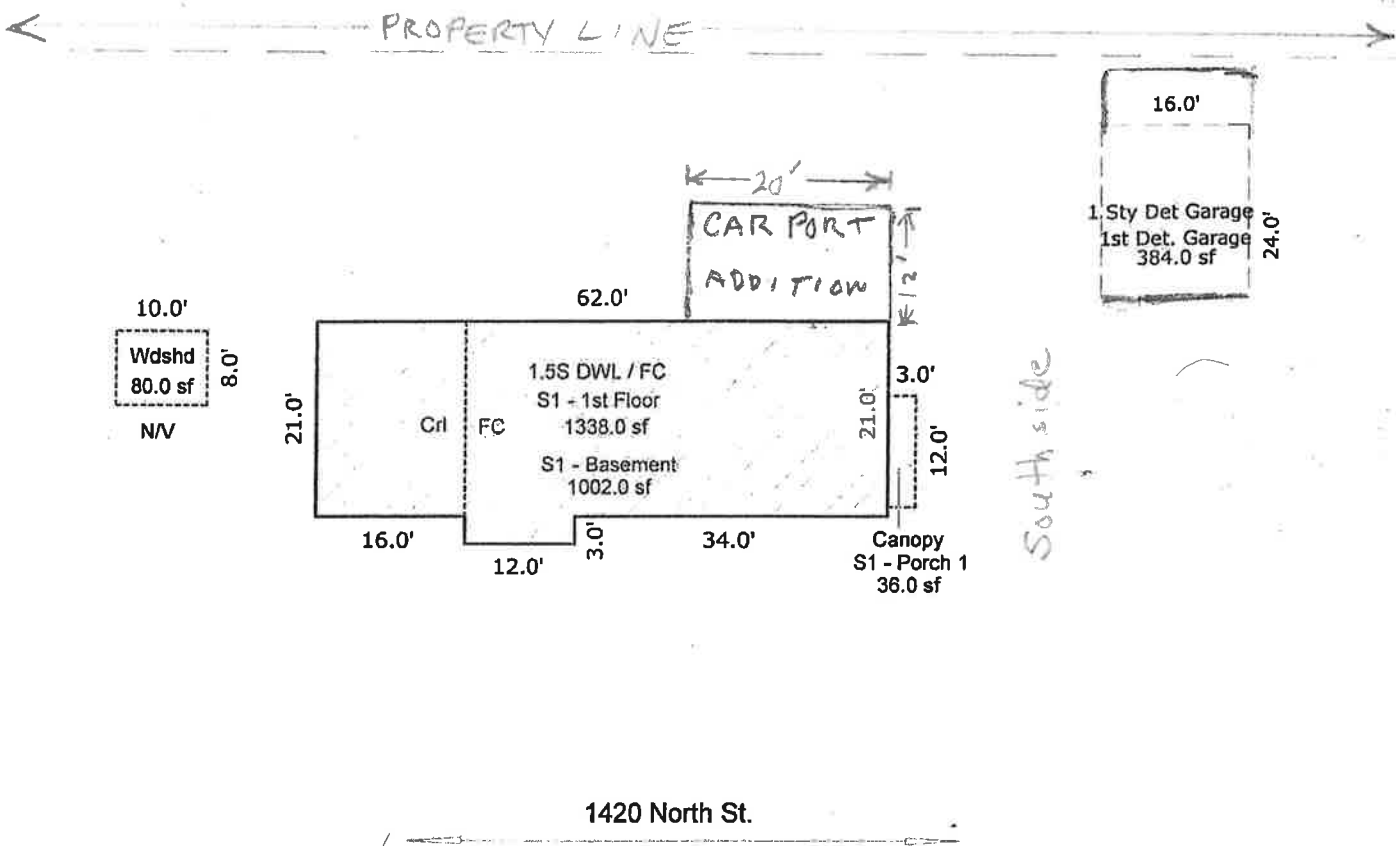
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Owner \_\_\_\_\_

Client \_\_\_\_\_

Appraiser Name \_\_\_\_\_

IMPROVEMENTS SKETCH



Scale: 1 = 20

AREA CALCULATIONS

### AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
1FL1	S1 - 1st Floor	1.00	1338.0	172.0	1338.0
1FL2	S1 - 2nd Floor	1.00	672.0	104.0	672.0
1BS	S1 - Basement	1.00	1002.0	140.0	1002.0
P/P11	S1 - Porch 1	1.00	36.0	30.0	36.0
1DG	1st Det. Garage	1.00	384.0	80.0	384.0

### Comment Table 1

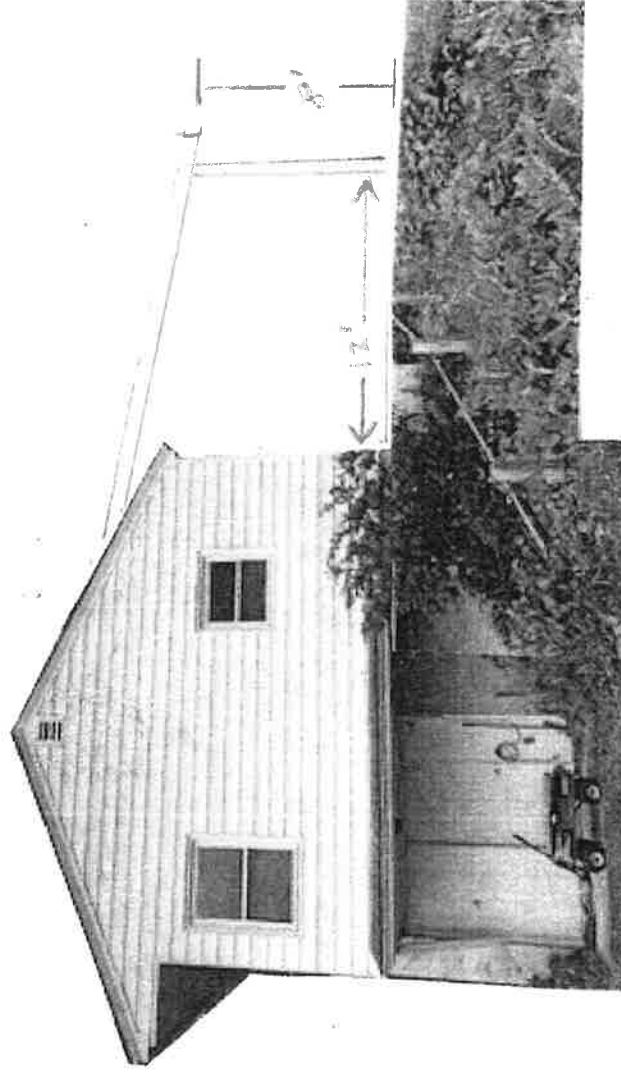
### Comment Table 2      Comment Table 3

**Net BUILDING Area** (rounded w/ factors) **2010**

MICHAEL BENDER

PROPOSED CARTOP ADDITION

JUNE 2018



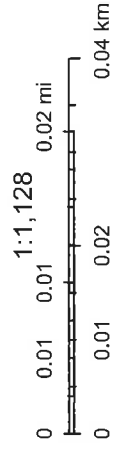
South side

# Bender -- 1420 North Street



June 21, 2018

- Contours 50 Foot
- Contours 20 Foot
- Map\_Annotation
- Annotation\_Line
- East Montpelier Parcels 2017
- E911\_Data
- Other
- Unknown; UNKNOWN
- Accessory Bldg - Barns, Garages, etc.



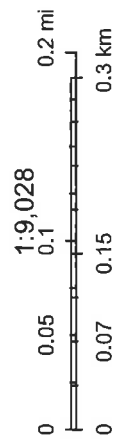
VCGLI, DigitalGlobe

# Bender -- 1420 North Street



June 21, 2018

- Contours 50 Foot
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1:9,028

VCGI, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA