



MUNICIPALITY OF NORRISTOWN

A HOME RULE MUNICIPALITY
235 EAST AIRY STREET
NORRISTOWN, PENNSYLVANIA 19401-5003
(610) 272-8080
WWW.NORRISTOWN.ORG

FAX:

FINANCE: (610) 270-0445
ADMINISTRATION: (610) 275-0687
PUBLIC WORKS: (610) 279-3603
PLANNING: (610) 270-2892
CODE/BLDG.: (610) 279-7548

File No. (45-20)

APPLICATION TO THE ZONING HEARING BOARD (Please print or type)

1. Application for: Variance from Section
 Special Exception from Section *w/ reasonable accom. / all rights reserved*
 Interpretation (Explain) Appeal of Notice of Violation dated 10/1/20 *11/24/20*

2. Name and Address of Applicant: Corner Development II, LP c/o Ameer S. Farrell
Kaplin Stewart, 910 Harvest Dr, Blue Bell, PA 19422 Phone # 610-941-2547

3. Name and Address of Property Owner: _____
Via Montella Opportunity Zone Development Company, 109 Water Street, Norristown, PA 19401

4. Address of Property: 352 E. Penn Street, Norristown, PA 19401

5. Zoning Classification of Property: TC-II District

6. Present Use of Property: Residential

7. Proposed Use of Property: Residential

8. Reasons Application Should Be Granted: See attached Addendum

9. Description of Improvements and/or Use: General Construction Thereof: _____

See attached Addendum

10. The Undersigned do(es) hereby make application to the Zoning Hearing Board as indicated and affirms that the information contained herein is true and correct.

Signed *Ameer S. Farrell* Date 10/27/2020
(Applicant)
Ameer S. Farrell, Esq., Attorney for Applicant/Property Owner

Signed _____ Date _____
(Owner)

\$ 575.00 Filing Fee Received, Date 10/30/2020 By: *Jayne Musonye*

(FILING FEE IS NON-REFUNDABLE)

Jayne Musonye, Zoning Officer



December 3, 2020

VIA ELECTRONIC MAIL

Patrick Hitchens, Esquire
Kilkenny Law
519 Swede Street
Norristown, PA 19401

RE: Corner Development II, LP - Zoning Violation Appeal
352 E. Penn Street

Dear Patrick:

As you are aware, on October 30, 2020 my office filed the Borough of Norristown (“Borough”) October 1, 2020 Notice of Zoning Violation (“Violation Notice”) related to the above noted property (“Application”).

At the request of the Borough, I subsequently amended that application in person on November 24, 2020, to include a request for a special exception to permit a sober living residence, together with a request for reasonable accommodation and a reservation of rights. As we discussed yesterday afternoon by telephone, I received a subsequent phone call from a Borough representative requesting a further amendment to the Application to include a variance.

As we discussed, it appears that request was in error, as the Borough Zoning Code is clear that a sober living home is permitted by special exception in the TC-II District. Accordingly, this letter will serve to reconfirm that the Applicant, Corner Development II, LP, requests the following in connection with the property located at 352 East Penn Street:

1. A special exception, pursuant to Borough Zoning Code §320-216.H, to permit a sober living home, together with such reasonable accommodation as is necessary to permit operation of the sober living home in the existing residential dwelling; and
2. Applicant, Corner Development II, LP, otherwise reserves all rights related to its appeal of the Violation Notice, as further outlined in its October 30, 2020 Application and associated addendum.

Patrick Hitchens, Esquire
December 3, 2020
Page 2

Please do not hesitate to contact me should you have any questions or require any further information to process this application. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Amee S. Farrell", with a long horizontal flourish extending to the right.

Amee S. Farrell

cc: Dan Rowley, Esquire (via electronic mail)

Amee S. Farrell, Esquire
Daniel P. Rowley, Esquire
Attorneys for Applicant
Union Meeting Corporate Center
910 Harvest Drive
Blue Bell, PA 19422
(610) 260-6000
afarrell@kaplaw.com
drowley@kaplaw.com
www.kaplaw.com

BEFORE THE ZONING HEARING BOARD OF THE TOWNSHIP
OF MUNICIPALITY OF NORRISTOWN, MONTGOMERY COUNTY,
PENNSYLVANIA

IN THE MATTER OF	:	PREMISES:
CORNER DEVELOPMENT II, LP	:	352 E. PENN STREET
	:	NORRISTOWN, PA 19401
APPELLANT	:	PARCEL NO. 130029772005
	:	
	:	

ADDENDUM TO ZONING HEARING BOARD APPLICATION APPEALING
OCTOBER 1, 2020 NOTICE OF VIOLATION

Corner Development II, LP, the operator of the property located at 352 E. Penn Street in Norristown, Pennsylvania, by and through its attorneys, Amee S. Farrell, Esquire and Daniel P. Rowley, Esquire, hereby files this application for an appeal of the Notice of Zoning Violation, dated October 1, 2020, and in support thereof states:

1. **Name and Address of Appellant.** Appellant is Corner Development II, LP (“**Corner Development**” or “**Appellant**”), the operator of the property located at 352 E. Penn Street in Norristown, PA (“**Property**”). The owner of the Property is Via Montella Opportunity Zone Development Company, 109 Water Street, Norristown, PA 19401.

2. **Property, Improvements, and Zoning.** The Property contains a three-story residential building that is operated by Corner Development as a sober living residence. Per the

Municipality of Norristown (“**Borough**”) Zoning Code (“**Code**”), the Property is located in the TCII Town Center II District (“**TCII District**”).

3. **Background.** Corner Development¹ received a Notice of Zoning Violation letter from the Borough, dated October 1, 2020, (“**Notice of Violation**”) asserting that the Appellant is operating a commercial business at the Property, in violation of the Borough Code. The Notice of Violation states that, upon a site visit to the Property, “commercial business operations” were observed in violation of the Code. The Notice of Violation goes on to indicate that “commercial businesses are not permitted by right, while specific commercial businesses are permitted by Special Exception, neither a Sober Living Home nor a Rooming House are permitted” at the Property. The Notice of Violation further informed the Appellant of their right to appeal the Notice of Violation within thirty (30) days of receipt. A copy of the Notice of Violation is attached hereto as **Exhibit “A”** and is incorporated herein.

4. **Legal Argument.** The Zoning Officer erroneously characterized the Corner Development sober living residence as a commercial operation in direct contravention of both the Borough Code and federal law. Accordingly, the Notice of Violation is based upon an incorrect legal determination and must be dismissed.

i. A Sober Living Home is Specifically Permitted under the Borough Code as a Residential Use.

As previously noted, the Property is located in the TCII District. Section 320-141.A(1) of the Borough Code permits within the TCII District “any residential use as per the standards and criteria as specified in the R-2 District”. Code §320-41.A, which governs uses in the R-2 District,

¹ The Notice of Violation erroneously identifies Corner Development II, LP as the owner of the Property. Although Corner Development is the operator of the sober living residence, the Property is owned by Via Montella Opportunity Zone, by virtue of a deed, dated August 9, 2019, and recorded September 4, 2019 at Deed Book 6151, Page 02182.

specifically permits single-family residential dwellings in the R-2 Residence District (“**R-2 District**”).

Code §320-11 in turn defines the term “family” as follows:

- A. Any number of individuals living together on a nontransient basis as a single housekeeping unit and doing their cooking on the premises, when said individuals are related by blood, marriage or adoption, including any number of foster children; no more than five unrelated individuals living together as a single housekeeping unit and doing their cooking on the premises, except when an application for a special exception to enable a greater number of unrelated individuals to occupy a dwelling unit is reviewed and approved by the Zoning Hearing Board, as provided herein. The definition of "family" shall not apply to the occupants of a club, fraternity house, lodge or residential club.

- B. Notwithstanding the definition in the preceding subsection, a *family shall also be deemed to include any number of mentally or physically handicapped persons occupying a dwelling unit as a single, nonprofit housekeeping unit, if such occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968 and amended by the Fair Housing Amendments of Act of 1988.*

(emphasis added).

The plain language of subpart B of the definition of family specifically contemplates that the term includes any number of mentally or physically handicapped persons occupying a dwelling unit as a single, nonprofit² housekeeping unit, if such occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968 and amended by the Fair Housing Amendments of Act of 1988 (“**FHA**”).

² That the Borough Code seeks to limit the definition of “family” in this context to a non-profit is of no moment as such a restriction is a violation of federal law. See *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819, 844-45 (N.D. Ill. 2001) (municipal requirements that group homes be operated only by non-profit organizations and that limited the number of people per room to one, where similar limitations did not apply to single-family residences, violate the FHA).

Congress amended the FHA, 42 U.S.C. §3601, *et seq.*, in 1988 to extend the guarantee of fair housing to handicapped individuals, and further authorized the Secretary of the United States Department of Housing and Urban Development to promulgate regulations necessary to implement the FHA. 42 U.S.C. §3614a. As specifically defined under the FHA, and further clarified under promulgated Regulations, the term “handicap” includes any individual with a “physical or mental impairment which substantially limits one or more of such person’s major life activities...” and includes “alcoholism” and “drug addiction” other than caused by current, illegal use of a controlled substance. 42 U.S.C. §3602(h); 24 C.F.R. §100.201. *See also, Easter Seals Society, Inc. v. North Bergen*, 798 F.Supp. 228, 233 (D.N.J. 1992) (holding FHA protections apply to recovering alcoholics and addicts who are in recovery, and accordingly, not currently using an illegal substance).

Corner Development operates a sober living residence at the Property. Residents are recovering substance abusers who are living in a family-like setting as a single housekeeping unit where they can be part of a community of recovery. As such, residents meet the definition of “handicapped” under the FHA and, accordingly constitute a “family” under the Borough’s own definition of family. As such, the sober living residence constitutes a single-family residential use that is permitted in the TCII District. The Zoning Officer’s determination to the contrary is illegal and erroneous and must be dismissed and the Notice of Violation revoked.

ii. Prohibiting a Sober Living Residence in a Residential District is a Violation of Federal Law.

Under the FHA, it is unlawful to deny a dwelling to a buyer or renter because of a handicap of that buyer or renter or to discriminate against a handicapped person in the terms, conditions, or privileges of the sale or rental of a dwelling. 42 U.S.C. §3604(f)(1) and (2). Further, and perhaps most significantly for the purposes of this appeal, “a refusal to make reasonable

accommodations...when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling” is *per se* discrimination under the FHA. 42 U.S.C. §3604(f)(3(B)). Any restriction or attempt to restrict the choices of a handicapped person in an effort to discourage or obstruct choices in a community, neighborhood, or development, is a violation of the FHA. 24 C.F.R. §100.70(a).

The legislative history of the FHA amendments makes clear that Congress specifically sought to prohibit the application of local land use and zoning laws in any way that will limit access to housing by people with disabilities, stating in pertinent part:

The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such [handicapped] individuals to live in the residence of their choice in the community.

H. Rep. No. 100-711, at 24 (1988).

In the land use and zoning context, the standards and provisions of the FHA have consistently been interpreted to require that municipalities provide “equal opportunity” for handicapped individuals – including those in alcohol and drug addiction recovery – to afford them an opportunity to “...live in single-family neighborhoods, for that right serves to end the exclusion of handicapped individuals from the American mainstream.” *Lapid-Laurel v. Zoning Board of Adjustment*, 284 F.3d 442, 459-60 (3d Cir. 2002) (quoting *Smith & Lee Associates, Inc. v. City of Taylor*, 102 F.3d 781 (6th Cir. 1996)). *See also, McKivitz v. Township of Stowe*, 769 F.Supp. 2d 803, 825-26 (W.D. Pa. 2010); *Bryant Woods Inn, Inc. v. Howard County*, 911 F. Supp. 918, 946 (D. Md. 1996) (holding the FHA prohibits local municipalities from imposing or applying land use regulations in such a way as to exclude disabled individuals entirely from zoning districts, “particularly residential neighborhoods,” or to provide disabled residents with less opportunity to

live in certain neighborhoods than people without disabilities), *affirmed*, 124 F.3d 597 (4th Cir. 1997).

A refusal to waive or otherwise modify zoning provisions that restrictively define “family” to limit the number of unrelated individuals who may live together violates the FHA when such refusal has the effect of barring group residences for handicapped individuals. *See Dr. Gertrude A. Barber Center, Inc. v. Peters Township*, 273 F. Supp. 2d 643, 656-59 (W.D. Pa. 2003); *Remed Recovery Care Centers v. Township of Willistown*, 36 F. Supp. 2d 676, 684-86 (E.D. Pa. 1999). *See also Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185-86 (E.D.N.Y. 1993); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 462 (D.N.J. 1996).

Additionally, federal courts have routinely found that municipalities have violated the FHA in the adoption, interpretation, and/or enforcement of municipal zoning ordinances when those ordinances have imposed obligations or restrictions on handicapped individuals that are not otherwise imposed on other individuals in residential districts. *See Dr. Gertrude A. Barber Center, Inc. v. Peters Township*, 273 F. Supp. 2d 643, 656-59 (W.D. Pa. 2003) (finding zoning ordinance excluding group homes for persons with disabilities from single-family residential districts was a clear violation of the FHA); *Community Housing Trust v. Department of Consumer Regulatory Affairs*, 257 F. Supp. 2d 208, 221-25 (D.D.C. 2003) (requiring a 6-person home for handicapped individuals to procure a certificate of occupancy when a 6-person home without handicapped individuals was not required to procure the same certificate was held to be a discriminatory classification that violates the FHA); *New Jersey Coalition of Rooming and Boarding House Owners v. Mayor and Council of City of Asbury*, 152 F.3d 217, 221 (3d Cir. 1998) (finding municipal ordinance requiring new certificates of inspection each time a new resident moved into a group residence was “freighted with discriminatory intent” in violation of the FHA); *Potomac*

Group Home Corp. v. Montgomery County, 823 F. Supp. 1285, 1296-97 (D. Md. 1993) (holding zoning ordinance requiring notice to neighbors of a group home's existence constituted a discriminatory obligation in violation of the FHA because it was not imposed on any other residential unit within a residential district).

Any effort by the Borough to restrict the operation of a sober living residence from the Property – or to impose restrictions or additional requirements on the residents or operator of that residence that it does not otherwise impose on other single-family residential properties – is a direct violation of the FHA. By issuing the Notice of Violation, the Borough has abused its discretion, committed an error of law, and is attempting to unlawfully discriminate against the occupants of the Property on the basis of their handicap.

Appellant's appeal of the Notice of Violation should be sustained and the Notice of Appeal should be revoked.

Respectfully submitted,



AMEE S. FARRELL, ESQUIRE
DANIEL P. ROWLEY, ESQUIRE
Attorneys for Appellant,
Corner Development II, LP

Dated: October 30, 2020

EXHIBIT A

Municipality of Norristown



Municipal Council

Derrick Perry, President
Rebecca Smith, Vice President
Sonya Sanders, District 1
Heather Lewis, District 2
Valerie Scott Cooper, District 3
Hakim Jones, District 4
Thomas Lepera, At Large

Crandall O. Jones
Municipal Administrator

October 1, 2020

CORNER DEVELOPMENT II LP
109 WATER STREET
NORRISTOWN PA 19401

NOTICE OF ZONING VIOLATION

PROPERTY ADDRESS: 352 E Penn Street
Norristown, PA 19401
PARCEL # 130029772005

Dear Sir/ Madam,

I am contacting you as the record Owner of 352 E Penn Street, Norristown, PA in response to complaints received by the Department of Planning and Municipal Development through the Norristown Police Department regarding the operation of commercial business at 352 E Penn Street, Norristown, PA (hereinafter sometimes referred to as the "Property"). Upon a site visit conducted by the Norristown Police Department, the commercial business operations were in plain site and observed.

VIOLATION:

1. Pursuant to Chapter 320 (Zoning), Article XXIX (Administration), Section 320-343 (Permits) No building shall be constructed or altered in the Municipality nor the use of any building changed nor vacant land occupied until a zoning permit is secured from the Zoning Officer. Upon completion of the work authorized by any permit, the applicant or owner shall notify the Zoning Officer of said completion. No permit shall be considered as complete or permanently effective until the Zoning Officer has noted on

the permit that the work has been inspected and approved as being in conformity with the provisions of this chapter.

2. Pursuant to Chapter 320 (Zoning), Article V (R-2 Residence District), Section 320-41 Use Regulations, commercial businesses are not permitted by right, while specific commercial businesses are permitted by Special Exception, neither a Sober Living Home nor a Rooming House are permitted.

ORDER:

You are hereby ordered within thirty (30) days of receiving this letter to cease and desist all activity, which violates Chapter 320 – Zoning of the CODE of the Municipality of Norristown as cited above, and to violations on the Property.

Your failure to comply with this Order within thirty (30) days and terminate all activity referenced above is a violation of the Municipality of Norristown Zoning Code. You have the right to appeal this *Notice of Zoning Violation* to the Zoning Hearing Board within thirty (30) days of receipt of this Notice. Failure to appeal or comply with the Order contained in this Notice of Violation within thirty (30) days will subject you to possible fines of up to \$500.00 per day, per violation, along with additional penalties permitted by law, including injunctive relief. An appeal to the Norristown Zoning Hearing Board will extend the time period that you have to comply with this Notice until the Zoning Hearing Board renders a decision.

An application for the Zoning Hearing Board is enclosed for your convenience.
Sincerely,



Ayman Shehata
Zoning Enforcement Inspector
Municipality of Norristown

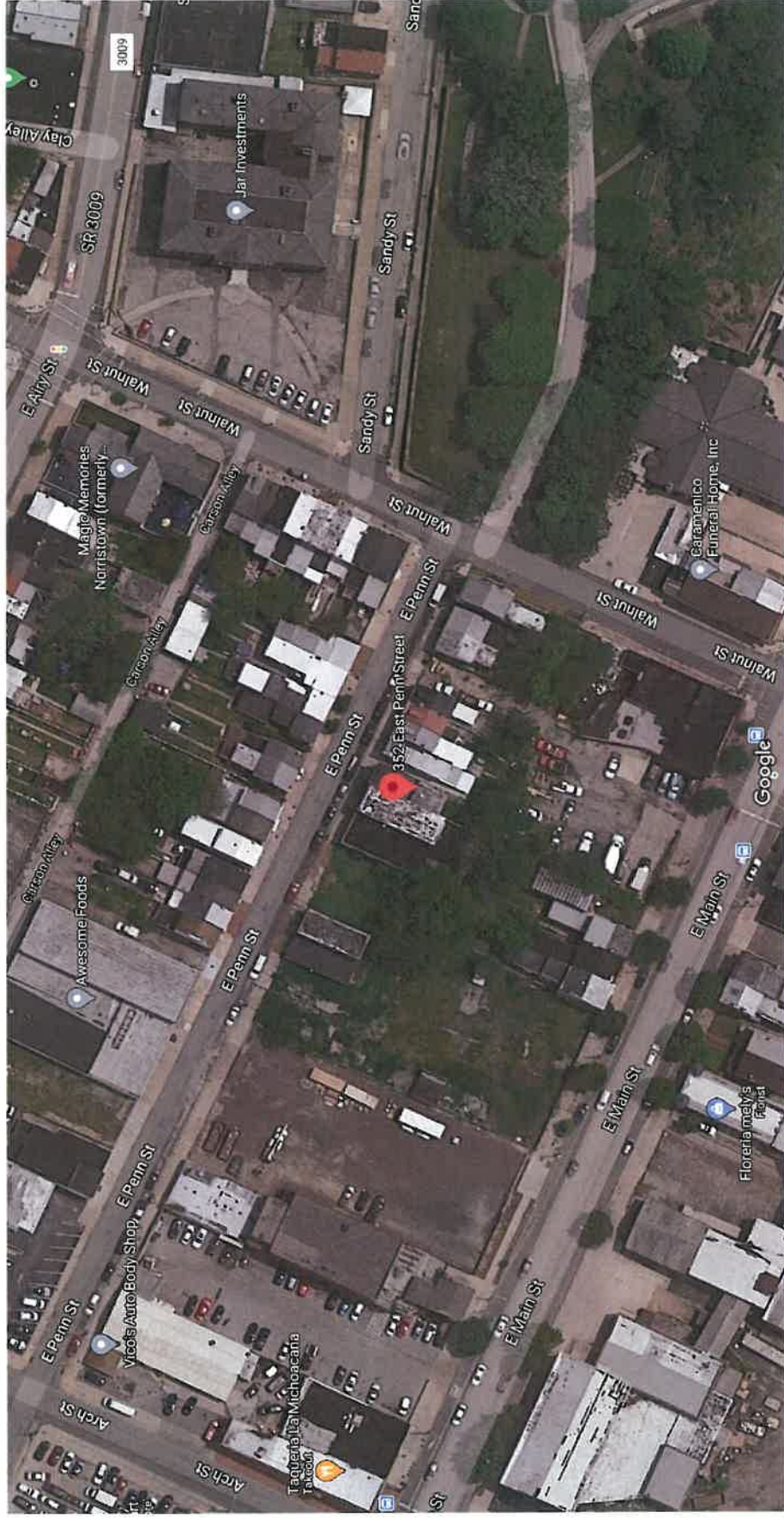
352 E. Penn Street



352 E. Penn Street



352 E. Penn Street



Printed: 10/30/2020 14:45:47 EDT

TRANSACTION SUMMARY

TRANSACTION TYPE: SALE

PAYMENT ITEM

REFERENCE NUMBER

AMOUNT

Zoning Hearing Fees / 01-361-308600

352 E Penn St Zoning Hearing Fees

\$575.00

Total: \$575.00

Transaction Number:

20304525870966521

Date Processed:

10/30/2020 14:37:25 EDT

Transaction Type:

PAPER CHECK

Check Number:

21860

Cardholder Name:

KAPLIN STEWART MELOFF REITER&STEIN

General Fund - Municipality of Norristown PA

235 E Airy Street

Norristown, PA 19401

610 272-8080

Zoning Hearing Fees / 01-361-308600

\$575.00

Total:

\$575.00

I agree to pay above total amount according to the card issuer agreement & understand this convenience fee will be charged to allow my payment via credit card.

Signature: _____

Printed Name: _____

Phone: _____

Municipality of Norristown
 DEPARTMENT OF PLANNING AND MUNICIPAL DEVELOPMENT
 PAYMENT FORM

DATE RECEIVED

DATE: 10/30/2020

PAYEE: Kaplin, Stewart, Meloff, Reiter & Stein, PC

AMOUNT: \$575.00

Check # 21860 Cash _____ Credit _____

PROPERTY ADDRESS/PROJECT: 352 E. Penn St.

Check Applicable Purpose	Fund	Account
<input checked="" type="checkbox"/> Use Registration Application	01	361.308.600
<input checked="" type="checkbox"/> ZHB Application	01	361.308.600
<input type="checkbox"/> Subdivision/Land Development Application Fee	01	361.308.700
<input type="checkbox"/> Subdivision/Land Development Escrow Fee	17	210-101100
<input type="checkbox"/> Subdivision/Land Development – Letter of Credit	See Jayne	
<input type="checkbox"/> Zoning Ordinance/SALDO	01	361.308.800
<input type="checkbox"/> Bid Specs	01	361.308.800
<input type="checkbox"/> Annual Sign Assessment	01	321.305.700
<input type="checkbox"/> Refund (attach relevant documentation)	361 - 308600	

NOTES:

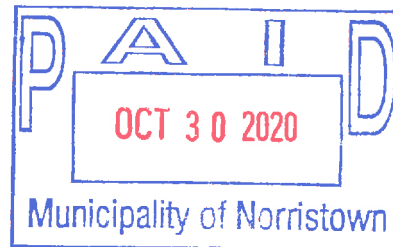
Received By:



Planning Department Staff



Finance Department Staff



Date Received (date stamp)