

# CITY PLANNING DEPARTMENT



## Memorandum – FINAL

**To:** City Plan Commission  
**From:** Kenneth R. Kirkland MPA, MRP, AICP; Asst. City Planning Director  
**Date:** September 5, 2023  
**RE:** 45 Fairlawn Street & 0 Lakeside Avenue – Assessors Plat 4, Lots 1447 & 1448  
**Application for Dimensional Variance**

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**Owner | Applicant:** Jo-Anne Gorman  
**Location:** 45 Fairlawn Street & 0 Lakeside Avenue  
**Zoning:** A6 – Residential (Single-Family, 6,000 sq. ft.)  
**FLUM Designation:** Single-Family Residential – 7.26 to 3.64 Units Per Acre.

### Subject Property:

The subject property is a corner lot located at 45 Fairlawn Street and 0 Lakeside Avenue, identified as Plat 4/1, Lots 1447 and 1448, and has a total combined land area of 0.19± acres, (8,350± sq. ft.) with corner lot frontages on Fairlawn Street and Lakeside Avenue. The property is currently a single-family home, with a pool.

### Request:

To allow an illegally-constructed pool deck (17.60.010 – Accessory Uses) within the front and rear corner lot setbacks in an A6 zone (17.20.120 – Schedule of Intensity Regulations)

### AERIAL PHOTO



**STREET VIEW**

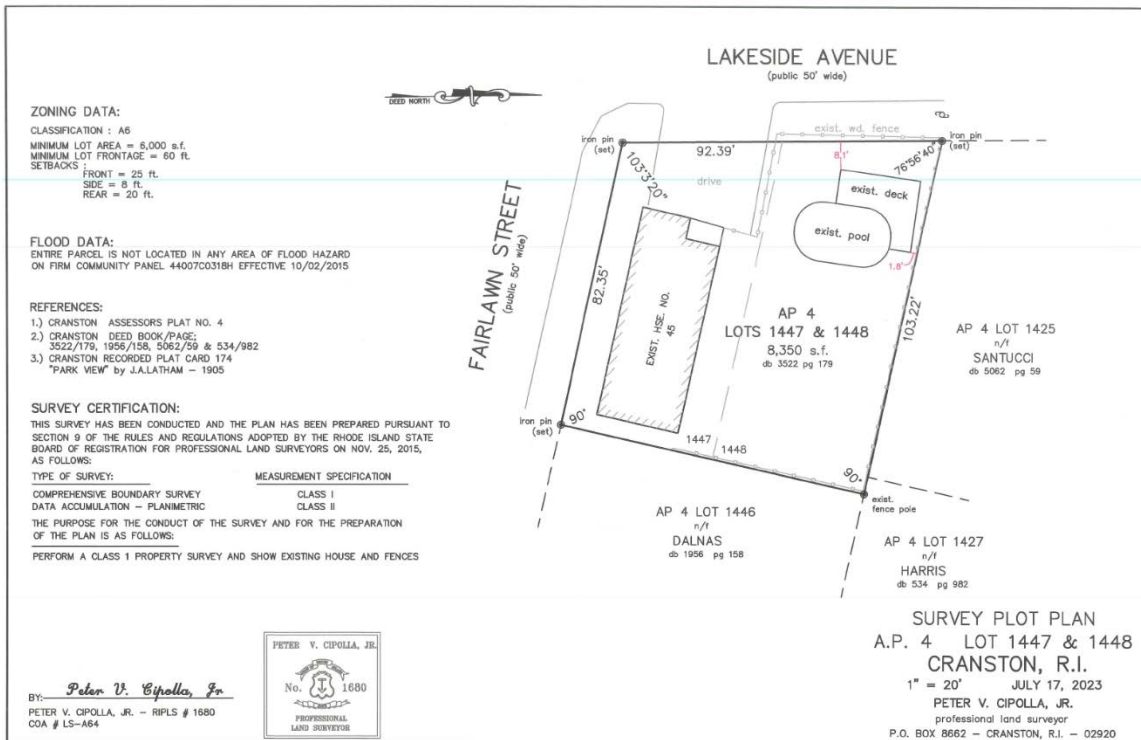


**DECK PHOTOS**





**PLAN**



**Findings of Fact:**

- The Applicant has requested specific relief in their Application, namely:
  - 17.20.120 – Schedule of Intensity Regulations
  - 17.60.010 – Accessory Uses
- This Application is sought for an existing pool deck that was constructed without permits and was issued a notice of violation by the Department of Building Inspections & Zoning Enforcement.
- Staff has reviewed this Application relative to the general concepts of planning and zoning. Section 17.04.010 of the Zoning Ordinance enumerates “general purposes” for which the Ordinance was adopted:
  - To promote public health, safety, morals, and general welfare.

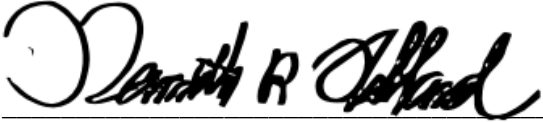
- Since a notice of violation was issued for illegal construction which is now seeking relief, it is impossible to say that illegal construction without the benefit of construction inspections promotes the City's public health, safety, morals, and general welfare.
  - To provide for orderly growth and development which recognizes:
    - The goals and patterns of land use contained in the Comprehensive Plan.
      - Under State law, zoning shall be consistent with the Comprehensive Plan. Illegal construction, done without a consistency analysis with the Comprehensive Plan's overarching goals and patterns of land use cannot be said to provide for orderly growth and development in the City.
    - The need to shape and balance urban...development.
      - If zoning is to provide for orderly growth and development which recognizes the need to shape and balance urban...development, then illegal construction, done without an analysis of the Comprehensive Plan's overarching goals and patterns of land use and development patterns outlined to be the best for the neighborhood, cannot be said to provide for orderly growth and development in the City.
  - Promote implementation of the Comprehensive Plan.
    - If zoning is meant to provide for orderly growth and development which recognizes the Comprehensive Plan's goals and patterns of land use and the need to shape and balance urban...development, illegal construction is certainly inconsistent with the general concepts of planning and zoning.
  - Provide efficient review of development proposals, to clarify and expedite the zoning approval process.
    - Illegal construction, by its nature, is directly inconsistent with this general purpose.
  - Provide procedures for the administration of the Zoning Ordinance.
    - Administration of the Zoning Ordinance is meant to address development proposals. Every proposal that meets every aspect of the Ordinance has already been built, constructed, occupied, and in use. While not every contemporary proposal may wholly and totally be in compliance with every aspect of the Ordinance, illegal construction bypasses not just building and construction code inspection, (public health and safety) but also any sort of review, (efficient development) or consistency analysis (orderly growth and development) that may have provided a means of addressing potential deficiencies (shape and balance urban development).
- Staff notes that the photos of the subject property clearly show the pool deck railing is visible above the existing fence, which illustrates that a person of normal height standing on the pool deck can see, (and be seen) into neighboring properties, which raises issues of privacy and visual intrusion.

In review of the general purposes of the Zoning Ordinance and their relationship to the Comprehensive Plan, Staff finds that the Application is directly inconsistent with the Comprehensive Plan.

**Recommendation:**

In accordance with RIGL §45-24-41(b), Staff finds this Application inconsistent with the goals and purposes of the Comprehensive Plan and is directly incompatible with the general character of the surrounding neighborhood. Staff therefore recommends that the City Plan Commission adopt the Findings of Fact documented above and forward a **NEGATIVE RECOMMENDATION** on the Application to the Zoning Board of Review.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kenneth R. Kirkland". The signature is written in a cursive, flowing style with a large initial "K".

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Kenneth R. Kirkland, MPA, MRP, AICP  
Assistant City Planning Director

**Cc:** City Planning Director  
Applicant Representative  
File