

# Plattsburgh, New York

Building & Zoning Dept.  
41 City Hall Place  
Plattsburgh, New York 12901  
Ph: 518-563-7707  
Fax: 518-563-6426

Plattsburgh

         USE  
CLASS A VARIANCE

  X   AREA  
CLASS B VARIANCE

         SUP  
SPECIAL USE PERMIT

Date:   12/21/22  

Appeal No   2340  

An application is hereby made to the Zoning Board of Appeals pursuant to the City of Plattsburgh Zoning Ordinance for a variance to allow the property use as herein described.

**Applicant:**   Notre Dame des Victoires of Plattsburgh/Our Lady of Victory Church  

**Applicant's Address:**   7 Margaret Street, Plattsburgh, NY, 12901  

**Telephone No.:**   518-524-4354  

**Parcel Identification:**   221.11-9-20.1  

**Location of Request:**   4915-4919 South Catherine Street  

**Property Owner:**   Notre Dame des Victoires of Plattsburgh/Our Lady of Victory Church; c/o Fr. Kevin McEwan  

**Request Description:**   Create a 2 lot subdivision to parcel off the former Church Rectory and intend to sell as a residential property  

**Zoning District:**   R2  

**Section Appealed:**   Open space, Section 360-17 and Section 360-26, A2 ; Section 360-26, C1,a,5 Section 360-11 (schedule of Area/Bulk Controls)  

**Previous Appeal:**   No.: X     Date:  

Identify Applicant's Right to Apply for Variance:

**Ownership:**   X   **Long Term Lease:**          **Contract To Purchase:**         

**Other (Please Explain):**         

Applications for Zoning Variances must be accompanied by:  
13 copies of existing and proposed site plan plus original application.  
13 copies of existing and proposed floor plan.

The Zoning Board of Appeals may impose reasonable conditions and restrictions on the grant of area and use variances provided they are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

  Kevin D McEwan    
Signature (Owner/Applicant)  
  KEVIN D MCELWAN    
Print First and Last Name

  Dean H. Lashway    
Notary Public  
DEAN H. LASHWAY  
NOTARY PUBLIC, STATE OF NEW YORK  
REGISTRATION # 01LAG300131  
QUALIFIED IN CLINTON COUNTY  
COMMISSION EXPIRES AUGUST   4, 2024  

**\*Signatures other than Property Owner require a Letter of Authorization to apply.**

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\_\_\_\_\_  
Signature (Owner/Applicant)  
FR KEVIN MCKEWAN  
Print First and Last Name

  
\_\_\_\_\_  
Notary Public  
DEAN H. LASHWAY  
NOTARY PUBLIC, STATE OF NEW YORK  
REGISTRATION # 01LA6309131  
QUALIFIED IN CLINTON COUNTY  
COMMISSION EXPIRES AUGUST 4, 2024

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# ZONING BOARD OF APPEALS

CITY HALL

PLATTSBURGH, NEW YORK 12001

## STANDARDS OF PROOF - AREA VARIANCE

A. The applicant for an area variance is not entitled to an area variance unless he has furnished competent proof to satisfy the "practical difficulty standard" and that the variance, if granted will not alter the essential character of the neighborhood.

In order to satisfy the practical difficulty standard, the applicant must prove that the Zoning Ordinance as it applies to his land creates significant economic injury and that the variance, if granted, will not produce a substantial change in the character of the neighborhood. The courts of this state hold that "significant economic injury cannot be established except by dollars and cents proof which includes:

1. The original purchase price of the premises.
2. The current market value of the premises without an area variance.
3. The projected market value of the premises with the variance having been granted."

"Projected market value" in item 3 does not include any cost of valuation for the proposed construction. It includes only the current market value without any variance plus the "value of the right to build." The "value of the right to build" may be said to be the "value of the building permit". How much more valuable is the entire property with a building permit allowing the future construction of the proposed work? Projected market value which includes the value of the work to be constructed will be rejected.

Projected market value can be best shown by the in-person testimony of a real estate appraiser who is present at the hearing. Written appraisals may be less satisfactory because the writer is not present to answer any questions.

The difference between the current market value without the variance and the projected market value with the variance is the amount of economic injury. If the Zoning Board of Appeals determines that this economic injury is significant, then the applicant may be entitled to the area variance.

However, if a town official comes forward at the hearing with testimony establishing that it is important in this particular instance to enforce the Zoning Ordinance as it is written, in order to protect the health, safety and welfare, then the application must be denied. It is important to note that such testimony must be by a town official or someone hired by the town to give the testimony. If the Zoning Board of Appeals agrees with the Town Official that it is important in this case to enforce the Zoning Ordinance as written, then the applicant is not entitled to the area variance, unless he presents further testimony that the enforcement of the ordinance as written will deprive him of any reasonable use of his land. If applicant proves that, then he is entitled to the area variance.

B. The second question to be determined by the Zoning Board of Appeals is whether the the propose will alte the essential character of the neighborhood. Will a substantial detriment to adjoining properties be created? If it will, then the variance may be denied.

### C. Other Grounds for Denial:

1. Whether the variance applied for is the minimum variance that is necessary.
2. Is the variance sought one that is merely desirable for the greater enjoyment of the property, as opposed to one that is necessary for continued practical utilization of the premises? (Bielak v. Zoning Board of Appeals, 78 AD 2d 435).

ZONING BOARD OF APPEALS

CITY HALL

PLATTSBURGH, NEW YORK 12901

-2-

STANDARDS OF PROOF - AREA VARIANCE

3. Is this hardship self-created? An area variance cannot be denied solely on the ground of self-created hardship, but is a factor to be considered.
4. Is the plight of the owner due to personal problems of the owner as opposed to matters dealing with the land or buildings? While an area variance may not be denied solely on this basis, it is a factor to be considered.

## Area Variances Standards

The state statues define area variances as: "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by dimensional or physical requirements of the applicable zoning regulations."

General City Law, 81-b(1)

The state statues then go on to provide the zoning board with the standards for granting the area variances;

"(b) In making it's determination, the zoning board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(2) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

(3) whether the requested area variance is substantial;

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and

(5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The board of appeals , in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

General City Law, 81-b(4)

## Area or Dimensional Variances

Area variances may be granted where setback, frontage, lot size or yard requirements of this Code cannot be reasonably met. In making it's determination the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determinations the board shall also consider the following criteria:

Please give a written response to each section.

(1) Will an undesirable change be produced to the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance?

See attached Area Variance Narrative for these 5 items

(2) Can the benefit sought by the applicant be achieved by some method, feasible to the applicant to pursue, other than an area variance?

(3) Is the requested area variance substantial?

(4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

(5) Has the alleged difficulty been self-created?  
This information shall be relevant to the decision of the board but shall not necessarily preclude granting of the variance.

**Notre Dames des Victoires of Plattsburgh/OLVA Subdivision 2022  
4919 South Catherine Street, Plattsburgh**

**Area Variance Narrative**

**Appeal from Area Variance request;**

**(A) Section 360-17 Open Space on Lot No. 1 and,**

**(B) Section 360-26, A(2) Off-Street Parking and loading regulations on Lot No. 1**

The following numbered items are intended to address the numbered items noted in the Area or Dimensional Variances of the City Class B Variance review:

1. (A) The proposed subdivision consists of a two lot subdivision. The pre-existing condition of the pre-subdivision, has a deficiency for the open space at 20.8%. The proposed subdivision will create a lot, Lot No. 1 (the remaining lands), with an open space of 17.6%. The pre-existing condition did not have a negative impact to the character of the neighborhood or is a detriment to the nearby properties. The new open space created with the subdivision will not be noticeable to the neighborhood or the nearby properties, and will not be a detriment to the adjoining community.  
(B) The proposed subdivision will parcel off the former Church Rectory building. This parcel will provide 6 parking stalls, 4 within the existing garage and 2 from the parking stalls located on the northerly portion of the property. Lot No 2 has multiple uses, Church Mass, Bingo, the Gymnasium, JCEO Headstart program, yearly Church events and the Soup Kitchen. These existing uses have been ongoing for a number of years and have not have had a negative impact to the character of the neighborhood or has been a detriment to the nearby properties. These uses are staggered and the parking stalls available as shown in the existing parking tabulation on the subdivision map provide ample parking for the site.
2. (A) The open space for the existing lot (pre-subdivision) was deficient of the open space. The applicant has made modifications to the proposed subdivision to minimize the open space deficiency for the project. There is no other alternative to mitigate the open space for Lot No. 2.  
(B) Although the City is not able to provide a report on the required parking spaces for Lot No. 1, the existing parking tabulation noted on the subdivision map does show the parking stall use for each onsite use. It is the opinion of the Applicant that there is sufficient parking available for the site. There is no further need for any other option.
3. (A) The pre-existing open space provided is 20.8%. The City zoning ordinance requires 45%. The proposed subdivision, Lot No. 1 provides 17.6%. Although the change is substantial to the requirement, it is not substantial to the previous non conforming existing open space. The pre-existing buildings and supported parking area creates the deficiency.

(B) The requested variance for the parking is not substantial. The high need for parking is for the Church Mass, Bingo and the yearly Church events. These uses are not a 5 days a week over 8 hours, but, a 1 day event over a 1 hour to 4 hour event. It is not a substantial variance request.

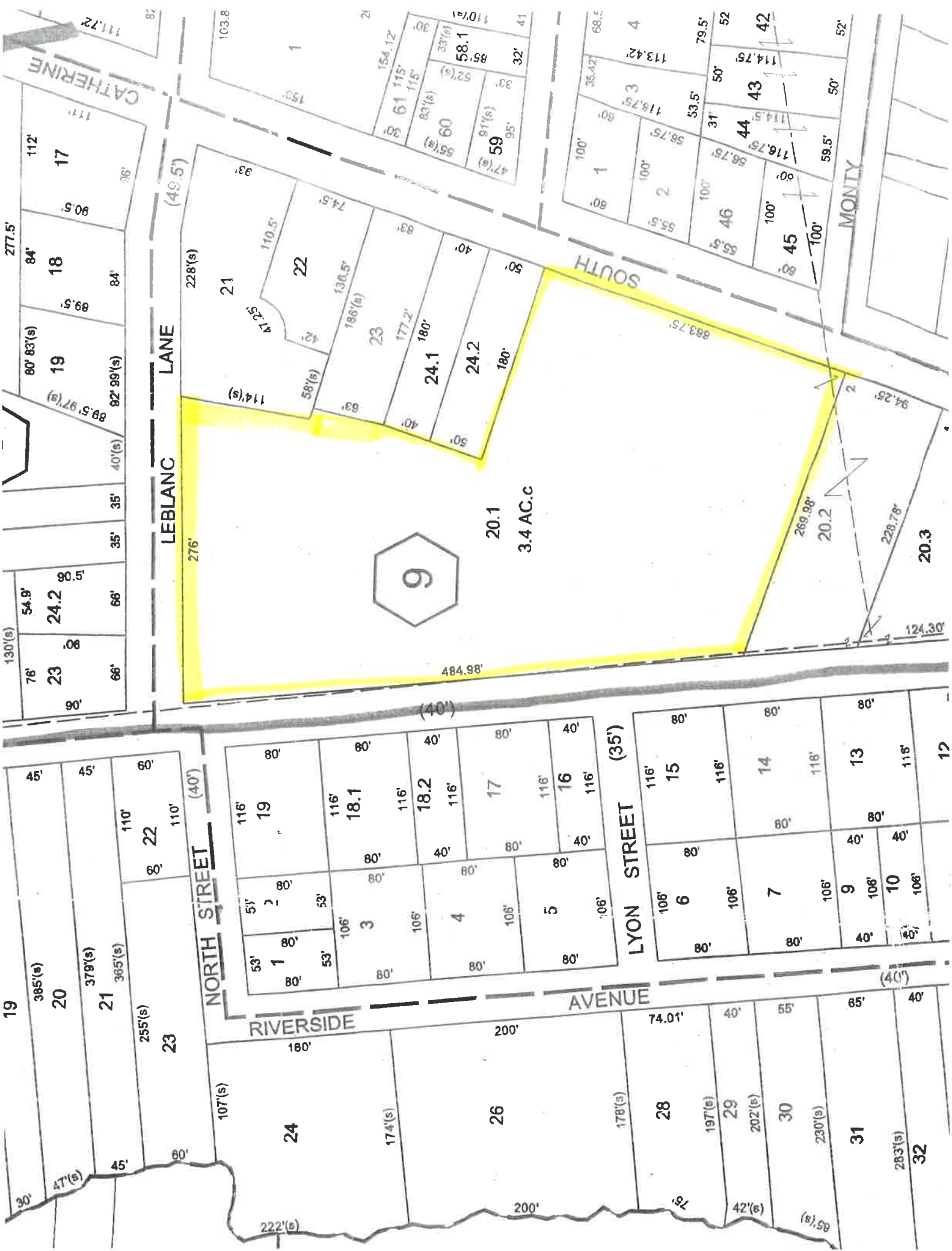
4. (A) The requested variance for the open space will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The site, already deficient of the open space, has a significant exposure to the public with the current uses. The current uses provide a positive environment to the community.

(B) The requested variance for parking on the remaining lands, Lot No. 1, will not have an adverse effect or impact on the physical environmental conditions in the neighborhood. The site has maintained the parking area for many years. Over the years, the need for the number of parking stalls has diminished for the site, in part because of the declining number of parish members.

5 (A) The deficient open space was non-conforming prior to the request for a subdivision review. The project created a new lot, Lot No. 1 that meets the current zoning requirements. Lot No. 1 is intend to be sold as a residential lot for private ownership. The remaining lands, is in a better position to absorb the open space deficiency under the Church ownership. The open space deficiency for Lot No. 1, remaining lands, is self created.

(B) The parking variance requested is not a self-created difficulty. The number of parking stalls needed, relative to the past uses, has diminished over the years. The current parking use on the remaining lands adequately meet the needs of the Church.





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## Short Environmental Assessment Form

### Part 1 - Project Information


#### Instructions for Completing

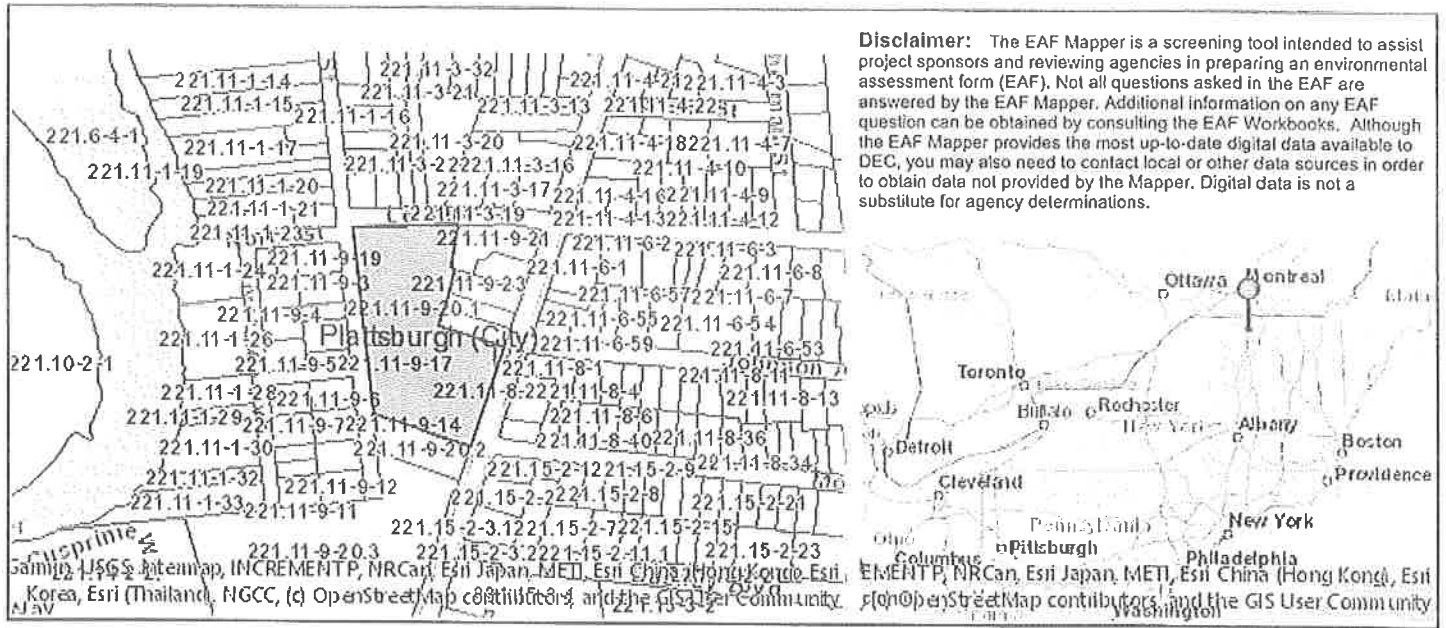
**Part 1 -- Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Notre Dame Des Vistiores of Plattsburgh Subdivision 2022			
Project Location (describe, and attach a location map): 4919 South Catherine Street, City of Plattsburgh, Clinton County, NY			
Brief Description of Proposed Action: Applicant proposes to create a 16,555 sq.ft. parcel that will include the existing Rectory building with attached garage and subdivide off from the existing Church parcel with the intent to convey the Rectory building.			
Name of Applicant or Sponsor: Fr. Kevin McEwan for OLVA/Notre Dame Des Vistiores Of Plattsburgh Church		Telephone: E-Mail:	
Address: 4919 South Catherine Street			
City/PO: Plattsburgh		State: NY	Zip Code: 12901
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ 0.38 acres b. Total acreage to be physically disturbed? _____ 0 acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ 3.02+/- acres			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input checked="" type="checkbox"/> Other(Specify): Church and Senior Residential Facilities <input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?  b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
<input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input type="checkbox"/>	<input type="checkbox"/>
_____		
_____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____		
_____		
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____		
_____		
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
_____		
_____		
<b>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor/name: <u>Fr. Kevin McEwan for OLVA/Notre Dame Des Victoires Church</u> Date: <u>9/20/22</u>		
Signature: <u></u> Title: <u>Church Administrator</u>		



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	Yes

Project: 2340

Date:

*Short Environmental Assessment Form*  
*Part 2 - Impact Assessment*

**Part 2 is to be completed by the Lead Agency.**

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Project: \_\_\_\_\_

Date: \_\_\_\_\_

### *Short Environmental Assessment Form Part 3 Determination of Significance*

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

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 Name of Lead Agency

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 Date

---

 Print or Type Name of Responsible Officer in Lead Agency

---

 Title of Responsible Officer

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 Signature of Responsible Officer in Lead Agency

---

 Signature of Preparer (if different from Responsible Officer)

**PRINT FORM**