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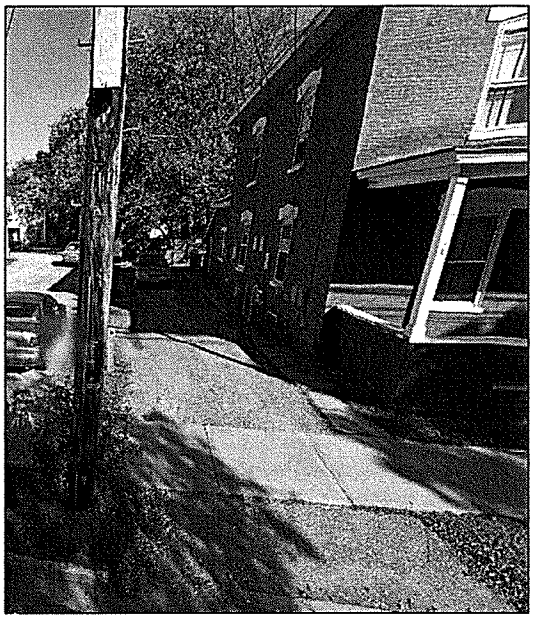
MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: May 3, 2016
RE: ZP16-0888CA; 100-102 North Union Street



Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

File: 16-0888CA / Appeal
Location: 100-102 North Union Street
Zone: RM **Ward**: 2C
Date application accepted: February 29, 2016
Date of denial: March 10, 2016
Applicant/ Owner: Josh Typrowicz-Cohen (purchased 2/3/2016)
Request: Appeal of an administrative denial to convert 200 sq. ft. of an existing attached shed to living space.

Staff site visit: March 31, 2016

Reasons for Denial:

1. **Section 5.2.5 Setbacks**
   (b) Exceptions to Yard Setback Requirements:
   4. Accessory Structures and Parking Areas.
   Accessory structures no more than fifteen feet in height, parking areas, and driveways may project into a required side and rear yard setback provided they are no less than five (5) feet from a side or rear property line where such a setback is required.

   The proposed parking plan on the submitted site plan does not meet the required 5' minimum side yard setback. **Adverse finding.**

2. Scaled plan appears inaccurate (site plan scales lot width as 61'; tax maps identify lot width as 56.32'). No survey was provided to confirm parking adequacy or required setbacks on the parcel. **Adverse finding.**

3. **Article 5, Part 3: Non-Conformities**

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Applicant has asserted that the property has the required parking based upon four parking spaces "existing". For the four spaces to be a legally preexisting nonconformity, the applicant must demonstrate that the four spaces were legal prior to the ordinance requirement for setbacks (January 28, 1947) and lot coverage (1962). Applicant has not demonstrated that the parking at the site has occurred continuously in the proposed configuration during that timeframe, nor has he demonstrated any previous zoning approval for parking in that location.

Applicant's assertions regarding the 15 year statute of limitations are not relevant to this application as, even if Applicant could prove 15 years of continuous use and location, any parking spaces that fell into the 15 year statute of limitations would not be legal and could not be used toward the required parking spaces. See *In re Keenan Conditional Use,* 2009 WL 4396753 (Vt. Envtl. Ct. June 4, 2009).

4. Analysis of photographic documentation illustrates parking over property boundary lines. A property owner secured Zoning Permit 11-0343FC "to keep people from crossing drive;" providing confirmation of the problem and an attempt to cease the practice. **Adverse finding.**

Background:

- **Zoning Permit 11-0343FC**; install 6' x 6' post with galvanized link chain through it. October 2010.
- **Zoning Permit 08-1117FC**; enclose portion of backyard with s' stockade fence. August 2007.
- **Zoning Permit 97-346**; replacement of existing 2/2 wooden window sash with vinyl. Cover wooden porch trim and wood shingle siding with vinyl and aluminum. Use remains a duplex. March 1997. (Approval for window replacements only; does not include installation of vinyl siding on the front porch. Windows must be true divided light 2/2.)
- **Request for a variance**; Demolish existing garage and replace with larger structure. A variance of lot coverage and setback requirements is requested. **Denied**, May 1984.

  [The barn/garage is no longer on site. There is no permit for its removal in the electronic or paper zoning records.]

Overview: The applicant/appellant applied to convert a rear, attached rear shed to living space to expand the existing duplex by adding additional bedrooms. The permit was administratively denied as the provided parking plan encroached into a required sideyard setback, a failure to demonstrate the parking was pre-existing and could therefore be continued, and failure to meet required parking.

Recommendation: **Denial** of the appeal and uphold the administrative decision, per the following findings:

I. <u>Findings</u>

Article 3: Applications, Permits and Project Reviews

Section 3/2/2)c Certificate of Appropriateness (COA) Level I Application

Submission requirements for a COA Level I Application shall include the following as applicable:

2. Site Plan, drawn to a scale of 1:=8, 10, 16, 20, 40, or 60' of the subject property accurately indicating the location and dimensions of all existing structures, walkways, driveway, and other significant features; and all proposed changes with all dimensions; distances from the front, side and rear property lines to each proposed new structure and/or site improvement.

The applicant provided a site plan drawn 1"=10'; however there appear to be inaccuracies. The lot per tax and assessor's records is 56.32' wide while the site plan illustrates the width in excess of 60'. A concrete pad that surrounds the north side of the house is not illustrated, nor are the utility meters with protective bollards. On-site measurements define lot width between the concrete walk and the first (westerly) bollard as 11.8'; the width measurement between the walk and the 2nd bollard as 12.25'; not the 20' illustrated.

The bollard-protected utility meter restricts full width parking on the south of the driveway, the bollard and chain on the north. The location of the northerly property boundary is not known. These measurements are inconsistent with the submitted site plan, which was presented as "existing driveway/parking." **Adverse finding.**

Article 4: Zoning Maps and Districts

Table 4.4.5-3 Residential District Dimensional Standards

RM zoning district: Maximum Coverage 40%, Side yard setback 10% of lot width or average of side yard setback of 2 adjacent lots on both sides.

The site plan prepared by the applicant indicates a building footprint of 2110 sf and an "existing driveway" of 70' x 20'. The total area (excluding walkways) is 3510 sf, or 66.71% lot coverage. This exceeds allowable base coverage for the zoning district of 40%.

The parking area/driveway is illustrated on the site plan as up to the northerly (side yard) property line. There is not sufficient evidence that this is a preexisting nonconformity, and therefore presents an encroachment into a required sideyard setback. The applicant did not present a survey to support the accuracy of his plan. **Adverse finding for coverage and setback compliance.**

Section 4.4.5 (d) 1. Setbacks

A. Encroachment for Residential Driveways

For purposes of allowing existing, developed, nonconforming lots containing single family homes to create a driveway and provide a maximum of two tandem parking spaces, driveways may encroach into a required sideyard setback up to the property line with DRB approval.

This is not a single family home, but a duplex. This standard does not apply.

Article 5: Citywide General Regulations

Section 5.2.5 Setbacks

(a) Exceptions to Yard Setback Requirements

4. Accessory structures and parking areas.

Accessory structures no more than fifteen (15) in height, ***parking areas, and driveways*** *may project into a required side and rear yard setback* ***provided they are no less than five (5) feet from a side or rear property line*** *where such a setback is required.*

The site plan submitted by the applicant omits a setback from the side (north) property line, and therefore presents an encroachment into a required side yard setback. **Adverse finding.**

Part 3: Non-conformities

The applicant submitted a detail copy of a 2000 aerial photograph where he asserts adequate parking is represented. The photograph does illustrate vehicles in the driveway, but they are "off-set" from each other; staggered within the access drive and therefore not representative of the parking plan submitted as pre-existing.

Staff submits photographs from the following dates:

1978: No vehicles in driveway.

2000: Three cars in driveway; northerly vehicle appears to be over the property line.

2004 (color): Two vehicles in driveway; one appears to be over the property line.

2004 (black & white): 4 cars in driveway, two over property line.

2014 Google images: single width driveway, one car.

There is no evidence that there has been dual tandem parking on this lot continuously prior to the requirement for the 5 foot setback or 40% lot coverage. Therefore, no pre-existing non-conformity may be established for the proposed parking arrangement.

This discussion is enhanced by Zoning Permit **11-0343FC,** where the property owner applied for a bollard and chain barrier fence to prevent cars from parking over the property line. This establishes a pattern of parking inconsistent with zoning requirements, and a direct action to prevent the continued disregard for property boundaries. As approved, the barrier fence narrows the driveway to approximately 12' at the widest, therefore insufficient to accommodate 2 vehicles side-by-side, as suggested in the submitted plan. [1] **Adverse finding**.

<u>Article 8: Parking</u>

Section 8.1.7 Non-conforming Residential Structure

Where additions or converson to existing residential structures within a Neighborhood or Shared Use Parking District add living space but do not add dwelling units, and such sites do not currently meet the parking standards of Section 8.1.8, one parking space shall be provided for each additional room.

100-102 North Union Street is within the Neighborhood Parking District. The parking requirement for two residential units is four vehicles.

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[1] A site visit 3/31/2016 resulted in the following measurements: From the edge of the pavement on the north of the residence to the first post: 11.81'. From the edge of the pavement to the 2nd post, 12.25'. There are metal bollards protecting utility connections on the north side of the dwelling, so vehicles cannot get closer to the structure.

The applicant has applied to convert an attached shed to new habitable space (2 new bedrooms) for the existing duplex. There is no approved site plan that confirms satisfaction of the required parking. The applicant is required to demonstrate four parking spaces legally exist by prior approval or a legally preexisting nonconforming status.

The driveway entrance is single width access as determined from photographs and a site visit. The garage in the 1984 variance request is now gone (no permits on file.) The site is extremely constricted, and there is no evidence of an organized parking plan. Orthophotographs illustrate a scattered pattern of parking, frequently appearing to be over a property boundary.

Per this standard, the applicant must add a parking space for each room added until the full parking requirement is met (a total of 4 parking spaces.) The submitted site plan suggests that the existing pattern of parking is paired tandem parking spaces. Although this would meet the required number of spaces, the plan encroaches into a required side yard setback. Applicant's assertion that the encroachment is a preexisting nonconformity isis not supported in photodocumentation. **Adverse finding.**

Table 8.1.8-1, Minimum Off-Street Parking

Requirements in the Neighborhood Parking District are 2 parking spaces per unit. For a duplex, 4 parking spaces are required.

There is no approved site plan that includes parking definition on file for this property. From photographs, parking appears to have been haphazard, with evidence that vehicles were scattered in the rear or parking over the northerly property line. The most recent permit issued was for a bollard-and-chain fence next to the driveway, with notations on the plan:

"To keep people from crossing drive", "Student neighbors", and "Cars parking here NOT MINE." This barrier proposal was approved October 28, 2010, and gives clear definition that vehicles crossing the property line had been a problem. It also effectively terminated any claim that the suggested parking pattern was a preexisting nonconformity, as there is no longer adequate space for vehicles parked as 2 pair in tandem. The parking plan cannot be established as existing non-conforming, and the parking deficient for the parcel per the standards of the ordinance. **Adverse finding.**

II. Recommendation

Uphold administrative denial of zoning permit 16-0888CA per the adverse findings above.