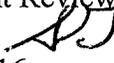


Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin 
DATE: April 19, 2016
RE: 15-0922CA; 451 Appletree Point Road (Remand)

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.

Zone: WRL Ward: 4N

Owner/Applicant: Al Senecal / Brad Rabinowitz

Request: Remand review – demo existing structures, construct new single family home with accessory apartment and associated site improvements. Lot line adjustment included.

Applicable Regulations:

Article 3 (Applications and Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking), Article 10 (Subdivision)

Background Information:

On July 21, 2015, the applicant received approval to demolish the existing camp building and to construct a new duplex and related site improvements. That approval was appealed to the VT Superior Court Environmental Division. Prior to trial, the parties arrived at an agreement for a scaled back proposal. The matter has been remanded to the Development Review Board for final approval.

Revisions include:

- Change from duplex to single family home with accessory apartment
- Reduce size of building footprint by ~ 5%
- Move building back another 5' from the front property line (30' instead of 25' setback)

Previous zoning actions for this property are as follows:

- 7/21/15, Approval of demolition, construction of new duplex and related site improvements
- 7/1/14, Approval of front yard setback variance
- 7/26/04, Approval of 2-lot subdivision
- 1/13/04, Denial of 3-lot subdivision

Recommendation: Consent approval as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

1. Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;

The proposed development will require municipal water and sewer service. A municipal water line already runs by the property. A new pump station and force main will be installed to connect to the municipal wastewater system. Review and approval by the Department of Public Works will be required. A State of Vermont wastewater permit has already been obtained. **(Affirmative finding as conditioned)**

2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;

The property is located on the east-facing side of Appletree Point within the Waterfront Residential Low Density (WRL) zone. There is an existing vacant camp structure on the property and several homes along the western side of the point; however, much of the peninsula is undeveloped. As with the Residential Low Density zone, the WRL zone is primarily intended for low density residential development in the form of detached single family homes and duplexes. The WRL zone is distinguished by its close proximity to the lake and a greater consideration of public views from the lake and stormwater runoff. The proposed single family home with accessory apartment is consistent with the intent of the WRL zone. The proposed home will be set back 35' – 45' from the 100' lakeshore elevation, and much of the existing vegetation along the lakeshore will be retained. Stormwater management has been reviewed and approved by the Stormwater Administrator. **(Affirmative finding)**

3. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;

The proposed single family home with accessory apartment is not expected to generate any such nuisance impacts. **(Affirmative finding)**

4. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies.

The new home and apartment will generate additional vehicular traffic; however, impacts will be minimal. Traffic impact fees will be paid to help offset what impacts there are. **(Affirmative finding as conditioned)**

5. The utilization of renewable energy resources;

The utilization of alternative energy has not been incorporated into this proposal. The proposed construction does not preclude such utilization in the future. **(Affirmative finding)**

(b) Major Impact Review Standards

(Not applicable)

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

Nothing in this revised proposal is expected to generate offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

2. Time limits for construction.

The project is to be constructed within the standard 2-year timeframe. **(Affirmative finding)**

3. Hours of operation and/or construction to reduce the impacts on surrounding properties.

Hours of operation do not apply to the proposed residence. No construction schedule is proposed. Other projects with nearby residences have days and hours of construction limited to Monday-Friday 7:00 am – 6:00 pm. Limited work may extend outside this schedule to extend to Saturday 9:00 AM – 5:00 PM only after obtaining approval from the Development Review Board through correspondence rather than a scheduled hearing. No construction on Sunday. **(Affirmative finding as conditioned)**

4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

5. Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

See recommended conditions of approval.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Waterfront Residential Low Density (WRL)

The subject property is located in the WRL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The proposed single family home with apartment is consistent with this purpose. **(Affirmative finding)**

(b) Dimensional Standards & Density

The property, with the lot line adjustment with neighboring 465 Appletree Point Rd, will have 150' of road frontage and 22,043 sf area. Both well above the 75' and 9,900 sf, respectively, needed for a single family home in the Larger Lot Overlay that affects this property.

The 1 primary residential unit proposed on the 0.5 acre lot is acceptable. 4.4 dwelling units/acre are allowed within the Larger Lot Overlay. Accessory apartments do not count towards density.

Proposed lot coverage will decline slightly to 19.4%, well below the 35% limit permitted.

The proposed front yard setback has been pushed back to 30'. Side yard setbacks vary between 15' and 17.5' with the slightly tapered lot. As proposed, the home is 40' at its closest to a side property line. There is no rear yard setback; rather, there is a waterfront setback. The standard waterfront setback requirement is 75'; however, as noted during review of the July 2014 variance request, there are exceptions as noted in (d) *District Specific Regulations*, 1 below. As proposed, the new home would be set back an acceptable 35' – 45' from the 100' elevation, depending on the curvature of the shoreline.

The multiple roof planes and dormers make a clear height measurement to the midpoint of the roof rise elusive. It appears to be about 20.' The very peak of the structure is 33', below the 35' height limit. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The proposed single family home is a permitted use in the WRL zone. The accessory apartment, as new construction, triggers conditional use review. Conditional use criteria are addressed under Article 3 above. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

B. Encroachment into the Waterfront Setback.

(i) Replacement of Existing Structure

The existing camp structure on the subject property sits about 17' from the 100' lakeshore elevation. As noted above, the standard setback requirement is 75.' This provision allows replacement structures to encroach into the standard 75' setback so long as the area or extent of encroachment does not increase. As noted above, the new home will be set back 35' – 45' from the 100' elevation and is acceptable.

The area of existing structural encroachment (the camp and boathouse buildings) within the 75' waterfront setback is 1,347 sf. The proposed building area (the new home) is now 1,226 sf and remains acceptable. Note that this retention (and slight lessening) of nonconformity is further supported by Sec. 5.3.5, *Nonconforming Structures* (b) *Demolition*. This section specifically allows for demolition of nonconforming structures and replacement thereof within 1 year so long as the degree of nonconformity does not increase. Such is the case here. **(Affirmative finding)**

2. Height

No height bonuses are being sought. **(Not applicable)**

3. Lot Coverage

No lot coverage bonuses are being sought. **(Not applicable)**

4. Accessory Residential Structures and Uses

The attached garage has a 275 sf footprint; less than 50% of the main home's 1,226 sf footprint. **(Affirmative finding)**

5. Residential Density

The home is subject to the functional family provisions of the Comprehensive Development Ordinance. **(Affirmative finding)**

6. Uses

No neighborhood commercial use is included in this proposal. **(Not applicable)**

7. Residential Development Bonuses

No development bonuses are being sought. **(Not applicable)**

Sec. 4.5.4, Natural Resource Protection Overlay (NR) District

(c) District Specific Regulations: Riparian and Littoral Conservation Zone

The subject property is wholly affected by the Riparian and Littoral Conservation Zone (250' width from the 100' lakeshore elevation). This overlay zone limits the clearing of vegetation and new stormwater outfalls. As proposed, some dead or dying trees will be removed, but most of the existing vegetation along the lakeshore will be retained. The project plans clearly depict vegetation to be removed or retained. No new stormwater outfalls are proposed. A basic stormwater management plan has been reviewed and approved by the Stormwater Administrator (see Sec. 5.5.3). The Conservation Board reviewed the prior duplex proposal under this criterion and recommended project approval as proposed. **(Affirmative finding)**

(f) District Specific Regulations: Special Flood Hazard Area

This lakeshore property is partially affected by the special flood hazard area (SFHA). All areas along the lakeshore under the 102' elevation are within the SFHA. Except for a new stairway to the water, none of the proposed construction will take place within the SFHA. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

(Not applicable)

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.4.5, Accessory Dwelling Units

(a) Accessory Units, General Standards/Permitted Uses:

Where there is a primary structure on a lot which exists as an owner-occupied single family residence, one accessory dwelling unit, that is located within or appurtenant to such single family dwelling, shall be allowed as a permitted use if the provisions of this subsection are met. An accessory dwelling unit means an efficiency or one bedroom apartment that is clearly subordinate

to the primary dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. No accessory unit shall be inhabited by more than 2 adult occupants. An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation. Additionally, there must be compliance with all the following:

1. *The property has sufficient wastewater capacity as certified by the department of public works;*
Sufficient wastewater capacity is available. A letter of capacity has been issued by the Department of Public Works. **(Affirmative finding)**
2. *The unit does not consist of more than 30 percent of the total habitable floor area of the building, inclusive of the accessory dwelling unit;*
The total area of the proposed residence is 1,827 sf. The 1-bedroom apartment is 530 sf (22.5% of the entire area). **(Affirmative finding)**
3. *Applicable setback and coverage requirements are met;*
See Sec. 4.4.5 (b).
4. *One additional parking space which may be legally allocated to the accessory unit must be provided for the accessory unit; and,*
As proposed, there is room for 3 or 4 vehicles to park onsite. One of these spaces will serve the accessory apartment. **(Affirmative finding)**
5. *A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit prior to the issuance of the certificate of occupancy for the unit. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.*
This requirement is a condition of permit approval. **(Affirmative finding as conditioned)**

(b) Conditional Use Approval for Accessory Units:

If any of the following are also proposed, conditional use approval, as well as development review provisions of Article 6 shall be required:

1. *A new accessory structure;*
(Not applicable)
2. *An increase in the height or habitable floor area of the existing dwelling;*
New construction is proposed, thereby triggering conditional use review. See Article 3.
(Affirmative finding)
3. *An increase in the dimensions of any parking area;*
(Not applicable)

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

No revisions to outdoor lighting have been made. As previously approved, new outdoor lighting consists of building mounted fixtures to illuminate building entries and post and bollard fixtures to illuminate the circulation area and new stairs to the lakeshore. Locations are noted, and cutsheets have been provided. All are acceptable residential fixtures generating low levels of illumination. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

No revisions to stormwater management or erosion control have been made. As more than 400 sf of earth disturbance is proposed, a “small project erosion control” form was provided. A residential stormwater management plan was also provided. Stormwater management is basic and amounts to directing runoff onto pervious surfaces for infiltration. Both were reviewed and approved by Conservation Board and the Stormwater Administrator. Those approvals are incorporated into this permit. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Note that the project revisions do not materially affect the criteria of Article 6. Except for correcting reference to duplex (now single family home with accessory apartment) and revised dimensional numbers, these findings are unchanged from the original duplex approval.

Part 1, Land Division Design Standards

No land division is included in this proposal; however, a lot line adjustment between this property and neighboring 465 Appletree Point Road is proposed. The proposed adjustment is of the common side property boundary and will not affect any of the criteria under this section. **(Affirmative finding)**

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

This lakeshore site is lightly wooded. Most of the trees are concentrated along the shoreline. Some tree removal is proposed as noted on the landscape and planting plan; however, a number of the existing trees will remain. The lakeshore itself is a significant natural feature and is protected by the riparian and littoral conservation zone. This overlay limits tree clearing and also requires stormwater management. The stormwater management plan has been reviewed and approved by the Conservation Board and the Stormwater Administrator. **(Affirmative finding)**

(b) Topographical alterations

The property slopes gently towards the lake and then drops significantly down to the lake along the immediate shoreline. The site of the proposed home is generally flat and will remain so. A soils analysis has been done, and no blasting is included in this proposal. Removal of the existing camp and boathouse along the shoreline will require some grading. That work will result in grades reflecting the existing grades on either side of these structures. **(Affirmative finding)**

(c) Protection of important public views

The subject property is not affected by any identified public view corridor. This criterion is typically applied to developments fronting such corridors. An individual interested in this

application has asserted that, in light of the design review considerations of the WRL zone, views of the construction from the lake should be considered. This criterion is written broadly enough that that assertion may be well based. The proposed home will indeed be visible from the lake. Virtually any construction would be. The new home will be set back and at least partially behind lakeshore vegetation. The existing camp structure is set closer to the lakeshore with little vegetative screening. **(Affirmative finding)**

(d) Protection of important cultural resources

The property is within an archaeologically sensitive area; however, there are no specifically identified archaeological sites on the property. This archaeological sensitivity stems from the property's lakeshore location. If, during construction, artifacts are unearthed, it is the applicant's responsibility to stop earthwork and to contact the Vermont Division for Historic Preservation for further guidance. **(Affirmative finding as conditioned)**

(e) Supporting the use of alternative energy

There is no indication that the proposed home will utilize alternative energy. Solar energy utilization is encouraged. In any event, the home will not adversely impact the actual or potential use of alternative energies by neighboring properties. **(Affirmative finding)**

(f) Brownfield sites

The subject property is not an identified brownfield. **(Affirmative finding)**

(g) Provide for nature's events

As total lot coverage will exceed 2,500 sf, a residential stormwater plan has been provided. All of the impervious surface associated with this project is disconnected from the municipal stormwater system, and stormwater will infiltrate into the ground as it does now. As noted above, the city's stormwater program has reviewed the proposed stormwater management.

The front entrance into the home is sheltered, and ample room is available onsite for seasonal snow storage. **(Affirmative finding)**

(h) Building location and orientation

The proposed residence is relatively far from existing homes on Appletree Point Road (~ 360' from 395 Appletree Point Rd and ~ 220' from 440 Appletree Point Rd). It will be set 30' from the road – the same front setback as that of the to-be-built neighboring home at 465 Appletree Point Road. Its main entrance faces the road and is clearly identifiable. The small front porch accentuates the primary entrance. The secondary entrance (into the 2nd unit) is set off to the side but also faces the road. The garage is set back more than the minimum required 25' from the road and is set behind the front plane of the home. The width of the garage is 12' or 20% of the total building width of 58'. The width of the garage complies with the maximum permissible 35% of the width of the entire structure. **(Affirmative finding)**

(i) Vehicular access

A private driveway will provide adequate access to the home. It will access the attached garage and surface parking to the side. A turn-around is provided in front of the home; however, it remains behind the front yard setback. **(Affirmative finding)**

(j) Pedestrian access

A stone front walkway is proposed and will connect to the private road. **(Affirmative finding)**

(k) Accessibility for the handicapped

No handicap accessibility is evident or required with this proposal. **(Affirmative finding)**

(l) Parking and circulation

Up to four parking spaces are provided; three in the driveway and one in the attached garage. These spaces meet the minimum parking requirement of 2 spaces for the primary dwelling and 1 for the apartment. Circulation is simple with access provided to the garage and surface parking spaces. **(Affirmative finding)**

(m) Landscaping and fences

Clearing limits are depicted. Much of the existing vegetation will be retained. New landscaping is proposed and consists of a variety of shrubs and one new peach tree. Much of the new landscaping is proposed along the roadside and will provide some buffering between the new home and the road. Given the close proximity of the driveway turn-around to the road, additional landscaping between it and the road is necessary to provide screening between the two.

No new fencing is proposed; however, a boulder wall will be installed to help shore up the slope where the existing camp will be removed. Topographic information indicates the bottom of this wall will be above the 102' elevation and out of the lake's flood zone. New concrete stairs will provide access to the lakeshore. **(Affirmative finding as conditioned)**

(n) Public plazas and open space

No public plaza or open space is included or required in this proposal. **(Not applicable)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

New utility lines must be buried. No mechanical equipment is depicted on the plan; however, the applicant has noted that an AC compressor will be located behind the building. This item must be depicted on the site plan. **(Affirmative finding as conditioned)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The overall size of the home has been reduced. As revised, the massing, height, and scale of the proposed home remain consistent with that of existing homes along Appletree Point Road. The proposed home affords ample living space while staying within the constraints established by the existing structures within the lakeshore setback. The front façade includes a well-defined symmetrical front entry. Varying rooflines, dormers, and eave projections serve to articulate separate volumes within the overall structure. **(Affirmative finding)**

2. Roofs and Rooflines

As noted above, the proposed structure incorporates numerous rooflines. Generally, however, it may be seen as a gable roof, particularly as viewed from the road. The proposed roof is appropriate as part of this residential building. **(Affirmative finding)**

3. Building Openings

The primary front entrance is clearly articulated and is sheltered by a small front porch. Fenestration is appropriately scaled and placed in consistent rhythm throughout the building. **(Affirmative finding)**

(b) Protection of important architectural resources

The seasonal camp structure proposed for demolition is not historically significant. Its removal will not adversely impact Burlington's wealth of historic buildings. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

As noted above, the front entry to the proposed home is clearly articulated. There are no large blank walls or expanses of roof. Fenestration, roof variations, and architectural detailing work successfully to provide an active and inviting street elevation. **(Affirmative finding)**

(e) Quality of materials

The proposed home will be clad in cedar shingles with tongue-and-groove siding accents. Painted white AZEK trim is noted. Asphalt shingles will be installed. Combination fiberglass and wood windows will be installed. Railing materials are composite. The materials proposed are of acceptable quality and durability. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed building must comply with the current energy efficiency standards of Burlington and the State of Vermont. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

No advertising is included in this proposal.

(h) Integrate infrastructure into the building design

Utility meters will be appropriately located on a side elevation near the entrance to the apartment. **(Affirmative finding)**

(i) Make spaces safe and secure

The proposed building must comply with the city's current egress requirements. Building entries will be illuminated. **(Affirmative finding as conditioned)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the neighborhood parking district. As such, the single family home requires 2 parking spaces. The accessory apartment requires 1 parking space. All of the parking spaces will be provided onsite; 1 in the garage and 2-3 within the driveway. **(Affirmative finding)**

Article 10: Subdivision

Note that the project revisions do not materially affect the criteria of Article 10. This item remains unchanged.

No subdivision of land is included in this proposal; however, a lot line adjustment with neighboring 465 Appletree Point Rd is included. A boundary line adjustment plan clearly depicts the proposed boundary adjustment. The required endorsement block for the Administrative Officer's signature per Sec. 10.1.5, *Lot Line Adjustments*, (a) is missing. All of the signature blocks provided relate to subdivisions and should be deleted (except for the surveyor's endorsement). (**Affirmative finding as conditioned**)

II. Conditions of Approval

1. **Prior to release of the zoning permit**, revised plans shall be submitted subject to staff review and approval. Revised plans shall depict:
 - a. The proposed AC compressor; and
 - b. The required Administrative Officer's signature block per Sec. 10.1.5.
2. **Prior to release of the zoning permit**, the new pump station and force main shall be reviewed and approved by the Department of Public Works.
3. This permit incorporates the EPSC and Stormwater Management approvals issued by the Stormwater Administrator on April 3, 2015.
4. Days and hours of construction shall be limited to Monday-Friday 7:00 am – 6:00 pm. Limited work may extend outside this schedule to extend to Saturday 9:00 AM – 5:00 PM only after obtaining approval from the Development Review Board through correspondence rather than a scheduled hearing. No construction on Sunday
5. In the event that artifacts are uncovered during excavation, it is the applicant's responsibility to contact the Vermont Division for Historic Preservation for further guidance.
6. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
7. A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit **prior to the issuance of the certificate of occupancy** for the unit. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.
8. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Planning & Zoning Department the impact fee as calculated by staff based on the net new square footage of the proposed development.
9. Standard permit conditions 1-15.