

## Department of Planning and Zoning

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### MEMORANDUM

To: Development Review Board  
From: Ryan Morrison, CFM, Associate Planner  
Date: October 18, 2016  
RE: ZP17-0297CA – 92-94 Hyde 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:** ZP17-0297CA  
**Location:** 92-94 Hyde Street  
**Zone:** RM **Ward:** 2C  
**Date application accepted:** September 6, 2016  
**Applicant/ Owner:** JMD Real Estate LLC / D Connolly  
**Request:** Rebuild fire damaged building

#### Background:

- **Zoning Permit 17-0059CA;** Demolish burned building. No site alterations. Approved July 15, 2016.



**Overview:** The application is to replace an existing duplex that was damaged by fire on May 18, 2016. The fire damaged structure has been demolished, and the applicant proposes to construct a new duplex of the same size, in the same footprint.

**Applicable Regulations:** Article 3 (Applications, Permits, and Project Reviews); Article 4 (Zoning Maps and Districts); Article 5 (Citywide General Regulations); Article 6 (Development Review Standards); Article 8 (Parking); Article 9 (Inclusionary and Replacement Housing.)

**Recommendation:** Certificate of Appropriateness **Consent approval**, per the following findings and conditions:

**I. Findings**

**Article 3: Applications, Permits, and Project Reviews**

**Part 3: Impact Fees**

**Section 3.3.2 Applicability**

*Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact according to Sec. 3.3.4.*

The replacement duplex will maintain the same number of dwelling units as previously existing. Not applicable.

**Article 4: Zoning Maps and Districts**

**Section 4.4.5 Residential Districts**

**(a) Purpose**

*1. The Residential Medium Density (RM) district is intended primarily for medium density residential development in the form of single-family detached dwellings and attached multi-family apartments.*

A replacement duplex is proposed. **Affirmative finding.**

**(b) Dimensional Standards and Density**

*The density and intensity of development, dimensions of building lots, the height of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:*

**Table 4.4.5-1 Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W**

**Duplex and above, RM Minimum 30' frontage, RM Minimum Lot Size – Not Applicable**  
92-94 Hyde Street is a 4,000 sf lot, with 50 feet of frontage. **Affirmative finding.**

**Table 4.4.5-2 Base Residential Density**

**Medium Density: RM, RM-W 20 units/acre**

4,000 / 43,560 (acre) = .0918 acres.

2 units / .0918 = 21.78 units; exceeds the 20 unit/acre limitation. However, Article 5, Part 3: Non-Conformities, allows for the rebuilding of a non-conforming use or structure if damaged by fire, or other catastrophe. Refer to Article 5, Part 3 below. **Affirmative finding.**

**Table 4.4.5-3 Residential District Dimensional Standards**

*Maximum Lot Coverage – 40%*

*Setbacks: Front – Average of 2 adjacent lots on both sides +/- 5 feet; Side – 10% of lot width or ave. of side yard setback of 2 adjacent lots on both sides; Rear – 25% of lot depth but in no event less than 20’.*

*Maximum Height – 35 feet*

Prior to the fire damage, and subsequent building demolition, the lot coverage totaled 51.5%. The applicant proposes to maintain the 51.5% lot coverage by rebuilding the duplex structure in the same footprint, and maintaining the existing driveway footprint. The setbacks are proposed to remain as previously existing, which are: front 5’; south side 13’; north side 13’; and rear 31’. The top of the second floor will have an approximate elevation of 17’, and the top roof line will be at an elevation of 31’. **Affirmative finding.**

**(c) Permitted and Conditional Uses**

A duplex is a permitted use per Appendix. A – Use Table – All Zoning Districts.

**(d) District Specific Regulations**

*1. Setbacks*

*A. Encroachment for residential driveways*

Not applicable.

*B. Encroachment into the Waterfront Setback*

Not applicable.

*2. Height*

*A. Exceptions in the Waterfront RM District*

Not applicable.

*3. Lot Coverage*

*A. Exceptions for Accessory Residential Features*

*In the RL, RL-W, RM and RM-W districts, an additional ten (10) percent of lot coverage above the otherwise applicable limit may be permitted for the following amenity features accessory to residential uses provided that such features shall at no time be enclosed or be used for parking: decks, patios, porches, terraces, tennis or other outdoor game courts, swimming pools and swimming pool aprons, walkways, and/or window wells.*

The open front porch and walkway in the rear would be considered under the 10% bonus. However, the previous lot coverage of 51.5% exceeds both the 40% standard allowance and the additional 10% lot coverage bonus. The replacement duplex structure is proposed to maintain the same footprint, resulting in the retention of 51.5% lot coverage. Article 5, Part 3: Non-Conformities (below) would allow the non-conforming lot coverage to be maintained with the proposed reconstruction of the duplex. **Affirmative finding.**

*4. Accessory Residential Structures and Uses*

Not applicable.

5. *Residential Density*

A. *Additional Unit to multi-family*

Not applicable.

B. *Additions to Existing Residential Structures*

No additions are proposed. Not applicable.

C. *Residential Occupancy Limits*

*In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.*

The residential occupancy provisions of the ordinance will apply to each unit of the duplex.

**Affirmative finding as conditioned.**

6. *Uses*

A. *Exception for Existing Neighborhood Commercial Uses*

Not applicable.

7. *Residential Development Bonuses*

No bonuses are sought. Not applicable.

**Article 5: Citywide General Regulations**

**Part 1: Uses and Structures**

**Section 5.1.1 Uses**

**(c) Permitted Uses**

*A permitted use is allowed as of right in any district under which it is denoted by the letter “Y” in Appendix A – Use Table – All Zoning Districts.*

Appendix A – Use Table – All Zoning Districts lists ‘Attached Dwellings – Duplex’, as a permitted use in the RM zone. **Affirmative finding.**

**Section 5.1.2 Structures**

**(b) Preexisting Non-conforming Structures**

*Pre-existing structures that do not conform to the requirements of this ordinance shall be subject to the provisions of Sec. 5.3.5.*

See Sec. 5.3.5 below.

**Part 2: Dimensional Requirements**

**Section 5.2.1 Existing Small Lots**

Not applicable.

**Section 5.2.2 Required Frontage or Access**

Not applicable.

**Section 5.2.3 Lot Coverage Requirements**

The property had a total lot coverage of 51.5%, exceeding the 40% maximum, plus the 10% bonus lot coverage, allowance. The proposal will see the construction of a replacement duplex structure within in the same footprint as the recently fire damaged/demolished duplex structure.

Sec 5.3.8 (below) allows a non-conforming use to be rebuilt, as long as it does not expand in size or intensity beyond its extent prior to the catastrophe. **Affirmative finding.**

**Section 5.2.4 Buildable Area Calculation**

Not applicable.

**Section 5.2.5 Setbacks**

The rebuilt structure will be rebuilt in the same footprint, and utilize the same setbacks as before. **Affirmative finding.**

**Section 5.2.6 Building Height Limits**

The rebuilt structure will have a maximum height of 31', less than the 35' maximum allowance. **Affirmative finding.**

**Section 5.2.7 Density and Intensity of Development**

No change from existing use and intensity. The property will remain a duplex. **Affirmative finding.**

**Part 3: Non-Conformities**

**Section 5.3.4 Nonconforming Uses**

**(a) Changes and Modifications**

Not applicable.

**(b) Discontinuance**

*A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer. An extension to this time limit may be granted by the DRB after a public hearing and on the basis of documented evidence of a continuous good faith effort to re-establish the nonconforming use.*

The fire damage occurred on May 18, 2016. The applicant will have until May 17, 2017 to complete the reconstruction, or request a time extension. See also Sec. 5.3.8 below.

**Affirmative finding as conditioned.**

**Section 5.3.5 Nonconforming Structures**

See Sec. 5.3.8 below.

**Section 5.3.6 Nonconforming Lots**

See Sec. 5.3.8 below.

**Section 5.3.7 Nonconforming Signs**

Not applicable.

**Section 5.3.8 Rebuilding After Catastrophe**

*If the structure housing a nonconforming use or a nonconforming structure is damaged by fire, explosion, or other catastrophe, and no government investigation determines that the damage*

resulted from the owner's intentional conduct or gross negligence, the use may be restored or the structure rebuilt subject to the following provisions:

- a) *A zoning permit shall be obtained;*

The applicant is applying for a zoning permit. **Affirmative finding.**

- b) *Any restoration or rebuilding which results in a modification of exterior features or to the site plan shall be subject to the provisions of Art. 3, Part 4 – Site Plan and Design Review where applicable;*

The reconstruction will see very minor differences between the original building and the replacement building, mainly with regard to a slight decrease in the overall number of windows. Because the property is within the Design Review District, it is subject to the Design Review standards of Art. 3, Part 4, as well Article 6. **Affirmative finding.**

- c) *A nonconforming use shall not be expanded in size or intensity beyond its extent prior to the catastrophe. If a nonconforming use is relocated and becomes operational in an area where it is a permitted use as a result of a catastrophe, it shall not be reestablished as a nonconforming use;*

The applicant proposes to rebuild the duplex structure in the same footprint as the previous structure, maintaining the previously existing lot coverage amount of 51.5%. **Affirmative finding.**

- d) *Noncompliance, in terms of dimensional regulations or parking requirements, shall not be increased beyond what existed prior to the catastrophe and, where physically possible, shall come into compliance;*

The applicant proposes to maintain the same building footprint, driveway, and setbacks as was previously existing. The property, with its existing 10' x 55' driveway, does not provide for the minimum number of 4 parking spaces. However, if its area were to be enlarged to accommodate the minimum parking requirement, lot coverage would be increased further beyond the allowed amount. The application, overall, does not increase nonconformities. **Affirmative finding.**

- e) *If the structure is a nonconforming non-residential structure, determined to be 50% or more destroyed as determined by the City's building inspector, any reconstruction must be in full conformity with then existing zoning regulations, except that a building that is listed or eligible for listing on the National or State Registers of Historic Places may be reconstructed in accordance with the provisions of Secretary of the Interior's Standards for Rehabilitation, where such reconstruction is approved pursuant to the requirements of Art. 3, Part 5 Conditional Use Review;*

Not applicable. The structure is residential.

and

- f) *Such restoration or reconstruction shall be completed within one year after such catastrophe unless extended in accordance with Sec. 5.3.4(b).*

The fire damage occurred on May 18, 2016. The applicant will have until May 17, 2017 to complete the reconstruction, or obtain a time extension from the DRB, in accordance with Sec. 5.3.4 (b). **Affirmative finding as conditioned.**

**Section 5.4.9 Brownfield Remediation**

Not applicable.

**Section 5.5.1 Nuisance Regulations**

No part of this application suggests the introduction of impacts deemed to be in conflict with applicable nuisance regulations and performance standards pursuant to the requirements of the Burlington Code of Ordinances. **Affirmative finding.**

**Section 5.5.2 Outdoor Lighting**

Information on outdoor lighting has not been submitted. The project will be required to comply with the general outdoor lighting standards set forth in Sec. 5.5.2 (e). **Affirmative finding as conditioned.**

**Section 5.5.3 Stormwater and Erosion Control**

*All new development and redevelopment projects that require a zoning permit shall be required to demonstrate compliance with the standards in Article 3, Stormwater & Erosion Control of Chapter 26 of the City Code of Ordinances: Wastewater, Stormwater, and Pollution Control.* The project shall demonstrate compliance with stormwater and erosion control requirements. **Affirmative finding as conditioned.**

**Section 5.5.4 Tree Removal**

Not applicable.

**Article 6: Development Review Standards**

**Part 1: Land Division Design Standards**

Not applicable.

**Part 2: Site Plan Design Standards**

**Sec. 6.2.2 Review Standards**

**(a) Protection of Important Natural Features:**

There are no important natural features on the subject property. Not applicable.

**(b) Topographical Alterations:**

There will be no topographical alterations to the property as a result of the proposed reconstruction. Not applicable.

**(c) Protection of Important Public Views:**

There are no protected views from this property. Not applicable.

**(d) Protection of Important Cultural Resources:**

*Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Archeological sites likely to yield information important to the city's or the region's pre-history or history shall be evaluated, documented, and avoided whenever feasible. Where the proposed development involves sites*

*listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8(b).*

The damaged structure was not listed on either the State or National Register, nor has it been identified as historically sensitive in any surveys or research documents. Not applicable.

**(e) Supporting the Use of Renewable Energy Resources:**

No part of this application will prevent the use of solar, wind, water, geothermal or other alternative or renewable energy resources. **Affirmative finding.**

**(f) Brownfield Sites:**

None identified. Not applicable.

**(g) Provide for nature's events:**

*Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.*

*Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.*

As noted above, an erosion prevention and sediment control plan will have to be submitted for review and approval by the Public Works Dept. as conditioned by this permit. There will be a covered front porch that should protect the building entrance from rain, snow, ice, etc. There is little room for snow storage beyond the extent of the driveway. However, the property layout leaves little option to revise or enhance snow storage. **Affirmative finding.**

**(h) Building Location and Orientation:**

The replacement structure is proposed to be situated in the same manner as previously existing. **Affirmative finding.**

**(i) Vehicular Access:**

The property will maintain its existing access from Hyde Street. The driveway dimension is 10' x 55'. **Affirmative finding.**

**(j) Pedestrian Access:**

The front porch, located 5' from the public sidewalk, will have steps on both ends. The steps on the southern end leads directly to the driveway. A landing and a short concrete walkway connects the steps on the northern end to the sidewalk. Differentiation is provided between the sidewalk and the driveway by way of a concrete sidewalk and asphalt driveway. **Affirmative finding.**

**(k) Accessibility for the Handicapped:**

The applicant will be required to meet ADA requirements as defined by the building inspector. **Affirmative finding as conditioned.**

**(l) Parking and Circulation:**

As noted, the property did not comply with the minimum 4 parking space requirement for the duplex use. The proposal to replace the fire damaged duplex structure falls under Sec. 5.3.8 – Rebuilding After Catastrophe, which, as long as existing nonconformities are not increased, allows for noncompliant structures and uses to be rebuilt to the pre-catastrophe conditions. Based on 20’ parking space lengths, the 10’ x 55’ driveway can accommodate 2 parking spaces. If the onsite parking were to be expanded, then the non-compliant lot coverage amount would increase as a result, and thus be in violation of Sec. 5.3.8 (c) which prohibits increases in existing nonconformities. **Affirmative finding.**

**(m) Landscaping and Fences:**

Landscaping shall be used to beautify the development site and to provide specific functions and benefits to the uses and buildings on the site. No landscaping is depicted on the site plan. The site plan will have to be revised to include new landscaping in front of the addition. No new fencing is proposed. **Affirmative finding as conditioned.**

**(n) Public Plazas and Open Space:**

Not applicable.

**(o) Outdoor Lighting:**

*Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.*

See Section 5.5.2, above.

**(p) Integrate infrastructure into the design:**

Any new utility lines must be buried. There are no electric utility meters or ground-mounted mechanical equipment, depicted in the plans. If these, or other exterior equipment or machinery, are to be installed, they shall be sufficiently screened and/or setback to minimize their auditory and visual impact on the public street and neighboring properties. **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 massing and scale of the replacement structure is consistent with other structures in the neighborhood. It is a 2.5 story gable roofed structure, with a total height of 31’ to the top ridge of the gable roof. **Affirmative finding.**

**2. Roofs and Rooflines.**

A gable roof is proposed; common to residential architecture and the surrounding neighborhood. **Affirmative finding.**

**3. Building Openings**

Door and window openings are consistent with the style of residential architecture. **Affirmative**

**finding.**

**(b) Protection of Important Architectural Resources:**

*Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.*

While the fire damaged building was older than 50 years, it was not listed on the Vermont State Register of Historic Resources, or on the National Register. Not applicable.

**(c) Protection of Important Public Views:**

There are no public views from or through this property. Not applicable.

**(d) Provide an active and inviting street edge:**

The replacement structure will have a façade that is almost identical to the previous façade. The only noticeable differences between the old building and the new building appear to be one front door instead of the two front doors previously used (one for each unit), and the lack of an attic window. **Affirmative finding.**

**(e) Quality of materials:**

*All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.*

Siding on the fire damaged structure was vinyl clapboard, and the applicant proposes to use vinyl clapboard siding, with a 4" reveal, on the replacement structure. The applicant proposes to install double-hung vinyl windows and fiberglass doors. These materials are considered durable, low maintenance, and likely to extend the life cycle of the building. **Affirmative finding.**

**(f) Reduce energy utilization:**

The proposed building must comply with the city's current energy efficiency standards.

**Affirmative finding as conditioned.**

**(g) Make advertising features complementary to the site:**

No signs are proposed. Not applicable.

**(h) Integrate infrastructure into the building design:**

See Section 6.2.2. (p) above.

**(i) Make spaces secure and safe:**

Development shall meet all building and life safety code, including ingress and egress requirements as defined by the building inspector and fire marshal. **Affirmative finding as conditioned.**

**Article 8: Parking**

Parking within the Neighborhood parking district requires 2 parking spaces per unit. The property's 10' x 55' driveway is incapable of providing the minimum 4 parking spaces required for the duplex use. However, Sec. 5.3.8 allows a nonconforming use/structure to be rebuilt within one year from the date of a catastrophe, with one requirement that nonconformities not be increased. If the driveway/parking were to be increased to accommodate 4 parking spaces, the property's nonconforming lot coverage would increase as a result. What the applicant proposes will maintain the same level of nonconformities as was existing pre-fire. **Affirmative finding.**

**Article 9: Inclusionary and Replacement Housing**

**Part 2: Housing Preservation and Replacement/Demolition and Conversion**

The owner proposes replacing the fire damaged/demolished duplex unit with another duplex. There is no net loss of housing. **Affirmative finding.**

**II. Conditions of Approval**

1. **Prior to issuance of the zoning permit**, lighting spec sheets shall be submitted for review and approval by Planning and Zoning staff.
2. **Prior to issuance of the zoning permit**, a landscape plan shall be submitted for review and approval by Planning and Zoning staff.
3. **Prior to release of the zoning permit**, revised project plans shall be submitted, subject to staff review and approval. Revisions shall contain:
  - The front and rear porches identified within the building envelope.
  - The steps on the front porch and where/how pedestrians access the public sidewalk.
4. The applicant shall have one (1) year from the date of the fire (May 18, 2016) to complete the reconstruction of the duplex, or otherwise obtain an extension from the DRB, in accordance with Sec. 5.3.4 (b) and Sec. 5.3.8 (f).
5. No change in use or increase in the number of residential units is included within this review. The property will remain a duplex.
6. The occupancy of both dwelling units is limited to members of a family as defined in Article 13. Not more than four unrelated adults may occupy either dwelling unit.
7. Utilities are required to be placed underground.
8. Any utilities or mechanical machinery located on or adjacent to the exterior of the structure shall be sufficiently mitigated or screened to minimize their auditory and visual impact on the public street and neighboring properties.
9. Construction hours shall be limited to Monday – Friday from 7:00 AM – 5:00 PM. Saturday construction may be allowed upon request to the Development Review Board. No work on Sunday.
10. A state wastewater permit may be required, and will be the responsibility of the applicant to secure if needed.

11. Any encroachments into the public street right-of-way (permanent or temporary and including underground structure such as footings) will require an encumbrance permit via the Department of Public Works.
12. It is the applicant's responsibility to comply with all applicable building, life safety, and ADA requirements.
13. The applicant shall secure any associated trades permits for the interior work.
14. 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.
15. All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
16. Approval of the erosion prevention and sediment control plan shall be obtained from the Stormwater Administrator.
17. Vermont Residential Building Energy Standards apply to this project. Compliance with the standards is the Owner's responsibility. Prior to requesting a Certificate of Occupancy, a copy of a completed Vermont Residential Building Energy Standards Certificate shall be submitted with a Certificate of Occupancy (final or temporary) request, and filed in the Land Records located at the Clerk/Treasurers office in City Hall (149 Church Street). For more information, see [http://publicservice.vermont.gov/topics/energy\\_efficiency](http://publicservice.vermont.gov/topics/energy_efficiency).
18. Standard Permit Conditions 1-15 shall apply.

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