

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: March 16, 2021
RE: 21-0670CA/CU; 136 Birch Court

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: RL Ward: 7N

Owner/Applicant: Ervina Ramic

Request: Convert the lower level in the single family home to an accessory dwelling unit and use it for a 1-bedroom bed & breakfast (short term rental).

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Background Information:

The applicant is requesting approval to convert the lower level of the single family residence to a one bedroom accessory dwelling unit and utilize it as a bed and breakfast (short-term rental) use. The owner resides at the property.

Previous zoning actions for this property:

- **Zoning Permit 91-105;** construct a new home with an attached deck. Approved September 10, 1990.
- **Non-Applicability of Zoning Permit 12-0784NA;** replace exterior vinyl siding. Approved March 9, 2012.
- **Non-Applicability of Zoning Permit 20-1040NA;** installation of new exterior door on side of garage. Approved June 26, 2020.

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

I. Findings

Article 2: Administrative Mechanisms

Part 7: Enforcement

Section 2.7.8 Withhold Permit

There is one permit associated with the property that has never been closed out, and remains 'permit indeterminate'. The applicant is tasked with closing this permit before being able to obtain any future certificates of occupancy. (**Affirmative finding as conditioned**)

Article 3: Applications, Permits, and Project Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general 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 conversion of the lower floor within the existing single family home and using it as a bed and breakfast rental has no appreciable impacts on existing or planned public utilities, services, or facilities. A state wastewater permit will be needed and it is the applicant's responsibility to obtain. **(Affirmative finding as conditioned)**

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

The property is located within the residential – low density zone. The neighborhood consists of residential properties, and the subject property is located near the cul-de-sac end of Birch Court. The short term rental will serve as a place for people to stay on a short term basis. **(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;*

As noted above, the short term rental will serve as a place for people to stay within the neighborhood, albeit on a short term basis. It is not expected to generate nuisance impacts from noise, odor, dust, and the like. **(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;*

Little change in traffic is expected. Short term guests will arrive and depart within established timeframes. The property is within a short walk to North Avenue, where transit stops are available. A sidewalk exists along Birch Court, running the entire length to North Avenue. **(Affirmative finding as conditioned)**

- 5. The utilization of renewable energy resources;*

No part of this application would prevent the use of wind, water, solar, or other renewable energy resources. **(Affirmative finding)**

- 6. Any standards set forth in existing City bylaws and city and state ordinances;*

The bed and breakfast use must adhere to the life safety standards and provide payment of applicable rooms and meals taxes as per the State of Vermont. **(Affirmative finding as conditioned)**

(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.

The short term rental is not expected to produce adverse effects in need of mitigation.

(Affirmative finding)

2. Time limits for construction.

No construction timeline or phasing is included in this proposal. **(Affirmative finding)**

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

The short term rental is offered year-round. It is recommended that guest check-ins be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisances. **(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. **(Affirmative finding as conditioned)**

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.

Not applicable.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The Residential Low Density (RL) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhood’s development history.

The property consists of a single-family residence, constructed in 1990. The lower level in the home will be converted to a one bedroom accessory dwelling unit and used as a bed and breakfast use, serving short term guests. **(Affirmative finding)**

(b) Dimensional Standards and Density

Not applicable.

(c) Permitted and Conditional Uses

Accessory dwelling units are permitted uses within the RL zone. The “bed and breakfast” (short term rental) use is conditional in the zone. Owner occupancy is required, and up to 3 rooms may be let. In this case, the applicant is the owner and lives onsite. The applicant proposes to rent out the new one-bedroom accessory dwelling unit within her home to short term guests. **(Affirmative finding)**

(d) District Specific Regulations

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.4.5, Accessory Dwelling Units

(a) Accessory Units, General Standards/Permitted Uses

Where there is a principal 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 principal dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. No accessory unit shall be inhabited by more than two adult occupants. An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation.

The proposed one-bedroom accessory dwelling unit will be located in the lower level of the existing single family home. The floor plan identifies a bathroom, kitchenette, living and sleeping space. **(Affirmative finding)**

Additionally, there must be compliance with all the following:

- 1. The property has sufficient wastewater capacity as certified by the Department of Public Works; and*

The applicant will be required to secure a letter of adequate capacity from DPW for water and sewer services. **(Affirmative finding as conditioned)**

- 2. The unit does not consist of more than 900 sq. ft. or 30 percent (30%) of the gross floor area of the principal home, whichever is greater; and*

The ADU will total 720 sf in size, less than the 900 sf maximum allowance. **(Affirmative finding)**

- 3. Applicable setback and coverage requirements are met;*

Not applicable. No changes to setbacks or lot coverage are proposed.

- 4. 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.*

A condition of approval will ensure this. (**Affirmative finding as conditioned**)

(b) Discontinuance of Accessory Units

Approval of an accessory dwelling unit is contingent upon owner occupancy of either the principal or accessory dwelling unit as a primary residence. For purposes of this section, owner-occupancy means that, after the creation of the accessory unit all individuals listed on the deed for the property must reside in the principal unit or in the accessory unit. If neither the principal unit nor the accessory unit is owner-occupied as a primary residence, the approval for the accessory dwelling unit is void and the kitchen of the accessory dwelling unit must be removed within 90 days with the entirety of the property being occupied as a single unit. When an accessory unit that is the result of additional square footage and/or a new accessory structure is proposed to be removed, revised floor plans and a revised site plan shall be required to be submitted for review and approval. Furthermore, where additional square footage is added to a single family home for purposes of creating an accessory unit and the accessory unit is at any point discontinued, none of the additional square footage shall be eligible for the purposes of increasing the number of unrelated adults that may be allowed to inhabit the property.

The property is owner occupied and shall continue to be so in order for the ADU, and bed and breakfast short term rental, to remain compliant. (**Affirmative finding as conditioned**)

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

Single-family uses in the Neighborhood Parking District require 2 parking spaces. There is no parking requirement for accessory dwelling units. “Bed & Breakfast” uses, however, require 1 parking space per rental room. In this case, the home requires two spaces plus one space for the bed and breakfast room – for a total of 3 onsite parking spaces. The property has two tandem parking spaces (one space in the attached garage and one in front of the garage), and room for the third parking space to the side, within the existing driveway. (**Affirmative finding**)

II. Conditions of Approval

1. Per **Section 2.7.8, Withhold Permit**, the applicant is required to close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations.
2. **Prior to release of the zoning permit**, the applicant shall secure a letter of adequate capacity from DPW for water and sewer services.
3. The subject property must be, and remain, owner occupied as long as the accessory dwelling unit/bed and breakfast short term rental remains in operation.
4. No more than 2 adults and their minor children shall inhabit the accessory dwelling unit.
5. **Prior to the issuance of a certificate of occupancy**, 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. The reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy.
6. The short term rental must adhere to the life safety standards and provide payment of applicable rooms and meals taxes as per the State of Vermont.
7. It is recommended that guest check-ins be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
8. All guest parking shall be on-site and off-street.

9. A state wastewater permit will be required, and is the responsibility of the applicant to secure.
10. Any additional B&B room, or physical alteration, will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.
11. The applicant will have to ensure compliance with state regulations regarding short-term B&B type rentals, including but not limited to payment of required rooms and meals taxes and compliance with Division of Fire Safety standards and Health Department standards.
12. 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.
13. Standard permit conditions 1-15.