

**Department of Permitting & Inspections**

Zoning Division  
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**TO:** Development Review Board  
**FROM:** Scott Gustin & Garret King  
**DATE:** March 21, 2023  
**RE:** ZP-23-25; 15 Conger Avenue

=====  
**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-W                      Ward: 5

Owner/Applicant: Natalie von Turkovich

**Request:** Demolish existing 4 bay garage and replace with new single family residence with attached ADU.

**Applicable Regulations:**

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

**Background Information:**

The applicant is requesting approval to tear down a detached 4 bay garage and replace it with a new single family residence with an attached ADU.

The subject property is very small at just 2935.5 sf and received variance approval from the Development Review Board May 14, 2014 that allowed construction on the property even though it is less than 4,000 sf (Sec 5.2.1, *Existing Small lots*). The variance was reapproved on November 6<sup>th</sup>, 2019 and remains in effect and can be carried over to this application.

Two prior zoning permits (15-0055CA & 20-0166CA/VR) have been approved for demolition and construction of a new home on this property. Significant construction has not taken place. Existing and proposed dimensional information has varied somewhat among the applications. On such a small lot, even small variations can be significant. Dimensional information in this report is based on the professional boundary survey included in this application.

The Design Advisory Board reviewed this application on February 28, 2023. At the time of their review, a 5' front yard setback was proposed; however, a minimum of 10' was required. The DAB voted 3-2 to recommend approval of the application with a 7' front yard setback. The DAB felt that 7' was a reasonable compromise between the applicant's 5' and the ordinance's required 10.' Unfortunately, there is no provision in the ordinance (except variance) to reduce the front yard setback as recommended by the DAB. The applicant has submitted a revised project plan that complies with the required 10' front yard setback.

Prior zoning permit actions for this property.

- 3/14/2014 ZP-14-108 Determination of developable existing small lot
- 3/14/2014 ZP-14-110 Variance from limitation of development of existing small lot of less than 4,000 sf.
- 7/11/2014 ZP-14-498 Replace existing garage with new single family dwelling
- 1/20/2015 ZP15-0055CA Replace existing garage with new single family dwelling
- 12/15/2016 zoning permit time extension for ZP15-005CA
- 8/7/2019 ZP-19-567 Demolish existing structure and construct new single family home
- 10/14/2021 ZP-20-0166CA Request for time extension on ZP-19-567

**Recommendation:** Certificate of appropriateness approval as per, and subject to, the following findings and conditions:

## **I. Findings**

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

#### ***Part 3: Impact Fees***

##### ***Sec. 3.3.2, Applicability***

Applicant will be required to pay associated impact fees set forth and calculated by the Impact Fee Administrative Regulations based on the total gross square footage of the new home. Credit will be given for the existing 2,115 sf non-residential use. (**Affirmative finding as conditioned**)

### **Article 4: Maps & Districts**

#### ***Sec. 4.4.5, Residential Districts:***

##### ***(a) Purpose***

##### ***(2) Waterfront Residential Low Density (RL-W)***

The property is in the RL-W zone and is subject to the development standards of this zone. The district is primarily intended for low density single-family detached dwellings and duplexes with consideration given for design review. The proposed construction of a new home fits within the district's purpose. (**Affirmative finding**)

##### ***(b) Dimensional Standards & Density***

Residential density will change from 0 units to 1 unit. This new residential unit exceeds allowable density at 1 unit/acre on this 2,936 sf lot; however, a variance has been issued to enable residential development of the property. The proposed accessory dwelling unit does not count towards residential density.

Current lot coverage is 63.4%. Proposed lot coverage will drop to 61.2% which will still be nonconforming to the district (40% limit) but lessens the degree of nonconformity.

The minimum required side yard setback must be either 10% of lot width or the average of side yard setback of 2 adjacent lots on both sides of the property. As proposed, the southerly side yard setback is 5' 8" (10% of the 58' wide lot). The northerly side yard setback is 3' and is acceptable based on the average of neighboring side yard setbacks. The existing rear setback is 1.2' from the property line. The proposed rear setback increases to 4' and is acceptable as it reduces the degree

of nonconformity. The proposed front yard setback is 10' and is acceptable based on the average of neighboring properties (15' +/- 5').

The existing height of the garage is not noted but is one story tall and the proposed structure is 28'2" tall, under the maximum of 35' of the district. **(Affirmative finding)**

***(c) Permitted & Conditional Uses***

The development of a new single family home is permitted use in the RL-W zone. The apartment is accessory thereto. **(Affirmative finding)**

***(d) District Specific Regulations***

***1. Setbacks***

See Sec. 4.4.5 above

***2. Lot Coverage***

See Sec. 4.4.5 above

***3. Accessory Residential Structures and Uses***

No Accessory structures are proposed. **(Not applicable)**

***4. Residential Density***

The single family home is limited to occupancy by a family as defined in Article 13 of the Comprehensive Development Ordinance, and the ADU is subject to Sec 5.4.5 of the Comprehensive Development Ordinance. **(Affirmative finding)**

***5. Uses***

Not applicable

***6. Residential Development Bonuses***

Not applicable

**Article 5: Citywide General Regulations**

***Sec. 5.2.1, Existing Small Lots***

Prior variance approval allows for development on the site even though the lot is only 2,936 sf. **(Affirmative finding)**

***Sec. 5.2.3, Lot Coverage Requirements***

Refer to Sec. 4.4.5 above.

***Sec. 5.2.4, Buildable Area Calculation***

Not Applicable

***Sec. 5.2.5, Setbacks***

See Sec. 4.4.5 above

***Sec. 5.2.6, Building Height Limits***

See Sec. 4.4.5 above

**Sec. 5.2.7, Density and Intensity of Development Calculations**

See Sec. 4.4.5 above

**Sec. 5.5.1, Nuisance Regulations**

Nuisance impacts from the proposed residence are not anticipated. **(Affirmative finding)**

**Sec 5.3.5 Nonconforming Structures**

**(a). Changes and Modifications**

The Comprehensive Development Ordinance states “Such a change may reduce the degree of nonconformity.” The proposed plan includes nonconformities as to the rear yard setback and lot coverage; however, in both cases, the degree of nonconformity lessens. **(Affirmative finding)**

**Sec 5.4.5 ADU Accessory Dwelling Units**

With an owner occupied single family residence, one accessory dwelling unit shall be allowed if the provisions of this subsection are met.

1. The applicant will be required to acquire certification of sufficient wastewater capacity from the Department of Public Works and a wastewater permit from the VT Dept. of Environmental Conservation.
2. The proposed ADU looks to be ~ 560 sf and is well under the 900 sf limit.
3. Setbacks are compliant or reduce the degree of nonconformity. Lot coverage will reduce the degree of nonconformity. See Sec. 4.4.5 above.
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. **(Affirmative finding as conditioned)**

**Sec. 5.5.2, Outdoor Lighting**

New outdoor lighting is included in this application. The elevation plans depict exterior fixture locations, and fixture specification sheets have been provided. All of the fixtures are shielded (although not necessarily cutoff) and will illuminate building entries. As all of the fixtures utilize low output lamps, full cutoff fixtures are not required. **(Affirmative finding)**

**Sec. 5.5.3, Stormwater and Erosion Control**

Over 400sf of land disturbance is proposed, so an erosion prevention and sediment control plan will require review and approval by the city’s stormwater program. Prior plans have been approved but will require updating for this current application. **(Affirmative finding as conditioned)**

**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 significant natural features within the property. **(Affirmative finding)**

*(b) Topographical alterations*

The lot is flat, and topography will remain essentially unchanged. **(Affirmative finding)**

*(c) Protection of important public views*

The property is not associated with any important public views. **(Affirmative finding)**

*(d) Protection of important cultural resources*

The property has is not listed on a state or national register of historic places, nor is it known to be an important archeological site. **(Affirmative finding)**

*(e) Supporting the use of alternative energy*

The proposed home will not 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*

The proposed plan shows that a sheltered entry will be constructed for the front entrance. The scope of development is too small to require a post-construction stormwater management plan. **(Affirmative finding)**

*(h) Building location and orientation*

The new home will face Conger Avenue with a clearly identifiable front door and walkway. The new building will be shifted slightly closer to the street than the existing garage (11' setback).

As part of the previous zoning permit approval for a home here, the Board determined that an open-air carport does not need to comply with the 25' front yard setback required for street-facing garages. This new project continues to include an open-air carport, albeit with living space above now. The entire width of the proposed residence is ~51'. The carport is less than 50% of that entire width at ~23' (and less than the upper limit of 24' width). **(Affirmative finding)**

*(i) Vehicular access*

The existing gravel driveways will be removed. They will be replaced with porous asphalt that provides access to the proposed carport which contains parking spaces for two vehicles. **(Affirmative finding)**

*(j) Pedestrian access*

The proposed home will serve as a private residence and is located along a road with a public sidewalk. A new stone slab walkway will provide pedestrian access to the main entrance of the home. **(Affirmative finding)**

*(k) Accessibility for the handicapped*

No handicapped accessibility is shown or required. **(Not applicable)**

*(l) Parking and circulation*

A 2-car carport is noted in the plans. Circulation is basic with separate single-width driveways for access to each bay in the carport. **(Affirmative finding)**

*(m) Landscaping, fences, and retaining walls*

A full plan of the property has a landscaping plan noting that a fence will be constructed around the property as well as what plants will be installed. The proposed fence will be horizontal panel fencing made out of a dark stained wood that will be 5 feet tall (except 3' tall within the driveway clear sight triangle). The fence will go around the entire side and rear perimeter of the property. The proposed shrubs, grasses, and ivy are not invasive species, and add color as well as natural aspects to the overall design elements on the property. Proposed trees in the rear yard will provide shade cover to add to the privacy of the rear outdoor space. Landscaping of grasses and shrubs in the front yard help to create an attractive appearance that adds to the overall design of the property. **(Affirmative finding)**

*(n) Public plazas and open space*

**(Not applicable)**

*(o) Outdoor lighting*

See Sec. 5.5.2.

*(p) Integrate infrastructure into the design*

Gas, electric, and water meters are located on the northwest corner of the house. They will be screened from the street with a gate that matches the aesthetic of the fence. **(Affirmative finding)**

**Part 3, Architectural Design Standards**

**Sec. 6.3.2, Review Standards**

*(a) Relate development to its environment*

*1. Massing, Height, and Scale*

The home is similar scale and height to other homes in the neighborhood. The massing of the structure is broken up into distinct components that create variation in height as well as setback that reduce the apparent building mass. Variation of the rooflines also adds interest to the building. The height of the building varies, but all parts of the structure stay under the permissible height limit. **(Affirmative finding)**

*Roofs and Rooflines*

Rooflines vary with the individual building components. They are a mix of gable and shed roof styles and fit within the residential context of this neighborhood. **(Affirmative finding)**

*2. Building Openings*

The design and shape of the (casement) windows matches the modern design and lines of the building. The doors are of matching style to the rest of the home's design. **(Affirmative finding)**

*(b) Protection of important architectural resources*

The current garage is not listed on either the state or national registry of historic buildings, nor has it been deemed eligible for listing, so demolition of the existing structure will not impact Burlington's historic features or architecture. **(Affirmative finding)**

*(c) Protection of important public views*

See Sec. 6.2.2 above.

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

Features including landscaping, setbacks, spacing, and height are used in the project design to create a development compatible with its neighborhood. The new home has several layers of setback and ample fenestration that preclude large, undifferentiated building façade along the street. The new home has an obvious front entry and provides easy access to the public sidewalk out front.

Note that existing conditions within the street right-of-way include a very wide curb cut and no green belt. The applicant is advised to work with the Department of Public Works to bring the curb cut(s) into compliance with current standards and to restore this stretch of greenbelt.

**(Affirmative finding as conditioned)**

*(e) Quality of materials*

Most of the building exterior will be clad in slate gray rough sawn ship lap siding and charcoal gray asphalt shingles for the roofing. The connector between the house and carport has standing metal seam roofing with a burnished slate finish. The side of the entire rectangular stair structure will have corrugated metal panel siding with a burnished slate finish. These materials are acceptable for new residential construction. **(Affirmative finding)**

*Reduce energy utilization*

Proposed building must comply with current energy efficiency standards. **(Affirmative finding as conditioned)**

*(f) Make advertising features complimentary to the site*

**(Not applicable)**

*(g) Integrate infrastructure into the building design*

Gas, electric, and water meters are located on the northwest corner of the house. They are screened from the street with a gate that matches the aesthetic of the fence. No roof A/C units will be installed. **(Affirmative finding)**

*(h) Make spaces safe and secure*

The proposed building must comply with the city's current egress requirements. As noted previously, building entries will be illuminated. **(Affirmative finding)**

## **Article 8: Parking**

### **8.1.9 Maximum**

As proposed, the development will include less than the maximum permissible 3 parking spaces for single family homes in neighborhood districts. The proposed spaces are dimensionally compliant. **(Affirmative finding)**

## **II. Conditions of Approval**

1. Prior to release of the zoning permit, the following shall be addressed, subject to staff review and approval:
  - a. Obtain a wastewater capacity letter from the Department of Public Works, and

- b. Obtain stormwater program approval of the erosion prevention and sediment control plan.
2. The applicant shall work with the Department of Public Works to bring the curb cut(s) of the property into compliance with current standards and to restore the stretch of green belt along this property's Conger Avenue frontage.
3. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Department of Permitting & Inspections the impact fee as calculated by staff based on the new square footage of the proposed development. Credit will be given for the existing nonresidential building area.
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.
5. 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.
6. Standard permit conditions 1-15.