

Burlington Development Review Board

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Burlington Development Review Board

Findings of Fact Deliberative Hearing Tuesday, November 6, 2019

In RE: 20-0166CA/VR; 15 Conger Ave (Ward 5S, RL-W) (Tax Lot No. 053-2-026-000)

Owner/Applicant: Patrice A. Stratmann

Request: Demolish existing structure and construct new single family home and related site improvements. Lot size variance also included.

Members Present:

Brad Rabinowitz
AJ LaRosa
Zoraya Hightower
Brooks McArthur
Kienan Christianson
Sean McKenzie

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is requesting approval to demolish an existing 4-bay garage and to replace it with a new single family home and attached carport. Related site improvements such as a driveway, walkway, and landscaping are also proposed. The applicant received approval for a similar application in 2015; however, that proposal was never constructed.

The subject property is very small at just 2,933 sf. It is smaller than even the 4,000 sf minimum noted in Sec. 5.2.1, *Existing Small Lots*. As a result, development will be contingent on receipt of a variance. Such request is included in this application. The prior approval noted above was granted following issuance of a variance (the variance has now expired and must be renewed).

Relief is sought from the buildable small lot provisions of Sec. 5.2.1, *Existing Small Lots* that requires at least 4,000 sf to build on a small lot (i.e. less than the 6,000 sf minimum lot size) existing as of April 26, 1973. This property appears to date to September 29, 1972 and is just 2,933 sf in area. It contains only a 4-bay, single story garage structure.

The Design Advisory Board reviewed this application September 24, 2019 and recommended approval subject to the following conditions:

1. Any exterior light fixture on the front elevation should be cutoff to prevent glare.
2. The Board accepts location of the carport with an 8 ft. front yard setback, as the carport is not a garage. It contains no doors and is recessed from the front plane of the house.

No revised light fixture specifications have yet been provided. This item will, therefore, be addressed as a zoning permit condition.

Previous zoning actions for this property are as follows:

- 1/20/15, Approval to replace garage with new single family dwelling
- 5/14/14, Variance from Sec. 5.2.1, *Existing Small Lots*, 4,000 sf minimum lot restriction
- 3/18/14, Adverse determination of existing buildable small lot

Article 3: Applications, Permits, & Project Reviews

Part 3: Impact Fees

Sec. 3.3.2, Applicability

The proposed work will result in a new residential dwelling unit. Impact fees will be assessed on the new square footage of the home. **(Affirmative finding as conditioned)**

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 single detached dwellings and duplexes. The proposed single family home is consistent with the intent of this zone. **(Affirmative finding)**

(b) Dimensional Standards & Density

The property is undersized at just 2,933 sf. Buildability is contingent on a variance per Article 12.

The property as it currently exists exceeds the maximum allowable lot coverage of 35% in the WRL zone. Just the garage's 1,600 sf footprint results in 57% lot coverage. Parking/driveway area brings existing lot coverage to about 90%. The proposed construction will lessen the existing building footprint and narrow the driveway down to just 18' wide. The resultant lot coverage would be 53.6% -- still nonconforming but substantially less so.

The minimum required side yard setbacks are 10% of the width or the average of four adjacent properties' (two on each side) side yard setbacks. In this case, there's only one property upon which to base the average side yard setback (27 Conger Ave). It has 0 side yard setback on both side yards. As proposed, the new home will have a 2.5' setback on the north side and a 5.5' setback on the south side. The proposed house will be set back 5' from the front property line, whereas the existing garage is ~ 11.' The proposed attached carport is 8' from the front property line. The front yard setback for this property is 7.5' +/- 5' (based on the average of neighboring homes). The existing garage sits ~ 1' from the rear property line, whereas the proposed home

will observe a 5' rear yard setback. At least a 20' rear yard setback is the minimum requirement. While 5' is nonconforming, the degree of nonconformity is lessened and is, therefore, acceptable.

The height of the existing garage is not noted; however, it is just 1 story. Building height is just 21' to the roof. Note that a rooftop access is depicted as well. This small feature extends to 29.' This height is less than the maximum permissible 35'. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The proposed single family home is a permitted use in the WRL zone. Note that the change in use and increased building size will require payment of impact fees per Article 3. **(Affirmative finding as conditioned)**

(d) District Specific Regulations

1. Setbacks

No setback encroachments under this provision are being sought. **(Not applicable)**

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

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

5. Residential Density

The single family home is limited to occupancy by a family as defined in Article 13 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)**

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. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion.

(Affirmative finding)

Sec. 5.5.2, Outdoor Lighting

Outdoor lighting fixture cut sheets have been provided and depict typical residential lighting fixtures. Per the DAB's recommendation, the proposed fixture that is not cutoff must be replaced with a cutoff style fixture if it is to be used on the front elevation of the home. Fixture locations must be depicted on revised elevation drawings. **(Affirmative finding as conditioned)**

Sec. 5.5.3, Stormwater and Erosion Control

Since the application includes removal of the existing garage and construction of a new home, a "small project erosion control" plan is required. This plan has been reviewed and approved by the Stormwater Program manager. **(Affirmative finding)**

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

The subject property contains no significant natural features. **(Affirmative finding)**

(b) Topographical alterations

The lot is flat and will remain so. No significant topographical changes are proposed.

(Affirmative finding)

(c) Protection of important public views

There are no important public views from or through the subject property. The property does not front any identified view corridor. **(Affirmative finding)**

(d) Protection of important cultural resources

The site itself is not historically significant, nor does it have any known archaeological significance. See Sec. 6.3.2 (b) below for historic significance the building itself. **(Affirmative finding)**

(e) Supporting the use of alternative energy

No alternative energy measures are included in the development proposal. The new structure will have no adverse impacts on alternative energy potential on the subject or neighboring properties. **(Affirmative finding)**

(f) Brownfield sites

The property is not an identified brownfield. **(Not applicable)**

(g) Provide for nature's events

The project as proposed is not large enough to require a post-construction stormwater management plan. A construction site erosion control plan is required and has been approved by the city's stormwater program staff. **(Affirmative finding)**

(h) Building location and orientation

The new home will face Conger Avenue with a clearly identifiable primary entrance. The new structure will be shifted closer to the street than the existing garage. The house will be set back 6' from the front property line, whereas the existing garage is ~ 11.' The proposed attached carport is 8' from the front property line.

The carport is set behind the front plane of the home as required by this criterion. This criterion also specifies a minimum 25' front yard setback for street-facing garages. The DAB found that the open-air carport structure is not a garage and that its placement at 8' from the front property line is acceptable. **(Affirmative finding)**

(i) Vehicular access

The new home will be served by a private driveway to access the attached 2-car carport. The driveway appears to be 18,' the maximum width permissible. **(Affirmative finding)**

(j) Pedestrian access

This criterion requires that a walkway be provided between the building's primary entrance and the public sidewalk. The site plan depicts a concrete walkway out to the sidewalk. **(Affirmative finding)**

(k) Accessibility for the handicapped

No handicap accessibility is evident in this proposal, nor is it required. **(Not applicable)**

(l) Parking and circulation

A 2-car carport will provide space for the required off-street parking associated with the single family home. It will be accessed by a short driveway. **(Affirmative finding)**

(m) Landscaping, fences, and retaining walls

A landscaping plan has been provided and depicts species and placement. New plantings will be installed to define the property boundaries and to accentuate the street-facing façade of the home. While basic, the proposed landscaping plan is acceptable for this new single family dwelling. **(Affirmative finding)**

(n) Public plazas and open space

No public plazas or open space are included in this proposal. **(Not applicable)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

Any new utility lines must be buried. No ground-mounted mechanical equipment is noted on the site plan. **(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 massing of the proposed structure is driven in large part by preservation of existing setback nonconformity without increasing the degree of nonconformity. In particular, the minimum rear yard setback is 25,' whereas the existing structure is ~1' from the rear property line. The existing building volume within that setback is retained by swapping some of the ground level of the existing garage with a second story on the new home. Additional back yard green space will appear as a result.

Beyond retention of nonconformity, the massing of the structure is boxy in appearance. From the street, the building is perceived as three separate components – living quarters, central entry, and carport. While difficult to discern in the elevation drawings, the carport is open-air with an enclosed “shed” at the rear behind the parking spaces. The scale of the structure is fairly small given the significant constraints of this very small lot. Building height is just 21' to the roof with a rooftop access extending to 29.' Note that only two of the four elevation drawings depict the rooftop access. It must be included on all elevation drawings. **(Affirmative finding as conditioned)**

2. Roofs and Rooflines

A flat roof is proposed. While uncommon for single family homes, there are several nearby residential structures with flat roofs. The three separate building components each has its own individual roof plane. **(Affirmative finding)**

3. Building Openings

The proposed fenestration is fairly basic and uniformly applied. Window size varies among the building levels, but they remain stylistically similar. **(Affirmative finding)**

(b) Protection of important architectural resources

The garage dates to 1900 but is not included in the State or National Register of Historic Places, nor does it appear to meet the eligibility criteria for review under Sec. 5.4.8, *Historic Buildings and Sites*. The proposed construction would not adversely impact Burlington's wealth of historically significant properties. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The project plans depict a primary entrance clearly visible from the street, and a walkway provides direct access to it from the public sidewalk. Fenestration and varying roof planes preclude uniform, blank expanses of building wall. **(Affirmative finding)**

(e) Quality of materials

The proposed structure will be clad in horizontal channel siding composite material by “Boral.” Trim is not noted and must be. Vertical cedar siding will be installed around the primary entrance. Clad wooden windows will be installed throughout. Membrane roofing will be installed. The rooftop access structure will be clad in cedar shingles with associated metal cable railings. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed construction must comply with the city’s current energy efficiency requirements. Note also that the State of Vermont’s new energy efficiency standards will apply to the new home. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

Not applicable.

(h) Integrate infrastructure into the building design

The landscape and site plans depict a utility meter enclosure on the north side of the home. Such location is appropriate. It must be depicted on the corresponding elevation drawing. No exterior mechanical equipment is proposed. Trash should be stored inside the home or “shed” until curb side pick-up days. **(Affirmative finding as conditioned)**

(i) Make spaces safe and secure

The building will be subject to 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. The proposed single family dwelling requires 2 parking spaces. The carport contains room for 2 parking spaces. **(Affirmative finding)**

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The subject property is small at just 2,933 sf. It is well under the minimum lot size of 6,000 sf that applies in the WRL zone. The lot was created in 1972 and pre-dates the minimum lot size presently in effect. It is also smaller than the minimum 4,000 sf lot size specified in Sec. 5.2.1 that is intended to enable development of pre-existing lots that are less than the district minimum lot size. While the property is less than 4,000 sf, there are three other properties within the same block that are also less than 4,000 sf. They are 45 Lakeside Avenue (3,400 sf with a duplex), 10 Central Avenue (3,900 sf with a duplex), and 70 Wright Avenue (2,250 sf with a single family home). As with these other properties, the subject property, while small, is sufficiently large to contain a small residence. **(Affirmative finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As the lot is only 2,933 sf, it plainly fails to conform to the 4,000 sf minimum lot size stipulated in Sec. 5.2.1. Development is impossible without a variance from this requirement. **(Affirmative finding)**

(c) The unnecessary hardship has not been created by the applicant.

The hardship relative to Sec. 5.2.1 is related to the pre-existing small lot size. It is not a lot newly created by the applicant. **(Affirmative finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance from the limitations of Sec. 5.2.1 would not alter the essential character of the neighborhood or district in which the subject property is located. As noted previously, there are three other properties of less than 4,000 sf within the same block that contain residences and more within the greater neighborhood. **(Affirmative finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested variance from Sec. 5.2.1 is not a matter of degree. It is a requested exception to the minimum 4,000 sf lot size. As noted above, the 2,933 sf lot size is sufficient to contain a residence consistent with the character of the surrounding built environment. **(Affirmative finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

The requested variance would not result in the extension of a noncomplying situation or allow the initiation of a nonconforming use of land. The requested variance is sought in order to enable replacement of the existing nonconforming garage with a permitted residential use. **(Affirmative finding)**

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: AJ LaRosa

I move that the Board grant certificate of appropriateness and lot size variance approval to demolish the existing structure and to construct a new single family home and related site improvements at 15 Conger Avenue based on the findings in Section I above and subject to the following conditions:

1. At least **seven days prior to issuance of a certificate of occupancy**, impact fees based on the square footage of the new residence shall be paid to the Department of Permitting & Inspections.
2. **Prior to release of the zoning permit**, revised plans addressing the following shall be submitted subject to staff review and approval:
 - a. Outdoor lighting fixture locations and revision to cutoff fixtures on the front elevation;
 - b. Rooftop access structure depicted on all elevation drawings;
 - c. Trim material noted on elevation drawings; and,
 - d. Utility meter enclosure depicted on the north elevation drawing.
3. A State of Vermont wastewater permit is required. It is the applicant's responsibility to inquire with the Vermont Department of Environmental Conservation, Wastewater Division as to the wastewater permit for the proposed use.
4. 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 state or federal permit(s) as may be required, and shall meet all energy efficiency codes as required.
5. Standard permit conditions 1-15.

Seconded: Kienan Christianson

Vote: 6-0-0, motion carried

Dated at Burlington, Vermont, this ____ day of November 2019

Respectfully Submitted,

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.