

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Garret King, Associate Planner
Joseph Cava, Planning Technician
Ted Miles, Code Compliance Officer
Vacant, DPI Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: June 6, 2023
RE: ZP-23-33; 120 Depot 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.

Zone: RM-W Ward: 3C

Owner/Applicant: Steve & Andrea Trombley

Request: Height variance request up to 60 feet.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a variance from the applicable height limit. The subject property is located within the Residential Medium Density – Waterfront zone. Per Table 4.4.5-3: *Residential District Dimensional Standards*, the building height limit within this zone is 35.’ The applicant is seeking a variance from this height limit up to 60.’

Most of the application materials focus on zoning amendment 21-07, *Building Height Measurement*, and how that amendment supposedly affected the applicant’s prior (denied) application ZP-22-307 to build a home at the property. This amendment changed some of the parameters as to how building height is measured, such as from just the building front versus from the average finished grade around the entire building. The amendment did not change any building height limits. The prior application set the proposed home 10’ from the front property line as approved in the front yard setback variance ZP-21-508 granted to this property. At 10,’ building height is measured on just the front façade. Zoning amendment 21-07 extended the 10’ to 50.’ This change had no bearing on the applicant’s prior application. Zoning amendment 20-09, effective as of October 21, 2020, did affect height limits and lowered the prior 60’ RM-W height limit to 35.’ This change took place well before the applicant purchased the property or filed an application to build on it.

This application was initially scheduled for review by the Development Review Board on April 18, 2023. The applicant requested deferral of review, and the DRB deferred review to June 6, 2023.

Previous zoning actions for this property are as follows:

- 9/7/22, Denial of new single family home
- 8/4/21, Re-approval of 10’ front yard setback variance
- 10/24/14, Approval of 10’ front yard setback variance

Recommendation: Variance denial as per, and subject to, the following findings:

I. Findings

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 dimensionally ordinary as a 4,180 sf rectangle; however, it is uniquely steep. It is also neighbored by through lots with frontage on Depot Street and North Avenue, hence the prior variance approval for the 10' front yard setback. Except for a small flat area at the top/eastern end of the lot, the property is uniformly steep. Any construction, anywhere on the slope will likely be challenging. **(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.

The 10' front yard setback approved for this property previously, and currently, requires building height measurement of the building's front façade. Although the property is largely slopped, construction in compliance with the 35' height limit is possible. The applicant has submitted a project design for reference to demonstrate this possibility. Prior schematic project designs, predating the applicant's ownership, also demonstrate compliance with the height limit. **(Adverse finding)**

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

The slope has not been created by the applicant. As noted above; however, it is possible to design a building utilizing the 10' front yard setback that complies with the 35' height limit. **(Adverse 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 requested variance is near double the applicable height limit. It would result in an uncharacteristically tall single family home. Its construction would not adversely impact the remainder of this criterion. It would not impair the appropriate use or redevelopment of adjacent properties, nor would it impact renewable energy resources or be detrimental to the public welfare. **(Adverse 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.

As noted above, the requested 60' height variance is near double the applicable 35' height limit. It is not a minimal departure from the regulation, rather it is a substantial increase above the allowable limit. **(Adverse 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.

Except for the excessive height requested in the variance application, the variance would not result in the extension of a non-complying situation. The would-be home is a conforming use of the property. **(Affirmative finding)**

II. Reasons for Denial

1. Per the adverse findings above.