

## Department of Permitting & Inspections

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### MEMORANDUM

To: Development Review Board  
From: Ryan Morrison, Associate Planner  
Date: June 15, 2021  
RE: ZP21-0909CU; 81 Dunder Road

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**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:** ZP21-0909CU  
**Location:** 81 Dunder Road  
**Zone:** RL-W **Ward:** 5S  
**Date application accepted:** April 16, 2021  
**Applicant/ Owner:** Jonathan Heller  
**Parking District:** Neighborhood  
**Request:** Creation of an accessory dwelling unit to be used as a bed and breakfast use - amending ZP18-0682CU.



#### **Applicable Regulations:**

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking), Appendix A (Use Table – All Zoning Districts)

#### **Background:**

- **Zoning Permit 94-013**; construction of a front entry and a gable over garage. Approved July 13, 1993.
- **Zoning Permit 06-208CA**; convert porch to living space. Approved September 16, 2005.
- **Zoning Permit 13-0310CU**; change use of single family house to boarding house. Denied November 20, 2012.
- **Zoning Permit 18-0682CU**; permit a bed and breakfast use in one room within the single family residence. Approved March 29, 2018.

**Overview:**

The applicant proposes to create an accessory dwelling unit (ADU) within the existing single family residence to be used as a bed and breakfast short term rental use. This proposal represents an amendment to ZP18-0682CU, which just approved a one-room bed and breakfast use within the home. That permit was approved by the DRB on March 29, 2018.

**Recommendation: Conditional Use Approval**, per the following findings and conditions:

**I. Findings**

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

**Part 5: Conditional Use and Major Impact Review**

**Section 3.5.6 Review Criteria**

**(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 proposal will have minimal impact on public utilities, facilities and services. It is possible that a state wastewater permit will be required, and if so, the applicant will be responsible for securing said permit. The applicant will have to obtain a letter from the Department of Public Works confirming that there is adequate water and sewer capacity for the ADU. **Affirmative finding as conditioned.**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the Municipal Development Plan;*

The property is within an established residential neighborhood and a residential zoning district. The Waterfront Residential Low Density (RL-W) zoning district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. B&Bs are allowed up to 3 rooms in the underlying zoning district. The proposal should result in little to no change in traffic and circulation impacts. The ADU and B&B are accessory to the single family home, which is consistent with the intent of the zoning district. **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;*

No greater impacts are anticipated than other residential uses in the area. **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;*

This parcel is located on Dunder Road, a quiet, dead-end road. The driveway has adequate room to accommodate the 3 required parking spaces. It is expected that the ADU/B&B use will generate one additional vehicle to the property when occupied. There are no transit stops in the surrounding neighborhood. A sidewalk lines the west side of Dunder Road, and Oakledge Park is within walking distance. The proposal is not expected to create adverse impacts on the existing transportation system. **Affirmative finding.**

5. *The utilization of renewable energy resources;*

Nothing within the application prevents the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**  
*and;*

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.*

The application and resultant change in use will be required to meet all bylaws and city and state ordinances in effect. Specific to the proposed use, 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. **Affirmative finding as conditioned.**

**(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;*

Not applicable. No changes to the site are proposed.

2. *Time limits for construction.*

Not applicable. There is no construction proposed.

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

It is recommended that B&B guests' arrivals and departures 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,*

The applicant proposes to convert space within the single family home to an ADU, which will be used for a B&B use. No other alterations are proposed. However, a new zoning permit, subject to review and approval under regulations in effect at that time, will be required if any future alterations to this permit are proposed. **Affirmative finding as conditioned.**

*and*

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.*  
None identified.

#### **Article 4: Zoning Maps and Districts**

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

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

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

*The Waterfront Residential Low Density (RL-W) 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 neighborhoods' development history. This district is distinguished from the Residential Low Density district by its proximity to Lake Champlain, and a greater consideration needed for views from the lake and stormwater runoff.*

The existing single-family dwelling is consistent with this intent. Converting the existing living space above the attached garage into an ADU to be used as a one-room B&B short term rental use remains consistent with the intent of the zone. **Affirmative finding.**

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

Not applicable.

###### **(c) Permitted and Conditional Uses**

ADUs are permitted uses within the RL-W zone, while the bed and breakfast (short term rental) use is conditional. For both an ADU and B&B to operate legally, owner occupancy of the premises is required. In this case, the applicant is the owner and lives onsite. An accessory dwelling unit can be permitted for rental on either a short or long term basis, provided that the appropriate conditional use permit for a short term rental is obtained. This permit will allow creation of an ADU within the existing single family home, which can then be used as a short term rental (B&B). **Affirmative finding as conditioned.**

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

Not applicable.

#### **Article 5: Citywide General Regulations**

##### **Section 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 within the existing single family residence, above the attached garage.

*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 800 sq. ft. or 30 percent (30%) of the gross floor area of the principal home, whichever is greater; and*

The ADU will total 568 sf in size, less than the 800 sf maximum allowance. **Affirmative finding.**

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

Not applicable. There are no changes with regard to the existing building setbacks and lot coverage.

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.**

### **(c) 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 B&B to remain compliant. **Affirmative finding as conditioned.**

## **Article 8: Parking**

### **Table 8.1.8-1 Minimum Off-Street Parking Requirements**

In the Neighborhood Parking District, single family uses require 2 parking spaces per unit. ADUs are exempt from providing an additional parking space, but B&Bs require 1 parking space per room. The existing parking layout will provide for the 3 required spaces. The driveway/garage combination contributes to 2 tandem parking spaces, and the driveway is wide enough (23 ft) to fit the third required space. **Affirmative finding.**

## **Appendix A: Use Table – All Zoning Districts**

*Accessory Dwelling Unit* is a permitted use in the RL-W zoning district, while *Bed and Breakfast* is a Conditional Use. Footnotes 4 & 6 of Appendix A apply to bed and breakfasts. Footnote #4 states: “*No more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use. No more than 3 rooms permitted to be let in the RL district.*” Footnote #6 states: “*Must be owner-occupied.*” The applicant proposes to rent out the 1 bedroom ADU as a bed and breakfast use. The owner currently resides on the property. **Affirmative finding.**

## **II. Conditions of Approval**

1. **Prior to the release of the zoning permit**, the applicant shall obtain a letter from the Department of Public Works confirming that there is adequate water and sewer capacity for the ADU.
2. This approval is for an accessory dwelling unit / 1-bedroom Bed and Breakfast use, in association with the single family dwelling. The applicant will allow Code Enforcement to periodically confirm that the use is limited to the one bedroom rental limitation. This may include review of web-based advertising, posted guest comments, or response to neighborhood complaint.
3. The subject property must be, and remain, owner occupied as long as the accessory dwelling unit / B&B use remains in operation.
4. It is recommended that guests’ arrival and departures be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
5. All guest parking shall be on-site and off-street.
6. 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.
7. Any additional physical alteration or change of use to the accessory dwelling unit / B&B rental room will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.
8. **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.
9. 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.

10. The applicant/property owner shall secure a state wastewater permit, should one be required for the proposal.
11. Standard Permit Conditions 1-15.