

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: May 17, 2022
RE: ZP-22-199; 51 Elmwood 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: RH Ward: 3C

Owner/Applicant: Burlington DPW / Samantha Dunn

Request: Establish a temporary emergency shelter including 30 shelter pods, community resource center, and bathhouse.

Applicable Regulations:

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

Background Information:

The applicant is requesting approval to establish a temporary emergency shelter on an existing nonconforming municipal parking lot. The requested duration is 3 years. The parking lot will remain in place, and the proposed structures will be placed upon it with limited earthwork for utility installations and connections. Additional fencing, outdoor lighting, and raised planters are also proposed. Emergency shelters are a conditional use in the Residential – High Density zone wherein the project is located. A related community center is included and will serve occupants of the shelter but will also be open to the public.

As a municipally owned and operated facility the application for this emergency shelter is subject to only limited zoning review per 24 VSA, Sec. 4413, *Limitations on municipal bylaws*. The development may be reviewed only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements.

There are no previous zoning actions for this property.

Recommendation: Conditional use and 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 & Sec. 3.3.3, Exemptions & Waivers

The proposed emergency shelter does not contain any new dwelling units, but is it categorized as a special residential use. Occupants of the shelter will stay there rent free. As such, it qualifies for an exemption from impact fees per Sec. 3.3.3.

The community resource center, even though temporary, does not qualify for an exemption from impact fees. Those will be due prior to issuance of a certificate of occupancy. **(Affirmative finding as conditioned)**

Article 3: Applications and 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 property will be served by municipal utilities. Electrical service is present, and water and wastewater service will be installed. Sufficient water and sewer service are available. While the use is temporary, a State of Vermont wastewater permit will be required. A wastewater capacity letter from the Department of Public Works will be required for issuance of the wastewater permit. **(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 located within the Residential – High Density zone. This zone is intended primarily for high density residential development in the form of attached multi-family buildings. A variety of residential uses are allowed, including “special residential uses” such as emergency shelters. The temporary emergency shelter fits within the residential context of the RH zone.

(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;*

The proposed emergency shelter will be limited to 35 individuals (30 pods, including 5 pods that will allow 2 people if there are couples who request being together) and onsite staff. With continuous onsite staff, the shelter is not expected to generate nuisance impacts from noise, odor, dust, and the like that may be more typically associated with commercial uses. **(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;

No traffic analysis has been provided or is required for this application. The anticipated occupants of the emergency shelter are not expected to generate any traffic impacts. Staff will park onsite on a small number of parking spaces. **(Affirmative finding)**

and,

5. *The utilization of renewable energy resources;*

Depending on available funding, solar panels will be installed on the rooftops of the community resource center and/or the bathhouse. **(Affirmative finding)**

and,

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

It is the applicant's responsibility to comply with other applicable city and state bylaws and ordinances.

(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 emergency shelter is similar to a multi-family residential development. As opposed to dwelling units, the facility will have 30 individual shelter pods and a related community center and a bathhouse. The emergency shelter will have onsite staff to manage it 24/7. All of the buildings are fully enclosed. Shared outdoor space is located in the center of the site to lessen potential noise impacts to neighboring properties. Trash and recycling units will be enclosed behind screening. **(Affirmative finding)**

2. *Time limits for construction.*

All of the buildings are pre-fabricated and will take relatively little time to install. Standard zoning permit time limits will apply – 1 year to start construction and 2 more to complete (total of 3 years). In this case, the emergency shelter will cease operation after 3 years. **(Affirmative finding)**

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

The emergency shelter will operate 24 hours per day, 7 days per week for up to 3 years. The related community center will operate, open to the public, 7 days per week from 9:00 AM – 4:00 PM. These hours are within the permissible hours of 5:30 AM – 11:00 PM for community centers.

Hours of construction are not noted. Within residential areas, hours of construction are typically limited to M-F 7:00 am to 5:30 pm, with Saturday hours restricted to interior work. No work on Sundays. **(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.

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.

See the recommended conditions.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(5) Residential High Density (RH)

As noted previously, the subject property is located within the Residential – High Density zone. This zone is intended primarily for high density residential development in the form of attached multi-family apartments. A variety of residential uses are allowed, including “special residential uses” such as emergency shelters. The temporary emergency shelter fits within the residential context of the RH zone. Community centers are permitted in the RH zone and serve as an ancillary amenity to the surrounding neighborhoods. **(Affirmative finding)**

(b) Dimensional Standards & Density

There is no residential density per se. See Sec. 5.4.13 for residential density equivalent for emergency shelters.

Lot coverage is nonconforming at 100%. No change in lot coverage is proposed, although some green space will be introduced to the site with planters.

The front yard setback is based on the average of neighboring properties. In this case, a 5’ front yard setback is proposed and is based on an average of 3.’ Note that the average provided is for just the two adjacent properties. The average is based on 4 properties, the two to the north and the two to the south in this case. All of the buildings look to be close to the street, but the average needs to be recalculated based on the 4 properties. As all of the proposed buildings are 15’ tall or less, 5’ minimum side and rear yard setbacks are required. The site plan reflects these required side and rear minimum setbacks.

The community resource center is 15’ tall and the rest of the buildings are just 10’ tall. These heights are well below the 35’ height limit. **(Affirmative finding as conditioned)**

(c) Permitted & Conditional Uses

An emergency shelter is a conditional use in the RH zone. The related community center is a permitted use. **(Affirmative finding)**

(d) District Specific Regulations

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b).

Sec. 5.2.4, Buildable Area Calculation

See Sec. 4.4.5 (b).

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b).

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b).

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b).

Part 4: Special Use Regulations

Section 5.4.13 Emergency Shelters

Emergency shelters shall be subject to the site and design review standards in Art 6.

In addition to conditional use standards where applicable, proposals for all new emergency shelters shall comply with the following requirements:

- (a) *All dimensional standards for the underlying zoning per the requirements of Art. 4 shall be applicable;*

See Sec. 4.4.5 above.

- (b) *Density within the residential zones shall be per the residential density standards of Article 4. For the purposes of density calculation for emergency shelters, every four (4) beds shall count as one (1) dwelling unit;*

The 30 pods contain 30-35 beds. Assuming a maximum of 35 beds, that equates to 9 dwelling units on this ~ ½ acre property. With a limit of 40 units per acre, the equivalent of 9 units is acceptable. **(Affirmative finding)**

- (c) *Density within the neighborhood mixed use zones shall be limited to fifty (50) beds, and there is no density limit in the downtown or downtown transition zones;*

(Not applicable)

- (d) *Overnight stays by any individual are limited to 180 consecutive days. An extension of up to 60 days may be provided if no alternative housing is available;*

This standard will be a condition of approval. The applicant is aware of this criterion.

(Affirmative finding as conditioned)

- (e) *There shall be onsite management by qualified adults during all hours of operation with at least 1 management person for every 25 beds; and,*

Up to four onsite staff will be present, including 1 or 2 overnight staff. One overnight staff will be present until or unless the number of individuals in the shelter pods exceeds 25. At that point, 2 overnight staff would be present. **(Affirmative finding)**

(f) *An emergency shelter may be the primary use of a property, or it may be accessory to another primary use on a property.*

In this case, the emergency shelter will be the primary (albeit temporary) use of the property. **(Affirmative finding)**

Sec. 5.5.1, Nuisance Regulations

The emergency shelter is anticipated to have impacts similar to multi-family housing. Design and management measures, such as enclosed buildings, centralized community spaces, and 24/7 onsite staffing will lessen potential noise and related impacts. Nothing in the proposal appears to constitute a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

Existing pole lights will remain. New outdoor lighting consists of canister and wall-pack fixtures that will illuminate building entries. The proposed fixtures will provide illumination with acceptable low output lamps. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

An erosion prevention and sediment control plan is required for the utility earthwork associated with this project. Review by the city's Water Resources staff is underway. Approval of the erosion prevention and sediment control plan is required prior to construction. **(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 important natural features within the project area. The site is entirely a paved parking lot. **(Affirmative finding)**

(b) Topographical alterations

Not applicable per 24 VSA, Sec. 4413.

(c) Protection of important public views

Not applicable per 24 VSA, Sec. 4413.

(d) Protection of important cultural resources

Not applicable per 24 VSA, Sec. 4413.

(e) Supporting the use of alternative energy

Not applicable per 24 VSA, Sec. 4413.

(f) Brownfield sites

Not applicable per 24 VSA, Sec. 4413.

(g) Provide for nature's events

Not applicable per 24 VSA, Sec. 4413. The city's stormwater standards under Chapter 26 continue to apply.

(h) Building location and orientation

Not applicable per 24 VSA, Sec. 4413.

(i) Vehicular access

Not applicable per 24 VSA, Sec. 4413.

(j) Pedestrian access

Not applicable per 24 VSA, Sec. 4413.

(k) Accessibility for the handicapped

Not applicable per 24 VSA, Sec. 4413. Accessibility requirements under the City's building code continue to apply.

(l) Parking and circulation

The property is presently nonconforming as a large parking lot. The parking lot will remain largely as is with the modular buildings installed on top. A small section of the parking lot in the southeast corner will remain available for parking. These parking spaces are located behind the front yard setback and to the side of the community resource center building. The spaces can be accessed directly from the street. The parking spaces are in close proximity to the community resource center and access into the site. **(Affirmative finding)**

(m) Landscaping, fences, and retaining walls

A number of planters will be installed to introduce as least some green space into this temporary facility. Several are located amongst the shelter pods, and a cluster is proposed between the pods and the bathhouse. A relatively large planter will be installed to provide some green space along the front of the community resource center.

The site is presently fenced on three sides with chain link. This fencing will be repaired where needed, and bamboo screening slats will be installed. A new wooden privacy fence with gates is proposed along the front of the property and around the trash and recycling receptacles.

(Affirmative finding)

(n) Public plazas and open space

Shared outdoor space will be located within the center of the site. It will be proximate to the shelter pods and relatively far from adjoining residential properties. **(Affirmative finding)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

No new ground-mounted mechanical equipment is proposed. **(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 most prominent building onsite, the community resource center, approximates a residence in appearance. It is residential in scale with basic massing and relatively low height. Other buildings onsite are behind fencing and not as apparent from the street. The bathhouse reads as an outbuilding of smaller scale with simple form and massing. All of the shelter pods read as miniature cottages with typically residential characteristics like pitched roofs, front doorways, and windows. **(Affirmative finding)**

2. Roofs and Rooflines

Not applicable per 24 VSA, Sec. 4413.

3. Building Openings

Not applicable per 24 VSA, Sec. 4413.

(b) Protection of important architectural resources

Not applicable per 24 VSA, Sec. 4413.

(c) Protection of important public views

Not applicable per 24 VSA, Sec. 4413.

(d) Provide an active and inviting street edge

Not applicable per 24 VSA, Sec. 4413.

(e) Quality of materials

Not applicable per 24 VSA, Sec. 4413.

(f) Reduce energy utilization

Not applicable per 24 VSA, Sec. 4413.

(g) Make advertising features complimentary to the site

No new exterior signs are included in this proposal. **(Not applicable)**

(h) Integrate infrastructure into the building design

No new rooftop mechanical equipment is proposed. The project plans depict interior mechanical spaces for the community resource center and bathhouse. **(Affirmative finding)**

(i) Make spaces safe and secure

The proposed building must provide adequate egress as required by the building code. Entries will be illuminated. A central emergency access aisle will be provided into the site. **(Affirmative finding)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The emergency shelter has no minimum onsite parking requirement. The ~1,400 sf community center requires 5 parking spaces (3.3 spaces per 1,000 sf). A total of 6 parking spaces will be provided onsite. **(Affirmative finding)**

Sec. 8.2.4, Bicycle Parking Requirements

There is no bicycle parking requirement for the emergency shelter. The community resource center is required to have 2 short term bike parking spaces. It is not large enough to require long term spaces. The project plans do not depict an outdoor bike rack. One is required and should be placed near the primary entrance to the community resource center. **(Affirmative finding as conditioned)**

II. Conditions of Approval

1. **Prior to release of the zoning permit**, the following items shall be addressed, subject to staff review and approval:
 - a. A wastewater capacity letter from the Dept. of Public Works shall be obtained;
 - b. The front yard setback shall be recalculated based on the 4 neighboring properties (2 on each side), and, if need be, the location of the community resource center adjusted to be compliant;
 - c. A bicycle rack for at least 2 bikes shall be installed near the primary entrance to the community resource center; and,
 - d. The erosion prevention and sediment control plan shall be reviewed and approved by city stormwater staff.
2. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Permitting & Inspections Department the impact fee as calculated by staff based on the net new square footage of the proposed community center building.
3. This zoning permit approval is valid for 3 years, and the site must be returned to its current state or to another approved use immediately following that. Extension of this time will require review and approval by the Development Review Board per Sec. 3.2.9, *Zoning Permits*, (d) *Time Limits on Zoning Permits*.
4. Overnight stays by any individual are limited to 180 consecutive days. An extension of up to 60 days may be provided if no alternative housing is available.
5. Hours of construction shall be limited to M-F 7:00 am to 5:30 pm, with Saturday hours restricted to interior work. No work on Sundays.
6. Any new utility lines must be buried.
7. 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.
8. Standard permit conditions 1-15.