

Department of Permitting and Inspections

Zoning Division

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MEMORANDUM

To: Development Review Board

From: Mary O'Neil, AICP, Principal Planner

Date: December 7, 2021

RE: 48-50 Greene Street, ZAP 21-17 (original permit ZP 21-639)

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 Number: ZAP 21-17, Appeal of ZP 21-639

Location: 48-50 Greene Street

Zone: RM **Ward:** 2C

Parking District: Neighborhood

Date application accepted: August 31, 2021

Date of Administrative Decision: September 15, 2021

Date of Appeal: September 28, 2021

Applicant/ Owner: Lee Bissonette, represented by Liam Murphy

Request: "Repair of Fire Escape"

Staff Site visit: September 8, 2021



Background:

- **Building Permit 1659;** repair the side porch on existing house. May 21, 1984.
- **Building Permit 1547;** construct fire escape (2nd means of egress) from grade to third floor. April 1984.
- **Building Permit 780099;** replace some slate and 22' of metal flashing on roof. August 1977.
- **Electrical Permit 134148;** install 3rd floor EB Panel. Replace 2 sockets with 4 sockets with new 2/0 to weatherhead; put heating system on separate meter "3rd floor. Install 30 gal elec water htr for 3rd floor. January 1977.
- **Zoning Permit 77-167;** replace a 7' x 9' porch in the front of the house. August 1976.
- **Notice of No Zoning or Permit;** April 6, 1976.
- **Building Permit 77-167;** replace the porch deck. August 1976.

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- **Notice of Violation July 1974;** Conversion of a two apartment house into a three apartment house (conversion of attic into a unit) without having obtained a zoning permit. July 1974.
- **Building Permit 24-558;** convert heating system to gas. January 1974.
- **Building Permit 73-451;** install gas space heater. September 1972.

Overview:

48-50 Greene Street, constructed c. 1900 is listed on the Vermont State Register of Historic Resources. The original “fire escape” was constructed via building permit in 1984. This permit is an after-the-fact zoning permit for the replacement of the exterior stairs to the third floor. Upon inspection the building inspector advised the owner that the completed work had exceeded the 2020 building permit issued for repair, requiring zoning review.

Although currently used as a triplex, there are no permits on file for the conversion of a duplex to a triplex. A Notice of Violation was issued in July 1974 for the creation of a unit by finishing the attic, turning a duplex into a triplex. No further resolution is identified within the zoning, building or code enforcement record.

A staff site visit confirmed that multiple alterations have occurred to the property without benefit of building or zoning permits. There is evidence of window and door alterations, with no zoning or building permits issued.

48-50 Greene Street was included on the Vermont State Register of Historic Resources in 1978. The Assessor’s revaluation photograph of 1984 illustrates the newly constructed exterior stairs.

The **Design Advisory Board** reviewed the application at their September 14, 2021 meeting. The Board took the following action:

Motion by Ron Wanamaker: I move to deny the application to reconstruct stairs, based on Section 5.4.8 and Section 6.3.2 (i), *Makes Spaces Safe and Secure*.

Emily Morse: 2nd.

Vote 4-0.

Motion carries.

The appeal was filed September 28, 2021; within the 15 day (administrative decision) appeal period and therefore timely.

Recommended motion: Certificate of Appropriateness denial, based on the following Findings:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Section 3.1.2 Zoning Permit Required

A. Exterior Work

1. *Additions to existing buildings, garages, accessory buildings, or other structures*
2. *Alterations to building elevations/appearances*
3. *Change of use or expansion of use*

B) Interior Work

1. *Increase in habitable living space*
2. *Installation of additional kitchen*
3. *Change in use*
5. *Increase or decrease in the number of units.*

The zoning application was precipitated by the direction of Building Official Kim Ianelli who instructed the owner that the completed work has exceeded the scope of work approved in a June 2020 building permit (“Repair fire escape”.) A review of the zoning and building permit history as well as a site visit reflect a change in use (duplex to triplex), an expansion of habitable living area into the attic, and exterior alterations that have been undertaken without appropriate permits. A Notice of Violation was issued in 1974 for the change of use without issuance of a permit.

While an Affirmative Finding would acknowledge this application for exterior changes (although after-the-fact), the absence in required permitting for obviously completed work recommends continued evaluation by Code Enforcement.

Adverse Finding.

Section 3.2.7 Administrative Review and Approval

(a) Administrative Authority

The application to “repair” the fire escape met standards for staff review. As the building is listed on the Vermont State Register, the application was forwarded to the Design Advisory Review for their recommendation relative to the changes introduced by the replacement staircase. That Board’s recommendation for denial informed the administrative decision, which was issued September 15, 2021.

Affirmative finding for Administrative Review

(d) Appeal of Administrative Decisions

The applicant filed a timely appeal September 28, 2021.

Affirmative finding.

Part 4: Site Plan and Design Review

Section 3.4.2 Applicability

(a) Site Plan Review:

Site Plan Review shall be required for the approval of all development subject to the provisions of this ordinance with the exception of single-family dwellings not otherwise subject to the requirements of Design Review.

Site plan Review is required for the changes to the exterior staircase. **Affirmative finding.**

(b) Design Review

Design Review shall be required for the approval of all development subject to the provisions of this ordinance within the Design Review Overlay District as defined in Article 4, Section 4.5.1 and any of the following:



3. Any development subject to the provisions of Article 5, Part 4 – Special Use Regulations.

48-50 Greene Street is listed on the Vermont State Register of Historic Resources, which therefore engages the standards of Section 5.4.8, Historic Buildings and Sites. Furthermore, Greene Street falls within the Design Review Overlay District, as illustrated in Map 4.5.1-1.

Article 4: Zoning Maps and Districts

Section 4.4.5

(b) Dimensional Standards and Density

Table 4.4.5-2 Base Residential Density permits a maximum of 20 dwelling units per acre. With a lot size of 2640 sq.ft. ($2640 / 43,560 = .06$ acres x 20 dwelling units/acre = 1 unit.) Providing an exterior staircase to an unpermitted dwelling unit is

irreconcilable with the ordinance. **Adverse finding.**

Table 4.4.5-3 Residential District Dimensional Standards limits lot coverage to 40% in the RM Zoning District (with an allowance of an additional 10% “bonus” features.) No site plan nor a coverage calculation was provided, and no construction plans were submitted. There is no site plan on file to determine previously approved coverage. Aerial photos depict a substantial amount of lot coverage. As the stairs to the third floor are central to the lot, setback compliance

for the stairs is assumed.



The building permit indicated the repair was to retain the existing dimensions.

No finding possible.

(c) Permitted and Conditional Uses

Duplex and Multi-family residential are both permitted uses in the RM zoning district. There is no evidence that a zoning permit was issued for the current triplex use. A NOV issued in 1974 confirms the City’s action against the additional unit.

Adverse finding.

48-50 Greene Street 2019 Orthophotography

(d) District Specific Regulations

1. *Setbacks*

No site plan or construction documents were provided to assess the lot and setbacks.

No finding possible.

2. *Lot Coverage*
See above.
3. *Accessory Residential Structures, Buildings, and Uses*
The application does not relate to garages, barns, sheds, tennis courts or similar accessory features. Not applicable.
4. *Residential Density*
See Table 4.4.5-2, above.
5. *Uses*
 - a. *Exceptions for Neighborhood Commercial Uses*. Not applicable.
6. *Residential Development Bonuses*
The application was not seeking any development bonuses. Not applicable.

Although the appeal relates to administrative denial of a replacement staircase, the issue of residential density and alterations to the building to accommodate the attic living space are irreconcilably related. Without a separate determination as the expanded living space and additional dwelling unit, **Adverse finding**.

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots.

Not applicable.

Section 5.2.2 Required Frontage or Access

Not applicable.

Section 5.2.3 Lot Coverage Requirements

See Section 4.4.5-3, above.

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks

See Section 4.4.5-3, above.

Section 5.2.6 Building Height Limits

See Section 4.4.5-3, above.

Section 5.2.7 Density and Intensity of Development Calculations

See Section 4.4.5 (b), above.

Part 3: Non Conformities

Not applicable.

Section 5.4.8 Historic Buildings and Sites

The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:

To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;

To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;

To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,

To promote the adaptive re-use of historic buildings and sites.

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

48-50 Greene Street, identified as the Cassius B. Russell residence, is listed on the Vermont State Register of Historic Resources. See attached historic narrative.

(b) Standards and Guidelines:

The following development standards, following the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used in the review of all applications involving historic buildings and sites subject to the provisions of this section and the requirements for Design Review in Art 3, Part 4. The Secretary of the Interior's Standards are basic principles created to help preserve the distinctive character of a historic building and its site. They are a series of concepts about maintaining, repairing and replacing historic features, as well as designing new additions or making alterations. These Standards are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility.

- 1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.*

The home was constructed c. 1900 as the residence of Cassius B. Russell. As the use remains residential, it continues the historic use. The conversion of the third floor attic to habitable space has spurred the life safety need for the exterior staircase; receiving a building permit in 1984 for a second means of egress. This application is an after-the-fact permit for its replacement, which introduces new intrusion relative to the first floor porch. **Adverse finding.**

- 2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.*

The alteration of features; specifically the inclusion of an iron support post on the (visible) front porch, is an unacceptable and avoidable alteration to the character of the historic structure.

Adverse finding.

3. *Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.*

There are no conjectural features, but an alteration that changes the character of the structure.

Adverse finding.

4. *Changes to a property that have acquired historic significance in their own right will be retained and preserved.*

None identified.

5. *Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.*

The one story veranda with turned posts is a defining feature of the Queen Anne structure. The introduction of an iron post within the feature is a disruption. **Adverse finding.**

6. *Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.*

The exterior staircase is not a historic feature. Not applicable.

7. *Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*

Providing additional support by introducing non-historic materials on a façade visible from the street is a physical treatment that mars the historic character of the structure. Piercing the first floor porch roof for the iron column is a physical treatment that has caused damage to historic building fabric, and portends future material damage with structural exposure to the elements.

Adverse finding.

8. *Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.*

There are no known archaeological resources on site. Not applicable.

9. *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.*

The stair replacement introduces non-historic building fabric that diminishes the historic integrity of the structure. A common resolution to achieve building and life safety code for multi-story, multi-unit structures is to sprinkle the building; a much preferred solution than the replacement staircase under appeal. As the ordinance has been updated since the original

building permit was issued in 1984 for the exterior stairs, replacement options should follow best practices and reflect the regulations now in effect. **Adverse finding.**

10. *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

The method of support for this replacement staircase is distracting and is an adverse alteration to the historic porch/house. A more sympathetic solution is needed, consistent with the current regulations to protect the safety of the tenants as well as the historic integrity of the residence. **Adverse finding.**



1984-85 Assessor Revaluation photograph
Stairs are new build

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 identified natural features within the application. The replacement stairs were described to have been constructed in the same location as the 1984 stairway. **Affirmative finding.**



(b) Topographical Alterations:
Not applicable.

(c) Protection of Important Public Views: Not applicable.

(d) Protection of Important Cultural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Archeological sites likely to yield information important to the city's or the region's pre-history or history shall be evaluated, documented, and avoided whenever feasible. Where the proposed development involves sites listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8(b).

See Section 5.4.8, above.

(e) Supporting the Use of

Renewable Energy Resources:

No part of the application precludes the use of wind, water, solar, geothermal or other renewable energy resource. Not applicable.

(f) Brownfield Sites:

Not applicable.

(g) Provide for nature's events:

Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.

Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.



Other than the roof eave, the top of the landing has no canopy. The stair, itself, is uncovered. Relevant building code here, as provided by the building official:

If the stairs are new here is what the code says: NFPA 101:7.2.2.6.5 Outside Stairs, Accumulation of Snow, Ice or Water: New outside stairs, ramps and landings, other than the primary entrance, shall be designed to minimize the accumulation of snow, ice and water by a roof or other approved means. (Cross reference to NFPA 1:14.4.1) Plans would need to be reviewed in order to give the best answer.

Treads are to be 11" deep for new stairs (10" if 1-2 unit dwelling or a fire escape)

While the building official has not opined on the code compliance of the replacement stairs, she has determined that the work done exceeded the building permit and required a zoning permit. If intended to be a principal

entry to a dwelling unit, it should be design to address the effects of rain and snow, which it does not. **Adverse finding.**

(h) Building Location and Orientation:

The applicant proposed the replacement stairs appear in the same location as the previous. The orientation of the building remains original. Not applicable.

(i) Vehicular Access:

No change. Not applicable.

(j) Pedestrian Access:

Not applicable.

(k) Accessibility for the Handicapped:

ADA access is under the jurisdiction of the building inspector.

(l) Parking and Circulation:

No change.

(m) Landscaping and Fences:

Not applicable.

(n) Public Plazas and Open Space:

Not applicable.

(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

No lighting is included within this application. Not applicable.

(p) Integrate infrastructure into the design:

Exterior storage areas, machinery and equipment installations, service and loading areas, utility meters and structures, mailboxes, and similar accessory structures shall utilize setbacks, plantings, enclosures and other mitigation or screening methods to minimize their auditory and visual impact on the public street and neighboring properties to the extent practicable.

Any development involving the installation of machinery or equipment which emits heat, vapor, fumes, vibration, or noise shall minimize, insofar as practicable, any adverse impact on neighboring properties and the environment pursuant to the requirements of Article 5, Part 4 Performance Standards.

The application is an after-the-fact permit to “repair” an exterior stair originally erected in 1984. The design of the stair, which rises from the ground level to the third story has been altered by the addition of a support column between the first floor porch and the third floor landing. The contractor has carried the weight of the upper deck landing down onto an iron plinth, mounted through the

second floor porch roof, continuing to a porch mounted iron-angle. The design is awkward on this historic



structure; may overly burden the first floor porch deck (the porch lattice shows deflection) and hinders escape from the second floor turret window. **Adverse finding.**





invite water and early structural failure. The solution was ill-advised from the standpoint of building care and protecting the character defining features of the building. **Adverse finding.**

3. *Building Openings*

The replacement of a third floor window with an entry door has not received zoning approval, although the 1984 building permit notes the introduction of a door. There are other noted door and window alterations that similarly lack permitting.

Adverse finding.

First floor south/east entry; entry door appears to have been relocated, one door sealed off.

Part 3: Architectural Design Standards Sec. 6.3.2 Review Standards

(a) Relate development to its environment:

1. *Massing, Height and Scale:*

The egress stair replaces another installed in 1984. In that manner, the visually intrusion is similar. The earlier stair did not have the additional porch support which is obtrusive and especially visible from the public right-of-way. **Adverse finding.**

2. *Roofs and Rooflines.*

Current building code may require a roof cover over the stairs. See 6.2.2. (g), above. No roof cover or entry shelter is included in this reconstruction.

The piercing of the porch roof introduces an opening in the building envelope that will



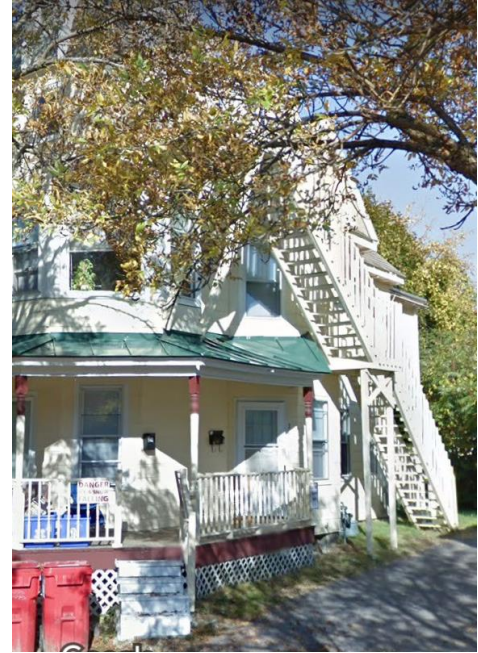
(b) Protection of Important Architectural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.

See Section 5.4.8.

(b) Protection of Important Public Views:

Not applicable.



(d) Provide an active and inviting street edge:

The stairs themselves appear to be in the same location as the previous stairs; but the iron support pole that rises vertically through the first floor porch roof is a visual intrusion that is particularly damaging to the porch and to the visual and material integrity of the historic structure. **Adverse finding.**

(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

Owners of historic structures are encouraged to consult with an architectural historian in order to determine the most appropriate repair, restoration or replacement of historic building materials as outlined by the requirements of Art 5, Sec. 5.4.8.

There is no evidence of consultation with an architectural historian prior to constructing this replacement staircase. The method chosen is inconsistent with the historic character of the structure and introduces adverse visual impact; literally opening a wound on the building envelope. **Adverse finding.**

(f) Reduce energy utilization:

Not applicable.

(g) Make advertising features complementary to the site:

Not applicable.

(h) Integrate infrastructure into the building design:

See Section 6.2.2 (p), above.

(i) Make spaces secure and safe:

These exterior staircases were intended to provide egress to upper floor residents. The original was constructed with a building permit in 1984. The building official has not closed out the 2020 building permit, so code compliance is unknown.

Alternate satisfaction of egress code can be accomplished by providing sprinklering to avoid the visual intrusion on a historic property.

There is no evidence within the zoning history record that the third floor unit ever received zoning approval. **Adverse finding.**

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