

## Department of Planning and Zoning

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**TO:** Development Review Board  
**FROM:** Ken Lerner  
**DATE:** May 19, 2015  
**RE:** 15-1012CA/CU; 36 Locust 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:** RL                      **Ward:** 5

**Owner/Applicant:** Alec Bauer

**Request:** Construct second story over garage and convert entire garage for an accessory unit, add storage shed and patio.

### **Applicable Regulations:**

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

### **Background Information:**

The applicant is seeking approval to add a second story to a detached garage and convert the entire structure into an accessory apartment. No new parking to serve the accessory unit is proposed.

Previous zoning actions for this property are noted as follows:

- ZP 11-0508CA Addition to single family residence, add retaining wall, relocate existing garage, extend driveway. Approved December 10, 2010.
- ZP 11-0571CA Demolition of existing garage and construction of a new one. Approved April 27, 2011.
- ZP 15-0161CA Finish interior space in garage per previous permit #11-0767CA. Construct new pervious stone patio in backyard. Approved August 4, 2014.

**Recommendation:** Denial for the following reasons:

### **I. Findings**

#### **Article 3: Applications and Reviews**

#### **Part 5, Conditional Use & Major Impact Review:**

##### **(a) Conditional Use Review Standards**

##### **(1) The capacity of existing or planned community facilities;**

The proposed accessory dwelling unit will be served by municipal water and sewer service. Adequate capacity is available; however, approval for connections from DPW and a wastewater permit from the State of Vermont will be required. **(Affirmative finding if conditioned)**

*(2) The character of the area affected;*

This neighborhood is defined by detached single family homes. Accessory dwelling units are allowed in association with single family homes throughout the city. As required, the proposed accessory dwelling unit is relatively small and is clearly secondary to the primary residence on the subject property. As an apartment the occupancy of the unit is for permanent residents and cannot be used otherwise such as for less than a 30-day rental period. **(Affirmative finding if conditioned)**

*(3) Traffic on roads and highways in the vicinity;*

No traffic information has been provided; however, anticipated traffic impacts are minimal. **(Affirmative finding)**

*(4) Bylaws then in effect;*

As a rental, either the primary or accessory unit must be registered with Code Enforcement for occupancy for permanent residential use, and shall meet minimum housing standards as required. **(Affirmative finding if conditioned)**

There is inadequate parking to support the accessory unit and the single family occupancy as required – see finding in Sec. 5.4.5 (a) 4 and Sec. 8.1.8. Thus this proposal cannot be found to comply with all applicable zoning bylaws. **(Adverse finding)**

The applicant refers to the recent approval by the DRB for a similar situation. In that case, 52 Locust Street 14-0773CA/CU, the approval was granted only with a parking management plan and deeded covenant that limited vehicular ownership for both units to two vehicles. See below under Article 8.

*(5) Utilization of renewable energy resources;*

No utilization of renewable energy resources is evident in the project plans; however, as proposed, the accessory dwelling unit will have no adverse impact on the potential utilization of such energy onsite. **(Affirmative finding)**

*(6) Cumulative impacts of the proposed use;*

The subject property is located in the RL zone wherein residential use is permitted. Per this criterion, cumulative impacts shall be deemed negligible. **(Affirmative finding)**

*(7) Functional family;*

Accessory apartments by definition are limited to 1-bedroom or studio units. While the functional family limitations of this criterion apply, the occupancy restrictions of no more than two adult occupants for an accessory apartment are more stringent. The functional family limitation also would be applicable to occupancy of the principal dwelling. **(Affirmative finding if conditioned)**

*(8) Vehicular access points;*

The proposed accessory unit will be placed behind, to the east of, the existing home utilizing an existing garage by adding a second story. There is insufficient parking in the driveway to accommodate the increase in use and to meet the required parking resulting from the accessory unit as per Sec. 5.4.5 (a) 4 and Sec. 8.1.8. As noted the applicant requests a waiver of parking and points to the waiver granted to 52 Locust Street. **(Adverse finding)**

(9) *Signs;*

No signage is included in this proposal. **(Not applicable)**

(10) *Mitigation measures;*

The proposed accessory dwelling unit should not produce noise or glare sufficient to warrant mitigation measures. **(Affirmative finding)**

(11) *Time limits for construction;*

The zoning permit is valid for 2 years; 1 year to start construction and another to finish. No additional time is being sought by the applicant. **(Affirmative finding)**

(12) *Hours of operation and construction;*

Hours of operation do not apply to the proposed residential use. Given the project location in a residential neighborhood, hours of construction of the second story and shed should be limited to Monday – Saturday, 7:00 AM – 6:00 PM. No construction on Sunday. These limitations are consistent with those imposed for other development within residential areas. **(Affirmative finding if conditioned)**

(13) *Future enlargement or alterations;*

Any future enlargement or alterations will require additional permit review in accordance with the regulations in effect at that time. **(Affirmative finding)**

(14) *Performance standards;*

See Sec. 5.5.3 for erosion control.

(15) *Conditions and safeguards;*

If conditioned, the proposed use complies with the applicable requirements of the Comprehensive Development Ordinance, except for parking as noted. **(Affirmative finding)**

#### **Article 4: Maps & Districts**

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

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

**(1) 1. The Residential Low Density (RL) 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.**

The subject property is located in the RL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes. Accessory dwelling units are allowed in association with single family homes throughout the city.

**(Affirmative finding)**

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

Lot coverage will increase to 25.6% plus 6% for amenity coverage; below the 35% and 10% maximum permissible. **(Affirmative finding)**

The accessory dwelling unit as proposed with a second story appears to be greater than 15 ft. high. Thus it is subject to complying with a side yard setback of 10% of the lot width. As proposed, it will be set back 5.5 ft. from the side boundary line, which it appears to do. **(Affirmative finding)**

***(c) Permitted & Conditional Uses***

The existing single family home is a permitted use in the RL zone. Accessory dwelling units may be permitted uses as well; however, the new construction proposed tips the application into conditional use review. **(Affirmative finding)**

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

***1. Setbacks***

Refers to exceptions – none sought

***2. Height***

Refers to exceptions – none sought

***3. Lot Coverage***

Refers to exceptions – none sought

***4. Accessory Residential Structures and Uses***

Accessory dwelling units are allowed in association with single family homes throughout the city and are not counted as an additional unit for density purposes. See Sec. 5.4.5, *Accessory Dwelling Units*. **(Affirmative finding)**

***5. Residential Density***

No additional density is calculated as a result of the inclusion of an accessory apartment.

***6. Uses***

See item 4. above.

***7. Residential Development Bonuses***

**(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. 5.4.5, Accessory Dwelling Units***

***(a) Accessory Units, General Standards/Permitted Uses:***

*Where there is a primary 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 primary dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. No accessory unit shall be inhabited by more than 2 adult occupants.*

As required, there shall be no more than two adult occupants in the accessory unit and the premises must be owner occupied. **(Affirmative finding if conditioned)**

*Additionally, there must be compliance with all the following:*

1. *The property has sufficient wastewater capacity as certified by the Department of Public Works;*

The proposed accessory dwelling unit will place minimal demand on the city's wastewater system. This capacity must be verified in writing by the Department of Public Works.

**(Affirmative finding if conditioned)**

2. *The unit does not consist of more than 30 percent of the total habitable floor area of the building, inclusive of the accessory dwelling unit;*

The proposed accessory dwelling unit is 510 sf.

This square footage is 29.59% of the 1723 sf habitable area of the existing single family home which includes the habitable first floor of the garage. **(Affirmative finding)**

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

As noted previously, the proposed accessory dwelling complies with yard setback requirements. The proposed work does not exceed lot coverage limitations. **(Affirmative finding)**

4. *One additional parking space which may be legally allocated to the accessory unit must be in existence and provided for the accessory unit.*

There are two parking spaces in tandem in the existing driveway on the property. Three parking spaces are required; two for the single family use and one for the accessory apartment.

The driveway is not sufficient to contain the required three parking spaces; also as per Sec. 8.1.8. No additional parking is proposed. **(Adverse finding)**

#### ***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***

A proposed outdoor lighting fixture is shown at the front of the accessory structure that is residential in character. **(Affirmative finding)**

#### ***Sec. 5.5.3, Stormwater and Erosion Control***

As no earth disturbance is proposed, a "small project erosion control" form is not required. **(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*

There are no natural resource features on site that are in need of protection. **(Affirmative finding)**

*(b) Topographical alterations*

No topographical alterations are proposed. **(Affirmative finding)**

*(c) Protection of important public views*

There are no important public views from or through the subject property. **(Affirmative finding)**

*(d) Protection of important cultural resources*

The existing single family house was built post WWII, around 1946. It is identified in the Five Sisters Neighborhood Survey of historic resources. The site does not contain any known archaeological resources. **(Affirmative finding)**

*(e) Supporting the use of alternative energy*

As noted previously, no utilization of renewable energy resources is evident in the project plans. **(Affirmative finding)**

*(f) Brownfield sites*

**(Not applicable)**

*(g) Provide for nature's events*

See Sec. 5.5.3.

*(h) Building location and orientation*

The proposed dwelling unit is accessory to the primary residence on the subject property. It is appropriately located behind the principal building. **(Affirmative finding)**

*(i) Vehicular access*

See Sec. 3.5.6 (a) 8.

*(j) Pedestrian access*

Access to the accessory dwelling unit will be over a previously approved patio. **(Affirmative finding)**

*(k) Accessibility for the handicapped*

While not required the two story accessory dwelling will not be accessible for use by handicapped persons. A suggested alternative would be to add to the garage keeping it as a single story structure. **(Not applicable)**

*(l) Parking and circulation*

See Sec. 5.4.5 (a) 4 and 8.1.8.

*(m) Landscaping and fences*

No changes proposed. **(Affirmative finding)**

*(n) Public plazas and open space*

**(Not applicable)**

*(o) Outdoor lighting*

See Sec. 5.5.2.

*(p) Integrate infrastructure into the design*

New site infrastructure is needed for the accessory dwelling unit. All new utility lines to serve the dwelling must be buried. **(Affirmative finding if conditioned)**

### ***Part 3, Architectural Design Standards***

#### ***Sec. 6.3.2, Review Standards***

*(a) Relate development to its environment*

- *Massing, Height, and Scale*

The massing, height, and scale of the proposed accessory dwelling unit while subordinate to the primary residence, results in an ill-proportioned structure. It is relatively too tall and vertical for the width of its footprint. In addition, the use of vertical siding only adds to this verticality. As an alternative an at-grade extension might be a better solution. As designed it is suggested that, if the conditional use for the accessory unit is approved, the COA for the structure not be issued unless the structure is redesigned or referred to the DAB for consideration. **(Affirmative finding if conditioned)**

- *Roofs and Rooflines*

The proposed gable roof on the accessory dwelling is acceptable although as noted the building ratio of height to width is awkward. **(Affirmative finding)**

- *Building Openings*

Fenestration is composed of basic geometric shapes that reinforce the residential nature of the proposed building. **(Affirmative finding)**

*(b) Protection of important architectural resources*

The subject property contains an historic building that is common to this neighborhood. The addition of the accessory structure is separate and detached and will not have any effect on the existing building or others in the vicinity. **(Affirmative finding)**

*(c) Protection of important public views*

See 6.2.2 (c) above.

*(d) Provide an active and inviting street edge*

As noted above, proposed building will house an accessory dwelling unit. The building is not intended to present a strong street presence. Rather, the building is oriented behind the primary dwelling unit. **(Affirmative finding)**

*(e) Quality of materials*

The existing garage was approved with metal siding. The proposed elevations illustrate vertical siding that exacerbates the verticalness of the structure. Horizontal siding should be considered unless the building is one-story. **(Affirmative finding if conditioned)**

*(f) Reduce energy utilization*

The proposed building must comply with the state & city's current energy efficiency standards. **(Affirmative finding if conditioned)**

(g) *Make advertising features complimentary to the site*

No advertising is included in this proposal. **Not applicable.**

(h) *Integrate infrastructure into the building design*

No exterior mechanical equipment is proposed. If exterior utility meters are to be installed, they must be depicted on revised plans and screened. **(Affirmative finding if conditioned)**

(i) *Make spaces safe and secure*

The proposed building must comply with the city's current egress requirements. **(Affirmative finding if conditioned)**

## **Article 8: Parking**

### **Sec. 8.1.8 Minimum Off-Street Parking Requirements**

The accessory dwelling unit requires one parking space and the principal residence requires two spaces for a total of three. The driveway is inadequate to contain the required parking.

No additional parking is proposed, rather a waiver is requested under Sec. 8.1.15, below.

**(Adverse finding)**

### **Sec. 8.1.15 Waivers from Parking Requirements/ Parking Management Plans**

*The total number of parking spaces required pursuant to this Article may be reduced to the extent that the applicant can demonstrate that the proposed development can be adequately served by a more efficient approach that more effectively satisfies the intent of this Article and the goals of the municipal development plan to reduce dependence on the single-passenger automobile.*

*Any waiver granted shall not exceed fifty percent (50%) of the required number of parking spaces except for the adaptive reuse of a historic building ... and ground floor retail uses in any Mixed Use district which may be waived by as much as one hundred percent (100%). Waivers shall only be granted by the DRB, or by the administrative officer pursuant to the provisions of Sec. 3.2.7 (a) 7.*

*In order to be considered for a waiver, the applicant shall submit a Parking Management Plan that specifies why the parking requirements of Sec. 8.1.8 are not applicable or appropriate for the proposed development, and proposes an alternative that more effectively meets the intent of this Article. A Parking Management Plan shall include, but not be limited to:*

- (a) *A calculation of the parking spaces required pursuant to Table 8.1.8-1.*
- (b) *A narrative that outlines how the proposed parking management plan addresses the specific needs of the proposed development, and more effectively satisfies the intent of this Article and the goals of the Municipal Development Plan.*
- (c) *An analysis of the anticipated parking demand for the proposed development. Such an analysis shall include, but is not limited to:*
  - 1. *Information specifying the proposed number of employees, customers, visitors, clients, shifts, and deliveries;*
  - 2. *Anticipated parking demand by time of day and/or demand by use;*
  - 3. *Anticipated parking utilizing shared spaces or dual use based on a shared parking analysis utilizing current industry publications;*

4. *Availability and frequency of public transit service within a distance of 800-feet.*
  5. *A reduction in vehicle ownership in connection with housing occupancy, ownership, or type; and,*
  6. *Any other information established by the administrative officer as may be necessary to understand the current and project parking demand.*
- (d) *Such a plan shall identify strategies that the applicant will use to reduce or manage the demand for parking into the future which may include but are not limited to:*
1. *A telecommuting program;*
  2. *Participation in a Transportation Management Association including methods to increase the use of mass transit, car pool, van pool, or non-auto modes of travel;*
  3. *Implementation of a car-share program;*
  4. *Development or use of a system using offsite parking and/or shuttles; and,*
  5. *Implementation of public transit subscriptions for employees.*

*Prior to any approval by the DRB pursuant to this section, the means by which the parking management plan will be guaranteed and enforceable over the long term, such as a contract, easement, or other means, and whether the city should be a party to the management contract or easement, shall be made acceptable to the city attorney.*

The proposed accessory apartment cannot be approved as it does not meet the minimum parking standards as articulated in Sections 5.4.4 (a) 4 and 8.18. In an attempt to address the lack of parking, the applicant has requested a parking waiver based on:

There being three spaces that can be lined up behind each other in the driveway;

That the premises are owner-occupied; and

That there is on-street parking available.

It is also noted that another property owner was granted a waiver.

Tandem spaces are one behind the other. Three spaces lined up are “stacked” and only tandem are allowable for accessory apartments, (see Section 8.1.14);

The premises are required to be owner occupied regardless and that in-and-of-itself does not address the amount of shuttling that would be necessitated with stacked parking;

Street parking is not allowed to be counted toward any private development, as they are public and subject to change beyond the control of the applicant; and

The waiver granted to a nearby owner (52 Locust Street) was actually a proposal by the owner. His rationale for the waiver is based on a personal commitment and life style.

Despite a recommendation for an adverse finding, the DRB conditioned that permit for the owner to provide a deeded covenant limiting vehicular ownership to two for the entire property to insure that the future long term occupancy of the accessory unit and single family residence will continue a life-style with limited vehicle ownership. This restriction is based on the commitment of the owner and should not be viewed as a precedent. Zoning permits are issued to and run with the land, not with an individual. The reality is that the occupancy of the accessory unit and the single family residence are for the long-term, beyond the current owner’s residency. It is not possible to guarantee or enforce, as required in Sec. 8.1.15 (d), that future owners and/or occupants will subscribe to the same life style including limiting vehicle ownership despite the covenant. It is also a concern that

personal circumstances change with life event changes and with the needs of growing families.

In addition, the 52 Locust property is a corner lot and a third parking space could be provided that is accessed from the second fronting street (Locust Terrace). This opportunity does not exist for the subject property.

**(Adverse finding)**

## **II. Reasons for Denial:**

**Per the adverse findings above.**