

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
Ryan Morrison, Associate Planner
Vacant, Planning Technician
Vacant, Planning & Zoning Clerk
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



MEMORANDUM

TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: September 21, 2021
RE: ZP-21-577; 63 North 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: RM-W Ward: 3C

Owner/Applicant: Joseph Piscotty

Request: Construct a garbage shed within required setbacks. Applicant requests a variance from required front and side yard setbacks.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 12 (Variances and Appeals)

Background Information:

The applicant is requesting a front and side yard setback variance to place a garbage shed on a portion of the rear driveway. The construction/placement of the shed is also included in this application. The property is developed with a 6-unit multi-family residential structure, with ground level interior parking. 2 exterior parking spaces used to exist but are no longer used nor required. The new shed will be placed within those previous parking spaces. Based on dimensional limitations of the rear driveway, and a suitable location to place the shed, the applicant proposes to place the shed within required front and side yard property line setback areas.

The subject property is relatively small at just 4,455 sf, and has two frontages: North Avenue and Depot Street. Although public, Depot Street is closed to vehicular traffic with the exception of traffic generated for property access, as is the case with the subject property.

Relief is sought from the setback requirements of Table 4.4.5-3, *Residential District Dimensional Standards* and Section 5.2.5 (b), *Exceptions to Yard Setback Requirements*. Given the existing development layout of the property, and the front yard setbacks, there is no available location to place the shed where setback compliance can be met.

Previous zoning actions for this property are as follows:

- 5/7/76, Approval for alterations to porches, entrance doorways, and stairs.
- 5/13/82, Approval to construct 6 attached dwelling units – fire rebuild utilizing existing footprint.
- 2/18/00, Approval to install vinyl siding.
- 2/18/04, Approval to replace windows and doors.
- 9/7/13, Approval to replace windows and a sliding door.
- 1/14/16, Approval to replace windows and a sliding door.
- 1/25/16, Approval to replace windows.

Recommendation: Variance approval as per, and subject to, the following findings and conditions.

I. Findings

Article 2: Administrative Mechanisms

Part 7: Enforcement

Section 2.7.8 Withhold Permit

There is one permit associated with the property that has never been closed out, and remains ‘permit indeterminate’. The applicant is tasked with closing this permit before being able to obtain any future certificates of occupancy. **(Affirmative finding as conditioned)**

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(4) Residential Medium Density (RM)

The subject property is located in the RM zone. This zone is intended primarily for single detached dwellings and attached multi-family apartments. The existing multi-family condo building complies with the intent of the zone. **(Affirmative finding)**

(b) Dimensional Standards & Density

Table 4.4.5-3: Residential District Dimensional Standards

Zoning District	Max. Lot Coverage ₁	Setbacks ^{1, 3, 4, 5, 6}				Max. Height ¹
		Front ²	Side ³	Rear	Waterfront	
RM	40%	Min/Max: Ave of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides Max required: 20-feet	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	Min: 75' feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet
63 North Ave	N/A –	Ave. to	See Sec.	N/A	N/A	8 ft

Table 4.4.5-3: Residential District Dimensional Standards

Zoning District	Max. Lot Coverage ₁	Setbacks ^{1, 3, 4, 5, 6}				Max. Height ¹
		Front ²	Side ³	Rear	Waterfront	
Prop'd shed	shed will be placed on existing lot coverage.	Depot St. – 45 ft. Proposed shed setback of 7 ft.	5.2.5 (b) below. 5 ft setback req'd for the shed. Proposal asks for a 2 ft setback.			

The neighboring two properties along Depot Street (55 & 57 North Ave) have an average setback of 45 ft, meaning the minimum setback from Depot Street for the subject property is 40 ft (ave. setback +/- 5 ft). When applying a 40 ft setback off Depot Street, there is no available building space due to the existence of the multi-family building. Also worth noting – while average front yard setbacks are based off primary structures, 55 North Ave has a detached garage that is setback 6 ft from Depot Street. The applicant proposes a 7 ft setback for the garbage shed. In order to be approved, the Development Review Board must approve this variance request. See Article 12 below.

The shed is able to take advantage of yard setback exceptions, as outlined in Sec. 5.2.5 (b) below, but will still require a variance to this standard as well. **(Affirmative finding if the DRB grants the variance request)**

Article 5: Citywide General Regulations

Sec. 5.2.5, Setbacks

(b) Exceptions to Yard Setback Requirements

5. Accessory Structures and Parking Areas. Accessory structures no more than fifteen (15) feet in height, parking areas, and driveways may project into a required side and rear yard setback provided they are no less than five (5) feet from a side or rear property line where such a setback is required.

The applicant proposes a setback of 2 ft from the side yard property line. Such a request is subject to variance approval through the Development Review Board. See Article 12 below. **(Affirmative finding if the DRB grants the variance request)**

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

(h) Building location and orientation

The introduction of new buildings and additions shall maintain the existing development pattern and rhythm of structures along the existing streetscape. New buildings and additions should be aligned with the front façade of neighboring buildings to reinforce the existing “street-edge,” or where necessary, located in such a way that complements existing natural features and landscapes.

Little development exists along Depot Street. The lots in this area stretch between North Ave and Depot Street, and the Depot Street frontages actually have more of a rear yard feel to them. As noted above, 55 North Ave has a detached garage that is setback 6 ft from Depot Street. There appear to be no other accessory structures on the few developed lots along this frontage. The applicant proposes a similar setback to that of the detached garage on 55 Depot Street.

In residential areas, accessory buildings shall be located in such a way so as to be secondary and subordinate in scale and design to the principal structure. A parking structure – either attached or detached – shall be setback from the longest street-facing wall of the principal structure and be deferential yet consistent in character and design. Where a front yard setback is required, any street-facing garage wall containing garage doors shall be set back a minimum of 25' from the front property line to prevent parked vehicles from blocking the public sidewalk. Where a garage is not oriented towards the street (i.e. the garage doors face the rear or side yard), the street-facing garage wall shall have windows or doors or other features that break-up the mass into smaller elements, and be blended with the character of the residential portion of the structure

Given the unique lot layout and existing development thereon, there appear to be no areas on the lot where such a shed could locate and comply with setback requirements. In fact, the front setback lines only allow for a small building envelope which is currently occupied by the existing multi-family building. Garbage containment is a basic need for any developed property, and the applicant is proposing to place the shed in a location that will be the least noticeable, and won't create an obstruction for vehicular travel onsite. **(Affirmative finding)**

(p) Integrate infrastructure into the design

Trash and recycling bins and dumpsters shall be located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.

63 North Ave has two street frontages, North Ave and Depot Street. As mentioned above, Depot Street is closed to general vehicular traffic, with an exception made for residents of the street. One might find that the Depot Street frontage acts almost like a rear yard. Given the topography, pedestrians on Depot Street would have to look uphill and through oftentimes thick vegetation to even be able to see the shed. The shed has one open side for easy access to trash/recycling bins. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

Not applicable.

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 small at just 4,455 sf. Given its triangular shape and frontage on 2 streets, minimum setback requirements render new, compliant development on the property impossible. Due to the diagonal nature of Depot Street in relation to existing development on the neighboring two lots (55 & 57 North Ave), there is actually no area on the subject property that would allow for the proposed shed to be placed in a setback-compliant location. The applicant believes that the

property has unique physical circumstances and conditions, including irregularity and narrowness. And given the existing multi-family building, there is no other suitable location to place the garbage shed. **(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 applicant states that there was shed located partially on the slope leading down to Depot Street for many years which didn't comply with setback requirements. While there is no zoning or building permit evidence showing this old shed as having been permitted, historic aerial photos show it to be in place as far back as 2004. Still, the current request is for a new shed.

Reasonable use of the property has already been achieved by way of the existing 6-unit multi-family development. However, even though the shed is not a major new development, Sec. 6.2.2 (p) does want to see trash/recycling containment within this Design Review District. Placement of the garbage shed is impossible without a variance from the front and side yard setback requirements. **(Affirmative finding)**

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

Even if the lot were vacant, the front yard setback off Depot Street severely, if not completely, restricts the property's development potential. This is not a lot newly created by the applicant. **(Affirmative 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 variance from the limitations of Table 4.4.5-3 and Sec. 5.2.5 (b) would not alter the essential character of the neighborhood or district in which the subject property is located. This is a residentially zoned area, and accessory structures are commonplace with such development. **(Affirmative 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.

When taking into consideration vehicle maneuverability in the driveway, and the fact that there is no available area on the property to place the shed where setback compliance would be met, the proposed shed location represents the least deviation from setback requirements. **(Affirmative 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.

Technically, most of the existing multi-family building is located within required setbacks. There is no available land on the property in which to place the shed where setback requirements would be met. (**Affirmative finding**)

II. Conditions of Approval

1. Per **Section 2.7.8, Withhold Permit**, the applicant is required to 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.
2. The shed may have a setback of 7 ft to the Depot Street right of way, and a 2 ft setback to the side yard (south) property line.
3. 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 state or federal permit(s) as may be required, and shall meet all energy efficiency codes as required.
4. Standard permit conditions 1-15.