

## Department of Permitting and Inspections

Zoning Division

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## MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: May 2, 2023  
RE: ZAP-23-2; 410 North 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.**

**File:** ZAP-23-2

**Location:** 410 North Street

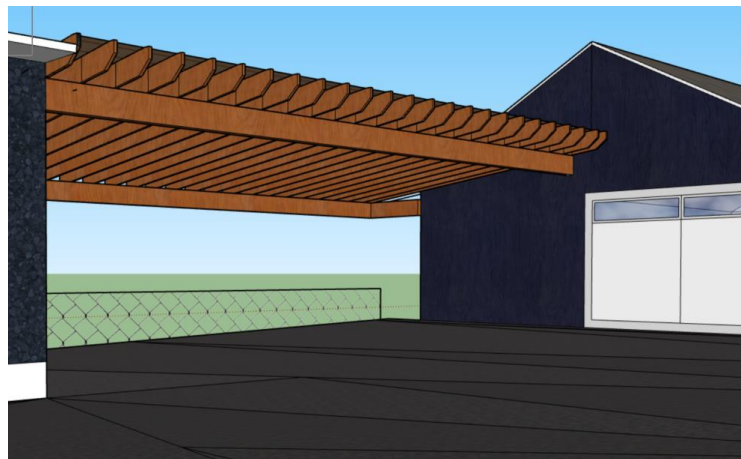
**Zone:** RL **Ward:** 1E

**Parking District:** Neighborhood

**Date application accepted:** March 29, 2023

**Applicant/ Owner:** Scott Goodwin

**Request:** Appeal of ZP-23-80: Administrative denial to convert existing single family home with detached ADU/garage to a duplex via roof extension. Administratively denied March 20, 2023.



### Background:

- **Zoning Permit 18-483 (ZP18-1216CA);** Raise the roof height of the garage/ADU; add/remove windows, add walkway and patio. July 2018.
- **Zoning Permit 18-0807CA;** add screened porch to the rear of the garage; change siding on the previously approved garage addition from stucco to board and batten, add fence in rear yard. April 2018.
- **Zoning Permit 17-0792CA/CU;** Add a 165 sf addition onto accessory dwelling unit. May 2017.
- **Zoning Permit 16-1225CA/CU;** Finish garage interior to be accessory dwelling unit; add parking space. January 2017.
- **Non-applicability of Zoning Permit Requirements 15-0683NA;** create a third bedroom out of a former living room. No increase in foot print or in living space. December 2014.

**Overview:** 410 North Street was approved for a detached accessory dwelling unit in January 2017 with a partial conversion of a detached garage. The applicant made an application to connect the existing single family home to the garage/ADU via a pergola-style structure and deem the connected buildings a duplex, which would relieve the obligation of owner-occupancy required of an ADU. The application was administratively denied March 20, 2023. The applicant filed an appeal March 29, 2023; within the required 15 day appeal period and therefore timely.

**Recommended motion: Deny appeal and uphold administrative decision to deny ZP 23-80** per the following Findings.

**I. Findings**

**Article 4: Zoning Maps and Districts**

**Section 4.4.5 Residential Districts**

**(a) Purpose**

*The Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment. They are also intended to create an inviting streetscape for residents and visitors. Development that places emphasis on architectural details and form is encouraged, where primary buildings and entrances are oriented to the sidewalk, and historic development patterns are reinforced. Parking shall be placed either behind, within, or to the side of structures as is consistent with the district and/or the neighborhood. Building facades designed for parking shall be secondary to the residential aspect of a structure.*

- 1. 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.*

**Table 4.4.5-3 Residential District Dimensional Standards**

<b>Zoning District RL</b>	<b>Max lot coverage 35%</b>	<b>Front setback</b>	<b>Side setback</b>	<b>Rear setback</b>	<b>Height 35' max.</b>
		Ave of 2 adjacent lots on both sides +/- 5'	10% of lot width or ave. of side yard setback of 2 adjacent lots on both sides	25% of lot depth	
<b>410 North Street</b>	ZP18-1216CA 30.73% Proposed 30.73%	No change	Connecting structure approx.. 1.3' from property line. 10% of lot width is 2.7'.	No change.	Pergola proposed at 8'

			Application defines “eaves” presumably to meet exemption from required setbacks. See Section 5.2.5 (b) 2. and definition of Eave, below.		
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**Adverse finding** for side yard setback.

**Article 5: Citywide General Regulations**

**Section 5.2.5 Setbacks**

See Table 4.4.5-3, above. Side yard setback is either 10% of lot width, or the average of side yard setback of 2 adjacent lots on both sides. There is only one adjacent on the west (406 North Street), but two on the east (412 and 418 North Street.) Using aerial imagery, side yard setbacks are estimated at:

- 406 North St. – 0
- 412 North Street – 13.7’
- 418 North Street – 11.6’
- Average                   **8.43’.**

The proposed roof connector is approximately **1.3’** from the west property line. It does not satisfy the “averaging” method to meet the required side yard setback.

Utilizing the 10% of lot width method, the required side yard setback is  $.10 \times 27.44 = 2.74’$ .

The proposed new structure does not meet that setback calculation either.

It is assumed that the applicant is seeking the identified **Exemption from Setbacks**. See **Section 5.2.5 (b) 2.** below.

**Adverse finding for Side Yard Setbacks.**

**Article 5: Citywide General Regulations**

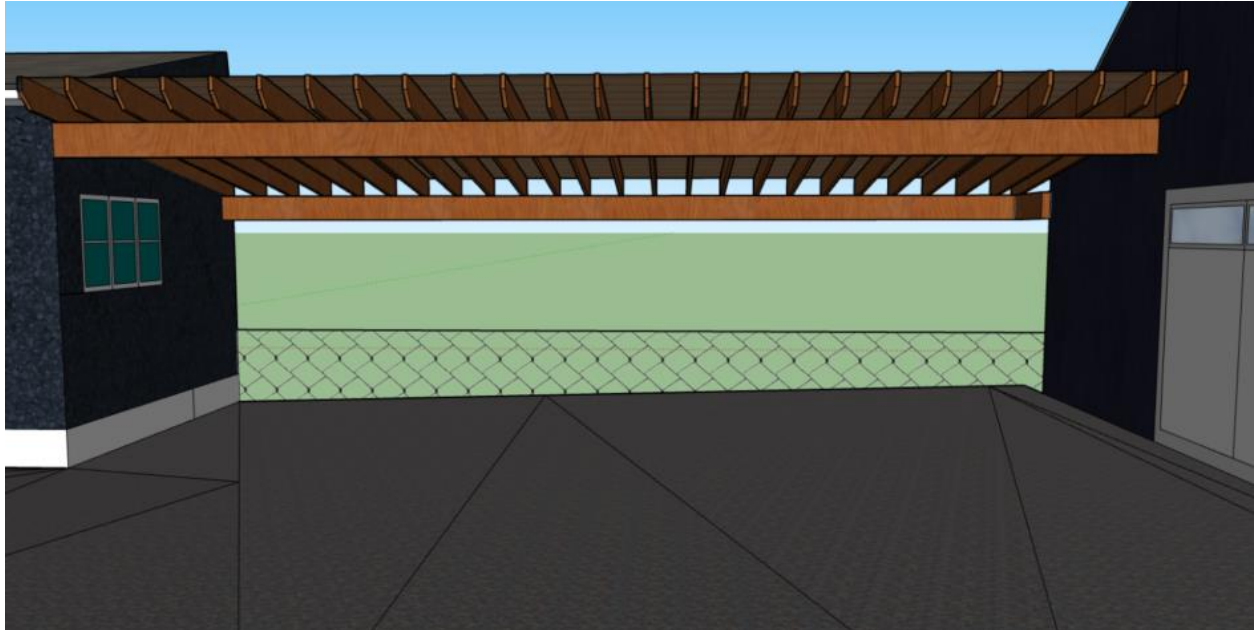
**Section 5.2.5 Setbacks**

**(b) Exceptions to Yard Setback Requirements**

- 2. *Building and Site features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, walls, and similar building and site features may project into a required yard setback.*

The proposed connector is a set of parallel roof joists, presenting rafter tails which extend into the required side yard setback. A minimum 2.7’ setback is required, 10% of the lot width at the point of the development. They are poised approximately 1.3’ from the side property line.

Rafter tails do not meet the definition of Eave (see below), and as a largely open structure, not a solid or boxed roof overhang.



**Adverse finding** for interpretation as Eave. The roof is not a solid plane, but the exposed and projecting rafter tails might be determined to be a “roof overhang.” This interpretation is at the discretion of the DRB.

The structure may find difficulty in securing a building permit with the proximity to a property line, as shelters for vehicles typically include consideration of combustability; requiring greater setbacks to meet life safety code. The applicant is encouraged to consult a building official.

### **Article 8: Parking**

No change is proposed to the number or location of parking. The applicant has provided a revised site plan that suggests vehicles may back up onto the neighboring parcel (SP-2). The property deed is attached that provides for a 10’ easement 95’ in depth for the shared driveway. The allowance does not include utilization of the neighbor’s parking area, and this application will not consider utilization of another parcel.

**No change to parking;** however applicant may not utilize the neighbor’s parcel a suggested in the submitted plan.

### **Article 13: Definitions**

#### **Section 13.1.2**

*For the purpose of this ordinance certain terms and words are herein defined as follows: Unless defined to the contrary in Section 4303 of the Vermont Planning and Development Act as amended, or defined otherwise in this section, definitions contained in the building code of the City of Burlington, Sections 8-2 and 13-1 of the Code of Ordinances, as amended, incorporating*

*the currently adopted edition of the American Insurance Association’s “National Building Code” and the National Fire Protection Association’s “National Fire Code” shall prevail.*

Both of the terms *Eave* and *Duplex* are defined within Article 13. The application narrative makes use of the FEMA building code, which is not warranted under the preamble to this Article. The definitions in Article 13 prevail; no other reference is required.

**Adverse finding** for utilization of other government code to define *Duplex*.

*Eave: The edge of the roof which overhangs the face of an exterior building wall and, normally, projects beyond the side of a building; performing the primary function of the roof in throwing water clear of the exterior building walls.*

The rafter tails do not meet the definition of Eave, as there are no exterior building walls and/or side of the building. **Adverse finding, no exemption from Setbacks.**

*Duplex: A single structure containing two (2) separate dwelling units, regardless of the type of construction. For purposes of this ordinance a single-family detached structure with an accessory apartment shall not be considered a duplex.*

410 North Street is currently a single family home with a detached garage/ADU. Zoning Permit 23-80 proposed to connect the two buildings with a pergola-style structure with parking underneath. The new structure does not substantively transform the two detached buildings into one (“a single structure”) and therefore does not meet the meaning or intent of the definition of “duplex” per Article 13. **Adverse finding.**

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