

## Department of Permitting & Inspections

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### MEMORANDUM

To: Development Review Board  
From: Ryan Morrison, Associate Planner  
Date: September 15, 2020  
RE: ZP20-0076CA; 400 North Street

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**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:** ZP21-0076CA

**Location:** 400 North Street

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

**Date application accepted:** July 21, 2020

**Applicant/ Owner:** William McKenna

**Parking District:** Neighborhood

**Request:** Remove existing garage, construct a new, detached accessory dwelling unit structure and associated driveway, and reconfigure existing parking area serving the existing residence.

**Applicable Regulations:**

Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking)

**Background:**

- **Zoning Permit;** build an addition to the existing accessory building. July 1973
- **Zoning Permit 82-039;** replace a 10'x10' section of flat roof with a pitched roof. July 1982
- **Zoning Permit 99-504;** rear addition to the existing single family home. May 1999.

**Overview:**

The applicant proposes to remove an existing garage, reconfigure the existing driveway/parking area serving the existing single family home, and construct a detached accessory dwelling unit (ADU) with an associated driveway off of Dan's Court. No changes are proposed to the existing, historically contributing single family structure.

**Recommendation: Continued review and deferral of action pending approval of an Erosion Prevention and Sediment Control plan and a Stormwater Plan.**

**I. Findings**

**Article 4: Zoning Maps and Districts**

**Section 4.4.5 Residential Districts**

**(a) Purpose**

1. The Residential Low Density (RL) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. The district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhood’s development history.

An accessory dwelling unit to an existing single family residence is proposed. **Affirmative finding**

**(b) Dimensional Standards and Density**

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

**Table 4.4.5-1 Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W.**

**Single detached dwelling, RL Minimum 60’ frontage, RL Minimum 6,000 sq ft lot size.**

400 North Street is a long, narrow, 5,100 sq ft lot, with approximately 31 feet of frontage along North Street, and 166 ft of frontage along Dan’s Court, an unaccepted city street. Unaccepted streets are city owned and generally maintained in the winter months for emergency vehicle access. The property size is considered legally pre-existing, non-conforming. **Affirmative finding**

**Table 4.4.5-2 Base Residential Density**

Not applicable per Section 5.4.5 (a) below.

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

Zoning District	Max. Lot Coverage <sup>1</sup>	Setbacks <sup>1,3,4,5,6</sup>			Height:
		Front	Side	Rear	
<b>RL; WRL</b>	35%	<b>Min/Max:</b> Ave. of 2 adjacent lots on both sides +/- 5-feet	<b>Min:</b> 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides <b>Max required:</b> 20’	<b>Min:</b> 25% of lot depth but in no event less than 20’ <b>Max required:</b> 75-feet	35-feet
400 North Street	Existing lot coverage totals 51% (based on ZP99-504). The applicant notes existing coverage to be 50%. The current proposal will result in a lot coverage total of 57.4%. Sec. 5.2.3(b) (10) allows up to an additional 650 sf of lot coverage above legally existing, non-conforming lot coverage for lot area to be occupied by an ADU.	An accessory structure on 164 North Willard St. has a setback of approx. 1.5 ft from Dan’s Court. While this is an accessory structure to a triplex fronting on North Willard St., it is the only structure to base a front yard setback off Dan’s Court for	Based off the 31 ft of North St. frontage, and the 166 ft of Dan’s Court frontage, side yard setbacks are 3.1 ft and 16.6 ft respectively. The ADU will be setback 5+ ft from the west side yard property line, and 20+ ft from the north	No rear yard property line exists. The property has two front property lines and two side yard property lines.	20 ft to the roof ridge.

		the proposed ADU. The ADU will have a 6 ft front yard setback off Dan's Court.	side yard property line.		
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**Affirmative finding**

**(c) Permitted and Conditional Uses**

An accessory dwelling unit to a single family dwelling is allowed by right. **Affirmative finding**

**(d) District Specific Regulations**

*1. Setbacks*

*A. Encroachment for residential driveways*  
Not applicable.

*B. Encroachment into the Waterfront Setback*

Not applicable.

*2. Height*

No change. Not applicable.

*3. Lot Coverage*

*A. Exceptions for Accessory Residential Features*  
No change. Not applicable.

*4. Accessory Residential Structures and Uses*

*A. Accessory structures or buildings shall meet the dimensional requirement set forth in the district in which they are located pursuant to Sec. 4.4.5(b) of this Article and related requirements in Art 5, Part 2.*

See Table 4.4.5-3 above and Article 5 below.

*5. Residential Density*

*A. Additional Unit to multi-family*  
Not applicable.

*B. Additions to Existing Residential Structures*

No additions are proposed. Not applicable.

*C. Residential Occupancy Limits*

*In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.*

No changes to the single family dwelling are proposed. It may be occupied only by a family as defined in Article 13 of the CDO.

**Affirmative finding as conditioned**

*6. Uses*

*A. Exception for Existing Neighborhood Commercial Uses*  
Not applicable.

7. *Residential Development Bonuses*  
Not applicable.

**Article 5: Citywide General Regulations**

**Part 2: Dimensional Requirements**

**Section 5.2.2 Required Frontage or Access**

400 North Street has 31 feet of frontage along North Street and 166 ft along Dan’s Court.

**Affirmative finding**

**Section 5.2.3 Lot Coverage Requirements**

**(b) Exceptions to Lot Coverage**

*(10) The DRB may grant an exemption from maximum lot coverage limits for up to 650 sq. ft. of the lot area occupied by an ADU. To grant such an exception, the DRB must find that the existing lot coverage has been lawfully created, and that the proposed location, site design, and improvements will enable on-site management of the first one inch of stormwater runoff from the lot area of the ADU exceeding the applicable lot coverage limit, and will not have undue adverse impact on public rights of way based on the review of the DPW Stormwater Program Manager.*

The RL zoning district limits lot coverage to 35%, plus a 10% bonus for features such as walkways, decks, patios, open porches, etc. Zoning Permit 99-504 documented existing and proposed lot coverage for the property at 51%. The submitted plans indicate an existing lot coverage of 50% (2,540 sf). The proposal involves removing 534 sf of existing lot coverage (garage, patio, and some driveway/parking area), while adding 923 sf of new lot coverage, for an end result of 2,929 sf. This results in an increase of 389 sf of new lot coverage for the ADU, which is less than the 650 sf allowed in instances of pre-existing nonconforming lot coverage.

The applicant has submitted an Erosion Prevention and Sediment Control plan, as well as a stormwater plan, to the City’s Stormwater Program Manager. Public comments/concerns have been submitted to the City regarding stormwater runoff and its effects on neighboring properties and structures, particularly considering a new curb cut on Dan’s Court for the proposed driveway and walkway. The property slopes downward to the west, and concern over stormwater entering and damaging adjacent property is present. The plans are still under review, and in accordance with this section, the DRB must find that the site design and improvements will enable on-site management of the first one inch of stormwater runoff from the lot area of the ADU exceeding the applicable lot coverage limit and will not have an undue adverse impact on public rights of way based on the review of the DPW Stormwater Program Manager. **No finding possible**

**Section 5.2.4 Buildable Area Calculation**

Not applicable.

**Section 5.2.5 Setbacks**

**(a) Setbacks Required**

See Table 4.4.5-3 above.

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

*(5) Accessory Structures and Parking Areas. Accessory structures no more than fifteen (15) 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 proposed ADU is just below 15 ft in height, as measured to the midpoint of the rise between the roofplate and the ridge of the highest gable, and therefore qualifies for this setback exception. However, its placement will conform to the standard side yard setback requirements of Table 4.4.5-3. The new driveway is proposed to be setback 5 ft from the north side yard property line.

**Affirmative finding**

### **Section 5.2.6 Building Height Limits**

The height of the new ADU structure is 20 ft, measured to the roof ridge, and is well under the 35 ft height maximum allowance. **Affirmative finding**

### **Section 5.2.7 Density and Intensity of Development Calculations**

Not applicable per Sec. 5.4.5 (a) below.

### **Section 5.4.5 Accessory Dwelling Units**

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

*Where there is a principal 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 principal dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. No accessory unit shall be inhabited by more than two adult occupants. An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation.*

The proposed one-bedroom accessory dwelling unit will be located in an appurtenant structure. The floor plan identifies a bathroom, kitchen, living and sleeping space.

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

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

The applicant will be required to secure a letter of adequate capacity from DPW for water and sewer services. **Affirmative finding as conditioned**

- 2. The unit does not consist of more than 800 sq. ft. or 30 percent (30%) of the gross floor area of the principal home, whichever is greater; and*

The ADU will total 646 sf in size, less than the 800 sf maximum allowance. **Affirmative finding**

- 3. Applicable setback and coverage requirements are met;*

See Table 4.4.5-3 and Sec. 5.2.3 (b) (10) above. **Affirmative finding**

- 4. A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit prior to the issuance of the certificate of occupancy for the unit. Such reference shall identify the permit number and*

*note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.*

A condition of approval will ensure this. **Affirmative finding as conditioned**

**(c) Discontinuance of Accessory Units**

*Approval of an accessory dwelling unit is contingent upon owner occupancy of either the principal or accessory dwelling unit as a primary residence. For purposes of this section, owner-occupancy means that, after the creation of the accessory unit all individuals listed on the deed for the property must reside in the principal unit or in the accessory unit. If neither the principal unit nor the accessory unit is owner-occupied as a primary residence, the approval for the accessory dwelling unit is void and the kitchen of the accessory dwelling unit must be removed within 90 days with the entirety of the property being occupied as a single unit. When an accessory unit that is the result of additional square footage and/or a new accessory structure is proposed to be removed, revised floor plans and a revised site plan shall be required to be submitted for review and approval. Furthermore, where additional square footage is added to a single family home for purposes of creating an accessory unit and the accessory unit is at any point discontinued, none of the additional square footage shall be eligible for the purposes of increasing the number of unrelated adults that may be allowed to inhabit the property.*

The property is owner occupied and shall continue to be so in order for the ADU to remain compliant. **Affirmative finding**

**Section 5.4.8 Historic Buildings and Sites**

Not applicable. While the existing home is listed on the State Register, the garage proposed for removal is not.

**Section 5.4.9 Brownfield Remediation**

Not applicable

**Section 5.5.1 Nuisance Regulations**

Nothing within the application suggests non-compliance with applicable nuisance regulations and performance standards per the requirement of the Burlington Code of Ordinances. **Affirmative finding**

**Section 5.5.2 Outdoor Lighting**

The plans do not indicate any outdoor light fixtures and will need to. The applicant will have to revise the plans to show the location of all exterior light fixtures, and submit spec sheets for said light fixtures for staff review and approval. **Affirmative finding as conditioned**

**Section 5.5.3 Stormwater and Erosion Control**

An Erosion Prevention and Sediment Control (EPSC) plan and a stormwater plan have been submitted to the Stormwater Program Manager for review and approval. As noted above, there is neighbor concern regarding the proposed development's adverse impact of stormwater on their property and structure(s). The EPSC and stormwater plan should be approved prior to the DRB issuing a decision on the application. **No finding possible**

**Section 5.5.4 Tree Removal**

Not applicable.

**Article 6: Development Review Standards**

**Part 1: Land Division Design Standards**

No land division is proposed. Not applicable.

**Part 2: Site Plan Design Standards**

**Sec. 6.2.2 Review Standards**

**(a) Protection of Important Natural Features:**

The property contains no important natural features. The ADU structure and driveway will locate on existing lawn space. After the garage and portions of existing driveway/parking that currently serve the existing single family residence are removed, those spaces will be restored to yard area.

**Affirmative finding**

**(b) Topographical Alterations:**

There will be some minor cut/fill and regrading to accommodate the new ADU and driveway. An EPSC plan and a stormwater plan are currently under review by the Stormwater Program Manager, and should be approved prior to a DRB decision. **No finding possible**

**(c) Protection of Important Public Views:**

There are no protected views from or through this property. 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).*

Not applicable. The principal structure at 400 North Street is listed as a contributing resource on the State of Vermont Historic Register. No alterations to this structure are proposed. The garage proposed for removal is not included on the historic listing, and is therefore not subject to the historic preservation guidelines of Sec. 5.4.8.

**(e) Supporting the Use of Renewable Energy Resources:**

No part of this application will preclude use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding as conditioned**

**(f) Brownfield Sites:**

None identified at this location. 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.*

As noted above, approval of this zoning permit is contingent on meeting the stormwater control requirements of Chapter 26 of the Burlington Code of Ordinances – Wastewater, Stormwater, and Pollution Control. There is concern over stormwater adversely impacting neighboring properties/structures. Compliance with Chapter 26 BCO should ensure that stormwater is contained onsite and does not impact neighboring properties.

There is additional concern over snow shed from the roof of the ADU – how it will likely cause damage to a neighboring structure. The DRB may want to consider requiring rooftop snow guards to mitigate snow shed from the roof.

The plans indicate entrance covers to protect from the elements. The site plan shows there to be yard space beyond the new driveway for snow storage. **No finding possible**

**(h) Building Location and Orientation:**

This new accessory structure will orient in a similar fashion with that of the neighboring accessory structure at 164 North Willard Street which sits approximately 2.5’ ft from the edge of Dan’s Court, thus maintaining a similar street edge. This accessory structure will be located in such a way so as to be secondary and subordinate in scale and design to the principal structure.

**Affirmative finding**

**(i) Vehicular Access:**

A new driveway for the ADU is proposed off of Dan’s Court which will provide one parking space. **Affirmative finding**

**(j) Pedestrian Access:**

While there is no sidewalk along the west side of Dan’s Court, the plans indicate a walkway alongside the driveway to Dan’s Court which will provide pedestrian access to the ADU.

**Affirmative finding**

**(k) Accessibility for the Handicapped:**

ADA access is administered by the building inspector’s office. None is proposed or required in this instance. **Affirmative finding**

**(l) Parking and Circulation:**

Parking for the existing single family residence will continue to be adequate for the 2-space minimum. The proposal calls for a new driveway/parking space for the ADU directly off Dan’s Court. A new curb cut will be required and the applicant will be tasked with obtaining a permit from the Department of Public Works. **Affirmative finding**



**(m) Landscaping and Fences:**

No landscape plan has been submitted. There is currently a cedar hedge running along the frontage (Dan's Court) that will provide considerable screening. No new fencing is proposed.

**Affirmative finding**

**(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.*

See Sec. 5.5.2 above.

**(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.*

*Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be placed underground whenever practicable. 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.*

*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 plans identify an electrical service box on the west elevation (street side) and a wall hung condensing unit on the east elevation. The cedar hedge that will remain will provide an adequate screen for the electrical service box. The plans will need to be updated to show any and all other outdoor mechanical units, mailboxes, trash/recycling bins, and any other new onsite utilities.

**Affirmative finding as conditioned.**

**Part 3: Architectural Design Standards**

**Sec. 6.3.2 Review Standards**

**(a) Relate development to its environment:**

**1. Massing, Height and Scale:**

The proposed ADU structure will be similar in massing, height, and scale with other accessory structures along Dan's Court. **Affirmative finding**

**2. Roofs and Rooflines.**

The gable roof will run parallel with Dan's Court. Gable roofs are very common rooftops of homes in the immediate area. **Affirmative finding**

### **3. Building Openings**

The ADU structure will have 3 window openings on the east and west side, one sliding door on the south side, and an entrance door and picture/casement window combo on the north side.

**Affirmative finding**

#### **(b) Protection of Important Architectural Resources:**

Not applicable.

#### **(c) Protection of Important Public Views:**

There are no protected public views from or through this property. Not applicable.

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

While the street facing façade will be one long wall (38 ft) with a few window openings, the existing cedar hedge that will remain will continue to provide a visible screen from Dan's Court. The front entrance is not oriented in a street-facing manner, and since this is not the primary structure on the property, it isn't required to be. A walkway to this building entrance has been included to connect to the street. **Affirmative 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.*

The plans indicate corrugated metal siding, roofing, and trim for the entire structure. Spec sheets for the windows and doors have not been provided and will be needed. **Affirmative finding as conditioned**

#### **(f) Reduce energy utilization:**

This habitable structure will be required to meet Efficiency Vermont standards.

All new construction shall meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances. **Affirmative finding as conditioned**

#### **(g) Make advertising features complementary to the site:**

New signage is not proposed or expected for this ADU. Not applicable.

#### **(h) Integrate infrastructure into the building design:**

See Section 6.2.2. (p), above.

(i) **Make spaces secure and safe:**

This development is subject to all applicable building and life safety codes as defined by the Burlington's Building Inspector and the Fire Marshal. **Affirmative finding as conditioned**

**Article 8: Parking**

**Table 8.1.8-1 Minimum Off-Street Parking Requirements**

Single family uses require 2 parking spaces in the Neighborhood Parking District. Section 5.4.5 Accessory Dwelling Units, was recently amended and removed the previous requirement for one additional parking space for an ADU. As a result, the property is still only required to have 2 off-street parking spaces. The existing driveway provides ample room for 2 parking spaces for the existing single family home, and the new proposal will add 1 off-street parking space serving the ADU. **Affirmative finding**

1. **Prior to release of the zoning permit**, the applicant shall secure a letter of adequate capacity from DPW for water and sewer services.
2. **Prior to the release of the zoning permit**, the applicant shall revise the plans to show the location of all exterior light fixtures, and submit spec sheets for said light fixtures for staff review and approval.
3. **Prior to the release of the zoning permit**, the plans shall be updated to show any and all other outdoor mechanical units, mailboxes, trash/recycling bins, and any other new onsite utilities.
4. **Prior to the release of the zoning permit**, the applicant shall submit spec sheets for all windows and doors to staff for review and approval.
5. The wall hung condensing unit shall meet the minimum side yard setback requirement of 3.1 ft.
6. No more than 2 adults and their minor children shall inhabit the accessory dwelling unit.
7. Any additional physical alteration or change of use to the accessory dwelling unit will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.
8. **Prior to the issuance of a certificate of occupancy**, a deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit. The reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy.
9. Construction hours shall be limited to Monday – Friday from 7:00 AM – 5:30 PM. Saturday construction may be allowed upon request to the Development Review Board. No work on Sunday.
10. A state wastewater permit will be required, and is the responsibility of the applicant to secure.
11. It is the applicant's responsibility to obtain a curb cut permit from the Department of Public Works.
12. The applicant shall secure any associated trades permits for the interior work.
13. 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, and shall meet all energy efficiency codes of the city and state as required
14. Standard Permit Conditions 1-15.