

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401

<http://www.burlingtonvt.gov/PZ/>

Telephone: (802) 865-7188
(802) 865-7195 (FAX)

David E. White, AICP, Director
Meagan Tuttle, Comprehensive Planner
Jay Appleton, Senior GIS/IT Programmer/Analyst
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Elsie Tillotson, Department Secretary
Anita Wade, Zoning Clerk



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Senior Planner
Date: January 5, 2016
RE: ZP16-0511CA/ AP, 154 Park 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: ZP16-0511CA / AP

Location: 154 Park Street

Zone: RM **Ward:** 3C

Date application accepted: October 22, 2015

Date of Decision: October 22, 2015

Date of Filing of the Appeal: November 5, 2015

Applicant: Amy E. Pickering

Appellant: Maggie Standley, represented by Monaghan Safar Ducham PLLC.

Request: Appeal of an administrative decision to establish a family daycare for 2 children in an existing single family residence.

Background:

- Zoning Permit 14-0693CA; replace windows, install insulated panels in basement window openings. January 2014.
- Zoning Permit 14-0485CA; Removal of existing garage, return to green space. October 2013.
- Zoning Permit 99-182; replace existing opening in the rear of the single family home with a window. No change to footprint or use. October 1998.
- Zoning Permit 76-697; erect a 56' x 5' stockade fence with gate, replace garage door with overhead door. March 1976.
- Zoning Permit to build a porch upstairs two feet from northeast lot line. Approved November 1962.

Overview: The owner of the single family home at 154 Park Street was administratively approved for a Family Daycare October 22, 2015. The appeal requests reversal of the administrative decision that the family day care facility is considered by right to constitute a permitted accessory use to a single family dwelling, and to require Conditional Use review of the change of use as a home occupation pursuant to Article 5.4.6 (b).

I. Findings

On October 22, 2015, the owner of 154 Park Street filed an application to operate a daycare for two children at her existing single family home. Burlington's Comprehensive Development Ordinance (CDO) lists three categories of day under Article 13; divisions which are largely related to the number of children served.

The number of children to be accommodated by the daycare at 154 Park Street met the definition of Family Day Care Home. Per this definition and location within a single detached dwelling, the proposed use as a Family Day Care is defined as a permitted accessory use by right.

The proposed use does not meet the definition of a Small Day Care (up to 20 children, and subject to the standards of Section 5.4.1), or a Large Day Care Center (greater than 20 children.)

The permit was granted October 22, 2015 with the following conditions:

1. Per **Article 13, Definitions: Day Care Center (a) Family Day Care Home** may serve up to six (6) preschool plus four (4) school-aged children. A family day care shall be considered by right to constitute a permitted accessory use to a single detached dwelling. Registration or licensure shall be consistent with the regulations and practices of the State of Vermont Department of Children and Families. Any increase in the number of children served shall require a new zoning application and permit review as appropriate.
2. There is no additional required parking for a Family Day Care Home in the Neighborhood Parking District per Table 8.1.8-1 of the Comprehensive Development Ordinance.

Additionally, the appeal defines the decision as "Administrative approval of use of single family home as a small daycare" which is incorrect. The permit issuance was for a Family Daycare, which is distinct and different per Article 13.

Article 5: Citywide General Regulations

The appellant requests Conditional Use Review of the Family Daycare as a home occupation under Section 5.4.6 (b). Daycares are not considered Home Occupation uses, as they have their own definition under Article 13 (see below) and separate provisional standards under Article 5, Part 4, *Special Use Regulations*. **Section 5.4.1** is specific to Small Day Care Centers, **Section 5.4.6** Home Occupations.

Daycares are not home occupations.

A Family Daycare is not identified as a Conditional Use in the RM zoning district (See Appendix A, below), and is in fact considered by right to constitute a permitted accessory use to single detached dwellings.

Article 13: Definitions

Day Care Center (See Article 5 for specific provisions)

- (a) *Family Day Care Home: A state-registered or licensed daycare facility serving up to six (6) pre-school plus four (4) school-aged children. A family day care shall be considered by right to constitute a permitted accessory use to single detached dwellings.*

(b) *Small Day Care Center: A state-registered or licensed daycare facility serving no more than twenty (20) full-time children in total.*

(c) *Large Day Care Center: A state-licensed facility providing day care services for more than twenty (20) full-time children.*

The applicant confirms that she is not state licensed or registered as a day care provider, but advised staff that she could not be per the slightly differing standards of the State of Vermont for licensure.

As **Article 13 Definitions** of the Comprehensive Development Ordinance identify licensure or certification as a requirement for day cares, staff contacted the Vermont Division for Children and Families to determine state licensure or certification requirements for daycare providers. It was identified that the State of Vermont has *four* categories for daycare operators (one more than identified in the CDO), and more specifically a category for this less intensive type. Sarah Fitts Pratt, a certification specialist with DCF informed staff that the State of Vermont does not regulate day care operations that provide care for 2 families, that those may in fact operate without state licensure or certification. Their standards afterward parallel those of the three categories in the CDO; licensure is required for day care when no more than 6 children under the age of 6 plus 4 school age children are cared for, licensure for Small Day Care Centers up to 20 children, and Large Day Care Center serving over 20 children. Ms. Fitts-Pratt confirmed that the day care use proposed by the applicant, where children from 2 or fewer families are provided for, would not require regulation or certification by the State of Vermont.

The City of Burlington cannot require an applicant to secure licensure that cannot be obtained, and to a greater standard than required by the State of Vermont.

Home Occupation: *an accessory use of a dwelling unit for employment involving the provision of services or the fabrication of goods. Home occupations are subject to all the procedures, conditions, and standards of Article 5, Sec. 5.4.6.*

A day care is not a home occupation, as it has its own definition, provisions and standards within the Comprehensive Development Ordinance. A daycare is therefore not subject to Section 5.4.6. or to Conditional Use review as a home occupation.

Appendix A – Use Table

Daycare – Home (6 children or less) is a permitted use (“Y”) in the RM zoning district. Conditional Use Review does not apply.

Recommendation: Denial of the appeal, uphold the issuance of Zoning Permit 16-0511CA.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.