

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: January 3, 2023
RE: ZP-22-596; 170 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.

Zone: RM Ward: 3C

Owner/Applicant: Iryna Poberezhniuk

Request: Variance for additional lot coverage.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a variance from the applicable lot coverage limit. The subject property is located within the Residential – Medium Density zone. Per Table 4.4.5-3: *Residential District Dimensional Standards*, the lot coverage limit within this zone is 40%. Sec. 4.4.5 (d) 2, *Lot Coverage, Exceptions for Accessory Residential Features*, allows an additional 10% lot coverage for open air amenities such as decks, patios, and walkways. Parking areas and driveways are not included in this additional 10% allowance. They are counted within the standard 40% limit.

The most recent site plan approval for the property (ZP-22-505) depicts exactly 40% standard lot coverage and 4.7% for open air amenities. There is another pending application (ZP-22-598) for additional walkway and patio work that increases the 4.7% open air amenity coverage to 8.3% but leaves the standard 40% lot coverage unchanged.

The site plan originally associated with this variance application depicted an additional 71 square feet (+1.3%) of proposed standard lot coverage for expanded parking area behind the house. A revised site plan was submitted December 27, 2022 that depicts a smaller expansion of 48 square feet. The total number of parking spaces remains 3 as approved in ZP-22-505. This additional area results in 40.9% standard lot coverage, a 0.9% increase over the maximum permissible lot coverage. While the revised site plan depicts a smaller expansion, it still results in nonconforming lot coverage exceeding the maximum permissible in this residential district.

Previous zoning actions for this property are as follows:

- 12/12/22, Approval of rear yard parking area modifications
- 7/21/20, Approval of rear yard shed
- 10/14/16, Approval for paver system parking space

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

I. Findings

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 lot is rectangular in shape, is 5,445 sf in size, and has 33' of street frontage. There is no unusual topography – the lot is flat. The lot is very similar to the rest of the properties along this stretch of Park Street.

The applicant cites a shared driveway as a unique circumstance that forces the need to park behind the house and to necessitate the excess lot coverage. Shared driveways are not rare or otherwise unique, particularly in Burlington's Old North End. Onsite parking is typically limited. A compliant site plan with 3 rear parking spaces is possible and has even been approved as part of ZP-22-505. **(Adverse 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.

As noted above, there are no unique physical conditions or circumstances precluding a compliant site plan for this property. **(Adverse finding)**

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

The applicant wishes to have additional lot coverage for larger parking spaces. As noted above, the property has an approved, compliant site plan. There is no unnecessary hardship. **(Adverse 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 would enable additional lot coverage behind the house. It would not likely alter the essential character of the neighborhood or the residential district in which it is located. It would not impair the appropriate use or redevelopment of adjacent properties, nor would it impact renewable energy resources or be detrimental to the public welfare. **(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.

The requested variance results in 48 sf of lot coverage over the permissible limit; however, there is no hardship beyond the applicant's control creating the need for any excessive lot coverage.

(Adverse 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.

The variance would result in a noncomplying situation with excessive lot coverage. It would not enable the initiation of a nonconforming use of land. **(Adverse finding)**

II. Reasons for Denial

1. Per the adverse findings above.