

Department of Permitting and Inspections

Zoning Division

645 Pine Street

Burlington, VT 05401

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

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

*William Ward, Director
Theodore Miles, Code Compliance Officer
Charlene Orton, Permitting and Inspections Administrator
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Vacant, Planning Technician
Celeste Crowley, Permit Administrator*



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: March 22, 2022
RE: 189-191 South Champlain Street, ZP22-21

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 Number: ZP 22-21

Location: 189-191 South Champlain Street

Zone: RH **Ward:** 5S

Parking District: Neighborhood

Date application accepted: January 10, 2022

Applicant/ Owner: Israel Smith / Anne Rothwell

Request: Re-application for construction of a duplex on a vacant lot.

Background:

- **Zoning Permit 19-0401CA;** construct duplex on vacant lot. February 2019. Permit expired.
- Owner pays fees required of Settlement Agreement October 27, 2017.
- Code Enforcement: Failure to meet condition of approval re: housing replacement and demo by neglect. October 2017.
- Stipulated agreement with owner; owner to pay \$8,000 into City's historic preservation fund to address demolition by neglect of historic property; and payment of \$26,253.00 into Housing Trust Fund for failure to replace housing. July 28, 2017.



- **Violation ZV#317818. Demolition by neglect.** Specifically, failing to adequately secure and maintain an historic residential structure resulting in its deterioration to be determined dangerous whereby the structure was ordered to be demolished. The demolition also resulted in the loss of housing that has not been replaced as required under housing replacement requirements. February 2013.
- Remove dangerous building respective to dangerous building order issued by Building Inspector. Also: Remove and dispose of asbestos contaminated materials in accordance with State & Fed rules and regulations. December, 2012.
- **Zoning Permit ZP12-0953CA/CU;** Demolish existing single family residence; replace with multi story duplex, parking below. **Application withdrawn** November 13, 2012.
- **Zoning Permit 10-1132CU;** Demolish existing vacant single family home. Re-seed lawn to create vacant lot. No development proposed. **Denied** by DRB August 24, 2010; Appealed to VEC, Dismissed with prejudice September 12, 2011.
- December 11, 2009 Interior fire.
- **Zoning Permit 10-0129;** Remove front porch and replace with new stairs and railing. {Required by building inspector due to failed condition of existing.} Approved August, 2009.
- November, 2008; Complaint regarding condition of building. Complainant stated the interior is a serious health concern with feces, urine, and various used personal products throughout. Complainant stated that transients have been living in a shed behind the building and are running electricity to the shed from the building. Complainant stated transients have been told to leave but they return. Complainant stated city has not been able to get in contact with owners of property.
- October, 2008; Rental billing transferred to **vacant** building.
- February 2008; property transfer to A & R Development, LLC (current owner.)
- **Zoning Permit 97-017;** Installation of a 6' fence approximately 64' long along the side property line of the existing single family home. Approved July 1996.
- **Zoning Permit 88-017;** Convert existing single family house to duplex; site changes to include continuing driveway and construction of 4 parking spaces in rear. **Denied** August 1988. [Reasons for denial; driveway does not meet required 5' side yard setback
- **Zoning Permit** to replace fence posts; May 1975.

Overview: 189-191 South Champlain Street has been a vacant lot since December 2012 when ordered demolished by the building inspector. Zoning enforcement and agreements were satisfied and completed in October 2017. This is re- application for construction of a new duplex on a vacant lot, as the 2019 permit has expired without exercise.

Recommended motion: Certificate of Appropriateness Consent approval per the following findings and conditions:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and 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. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 3: Impact Fees

Sec. 3.3.2 Applicability *Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact according to Sec. 3.3.4.*

Based on plans provided, and with credit for the square foot area of the house demolished, the following estimate is made of Impact Fees:

(Proposed new sf. 2453 – previous sf. 1736 = 717 sf new)

SF of Project	717	
	<u>Residential</u>	
Department	Rate	Fee
Traffic	0.208	149.14
Fire	0.235	168.50
Police	0.047	33.70
Parks	0.789	565.71
Library	0.488	349.90
Schools	1.019	730.62
Total	2.786	\$ 1,997.57

Any correction shall be made prior to issuance of the zoning permit so appropriate fees made be calculated for the new habitable area. **Affirmative finding as conditioned.**

Sec. 3.3.8 Time and Place of Payment

Impact fees must be paid to the city’s chief administrative officer/ city treasurer according to the following schedule: (a) New Buildings: Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof;

Affirmative finding as conditioned.

Article 4: Zoning Maps and Districts

Sec. 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.

5. *The Residential High Density (RH) district is intended primarily for high density attached multi-family residential development. Development is intended to be intense with high lot coverage, large buildings, and buildings placed close together. Parking is intended to be hidden either behind or underneath structures.*

The proposed residential structure is oriented to the sidewalk, and setbacks are calculated based on the average of the existing buildings on the same block fronting the street to reinforce the neighborhood pattern. As is guided by these standards, the building is large and reflects more intensive use of the lot. Parking is within the structure, with residential use above as allowed within these standards. **Affirmative finding.**

Table 4.4.5-2 Base Residential Density

High Density: RH	40 units/acre
189-191 South Champlain Street	0.107A (2 units/0.107 = 18.69, < 40 unitsA

Affirmative finding.

Table 4.4.5-3: Residential District Dimensional Standards

RH	Coverage 80%	Front setback: Min/Max: Ave of 2 adjacent lots on both sides +/- 5- feet	Side setbacks: Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides	Rear Setback: Max required: 20- feet Min: 25% of lot depth but in no event less than 20' Max. required 75'	Max Height: 35'
189-191 South Champlain Street	Proposed: 60.12%	5' proposed (Average is 9'6"; +/- 5' allows setback to be between 4'6" and 14'6".)	3'6 3/8" proposed (10% of 35.33 lot width)	33' proposed (25% of 132' lot depth)	34'5" to flat roof deck. Components that meet the <i>Exceptions to roof height</i> exceed this limit. See Section 5.2.6 (b), below.

Affirmative finding as conditioned.

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots.

This is an existing lot of record that exceeds the minimum lot size of 4,000 (4670 sf) and that has previously been developed. **Affirmative finding.**

Section 5.2.2 Required Frontage or Access

The lot fronts on a public street. **Affirmative finding.**

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.5-3, above.

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks

See Table 4.4.5-3, above.

Section 5.2.6 Building Height Limits

No structure shall exceed thirty-five (35) feet in height unless otherwise authorized under the district-specific provisions of Article 4.

(a) Height measurement

See See Table 4.4.5-3, above.

(b) Exceptions to Height Limits

1. *Additions and new construction on parcels created prior to January 1, 2008 that contain a non-conforming Principal Building exceeding the maximum permitted Building height may exceed the maximum permitted Building height of the zoning district subject to the design review provisions of Art. 3 and 6, but in no event shall exceed the height of the existing non-conforming Principal Building.*
Not applicable.
2. *In no case shall the height of any structure exceed the limit permitted by federal and state regulations regarding flight paths of airplanes.*
Not applicable.
3. *Ornamental and symbolic architectural features, including towers, spires, cupolas, belfries and domes; greenhouses, garden sheds, gazebos, rooftop gardens, terraces, and similar features; and fully enclosed stair towers, elevator towers and mechanical rooms, where such features are not used for human occupancy or commercial identification, are exempt from specific height limitations but shall be subject to the design review provisions of Art. 3 and 6. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the Building.*

The plan proposes greenhouses, garden sheds, terraces, fully enclosed stair towers, elevator towers and mechanical rooms; all which fall within the exceptions to Height Limits. **Affirmative finding as conditioned.**

4. *Exposed mechanical equipment shall be allowed to encroach beyond the maximum building height by no more than 15-feet provided that portion exceeding the height limit does not exceed 20% of the roof area. Exposed mechanical equipment shall be fully screened on all sides to the full height of the equipment, and positioned on the roof to be unseen from view at the street level. Screening may consist of parapets, screens, latticework, louvered panels, and/or other similar methods. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the Building.*

Two mechanical rooms are proposed above the roof deck, both incorporated into the building design. See Plan A105.

Where mechanical equipment is incorporated into and hidden within the roof structure, or a mechanical penthouse setback a minimum of 10-ft from the roof edge, no such area limit shall apply and the structure shall be considered pursuant with 4 above.

The mechanical equipment is incorporated into the building design. No area limit applies. The feature meets the exception to height limits per 3. above.

Affirmative finding.

5. *All forms of communications equipment including satellite dish antennae shall not be exempt from height limitations except as provided in Sec 5.4.7 of this Article.*
None proposed. Not applicable.
6. *The administrative officer may allow for up to a 5% variation in the maximum building height to account for grade changes across the site. In no event however, shall such additional height enable the creation of an additional story beyond the maximum permitted.*
Not applicable.

(c) Clear Sight Triangle

1. *Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3-feet in height above the curb in order to provide safe sight distances for pedestrian and vehicles.*

The fencing proposed will be required to meet the Clear Site Triangle. The revised Landscape Plan (005) and First Floor Plan (A102) have incorporated that factor.

Affirmative finding.

Section 5.2.7 Density and Intensity of Development Calculations

Density in the RH Zoning District is 40 units per acre. For the existing .107 acre lot:
 $2 \text{ proposed units} / .107 = 18,69 \text{ units per acre}$; less than the maximum of 40.

Affirmative finding.

Part 3: Non Conformities

Not applicable.

Sec. 5.4.8 Historic Buildings and Sites

Although the lot is within the Battery Street / King Street Historic District, it is now a vacant lot. This standard is no longer applicable.

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

(a) Protection of Important Natural Features:

This is a very small lot (4670 sq. feet) with no identified change in topography. Plan 003 notes existing treescape at the west (rear) of the property. Communication and a site visit by the City Arborist has defined the intent to protect existing trees during construction by placing fencing out to the canopy edge of the trees to prevent any excavation, compaction of soil, and staging the excess soil and materials within the root zones during construction. It is likely that an existing Hackberry tree will be removed as it crosses a property boundary, and the adjacent owner would like it removed. A tree within the ROW in front of the house will be removed to accommodate the new driveway, but the applicant has committed funding for a replacement tree, as agreed and articulated between parties. See email communication, December 12, 2018 and reaffirmed February 29, 2022.

Affirmative finding as conditioned.

(b) Topographical Alterations:

This is a relatively flat site. No topographical changes are proposed. Not applicable.

c) Protection of Important Public Views:

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

(d) Protection of Important Cultural Resources:

Not applicable.

(e) Supporting the Use of Renewable Energy Resources:

Site Plan 004 identifies solar panels above both the mechanical/elevator space and the garden shed/elevator on the roof. **Affirmative finding.**

(f) Brownfield Sites:

The property is not listed on Vermont's Department of Environmental Conservation brownfields sites. 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.

The Sediment and Erosion Control Plan and Stormwater Plan have received the approval of the Stormwater Engineering program January 25, 2019. The applicant will connect and confirm with Water Resources of the continued acceptability of the plan.

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.

Residents can either enter through the (covered) garage, or through entries immediate to the front or (north) side walkways; escaping inclement weather. An additional roof overhang on the north elevation shelters that walkway.

As the garage is covered and the building is only 5' from the front property line, only the area immediately adjacent to the apron will need to be shoveled. There is room directly to the south that will accommodate the minor area required of snow removal. **Affirmative finding as conditioned.**

(h) Building Location and Orientation:

The proposed duplex will maintain (and help re-establish) the existing development pattern and rhythm of structures along the street. There is an empty lot immediately south of this parcel that is used for parking, and a pocket park to the immediate north. The only existing structure on the west side of South Champlain Street in this block is the former Gray's carriage factory at 183 South Champlain Street; now a residential building. The building front is aligned with this building to reinforce the existing street-edge.

There is a main entrance on the front façade that is clearly identifiable from the public street.

The garage doors exceed the minimum setback of 25' from the front property line, as required by this standard. The garage width is consistent with subsection 4:

Where a garage entrance is within a single roofline and wholly integrated into the overall design the front façade of the structure, it may constitute more than 50% of the width of the street facing façade provided there is interior living space above, and the primary pedestrian entrance offers a clear and welcoming entrance from the street.

Affirmative finding.

(i) Vehicular Access:

The proposed access drive will be widened to the maximum width of 18'. A curb cut permit will be required to accomplish this work within the ROW. The required 5' minimum setback for driveways is met both north and south (Plan A102.) **Affirmative finding as conditioned.**

(j) Pedestrian Access:

A pedestrian walkway that connects the public sidewalk to dual entrances of the residence is illustrated. **Affirmative finding.**

(k) Accessibility for the Handicapped:

Compliance with ADA regulations is the jurisdiction of the building inspector.

Two elevators are proposed within the structure. The elevators are assumed required by building code for a four story building. The applicant is advised that nothing above the 35' regulatory height limit may be used for human occupancy. (Section 5.2.6 (b) 3.) **Affirmative finding as conditioned.**

(l) Parking and Circulation:

For two units, four parking spaces are required. All are provided on-site in a tandem configuration; allowable for duplexes. **Affirmative finding.**

(m) Landscaping and Fences:

A landscape plan is provided on Sheet 005. Generally lower profile shrubbery is proposed around the front; appropriate to prevent blocking visibility from the driveway. There currently exists a chain link style fence on the northerly property boundary. Two gates are illustrated on Plan A102, and full surround 6' high solid fencing of the parcel (see Erosion Control Plan 008 and views 101-103.) No fence within the clear site triangle (within 25' of a driveway) may exceed 3' in height.

A street tree is proposed to be removed and replaced. The application team has agreed to compensate the city for the lost tree; the replacement will be at the discretion of the city arborist. Any work within the public right-of-way will require consultation with and agreement by the city arborist. **Affirmative finding as conditioned.**

(n) Public Plazas and Open Space:

There is no requirement for public plazas or open space for this residential project; however, ample outdoor space is provided via rooftop terraces. See Plans A104 and A105. **Affirmative finding.**

(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

Plan A102 defines the location of light fixtures. The submitted spec sheets confirm downlit and residential appropriate fixture selection. **Affirmative finding.**

(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.

Meters are identified on the north elevation at a building recess. Mailboxes are within the stair entry; See plan A102.

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.

A mechanical room is internal to the first floor and within a mechanical closet on the roof. No other exterior mechanicals are illustrated. Utilities shall be undergrounded.

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.

None are identified. **Affirmative finding.**

Part 3: Architectural Design Standards
Sec. 6.3.2 Review Standards

(a) Relate development to its environment:

1. Massing, Height and Scale:

At three stories with a penhouse-type fourth floor mass, the building is taller than those across the street, but stands close to the former Gray's carriage manufactory at 183 South Champlain Street; an imposing edifice. The proposed building is tall for its narrowness, unusual on the street, but consistent with the standard of this ordinance. **Affirmative finding.**

2. Roofs and Rooflines.

Flat roofs are proposed, with a solar installation on the greenhouses. Parapets up to 48" do not count toward height measurement; a 42" parapet is included. **Affirmative finding.**

3. Building Openings

See Plans A1-8-110 for the proposed fenestration pattern of all elevations. Entrances are on the east (front) and north (side) elevations, as well as within the garage. **Affirmative finding.**

(b) Protection of Important Architectural Resources:

Not applicable.

(c) Protection of Important Public Views:

Not applicable.

(d) Provide an active and inviting street edge:

Although the streetfront is met with two open garage stalls, the plan meets the requirement for any garage doors to be set back 25' from the front property line. The dedication of so much street frontage to parking is also permissible (> 50% of front elevation) as living space is proposed above. The entry door with a slight roof overhang is the welcoming element on the street edge. **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.

Fiber cement siding (shingle, lap and panels) with aluminum clad windows are proposed.

The third floor will be capped with rooftop terraces, a garden shed, greenhouses, and enclosed stairwells. None of these amenities may be utilized for human occupancy under Section 5.2.6 (b) 3.

Owners of historic structures are encouraged to consult with an architectural historian in order to determine the most appropriate repair, restoration or replacement of historic building materials as outlined by the requirements of Art 5, Sec. 5.4.8.

Not applicable. **Affirmative finding.**

(f) Reduce energy utilization:

All new construction is required to meet the guidelines for Energy Efficient Construction according 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:

Not applicable.

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p), above.

(i) Make spaces secure and safe:

The building will be sprinklered.

All construction must meet required building and life safety code as defined by the building inspector and fire marshal. **Affirmative finding as conditioned.**

Article 8: Parking

Within the Neighborhood Parking District, 2 parking spaces are required for each residential unit. Four spaces are provided on-site, meeting the parking requirement for a duplex.

Table 8.2.4-1, Bicycle Parking Requirements

For a multi unit residential building, 1 Long Term Bike Parking Space is required for every 2 bedrooms, and 1 Short Term space for every 10 units. For this application with 4 bedrooms, 2 Long Term Bike Parking spaces are required. The Long Term bicycle parking spaces are identified on the revised Plan A102; at the west of the garage interior. **Affirmative finding.**

II. Conditions of Approval

- 1. Impact fees.

Based on plans provided, giving credit for the lost residential area and utilizing the 2022 Impact Fee calculator, the following Impact Fee assessment is made:

SF of Project	717	
	<u>Residential</u>	
Department	Rate	Fee
Traffic	0.208	149.14
Fire	0.235	168.50
Police	0.047	33.70
Parks	0.789	565.71
Library	0.488	349.90
Schools	1.019	730.62
Total	2.786	\$ 1,997.57

Any correction in area shall be made prior to issuance of the zoning permit so staff may recalculate appropriate fees for the new habitable area.

Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.

- 2. The removal and replacement of the tree in the City’s ROW is to be done in cooperation with the Department of Public Works and city arborist. The applicant has agreed to compensate the City for the loss of the existing tree. Selection of species and location for the replacement tree is at the discretion of the arborist.
- 3. All utilities must be undergrounded.

4. A curb cut permit for the proposed revisions to the existing curb cut will be required from the Department of Public Works.
5. The Clear Site Triangle requires that any fence within 25' of a driveway not exceed 3' in height.
6. Per Section 5.2.6 (b): *Ornamental and symbolic architectural features, including towers, spires, cupolas, belfries and domes; greenhouses, garden sheds, gazebos, rooftop gardens, terraces, and similar features; and fully enclosed stair towers, elevator towers and mechanical rooms, **where such features are not used for human occupancy or commercial identification**, are exempt from specific height limitations.* The Greenhouse, garden sheds and stair towers shall at no time be utilized for human occupancy while considered exemptions from height limitations as articulated under these regulations.
7. Written confirmation shall be received from the Stormwater Engineering program of the continued acceptability of the previously submitted EPSC and Stormwater Plan **prior to release of the zoning permit.**
8. All new construction is required to meet the guidelines for Energy Efficient Construction according to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
9. This review is limited to the request for a duplex at 189-191 South Champlain Street. No additional units, or units with more than 4 unrelated adults, are assumed or implied with this review under the regulations in effect at this time. Functional Family provisions of the Comprehensive Development Ordinance apply.
10. Standard Permit Conditions 1-15.