

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188

*William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator*



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: July 5, 2022
RE: ZAP-22-2; 203 South Cove Road

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-22-2 Appeal

Location: 203 South Cove Road

Zone: RL-W **Ward:** 5S

Date appeal accepted: May 31, 2022

Date of administrative decision: May 24, 2022

Appellant / Owner: Stanley & Christine Weinberger

Request: Appeal of Administrative Denial of a request to demolish the existing garage and slab and replace with a new, 2-story garage structure with an enlarged footprint, incorporating a storage shed, mudroom, and habitable space in the second floor.

Background:

- **Zoning Permit ZP-22-148;** demolish the existing garage and slab and replace with a new, 2-story garage structure with an enlarged footprint, incorporating a storage shed, mudroom, and habitable space in the second floor. Denied May 24, 2022. (Subject of this appeal.)
- **Zoning Permit 14-1046CA;** finish additional habitable space within basement, install two new egress windows. Approved June 16, 2014.
- **Zoning Permit 14-0069FC;** install chain link fencing. Approved July 19, 2013.
- **Zoning Permit 11-0732CA;** install new AC condenser. Approved April 12, 2011.
- **Zoning Permit;** enclose existing patio with a roof and screening. Approved June 18, 1974.

Overview:

ZP-22-148, to demolish the existing garage and slab and replace with a new, 2-story garage structure with an enlarged footprint, incorporating a storage shed, mudroom, and habitable space in the second floor, was denied on May 24, 2022 for reasons outlined below. On May 31, 2022, the appellants filed a timely appeal within the 15-day appeal period.

Recommendation: Uphold zoning permit denial based on the following findings.

I. Findings

Timeline:

- **March 14, 2022** – Application ZP-22-148 submitted.
- **March 26, 2022** – Application ZP-22-148 application fee paid.

- **April 22, 2022** – Application ZP-22-148 deemed complete.
- **May 24, 2022** – Decision of Denial for ZP-22-148.
- **May 31, 2022** – Appeal of administrative denial submitted.

Reason for Denial:

The single-story (with finished basement) residence was built circa 1962. The 26,325 sf lot is located in the RL-W zoning district, the South Cove Large Lot Overlay District, and the Design Review Overlay District. The attached garage, which sits at the front of the home, pre-dates the Design Review Standards of Article 6, which currently requires garages, either attached or detached, to be setback behind the longest street facing wall of the principal structure.

The front yard setback average was determined from 3 neighboring homes (185, 191, and 215 South Cove Road). 227 South Cove Road is vacant, so only three homes could be used to determine this setback. Given the road’s curve in this section, existing front yard setbacks vary, particularly 185 South Cove Road’s setback (210 ft). Of interest here is that the two homes on either side of the subject property (191 & 215) are more in character with typical front yard setbacks of the neighborhood, as opposed to 185 South Cove Road. If we were to take the average setback of 191 & 215 South Cove Road (73 ft measured to the street edge) and apply that to the appellant’s property (with the +/- 5 ft allowance), the closest any development on the appellant’s property could get would be 68 ft to the street edge. The replacement garage is proposed to be 49.5 ft from the street edge. Further, if we were to base the front yard setback strictly off of 191 South Cove Road’s setback (66’ 9” to the street edge), which happens to share a straight section of the road with the appellant’s lot, the closest that the replacement garage could get to the street edge, while utilizing the +/- 5 ft allowance, would be 61’ 9”. Again, the appellant’s propose a 49.5 ft setback from the street edge. With the front yard setback issue, combined with the Article 6 design review standard requiring the proposed garage replacement structure to be setback behind the longest street facing wall of the principal structure, denial of the application was warranted.

Below is the administrative denial language and the appellant’s reasoning on why they believe the administrative denial should be overturned.

Application ZP-22-148 (subject of this appeal) was **denied May 24, 2022 for the following reasons:**

Table 4.4.5-3: Residential District Dimensional Standards

Zoning District	Max. Lot Coverage¹	Setbacks^{1, 3, 4, 5, 6}				Max. Height¹
		Front²	Side³	Rear	Waterfront	
RL; WRL	35%	Min/Max: Ave. of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides	Min: 25% of lot depth but in no event less than 20’ Max required:	Min: 75’ feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet

Zoning District	Max. Lot Coverage¹	Setbacks^{1, 3, 4, 5, 6}				Max. Height¹
		Front²	Side³	Rear	Waterfront	
			Max required: 20-feet	75-feet		

The neighboring property’s front yard setbacks are as follows (as measured from the street edge):

From the street edge

- 185 South Cove Road – 210’ (or 174’ from front property line)
- 191 South Cove Road – 66’ 9” (or 50’ from front property line)
- 215 South Cove Road – 80’ (or 50’ from front property line)
- 227 South Cove Road - vacant

Based on these averages, the average front yard setback to the street edge is 118.9 ft (or 91.3 ft from the front property line). Given the +/- 5’ allowance to the average front yard setback, 203 South Cove Road’s minimum front yard setback is 113.9’ to the street edge, or 86.3 ft to the front property line. The proposal requests a front yard setback of 49 ½’ to the street edge, well within the required front yard setback.

Section 5.3.5: Nonconforming Structures

(a) Changes and Modifications

Any change or modification to a nonconforming structure, other than to full conformity under this Ordinance, shall only be allowed subject to the following:

1. Such a change or modification may reduce the degree of nonconformity and shall not increase the nonconformity...

As outlined in Sec. 6.2.2 (h) below, and in Table 4.4.5-3 above, the existing garage (20.5’ x 20.5’) is an existing nonconforming structure. It is situated well within the minimum front yard setback, and it is the foremost feature of the principal structure. The proposal involves demolishing the existing garage and rebuilding with a larger structure (26’ x 26’). By rebuilding with a larger structure, it creates a greater nonconformity within the required front yard setback. Additionally, even though there is habitable space proposed in the second floor, the fact remains that the garage will still be the foremost feature of the principal residential structure, which is in conflict with Sec. 6.2.2 (h) below.

Article 6: Development Review Standards

Part 2: Site Plan Design Standards

Section 6.2.2 Review Standards

(h) Building Location and Orientation

In residential areas, accessory buildings shall be located in such a way so as to be secondary and subordinate in scale and design to the principal structure. A parking structure – either attached or detached – shall be setback from the longest street-facing wall of the principal structure and be deferential yet consistent in character and design.

The garage is the foremost feature of the principal residential structure, which represents an existing nonconformity. The proposed 2-story garage replacement (with habitable space in the second floor) will be larger than the existing garage, and still will not be setback from the longest street-facing wall of the principal structure. This also represents an increase of nonconformity to both building volume and footprint within the front yard setback.

Appellant's Arguments and City Responses:

Appellant's arguments are in *italics*, the City responses are not.

1. *There are unique physical circumstances based on our location on South Cove Road. The residential district dimensions note that the front setback be the average of 2 adjacent lots on both sides. However, two of our adjacent neighbors have the two longest setbacks on South Cove Road due to the shape of their lots at the curve of the road. One neighbor in particular has a driveway that extends to the lake, making their particular distance an outlier in the overall neighborhood. Finally, the last lot is not yet developed, so there is no additional 'normal' figure to amend the average setback.*

Relief requested: to include multiple properties beyond our 4 neighbors, including those across the street, to arrive at a more fair setback figure for our street. (Just a few that are as close or closer to the road are the following: #140, 150, 170, 177, 169, and 228).

Among the four neighboring properties (two on either side of subject property), three have homes on them, with front yard setbacks that average greater than the appellant's existing garage. The zoning ordinance is very clear that the front yard setback is to be based on the 'Ave. of 2 adjacent lots on both sides +/- 5-feet'. In this case, because there are only 3 homes on the adjacent 4 properties (2 on either side of the subject property), the average front yard setback of those 3 homes is applied. The appellant is requesting to include into the average front yard setback equation lots that go beyond the adjacent 2 lots on either side of their property, as well as lots on the opposite side of the street. The CDO does not have provision for including such additional lots into the average front yard setback calculation.

2. *We do not believe our proposed renovation would be a nonconforming structure as we are proposing to develop substantial living space above the garage, which would include bedroom/bathroom. Additionally, our current first floor footprint also includes non-garage space, including a mudroom and storage. We also feel that this modification would be compatible with the character and scale of surrounding homes in our neighborhood. In fact, a significant percentage of the properties on South Cove Road include garages that are in front of the principal structure.*

Relief requested: to consider the proposed renovation a conforming structure as it is not principally a garage, but rather an expansion of primary living space.

Sec. 6.2.2 (h) – *A parking structure – either attached or detached – shall be setback from the longest street-facing wall of the principal structure.* Even with the proposed 2-story garage replacement (with habitable space in the second floor), the longest street facing wall of the principal structure is, in fact, behind the full footprint of the existing and proposed garage. Even if the replacement structure saw the ground level garage setback a foot or

more behind the front wall of the second story habitable space, the entire replacement structure will still be forward of the longest street facing wall of the existing principal structure. The finished 2nd level only affects provisions for the width of the garage – not its placement relative to the longest street-facing wall of the residence.

A similar request was made at 125 South Cove Road to demolish an existing home with an attached garage and rebuild new with an attached, 2-story garage at the forefront of the new structure. The upper story was planned to be unfinished space. The application, ZP 21-0910CA, was denied by the DRB because the new garage was not setback behind the longest street-facing wall of the principal structure. Front yard setbacks, however, were not an issue for that decision. Similar to that decision however, and as noted above, the appellant's longest street facing wall, both under the existing and proposed building configuration, is actually entirely behind the existing/proposed garage portion. While the second floor of the replacement garage will be finished, it is in fact not the longest street facing wall of the principal structure. Therefore, the ground level garage space conflicts with this provision of Sec. 6.2.2 (h) – *A parking structure – either attached or detached – shall be setback from the longest street-facing wall of the principal structure.*

- 3. This would not have an undue impact on our neighbors. We have spoken to all of our direct neighbors and many more in our neighborhood, who are in favor of our plans and are willing to give this approval in writing. A larger scale project which would lead to demolition to the back of the house and reconfiguring our current living space – should this more modest project be declined – would likely take much longer and be more disruptive to the neighborhood.*

The zoning ordinance sets clear requirements. Unfortunately, neighbor support of projects is not one such requirement, or means for consideration.

Summary

The existing garage is noncompliant with front yard setbacks and the requirement that it be set back behind the longest street facing wall of the principal structure. If the proposal were to simply rebuild the garage in the same footprint and with the same volume, then it could likely be approved. The proposal to rebuild the garage with a larger structure increases the existing nonconformity within the front yard setback, as well as the nonconforming garage location/orientation in relation to the longest street-facing wall, and cannot be approved.

II. Recommended Motion:

Uphold the denial of zoning application ZP-22-148.