

Burlington Development Review Board

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Burlington Development Review Board

Findings of Fact Deliberative Hearing Tuesday, July 5, 2017

In RE: 17-1117CA/CU; 426 South Winooski Ave. (Ward 6S, RM) (Tax Lot No. 053-3-010-000)

Owner/Applicant: Scott Mapes

Request: Demolish existing garage and construct new garage with accessory apartment

Members Present:

Austin Hart
Brad Rabinowitz
AJ LaRosa
Alexandra Zipparo
Israel Smith
Geoff Hand
Samantha Tilton

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is seeking approval to demolish an existing detached garage and to replace it with a new detached garage with an accessory apartment. The garage footprint will remain unchanged. An existing area of driveway by the garage will be revamped with pervious pavers. Other minor improvements such as a new walkway to access the apartment and reconstructed front steps for the primary dwelling unit are also proposed.

Previous zoning actions for this property are noted below:

- 4/5/13, Approval to replace portion of asphalt shingle roof with EPDM

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The property is served by municipal utilities. Sufficient water and sewer service are available. A State of Vermont wastewater permit may be required. A capacity letter issued by the Dept. of Public Works has been obtained. **(Affirmative finding)**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The property is located within an established residential neighborhood in the medium density residential zoning (RM) district. The RM zoning district is intended primarily for medium-density residential development in the form of single detached dwellings, duplexes, and multi-family dwellings. The proposed accessory dwelling unit is consistent with this intent. The MDP provides the following support:

- Support the development of additional housing opportunities within the city... (MDP, Housing Plan, Page IX-1.
- Support the creation of new rental and owner-occupied housing on every parcel of land in Burlington that is zoned for residential development at the number of units allowed by zoning. (MDP, Housing Plan, Page IX-12.) **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

The proposed apartment is not expected to generate nuisance impacts from noise, odor, dust, and the like that may be more typically associated with industrial uses. **(Affirmative finding)**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

No traffic analysis has been provided or is required for this application. The proposed accessory apartment is expected to generate minimal additional traffic. **(Affirmative finding)**

and,

5. *The utilization of renewable energy resources;*

While not required, the applicant is considering the installation of rooftop solar units. **(Affirmative finding)**

and,

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances;*

City building and energy efficiency codes will apply as conditioned.

(b) Major Impact Review Standards

Not applicable.

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

The proposed apartment is not expected to produce offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

2. Time limits for construction.

No construction timeline or phasing are included in the project plans. The standard 2-year timeframe for zoning permits will apply. **(Affirmative finding)**

3. Hours of operation and/or construction to reduce the impacts on surrounding properties.

Hours of operation are not applicable to this residential use.

Construction hours are not noted in the application. Typical construction hours are Monday – Friday from 7:00 AM – 5:00 PM. Saturday construction may be allowed upon request. No work on Sunday. **(Affirmative finding as conditioned)**

4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

5. Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

See the recommended conditions.

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(2) Residential Medium Density (RM)

The Residential Low Density (RL) district is intended primarily for medium-density residential development in the form of single detached dwellings, duplexes, and multi-family dwellings. As noted previously, the single family dwelling and proposed accessory apartment are consistent with this intent. **(Affirmative finding)**

(b) Dimensional Standards and Density

Residential density remains unchanged. Accessory dwelling units specifically do not count towards allowable residential density per Sec. 5.4.5, *Accessory Dwelling Units*.

Lot coverage is presently 36.3%. As proposed, lot coverage will increase to 39.2%, under the 40% maximum permissible in the RM zone. Note that total impervious surface will be reduced with the introduction of pervious pavers. These pavers; however, constitute lot coverage and are reflected in the 39.2% figure.

The front yard setback will remain unchanged. Side and rear setbacks remain unchanged as well; however, the taller replacement structure (> 15' tall) triggers standard setbacks rather than the 5' accessory structure setbacks applicable to the existing garage (< 15' tall). In this case, the standard side yard setback of 10% of lot width equals 5' anyway. The lot is 50' wide. The proposed structure complies with the minimum side yard setback requirement. The rear yard setback is 25% of the lot depth, in this case 49'. As proposed, the structure will be 59' from the rear boundary.

Based on the average finished grade, overall building height will increase to 18.5.' (**Affirmative finding**)

(c) Permitted and Conditional Uses

An accessory dwelling unit is a permitted use; however, new construction triggers conditional use review. (**Affirmative finding**)

(d) District Specific Regulations

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable to the subject property.

Sec. 5.2.5, Setbacks

See Article 4 above.

Sec. 5.2.6, Building Height Limits

See Article 4 above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Article 4 above.

Sec. 5.4.5, Accessory Dwelling Units

(a) Accessory Units, General Standards/Permitted Uses

Where there is a primary 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 primary dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. No accessory unit shall be inhabited by more than 2 adult occupants. An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation.

The proposed apartment is accessory to the existing detached single family home and is laid out as a 1-bedroom unit. **(Affirmative finding)**

Additionally, there must be compliance with all the following:

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

The applicant has obtained a letter of adequate capacity from DPW for wastewater. **(Affirmative finding)**

2. *The unit does not consist of more than 30 percent of the total habitable floor area of the building, inclusive of the accessory dwelling unit;*

The apartment will be 592 sf, or 19.8% of the total 2,984 sf habitable area of the existing home and proposed apartment. **(Affirmative finding)**

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

See Article 4.

4. *One additional parking space which may be legally allocated to the necessary unit must be provided for the accessory unit;*

One onsite parking space will be provided for the accessory apartment. **(Affirmative finding)**
and

5. *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.*

This provision will be included as a condition of approval. **(Affirmative finding)**

(c) Discontinuance of Accessory Units

Approval of an accessory dwelling unit is contingent on owner occupancy of the single-family 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 primary unit or in the accessory unit. If either the primary unit or the accessory unit is no longer 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.

As with A. 5 above, this provision will be included as a condition of approval. **(Affirmative finding)**

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

New outdoor lighting is proposed. Fixtures will illuminate the garage doors, the apartment's deck and doorway, and related walkway. The proposed fixtures are typical for residential applications and utilize acceptable low output lamps. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

The required small project erosion prevention and sediment control plan has been reviewed and approved by the city's stormwater program. **(Affirmative finding)**

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Sec. 6.1.2, Review Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

Site layout remains virtually unchanged. The rear portion of the driveway will be redone with a pervious paver system. A new walkway and deck will be installed for the benefit of the new accessory apartment. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

Although larger than the single story detached garage that it will replace, the new structure remains clearly subordinate to the primary dwelling onsite. It is set well behind the primary residence and is set into the sloping grade. Different cladding for the 1st and 2nd floors and the gambrel roof further lessen the perceived mass of the structure. Height remains modest at 18.5.' **(Affirmative finding)**

2. Roofs and Rooflines

A gambrel roof is proposed on the new structure. This roof form is unusual as compared to the typical gable roofs on many residences. In this case, the gambrel roof reflects the roof style on the primary residence. As proposed; however, the gambrel roof is significantly compressed with a resultant pitch dissimilar to that on the house. Increasing the overall building height to afford a steeper roof pitch is encouraged. **(Affirmative finding)**

3. Building Openings

Fenestration varies between the primary and secondary elevations of the proposed building. It effectively accents the building design and affords access to natural light throughout the structure. **(Affirmative finding)**

(b) Protection of important architectural resources

The primary dwelling is historically significant; however, the existing detached garage is not. Its demolition and replacement with new construction will not adversely affect the significance of the primary dwelling unit. **(Affirmative finding)**

(c) Protection of important public views

There are no identified view corridors from or through the subject property. **(Affirmative finding)**

(d) Provide an active and inviting street edge

The front elevation of the proposed building contains a doorway but is deliberately understated. The intent is for the front residence to remain primary and for the new building to read as accessory thereto. **(Affirmative finding)**

(e) Quality of materials

The new structure will be set on a concrete foundation. It will be clad in wood or wood composite clapboard siding and cedar shakes. Both appear the same, and either is acceptable. Asphalt roofing will be installed. Clad wooden windows are proposed. The proposed materials are of acceptable quality and durability. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed construction must comply with the city's current energy efficiency requirements and with the State Residential Building Energy Code. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

Not applicable.

(h) Integrate infrastructure into the building design

No exterior machinery or equipment is proposed on the building. Service lines will be extended to the new structure underground. **(Affirmative finding)**

(i) Make spaces safe and secure

The new construction will be subject to current egress requirements. Building entries are illuminated. **(Affirmative finding as conditioned)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

Total onsite parking required is 3 spaces (2 for the existing home and 1 for the apartment). As proposed, all 3 spaces will be provided onsite. The 2 spaces for the single family home are in the garage. The accessory apartment parking space is within the driveway between the primary dwelling unit and the garage/apartment structure. (**Affirmative finding**)

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Israel Smith

I move that the Board grant certificate of appropriateness and conditional use approval for demolition of an existing garage and construction of a new garage with accessory apartment at 426 South Winooski Avenue, in the RM zone, in accordance with Articles 3, 4, 5, 6, and 8. Approval is subject to the following conditions:

1. The Board is open to alterations of the proposed roof design that would be steeper and taller, within height limits, to result in a more appropriate design.
2. The accessory dwelling unit shall be occupied by no more than 2 adults.
3. 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.
4. Approval of an accessory dwelling unit is contingent on owner occupancy of the single-family 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 primary unit or in the accessory unit. If either the primary unit or the accessory unit is no longer 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.
5. Days and hours of construction are limited to Monday – Friday 7:00 AM – 5:00 PM. Saturday construction within those hours may be allowed upon request to the DRB. No construction activity on Sunday.

6. A State of Vermont wastewater permit may be required.
7. All new construction is required to 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.
8. Standard Conditions 1-15.

Seconded: Brad Rabinowitz

Vote: 7-0-0, motion carried.

Dated at Burlington, Vermont, this ____ day of July, 2017

Respectfully Submitted,

Austin D. Hart, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.