

## 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  
Layne Darfler, Planning Technician  
Ted Miles, Zoning Specialist  
Charlene Orton, Permitting & Inspections Administrator*



**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** February 2, 2021  
**RE:** 21-0609VR; 110 Summit Street

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**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: RL                      Ward: 6S

Owner/Representative: Amy Mellencamp / Charlie Smith

**Request:** Variance from rear and side yard setback.

**Applicable Regulations:**  
Article 12 (Appeals and Variances)

### **Background Information:**

The applicant is seeking approval of a side and rear yard setback variance. No development is included in this application; however, if approved, the variance would be followed by a separate application for a detached garage with accessory dwelling unit located within the minimum side and rear yard setbacks.

The property presently contains a single family home and a detached garage. The detached garage appears to be less than 15' tall as measured to the midpoint of the roof rise and, therefore, appears to comply with the applicable 5' rear yard accessory structure setback. The garage does not comply with the 5' minimum side yard accessory structure setback. It sits about 1' from the north side property line.

The applicants would like to demolish this single story garage and replace it with a 2-story detached garage and accessory dwelling unit within the minimum required side and rear yard setback. As a 2-story structure over 15' tall, the minimum side yard setback is 10% of the lot width (8.5' in this case) and 25% of the depth (46' in this case). The requested variance would allow a 5' side yard setback and an ~ 8' rear yard setback.

Previous zoning actions for this property are as follows:

- 9/17/96, Approval to enlarge and enclose porches and build new rear entry.

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

### **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.*

There is nothing especially unique about the configuration of the subject property. It is basically rectangular and is about 1/3 acre in size. Existing lot coverage is about 23%. There are no exceptional physical characteristics inhibiting development on the lot. The existing garage is nonconforming as to the side yard setback. That nonconformity could be retained with a replacement structure within the existing building envelope. The applicants would like to build a taller structure with a larger footprint within the side and rear yard setbacks. Building such a structure in conformance with the applicable setback standards is possible. The only hardships here are the applicable setback requirements. **(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 exceptional physical circumstances or conditions affecting the property. There is ample opportunity to build in compliance with the applicable setback standards. **(Adverse finding)**

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

This variance request is driven entirely by the applicant's desire to build a structure within the applicable side and rear setbacks. **(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.*

A number of neighboring properties contain detached outbuildings that appear to encroach into side and/or rear yard setbacks. This variance, if granted, would not alter the essential character of the neighborhood or district in which the property is located. **(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 is substantial (5' side yard setback instead of 8.5' and ~ 8' rear yard setback instead of 46') and deviates markedly from the zoning regulation. **(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 requested variance would result in an increase in the degree of nonconformity. The existing single story detached garage is noncompliant as to the side yard setback only. The requested variance would enable a taller structure with a larger footprint to encroach into both the side yard setback and the rear yard setback. **(Adverse finding)**

## **II. Reasons for Denial**

1. Per the adverse findings in Sec. 12.1.1 above.