

Department of Permitting & Inspections

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TO: Development Review Board
FROM: Scott Gustin
DATE: January 4, 2022
RE: ZAP-21-19; 2 Tower Terrace

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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/Appellant: Mark Stephenson & Linda Jones / Kellen Brumsted

Request: Appeal of administrative deck permit.

Overview:

The appellant is seeking to reverse the administrative zoning permit approval (ZPD-21-43) for a rear deck expansion at 2 Tower Terrace.

Recommendation: **Uphold administrative zoning permit** based on the following findings:

I. Findings:

The subject property is located within a residential neighborhood abutting Champlain College. The home is historic, included on the state historic register, and serves as a single family dwelling. The home was built in 1895 and retains much of its original historic character. Some alterations have been made to the home, including replacement windows and installation of dormers. The rear deck is probably not original, but its construction date is unknown.

The zoning application for the requested deck expansion was filed November 9, 2021 and was deemed complete November 10, 2021. Following review of the application and prior zoning history and correspondence with the applicant, the zoning application was approved November 12, 2021 with the following conditions:

1. **Prior to release of the zoning permit**, the site plan shall be amended to depict the location of the proposed replacement deck.
2. Per **Section 2.7.8, Withhold Permit**, 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. In this case, zoning permit 01-145 to extend the existing dormer to the rear of the home remains unclosed and requires a certificate of occupancy prior to issuance of a certificate of occupancy for this permit.

Three days later, on November 15, 2021, the zoning permit was appealed by the appellant. The appeal was made complete November 23, 2021, within the 15-day appeal period.

The appeal asserts that the materials and size of the proposed deck expansion are inappropriate for an historic structure. The appeal also asserts that the larger deck size encroaches on lot limit size restrictions and on the appellant's lot. Finally, the appeal notes that work commenced prior to issuance of a building permit or zoning permit.

The existing 7' 6" X 20' 6" deck is a wooden frame structure with wooden decking and wooden shingle siding to match that on the home. The proposed deck is somewhat larger at 9' X 23' and is also a wooden frame structure with wooden decking. Wood framed cable railings strung through wooden posts are proposed. While this railing system is a departure from the existing, there is no requirement to prevent it. Based on orthophotos, the deck appears to have been constructed sometime between 1962 and 1978, and it is located behind the home. Nothing about the change to the rear deck adversely impacts the historic integrity of the home. The historic preservation standards in Sec. 5.4.8 recommend against artificial historic appearance for unoriginal building components.

The slightly larger deck increases lot coverage from 38% to 39%. Within the residential – low density zone, wherein the property is located, the standard lot coverage limit is 35%. An additional 10% lot coverage is allowed for open-air amenities such as decks, patios, and walkways. The expanded deck fits into this additional coverage allowance.

The assertion that the expanded deck encroaches on the appellant's lot might be valid insofar as setbacks are concerned. The site plan provided with the application lacks much in the way of detail, hence the pre-release condition to provide greater detail as to the proposed deck. As submitted, the existing deck scales to 4.66' from the nearer side property line. The 50' wide lot requires a 10% (or 5') side yard setback. The home angles slightly away from this property line. As a result, the extended deck likely complies with a minimum 5' side yard setback; however, confirmation is needed on a revised site plan.

The appellant filed a complaint for unpermitted construction activity at 2 Tower Terrace on November 15, 2021, after the November 12 permit approval date. Later that day, enforcement staff visited the property and met the contractor. The railings and steps had been removed from the rear deck. The contractor stated they were removed for safety reasons. Though no new construction had taken place, even the demo work should not have occurred until the related zoning permit was past its appeal period. In any event, the premature work is not grounds for nullifying or denying the zoning permit.

The zoning permit for an expanded rear deck at 2 Tower Terrace was property issued and conditioned. In the event that the expanded deck encroaches into the 5' minimum side yard setback, revision to the site plan will be required as conditioned.

II. Recommended Motion:

Uphold approval of zoning permit ZPD-21-43.