

## Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

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

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

*David E. White, AICP, Director  
Meagan Tuttle, Comprehensive Planner  
Jay Appleton, Senior GIS/IT Programmer/Analyst  
Scott Gustin, AICP, CFM, Principal Planner  
Mary O'Neil, AICP, Principal Planner  
Ryan Morrison, CFM, Associate Planner  
Elsie Tillotson, Department Secretary  
Anita Wade, Zoning Clerk*



### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: July 19, 2016  
RE: ZP16-1175CU, 66 Vest Haven Drive

**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:** ZP16-1175CA/CU

**Location:** 66 Vest Haven Drive

**Zone:** RL **Ward:** 7N

**Date application accepted:** April 28, 2016 Applicant requested deferral 5/18/2016.

**Applicant/ Owner:** Bruce Bergman

**Request:** Expand living space of accessory dwelling unit by enclosing rear deck to include 261 additional sq. ft.

#### **Background:**

- Non-Applicability of Zoning Permit Requirements 15-0174NA; replace existing egress bedroom window in 2nd floor accessory unit apartment with appropriate size to meet fire code. July 2014.
- Zoning Permit 15-0134CU; expand living space of accessory dwelling unit to include 261' additional sq. ft. of existing deck. Permit application withdrawn.
- Zoning Permit 14-1316CA; extend roof to cover deck and stairs. Conditioned not to include any new habitable area. July 2014.
- Zoning Permit 14-1130BA; Establish accessory apartment within existing home. Remove existing exterior staircase on side and install new staircase with different alignment. Approved June 12, 2014.
- Zoning Permit 07-030HO; Home occupation for home based seasonal tax business in existing single family home. Conditioned to operate between February 1 and April 15<sup>th</sup>. Approved September 2006.



- Zoning Permit 03-172; access ramp and landing on north side of existing single family residence with a 10' long pathway. Project allowed as access for disabled, as encroaches into side yard setback and exceeds allowable lot coverage. October 2002.
- Zoning Permit 03-204; install retaining wall in east corner of lot. Extend fence on southeast property line. Install walkway along northwest property line. Property identified as a single family residence. November 2002. (As-built approval to eliminate walkway, April 2014.)
- Zoning Permit application to install stone retaining wall for raised flower and vegetable garden 2' x 50'. Ground level stone patio 18' x 7'. Application defines use as Boarding House. Zoning Administrator questions identified use. Application remains incomplete. June 2002.
- AP-2002-025; Determination by the Burlington Development Review Board that zoning violations exist to the property regarding a ramp and landing (deck) installed in 1986. Owner/appellant gave testimony that property is a single family home. (Minutes of DRB meeting, December 4, 2001.) Decision to **deny** appeal of violation relative to deck connecting to the ramp and moving of stairs; other violations were found not supported by the evidence and on those violations upheld the appeal and reverse the decision of the Zoning Administrator, January 24, 2002; Appealed to VEC. Final judgment entered in favor of the City and against appellant, September 2002. VEC denied motion to stay October 22, 2002. Dismissed by Vermont Supreme Court January 7, 2003.
- Zoning Permit VR/CU-2002-027; Conditional Use to convert single family house into a community house and a request for a variance of side yard setback for a fire escape. **Denied** January 2002.
- Zoning Permit 02-048; fence along rear portion of the side property line of existing single family home. July 2001.
- Zoning permit 89-419; enclose existing 7.5' x 4' deck. No change in use. Property identified on application as Community Care Home. August 1989.
- Zoning Permit 83-443; construct an 8' x 26' addition to the front of the house to provide additional living space. Use identified as single family home. October 1983.
- Zoning Permit 83-105; construct a 4' x 12' addition to the existing garage. Use identified as single family home. April 1983.
- Permit 81-397; remove back wall of dining room (addition of 4 feet to rear of house.) Use identified as single family home. April 1981.
- Zoning Permit 80-861; stockade fence along back yard. Use identified as single family home. May 1980.
- Zoning Permit 80-845; inground pool. Use identified as single family home. April 1980.
- Letter from State of Vermont Agency of Environmental Conservation, acknowledging receipt of the application for 1 shower, 1 lavatory and 1 closet com. located at Community Care Home. Signed by Ernest Christiansen, District Administrator. November 1982.

- Zoning Permit n.n.; Portion of the house to be used as a boarding house for no more than four persons. March 1976.
- Zoning Permit; raise a 16' x 20' portion of the roof. July 1974.
- Permit 71-1090 to enlarge kitchen area and erect cedar closets using the back porch. Erect 8 x 12 addition to rear of garage. June 1971.

**Overview:** The property owner with an extensive zoning history requests a 261 sq. ft. expansion of the current accessory dwelling unit to be appended to an accessory dwelling unit within the single family home. There is also a home occupation for seasonal tax preparation. No change to coverage is proposed.

**Recommendation:** **Consent approval**, per the following findings and conditions:

**I. Findings**

**Article 3: Applications, Permits and Project Reviews**

**Section 3.5.6 (a) Conditional Use Review 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;*

This is a minor expansion of an existing Accessory Dwelling Unit. There will be no greater impact on planned public utilities, facilities or services. **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 single family home is located within a low density residential zoning district. Accessory dwelling units are permitted by statute and this zoning ordinance. From the Municipal Development Plan:

- *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. (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 proposal is a minor addition to an existing dwelling unit. No impacts other than those associated with residential use are anticipated. **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;*

The enclosure of a porch area to augment the existing dwelling unit will have no impact on the transportation system or street designations/capacity. **Affirmative finding.**

5. *The utilization of renewable energy resources;*

Nothing within the application will foreseeably prevent the utilization of renewable energy resources. **Affirmative finding.**

*and,*

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

The applicant will be required to secure any applicable trades permits to complete the project request. **Affirmative finding as conditioned.**

**Article 5: Citywide General Regulations**

**Section 5.4.5 Accessory Dwelling Units**

*(a) 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. Additionally, there must be compliance with all the following:*

*1. The property has sufficient wastewater capacity as certified by the department of public works;*

*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;***

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

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

The accessory dwelling units was permitted in June 2014, meeting the above requirements. The applicant proposes to enclose a deck to increase the habitable area of the house and apartment by 261 sq. ft.

The apartment was approved at 454 sq. ft (of 2363 overall habitable area.) = 19% < 30% limitation. Proposed: 454 + 261 new habitable area = 715 sq. ft. / 2624 (2363 + 261) = 27.24% < 30% limitation. No change to coverage is proposed. All other conditions will remain in effect.

**Affirmative finding as conditioned.**

**(b) Conditional Use Approval for Accessory Units:**

*If any of the following are also proposed, conditional use approval, as well as development review provisions of Article 6 shall be required:*

*1. A new accessory structure;*

2. *An increase in the height or habitable floor area of the existing dwelling;*

3. *An increase in the dimensions of any parking area;*

As the application includes new habitable area, Conditional Use Review is required. See Section 3.5.6, above.

**Article 6: Development Review Standards**

**Part 1: Land Division Design Standards**

Not applicable.

**Part 2: Site Plan Design Standards**

Not applicable.

**Part 3: Architectural Design Standards**

**Sec. 6.3.2 Review Standards**

**(a) Relate development to its environment:**

**1. *Massing, Height and Scale:***

There have been substantial modifications to this Cape style home, including multiple additions to the rear and front. The proposed enclosure of the rear (elevated) deck will marginally increase that mass, and is not likely to be visible from the street. **Affirmative finding.**

**2. *Roofs and Rooflines.***

The development will alter the existing shed roof to create a shallow pitched gable, which also will only be visible from the rear. **Affirmative finding.**

**3. *Building Openings***

A new sliding door and rear window will be included. **Affirmative finding.**

**(b) Protection of Important Architectural Resources:**

Not applicable.

**(c) Protection of Important Public Views:**

There are no public views from this site. Not applicable.

**(d) Provide an active and inviting street edge:**

The small enclosure is on the back of the dwelling and not likely to be visible from the street. **Affirmative finding.**

**(e) Quality of materials:**

The applicant proposes to match the existing aluminum siding. Annotation on the plan states: "Noted south elevation of second floor addition similar." Metal roofing is proposed over the new enclosure. **Affirmative finding.**

**(f) Reduce energy utilization:**

All new construction shall 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. **Affirmative finding as conditioned.**

**(g) Make advertising features complementary to the site:**

Not applicable.

**(h) Integrate infrastructure into the building design:**

Not applicable.

**(i) Make spaces secure and safe:**

All construction shall meet applicable building and life safety codes as defined by the building inspector and fire marshal. **Affirmative finding as conditioned.**

**II. Conditions of Approval**

1. All permit conditions of ZP14-1130BA not specifically altered herein remain in effect.
2. The Accessory Dwelling Unit is subject to the provisions of Section 5.4.5, Accessory Dwelling Units, of the Comprehensive Development Ordinance. The apartment or the primary residence shall be owner occupied.
3. Occupancy limits for both the single family residence and the Accessory Dwelling unit remain in effect. Not more than four unrelated adults may inhabit the single family dwelling unit; not more than 2 adults the Accessory Dwelling Unit.
4. All new construction shall 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.
5. Standard Permit Conditions 1-15.

**NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.**