

## Department of Planning and Zoning

149 Church Street

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### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: September 5, 2017  
RE: ZP18-0098CA/CU; 91 Henry Street

**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:** ZP19-0098CA/CU

**Location:** 91 Henry Street

**Zone:** RL **Ward:** 1E

**Date application accepted:** July 28, 2017

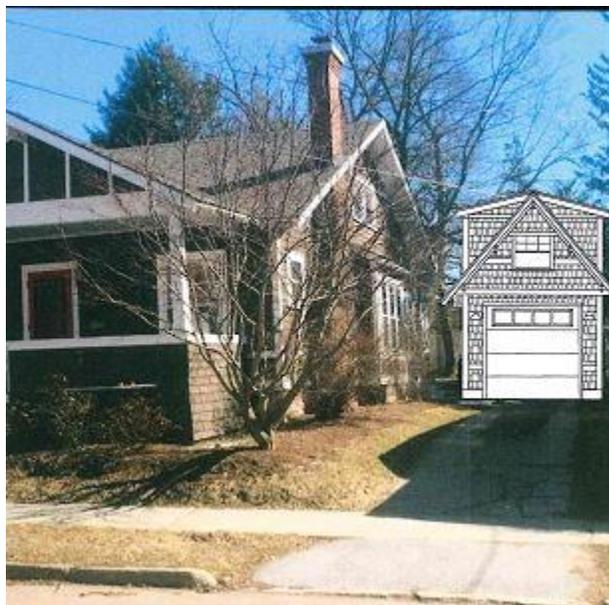
**Applicant/ Owner:** Trillium Remodeling (John Bixby) / Paul Matos

**Request:** Rebuild garage on existing footprint; vertical expansion of accessory structure within existing non-conforming setback.

#### Background:

- **Zoning Permit 17-1342CA;** Replacement of accessory structure (garage) meeting minimum required setbacks. Approved June 30, 2017.
- **Zoning Permit 11-0191CA;** extend half dormer across full length of roof. Convert three season porch to mudroom. September 2010.
- **Zoning Permit 82-470;** construct dormer window along rear (south) elevation of building. October 1982.
- **Zoning Permit 79-649;** replace flat roof with pitched roof on detached garage. November 1979.

**Overview:** The applicant originally came in with plans to remove and replace the garage (which encroaches into setbacks) meeting minimum required setbacks when reconstructed. That permit was approved in June 2017. The owner has subsequently decided to replace the garage in the same location as existing, which is non-conforming to setbacks. The replacement structure will be higher than the original garage demolished, but remain within the 15' maximum height for accessory structures. **Section 5.3.5, Nonconforming Structures**, allows for vertical expansion



of non-conforming structures in certain circumstances subject to DRB review. This application is the result of that request.

**Recommendation: Consent approval** per the following findings:

**I. Findings**

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

**Part 4: Site Plan and Design Review**

**(a) Site Plan Review**

*Site Plan Review shall be required for the approval of all development subject to the provisions of this ordinance with the exception of single-family dwellings not otherwise subject to the requirements of Design Review.*

**(b) Design Review:**

*Design Review shall be required for the approval of all development subject to the provisions of this ordinance within the Design Review Overlay District as defined in Article 4, Sec. 4.5.1, and any of the following:*

- 1. Any development subject to the provisions of Article 3, Part 5 – Conditional Use and Major Impact Review;**
- 2. Any development subject to the provisions of Article 5, Part 3 – Non-Conformities;**

91 Henry Street is subject to Design Review per **Section 5.3.5 Nonconforming Structures and Article 3, Part 4, Special Use Regulations.**

**Part 5: Conditional Use**

**Sec. 3.5.3 Exemptions**

*Neither Conditional Use nor Major Impact Review shall be required for applications involving one or more of the following:*

- (a) Temporary structures that do not otherwise involve a conditional use;*
- (b) Substantial rehabilitation that does not expand the floor area of an existing building or the structural capacity of existing development;*
- (c) Projects that do not result in a change of use or increased parking demand;**
- (d) Subsurface site improvements including but not limited to underground utility lines.*

The replacement garage is not intended for any other use but storage, and will not increase parking demand. Therefore, the project is exempt from Conditional Use Review.

**Article 4: Zoning Maps and Districts**

**Section 4.4.5 Residential Districts**

- 1. The Residential Low Density (RL) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history.*

Replacement of the small accessory structure on the same footprint will retain the characteristic pattern of development within this cohesive neighborhood, where garages and sheds are in close

proximity to property lines at the rear of the lot.



Google Satellite image of Henry Street. Note common pattern of accessory buildings at the rear of lots, abutting property lines.

**Table 4.4.5-3 Residential District Dimensional Standards**

RL Zoning District	Max coverage 35%	Setbacks			Max Height 35'
		Front	Side 10% lot width or average of side yard setback of 2 adjacent lots on both sides.	Rear Minimum 25% of lot depth but in no event less than 20'	

			*5' for accessory structure		
91 Henry St.	No change. Building proposed on existing garage footprint.	No change	Existing approx.. 1'	Existing approx.. 4'	Not to exceed 15' limitation for accessory structures.

\*See Article 5, **Section 5.2.5 Setbacks, (b) Exceptions to Setbacks, 4.** Below.

The application proposes to rebuild on the existing footprint, retaining the non-conformity to setbacks. Per Section 5.3.5 (a) 1, vertical expansion may be considered if *existing accessory buildings of 15' in height or less shall not exceed 15 feet tall as expanded.* **Affirmative finding.**

**Article 5: Citywide General Regulations**  
**Section 5.3.5 Nonconforming Structures**

**(a) Changes and Modifications:**

*Nothing in this Part shall be deemed to prevent normal maintenance and repair or structural repair, or moving of a non-complying structure pursuant to any applicable provisions of this Ordinance.*

*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 except as provided below.*

The application proposes replacement of the garage on the existing footprint, with no increase in the encroachment into the side yard setback. The expansion vertically requires DRB review under these standards. **Affirmative finding.**

*Within the residential districts, and subject to Development Review Board approval, existing nonconforming single family homes and community centers (existing enclosed spaces only) that project into side and/or rear yard setbacks **may be vertically expanded** so long as the expansion does not encroach further into the setback than the existing structure. Such expansion shall be of the existing nonconformity (i.e. setback) and shall:*

- i) *Be subject to conformance with all other dimensional requirements (i.e. height, lot coverage, density and intensity of development);*

There is no proposed change to lot coverage, density and intensity of development. The building height is proposed to be increased, but not beyond the 15' limitation noted for accessory structures. **Affirmative finding.**

- ii) *Not have an undue adverse impact on adjoining properties or any public interest that would be protected by maintaining the existing setbacks;*

The existing setback will be maintained. The applicant has consulted with the building inspector to assure compliance with building and life safety code. Exterior finishes will be non-combustible; openings limited per code. **Affirmative finding.**

and,

- iii) *Be compatible with the character and scale of surrounding structures.*

The replacement accessory structure will be located in a lot position consistent with the original and other accessory structures within the neighborhood. Although proposed with a higher pitched roof, detailing and finishes refer to the principal structure. **Affirmative finding.**

***Existing accessory buildings of 15 feet in height or less shall not exceed 15 feet tall as expanded.***

The proposed replacement structure will be higher than the original garage, but will not exceed 15' in height as measured to the mid-line of the ridge of the roof, as directed in Article 5, Section 5.2.6 (a). See plans approved with ZP17-1342CA. **Affirmative finding.**

2. *Such a change or modification shall not create any new nonconformity;*

As proposed on the existing garage footprint, no further encroachment into the side or rear setback is proposed. The expansion is vertical yet remains within the 15' height limit defined in this standard. **Affirmative finding.**

and,

3. *Such a change or modification shall be subject to review and approval under the Design Review provisions of Article 3, Part 4.*

The replacement structure was approved under ZP17-1342CA. See attached plans.

*When any portion of a nonconforming structure has been made conforming, it shall not be made nonconforming again except as provided for historic building features pursuant to Sec. 5.2.6(b)(3).*

*A non-conforming residential structure may be enlarged up to the dimensional standards of the underlying zoning district, subject to review and approval by the DRB pursuant to Art. 3, Part 4 Design Review and Art. 3, Part 5 Conditional Use Review. Adaptive reuse or residential conversion bonuses may allow a greater expansion than the underlying zoning district allows approved per the provisions of Article 4.*

Although a zoning permit has been issued in June 2017 for the replacement structure to be erected meeting minimum setbacks, the work has not commenced. This application seeks approval to supercede that permit and allow construction on the existing footprint, which is non-conforming to setbacks. **Affirmative finding.**

**(b) Demolition**

*A nonconforming structure may be replaced by a new structure retaining the same degree of nonconformity as the original structure. This provision is limited to the existing dimensional nonconformity (i.e. setback, lot coverage, or height), and shall not expand the degree of nonconformity **except as provided for in (a) above.** The new structure shall be subject to conformance with all other dimensional requirements (i.e. setback, lot coverage, and height). Zoning permit application for the replacement structure shall be completed within 1 year of demolition of the nonconformity structure; failure to do so shall result in the loss of the ability to retain the nonconformity.*

The replacement structure proposes to retain the same degree of non-conformity to setback as the existing garage. Vertical expansion is allowed per Section 5.3.5 (a), above, as noted. The replacement structure will be conditioned for completion within one year of demolition as required. **Affirmative finding as conditioned.**

**Article 6: Development Review Standards**

**Part 1: Land Division Standards**

Not applicable.

**Part 2: Site Plan Design Standards**

**Sec. 6.2.2 Review Standards**

(a) *Protection of Important Natural Features:*

Not applicable.

(b) *Topographical Alterations:*

Not applicable.

(c) *Protection of Important Public Views:*

Not applicable.

(d) *Protection of Important Cultural Resources:*

Not applicable.

(d) *Supporting the Use of Renewable Energy Resources:*

No part of the application prevents the use of wind, solar, water, geothermal, or other renewable energy resource.

(e) *Brownfield Sites:*

Not applicable.

(g) *Provide for nature's events:*

*Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.*

*Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.*

At a mere 240 sf, the project will not trigger an Erosion Prevention and Sediment Control Plan. The building is intended to be a storage building, and therefore will not require typical consideration for weather protected building entrance (although the easterly door is located under an eave.) **Affirmative finding.**

(h) *Building Location and Orientation:*

No change from the existing configuration or orientation. **Affirmative finding.**

(i) *Vehicular Access:*

Same as existing. The accessory structure will be located at the terminus of the driveway.  
**Affirmative finding.**

*(j) Pedestrian Access:*

A pedestrian door is offered on the easterly side of the building, facing the principal structure.  
**Affirmative finding.**

*(k) Accessibility for the Handicapped:*

Not required. Not applicable.

*(l) Parking and Circulation:*

Same as existing. **Affirmative finding.**

*(m) Landscaping and Fences:*

Not applicable.

*(n) Public Plazas and Open Space:*

Not applicable.

*(o) Outdoor Lighting:*

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

One downshielded light is proposed over the easterly pedestrian entrance. It is fully cut off and residential in scale. **Affirmative finding.**

*(p) Integrate infrastructure into the design:*

No additional equipment or infrastructure is proposed. The building is intended to continue its storage use. **Affirmative finding.**

### **Part 3: Architectural Design Standards**

#### **Sec. 6.3.2 Review Standards**

*(a) Relate development to its environment:*

1. *Massing, Height and Scale:*

The replacement building will have the same massing, albeit in a taller structure. It is not proposed to exceed the defined height limitation in Section 5.3.5. **Affirmative finding.**

2. *Roofs and Rooflines.*

A gable roof with full dormers is proposed. The existing accessory structure has a gable roof (installed in 1979.) The house has been modified to include a full dormer. Although the pitch is different, the replacement roof is proposed to be similar to the existing on house and garage.

**Affirmative finding.**

3. *Building Openings*

An overhead garage door is proposed for the north elevation, a pedestrian door on the east, and wall dormer windows on the east and in the south gable end.

The placement is consistent with function, and observes limitations of code requirements relative to proximity to boundary lines per direction of the building inspector. **Affirmative finding.**

(b) *Protection of Important Architectural Resources:*

Not applicable.

(c) *Protection of Important Public Views:*

*Not applicable.*

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

The replacement building will reflect design elements from the principal structure, and retain the common element of structural location. **Affirmative finding.**

(e) *Quality of materials:*

The submission narrative defines a frame of hemlock; cedar shakes, with composite (Boral) trim. Roofing material will be flat locked and soldered copper. Windows are wood, the exterior doors fiber thermatru. All are of acceptable durability for new construction.

**Affirmative finding.**

(f) *Reduce energy utilization:*

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. **Affirmative finding as conditioned.**

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

(g) Not applicable.

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

See Section 6.2.2. (p) above.

(i) *Make spaces secure and safe:*

The applicant has sought the guidance of the building inspector for reconstruction within setbacks, resulting in a façade without windows and doors and sheathed in non-combustible material. **Affirmative finding.**

## **II. Conditions of Approval**

1. 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.
2. Replacement building must be constructed within one year of building demolition. Failure to do so will result in loss of the ability to retain the nonconformity.
3. Building shall not exceed 15' in height as measured per **Section 5.2.6 Building Height Limits**.

4. 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.
5. Standard Permit Conditions 1-15.

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