

## Burlington Development Review Board

149 Church Street, City Hall

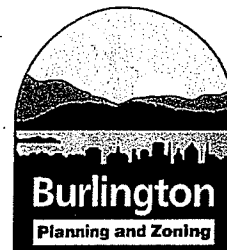
Burlington, VT 05401

[www.burlingtonvt.gov/PZ/Boards/Development-Review-Board](http://www.burlingtonvt.gov/PZ/Boards/Development-Review-Board)

Phone: (802) 865-7188

Fax (802) 865-7195

Austin Hart  
Jonathan Stevens  
Brad Rabinowitz  
Israel Smith  
AJ LaRosa  
Alexandra Zipparo  
Geoffrey Hand  
Jim Drummond (Alt.)  
Wayne Senville (Alt.)



## Burlington Development Review Board

Minutes/Findings of Fact  
August 11, 2016

**In RE:** 16-1225CA/CU; 410 North Street (Ward 1E, RL) (Tax Lot No. 045-1-104-000)

**Owner/Representative:** Scott A. & Margaret Gayle Goodwin

**Request:** Convert a portion of the existing garage into an accessory apartment.

### Members Present:

Austin Hart  
Brad Rabinowitz  
Alexandra Zipparo  
AJ LaRosa  
Israel Smith  
Wayne Senville  
Geoffrey Hand

### Evidence Presented:

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

## I. FINDINGS

### Background:

- Non-Applicability of Zoning Permit Requirements 15-0683NA; interior work only, no change in the number of residential units. December 2014.

### Overview:

The applicant proposes to convert a portion of the existing garage into an accessory dwelling unit. The onsite parking area will also be revised to accommodate the required number of parking spaces.

On June 21, 2016, a public hearing was held by the DRB to consider this application. After a 4-3 vote, the DRB continued the public hearing to August 2, 2016. At the request of the DRB, the applicant has provided a revised site plan, lot coverage calculations, a floor plan, and photographs of the property.

In addition to the applicant's new submittals, staff has received a response from Carl Andeer, Staff Attorney I with Vermont League of Cities and Towns, in regards to one citizen comment

about requiring a property owner(s) to reside in both the primary and accessory residential dwellings. This email response, dated June 24, 2016, is attached with this staff report, and noted under Article 5, Section 5.4.5 (c) below.

The following sections below have been updated since the June 21, 2016 DRB meeting staff report:

<u>Article 4</u>	<u>Article 5</u>	<u>Article 8</u>
Table 4.4.5-1 (lot size)	Sec. 5.2.3 (coverage)	Table 8.1.11-1 (parking dimensions)
Table 4.4.5-3 (coverage)	Sec. 5.2.5 (b) (4) (setbacks)	
Sec. 4.4.5 (d) (3) (coverage)	Sec. 5.4.5 (a) (acc. units)	
	Sec. 5.4.5 (a) (2) (unit size)	
	Sec. 5.4.5 (a) (3) (coverage)	
	Sec. 5.4.5 (c) (discontinuance)	

**Recommendation: Approval**, per the following findings and conditions:

**I. Findings**

**Appendix A:**

Accessory Dwelling Unit is a Permitted Use in the RL zoning district. However, Section 5.4.5 (b) CDO, lists three instances when accessory dwelling units are required to obtain conditional use approval. One of those instances when a conditional use permit will be required, as per Sec. 5.4.5 (b) (3), is when there will be an increase in the dimensions of any parking area.

**Affirmative finding.**

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

**Part 5: Conditional Use and Major Impact Review**

**Section 3.5.6 Review Criteria**

**(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 addition of one new residential unit will have minimal impact on public utilities, facilities and services. A letter of confirmation from DPW will be required to assure adequate sewer capacity. **Affirmative finding as conditioned.**

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 within an established residential neighborhood and a residential zoning district. The RL zoning 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. 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;*

No greater impacts are anticipated than other residential uses in the area. **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;*

This parcel fronts on North Street. With sidewalks on both sides, North Street provides adequate vehicular and pedestrian access to the surrounding neighborhood. An insignificant amount of additional traffic is anticipated. **Affirmative finding.**

5. *The utilization of renewable energy resources;*

Nothing within the application prevents the use of wind, solar, water, geothermal or other renewable energy resource. **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 a state wastewater permit, and any associated trades permits for interior work. **Affirmative finding as conditioned.**

#### **(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;*

Not applicable.

2. *Time limits for construction.*

There is a two-year time frame to complete the project.

3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*  
Hours of operation do not apply to the proposed accessory dwelling unit. Construction hours are not specified. Typical construction hours in residential areas 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,*  
The size of the proposed accessory dwelling unit is limited to 30% of the total habitable floor area of the building, inclusive of the accessory dwelling unit. Any additional physical alteration or change of use will require review and permitting under regulations in effect at that time. **Affirmative finding as conditioned.**  
*and*
  
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.*  
None identified.

**Article 4: Zoning Maps and Districts**

**Section 4.4.5 Residential Districts**

**(a) Purpose**

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

An accessory dwelling unit to an existing single family residence is proposed.

**Affirmative finding.**

**(b) Dimensional Standards and Density**

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

**Table 4.4.5-1 Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W.**

**Single detached dwelling, RL Minimum 60' frontage, RL Minimum 6,000 sq ft lot size.**

410 North Street is a long, narrow, 9,964 sq ft lot, with approximately 27 feet of frontage. The property's frontage is considered legally existing, non-conforming. **Affirmative finding.**

**Table 4.4.5-2 Base Residential Density**

Not applicable per Section 5.4.5 (a) below.

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

Setbacks – Front yard: the average of 2 adjacent lots on both sides, +/- 5 feet. Side yard: 10% of lot width or the average of the side yard setback of 2 adjacent lots on both sides. Rear yard: 25% of lot depth, but in no event less than 20 feet. The rear yard also has a maximum setback of 75'.

Side and rear yard setbacks for the garage are 3.25' and 75', respectively. Front yard setbacks will not apply. The proposal includes no expansion of existing building footprints. **Affirmative finding.**

Maximum Lot Coverage – 35%.

The project only proposes a 3.19% change in lot coverage as a result of the parking area alterations, and the new walkway leading to the new parking space. No other changes will occur to either lot or building footprints. After these revisions, lot coverage will total 31.99%.

**Affirmative finding.**

### **(c) Permitted and Conditional Uses**

An accessory dwelling unit to a single family residential property is a permitted use per Appendix. A. See Above.

### **(d) District Specific Regulations**

#### *1. Setbacks*

##### *A. Encroachment for residential driveways*

Not applicable.

##### *B. Encroachment into the Waterfront Setback*

Not applicable.

#### *2. Height*

No change. Not applicable.

#### *3. Lot Coverage*

##### *A. Exceptions for Accessory Residential Features*

Not applicable.

#### *4. Accessory Residential Structures and Uses*

Not applicable.

#### *5. Residential Density*

##### *A. Additional Unit to multi-family*

Not applicable.

##### *B. Additions to Existing Residential Structures*

No additions are proposed. Not applicable.

##### *C. Residential Occupancy Limits*

*In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.*

The residential occupancy provisions of the ordinance will apply to primary residence, and the Accessory Units, General Standards/Permitted Uses (Sec. 5.4.5 [a] - below) will apply to the accessory dwelling unit.

**Affirmative finding as conditioned.**

6. *Uses*

*A. Exception for Existing Neighborhood Commercial Uses*  
Not applicable.

7. *Residential Development Bonuses*

No bonuses are sought. Not applicable.

**Article 5: Citywide General Regulations**

**Section 5.1.2 Structures**

Aside from internal modifications to the existing garage, no changes are proposed to the existing residential accessory structure. Not applicable.

**Section 5.2.1 Existing Small Lots**

Not applicable.

**Section 5.2.2 Required Frontage or Access**

410 North Street has approximately 27 feet of frontage, less than the minimum frontage requirement of 60 feet. The lot's frontage is considered legally existing, non-conforming  
**Affirmative finding.**

**Section 5.2.3 Lot Coverage Requirements**

The maximum lot coverage allowance in the RL zoning district is 35%. After the modifications to the parking area, and a new walkway along the eastern rear portion of the primary home, lot coverage will total 31.99%. **Affirmative finding.**

**Section 5.2.4 Buildable Area Calculation**

Not applicable.

**Section 5.2.5 Setbacks**

**(a) Setbacks Required**

No change. Not applicable.

**(b) Exceptions to Yard Setback Requirements**

*4. Accessory Structures and Parking Areas*

Parking areas may project into a required side or rear yard setback, provided they are no less than 5 feet from a side or rear property line where such a setback is required. The existing parking area is less than 5' to the west property line. However, the additional gravel parking area to accommodate a parking space in the western side of the garage, and its 24' back-up length, will comply with the minimum 5' setback to the side yard property line. **Affirmative finding.**

*6. Shared Driveways*

Common or shared driveways along shared property lines and associated parking areas do not have to meet setback requirements along the shared property lines. **Affirmative finding.**

### **Section 5.2.6 Building Height Limits**

No change. Not applicable.

### **Section 5.2.7 Density and Intensity of Development Calculations**

Not applicable per Sec. 5.4.5 (a) below.

### **Section 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 first sentence above sets the initial requirement that one must meet in order to essentially proceed with applying for an accessory dwelling unit. That is that the primary structure on the lot must first be owner-occupied in order to proceed with an application to permit an accessory dwelling unit. The primary structure is currently occupied by one of the two owners listed on the property deed. The other owner will be removing herself from the deed as a result of this permit, leaving just one owner of record residing on the property (see Condition of Approval # 4).

The proposed one-bedroom accessory dwelling unit will be located in an appurtenant structure. The floor plan identifies a bathroom, kitchen, living, and sleeping space, in addition to the remaining garage use. No more than 2 adult occupants can be permitted within this accessory dwelling. **Affirmative finding as conditioned.**

*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 will be required to secure a letter of adequate capacity from DPW for water and sewer services. **Affirmative finding as conditioned.**

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 main residence has 1,240 sf of habitable floor area. The proposal is to convert 520 sf of garage area into the accessory dwelling unit. When combined, habitable floor area will total 1,760 sf.  $520/1,760 = 29.5\%$ . **Affirmative finding.**

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

See Section 5.2.5 (b) above. The existing parking area is situated within the 5' side yard setback. However, the proposed parking area expansions will meet the minimum 5' side

yard setback. Lot coverage, after additional parking area and walkway space is laid, will total 31.99%. **Affirmative finding.**

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

The site plan shows a total of 3 parking spaces, 2 that are required for the main residence, and 1 required for the accessory dwelling unit. **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.*

A condition of approval will ensure this. **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;*

The accessory dwelling unit will be located within an existing structure. Not applicable.

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

No increase in height is proposed. Not applicable.

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

The dimension of the parking area will be increased as a result of this accessory dwelling.  
**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.*



One resident, Julia Lynam, brought a concern to the DRB about the statement in (c) above that states: *'For the 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.'* It is Ms. Lyman's interpretation that that statement means that both the primary and accessory units must be occupied by persons listed on the property deed. If this interpretation were true, then it would be virtually impossible for any property with a single person ownership to be allowed an accessory dwelling unit due to the fact that no one person could occupy both units simultaneously. The key word in the statement above is 'or'. It is staff's interpretation that the use of the word 'or' allows the property owner(s) to occupy either the primary unit, or the accessory unit, after the accessory dwelling unit has been established. Ms. Lyman has submitted comments dated June 16, 2016 and July 25, 2016 (attached).

Further, the attached email from Carl Andeer, Esq., from the Vermont League of Cities & Towns, dated June 24, 2016, cites Title 24, Section 4412(1) (E) VSA, which allows for another unit without the requirement that the property owner(s) live in both the main dwelling unit and the accessory dwelling unit.

There are 2 individuals listed on the deed for the property: Scott A. Goodwin and Margaret Gayle Goodwin. The applicant, Scott Goodwin, states that it will be just himself residing on the premises. Margaret Gayle Goodwin will not reside on the property. Ms. Goodwin has indicated that she will remove herself from the property deed (see attached email dated June 8, 2016).

**Affirmative finding as conditioned.**

#### **Section 5.4.8 Historic Buildings and Sites**

Not applicable.

#### **Section 5.4.9 Brownfield Remediation**

Not applicable

#### **Section 5.5.1 Nuisance Regulations**

Nothing within the application suggests non-compliance with applicable nuisance regulations and performance standards per the requirement of the Burlington Code of Ordinances.

**Affirmative finding.**

#### **Section 5.5.2 Outdoor Lighting**

No changes proposed.

#### **Section 5.5.3 Stormwater and Erosion Control**

Not applicable.

#### **Section 5.5.4 Tree Removal**

Not applicable.

### **Article 8: Parking**

#### **Table 8.1.8-1 Minimum Off-Street Parking Requirements**

Single family uses require 2 parking spaces in the Neighborhood Parking District. Section 5.4.5 (a) (4), above, sets the parking requirement of 1 space for accessory dwelling units. The site plan shows parking for 3 vehicles. **Affirmative finding.**

#### **Section 8.1.11 Parking Dimensional Requirements**

*The standards in Table 8.1.11-1 below shall be used to ensure safe, adequate, and convenient access and circulation. These standards shall be adhered to except in situations where a lesser standard is deemed necessary by the DRB due to site topography, location of existing or proposed structures, lot configuration, and/or the need to preserve existing trees and mature vegetation.*

#### **Table 8.1.11-1 Minimum Parking Dimensions**

The minimum parking dimensions for 90° angled parking spaces is 9' x 20', with a minimum back-up length of 24'. The applicant plans on utilizing the 2-car garage for two of the required parking spaces. A 24' back-up length is shown behind both spaces. With the west-sided garage space, the applicant proposes to have the 20' parking space extend out of the garage to accommodate the new bathroom space. It should be noted that nothing in the CDO precludes this type of parking scenario. The third proposed parking space is located along the east wall of the existing home, outside of the shared driveway easement, with a 24' back-up distance identified. **Affirmative finding.**

## **II. MINUTES**

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

## **III. MOTION**

### **Motion: Brad Rabinowitz**

I move that the Board grant conditional use approval of Zoning Permit 16-1225CA/CU for the conversion of a portion of the existing garage into an accessory apartment at 410 North Street, in the RL zone, in accordance with Articles 3, 4, 5, and 8, and Appendix A. Approval is subject to imposing the following recommended staff conditions:

1. No more than 2 adults shall inhabit the accessory dwelling unit.
2. Any additional physical alteration or change of use to the accessory dwelling unit will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.
3. **Prior to the issuance of a certificate of occupancy**, 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. The reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy.
4. Section 5.4.5 (c) requires that all individuals listed on the deed for the property reside in either the primary unit or the accessory unit. Scott A. Goodwin and Margaret Gayle Goodwin are both listed on the property deed. Margaret Gayle

Goodwin does not intend to reside on the premises. **Prior to the issuance of a certificate of occupancy**, Margaret Gayle Goodwin shall be removed from the property deed.

5. Construction hours shall be limited to Monday – Friday from 7:00 AM – 5:00 PM. Saturday construction may be allowed upon request to the Development Review Board. No work on Sunday.
6. Vehicles shall not park in the 24' back-up lengths identified on the site plan.
7. The applicant shall secure a letter of adequate capacity from DPW for water and sewer services **prior to release of the zoning permit**.
8. A state wastewater permit will be required, and is the responsibility of the applicant to secure.
9. The applicant shall secure any associated trades permits for the interior work.
10. The applicant/property owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required
11. Standard Permit Conditions 1-15.

The DRB has imposed the following conditions:

12. Both parking spaces within the garage shall be located entirely within the garage.
13. As a result of Condition #12 above, if the applicant modifies the footprint of the accessory dwelling unit and/or the overall structure, a new set of plans shall be submitted to the Department of Planning and Zoning for review and approval by staff.

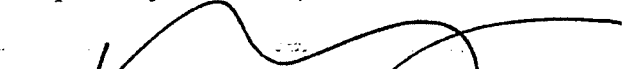
**Seconded: Geoffrey Hand**

**Vote: 5-0-0, motion carried**

**Note:** Austin Hart and Wayne Senville recused themselves from deliberation and voting.

Dated at Burlington, Vermont, this 10 day of August, 2016

Respectfully Submitted,

  
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Brad Rabinowitz, Development Review Board Vice Chair

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**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.**