

Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin *[Signature]*
DATE: November 1, 2016
RE: 17-0427CA/CU; 3127 North Avenue

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: WRL Ward: 7N

Owner/Representative: Joseph Benoit III / Tom & Karen Furland

Request: Remove existing garage and construct a new residence.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicant is seeking approval to build a new single family home with an accessory apartment and related site improvements. An existing 2-bay garage on the property will be demolished. The garage is presently nonconforming with respect to side and rear yard setbacks. The new construction will retain a lessened degree of rear yard setback nonconformity. Side yards will be brought into conformance. This property is one of very few at the end of North Avenue that is not within the lakeshore flood zone. The property's location within the Riparian & Littoral Conservation Overlay requires conditional use review.

Previous zoning actions for this property are as follows:

- 12/4/12, Affirmative zoning determination of buildable lot
- 2/13/12, Approval to remove shed
- 2/8/12, Approval to replace garage roofing
- 10/6/09, Approval to combine 2 parcels into 1 parcel
- 6/18/91, Approval to place fill on site and reconstruct 2 storage sheds

Recommendation: Initial review and continue hearing until problems with the accessory apartment are resolved:

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6 (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 new residence will place modest demand on municipal utilities and services. A wastewater capacity letter from the Department of Public Works has been obtained. Impact fees will be paid to help offset what impacts there are on municipal facilities. **(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 located within the Waterfront Low Density Residential (WRL) zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The neighborhood reflects this intent. The proposed single family home with accessory apartment is consistent with this purpose. **(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 residence will have no greater impacts than those associated with other permitted uses within this zoning district. **(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 new home will generate minimal vehicular traffic. It's very close proximity to the bike path will facilitate use of bicycle transportation. Nothing in the application indicates that the existing transportation system is incapable of handling the proposed construction. **(Affirmative finding)**

and,

5. *The utilization of renewable energy resources;*

Rooftop solar panels are included in the project design. **(Affirmative finding)**

and,

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

As conditioned, the project complies with all applicable zoning bylaws. **(Affirmative finding)**

(b) Major Impact Review Standards

Not applicable.

(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.

The proposed residence does not warrant implementation of mitigation measures to reduce noise and glare. **(Affirmative finding)**

2. Time limits for construction.

No construction schedule is included in the permit application. The standard time frame for a zoning permit applies. It is 2 years (start within 1 year of approval and complete within 2 years). **(Affirmative finding as conditioned)**

3. Hours of operation and/or construction to reduce the impacts on surrounding properties.

Hours of operation do not pertain to the proposed residence.

Given the project's neighborhood location, typical residential construction days and hours will apply. These 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; and,

Any future enlargement or alterations of the residence will require additional permit review in accordance with the regulations in effect at that time. **(Affirmative finding)**

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.

It is the applicant's responsibility to comply with all applicable city and state regulations pertaining to the proposed development. **(Affirmative finding as conditioned)**

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Waterfront Residential Low Density (WRL)

The subject property is located in the WRL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The proposed single family home with accessory apartment is consistent with this purpose. **(Affirmative finding)**

(b) Dimensional Standards & Density

Although the 4,263 sf lot is substandard in size (6,000 sf is the minimum lot size), Sec. 5.2.1, *Existing Small Lots*, enables development for the purposes permitted within the district. A single detached dwelling unit with an accessory apartment is allowable.

Existing lot coverage is not specified in the project plans but appears to be about 60%. As proposed, lot coverage will drop to 44%. This percentage includes 34.9% standard lot coverage

and an additional 9.1% lot coverage for the front and rear decks and porch. These percentages are within the 35% standard lot coverage limit with additional 10% for accessory features allowed in the WRL zone.

The existing garage sits within the rear and southern side yard setbacks. As proposed, the new home will comply with both side yard setbacks of just over 5' (10% of 48' wide lot). The proposed rear yard setback is 19' 9." The lot is slightly irregular with a depth of 84' – 88' with a corresponding minimum rear yard setback of 21' – 22'. The proposed 19' 9" rear yard setback is substantially more compliant than the existing 2' 10" rear yard setback and is acceptable per 5.3.5, *Nonconforming Structures, (a) Changes and Modifications*. The proposed front yard setback of 30' is acceptable. The one neighboring primary structure with the same road frontage is set back 35' from the front boundary.

The proposed residence is 34' 8" tall to the midpoint of the gable roof rise. This height is slightly below the 35' maximum permissible height in the WRL zone. The rooftop cupula exceeds this height but may be permissible under Sec. 5.2.6 (b) *Exceptions to Height Limits*, as an ornamental feature so long as it does not exceed 10% of the total roof area. The 10' X 10' cupula is just 8.4% of the 1,189.5 sf roof area. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The proposed single family home with accessory apartment is a permitted use in the WRL zone. Its location within the Riparian & Littoral Conservation Overlay zone triggers conditional use review. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

No encroachments are sought under this criterion. **(Not applicable)**

2. Height

No height bonuses are being sought. **(Not applicable)**

3. Lot Coverage

No lot coverage bonuses are being sought. **(Not applicable)**

4. Accessory Residential Structures and Uses

See Sec. 5.4.5, *Accessory Dwelling Units*, for evaluation of the accessory apartment.

5. Residential Density

The new home is subject to the functional family provisions of the Comprehensive Development Ordinance. The accessory apartment is limited to occupancy by just 2 adults and their minor children. **(Affirmative finding as conditioned)**

6. Uses

No neighborhood commercial use is included in this proposal. **(Not applicable)**

7. Residential Development Bonuses

No development bonuses are being sought. **(Not applicable)**

Sec. 4.5.4, Natural Resource Protection Overlay (NR) District

(c) District Specific Regulations: Riparian and Littoral Conservation Zone

The subject property is affected by the Riparian and Littoral Conservation Overlay zone (250' width from the 95.5' lakeshore elevation). The application notes some 66% of the property is affected, but GIS depicts a more modest extent of 25%-30%. In any event, the proposed construction will replace existing construction and is set inland of existing homes along the lakeshore. As a result, review by the Conservation Board is not required. The property is mostly open, and existing trees will be retained. See Sec. 5.5.3 for stormwater and erosion control.

(Affirmative finding)

Sec. 4.5.6, Mouth of the River Overlay District

The subject property is wholly included in the Mouth of the River Overlay District; however, the proposal is not reliant on any of the special use provisions associated with this overlay. The proposed single family dwelling with accessory apartment is permissible with, or without, this overlay. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.1, Existing Small Lots

The subject property is just 4,263 sf, less than the 6,000 sf minimum lot size in the WRL zone. This section allows construction on small lots of record existing as of April 26, 1973 so long as they are at least 4,000 sf in size with a minimum width and depth of 40'. The subject property meets the standards of this criterion and may be developed. It predates 1973 and is 48' wide by 84' – 88' deep. **(Affirmative finding)**

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7; Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 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. Additionally, there must be compliance with all the following:

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

A wastewater capacity letter has been obtained from the Department of Public Works. Note, however, that the capacity letter is predicated on a 3-bedroom single family home. There is no mention of the accessory apartment in the capacity letter. While the floor plans depict just 3 bedrooms in total, the apartment may affect anticipated wastewater demands. The applicant is advised to clarify with the Department of Public Works. **(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 floor plans depict a 403 sf apartment on the 2nd floor. This area is 26.8% of the total habitable area of 1,501 sf for the entire structure, less than the 30% maximum permissible. The floor plans; however, are problematic. They depict an apartment with access to the 305 sf “attic.” Including that area results in an apartment of up to 708 sf (47.2% of the total habitable area). The total area of the apartment must be less than 30% of the total habitable area of the building. The floor plans also depict an apartment with access into the rest of the residence. This layout essentially removes any size limitation outside of the total area of the residence. As depicted in the floor plans, the accessory apartment is unacceptable. **(Adverse finding)**

3. *Applicable setback and coverage requirements are met;*
See Sec. 4.4.5 (b).

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

The 2-bay garage will include 1 parking space for the accessory apartment.
(Affirmative finding)

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.*

This provision will be included as a condition of approval if the permit is issued.
(Affirmative finding as conditioned)

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

Elevation drawings indicate locations of outdoor lamps to illuminate building entries. Fixture cutsheets depict what appear to be cutoff fixtures. No illumination levels are noted either as

footcandles or lumens. Illumination levels are needed in order to determine compliance with this criterion. **(Affirmative finding as conditioned)**

Sec. 5.5.3, Stormwater and Erosion Control

As more than 400 sf of earth disturbance is proposed, a “small project erosion control plan” is required. The application includes an erosion control plan; however, the accompanying form has not yet been provided. Review and approval by the Stormwater Administrator is required prior to construction. Resultant lot coverage of less than 2,500 sf precludes the need for post-construction stormwater management review. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The rear portion of the property is affected by the Riparian and Littoral Conservation Overlay zone. As noted above, the proposed residence will replace an existing structure and is located on the inland side of existing homes along the lakeshore. No tree clearing is proposed. **(Affirmative finding)**

(b) Topographical alterations

The lot is flat and will remain so. No significant topographical alterations are proposed. **(Affirmative finding)**

(c) Protection of important public views

There are no important public views from or through this property. **(Affirmative finding)**

(d) Protection of important cultural resources

There are no known archaeological resources on the property. The property is not located within an archaeologically sensitive area. **(Affirmative finding)**

(e) Supporting the use of alternative energy

The project plans call for installation of rooftop solar panels on the building’s southern exposure. **(Affirmative finding)**

(f) Brownfield sites

The property is not an identified brownfield. **(Affirmative finding)**

(g) Provide for nature’s events

There is ample room onsite for winter snow storage. As noted above, an erosion prevention and sediment control plan is required. **(Affirmative finding)**

(h) Building location and orientation

There is little cohesiveness to the streetscape along this section of North Avenue. Insofar as the proposed building lines up with the single neighboring building to its south, it reflects the existing development pattern. The residence is oriented towards the street with a front-facing principal

entry and garage doors. Given the narrowness of the lot, the garage is integrated into the singular building form and takes up most of the 1st floor. Item 4 of this criterion allows for a garage entry to exceed 50% of the façade width where it is wholly integrated into the overall design of the front façade, and the primary pedestrian entrance offers a clear and welcoming entrance from the street. Such is the case here. **(Affirmative finding)**

(i) Vehicular access

Given the small size of the lot and the need to keep lot coverage down, two strip driveways are proposed. Each one will access a garage door. Vehicles will have to back out. While not ideal, backing out onto this lightly traveled portion of North Avenue is acceptable. **(Affirmative finding)**

(j) Pedestrian access

There is no public sidewalk along this portion of North Avenue, therefore a walkway from the front entrance to the public sidewalk is not required. If one can be provided within the lot coverage limits, installation of a front walkway is recommended. **(Affirmative finding as conditioned)**

(k) Accessibility for the handicapped

No handicap accessibility is evident or required with this proposal. **(Affirmative finding)**

(l) Parking and circulation

The garage will contain 2 parking spaces, and a 3rd space will be provided in a driveway. As noted above, vehicles will have to back out onto the street. Doing so is acceptable on this last stretch of North Avenue. **(Affirmative finding)**

(m) Landscaping and fences

A rudimentary landscaping plan has been provided. It notes retention of two oak trees and establishment of lawn. The landscaping plan also notes plantings for some minimal screening, but details are not provided. Additional landscaping such as foundation plantings and entry accents are recommended but not required. **(Affirmative finding as conditioned)**

(n) Public plazas and open space

No public plaza or open space is included or required in this proposal.

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

New utility lines will be buried. Electric utility meters are depicted on the side elevation in an acceptable location. A ground-mounted HVAC unit is located behind the building and screened. **(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 proposed home is relatively tall at 34' 8" to the midpoint of the roof rise and is 3.5 stories tall. Homes in this neighborhood are generally 1 – 2.5 stories tall. The proposed residence is situated next to a full 2 story "colonial" house to the south and vacant parcels to its north. While the proposed home appears to be the tallest in this neighborhood, the structure remains within the permissible height limit. Its height as compared to the 2 story homes is similar to that of the 2 story homes compared to the 1 story homes in the neighborhood. While tall, the proposed residence may reasonably fit within the diversity of heights in this neighborhood.

Its overall scale is similar to that of other larger homes in the neighborhood. Its massing, while simple, delineates separate ground, middle, and upper floors. Doing so lends visual interest to the building and also serves to break up its perceived mass. **(Affirmative finding)**

2. Roofs and Rooflines

A gable roof is proposed. Gable roofs are common in the neighborhood and typical for residential construction. **(Affirmative finding)**

3. Building Openings

Fenestration is appropriately scaled and placed in consistent rhythm throughout the building. Windows tend to be single-pane awning or casement units. Glass doors reflect this basic window design. **(Affirmative finding)**

(b) Protection of important architectural resources

There are no historic structures on or near the subject property. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The proposed residence clearly faces the street. Its front façade is varied between the ground, middle, and upper floors. A projecting shed roof covers the front entrance with a porch-like element and extends across the 1st garage door. Balconies are a relatively unique feature and add interest to the primary façade. The building contains no blank walls. **(Affirmative finding)**

(e) Quality of materials

The proposed residence will be clad largely in vinyl clapboard and shingle siding. Vinyl and/or composite trim material will be used. The ground floor of the east (street-facing) elevation will be clad in vertical cedar siding. Roofing is to be shingle or standing seam metal. Both are acceptable, but one needs to be selected. Vinyl windows and doors are proposed. The front porch will utilize PT decking. Posts will be wrapped and trim will be stained. Presumably the rear decks will be similar, but specification is needed. Metal railings will be used for the front balconies. The proposed materials are acceptable, but clarification is needed where noted. **(Affirmative finding as conditioned)**

(f) Reduce energy utilization

The proposed building must comply with the current energy efficiency standards of the city and state. The application acknowledges as much. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

No advertising is included in this proposal.

(h) Integrate infrastructure into the building design

As noted above, electrical meters are depicted at an acceptable location on the north side of the building. **(Affirmative finding)**

(i) Make spaces safe and secure

The proposed building must comply with the city's current egress requirements. Building entries will be illuminated. **(Affirmative finding)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the neighborhood parking district. As such, the single family home requires 2 parking spaces. The accessory apartment requires 1 parking space. Two tandem spaces for the single family home are provided in the southern garage bay and driveway. An additional parking space for the apartment is provided in the northern garage bay. **(Affirmative finding)**

II. Conditions of Approval

In the event that the proposed accessory apartment is brought into compliance, the following conditions are recommended.

1. **Prior to release of the zoning permit**, the following items shall be addressed, subject to staff review and approval:
 - a. Confirmation with the Department of Public Works that the accessory apartment has been addressed in the wastewater capacity letter. If need be, a new wastewater capacity letter shall be obtained.
 - b. Provide illumination levels of the outside lighting fixtures.
 - c. Provide a completed "Small Project Erosion Prevention & Sediment Control" form to the city's stormwater program staff.
 - d. A roofing material must be selected, and rear deck materials must be specified.
2. Additional landscaping is recommended as is a front walkway to the street if compliance with lot coverage can be retained.
3. Days and hours of construction shall be limited to Monday – Friday from 7:00 AM – 5:00 PM. Saturday construction may be allowed upon request. No construction activity on Sunday.
4. Occupancy of the primary dwelling unit shall be limited to a "family" as defined in Article 13 of the Comprehensive Development Ordinance. The accessory apartment shall be occupied by no more than 2 adult occupants and their minor children.
5. The accessory apartment shall not exceed 30% of the habitable area of the entire building.
6. 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.
7. All new utility lines must be buried.
8. 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.

9. Vermont Residential Building Energy Standards apply to this project. Compliance with the standards is the Owner's responsibility. Prior to requesting a Certificate of Occupancy, a copy of a completed Vermont Residential Building Energy Standards Certificate shall be submitted with a Certificate of Occupancy (final or temporary) request, and filed in the Land Records located at the Clerk/Treasurers office in City Hall (149 Church Street). For more information, see http://publicservice.vermont.gov/topics/energy_efficiency.
10. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Planning & Zoning Department the impact fee as calculated by staff based on the net new square footage of the proposed residence.
11. Standard permit conditions 1-15.

