

Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin
DATE: May 16, 2017
RE: 17-0955CA/CU; 76 Chase 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.

Zone: RL Ward: 1E

Owner/Applicant: Eva Sollberger

Request: Construct new addition to establish accessory apartment

Applicable Regulations:

Article 2 (Administrative Mechanisms), 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 create an accessory dwelling unit. Presently, the site contains a single family dwelling, driveway, and detached garage. An existing rear addition will be removed and replaced with a somewhat larger addition containing the proposed apartment. As a result, conditional use review is triggered. The existing garage will be demolished, and a new patio and deck will be constructed.

Previous zoning actions for this property are noted below:

- 12/14/11, Approval to install metal stovepipe
- 9/3/10, Approval to convert rear storage room into living space (not acted upon)
- 5/12/08, Approval to remove second chimney
- 9/24/07, Approval to remove chimney
- 7/10/00, Approval of rear retaining wall

Recommendation: Consent approval as per, and subject to, the following findings and conditions.

I. Findings

Article 2: Administrative Mechanisms

Part 7: Enforcement

Sec. 2.7.8, Withhold Permit

A number of zoning permits have been approved for the subject property. Most, but not all, have final certificates of occupancy. Per this section, prior to issuance of a final certificate of

occupancy for this project, any zoning permits not yet closed out with final certificates of occupancy must be addressed. **(Affirmative finding as conditioned)**

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 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 property is served by municipal utilities. Sufficient water and sewer service are available. A State of Vermont wastewater permit will be required. A capacity letter issued by the Dept. of Public Works will be required prior to issuance. **(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 an established residential neighborhood in the low density residential zoning (RL) 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 proposed accessory dwelling unit is consistent with this intent. 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;*

The proposed apartment is not expected to generate nuisance impacts from noise, odor, dust, and the like that may be more typically associated with industrial uses. **(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;*

No traffic analysis has been provided or is required for this application. The proposed accessory apartment is expected to generate minimal additional traffic. **(Affirmative finding)**

and,

5. *The utilization of renewable energy resources;*

No renewable energy utilization is included in this proposal. Future incorporation is not precluded by the project design. **(Affirmative finding)**

and,

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

City building and energy efficiency codes will apply as conditioned.

(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 apartment is not expected to produce offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

2. *Time limits for construction.*

No construction timeline or phasing are included in the project plans. The standard 2-year timeframe for zoning permits will apply. **(Affirmative finding)**

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

Hours of operation are not applicable to this residential use.

Construction hours are not noted in the application. Typical construction hours 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 alteration will be reviewed under the zoning regulations in effect at that time.

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.*

See the recommended conditions.

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(1) Residential Low Density (RL)

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. As noted previously, the single family dwelling and proposed accessory apartment are consistent with this intent. **(Affirmative finding)**

(b) Dimensional Standards and Density

Residential density remains unchanged. Accessory dwelling units specifically do not count towards allowable residential density per Sec. 5.4.5, *Accessory Dwelling Units*.

Lot coverage is presently nonconforming at 74.5%. As proposed, there will be no increase in this degree of nonconformity.

The front yard setback will remain unchanged. The right (east) side yard setback is presently nonconforming as to the building location. The replacement structure will not increase the degree of nonconformity. The left (west) side yard setback is conforming and will remain so. The existing rear storage addition and the accessory apartment that will replace it are both at, or below, 15' in height and, therefore, require a 5' rear yard setback. The proposed construction complies with this minimum rear setback. Existing driveway nonconformity along the western side yard setback will remain unchanged.

Overall building height will remain unchanged. As noted above, the proposed accessory apartment addition will be 15' tall. **(Affirmative finding)**

(c) Permitted and Conditional Uses

An accessory dwelling unit is a permitted use; however, new construction triggers conditional use review. **(Affirmative finding)**

(d) District Specific Regulations

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable to the subject property.

Sec. 5.2.5, Setbacks

See Article 4 above.

Sec. 5.2.6, Building Height Limits

See Article 4 above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Article 4 above.

Sec. 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.*

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);*
The proposed accessory apartment addition sits within the western side yard setback. Height will increase, but the building footprint will not come any closer to the side yard. Lot coverage is also nonconforming but will not increase. **(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; and,*
The height of the accessory apartment addition will be slightly taller than that of the existing storage room. It will not exceed 15' and will have no undue adverse impact on adjoining properties or public interests. **(Affirmative finding)**
- iii) *Be compatible with the character and scale of surrounding structures.*
The proposed construction entails a minor increase in height within the side yard setback. It is insufficient in size to have any appreciable impact as perceived from the street or the greater neighborhood area. **(Affirmative finding)**

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

As noted above, the new addition will be 15' tall. **(Affirmative finding)**

2. *Such a change or modification shall not create any new nonconformity; and,*
No new nonconformity results from the accessory apartment addition. **(Affirmative finding)**
3. *Such a change or modification shall be subject to review and approval under the Design Review provisions of Article 3, Part 4.*
See Article 6.

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.

The proposed apartment is accessory to the existing detached single family home and is laid out as an efficiency unit. **(Affirmative finding)**

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 shall obtain a letter of adequate capacity from DPW for wastewater.

(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 apartment will be small at just 294 sf, or 27.3% of the total 1,075 sf habitable area of the existing home. **(Affirmative finding)**

- 3. Applicable setback and coverage requirements are met;*
See Article 4.

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

One onsite parking space will be provided for the accessory apartment. **(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.*

This provision will be included as a condition of approval. **(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.

As with A. 5 above, this provision will be included as a condition of approval. **(Affirmative finding)**

Sec. 5.5.1, Nuisance Regulations

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

Sec. 5.5.2, Outdoor Lighting

A single new outdoor lighting fixture is proposed. It will illuminate the exterior entry into the proposed apartment. The fixture is appropriately downshielded with acceptable wattage.

(Affirmative finding)

Sec. 5.5.3, Stormwater and Erosion Control

Not applicable. Insufficient earthwork and resultant lot coverage to require EPSC or stormwater management forms.

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Sec. 6.1.2, Review 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 & Littoral Conservation zone paralleling the Winooski River; however, development in the form of existing parking lots sits between the property and the protected resource. No tree clearing or new stormwater outfalls are included in this proposal. No adverse impacts to the river are anticipated. **(Affirmative finding)**

(b) Topographical alterations

The property slopes down and away from the road. No significant topographic alterations are included in this proposal. **(Affirmative finding)**

(c) Protection of important public views

There are no identified view corridors near the subject property. The proposed construction will have no impact on the city's regulated view corridors. **(Affirmative finding)**

(d) Protection of important cultural resources

The subject property is not listed on an historic register, nor has it been surveyed to determine eligibility. The property is not located within an identified archaeologically sensitive area, nor

does it contain any archaeologically significant site points. The proposed construction will not adversely affect Burlington's historic or cultural resources. **(Affirmative finding)**

(e) Supporting the use of alternative energy

No alternative energies are incorporated into the project design. Construction of the project will have no adverse impact on potential use of alternative energies onsite. **(Affirmative finding)**

(f) Brownfield sites

The subject property is not included on the Vermont DEC Hazardous Site List. **(Affirmative finding)**

(g) Provide for nature's events

A small overhang will provide shelter for those entering the doorway into the proposed accessory apartment. **(Affirmative finding)**

(h) Building location and orientation

(Not applicable)

(i) Vehicular access

The existing driveway will serve the new accessory apartment as well as the detached single family home. **(Affirmative finding)**

(j) Pedestrian access

The existing home connects directly to the public sidewalk along Chase Street. The very small lot size and existing lot coverage nonconformity preclude a new walkway for the proposed apartment. A new set of steps will afford access to the apartment's exterior doorway. **(Affirmative finding)**

(k) Accessibility for the handicapped

Not applicable.

(l) Parking and circulation

See Article 8.

(m) Landscaping and fences

Not applicable.

(n) Public plazas and open space

Not applicable.

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

No exterior mechanical equipment is included in this proposal. Any new utility lines must be buried. **(Affirmative finding as conditioned)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

The new construction for the accessory apartment is minimally different from present conditions. Height and roof form will differ somewhat, but the overall massing and scale are similar. Given its very small size and position behind the existing home, little effect on the streetscape is anticipated. Note that exterior building materials are not labeled on the elevation plans and must be. **(Affirmative finding as conditioned)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

Total onsite parking required is 3 spaces (2 for the existing home and 1 for the apartment). As proposed, all 3 spaces will be provided onsite. The 2 spaces for the single family home are in tandem arrangement with access via existing connection to the neighboring Chace Mill driveway. The applicant has an easement for use of this neighboring driveway. Tandem parking is acceptable for single family homes. The 1 parking space for the accessory apartment will be located at the top of the driveway with direct access onto the street. **(Affirmative finding)**

II. Conditions of Approval

1. **Prior to release of the zoning permit**, revised elevation drawings labeling all exterior building materials shall be submitted, subject to staff review and approval.
2. **Prior to release of the zoning permit**, the applicant shall receive written verification of adequate wastewater capacity from the Department of Public Works.
3. **Prior to issuance of a final certificate of occupancy**, all outstanding zoning permits for the subject property shall be closed out.
4. Days and hours of construction are limited to Monday – Friday 7:00 AM – 5:00 PM. Saturday construction within those hours may be allowed upon request to the DRB. No construction activity on Sunday.
5. The accessory dwelling unit shall be occupied by no more than 2 adults.
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. 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.
8. A State of Vermont wastewater permit is required.

9. All new utility lines shall be buried.
10. 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.
11. Standard Conditions 1-15.