

## Department of Planning and Zoning

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### MEMORANDUM

To: Development Review Board  
From: Ryan Morrison, Associate Planner  
Date: July 5, 2018  
RE: ZP18-1044CA/CU; 92 Cherry Lane

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**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:** ZP18-1044CA/CU  
**Location:** 92 Cherry Lane  
**Zone:** RL **Ward:** 5S  
**Date application accepted:** May 14, 2018  
**Applicant/ Owner:** Donna and Sean Foley / Foley Rev Living Trust  
**Parking District:** Neighborhood  
**Request:** Construct a new, detached accessory structure for use as an accessory dwelling unit.

#### **Applicable Regulations:**

Appendix A (Use Table – All Zoning Districts), Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

#### **Background:**

- **Zoning Permit 91-412;** remove existing greenhouse on 12' x 12' foundation and replace with expansion of living space of same size. Materials to match existing single family home. June 1991.

#### **Overview:**

The applicant proposes to construct a new detached accessory structure for use as an accessory dwelling unit. The 18,254 sf parcel contains a single family residence.

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

#### **I. Findings**

##### **Appendix A:**

Accessory Dwelling Unit (ADU) 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 is when there will be a new accessory structure

to accommodate the ADU, and another is when there is an increase in the dimension of a parking area. The proposal involves construction of a new accessory structure for the ADU and widening of the existing driveway to accommodate parking. As a result, conditional use review is required. **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 Cherry Lane. With sidewalks on both sides, Cherry Lane provides adequate vehicular and pedestrian access to the surrounding neighborhood. Pine Street is within walking distance, where transit stops are available for travel in either direction. 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 associated building and trades permits for construction of the new structure. **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 7:30 AM – 5:30 PM. Saturday construction may occur for interior work only. 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 ADU is limited to 30% of the total habitable floor area of the building, inclusive of the ADU. Any additional physical alteration to the accessory structure, 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.**  
92 Cherry Lane is an 18,254 sq ft lot, with 85 feet of frontage. **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'. The new accessory structure will locate in the rear yard, behind the existing home – rendering a front yard setback inapplicable. Given the 85 ft lot width, side yard setbacks are 8.5 ft. The proposed structure will have side yard setbacks greater than 8.5 ft. And given the lot depth of 217 ft, a rear setback minimum of 54.25 ft is required. However, the applicant proposes a 40 ft rear yard setback, which in accordance with Sec. 5.2.5 (b) *Exceptions to Yard Setback Requirements*, is acceptable since the height of the structure is less than 15 ft. Accessory structures less than 15 ft in height may locate as close as 5 ft to side/rear property lines. See Sec. 5.2.5 (b) and Sec. 5.2.6 (a) below.

Maximum Lot Coverage – 35%.  
Existing lot coverage totals 13.9%, and the proposal will result in a total lot coverage of 17.7%.

Maximum Height – 35 ft.  
The height to the ridgeline of the accessory structure totals 19 ft (13' 6" to the midpoint).  
**Affirmative finding.**

**(c) Permitted and Conditional Uses**

An accessory dwelling unit to a single family residential property is a permitted use per Appendix A. Since the proposal involves the construction of a new accessory structure for the ADU, conditional use review is required, as per Sec. 5.4.5 (b). **Affirmative finding.**

**(d) District Specific Regulations**

1. *Setbacks*

A. *Encroachment for residential driveways*

**Not applicable.**

B. *Encroachment into the Waterfront Setback*

**Not applicable.**

2. *Height*

**Not applicable.**

3. *Lot Coverage*

A. *Exceptions for Accessory Residential Features*

**Not applicable.**

4. *Accessory Residential Structures and Uses*

*An accessory structure and/or use as provided under Sec. 5.1.1 and 5.1.2 customarily incidental and subordinate to a principal residential use, including but not limited to private garages, carriage houses, barns, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and detached fireplaces may be permitted as follows:*

A. *Accessory Structures shall meet the dimensional requirement set forth in the district in which they are located pursuant to Sec. 4.4.5(b) of this Article and related requirements in Art 5, Part 2;*

B. *Any accessory structure that is seventy-five percent (75%) or greater of the ground floor area of the principle structure shall be subject to the site plan and design review provisions of Art. 3, Part 4 and the applicable standards of Art 6;*

C. *Private garages shall be limited to as many stalls as there are bedrooms in the dwelling to which it is accessory, provided that the ground floor area is less than seventy-five percent (75%) of the ground floor area of the principle structure;*

D. *The outdoor overnight storage of commercial vehicles not otherwise associated with an approved home occupation or made available for the exclusive use of the residential occupants, or the outdoor storage of more than one unregistered vehicle, shall be prohibited. Any and all vehicles shall be stored in an approved parking space; and,*

E. *Uncovered play structures, seasonal skating rinks, raised planting beds shall not require a zoning permit.*

The proposed accessory structure meets the dimensional requirements of the RL zoning district, pursuant to Sec. 4.4.5 (b) and Article 5, Part 2. Subsections B-D above do not apply.

**Affirmative finding.**

5. *Residential Density*

A. *Additional Unit to multi-family*

**Not applicable.**

B. *Additions to Existing Residential Structures*

**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 apply to primary residence, and Sec. 5.4.5 (a) – below, will apply to the accessory dwelling unit. **Affirmative finding.**

6. *Uses*

*A. Exception for Existing Neighborhood Commercial Uses*

**Not applicable.**

7. *Residential Development Bonuses*

**Not applicable.**

**Article 5: Citywide General Regulations**

**Part 2: Dimensional Requirements**

**Section 5.2.1 Existing Small Lots**

**Not applicable.**

**Section 5.2.2 Required Frontage or Access**

92 Cherry Lane has 85 ft of street frontage, exceeding the 60 ft minimum frontage. **Affirmative finding.**

**Section 5.2.3 Lot Coverage Requirements**

The maximum lot coverage allowance in the RL zoning district is 35%. The project will result in 17.7% of total lot coverage. **Affirmative finding.**

**Section 5.2.4 Buildable Area Calculation**

**Not applicable.**

**Section 5.2.5 Setbacks**

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

*(4) Accessory Structures and Parking Areas.*

*Accessory structures no greater than fifteen (15) feet in height... may project into a required side and rear yard setback provided they are no less than five (5) feet from a side or rear property line where such a setback is required.*

The accessory structure will be 13' 6" tall (measured to the midline of the gable roof – see Sec. 5.2.6 below), and can locate at least five feet from side and rear property lines. While the structure will conform with the normal side yard setback requirement of Table 4.4.5-3 above, it will project into the required rear yard setback (54.25 ft), with a setback of 40 ft. **Affirmative finding.**

**Section 5.2.6 Building Height Limits**

**(a) Height Measurement**

2. *Ending Point: Building height shall be measured to:*

*(b) Pitched Roof: the midpoint of the rise between the roofplate and the ridge of the highest gable of a pitched roof...*

The new accessory structure will measure 19 ft to the ridge. The midpoint of the pitched roof will measure 13 ft 6 in in height. As noted above in Sec. 5.2.5 (b), with the midpoint height being less than 15 ft in height, the new structure may locate within the required rear yard setback. **Affirmative finding.**

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

Not applicable per Sec. 5.4.5 (a) below.

### **Part 4: Special Use Regulations**

#### **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 property is currently an owner occupied single family use. 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. 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 1,605 sf of habitable floor area. The proposed accessory structure will be 704 sf in size, 685 sf of which will habitable space dedicated to the ADU. By including the ADU with the habital space of the existing home, the combined habitable space totals 2,290 sf. 30% of 2,290 is 687 sf. The 685 sf ADU space is 29.9%, just under the 30% maximum allowance. **Affirmative finding.**

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

See Table 4.4.5-3 and Sec. 5.2.5 (b) above. Setback and coverage requirements are met. **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 ADU will be locate within a new accessory structure. As a result, conditional use approval is required. **Affirmative finding.**

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

**Not applicable.**

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

There will be a slight increase to the dimension of the parking area/driveway to accommodate required parking. As a result, conditional use approval is required.

**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.*



This will be a condition of the permit. **Affirmative finding as conditioned.**

**Section 5.4.8 Historic Buildings and Sites**

**Not applicable.**

**Section 5.4.9 Brownfield Remediation**

**Not applicable.**

**Part 5: Performance Standards**

**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**

It is assumed that the new structure will have exterior lighting, however the plans do not show light fixtures, and cut sheets have not been submitted for review. The applicant will be required to submit the required lighting information for administrative review and approval prior to the release of the zoning permit. The lighting must comply with the lighting standards of Sec. 5.5.2.

**Affirmative finding as conditioned.**

**Section 5.5.3 Stormwater and Erosion Control**

An Erosion Prevention and Sediment Control plan was submitted with the application. On May 21, 2018, the Stormwater Program Manager approved the plan. **Affirmative finding.**

**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 space dimension is 8' x 18'. The applicant intends to widen the front section of driveway to 16 ft in order to accommodate two side-by-side parking spaces within the first 20 ft deep section. The driveway extends an additional 16 feet along the side of the home.

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This section, which is also 9 ft wide, will accommodate the third required parking space. Overall, the driveway length for the tandem spaces is 36 ft. **Affirmative finding.**

**II. Conditions of Approval**

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. 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.
5. **Prior to release of the zoning permit**, the applicant shall submit revised elevation drawings showing the location of any exterior light fixtures, and provide spec sheets for those light fixtures, to staff for review and approval.
6. Construction hours shall be limited to Monday – Friday from 7:30 AM – 5:30 PM. Saturday construction may occur for interior work only. No construction activity on Sunday.
7. **Prior to release of the zoning permit**, the applicant shall secure a letter of adequate capacity from DPW for water and sewer services.
8. A state wastewater permit will be required, and is the responsibility of the applicant to secure.
9. The applicant shall secure all associated trades permits for the project.
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.