

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: March 20, 2018
RE: ZP18-0677CA/CU; 390 Colchester 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.

File: ZP18-0677CA/CU

Location: 390 Colchester Avenue

Zone: RL **Ward:** 1E

Date application accepted: February 9, 2018

Applicant/ Owner: Nathaniel Hayward

Parking District: Neighborhood

Request: Permit a new accessory dwelling unit within the existing single family home, and construct a new deck.



Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Background:

- **Zoning Permit ZP15-0938SD – 380 Colchester Avenue;** change of use or primary dwelling from 2 residential units to 3 residential units. Subdivision of property into 3

separate lots. 390 Colchester Avenue is Lot 3 of this subdivision. Approved June 16, 2015. Mylar recorded November 4, 2015.

- **Zoning Permit ZP16-0417BA**; construction of single family house and related site improvements on vacant lot. Approved October 8, 2015.
- **Zoning Permit ZP18-0412BA**; removal of failed retaining wall and 1 parking space; installation of wood framed walk and wood guard rail fence and associated grading. Approved October 20, 2017.

Overview:

The applicant proposes to add an accessory dwelling unit (ADU) within the basement of the existing single family residence. The subject property is Lot 3 of a 3-lot subdivision that was recorded in 2016. Similarly, the residence was constructed in 2016 as well. The property shares a driveway with the neighboring triplex at 380 Colchester Avenue. The home utilizes an attached 2-car garage, and the application proposes adding a new parking space along the side of the home to accommodate the ADU.

Section 5.4.5 (b) requires conditional use approval for ADUs that result in an increase in the dimensions of any parking area.

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

I. Findings

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. During the subdivision review, the Public Works Dept. confirmed adequate water and sewer capacity for a 4-bedroom single family unit and a 1-bedroom ADU. However, that confirmation was only good for 1 year. The applicant will need to obtain a new sewer and water capacity confirmation from the Public Works Dept. for the ADU prior to release of this zoning permit. **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 Colchester Avenue. With sidewalks on both sides, Colchester Avenue provides adequate vehicular and pedestrian access to the surrounding neighborhood. Bus stops are located within walking distance from the subject property (a couple hundred feet 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.*

As part of the subdivision recorded November 4, 2015, the applicant obtained a State wastewater permit a 4-bedroom unit and a 1-bedroom unit on Lot 3. The applicant will be responsible to obtain all required trades permits associated with any 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. **Affirmative finding.**

3. *Hours of operation and/or construction to reduce the impact on surrounding properties.* Hours of operation do not apply to the ADU. Construction hours are not specified. Days and hours of construction 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. **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 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. 390 Colchester Avenue is a 7,465 sf lot with 64 ft 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

The ADU is locating within the existing structure, and is therefore not subject to the dimensional standards of Table 4.4.5-3; however, the proposed deck and widened parking space are. After parking space #3 (see site plan) is established, and the rear deck is constructed, lot coverage will

total 28.9% - less than the 35% maximum allowance. In accordance with Sec. 5.2.5 (b) 4 (see below), the deck is subject to a 5' side yard setback, which it more than meets with a 12 ft setback. **Affirmative finding.**

(c) Permitted and Conditional Uses

An ADU to a single family residential property in the RL zoning district is a permitted use per Appendix. A – Use Table – All Zoning Districts. However, in accordance with Sec. 5.4.5 (b), if there is an increase in the dimensions of any parking area, then the ADU is subject to conditional use review. **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

No change. Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features

Not applicable. The proposal will result in a total lot coverage of 28.9%, less than the 35% coverage maximum allowed for the RL zoning district.

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 apply to the 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

As part of the initial home construction, the owner constructed the walk out basement level to allow for an easy future finish (the Assessor's property listing already lists the basement as finished space). The current proposal will see that the basement is finished for the ADU. The other aspect of the project is a new rear deck. The new deck complies with the lot coverage and setback standards of Articles 4 & 5. **Affirmative finding.**

Section 5.2.1 Existing Small Lots

Not applicable.

Section 5.2.2 Required Frontage or Access

390 Colchester Avenue has 64 ft of frontage, exceeding the 60 ft minimum requirement.

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 a total coverage of 28.9%. **Affirmative finding.**

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks

(a) Setbacks Required

Not applicable.

(b) Exceptions to Yard Setback Requirements

4. Accessory Structures and Parking Areas

Accessory structures no more than 15 ft in height may project into a side and rear yard setback, provided they are no less than 5 ft from the side and/or rear property line. The proposed deck will be set back from the side yard property line a distance of 12 ft.

Affirmative finding.

6. Shared Driveways

Common or shared driveways and walkways along shared property lines and associated parking areas do not have to meet setback requirements along the shared property line. Proposed parking space #3 slightly crosses the side yard property line, however it is within the shared driveway with 380 Colchester Ave. In order to comply with the minimum travel lane width requirement of 7 ft (per Sec. 6.2.2.i), the applicant is proposing to widen the shared driveway on 380 Colchester Avenue's property, which will result in a 10 ft wide driveway adjacent to the new ADU parking space. A separate zoning permit will be required to permit the additional driveway width on 380 Colchester Ave. **Affirmative finding as conditioned.**

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 property must be owner occupied in order to allow an ADU. The applicant notes that he is in the process of selling the property, and the future owners intend to occupy the home as their primary residence. The ADU will locate in the basement of the existing single family residence. 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;*

As noted above, the Public Works Dept. confirmed capacity for a 4-bedroom home and a 1-bedroom accessory dwelling unit as part of the 2015 subdivision review. However, that confirmation was only good for one year. The applicant will be required to secure a new 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 home has 3,092 sf of habitable floor area. 30% of the 3,092 floor area is 927.6 sf. The proposed ADU will occupy 655 sf. **Affirmative finding.**

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

See Section 5.2.5 (b) above. The new parking space for the ADU will locate within a portion of the shared driveway. Lot coverage will total 28.9% - less than the 35% maximum allowance. **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 three parking spaces, two that are required for the main residence, and one 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.**

(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.

A condition of approval will ensure compliance with this provision. **Affirmative finding as conditioned.**

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.

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.**

Table 8.1.11-1 Minimum Parking Dimensions

The minimum parking dimensions for a compact parking space is 8' x 18', with a minimum back-up length of 20'. The new parking space will be 8' x 18', with more than 20' of back-up

space. Additionally, there is more than enough room within the shared driveway to turn a vehicle around prior to exiting the site. **Affirmative finding.**

II. Conditions of Approval

1. No more than 2 adults and their minor children 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. All individuals listed on the deed for the property must reside in either the primary unit or 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.
5. A portion of the shared driveway to be widened is located on 380 Colchester Avenue. **Prior to issuance of a certificate of occupancy**, a zoning permit AND a certificate of occupancy shall be issued for 380 Colchester Avenue's portion of the driveway widening – as shown on this permit's approved site plan.
6. Days and hours of construction 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. The applicant shall secure a letter of adequate capacity from DPW for water and sewer services **prior to release of the zoning permit.**
8. The applicant shall secure any associated trades permits for the interior work.
9. 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
10. Standard Permit Conditions 1-15.

