

## Department of Planning and Zoning

149 Church Street  
Burlington, VT 05401  
<http://www.burlingtonvt.gov/PZ/>  
Telephone: (802) 865-7188  
(802) 865-7195 (FAX)

*David E. White, AICP, Director*  
*Meagan Tuttle, Comprehensive Planner*  
*Jay Appleton, Senior GIS/IT Programmer/Analyst*  
*Scott Gustin, AICP, CFM, Principal Planner*  
*Mary O'Neil, AICP, Principal Planner*  
*Ryan Morrison, Associate Planner*  
*Layne Darfler, Zoning Technician*  
*Anita Wade, Zoning Clerk*



### MEMORANDUM

To: Development Review Board  
From: Ryan Morrison  
Date: April 3, 2018  
RE: ZP18-0692BA (AP); 46 Cross Parkway

**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:** ZP18-0692BA Appeal

**Location:** 46 Cross Parkway

**Zone:** RL **Ward:** 4N

**Date appeal accepted:** February 28, 2018

**Date of administrative decision:** February 27, 2018

**Date of application:** February 15, 2018

**Appellant / Owner:** Ronald L. Koss & Carley Claghorn

**Request:** Appeal of Administrative Denial of a request to expand living space into garage, and associated replacement of windows and garage door.

#### **Background:**

- **Zoning Permit 18-0692BA;** add a bathroom in the rear of the garage, replace windows and garage door; increasing living space. Denied February 27, 2018. (Subject of this appeal.)
- **Non-applicability of zoning permit 15-1062NA;** replace existing asphalt shingle roof. Approved April 29, 2015.
- **Non-applicability of zoning permit 13-0752NA;** replace windows with new windows, new roof, interior renovation for kitchen cabinets and replace boiler. Approved February 20, 2013.
- **Zoning Permit 12-0360BA;** replace chain link fence with solid fence in rear yard; add new shed. Approved September 26, 2011.

#### **Overview:**

Zoning Permit 18-0692BA, to expand living space into the garage and an associated replacement of windows and the garage door was denied on February 27, 2018 for reasons outlined below. On February 28, 2018, the appellants filed a timely appeal within the 15-day appeal period.

**Recommendation:** Uphold zoning permit denial based on the following findings.

#### **I. Findings**

##### **Timeline:**

- **February 15, 2018** – Application ZP18-0692BA submitted.
- **February 16, 2018** – Application ZP18-0692BA deemed complete.
- **February 27, 2018** – Decision of Denial for ZP18-0692BA.
- **February 28, 2018** – Appeal of administrative denial submitted.

**Reason for Denial:**

Application ZP18-0692BA (subject of this appeal) was **denied February 27, 2018 for the following reasons:**

**Section 8.1.12 (c), Front Yard Parking Restricted**

*Required parking in all residential zoning districts shall not be located in a required front yard setback area abutting a public street, except alleys. This prohibition extends from the edge of the public right-of-way into the required front yard setback for the entire width of the property with the exception of a single access drive no more than eighteen feet (18') or less in width. The provisions of this subsection shall not be applicable during such times as when the winter parking ban pursuant to Section 20-56 of the Code of Ordinances is in effect. Where parking is provided outside the front yard setback, but either partially or entirely between the principle structure and the street, such parking shall be screened to the extent practicable from view from the public street.*

In accordance with Table 8.1.8-1 – Minimum Off-Street Parking Requirements, a single family detached unit is required to have a minimum of 2 off-street parking spaces. Section 8.1.12 (c) above prohibits parking within a required front yard setback area, with the exception of a single access drive no more than 18 ft. The Planning and Zoning Department has historically interpreted this requirement as meaning that the 1<sup>st</sup> of the 2 required parking spaces must comply with the front yard setback, and only then can a second parking space locate within the front yard setback area in tandem arrangement.

The application proposes to install a 6' 8" deep bathroom in the rear of the existing 21' 7" deep garage, thus reducing the garage parking space to a substandard depth of 14' 11". Table 8.1.11-1 – Minimum Parking Dimensions – requires a minimum parking space length of 18'. As a result of the proposed bathroom, the applicants propose this 1<sup>st</sup> required parking space to locate partially inside and partially outside the garage, all while keeping the garage door so they can close it when they want to use the garage for other purposes. Required parking spaces must remain parking spaces at all times. The proposal will create a parking deficiency when the applicants close the door. The application does not comply with the parking standards of Article 8 and, therefore, cannot be approved.

The appellants have provided a detailed statement addressing why the denial should be overturned. See attached memo dated March 1, 2018.

**Appellant's Arguments and City Responses:**

Appellant's arguments are in *italics*, the City responses are not.

1. *Section 8.1.12 (c) (above) does not specifically state that the first of the two required parking spaces must locate behind the front yard property line setback, nor has there been a precedent set requiring this.*

The appellants discussed their proposal with Planning and Zoning staff on a few separate occasions, and were informed of this requirement. Still they opted to pursue the application, and were denied as a result. The key phrases in Sec. 8.1.12 (c) are *'Required parking in all residential zoning districts shall not be located in a required front yard setback area abutting a public street...'* and *'... with the exception of a single access drive no more than eighteen feet (18') or less in width.'* A driveway is an access onto and within a property whose purpose is to access parking. It must access a conforming parking area, which in this case is the garage parking space. Otherwise the driveway itself turns into a parking area, and becomes front yard parking if the parking extends in front of the front yard setback line.

2. *To have an 'interpretation' of such consequence that is not spelled out in the highly specific written ordinance does not allow the public to fairly plan for the flexible use and enjoyment of their homes.*

One of staff's many duties is to provide interpretation of the Comprehensive Development Ordinance to the public. Not everything is black and white in the CDO. The appellants inquired with staff on a few separate occasions, and in turn, staff provided consistent feedback as to the parking requirements. The appellants still chose to submit their application, which was administratively denied.

3. *The City has not always interpreted the ordinance this way. There are 3 garage conversions that received permits – in the years 1995, 1997, and 2002.*

Be that as it may, two of those permits appear to have been issued in error. And after further review, the third permit appears legitimate. A recent example of essentially the same proposal resulted in an administrative denial, which was subsequently upheld by the Development Review Board following an appeal hearing. The application, ZP 15-0882CA, to expand living space into a garage was denied for essentially the same reasons ZP18-0692BA was denied. See attached ZP15-0882CA plan and decision. The fact that the DRB upheld denial of ZP15-0882CA is consistent with established precedent on how the City interprets Sec. 8.1.12 (c).

## **Summary**

The appellants have demonstrated that they can fit an 18' deep parking space behind the front yard setback line, but only if that space spans the garage entrance. Required parking spaces must remain parking spaces at all times. The appellants intend to retain a garage door so that they can utilize the insulated garage space for various activities. Staff informed them that if the garage door was permanently removed, the space could conceivably be considered a carport, which could result in a permanently available parking space, which could then allow them to construct the 'garage' bathroom.

A reversal of the administrative denial would contradict established precedent and run counter to the requirements of Sec. 8.1.12 (c).

**II. Recommended Motion:**

Uphold the denial of zoning application 18-0692BA.