

Department of Planning and Zoning

149 Church Street

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: February 6, 2018
RE: ZP18-0455CA/CU; 44 Hoover 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.

File: ZP18-0455CA/CU

Location: 44 Hoover Street

Zone: RL **Ward:** 6S

Date application accepted: November 1, 2017

Applicant/ Owner: Andy Greenberg dba 154 Design; Jessica and Alberto Gutierrez

1st DAB Hearing: November 14, 2017

2nd DAB Hearing: January 9, 2018

Request: Demolish existing 2 car garage, replace with 2 car garage with accessory dwelling unit.

Background:

- **Non-applicability of Zoning Permit Requirements;** replace stair treads, posts on railings. No change to style, materials, or size. June 2015.
- **Zoning Permit (n.n); erect** a 10' x 20' addition to the existing garage. July 1978.

Overview: 44 Hoover Street is a single family home constructed about 1932. The owners wish to demolish the detached two car garage and replace it with a larger structure with an accessory dwelling unit (ADU) above it.



The **Design Advisory Board** reviewed the application at their meetings November 14, 2017 and January 9, 2018. The vote was 4-1 to forward to the DRB with a recommendation for approval.

Recommendation: Conditional Use and Certificate of Appropriateness **Approval** per the following Findings and conditions:

The programs and services of the City of Burlington are accessible to people with disabilities. For accessibility information call 865-7188 (for TTY users 865-7142).

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Sec. 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;*

An accessory apartment meeting the area limitations of Section 5.4.5 will have a negligible impact on existing or planned public utilities. A letter of capacity for water and sewer has been provided from Burlington's water division. **Affirmative finding.**

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;*

This is a residential area; most of the homes having garages recessed behind the principal structures. The application is supported in the Municipal Development Plan:

- *Support the development of additional housing opportunities within the city...* [MDP, Housing Plan, Page IX-1.]
- *Encourage a wide range of housing options to meet different and changing needs of households with children, the elderly, people with disabilities and moderate and low income households.* [MDP, Housing Plan, Page IX-1.]
- *Conserve the existing elements and design of its established neighborhoods.* [MDP, Historic Preservation, Page IV-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 construction of a replacement accessory structure will have no discernable nuisance impacts greater than typically generated by other residences in the neighborhood.

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 structure will replace an existing two-car garage, albeit with an accessory dwelling unit above. This is an existing, developed residential neighborhood with immediate access to arterial roadways. Parking and public pedestrian circulation will remain as existing. **Affirmative finding.**

and,

5. *The utilization of renewable energy resources;*

No part of this application will prevent 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;* Per Section 2.7.8, all permit issued after July 13, 1989 must be closed out prior to issuance of a Certificate of Occupancy for this permit. A state wastewater permit will be required; it remains the obligation of the property owner to secure that approval.

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.*

The project applicant depends upon an existing hedge of 30' cedar trees on a westerly property to provide a visual buffer to this new structure. Should the neighboring trees not survive the development, or become damaged so as to cause their failure, the applicant shall install new landscaping or fencing on the west to visually screen the new structure.

Affirmative finding as conditioned.

2. *Time limits for construction.*

The permit will have a two-year life from the date of approval. Construction must be completed within that time frame. Reference is made to Section 3.2.9 (d). **Affirmative finding as conditioned.**

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

Residential use has no limitation on hours of operation.

Construction shall be limited Monday-Friday 7:30- 5:30 pm, with indoor work only on Saturdays. No construction shall occur on Sundays. **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;

Any enlargement will be reviewed under the zoning regulations in effect at that time.
Affirmative finding.

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.

Any other performance standards are at the discretion of the Development Review Board.

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

Table 4.4.5-1 Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W

44 Hoover Street has a lot frontage of 40'; less than the 60' minimum for a single detached dwelling in the RL zoning district. The project therefore requires review under **Section 5.3.6, Non-conforming Lots.**

Table 4.4.5-3 Residential District Dimensional Standards

Zoning District	Max. Lot Coverage ¹	Setbacks ^{1, 3, 4, 5, 6}			Waterfront	Max. Height ¹
		Front ²	Side ³	Rear		
RL; WRL	35%	Min/Max: Ave. of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width or ave. of side yard setback of 2 adjacent lots on both sides Max required: 20'	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	Min: 75' feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet
44 Hoover Street	39% existing; 39% proposed	No change.	No change on east. West 4' (10% of lot width; greater than previous non-conformity of 2')	61' proposed; > 25% lot depth.	N/A	New detached structure approx. 17' 9 1/2" to mid-line of the rise of the roof.

Affirmative finding.

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots.

Lot size of 6,900 sf exceeds minimum lot size requirement (4,000 sf) and meets minimum width of 40' for existing small lots. **Affirmative finding.**

Section 5.2.2 Required Frontage or Access

There is existing access to a public street. **Affirmative finding.**

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.5-3, above.

Section 5.2.4 Buildable Area Calculation

The property is not over 2 acres in size. Not applicable.

Section 5.2.5 Setbacks

See Table 4.4.5-3, above.

Section 5.2.6 Building Height Limits

See Table 4.4.5-3, above.

Section 5.2.7 Density and Intensity of Development Calculations

Per Section 5.4.5 (a), An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation. **Affirmative finding.**

Part 3: Non Conformities

This is an existing lot with a width of 40', less than the 60' frontage required by this ordinance for properties in the RL zoning district. It may be developed, however, per Section 5.2.1, Existing Small Lots.

Required setbacks are met (See Table 4.4.5-3, above.) Coverage calculations remain equal to existing conditions. **Affirmative finding.**

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. 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 has provided written proof of water/sewer capacity issued from the Department of Public Works. **Affirmative finding.**

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;

Utilizing the definition of habitable space from Article 13, the ADU does not exceed 30% of the total habitable floor area of the principle dwelling and the ADU combined. (363 sf proposed, 30% of total habitable floor area (1306sf) = 391.8 sf.) **Affirmative finding.**

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

See Table 4.4.5-3, above. **Affirmative finding.**

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

The required third parking space is provided in tandem behind a space proposed within the garage. **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 remains a condition of approval. **Affirmative finding as conditioned.**

(b) Conditional Use 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;*
2. *An increase in the height or habitable floor area of the existing dwelling;*
3. *An Increase in the dimensions of any parking area.*

The application proposes a new accessory structure, so Conditional Use Review applies. See Section 3.5.6 (a), above.

(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.

Affirmative finding as conditioned.

Sec. 5.4.8 Historic Buildings and Sites

The majority of the street was listed on the Vermont State Register of Historic Resources in 2005; however, this house was not identified among those eligible. It does appear to be consistent with the vernacular Craftsman style houses common to the street, but as it is not identified within the survey, these standards do not apply. Not applicable.

Section 5.5.2 Lighting

The application proposes full cut-off residential scale lighting above the building entrance and between the double garage doors. **Affirmative finding.**

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:

Other than a rock north of the garage, there are no nature features noted in the application submission. **Affirmative finding.**

(b) Topographical Alterations:

No change to the existing topography is identified in the application materials. **Affirmative finding.**

(c) Protection of Important Public Views:

Views are not protected from or through private property. Not applicable.

(d) Protection of Important Cultural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Archeological sites likely to yield information important to the city's or the region's pre-history or history shall be evaluated, documented, and avoided whenever feasible. Where the proposed development involves sites listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8(b).

The majority of the street was listed on the Vermont State Register of Historic Resources in 2005; however, this house was not identified among those eligible. It does appear to be consistent with the vernacular Craftsman style houses common to the street, but as it is not identified within the survey, this standard is not applicable.

(e) Supporting the Use of Renewable Energy Resources:

No part of this application would preclude the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**

(f) Brownfield Sites:

The site is not listed on the VT ANR or DEC Brownfields list of identified sites. Not applicable.

(g) Provide for nature's events:

Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.

Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.

An Erosion Prevention and Sediment Control Plan has been submitted and forwarded to the Stormwater Engineering program. Approval was received from that office December 7, 2017.

The proposed ground floor entry to the Accessory Dwelling Unit (ADU) provides a small foyer prior to the staircase that will allow an interstitial area for refuge from the elements. The applicant has defined a snow storage area on the site. **Affirmative finding.**

(h) Building Location and Orientation:

The addition is proposed in a typical location for residential expansion; at the rear of a principal structure. The new ADU is proposed for a rear (attached) structure. As located, it is consistent with accessory garages. **Affirmative finding.**

(i) Vehicular Access:

The existing access from Hoover Street will be maintained. **Affirmative finding.**

(j) Pedestrian Access:

A walkway remains from the public sidewalk to the principal dwelling. A small extension of pavement from the drive/parking area will lead the tenant of the ADU to the proposed entrance from its dedicated parking space. **Affirmative finding.**

(k) Accessibility for the Handicapped:

Although encouraged, this is not a requirement for single family homes. Any accessibility review remains under the jurisdiction of the building inspector. **Affirmative finding.**

(l) Parking and Circulation:

The existing 2 car garage is to be replaced with a two car garage and slightly adjusted driveway to accommodate the required 3rd parking space. **Affirmative finding.**

(m) Landscaping and Fences:

Revised plans include a Landscape Plan (L100.)

Some existing pavement will be removed. The site is currently non-conforming for coverage in the RL zoning district, and may not exceed the current level of non-conformity of 39%. As proposed, the coverage remains at the same level as pre-development.

The adjacent cedar trees are illustrated as a screening buffer to the west. It is possible that these trees may not survive construction. If so, their replacement or some other manner of screening will be required.

As this plan introduces a structure of significant scale in a neighborhood of modest sized homes, a more robust planting plan was brought to the DAB in an effort to ameliorate height and help “sink” the new structure into the site. **Affirmative finding as conditioned.**

(n) Public Plazas and Open Space:

Not required for single family homes. Not applicable.

(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

The submission includes a specification sheet for a downshielded LED wall fixture with residential appropriate wattage. **Affirmative finding.**

(p) Integrate infrastructure into the design:

Exterior storage areas, machinery and equipment installations, service and loading areas, utility meters and structures, mailboxes, and similar accessory structures shall utilize setbacks, plantings, enclosures and other mitigation or screening methods to minimize their auditory and visual impact on the public street and neighboring properties to the extent practicable.

Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be placed underground whenever practicable. Trash and recycling bins and dumpsters shall be located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.

Any development involving the installation of machinery or equipment which emits heat, vapor, fumes, vibration, or noise shall minimize, insofar as practicable, any adverse impact on neighboring properties and the environment pursuant to the requirements of Article 5, Part 4 Performance Standards.

The mailbox for the principal dwelling is located on the street façade of the house. The location of the ADU mailbox has been proposed as a freestanding box within the parcel boundaries. DPW has directed the placement outside the right-of-way.

A condensing unit is located behind the replacement garage; on the north of the site, out of public view. **Affirmative finding.**

Part 3: Architectural Design Standards
Sec. 6.3.2 Review Standards

(a) Relate development to its environment:

1. Massing, Height and Scale:

Revised plans have lowered the roofline and height of the proposed structure, bringing it closer in height to the principal 1 ½ story vernacular Craftsman style building. The visibility may be somewhat ameliorated by the recessed location behind the existing home, the increasing grade to the east and the slightly larger residential building immediately adjacent.

The submission documents continue to rely on tall trees acting as a visual buffer to the large building. Given recent weather events and the questionable likelihood of them surviving site excavation, it remains in doubt whether they may endure. Building massing must be assessed for appropriateness based on surrounding structures rather than their likelihood to be shielded by vegetation. If the cedar hedge does not survive, replacement screening shall be provided.

The height to the mid point of the roof slope of the ADU is projected at 17'9 ½". The principal structure measures 17'11 ½" to the mid-point of the roof slope. **Affirmative finding as conditioned.**

2. Roofs and Rooflines.

In its modern vocabulary, the proposed roofline diverges from the character with the neighborhood dominated by gabled roofs. This plan attempts to facilitate the increased building height with a gradual rise in the roofline. The dormer break has been reduced on the new structure, but remains in contrast from those on the principal building and other residences on the street. The DAB found the proposal as revised acceptable. **Affirmative finding.**

3. Building Openings

Two garage doors face the street front accompanied by a pedestrian door. Window sizes and arrangement have been modified in an attempt to create a relationship between this building and the principal residence. The upper floor windows alternate in style and size, with arrangements grouped to reflect inner function. In design and articulation, the building is very contemporary in style.

The westerly elevation (first floor) is devoid of any openings and provides a stark building façade to the neighboring property on Ludwig Court. Unless building code prohibits it, some punctured opening or window break has been recommended on the first floor to break up the stretch of metal siding. This side will immediately face the sideyard of 42 Hoover Street and 12 Ludwig Court. As noted, the existing tree hedge may not survive construction activities and cannot be depended upon to continue to screen the rear yard and this building.

It is recommended that the applicant confer with the building inspector to assure that the westerly façade may contain the proposed number of building openings per life safety and building code, due to proximity to a property line.

Affirmative finding as conditioned.

(b) Protection of Important Architectural Resources:

The building is not listed on the Vermont of National Register of Historic Resources. Not applicable.

(c) Protection of Important Public Views:

Not applicable.

(d) Provide an active and inviting street edge:

As the building is proposed to be set behind the principal residence, the location is consistent with residential garage placement. The height and modern design will clearly distinguish the building as new to passers-by. **Affirmative finding.**

(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

The design proposes corrugated Galvalume (metal) on the first floor with Western Red Cedar surrounding the door, and 5” reveal lap siding on the upper floor. A standing metal seam roof is identified on Plan A203. All are considered durable building materials for new construction.

Affirmative finding.

(f) Reduce energy utilization:

All new construction must 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. **Affirmative finding as conditioned.**

(g) Make advertising features complementary to the site:

Not applicable.

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p), above.

(i) Make spaces secure and safe:

All development must observe applicable building and life safety code as defined by the building inspector and fire marshal. **Affirmative finding as conditioned.**

Article 8: Parking

Two parking spaces for the principal residence and an additional parking space for the accessory unit are provided in the garage/driveway. **Affirmative finding.**

Article 13: Definitions

Habitable: *A space in the building for living, sleeping, eating, or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.*

Using this guidance, the applicant has met the 30% limitation for habitable space for the accessory dwelling unit. See Section 5.4.5 (a), above.

II. Conditions of Approval

1. **Per Section 2.7.8, Withhold Permit**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations.
2. Screening shall be provided on the west property line to visually screen the new structure. If the existing landscaping does not survive the development, it shall be replaced with either new landscaping or fencing to provide a visual buffer to the new structure.
3. Construction shall be limited Monday-Friday 7:30- 5:30 pm, with indoor work only on Saturdays. No construction shall occur on Sundays.
4. 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.
5. **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.
6. Functional Family provisions of the ordinance remain in effect. Not more than 4 unrelated adults may occupy the single family residence.
7. No more than 2 adults may occupy the Accessory Dwelling Unit.
8. The accessory dwelling unit is limited to 30% of the habitable area of the single family residence including the ADU.

9. Hours of construction are limited to 7:30 am- 5:30 pm Monday through Friday. Saturday construction is limited to interior work. No construction shall occur on Sundays.
10. All new construction must 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. It is the applicant's responsibility to secure a State of Vermont Wastewater permit.
12. Standard Permit Conditions 1-15.

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