

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: August 7, 2018
RE: ZP18-1097CA/CU; 35 Western 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: ZP18-1097CA/CU

Location: 35 Western Avenue

Zone: RL **Ward:** 4N

Date application accepted: May 24, 2018

Applicant/ Owner: Noah Weisman

Parking District: Neighborhood

Request: Remove and replace existing porch and garage with a new porch and garage. Second floor above the new garage will be used as an accessory dwelling unit.

Applicable Regulations:

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

Background:

No previous zoning permits.

Overview:

The applicant proposes to remove and replace an existing porch and garage with a new porch and garage. The second floor above the new garage will be used as an accessory dwelling unit.

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 an increase in the height or habitable floor area of the existing dwelling 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 replacement garage with a new second floor dedicated to the ADU, and an increase to the parking dimension of the existing driveway to accommodate parking. As a result, conditional use review is required.

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. 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 Western Avenue. While the street has no sidewalks on either side, the property is well within walking distance of Staniford Road, which has a sidewalk all the way to North Avenue. There are multiple transit stops along North Avenue. The Burlington bike path abuts the property to the southwest, and can easily be reached by foot

from the property. 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.

35 Western Avenue is a 25,255 sq ft lot, with 75 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 requirement of 75'. The applicant has provided the front yard setbacks for the neighboring 4 homes (2 on either side). The average front yard setback is 40.25'. While the replacement garage will expand forward by 3 or 4 feet, it will still be setback behind the foremost wall of the home, and still well behind the front yard setback line. The lot has a width of 75 ft which results in a minimum 7' 6" side yard setback. The replacement garage will be setback 7' 6" from the side yard property line. And given lot depths of 341' on the north property line, and 327' on the south property line, the rear yard setback minimum is 75'. The closest portion of the residence to the rear property line is +/-245'.

Maximum Lot Coverage – 35%.

Existing lot coverage totals 10%, and the proposal will result in a total lot coverage of 12%.

Maximum Height – 35 ft.

The height to the ridgeline of the new structure totals 24 ft. **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 replacement garage with new habitable space on the second story and an expansion of the parking area, 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*
Not applicable.

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

35 Western Avenue has 75 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 12% of total lot coverage. **Affirmative finding.**

Section 5.2.4 Buildable Area Calculation

Not applicable.

Section 5.2.5 Setbacks

Not applicable.

Section 5.2.6 Building Height Limits

Height will total 24 ft to the roof ridgeline, less than the 35 ft height limit. **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 home. The proposed one-bedroom accessory dwelling unit will be located in the second story, above the rebuilt garage. The floor plan identifies a bathroom, kitchen, and a living/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 existing residence has 2,100 sf of habitable floor area, and the proposed space above the replacement garage will have 385 sf of habitable space (dedicated to the ADU), for a combined total of 2,485 sf of habitable space. The proposed ADU will be 15.5% of the total habitable floor area, well under the 30% maximum allowance. **Affirmative finding.**

3. *Applicable setback and coverage requirements are met;*
See Table 4.4.5-3 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. These spaces are located in front of the replacement garage, which the applicant intends to utilize for bike and garbage storage. **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.

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

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

The front façade elevation drawing shows a light fixture located next to the entrance door. However, a spec sheet for the fixture has not been provided. The fixture must comply with the lighting standards of Sec. 5.5.2. A spec sheet will be required, subject to staff review and approval. **Affirmative finding as conditioned.**

Section 5.5.3 Stormwater and Erosion Control

An Erosion Prevention and Sediment Control plan will need to be submitted to, and approved by, the Stormwater Program Manager because ground disturbance will exceed 400 sf. **Affirmative finding as conditioned.**

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 in the driveway. The spaces meet the minimum dimensional requirement. **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 lighting spec sheets for any new exterior 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 submit an Erosion Prevention and Sediment Control plan to the city’s Stormwater Program Manager, for review and approval.
8. A state wastewater permit will be required, and is the responsibility of the applicant to secure.
9. The applicant shall secure all associated building and 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.