

Burlington Development Review Board

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Burlington Development Review Board

Minutes/Findings of Fact

Tuesday May 3, 2016

In RE: 15-0923CA/CU; 465 Appletree Point Rd. (Ward 4N, WRL) (Tax Lot No. 030-3-018-000)

Owner/Representative: Al Senecal / Brad Rabinowitz

Request: Remand review – Construct new single family home with accessory apartment and associated site improvements. Lot line adjustment included.

Members Present:

Jonathan Stevens

Israel Smith

AJ LaRosa

Wayne Senville

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

On July 21, 2015, the applicant received approval to construct a new duplex and related site improvements on this vacant lot. That approval was appealed to the VT Superior Court Environmental Division. Prior to trial, the parties arrived at an agreement for a scaled back proposal. The matter has been remanded to the Development Review Board for final approval.

Revisions include:

- Change from duplex to single family home with accessory apartment
- Reduce size of building footprint by ~ 15%
- Move building back another 5' from the front property line (30' instead of 25' setback)

Previous zoning actions for this property are as follows:

- 7/21/15, Approval for construction of new duplex and related site improvements
- 7/1/14, Approval of front yard setback variance
- 7/26/04, Approval of 2-lot subdivision
- 1/13/04, Denial of 3-lot subdivision

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review 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 proposed development will require municipal water and sewer service. A municipal water line already runs by the property. A new pump station and force main will be installed to connect to the municipal wastewater system. Review and approval by the Department of Public Works will be required. A State of Vermont wastewater permit has already been obtained.

(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 located on the east-facing side of Appletree Point within the Waterfront Residential Low Density (WRL) zone. The subject property is presently vacant. Several homes are located along the western side of the point; however, much of the peninsula is undeveloped. As with the Residential Low Density zone, the WRL zone is primarily intended for low density residential development in the form of detached single family homes and duplexes. The WRL zone is distinguished by its close proximity to the lake and a greater consideration of public views from the lake and stormwater runoff. The proposed single family home with accessory apartment is consistent with the intent of the WRL zone. Most of the proposed home will be set back 20' – 40' from the 100' lakeshore elevation (a rear porch will reach as close at 17'), and much of the existing vegetation along the lakeshore will be retained. Stormwater management has been reviewed and approved by the Stormwater Administrator. **(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 proposed single family home with accessory apartment is not expected to generate any such nuisance impacts. **(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 new home and apartment will generate additional vehicular traffic; however, impacts will be minimal. Traffic impact fees will be paid to help offset what impacts there are. **(Affirmative finding as conditioned)**

5. The utilization of renewable energy resources;

The utilization of alternative energy has not been incorporated into this proposal. The proposed construction does not preclude such utilization in the future. **(Affirmative finding)**

(b) Major Impact Review Standards

(Not applicable)

(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.

Nothing in this revised proposal is expected to generate offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

2. Time limits for construction.

The project is to be constructed within the standard 2-year timeframe. **(Affirmative finding)**

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

Hours of operation do not apply to the proposed residence. No construction schedule is proposed. Other projects with nearby residences have days and hours of construction limited to Monday-Friday 7:00 am – 6:00 pm. Limited work may extend outside this schedule to extend to Saturday 9:00 AM – 5:00 PM only after obtaining approval from the Development Review Board through correspondence rather than a scheduled hearing. No construction 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; and,

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

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.

See recommended conditions of approval.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Waterfront Residential Low Density (WRL)

The subject property is located in the WRL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The proposed home is consistent with this purpose.

(Affirmative finding)

(b) Dimensional Standards & Density

The property, with the lot line adjustment with neighboring 451 Appletree Point Rd, will have 180' of road frontage and 17,417 sf area. Both well above the 75' and 9,900 sf, respectively, needed for a single family home in the Larger Lot Overlay that affects this property.

The 1 primary residential unit proposed on the 0.4 acre lot is acceptable. 4.4 dwelling units/acre are allowed within the Larger Lot Overlay. Accessory apartments do not count towards density.

Proposed lot coverage will decline slightly to 27.7%, well below the 35% limit permitted

The proposed front yard setback has been pushed back to 30' rather than 25' as originally approved. The minimum side yard setback is 18.' As proposed, the home is 30' at its closest to a side property line. There is no rear yard setback; rather, there is a waterfront setback. The standard waterfront setback requirement is 75'; however, as noted during review of the July 2014 variance request, there are exceptions as noted in (d) *District Specific Regulations*, 1 below. As proposed, the new home would be set back an acceptable 17' from the 100' elevation, depending on the curvature of the shoreline.

The midpoint of the roof appears to be about 25.' The very peak of the structure is 31', below the 35' height limit. **(Affirmative finding)**

(c) Permitted & Conditional Uses

The proposed single family home is a permitted use in the WRL zone. The accessory apartment, as new construction, triggers conditional use review. Conditional use criteria are addressed under Article 3 above. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

B. Encroachment into the Waterfront Setback.

(ii) Averaging of Setbacks of Existing Structures

This criterion allows new construction to observe a waterfront setback based on the average waterfront setback of existing principal structures within 150.' In this case, the existing camp on neighboring 451 Appletree Point Rd is set back 17' from the 100' lakeshore elevation. The proposed home will be set back 17.' As noted previously, this 17' setback will be for the waterfront porch. The bulk of the structure will be set further back (20' – 40').

While the degree of encroachment into the 75' waterfront setback is particularly important for the neighboring property at 451 Appletree Point Road, it is not as important for this property. On 451, the new building footprint is limited to the area of existing building footprints. On this vacant property; however, the new building must only be located behind the 17' waterfront setback established by the existing camp at 451. There is no limitation on the area of encroachment. Of course, standard lot coverage limits apply and have been adhered to. **(Affirmative finding)**

2. Height

No height bonuses are being sought. **(Not applicable)**

3. Lot Coverage

No lot coverage bonuses are being sought. **(Not applicable)**

4. Accessory Residential Structures and Uses

The attached garage has a footprint of ~720 sf; less than 50% of the main home's 2,149 sf footprint. **(Affirmative finding)**

5. Residential Density

The new home is subject to the functional family provisions of the Comprehensive Development Ordinance. **(Affirmative finding)**

6. Uses

No neighborhood commercial use is included in this proposal. **(Not applicable)**

7. Residential Development Bonuses

No development bonuses are being sought. **(Not applicable)**

Sec. 4.5.4, Natural Resource Protection Overlay (NR) District

(c) District Specific Regulations: Riparian and Littoral Conservation Zone

The subject property is wholly affected by the Riparian and Littoral Conservation Zone (250' width from the 100' lakeshore elevation). This overlay zone limits the clearing of vegetation and new stormwater outfalls. As proposed, some dead or dying trees will be removed, but most of the existing vegetation along the lakeshore will be retained. The project plans clearly depict vegetation to be removed or retained. No new stormwater outfalls are proposed. A basic stormwater management plan has been reviewed and approved by the Stormwater Administrator (see Sec. 5.5.3). The Conservation Board reviewed the prior duplex proposal under this criterion and recommended project approval as proposed. **(Affirmative finding)**

(f) District Specific Regulations: Special Flood Hazard Area

This lakeshore property is partially affected by the special flood hazard area (SFHA). All areas along the lakeshore under the 102' elevation are within the SFHA. Except for a new stairway to the water, none of the proposed construction will take place within the SFHA. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

(Not applicable)

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 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;*
Sufficient wastewater capacity is available. A letter of capacity has been issued by 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;*
The total area of the proposed residence is 3,038 sf. The 1-bedroom apartment is 628 sf (20.7% of the entire area). **(Affirmative finding)**
3. *Applicable setback and coverage requirements are met;*
See Sec. 4.4.5 (b).
4. *One additional parking space which may be legally allocated to the accessory unit must be provided for the accessory unit; and,*
As proposed, there is room for 4 vehicles to park onsite. One of these spaces will serve the accessory apartment. **(Affirmative finding)**
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 requirement is a condition of permit approval. **(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;*
(Not applicable)
2. *An increase in the height or habitable floor area of the existing dwelling;*

New construction is proposed, thereby triggering conditional use review. See Article 3.
(Affirmative finding)

3. *An increase in the dimensions of any parking area;*
(Not applicable)

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion.
(Affirmative finding)

Sec. 5.5.2, Outdoor Lighting

No revisions to outdoor lighting have been made. As previously approved, new outdoor lighting mirrors that at 451 Appletree Point Road. It consists of building mounted fixtures to illuminate building entries and post and bollard fixtures to illuminate the circulation area and new stairs to the lakeshore. Locations are noted, and cutsheets have been provided. All are acceptable residential fixtures generating low levels of illumination. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

No revisions to stormwater management or erosion control have been made. As more than 400 sf of earth disturbance is proposed, a “small project erosion control” form has been provided. A residential stormwater management plan has also been provided. Stormwater management is basic and amounts to directing runoff onto pervious surfaces for infiltration. Both were reviewed and approved by Conservation Board and the Stormwater Administrator. Those approvals are incorporated into this permit. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Note that the project revisions do not materially affect the criteria of Article 6. Except for correcting reference to duplex (now single family home with accessory apartment) and revised dimensional numbers, these findings are unchanged from the original duplex approval.

Part 1, Land Division Design Standards

No land division is included in this proposal; however, a lot line adjustment between this property and neighboring 451 Appletree Point Road is proposed. The proposed adjustment is of the common side property boundary and will not affect any of the criteria under this section.
(Affirmative finding)

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

As with neighboring 451 Appletree Point Road, this lakeshore site is lightly wooded. Some tree removal is proposed as noted on the landscape and planting plan; however, a number of the existing trees will remain. The lakeshore itself is a significant natural feature and is protected by the riparian and littoral conservation zone. This overlay limits tree clearing and also requires stormwater management. Stormwater management information has been provided. As required,

the proposed construction has been reviewed and approved by the Conservation Board and the city's stormwater program staff. **(Affirmative finding)**

(b) Topographical alterations

The property slopes gently towards the lake and then drops significantly down to the lake along the immediate shoreline. The site of the proposed home is generally flat and will remain so. A soils analysis has been done, and no blasting is proposed. **(Affirmative finding)**

(c) Protection of important public views

The subject property is not affected by any identified public view corridor. This criterion is typically applied to developments fronting such corridors. An individual interested in this application has asserted that, in light of the design review considerations of the WRL zone, views of the construction from the lake should be considered. This criterion is written broadly enough that that assertion may be well based. The proposed home will indeed be visible from the lake. Virtually any construction would be. The new home will be set back and behind existing lakeshore vegetation. **(Affirmative finding)**

(d) Protection of important cultural resources

The property is within an archaeologically sensitive area; however, there are no specifically identified archaeological sites on the property. This archaeological sensitivity stems from the property's lakeshore location. If, during construction, artifacts are unearthed, it is the applicant's responsibility to stop earthwork and to contact the Vermont Division for Historic Preservation for further guidance. **(Affirmative finding)**

(e) Supporting the use of alternative energy

There is no indication that the proposed home will utilize alternative energy. Solar energy utilization is encouraged. In any event, the home will not adversely impact the actual or potential use of alternative energies by neighboring properties. **(Affirmative finding)**

(f) Brownfield sites

The subject property is not an identified brownfield. **(Affirmative finding)**

(g) Provide for nature's events

As total lot coverage will exceed 2,500 sf, a residential stormwater plan has been provided. All of the impervious surface associated with this project is disconnected from the municipal stormwater system, and stormwater will infiltrate into the ground as it does now. As noted above, the city's stormwater program has reviewed the proposed stormwater management.

The front entrance into the home is sheltered within an open porch, and ample room is available onsite for seasonal snow storage. **(Affirmative finding)**

(h) Building location and orientation

The proposed residence is relatively far from existing homes on Appletree Point Road (~ 360' from 395 Appletree Point Rd and ~ 220' from 440 Appletree Point Rd). It will be set 30' from the road – the same front setback as that of the to-be-built neighboring home at 451 Appletree Point Road. Its main entrance faces the road and is clearly identifiable. The open front porch

provides an obvious and welcoming entry into the home. The secondary entrance (into the 2nd unit) is also within the front porch but oriented towards the north. The attached garage faces north, to the side. It is not oriented towards the road. **(Affirmative finding)**

(i) Vehicular access

A private driveway will provide adequate access to the home. It will access the two-bay attached garage. A turn-around is provided within the driveway and is set to the side of the home. **(Affirmative finding)**

(j) Pedestrian access

A stone front walkway is proposed and will connect to the private road. **(Affirmative finding)**

(k) Accessibility for the handicapped

No handicap accessibility is evident or required with this proposal. **(Affirmative finding)**

(l) Parking and circulation

Four parking spaces are provided; two in the driveway and two in the attached garage. These spaces meet the minimum parking requirement of 2 spaces for the primary dwelling and 1 space for the apartment. Circulation is simple with access provided to the garage and surface parking spaces. **(Affirmative finding)**

(m) Landscaping and fences

Clearing limits are depicted. Much of the existing vegetation will be retained. New landscaping is proposed and consists of a variety of shrubs and two new cherry trees on either side of the driveway. As with the neighboring property to the north, much of the new landscaping is proposed along the roadside and will provide some buffering between the new home and the road. No new fencing is proposed; however, a boulder wall will be installed along a portion of the lakeshore. Topographic information indicates the bottom of this wall will be above the 102' elevation and out of the lake's flood zone. New concrete stairs will provide access to the lakeshore. **(Affirmative finding)**

(n) Public plazas and open space

No public plaza or open space is included or required in this proposal. **(Not applicable)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

New utility lines must be buried. No mechanical equipment is depicted on the plan; however, the applicant has noted that an AC compressor will be located behind the building. This item must be depicted on the site plan. **(Affirmative finding as conditioned)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The overall size of the home has been reduced. As revised, the massing, height, and scale of the proposed home remain consistent with that of existing homes along Appletree Point Road. The proposed shingle style home faces the road with a well-defined front entry. Varying rooflines, dormers, and distinct building sections serve to articulate separate volumes within the overall structure. **(Affirmative finding)**

2. Roofs and Rooflines

Gable roofs are proposed, albeit on different plans. Several dormers project from the upper roofs. The proposed roof forms are appropriately residential. **(Affirmative finding)**

3. Building Openings

The primary front entrance is clearly articulated and is sheltered by an open front porch. Fenestration is appropriately scaled and placed in consistent rhythm throughout the building. **(Affirmative finding)**

(b) Protection of important architectural resources

There are no historic structures on the subject property or nearby. Construction of the proposed home will have no adverse impacts on Burlington's historic structures. **(Affirmative finding)**

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The front entry to the proposed home is clearly articulated and faces the road. There are no large blank walls or expanses of roof. Fenestration, roof variations, and architectural detailing work successfully to provide an active and inviting street elevation. **(Affirmative finding)**

(e) Quality of materials

The proposed home will be clad in cedar shingles with tongue-and-groove siding accents. Painted white AZEK trim is noted. Asphalt shingles will be installed on most of the roofs; however, standing seam metal will be installed on the dormers. Combination fiberglass and wood windows will be installed. A natural stone veneer will be installed along the base of the attached garage. The materials proposed are of acceptable quality and durability. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed building must comply with the current energy efficiency standards of Burlington and the State of Vermont. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

No advertising is included in this proposal. **(Not applicable)**

(h) Integrate infrastructure into the building design

Utility meters will be appropriately located on a side elevation near the entrance to the apartment. **(Affirmative finding)**

(i) Make spaces safe and secure

The proposed building must comply with the city's current egress requirements. Building entries will be illuminated. **(Affirmative finding)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the neighborhood parking district. As such, the single family home requires 2 parking spaces. The accessory apartment requires 1 parking space. All of the parking spaces will be provided onsite; 2 in the garage and 2 within the driveway. **(Affirmative finding)**

Article 10: Subdivision

Note that the project revisions do not materially affect the criteria of Article 10. This item remains unchanged.

No subdivision of land is included in this proposal; however, a lot line adjustment with neighboring 451 Appletree Point Rd is included. A boundary line adjustment plan clearly depicts the proposed boundary adjustment. The required endorsement block for the Administrative Officer's signature per Sec. 10.1.5, *Lot Line Adjustments*, (a) is missing. All of the signature blocks provided relate to subdivisions and should be deleted (except for the surveyor's endorsement). **(Affirmative finding as conditioned)**

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Israel Smith

I move that the Board grant certificate of appropriateness and conditional use approval for the amendment to construct a new single family home with accessory apartment and associated site improvements and lot line adjustment for the property at 465 Appletree Point Road in the WRL zone in accordance with Articles 3, 4, 5, & 6. Approval is subject to the following conditions:

1. **Prior to release of the zoning permit**, revised plans shall be submitted subject to staff review and approval. Revised plans shall depict:
 - a. The proposed AC compressor; and,
 - b. The required Administrative Officer's signature block per Sec. 10.1.5.
2. **Prior to release of the zoning permit**, the new pump station and force main shall be reviewed and approved by the Department of Public Works.
3. This permit incorporates the EPSC and Stormwater Management approvals issued by the Stormwater Administrator on April 3, 2015.
4. Days and hours of construction shall be limited to Monday-Friday 7:00 am – 6:00 pm. Limited work may extend outside this schedule to extend to Saturday 9:00 AM – 5:00

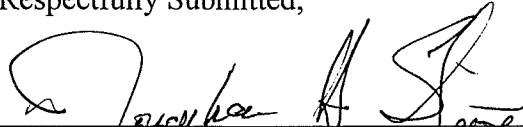
- PM only after obtaining approval from the Development Review Board through correspondence rather than a scheduled hearing. No construction on Sunday
5. In the event that artifacts are uncovered during excavation, it is the applicant's responsibility to contact the Vermont Division for Historic Preservation for further guidance.
 6. 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.
 7. 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.
 8. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Planning & Zoning Department the impact fee as calculated by staff based on the new square footage of the proposed development.
 9. Standard permit conditions 1-15.

Seconded: AJ LaRosa

Vote: 4-0-0, motion carried

Dated at Burlington, Vermont, this 3rd day of May 2016

Respectfully Submitted,


Jonathan H. Stevens, Acting Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.