STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
Docket No. 105-9-16 Vtec

GOODWIN CU	DECISION ON THE MERITS

Julia Lynam (Ms. Lynam or Appellant) appeals an August 11, 2016 decision by the City of Burlington's Development Review Board to grant a conditional use permit to her neighbor, Scott Goodwin (Mr. Goodwin or Applicant). The permit is for an accessory dwelling unit within an existing garage and outbuilding located behind Mr. Goodwin's home at 410 North Street in Burlington, Vermont.

The Court held a site visit and hearing on January 17, 2017. The City of Burlington (City) participated through Attorney Kimberlee J. Sturtevant. Ms. Lynam and Mr. Goodwin are self-represented. The City filed a Pre-Trial Memorandum on January 13, 2017. Mr. Lynam and Mr. Goodwin were invited to file post-trial memorandums, but declined.

Findings of Fact

Based on the evidence presented at trial, which was put into context by the site visit, the Court renders the following findings of fact:

1. Mr. Goodwin received conditional use permit 16-1225CA/CU from the City of Burlington Development Review Board (DRB) on August 11, 2016 to convert a portion of the existing building behind his house into an accessory dwelling unit. Approximately one-half of the rectangular building is a garage. Mr. Goodwin plans to convert the back half the building into an accessory unit.
2. A conditional use permit is required for an accessory dwelling unit when an increase in the dimensions of a parking area is proposed, as in this case. City of Burlington Comprehensive Dev. Ordinance (COD) Art. 5.4.5(b)(3).

3. The home at 410 North Street is within the Residential Low Density district (the RL district), which is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. COD Art. 4 Sec. 4.4.5(a)(1).

4. Mr. Goodwin and his mother Margaret Gayle Goodwin are co-owners of the home at 410 North Street.

5. If the permit for an accessory dwelling unit is approved, Mr. Goodwin's mother is expected to convey her interest to him.

6. Mr. Goodwin occupies the home as his primary residence; his mother does not live there.

7. If the permit for an accessory dwelling unit is approved, Mr. Goodwin will occupy either the existing home or the accessory unit.

8. The existing lot size is 9,964.4 square feet. The lot coverage, or impervious surface area, is 2,878.5 square feet, which is 28.8% of the lot.[1] Goodwin Ex. A.

9. Mr. Goodwin plans to add new brick pavers for parking and a small walkway next to the house. Id. The addition will increase the impervious area by 309.8 square feet, or 3.15%, bringing the impervious area to 3,188.3 square feet, or 31.99% of the lot. Id. The maximum lot coverage allowed in the RL district is 35%.[2] COD Table 4.4.4-3.

10. The existing house has 1,240 square feet of finished space.

11. The accessory dwelling unit will have 445 square feet of finished space.

12. The accessory dwelling unit consists of less than 30% of the total habitable floor area of the single-family home and the accessory dwelling unit combined.

13. Mr. Goodwin plans to install three windows on the east side of the outbuilding for the accessory unit. Goodwin Ex. B.

14. On the north side of the building, he plans to install one new window and replace an existing window.

15. On the south side of the building, he plans to replace a garage door and install a new garage door to create two parking spaces in the garage.

[1] The impervious area includes the house and the garage/outbuilding.

[2] An additional 10% lot coverage may be permitted for accessory features such as decks, patios, porches and walkways.

16. Inside the accessory dwelling unit, Mr. Goodwin plans to build a kitchen, bathroom, bedroom and living area. He does not plan to increase the height or footprint of the existing building.

17. No more than two adult occupants are permitted to live in the accessory dwelling. COD Art. 5, Sec. 5.4.5.

18. Three cars will be able to park on the property, as required by the City's zoning regulations. COD Art. 8 Table 8.1.8-1. Two spaces are required for the existing single-family home, and one is required for the accessory dwelling unit. Id.; COD Art. 5.4.5(a)(3).

19. Two cars will be able to park in the garage; the third car will be able to park in a newly created space along the east wall of the house.

20. The space between the rear of the house, where the third car will park, and the front of the garage is sufficient to give the cars the required 24 feet of back-up length. Goodwin Ex. A; COD Art. 8 Table 8.1.11-1. The cars will be able to turn around on-site and exit in a forward fashion.

Conclusions of Law

In Vermont, accessory dwelling units must be allowed either within owner-occupied, single-family homes, or on the same lot.[3] 10 V.S.A. § 4412(1)(E). This statute provides that:

> [N]o bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation."[4]

Id. The City of Burlington's zoning regulations for accessory dwelling units comply with the state law. See COD Art. 5 Sec. 5.4.5. The regulations limit occupancy of an accessory unit to two adults. Id. Additionally, one parking space must be allocated to the unit. Sec. 5.4.5(a)(4). If the parking

[3] Exceptions apply for properties located in flood or other hazard areas.

[4] Additional requirements apply. Under both state law and the city's regulations, the property must have sufficient wastewater capacity; the accessory unit must not exceed 30% of the total habitable floor area of the single-family home; and the applicable setback and coverage requirements must be met. 24 V.S.A. § 4412(E)(i)–(iii).

area needs to be increased to comply with the City's off-street parking regulations, a conditional use permit is required. Sec. 5.4.5(b)(3).

Mr. Goodwin applied to the DRB for a conditional use permit to increase the parking area behind the house. See Dept. Planning & Zoning Memorandum (June 21, 2016), Goodwin Ex. E 9; and Dept. Planning & Zoning Memorandum (Aug. 2, 2016), Goodwin Ex. F 9. Mr. Goodwin plans to install new gravel parking areas next to the garage and the house, expanding the back-up and turn-around area to 24 feet between the garage and the house to comply with the city's parking requirements. Goodwin Ex. A; COD Art. 8 Table 8.1.11-1.

Following the DRB's approval of Mr. Goodwin's conditional use permit, Ms. Lynam timely appealed to this Court on September 8, 2016 pursuant to 24 V.S.A. § 4471 and V.R.E.C.P. 5. Our review is de novo, which means this Court is not restrained by the DRB's findings of fact or conclusions of law. V.R.E.C.P. 5(g). We take a fresh look at the issues in dispute.

Ms. Lynam poses three questions in her Statement of Questions for this Court.[5] Question 1 asks whether the City's zoning regulations requires an owner to occupy both the primary unit and the accessory dwelling unit, pursuant to Section 5.4.5(c). Question 2 asks whether Mr. Goodwin's application includes an expansion of the existing building footprint. Question 3 asks whether the parking configuration, which limits parking to three cars, is enforceable. We address these in turn.

I. Owner Occupation

Ms. Lynam asserts that the City's accessory dwelling unit regulations require the property owner to occupy both the primary and accessory units. She cites one sentence from CDO 5.4.5(C) which states, "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." Ms. Lynam reads this requirement to say that if either unit is not owner-occupied, then the accessory unit must be removed. Because Mr. Goodwin plans to live in only one of the units, and his mother, who is currently a co-owner, does not plan to live in either, Ms. Lynam contends the application must be rejected.

[5] Ms. Lynam's Statement of Questions is a few pages long. At the beginning of trail, the Court summarized Ms. Lynam's questions with her concurrence.

The Court rejects the Appellant's interpretation for five reasons. First, we will "construe words according to their plain and ordinary meaning, giving effect to the whole and every part of the ordinance." In re Appeal of Trahan, 2008 VT 90, ¶ 19, 184 Vt. 262 (citations omitted). In construing statutory or ordinance language, our "paramount goal" is to implement the intent of its drafters. Colwell v. Allstate Ins. Co., 2003 VT 5, ¶ 7, 175 Vt. 61. We will therefore "adopt a construction that implements the ordinance's legislative purpose and, in any event, will apply common sense." In re Laberge Moto-Cross Track, 2011 VT 1, ¶ 8, 189 Vt. 578 (quotations omitted). If the words are not defined within a statute, they are given their plain and ordinary meaning, which may be obtained by resorting to dictionary definitions. Franks v. Town of Essex, 2013 VT 84, ¶ 8, 194 Vt. 595.

Because the City's regulations understandably do not define "either . . . or," we turn to the dictionary and find that when "either" is linked with "or," the meaning is "[o]ne or the other." Webster's II New College Dictionary 368 (3rd ed. 2005). Together they indicate a choice between two mutually exclusive possibilities. Webster's example is "Either we go now, or stay here all day." Only one choice is possible. Mr. Goodwin must live in either the main dwelling or the accessory dwelling; he does not have to live in both, nor does a co-owner have to live in one unit while he lives in the other.

Second, we consider the disputed language in context. Words in zoning ordinances are interpreted in a manner that gives "effect to the whole and every part of the ordinance." In re Trahan, 2008 VT 90, ¶ 20 (citing In re Stowe Club Highlands, 164 Vt. 272, 279 (1995)). The City's zoning regulations clearly require an owner of a single-family home with an accessory dwelling unit to reside on the property, but in only one of the units. In the same paragraph of the code cited by the Appellant, the regulations provide that "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." COD Art. 5 Sec. 5.4.5(c) (emphasis added).

Third, as discussed previously, the enabling state statute requires municipalities to allow accessory dwelling units. See 10 V.S.A. § 4412(1)(E). The state law sets parameters on how municipalities may regulate these units, allowing for requirements such as "sufficient wastewater capacity" and a limit on the size of the accessory unit. Id. Nothing in the state law requires an

owner to reside in both the single-family home and the accessory unit, and the state law does not indicate that a municipality may set such a requirement.

Further, the state law specifies that its provisions should not be construed to prohibit a municipal bylaw "that is **less restrictive** of accessory dwelling units." Id. at § 4412(1)(F)(i) (emphasis added). By implication, the law prohibits municipal bylaws that are more restrictive. Requiring an owner to live in both the main dwelling and the accessory dwelling would be more restrictive than the state law.

Finally, the provision is within a section titled "Equal treatment of housing and required provisions for affordable housing." Id. at § 4412(1). Requiring homeowners to occupy both the primary unit and the accessory unit would defeat the state's goal of allowing "[a]ccessory apartments within or attached to single-family residences which provide affordable housing in close proximity to cost-effective care and supervision for relatives, elders or persons who have a disability." Id. at § 4302(11)(D). The Court will not construe the City's accessory dwelling unit regulation to contravene the purpose of a state law.

Fourth, Ms. Lynam's interpretation would lead to an irrational result. See Wesco, Inc. v. Sorrell, 2004 VT 102, ¶ 14, 177 Vt. 287 ("[W]e favor interpretations of statutes that further fair, rational consequences, and we presume that the Legislature does not intend an interpretation that would lead to absurd or irrational consequences.") (internal quotation omitted); *In re Stowe Club Highlands*, 164 Vt. 272, 280-81 (1995) (refusing to interpret a regulation such that it leads to irrational results). It makes no sense to require a homeowner to occupy both the primary home and its accessory dwelling unit. Holders of the deed to a single-family home tend to either be individuals or couples. A single homeowner does not need two dwelling units on the same piece of property, and couples generally choose to share the same living space. Or, assuming the accessory unit is for an aging parent, one possibility envisioned by the state law, the child would be required to either sell or give an interest in the property to the parent. At the very least, such a requirement is unnecessary and overly burdensome, as well as contrary to the state Legislature's intent.

The fifth and final reason the Court rejects the Appellant's interpretation of the ordinance is the City's consistent interpretation of the ordinance. In testimony, the City of Burlington

provided examples of enforcing the ordinance to require an owner to occupy either the main house or the accessory unit, but not both. Because the Court finds the City's interpretation consistent with both the plain language of the CDO and common sense, the City's pattern of enforcement further validates our finding.

For all these reasons, the Court finds that to qualify for an accessory dwelling unit in or appurtenant to an owner-occupied single-family home, a homeowner must occupy either the main dwelling unit or the accessory dwelling unit, but not both.

II. Habitable Floor Space

Mr. Goodwin is not seeking to expand the height or habitable floor area of either the single-family home or the outbuilding that will serve as an accessory dwelling unit. Therefore, he does not need conditional use approval to expand either building's footprint. See COD Art. 5 Sec. 5.4.5(b).

III. Enforceability of the Parking Configuration

Ms. Lynam is concerned that the parking turnaround area next to the driveway she shares with Mr. Goodwin will be used by guests to park their cars. She asks this Court whether the three-space parking configuration—and limitation—is enforceable.

If guests park their cars in the turnaround area, effectively blocking it, they would violate the city's parking regulations and Mr. Goodwin's permit. The City offered testimony at the hearing that officials enforce parking regulations when they observe an infraction, either through their own investigation or in response to a citizen complaint. The Court finds that the parking configuration is enforceable.

Conclusion

The Court finds that the City's zoning regulations do not require an owner to occupy both the primary unit and the accessory dwelling unit, pursuant to COD Section 5.4.5(c); Mr. Goodwin's application does not seek to expand the existing building footprint and he therefore does not need a conditional use permit for that purpose; and the parking configuration is enforceable. We **AFFIRM** the City of Burlington Development Review Board's August 11, 2016 approval of 16-1225CA/CU to convert a portion of the existing garage/outbuilding into an

accessory apartment at 410 North Street in Burlington, Vermont. In addition to the conditions imposed by the DRB in its August 11, 2016 decision, the Court adds the following:

1) Applicant will comply with the proposed site plans as depicted in Goodwin Exs. A, B, C, and D.
2) Applicant will notify any tenants of the required parking configuration with an express statement in any lease agreement.
3) Applicant will notify any guests to the property of the required parking configuration.

A Judgment Order accompanies this Merits Decision. This completes the current proceedings before this Court.

Electronically signed on January 31, 2017 at 10:41 AM pursuant to V.R.E.F. 7(d).

Thomas G. Walsh, Judge
Superior Court, Environmental Division