

Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin
DATE: January 8, 2019
RE: 19-0449DT; 526 St. Paul 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.

Zone: RL Ward: 6S

Owner/Appellant: Estate of Catherine Bernard / Aaron Chiarvelotti

Request: Appeal adverse determination relative to duplex status.

Overview:

The appellant is seeking a determination relative to duplex use of the subject property. City records demonstrate that the property has been used as a duplex for some time. The earliest city record, assessor's data from the 1950's, does not specify a use. The earliest city record suggesting the presence of 2 units is a 1984 assessor's card referring to a vacant apartment.

The subject property is located in the residential low density zone and is very small at just ~3,345 sf. The minimum lot size in this zone is 6,000 sf. For a duplex, the minimum lot size is 10,000 sf. Within this zone, single family homes are permitted, and duplexes are a conditional use. Required onsite parking in this neighborhood parking district is 2 spaces per unit. There is room for just 2 parking spaces on this property. Use as a duplex is nonconforming within this zone on this size lot.

An affirmative determination for duplex use would be predicated on grandfathered status. Grandfathered status (i.e. pre-existing legal non-conformities) pertains to lots/parcels/structures/uses that are non-compliant with a current zoning regulation, but were compliant prior to a change in the regulations.

Recommendation: Uphold adverse determination based on the following findings and conditions:

I. Findings:

The home was originally constructed circa 1855. Its construction predates zoning in Burlington which was adopted in 1947. The only zoning permit on file is one from August 8, 1997 for installation of vinyl siding. The zoning permit refers to "existing brick single family home;" however, the application form notes "duplex" as the existing and proposed use. The application form is unsigned.

City records as to the use of the property consist of the assessor's cards and a single minimum housing record from March 9, 1994. The first indication of use in the assessor's records is on the 1984 property card that shows "R1" (i.e. 1 residential unit) and notes "apt up not rented since '71." The 1993 property card also shows "R1" but notes that the apartment is now occupied. The 1994 property card shows "R2" (i.e. 2 residential units). Present assessor's info continues to show 2 residential units. Curiously, there is only one rental record – the minimum housing inspection from 1994. Rental registration would have been required throughout the 1990's to the present.

Other evidence provided for consideration includes affidavits, city directories, Vermont Gas records, and a homeowner's insurance document.

Affidavits assert the presence of two units at various points dating back to the 1940's. Perhaps most significant is the November 14, 2018 affidavit of Eva M. Muhr, sister of the deceased owner, asserting occupancy of two dwelling units in 1944.

Copies of the Burlington directories from various years spanning the 1940's, 1950's, 1960's, 1970's, and 1980's note two addresses for the property – 524 and 526 St. Paul Street. In most instances, two separate names are indicated for the two addresses. Significantly, several entries for the 1970's state that 524 St. Paul Street is vacant. This evidence matches that of the assessor's records that note the "apartment" was vacant for a number of years in the 1970's.

The Vermont Gas records and the homeowner's insurance document are less significant. The VT Gas records simply show gas bills for both addresses (524 & 526) dating to 1995. Curiously, the records are annual to 1995 and then end at "1950" for the last entry in both cases. The Union Mutual homeowner's insurance document dates to 2017 and simply refers to 2 family/apartments.

The foregoing evidence suggests that the residence physically contained two dwelling units since 1944. The evidence also shows that use of one of those two units as a dwelling ceased for a period of approximately 8 years in the 1970's.

The determination request subject to this appeal was submitted November 16, 2018. Following review of the evidence, an adverse determination was issued November 26, 2018 as noted below.

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize the use of the property as that of a duplex. The City reviewed the following documents/evidence to form its determination:

- The City's zoning permit records
- The City's property assessment records
- 2008 Comprehensive Development Ordinance and as amended
- Zoning Ordinances of 1994, 1973, 1962, and 1947
- Affidavits of Cynthia Herbert, Aaron Chiaravelotti, Frances Nadeau, Juan Mier, & Eva Muhr
- Burlington directories
- Vermont Gas records
- Homeowners insurance record
- Email correspondence with Aaron Chiaravelotti

Based on the review of these items, it is the determination of the Planning and Zoning Department that use of the property cannot be recognized as a duplex. The documentation suggests that the residence physically contained two units since the 1940's; however, the documentation also shows that the "apartment" unit was vacant from 1971 to 1979.

The subject property is ~ 3,345 sf and is located in the residential low density zone. Presently, residential density is limited to 7 units per acre. Single family homes are a permitted use. Duplexes are a conditional use subject to, among other things, a minimum lot size of 10,000 sf. Duplex use on this property is nonconforming. Per the 1973 Zoning Ordinance, a duplex in this zone (R-6 at the time) was subject to conditional use review and a density limit of 5.5 units/acre. No CU approval was sought or obtained at the time the "apartment" was reoccupied. Two-unit density on this 0.08 acre lot exceeded the 5.5 unit/acre limit.

Sec. 5.3.4 *Nonconforming Uses (b) Discontinuance* of the CDO states that a nonconforming use shall not be reestablished if such use has been discontinued for any reason for a period of one year or longer. As noted above, the records show that one of the two units (the "apartment") was vacant for a period of approximately 8 years in the 1970's. This vacancy had the effect of discontinuing the nonconforming duplex use. The nonconforming use cannot be retained. The property may contain a single family home.

An appeal of this adverse determination was filed December 7, 2018, within the 15-day appeal period.

This matter centers on nonconformity and abandonment thereof. The evidence suggests use of two dwelling units at the property as early as 1944 and until 1971. At the time zoning was adopted in 1947, use of the property for two dwellings became nonconforming (a 7,500 sf minimum lot size was required for use other than a single family home). The use became conforming after a 1+ year vacancy of the 2nd dwelling unit in the 1970's. As noted above, when use of the 2nd dwelling unit resumed in or around 1979, conditional use review and approval was required, and maximum residential density of 5.5 units/acre applied. No conditional use approval was sought or obtained then or ever.

Nothing in the appeal addresses the reasons for the adverse determination. The appeal simply reproduces the evidence noted above.

In summary, the evidence shows that use of the property for two dwelling units ceased for most of the 1970's. Sec. 5.3.4 *Nonconforming Uses (b) Discontinuance* of the CDO states that a nonconforming use shall not be reestablished if such use has been discontinued for any reason for a period of one year or longer. Sec. 25 *Nonconforming uses and noncomplying structures*, (a) *Nonconforming uses (2)* of the 1973 zoning ordinance contains the same 1-year provision for abandonment. The nonconforming duplex use was abandoned for about 8 years. Reestablishing the use of two dwelling units at the property in approximately 1979 without the required

conditional use review and approval amounted to an unpermitted change in use and remains unpermitted today.

II. Recommended Motion:

Uphold the adverse determination 19-0449DT.