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Matthew T. Daly
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Jeremy M. Carter

February 8, 2018

Via Hand Delivery

Mr. Scott Gustin
Department of Planning and Zoning
149 Church Street, City Hall
Burlington, VT 05401-8415

***Re: 21 Peru Street/BPJS Management, LLC
Appeal***

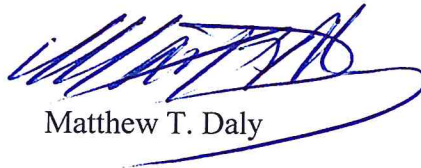
Dear Scott:

Enclosed you will find the following with regard to the above:

1. Appeal of an Administrative Decision (Determination-Findings);
2. Memorandum; and
3. Check in the amount of \$250 for the appeal fee.

Thank you.

Very truly yours,



Matthew T. Daly

Encs.

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DEPARTMENT OF
PLANNING & ZONING



Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
Phone: (802) 865-7188
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www.burlingtonvt.gov/pz

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DEPARTMENT OF PLANNING & ZONING

Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

SUBJECT LOCATION ADDRESS: 21 Peru Street

Subject Property Owner: BPJS Management, LLC

Appellant: BPJS Management, LLC

Agent/Representative: Daly & Daly, P.C.

Mailing Address: 110 Main Street

City, St, Zip: Burlington Vermont 05402

Day Phone: 802-658-6665 Email: mattdaly@dalyanddaly.com

Appellant Signature: [Signature] Duly Authorized Date: Feb. 8, 2018

In order for your request to be considered complete, ALL of the following information must be provided, as applicable:

- The Appeal fee of \$250;
Description of the decision under appeal;
Description of the property subject to the appeal;
Reference to the regulatory provisions applicable to the appeal;
Relief requested by the appellant;
Alleged grounds why such requested relief is believed proper under the circumstances.

Office Use Only:
Check No. Amount Paid Zoning Permit #

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DEPARTMENT OF
PLANNING & ZONING

Matthew T. Daly
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MEMORANDUM

TO: Mr. Scott Gustin, Planner
Department of Planning & Zoning
FROM: Daly & Daly, P.C.
SUBJECT: BPJS Management, LLC—21 Peru Street
Preexisting Nonconforming Use
DATE: February 8, 2018

BPJS Management, LLC (“BPJS”), owns real property located at 21 Peru Street (the “Property”). On December 5, 2017, BPJS requested that the Burlington Planning and Zoning Department (the “Department”) formally recognize BPJS’s use of the Property as a permissible preexisting nonconforming use. Specifically, BPJS requested the Department formally recognize that the Property was not subject to the Burlington Zoning Ordinance that limits the number of unrelated adults that occupy a single dwelling unit to four. BPJS made this request after a resident complained to the City that BPJS’s use of the Property was in violation of Burlington’s Zoning Ordinance. The Department issued a final “Zoning Determination—Findings” on January 24, 2018 (the “Decision”).¹ The Department concluded in the Decision that BPJS may permit “6 unrelated adult occupants” at the Property as a “grandfathered preexisting nonconformity.”

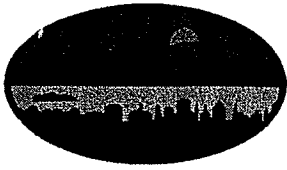
BPJS appeals the Department’s Decision to the extent that it limits BPJS’s ability to only permit 6 unrelated adults to occupy the Property. The Property is designated as a part of the Residential High Density District. BPJS purchased the Property on May 24, 2011. At that time and at all times since then, the Property has been leased and occupied by more than four unrelated adults. When BPJS purchased the Property, there were no limits to the number of unrelated people that could occupy a dwelling unit in the Residential High Density District. *See* 2008 Burlington Comprehensive Development Ordinance § 4.4.5(d)(5)(C). This changed, however, when the City Council adopted an amendment to the Comprehensive Development

¹ Two Decisions were issued actually. The first allowed five unrelated adult occupants. The second Decision (a “revised determination”) was issued January 29, 2018, and allowed six unrelated adult occupants.

Ordinance on December 26, 2012. This Amendment set certain restrictions on the number of unrelated adult occupants of dwelling units in the Residential High Density District for the first time. Following the City Council's adoption of the Amendment, BPJS's use of the Property became a preexisting nonconforming use.

BPJS appeals the Department's Decision, because the Department cannot arbitrarily limit the number of unrelated adults that occupy the Property. BPJS's use of the Property is exempt from the Ordinance limiting the number of unrelated adults that occupy the Property. BPJS requests the Development Review Board remove the arbitrary restriction imposed by the Department and find that BPJS's use of the Property is a permissible nonconforming use. BPJS contends there should be no limit on the number of unrelated adult occupants at the Property.

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DEPARTMENT OF
PLANNING & ZONING



Zoning Determination – Findings

City of
Burlington, Vermont
149 Church Street

ZP #: 18-0556DT

Tax ID: 044-2-084-000

Issue Date: January 24, 2018

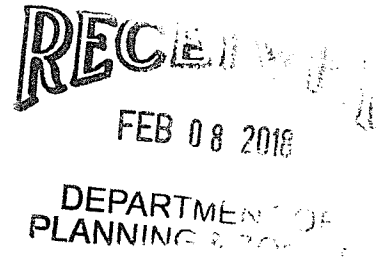
Decision: Affirmative

Property Address: 21 PERU STREET

Description: Determination request of preexisting nonconforming use of dwelling for more than 4 unrelated adult occupants.

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize occupancy of the dwelling unit with more than 4 unrelated adults at the subject property as a “grandfathered” preexisting nonconformity. The City reviewed the following documents/evidence to form its determination:

- The City’s zoning permit records
- The City’s property assessment records
- The City’s rental registration records
- The City’s 2008 Comprehensive Development Ordinance and as amended
- Cover letter dated December 7, 2017 included in determination request
- April 5, 2017 email from Caryn Long relating to the property
- Property leases dating from the present back to June 1, 2011



The subject property is located in the Residential – High Density zone. The limitation of 4 unrelated adults within a dwelling unit became effective in this zone as of December 26, 2012. The property leases for each year from June 1, 2011 to the present include more than 4 unrelated adult occupants in the dwelling.

- 5 Unrelated adult occupants from June 1, 2011 – May 25, 2012
- 6 Unrelated adult occupants from June 1, 2012 – May 25, 2013
- 5 Unrelated adult occupants from June 1, 2013 – May 25, 2014
- 7 Unrelated adult occupants from June 1, 2014 – May 25, 2015
- 7 Unrelated adult occupants from June 1, 2015 – May 25, 2016
- 8 Unrelated adult occupants from June 1, 2016 – May 25, 2017
- 8 Unrelated adult occupants from June 1, 2017 – May 15, 2018

The evidence shows that occupancy of the dwelling unit has grown from 5 unrelated adult occupants in 2011 to 8 unrelated adults presently. Since June 1, 2012, the evidence shows that there have been at least 6 unrelated adult occupants. Based on review of the evidence, it is the determination of the Planning and Zoning Department that occupancy of the subject dwelling by **6 unrelated adult occupants** is a grandfathered preexisting nonconformity. As such, occupancy of the dwelling by 6 unrelated adults is a legitimate nonconformity and may continue subject to the standards of *Article 5, Part 3: Non-Conformities* of the 2008 Comprehensive Development Ordinance and as amended. Note, however, that occupancy of the subject dwelling unit by any more than 6 unrelated adult occupants is not a legitimate nonconformity but, rather, it is an unpermitted expansion of a nonconformity.

This determination relates to the occupancy of the dwelling and to no other aspect of the property.