

## Department of Planning and Zoning

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**TO:** Development Review Board  
**FROM:** Scott Gustin *SG*  
**DATE:** November 1, 2016  
**RE:** 17-0189CA; 28 Pine Street

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**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: D                      Ward: 3C

Owner/Appellant: Chris Khamnei

**Request:** Appeal of zoning permit denial to change use to single family residence.

### **Overview:**

The appellant is seeking approval to convert a mixed use building in the Downtown zone to a detached single family dwelling. The subject property is currently permitted for a mixed use residential/office building. *Appendix A – Use Table – All Districts* notes that single detached dwellings are prohibited in the Downtown zone. The zoning permit application was denied and is now under appeal.

**Recommendation:** Uphold zoning permit denial based on the following findings and conditions:

### **I. Findings:**

The subject property has been permitted for commercial use since at least 1983. Most recently, it was approved for mixed office/residential use in October 2012 (zoning permit 13-0393CA). The original use of the structure, which dates to circa 1870, was seemingly residential. The historic listing for the property states that its history was not noted until 1900 when it was used as a rental property for tenants working on the waterfront or downtown. Single or multi-unit is not noted.

August 15, 2016, an application was filed to convert from the present mixed use to a single family residence.

Following review of the application, staff contacted the applicant to inform him that single family homes are not permitted in the Downtown zone. Following an email exchange, the applicant elected to keep the application as is.

The zoning permit application was denied September 12, 2016. Reasons for denial are noted below:

The subject property has most recently been permitted (zoning permit 13-0393CA) and used as a mixed use commercial/residential building. The proposed conversion to a single detached dwelling unit cannot be approved. *Appendix A – Use Table – All Districts* of the Comprehensive Development Ordinance notes that single detached dwellings are not allowed in the D zone, wherein the subject property is located.

An appeal of the denial was filed September 27, 2016, within the 15-day appeal period.

The appeal is founded largely on Sec. 4.4.1, (d) 1 A, *Ground Floor Residential Uses Restricted*. This section prohibits ground-floor residential uses within Downtown and related districts. It provides an exemption from this prohibition for “historic buildings originally designed and constructed for residential use...” The appeal asserts that this exemption relative to ground-floor residential uses somehow also allows creation of single family homes in the Downtown zone.

The central argument of the appeal is misplaced. Sec. 4.4.1, (d) 1 A pertains only to residential use of the ground floor and refers to residential use generally. It does not distinguish between single, duplex, or multi-family residential use. The effect of this section is to prevent creation of residential uses, whatever their type, within the ground floor of downtown buildings. The exception that the appeal hinges on simply allows creation of residential uses on the ground floor of buildings originally designed and constructed for residential use. Under this provision, the subject property could have an apartment on the ground floor so long as it contains commercial space and/or at least 2 additional dwelling units elsewhere in the building.

Sec. 4.4.1 (c) *Permitted and Conditional Uses* refers to *Appendix A – Use Table* for uses that may be permitted or conditionally permitted in the Downtown Mixed Use Districts. Within *Appendix A – Use Table*, single detached dwellings are listed as “N” (not allowed) in the “D” (Downtown) zone.

The creation of a single detached dwelling within the Downtown zone is not allowed under the provisions of the Comprehensive Development Ordinance. The request to allow creation of a single detached dwelling at 28 Pine Street cannot be approved.

## **II. Recommended Motion:**

Uphold zoning permit denial 17-0189CA.

## **Burlington Design Advisory Board**

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Jeremy Gates, Alt.*



**DESIGN ADVISORY BOARD**  
**Wednesday November 9, 2016 at 3:00 PM**  
**Conference Room 12, City Hall, Burlington, VT**  
**Agenda**

**Session I - 3:00pm – 3:30pm**

- 1. 17-0479CA; 79 Lakeside Ave (RL-W, Ward 5S) Rebecca A. Schwarz**  
Renovation and expansion of second story. (Project Manager, Mary O'Neil)

**Session II – 3:30pm – 4:00pm**

- 2. 17-0455CA; 57 South Williams (RH, Ward 1E) Vermont Organization for Jewish Education - Lubavitch**  
Two level addition, 5500 sq. ft. to west side of existing building. New worship sanctuary on upper level with supporting spaces on lower level; new off street parking, landscaping and erosion prevention. (Project Manager, Ryan Morrison)

