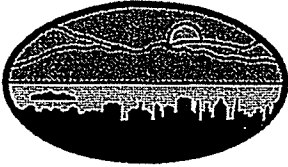


Conditional Use – Findings of Fact



City of
Burlington, Vermont
149 Church Street

ZP #: 15-0868CU

Tax ID: 050-1-098-000

Issue Date: May 4, 2015

Decision: Approved w/ Pre-Release
Conditions

Property Address: 404 COLLEGE STREET

Burlington Development Review Board

Minutes/Findings of Fact
May 4, 2015

File: ZP15-0656 CA/MA
Location: 404 College Street
Zone: RH **Ward:** 1E

Date application accepted: March 11, 2015

Applicant/ Owner: Dunlap Riehle

Request: Change of use from duplex to a single residential unit and boarding house in the second unit.

Members Present:

Jonathan Stevens, Brad Rabinowitz, AJ LaRosa, Jim Drummond, Missa Aloisi, Israel Smith, Michael Long

Evidence Presented:

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

I. FINDINGS

Background:

- Zoning Permit 77-752; to erect a 40' x 112' apartment house. This appears to be the incorrect address as the subject building was built in 1844.
- Zoning Permit 91-303; construct retaining wall. April 1991. Permit expired.
- Zoning Permit 95-391; fence. Approved April 27, 1995.
- Zoning Permit 01-333 / COA 02-11; Change of use from fraternity to duplex; each unit with four bedrooms. Approved March 8, 2001.
- Zoning Permit 06-464CA; Site modifications to previous approval (Zoning Permit 01-333 / COA 02-11) not to reduce parking. Approved March 20, 2006.
- Zoning Permit 06-465FC; fence and trash bin enclosure. Approved February 16, 2006.
- Zoning Permit 06-731CA; Revised parking configuration and construct patio and walkway. Parking to be white crushed gravel and patio and walkway to be slate. Approved June 6, 2006. (06/06/06)

Overview: The structure is known as the Captain Daniel Lyon House (c. 1844), and is listed on the National Register of Historic Places within the Main Street College Street Historic District. The building is the former Acacia Fraternity house that was converted into two residential units with occupancy of four bedrooms in each unit (Zoning Permit 01-333 / COA 02-11). The current request is to convert one of these six bedroom units into a boarding house unit with occupancy of the six rooms. The owner will live on the premises intending to occupy the unit that does not contain the boarding rooms.

Section 3.5.6 Review Criteria

The application and supporting documentation submitted for proposed development involving Conditional Use and/or Major Impact Review, including the plans contained therein, shall indicate how the proposed use and associated development will comply with the review criteria specified below:

(a) Conditional Use Review Standards: Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on the following general standards:

1. *The capacity of existing or planned community facilities;*

This is an existing high density residential area. This is a large building and the number of rooms occupied will increase from eight (four/unit) to ten (four in one unit and six in the other). The increase in the number of occupied rooms should ultimately pose no adverse impact to existing or planned community facilities. **Affirmative finding.**

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;*

As there are no exterior or interior modifications to the building or site proposed the occupancy of two additional rooms in the existing large building in this high-density residential district would not change the character and specified intent of the zoning district.

Previous application, Zoning Permit 01-333 /COA 02-11, was approved with the understanding that there would be multiple roommates and require adequate parking counts. This proposal is answering the demand for housing that has become a recent focus; finding residential options for individuals that wish to live close to where they work and play. The change to boarding use and increase in the bedroom occupancy count is an exception to the change to the Functional Family Housing provision, which now extends into the RH zone.

From the MDP:

- *Support housing models, organizations, and programs that insure perpetual affordability, fill gaps in the housing tenure ladder, and increase the overall supply of housing the community. (Municipal Development Plan, Housing Plan, Page IX-2.)*
- *Support the development of additional housing opportunities within the city... (Municipal Development Plan, Housing Plan, Page IX-1.)*
- *Retain [Burlington's] moderate scale and urban form in its most densely developed areas, while creating opportunities for increased densities. (MDP, Page III-1.)*

Affirmative finding.

3. *Traffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to complementing the flow of traffic and/or parking needs; if not in a commercial district, the impact of customer traffic and deliveries must be evaluated;*

The proposal represents that the existing parking configuration will be maintained. As the current use of the parking lot does not conform to the parking plan approved in 2006; see approved site plan and 2012 aerial photo, this needs to be addressed. Also refer to discussion under 4 and Article 8, below.

Affirmative finding as conditioned.

4. *Any standards or factors set forth in existing City bylaws and city and state ordinances;*

The zoning district and the City Master Plan support increased residential use in the RH zone.

The boarding house use itself is not in conflict with City bylaws or state ordinances; however it must meet any life safety requirements that may be triggered as a result in the change of occupancy. However, the approved parking lot configuration does not conform to the actual parking occurring on site. In addition, while not directly related to the boarding house it appears that replacement windows have been installed without the benefit of zoning permits. This will be referred to Code Enforcement for investigation.

Affirmative finding as conditioned.

5. *The utilization of renewable energy resources*

No part of this application will prevent the use of wind, solar, or water energy sources. Southerly exposure will complement the rear access/lobby for residential use. **Affirmative finding.**

and,

In addition to the General Standards specified above, the DRB;

6. *shall consider the cumulative impact of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible;*

The parcel is zoned for high density residential housing, and can accommodate the proposed occupancy. The cumulative impact must be considered negligible. **Affirmative finding.**

7. *in considering a request relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, RL-W, RM and RM-W districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green space standards must be observed.*

Zoning Amendment ZA-13-01 extended the Functional Family provisions of the ordinance to the RH district. *In all residential districts except the RH district, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.*

No new units are being created although occupancy of one unit is changing from a four bedroom occupancy to a 6 room boarding use. **Affirmative finding.**

8. *may control the location and number of vehicular access points to the property, including the erection of parking barriers.*

The proposal intends to utilize the existing vehicular access point off Williams Street. The parking barriers, planters and bollards, as approved are not in place. The bollards are in a different location and are moveable posts set in a concrete base connected simply by a single strand of rope. The planters are pots lined up along the east side of the house. The whole parking lot appears disorganized with vehicles haphazardly parked on the site. Neither the "picnic area" nor the walkway indicated on the site plan is evident. This needs to be resolved as the current situation is not in compliance with approved 2006 site plan, and is unacceptable. **Affirmative finding as conditioned.**

9. *may limit the number, location and size of signs.*

No signs proposed. Any signage will require a separate sign permit. **Not applicable.**

10. *may require suitable mitigation measures, including landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

The parking area and the building itself have not been maintained in good repair as this historic site deserves. The applicant has submitted the approved site plan (dated 6/18/2006) with a picnic area, walkway, landscaping, planters, and bollards that have not been implemented as approved. A fence was also approved but it too is in some disrepair. In order, not only to mitigate the increase in the use of the property, but to bring it into compliance with the approved site plan measures are needed to insure reliable parking in the future. **Affirmative finding as conditioned.**

11. *may specify a time limit for construction, alteration or enlargement of a structure to house a conditional use.*

The Comprehensive Development Ordinance Section 3.2.9 (d) affects a two year time limit on project completion. **Affirmative finding as conditioned.**

12. *may specify hours of operation and/or construction to reduce the impact on surrounding properties.*

Any exterior changes required for improving the parking area are allowed to be constructed Monday through Friday 7am to 6 pm with a limit on weekend hours (Saturday 9 am to 5 pm for interior work only.) **Affirmative finding as conditioned.**

13. *may require that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.*

This is a statutory requirement. **Affirmative finding as conditioned.**

14. *may consider performance standards, should the proposed use merit such review.*

Hours of construction are proposed to be limited. In addition, the parking lot needs to be improved and function in an organized manner. Any other performance standards would be at the discretion of the DRB. **Affirmative finding as conditioned.**

15. *may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

Conditions are proposed as indicated under the appropriate findings to address compliance with approved plans, and referrals to Code for potential violations. **Affirmative finding as conditioned.**

Article 4: Maps and Districts

Section 4.4.5 Residential Districts

Boarding House⁶ (5 persons or more) is a Conditional Use in the RH district. Footnote 6 requires owner occupancy. Owner occupancy is defined as: *Where owner occupancy is required by this ordinance, owner occupancy shall mean occupancy of premises by an owner for at least 50% of the year. (CDO Article 13.)* The applicant/owner is proposing to live on the premises in the non-boarding house unit. **Affirmative finding as conditioned.**

Article 5: Citywide General Regulations

Part 2: Dimensional Requirements

Section 5.2.1 Existing Small Lots

Not applicable.

Section 5.2.2 Required Frontage or Access

The lot has access to a public road. (College Street.)

Affirmative finding.

Section 5.2.3 Lot Coverage Requirements

No additional lot coverage is proposed. **Not applicable.**

Section 5.2.4 Buildable Area Calculation

Not within the RCO, WRM, RM, WRL or RL zoning district. **Not applicable.**

Section 5.2.5 Setbacks

No changes to setbacks are proposed. However, any modification to the parking area will need to respect minimum setback requirements. **Affirmative finding as conditioned.**

Section 5.2.6 Building Height Limits

No change to building height is proposed. **Not applicable.**

Section 5.2.7 Density and Intensity of Development Calculations

No change to density is proposed; remains two units. **Not applicable.**

Part 4: Special Use Regulations

Section 5.4.8 Historic Buildings and Sites

404 College Street is on the National Register of Historic Places, within the Main Street College Street Historic District.

As there are no changes propose for the structure itself this section is **not applicable**. However, as noted there were some changes that were undertaken without approvals and this will be referred to Code Enforcement for investigation.

Article 6: Development Review Standards

PART 2: SITE PLAN DESIGN STANDARDS

The applicant is not proposing any exterior changes and is relying on an already approved site plan. However, this site plan has not been implemented as approved. With the change in occupancy parking lot improvements appear to be needed.

Section 6.2.2 Review Standards

(a) Protection of Important Natural Features:

No natural features. **Not applicable.**

(b) Topographical Alterations:

No topo changes. **Not applicable.**

(c) Protection of Important Public Views:

There are no publically accessible views. **Not applicable.**

(d) Protection of Important Cultural Resources:

No changes to the historic building are proposed. However, as observed the building is somewhat in disrepair and unapproved windows have been installed. This will be referred to Code Enforcement for investigation. **Not applicable**

(e) Supporting the Use of Renewable Energy Resources:

No part of this application will preclude an opportunity to use direct sunlight, solar, wind, or geothermal; all of which are encouraged. **Affirmative finding.**

(f) Brownfield Sites:

None identified.

(g) Provide for nature's events:

The proposed condition to improve the parking lot may require a Small Project Erosion Prevention & Sediment Control Plan. **Affirmative finding as conditioned.**

(h) Building Location and Orientation:

No changes to the building are proposed. **Not applicable.**

(i) Vehicular Access:

There is no change proposed to the vehicular access. The existing curb cut and driveway will be utilized. The applicant is proposing to locate a dumpster at the northeast corner of the parking lot. There does not appear to have been any scaling or details of the exact location. It must be a minimum of five feet from side property line and cannot occupy a required parking space. Also it needs to be screened. A revised site plan of professional quality and to scale is needed to determine how parking and trash removal will operate. **Affirmative finding as conditioned.**

(j) Pedestrian Access:

Pedestrians shall be provided one or more direct and unobstructed paths between a public sidewalk and the primary building entrance. Well defined pedestrian routes shall be provided through parking areas to primary building access points and be designed to provide a physical separation between vehicles and pedestrians in a manner that minimizes conflicts and improves safety. Where sidewalks and driveways meet, the sidewalk shall be clearly marked by differentiated ground materials and/or pavement markings. There is an existing pedestrian walkway to the building from College Street. A walkway is delineated on the 2006 site plan but does not exist on the site. This is needed and should be added in detail to the required site plan. **Affirmative finding as conditioned.**

(k) Accessibility for the Handicapped:

Special attention shall be given to the location and integration of accessible routes, parking spaces, and ramps for the disabled. Special attention shall also be given to identifying accessible access points between buildings and parking areas, public streets and sidewalks. The federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) shall be used as a guide in determining the adequacy of the proposed development in addressing the needs of the disabled.

The property will need to meet any ADA compliance as may be required. **Affirmative finding as conditioned.**

(l) Parking and Circulation:

The parking area is existing. However, as noted throughout these comments it has not been implemented as approved, nor has it functioned as anticipated. The "existing" parking and a site visit confirmed the haphazard nature of the parking area and the inconsistency of the "improvements". The parking spaces are not defined and need to be.

All parking areas shall provide a physical separation between moving and parked vehicles and pedestrians in a manner that minimizes conflicts and gives pedestrians a safe and unobstructed route to building entrance(s) or a public sidewalk.

The pedestrian walkway illustrated on the approved plan between the parking area and the building is non-existent. A walkway differentiation from the parking area needs to be provided and indicated on the site plan. **Affirmative finding as conditioned.**

(m) Landscaping and Fences:

Landscaping/planting is shown on the 2006 plan. The current site conditions need to rethink these details and improve the provision of landscaping. **Affirmative finding as conditioned.**

(n) Public Plazas and Open Space:

No public open space proposed. **Not applicable.**

(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

No indication of any proposed lighting has been provided. If any lighting fixtures are to be placed on site details and photometrics are needed to assure appropriate light levels and compliance with Sec. 5.5.2.

Affirmative finding as conditioned.

(p) Integrate infrastructure into the design:

A dumpster is proposed but merely noted by an arrow on the northeast of the parking area. This is insufficient detail and the dumpster location dimensions and screening (required) must be provided. It cannot be located within a setback nor can it usurp a parking space. There is no enclosure defined, and needs to be. **Affirmative finding as conditioned.**

Article 8: Parking

Parking (site within a Neighborhood District) for the property with the proposed boarding house is calculated as follows:

Required

2 units x 2 spaces =4;

Six boarding rooms (1 per 2 beds) =3

Total of 7 parking spaces required

Provided

10 are illustrated on the 2006 approved site plan.

While 10 spaces meet the requirement, there are some concerns:

- Four spaces (two x two) are in tandem. *Section 8.1.14 (b)* addresses tandem parking allowing tandem parking for duplexes; however, as this proposal modifies the duplex use and results in six rooms rented to six individuals, tandem parking is not appropriate. As there are eight spaces that are not tandem this plan is only acceptable as long as the parking lot operates as approved. However, this has not occurred and the resulting problem is considered below.
- The lack of organized parking occurring on site must be addressed. With the increase in occupants whereby six unrelated individuals will be living in one unit, there is greater need for the parking lot and useable spaces to be clearly defined. This has not occurred in the past, thus it is recommended that, in order for the lot to operate effectively, the parking area should be paved and all parking spaces clearly striped. In addition, each occupant who has a vehicle must have an assigned space. All required barriers as illustrated on the approved site plan must also be installed to prevent continued unorganized parking. A revised site/parking plan may be considered to meet these concerns as well. **Affirmative finding as conditioned.**

Section 8.2.5 Bicycle Parking Requirements

Table 8.2.5-1

Requirement per CDO	Residential Housing Living, multi-unit, 1 per 4 units Long Term; 1 per 10 units Short term.
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While bicycle parking is not required, it is suggested that the applicant provide long-term and short term bike parking. **Affirmative finding.**

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

III. **MOTION: Brad Rabinowitz**

I move that the Board approve certificate of appropriateness approval for the change of use from duplex to a single residential unit and boarding house in the second unit for the property at 404 College Street in the RH zone and adopt the staff findings and conditions modified as follows:

Conditions of Approval

1. **Prior to release of the zoning permit**, the applicant shall submit a zoning application for a revised site/parking plan, subject to review and approval by staff. This plan shall include the following:
 - a. the lot shall be paved & striped to assure all parking occurs in an organized manner;
 - b. landscaping, barriers or other techniques that insure there will be organized and clearly defined parking on the site;
 - c. provide for a pedestrian walkway, (the approved walkway is not evident on the ground). The pedestrian walkway shall be differentiated, other than typical striping.
 - d. details of the location for the dumpster and its enclosure shall be included.
 - e. a Small Project Erosion Prevention & Sediment Control Plan to be provided if required.
 - f. any short term bicycle parking racks shall be illustrated and detailed
2. Any occupants with vehicles shall be assigned specific a parking space.
3. Hours for any construction related to exterior work (the parking lot) is limited to Monday through Friday 7am to 6 pm with a limit on weekend hours (Saturday 9 am to 5 pm for interior work only).
4. If there are any exterior lighting fixtures proposed, they need to be detailed and photometrics included to assure appropriate light levels and compliance with Sec. 5.5.2.
5. The property will need to meet any ADA compliance as may be required.
6. Standard Permit Conditions 1-15.

Seconded: Israel Smith

Vote: 7-0-0, motion carried

Dated at Burlington, Vermont, this 11 day of May 2015

Respectfully Submitted,


Jonathan Stevens, Development Review Board Vice 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.