

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner *monell*
Date: December 6, 2016
RE: ZP17-0548CU, 85 Lakeview Terrace

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.

File: ZP17-0548CU

Location: 85 Lakeview Terrace

Zone: RM **Ward:** 3C

Date application accepted: October 31, 2016

Applicant/ Owner: Peter Kamitses, Jovial King

Request: Change of use from single family residence with accessory apartment to single family residence with accessory apartment rented occasionally as one room Bed and Breakfast.

Background:

- **Zoning Permit 14-1300CA/CU;** Construct 2 story addition to existing single family home; remove existing shed and construct new accessory structure for accessory dwelling unit and storage. Approved August 2014.
- **Zoning Permit 08-267CA;** Enclose existing front porch and replace two attic windows at gable ends. Application **denied**, January 2008.
- **Zoning Permit 07-668CU;** Change of use from single family residence to bed and breakfast. Application **denied**, June 2007. (Not owner occupied.)
- **Zoning Permit** to erect a 14' x 16' open deck and railing on the rear of existing house; demolish existing porch except the roof. Approved April 1975.

Overview: 85 Lakeview Terrace is a single family home with a detached structure approved for an accessory unit. The owners wish to rent the accessory structure as a short term rental during periods that a family member is not there. As Burlington has no category for short term rental opportunities, these requests are reviewed as Bed and Breakfast use.

Applicable Regulations:

Appendix A (Use Table – All Zoning Districts), Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 8 (Parking), Article 13 (Definitions)

Recommendation: Consent approval, per the following findings and conditions:

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I. Findings

Appendix A: Use Table – All Zoning Districts

Bed and Breakfast is a Conditional Use in the RM zoning district. Footnotes 4 and 6 of Appendix A apply to bed and breakfasts. Footnote #4 states: “No more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use. No more than 3 rooms permitted to be let in the RL district.” Footnote #6 states: “Must be owner-occupied.” The applicant proposes to rent out only 1 bedroom as a bed and breakfast rental. The owner currently occupies the property. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 5: Conditional Use and Major Impact Review

Section 3.5.6 Review Criteria

(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 each of the following general standards:

1. *Existing or planned public utilities, facilities, or services are capable of supporting the proposed use in addition to the existing uses in the area;*

Converting an existing bedroom into a rental, bed and breakfast room will have minimal impact on public utilities, facilities and services. If the new use requires a state wastewater permit, applicant will be responsible for securing said permit. **Affirmative finding as conditioned.**

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;*

The property is within an established residential neighborhood and a residential zoning district. The Medium Density (RM) zoning district is intended primarily for medium density residential development in the form of single detached dwellings and attached multi-family apartments. The RM zoning district has the potential to have up to 5 rental rooms (Footnote #4, Appendix A.) The conversion of one bedroom in a medium density residential neighborhood to rental lodging, in addition to the existing single family residence will have negligible impact on traffic and circulation. It might be assumed that the resident of the accessory unit presented the same parking or traffic intensity as would the proposed renter.

The approval of a Bed and Breakfast rental room will *not* be considered a new dwelling unit. **Affirmative finding as conditioned.**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

No greater impacts are anticipated than other residential uses in the area. **Affirmative finding.**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation, safety for all modes; and adequate transportation demand management strategies;*

This parcel is located on Lakeview Terrace, which connects at both ends to North Avenue. The proposed rental of one bedroom would result in the requirement for one vehicle to the onsite parking, which has an existing requirement for 2 spaces for the single family home. Previous approval for the accessory unit required a single parking space for that use, in addition to the 2 for the single family home. The change of use will not increase traffic and circulation from the present residential demand of this property.

Affirmative finding.

5. *The utilization of renewable energy resources;*
Nothing within the application prevents the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**
and;
6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.*
The application and resultant change in use will be required to meet all bylaws and city and state ordinances in effect at the time of decision. Specific to the proposed use the applicant will have to ensure compliance with state regulations regarding short-term B&B/Airbnb type rentals, including but not limited to payment of required rooms and meals taxes. **Affirmative finding as conditioned.**

(c) Conditions of Approval

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;*
Not applicable. No changes to the site are proposed.
2. *Time limits for construction.*
There is no construction proposed.
3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*
Not applicable. Hours of operation do not apply to the proposed Bed and Breakfast rental room.
4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions,*
There are no enlargements or alterations proposed, as the Bed and Breakfast room will locate within an existing bedroom previously permitted as part of an accessory apartment.

However, should the applicant wish to add an additional Bed and Breakfast room(s), the change of use will require review and permitting under regulations in effect at that time. Both the accessory apartment and a one-bedroom Bed and Breakfast rental cannot occur at the same time, as each is a separate use requiring off site parking.

Affirmative finding as conditioned.

and

5. *Such additional reasonable performance standards, conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*
None identified.

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

(a) Purpose

1. *The Medium Density (RM) district is intended primarily for medium density residential development in the form of single family detached dwellings and attached multi-family apartments.*

A bed and breakfast is proposed, and may be approved through the conditional use permit process.

Appendix A – Use Table, has 2 footnotes for Bed and Breakfast Use:

#4: *...no more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use.*

This is in a RM zone and application proposes one bedroom. **Affirmative finding as conditioned.**

#6: *Must be owner occupied.*

The applicants assert they live at the subject property. Further, in August 2014, the property was approved to have a one-bedroom accessory dwelling unit. Similar to bed & breakfasts, in order to have and maintain an accessory dwelling unit, Sec. 5.4.5 (a) CDO requires that the property owner reside on-site. **Affirmative finding as conditioned.**

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

Table 4.4.5-1 Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W.

Minimum lot frontage for RM zoned properties is 30 feet. The property has approximately 51 feet of frontage. There are no minimum lot size requirements within the RM zone.

Table 4.4.5-2 Base Residential Density

The RM district is limited to 20 dwelling units per acre. As per Sec. 5.4.5 (a) CDO, “*an accessory dwelling unit shall not be counted as a dwelling unit for the purposes of density calculations.*” Bed and Breakfasts are considered short-term lodging, and are therefore not considered as a dwelling unit. The property is currently considered to have one dwelling unit,

and will continue to be considered as a one dwelling unit property should the Bed and Breakfast room be approved. **Affirmative finding.**

Table 4.4.5-3 Residential District Dimensional Standards

Not applicable. No new construction or alterations to existing site features are proposed.

(c) Permitted and Conditional Uses

An owner-occupied bed and breakfast use, up to 5 rooms in the RM zoning district, is a conditional use per Appendix. A. See Above.

(d) District Specific Regulations

1. Setbacks

A. Encroachment for residential driveways
Not applicable.

B. Encroachment into the Waterfront Setback
Not applicable. No development is proposed.

2. Height

No change. Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features
Not applicable.

4. Accessory Residential Structures and Uses

Not applicable.

5. Residential Density

Not applicable.

6. Uses

A. Exception for Existing Neighborhood Commercial Uses
Not applicable.

7. Residential Development Bonuses

No bonuses are sought. Not applicable.

Article 5: Citywide General Regulations

Part 1: Uses and Structures

Section 5.1.1 Uses

(d) Conditional Uses

A conditional use is listed in any district where denoted by the letters “CU” in Appendix A – Use Table. Such uses may be permitted by the DRB only after review under the conditional use provisions provided in Article 3, Part 5, such further restrictions as the DRB may establish and such additional requirements as may be established by this ordinance such as but not limited to

dimensional and intensity limitations, performance and design standards, and parking requirements.

A Bed and Breakfast is a Conditional Use in Appendix A, Use Table, for the RM district. The project meets the two footnote requirements; see Sec. 4.4.5(c) above. **Affirmative finding.**

Section 5.1.2 Structures

Not applicable.

Part 2: Dimensional Requirements

Section 5.2.1 Existing Small Lots

Not applicable.

Section 5.2.2 Required Frontage or Access

See Table 4.4.5-1 above. **Affirmative finding.**

Section 5.2.3 Lot Coverage Requirements

See Table 4.4.5-3 above. **Affirmative finding.**

Section 5.2.4 Buildable Area Calculation

The lot does not exceed 2 acres. Not applicable.

Section 5.2.5 Setbacks

No change. Not applicable.

Section 5.2.6 Building Height Limits

No change. Not applicable.

Section 5.2.7 Density and Intensity of Development Calculations

See Table 4.4.5-2 above. Not applicable.

Part 4: Special Use Regulations

Not applicable.

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

In the Neighborhood Parking District, single family uses require 2 parking spaces, and Bed and Breakfast use require 1 space per room, in addition to the single family residence requirement. Section 5.4.5 (a) (4) requires 1 space for accessory dwelling units. The Bed and Breakfast rental room is the same as was previously approved for an accessory apartment, so the parking space dedicated to that use could now be utilized by the Bed and Breakfast need. 3 spaces remain on-site, as approved under ZP14-1300CA. **Affirmative finding.**

Article 13: Definitions

Bed and Breakfast: *An owner-occupied residence, or portion thereof, in which short-term lodging rooms are rented and where only a morning meal is provided on-premises to guests.*

The applicant has proposed 1 room to let in the bed and breakfast. **Affirmative finding as conditioned.**

Owner: Any person, firm, partnership, association, joint venture, corporation or other entity or combination of entities who alone, or jointly or severally with others hold(s) legal or equitable title to any real property.

Per the ordinance, the owner (who must be listed on the deed) is required to be a resident of the bed and breakfast. **Affirmative finding as conditioned.**

Owner Occupied: 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.

As a bed and breakfast, an owner, whose name is on the title, is required to live on the premises at least 6 months of the year. **Affirmative finding as conditioned.**

II. Conditions of Approval

1. This approval is for a ONE-bedroom Bed and Breakfast use, in the place of the Accessory Apartment when not occupied. Both uses shall not occur simultaneously under this approval. The applicant will allow Code Enforcement to periodically confirm that the use is limited to the one-bedroom rental limitation. This may include review of web-based advertising, posted guest comments, or response to neighborhood complaint.
2. Approval of a one-bedroom Bed and Breakfast use will not constitute a new dwelling unit. The property remains a single family home with a one-bedroom Bed and Breakfast rental/Accessory Apartment.
3. Conditions relative to the accessory apartment approval (ZP14-1300CA) remain in effect for purposes of that use.
4. The subject property must be, and remain owner occupied as long as the Bed and Breakfast remains in operation.
5. It is recommended that guests' arrival and departures be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
6. All guest parking shall be on-site and off-street.
7. Regarding Standard Permit Condition #1 above, the applicant will have to ensure compliance with state regulations regarding Bed and Breakfast /short term rentals, including but not limited to payment of required rooms and meals taxes.
8. Any additional Bed and Breakfast room, or physical alteration, will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.
9. The applicant/property owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
10. The applicant/property owner shall secure a state wastewater permit, should one be required for the proposal.
11. Standard Permit Conditions 1-15.