

Department of Planning and Zoning

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Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin
DATE: August 20, 2013
RE: 11-1065CU; 26 Summit 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: 6

Owner/Representative: Michael Johnson & Eric Hanley

Request: Time extension for zoning permit to change use of front building from single family to duplex and to expand parking.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Review)

Background Information:

The applicants are seeking approval for a 1-year time extension to complete construction of the project to convert a single family home to a duplex and to expand the associated parking area. The duplex conversion has occurred; however, the parking expansion has not. No changes to the project are included in this extension request.

Note that the original application for this permit also sought to establish 6 bedrooms in one of the new duplex units. That portion of the application was denied. The applicants subsequently applied for a separate zoning permit to establish 6 bedrooms in one of the duplex units. That application was denied and appealed to Superior Court Environmental Division. That appeal is pending a ruling from the Court. The applicants wish to delay improvements to the parking area pending the outcome of that appeal.

Previous zoning actions for this property are noted below.

- 12/6/11, Denial to exceed 4-unrelated adult occupancy limit
- 8/4/11, Approval to convert single family home to duplex and denial to exceed 4-unrelated adult occupancy limit
- 6/17/11, Non-Applicability approval to install heating vents

Recommendation: Consent approval as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications and Reviews

Sec. 3.2.9, Zoning Permits

(d) Time Limit on Zoning Permits:

The zoning permit for this project was approved by the Development Review Board on August 4, 2011. From that date, the applicants had 1 year to commence construction and a 2nd year to complete it. The applicants have enacted the permit as required but have not yet finished. Per this criterion, they may request an extension to complete the project. As this request has been received prior to expiration of the zoning permit, approval may be granted. As such, construction must be complete by August 4, 2014. **(Affirmative finding)**

II. Conditions of Approval

1. Except as specifically modified in this approval, all conditions of the original zoning permit approval dated August 4, 2011 shall remain in effect.
2. Standard permit conditions 1 -15 (including construction completion date no later than August 4, 2014).

JOHNSON & FINNIGAN, LLP
ATTORNEYS AT LAW

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Telephone (802) 660-9393
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June 18, 2013

Department of Planning and Zoning
149 Church Street, City Hall
Burlington, VT 05401

**RE: Whiteville Properties, LLC
Zoning Permit# 11-1065CA/CU**

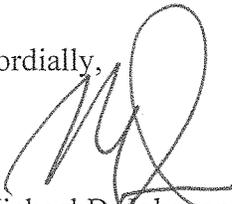
Dear Sir or Madame,

I am writing today in order to request, on behalf of Whiteville Properties, LLC, a time extension for the Zoning Permit# 11-1065CA/CU for our property located at 26 Summit Street, Burlington, VT, which is due to expire August 4, 2013. Said permit was approved August 4, 2011 for the following:

Change of use of front building from single family to duplex. Existing duplex at rear for a total of four units on the property. Expanded parking. Conditional Use review for addition of another unit within the RL zone; Cond Use review for waiver request from Functional Family provision of the Ordinance. (This request denied.)

More time is needed in order to complete the above-described work at 26 Summit Street before requesting a Unified Certificate of Occupancy. Please, do not hesitate to contact me at my office with any questions or concerns.

Cordially,

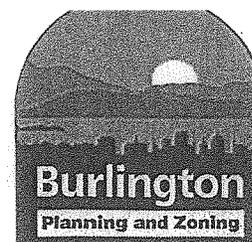


Michael D. Johnson, Esq
*Duly Authorized Agent of
Whiteville Properties, LLC*

cc: Edward Fitzpatrick, Esq.

Burlington Development Review Board
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Austin Hart, Chair
Jim Drummond
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Brad Rabinowitz
Kevin Stapleton
Jonathan Stevens
Bob Schwartz
Paul Henninge, (alternate)
Andrew Strauss, (alternate)



Burlington Development Review Board
Findings of Fact
Deliberative Hearing July 25, 2011

Board Members Present: Austin Hart (Chair); Michael Long, Brad Rabinowitz, Bob Schwartz, Jim Drummond, Jonathan Stevens, Kevin Stapleton.

Staff members present: Ken Lerner, Scott Gustin, Mary O'Neil.

File: 11-1065CA/CU

Location: 26 Summit Street

Zone: RL **Ward:** 6

Date application accepted: June 13, 2011

Date application deemed complete: June 23, 2011

Applicant/ Owner: Steve Guild / Michael Johnson, Eric Hanley

Request:

1. Conditional Use review for addition of another unit within the RL zone: Change front building from single family to duplex. Existing duplex at rear for a total of four units on the property.
2. Conditional Use review for waiver request from Functional Family provision of the Comprehensive Development Ordinance.
3. Expanded parking.

Background:

- o Non Applicability of Zoning Permit Requirements, Installation of heating vents, 6/11
- o There are no other zoning permits on file for this property.

Overview:

26 Summit Street has two primary buildings; a c. 1897 single family home at the front of the lot and an existing converted carriage barn with two units at the rear for a total of three units. This application proposes adding another residential unit within the single family residence, for a total of four units on the property. Within the RL zone, the addition of an additional residential unit to an existing multi-family residence is subject to Conditional Use review.

No exterior changes are proposed to the buildings; proposed site alterations include increased parking area/pavement to accommodate the additional residential unit.

The applicants are also seeking relief from the Functional Family provision of the ordinance (not more than 4 unrelated adults sharing living quarters) via Conditional Use review per Sec. 4.4.5 (d) 5. C. Residential Occupancy Limits.

Motion by Brad Rabinowitz: In the matter of 11-1065CA/CU, 26 Summit Street, I move we **approve** the application to convert an existing single family home to a duplex and increase the number of units on the property from 3 to 4; however **deny the request for a waiver** from the Functional Family provision of the Comprehensive Development Ordinance; accepting the site plan submitted the day of the hearing for parking purposes eliminating spaces 9 and 10, per the following findings and conditions:

I. Findings

Article 3: Applications, Permits and Project Reviews

Sec. 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;

As this is a developed neighborhood, the addition of one housing unit is expected to have little impact on community facilities. Additional demands will be placed on municipal water and sewer service; however, sufficient capacity is available. A state wastewater permit will be required. **Affirmative finding if 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;

Regarding request #1, the additional unit on this large lot with an existing large house will not appreciably affect the character of the area that contains significant institutional uses such as dorms and frat/sorority houses. The site is located directly across the street from Champlain College and close to UVM.

Affirmative finding.

As to request #2 to waive the functional family limitations, the project proposed is within the residential low density zone. To allow more than four unrelated adults to live together in a single dwelling unit requires conditional use approval. Although the ordinance includes provisions for accommodating such requests, this proposal includes an excessively high number of bedrooms that would result in a level of intensity that conflicts with the basic provisions of a low density residential zone. As noted, this site is located in close proximity to other institutional uses. While other dormitories found in this area are controlled and regulated by institutions, the proposed use would in effect be a non-regulated dorm. The applicant has not provided prior to or during the public hearing a management plan for the units, and without an acceptable management plan in place no finding can be made. A management plan for both

the physical aspects of the site and building and for the tenants must be provided in order to consider this request. **Adverse Finding for waiver of functional family limitations.**

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 four proposed units, with a total of fourteen bedrooms, will have an impact on traffic and congestion on Summit Street. The proposal includes an additional parking expansion for a total of 10 spaces in order to increase the supply of parking to meet the demand of:

1. the additional unit, and
2. the request to have more than four unrelated adults within a single dwelling unit

Both have implications for traffic and growing parking needs. The application has difficulty meeting those needs, as can be seen in the manner in which the parking area is laid out (see Article 8, below).

The board finds that there is no basis for extending a waiver from the Functional Family provisions of the ordinance, and approves the request for an additional unit conditioned upon the limitations of Functional Family, and elimination of parking spaces 9 and 10 on the submitted site plan. **Affirmative Finding as conditioned.**

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

The limitation on the number of unrelated adults, commonly known as the "Functional family provision", has roots in quality-of-life standards and remains an important tool in limiting households typical of student populations within RL and RM zones. The application contained no supporting documentation to support the request to waive the functional family provisions. This project is located within the RL zone. As no management plans were provided prior to the public hearing, there is no basis for waiving the standards of the Functional Family provision of the ordinance. The board deems a waiver from the Functional Family provisions inappropriate. **Adverse finding.**

5. *The utilization of renewable energy resources;*

No part of this application prevents the use of alternative energy.

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;*

Setting aside the request to waive the functional family provisions, the subject property is large enough to support the requested density of 4 dwelling units (7 units/acre on a ¾ acre lot). **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*

Findings of Fact

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.

Submitted floor plans show free movement to bathrooms and kitchen facilities without passing through any proposed bedroom. The kitchen and living room, however, are combined; a seemingly crowded configuration for a six bedroom apartment. The board feels strongly that greater emphasis should be placed on common areas, with conformance to the Functional Family provisions of the ordinance and a limitation of 4 bedrooms in the new unit. **Affirmative finding as conditioned.**

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.

The application is requesting tenancy in excess of the four unrelated adults provision, and thus has provided two additional parking spaces on site, measuring 9' x 22'. While this satisfies the 180 sq. feet for 2 parking spaces, there are two problems. The other 8 parking spaces are compact. While the explicit limitation of compact parking spaces to 15% of the total pertains to parking garages (Sec. 8.1.12 {h}), it is inadvisable to exceed the limitation in surface parking applications as well. There is sufficient space to further expand the parking area to provide full size spaces. Note that the provision of 2 additional parking spaces assumes that only 2 more unrelated adults will be living in the unit. As these are spacious bedrooms, it is conceivable that more than 6 adults will inhabit this fourth unit, and thus additional parking may be needed once the number of occupants is determined. **No finding possible.**

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

The location and number of access points is not proposed to change; however no parking barriers are proposed. Should the application be approved, barriers to prevent parking lot creep should be installed. **Affirmative finding if conditioned.**

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

No signs are proposed. Any signage will require a separate zoning 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 proposed parking configuration has the potential for headlight glare immediately into the rear duplex, as well as into properties both north and south of the parcel due to parking spaces #9 and 10. However, as the board does not support the waiver from Functional Family provisions of the ordinance, parking spaces 9 and 10 on the submitted site plan of July 18, 2011 shall be removed. Appropriate landscaping and parking barriers are nonetheless recommended. **Affirmative finding if conditioned.**

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

Although no exterior construction on the houses is proposed for the conditional use review, the expansion of the parking area will include construction activity. Typical limitations for other conditional use development have been 7:30 am to 5:30 pm M-F for exterior work. **Affirmative finding as conditioned.**

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

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.**

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

This application does not include aspects subject to performance measures pertaining to outdoor lighting. It does warrant consideration under Sec. 5.5.1, Nuisance Regulations and Sec. 5.5.3, Stormwater and Erosion Control (see Article 5 below).

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.*

Article 4: Zoning Maps and Districts

Sec. 4.4.5 Residential Districts

Table 4.4.5-1 Minimum Lot Size and frontage:

In the RL zone, duplex and above requires a minimum of 60' frontage, and 10,000 sq. feet lot size. 26 Summit Street has a lot frontage of 150', and lot size of 32,144 sq. ft. **Affirmative finding.**

Table 4.4.5-2 Base Residential Density

7 units per acre is the maximum density in the RL zone. For a 32,144 sf lot, maximum density is 5 units. The applicant proposes 4. **Affirmative finding.**

Table 4.4.5-3, Residential District Dimensional Standards

Coverage is limited to 35% in the RL zone, exclusive of bonus provisions (decks, patios, open porches.) The proposed plan for expanded parking would increase coverage by 1,217 sq. ft. for a total coverage calculation of 31%; however, taking into account the large open porch the base lot coverage is reduced to 28%, well below the maximum allowed. A final coverage calculation shall be included with a revised site plan, illustrating the removal of parking spaces 9 and 10 per these findings. **Affirmative finding as conditioned.**

Sec. 4.4.5 (d) 5. Residential Density

A. Additional Unit to Multi-Family.

One additional unit may be added to structures located in the RL district which legally contained two or more units as of January 1, 2007 if approved in advance as a conditional use, by the DRB.

After the reappraisal of 2005, the Assessor's Office changed the status from 2 units to three. There are no zoning permits on file for adding the third unit, and minimum housing inspection for 2006 billed for two

rental units. Rental billing in 2006 terms the parcel a duplex; however this may be because the two units in the converted carriage barn were rentals units, and the single family home was owner-occupied at that time. Therefore, it appears that three units currently exist. **Affirmative finding.**

Sec. 4.4.5 (d) 5

C. Residential Occupancy Limits

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. Notwithstanding the following, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied.

The applicant or owners have not submitted that any of the units will be owner occupied.

Subject to Conditional Use approval by the DRB, a dwelling unit may be occupied by more than four (4) unrelated adults if it contains at least twenty-five hundred (2,500) square feet excluding its attic and basement pursuant to the following:

i.) If in a RL district, the dwelling unit also contains at least an additional two hundred fifty (250) square feet and one (1) additional parking space per adult occupant in excess of four (4).

According to the Assessor's database, the existing single family home has a finished area of 5320 sq. ft; exceeding the 2,500 threshold. For the four proposed units in a Neighborhood parking district, 2 parking spaces are required per unit, for a total of 8 parking spaces. The request for more than 4 unrelated adults spurs the requirement for an additional parking space for every adult occupant over 4. The submitted site plan illustrates 10 parking spaces, an increase of 2 to address the additional unrelated adults over the standard limit of 4. The proposed new unit, however, has a total of 6 bedrooms, added to the existing 4 bedroom unit for a total of 10 bedrooms in the front building alone. Given the number of bedrooms, and the proposal to construct stalls around toilets in what appear to be communal bathrooms, the development appears to be geared towards collective student housing (essentially a defacto dorm) rather than just adding an additional unit in a single family home. Supplying two parking spaces will not assuredly satisfy the requirement for providing parking for each new adult over the four unrelated adult limitation. In exercise, the proposal appears to be in conflict with basic tenets of the low density residential district characterized by single detached dwellings and duplexes reflective of the respective neighborhoods' development. The sheer number of bedrooms (and a clearly articulated assessment of the real parking demand wrought by the potential number of unrelated individuals) stands in conflict with the RL zone and this standard.. **Adverse finding.**

Article 5: Citywide General Regulations

Sec. 5.5.1 Nuisance Regulations

The application contains nothing to demonstrate initial and ongoing compliance with the application nuisance regulations and performance standards pursuant to the requirements of the Burlington Code of Ordinances. The application materials strongly suggest that the property will be used for relatively high density student housing. Noise and other nuisances typically associated with such housing in this low density residential neighborhood could reasonably be expected to result. **Adverse finding.**

Sec. 5.5.3 Stormwater and Erosion Control

As more than 400 sf of earthwork is included in this proposal, a small project erosion control plan is required. Such plan has been submitted and forwarded to the Stormwater Administrator for review and

approval. If there is additional earth disturbance for expanded parking this plan will have to be amended. **Affirmative finding if conditioned.**

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

26 Summit Street is within the Neighborhood Parking District, where 2 parking spaces are required per unit. The request to add another residential unit for a total of four units would spur a requirement for 8 parking spaces. In addition, provisions of Conditional Use review to have more than 4 unrelated adults living together in the RL zone requires another parking space for every adult over 4 (See Sec. 4.4.5 (d) 5, Residential Occupancy Limits, above.) The applicant has provided 2 additional parking spaces over the 8 required for a total of 10 spaces; however, the front building is proposed to have 10 bedrooms (6 in the new unit, + 4 in the existing). It cannot be confirmed that 10 parking spaces will adequately address the parking need for the front building, let alone the second duplex on the rear of the lot. It is not expected that the two additional parking spaces provided in excess of the normal parking requirement would adequately address the intensity of occupancy proposed by the development, as these ten bedrooms could house more than one adult, and easily outnumber the demand for parking. Additionally, the increased density, and concomitant parking, is in conflict with basic tenets of the low density residential district. The board does not support a waiver from Functional Family provisions, and thus parking spaces 9 and 10 shall be eliminated from the plan submitted July 18, 2011. **Affirmative finding as conditioned.**

Table 8.1.11-1 Minimum Parking Dimensions

The standard size for a parking space at a 90° angle is 9' x 20'. The submitted site plan details 8 parking spaces 18' long, which is a compact car space. While this provides the necessary 24' backup space required by the ordinance, it does not provide adequately sized parking spaces. As noted there is sufficient space and lot coverage to allow an increase in parking and expansion of the size of the spaces. As previously noted, parking spaces 9 and 10 shall be eliminated from the proposed site plan. **Affirmative finding as conditioned.**

Part 2: Bicycle Parking

Table 8.2.5-1 Bicycle Parking Requirements

Residential	Specific Use	Long Term Spaces	Short Term Spaces
Household living	Multi Use	1 per 4 units	1 per 10 units
Group Living	Fraternity, sorority, and dormitory	1 per 4 residents	1 per 8 residents

Although this is presented as a single new unit to a multi-unit property, the character of the living arrangements (communal bathrooms, 10 bedrooms in a single structure) suggest student housing and may thus reasonably be viewed as group living. Therefore, bicycle parking should be calculated on the number of residents rather than the number of units. The application does not provide any bicycle parking accommodations within the submission materials. Depending upon the number of residents, bicycle parking requirements may be from 1-7 for long term spaces, and 1-4 for short term spaces. **No finding possible.**

II. Conditions of approval:

1. This approval is limited to the addition of one more dwelling unit; increasing the number of units on the parcel from three to four. The number of bedrooms in the new unit is limited to 4.

Occupancy limits shall follow the provisions of the Functional Family ordinance; not more than four unrelated adults shall occupy any one unit.

2. **Prior to release of the zoning permit**, the parking/site plan shall be revised to demonstrate a maximum of 8 parking spaces on site. Parking spaces 9 and 10, as illustrated on the site plan submitted July 18, 2011 shall be eliminated. Compact Car parking spaces should be limited to 1 (15% maximum of 8 spaces.) All other spaces, except any parallel spaces, shall be minimally 9' x 20', and have sufficient back-up space per Table 8.1.11-1 of the CDO. This revised plan shall include a parcel coverage calculation.
3. **Prior to release of the zoning permit**, appropriate landscape screening of headlights, and parking barriers shall be installed and illustrated on a revised site plan. Such plan shall be reviewed and approved by staff.
4. **Prior to release of the zoning permit**, written approval of the erosion control plan shall be obtained from the Stormwater Administrator.
5. **Prior to release of the zoning permit**, a property and parking management plan shall be provided, subject to staff review and approval, in consultation with the City Attorney. The property management plan shall clearly articulate how ongoing compliance with the applicable nuisance regulations and performance standards pursuant to the Burlington Code of Ordinances will be achieved.
6. **Prior to release of the zoning permit**, the number of residents shall be submitted for a calculation of required bicycle parking spaces. Such spaces shall be defined and illustrated on a revised site plan, subject to staff review and approval.
7. Hours of construction for parking lot enlargement, if proposed, are limited to 7:30 am to 5:30 pm Monday-Friday.
8. If approved and per Conditional Use standards, the board may elect to have the applicant/owners return for a post-approval review in one year's time to assess any complaints or negative impacts associated with the project.
9. Standard Permit conditions 1-18.

Second: Jonathan Stevens

Vote: 6-0 (Austin Hart recused.)

Dated at Burlington, Vermont, this 4th day of August, 2011.

Respectfully Submitted,



Michael Long, Development Review Board Vice-Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court. (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 Environmental Court. 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.