

## Department of Planning and Zoning

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### MEMORANDUM

To: Development Review Board  
From: Ken Lerner  
Date: April 7, 2015  
RE: ZP 15-0840CU 27 Arlington Court

**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:** ZP 15-0840CU

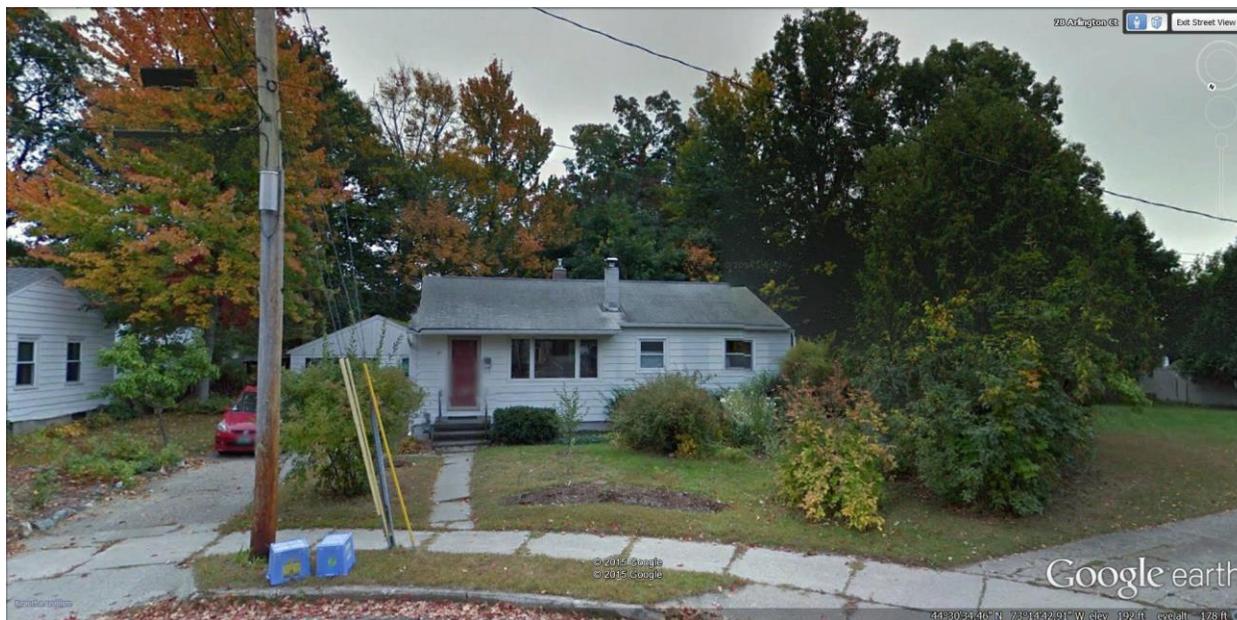
**Location:** 27 Arlington Court

**Zone:** RL **Ward:** 7

**Date application accepted:** March 2, 2015

**Applicant/ Owner:** Nathan Casewell

**Request** Change of use from single family to single family with bed and breakfast (one bedroom only).



#### Background:

- **August 24, 1987 Conditional Use** request to establish a youth hostel. Request approved as a home occupation but limited to six months. Returned after six months and was approved to continue operating. Specifically condition for the applicant, Nancy Farrell,

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and that it does not run with the property and is not transferable. Decision not appealed. Note that at that time the basement was used as quarters for the hostel. It is not clear as to whether this space meets current requirements as habitable space.

**Overview:** The applicant wishes to convert one bedroom to bed and breakfast use. There exists a 10 ft. wide single width driveway that widens alongside the house to 18 ft. wide. Three parking spaces are required – two for the residential use and one additional for the rented room for a total of three.

**Recommendation: Approval,** subject to the following findings and conditions:

**I. Findings**

**Article 3: Applications, Permits and Project Reviews**

**Part 5: Conditional Use and Major Impact Review**

**Sec. 3.5.6 (a) Conditional Use Review Standards**

*1. Capacity of existing or planned community facilities.*

The change of use to a bed and breakfast appears to pose no identified impact to the capacity of 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.*

This is an existing, developed residential neighborhood. The conversion of one bedroom in a low density residential neighborhood to rental lodging may have some impact on traffic and circulation, but not noticeably greater than a family with multiple drivers. If most cars are located on-site and only 1 bedroom is intended for rental, the anticipated impact would be negligible. **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 proposed rental of one bedroom would result in one more vehicle to the parking demand, which already has a requirement for 2 parking spaces for the existing single family residential use, as noted above. The change of use will likely increase traffic and circulation from the present residential demand of this parcel, however not so noticeable as to affect the overall neighborhood.

**Affirmative finding.**

*4. 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 type rentals, including but not limited to payment of required rooms and meals taxes. **Affirmative finding as conditioned.**

*5. The utilization of renewable energy resources;*

See Section 6.2.2 (e), below.

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;

A Bed and Breakfast is a special category residential use. The application for a single room is minimal, particularly in this location as it is not close to downtown or other short term rentals. It is possible to consider a conditioned Bed and Breakfast use within the low density residential district with limitations to address potential impacts of traffic, circulation, parking, and intensity of activity.

**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.

The change-of-use proposed is for a special residential use, and has different review criteria than identified within this standard.

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

No change to existing proposed. However, the driveway may be widened in order provide the minmum parkig required under Article 8. **Affirmative finding as conditioned.**

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

Any signage will require a separate permit, and will be limited by the standards for this zoning district. **Affirmative finding as conditioned.**

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.

Nothing is proposed. However, in order to meet the parking requirements a widening of the driveway needs to occur. If this is not done then the parking as configured cannot function and the applcaition cannot be approved. **Affirmative finding as conditioned.**

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

No construction proposed, although there may be a widening of the driveway. Not Applciable.

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

The applicant states that rental s will be at will; this implies being open 24 hours a day 7 days a week. If approved, arrivals are recommended to commence after 7:00 am and cease after 10:00 pm to preserve characteristic neighborhood quiet. Any limitations are at the discretion of the board. **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.

Footnote #4 in Appendix A informs that not more than 3 rooms may be let for that purpose in the RL district. Proposed is for the rental of one room. **Affirmative finding as conditioned.**

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

The parking circulation is of the most concern. While there can be two cars parking side by side along the house only one space is able to exit the driveway without moving another vehicle. This is not sufficient to meet the parking requirements as discussed in Article 8. **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.*

If the permit is granted the DRB may request the applicant/owner to return after a period of time to assess neighborhood impacts, if appropriate. **Affirmative finding as conditioned**

#### **Article 4: Zoning Maps and Districts**

##### **Sec. 4.4.5 (c) Permitted and Conditional Uses**

A Bed and Breakfast is a Conditional Use in the RL zoning district.

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

#4 : ...no more than 3 rooms permitted to be let in the RL district.

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

#6: *Must be owner occupied.*

The applicant lives at the subject property.

The property has previously been approved for a hostel as a home occupation. The hostel was confined to the basement that is not included in the subject request. It is not clear as to whether the use of the basement as habitable space would meet current life safety standards. **Affirmative finding as conditioned.**

#### **Article 5: Citywide General Regulations**

##### **Sec. 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 imitations, performance and design standards, and parking requirements.*

A Bed and Breakfast is a Conditional Use in Appendix A, Use Table, for the RL District. The project meets the two footnote requirements; see Sec. 4.4.5(c), above. The subject parcel, however, does not meet the parking requirements for the proposed use. A driveway widening to 18 ft. may be possible in lieu of shuffling parking as would need to occur if this is not widened; see Article 8, Sec. 8.1.12, (c), below. Given the limitation that the driveway cannot be wider than 18’, the driveway expansion should be considered. **Affirmative finding as conditioned.**

#### **Part 2: Dimensional Requirements**

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

##### **Sec. 5.2.3. Lot Coverage Requirements**

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

**Sec. 5.2.4. Buildable Area Calculation**

*For any properties two or more acres in size within any RCO, WRM, RM, WRL, or RL zoning district...*

The subject property is not more than two acres in size. This standard does not apply.

**Sec. 5.2.5. Setbacks**

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

**Sec. 5.2.6, Building Height Limits.**

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

**Sec. 5.2.7, Density and Intensity of Development Calculations**

The application is for a change-of-use to a specialty residential use. It is viewed the same as a single dwelling unit for intensity purposes.

**Affirmative finding.**

**Part 4: Special Use Regulations**

Not applicable.

**Article 7: Signs**

Any signage will require a separate sign permit. Any signage will be required to meet the standards of this article and specific standards of the zoning district. **Affirmative finding as conditioned.**

**Article 8: Parking**

**Sec. 8.1.1 Purpose**

*It is the purpose of this article to:*

- (a) Ensure there are adequate parking and loading facilities to serve the use or uses of the property;*
- (b) Ensure that parking facilities are designed to provide proper circulation, reduce hazards to pedestrians, and protect the users of adjoining properties from nuisance caused by the noise, fumes, and glare of headlights which may result from the operation of vehicles parking off the street;*
- (c) Reduce congestion in the streets and contribute to traffic safety; and*
- (d) Encourage alternate modes of travel that will reduce dependence upon the single-occupancy automobile.*

**Table 8.1.8-1 Minimum Off-Street Parking Requirements**

Single family residential use (Neighborhood Parking District) requires 2 parking spaces, the One room Bed and Breakfast (in addition to single-family residence) at 1 per room; requires 1 additional space for a total of 3 spaces required.

On-site parking: 2 are recognized based on the tandem limitations (one in the garage or in front of garage, one in the single-lane driveway.) The applicant claims that four spaces are provided. His sketch shows those four spaces all in tandem lined up one behind the other – three in the driveway and one in the garage.

Tandem spaces are only allowed for a maximum of 2 spaces with one space behind the other. The parking proposal as submitted is not acceptable for a bed & breakfast as it requires shuffling of spaces at all hours, and that tandem spaces are not allowable for a B&B situation.

There are two solutions that can be considered in order for the DRB to approve this request:

1. Expanding the driveway width to the full 18' in width to provide an additional parking space for a total of 3. Although after discussions the applicant believes that the existing layout may be able to accommodate the three spaces.
2. Requiring the owner to be present at all times to move a vehicle when the room is rented to insure maneuverability of vehicles.

Option #2 may be feasible in a larger B&B situation but is not conducive to the subject single family situation as it exists here, nor is it easily enforceable. Therefore, if the applicant is unable to demonstrate that three spaces are available the driveway would have to be expanded, up to 18 ft. wide, by obtaining a zoning permit and installing the widened driveway. **Affirmative finding as conditioned.**

### **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 proposed 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, jointly or severally with others hold(s) legal or equitable title to any 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. **Prior to release of the zoning period for the Bed & Breakfast**, the applicant shall either provide a site plan that demonstrates that three vehicles can be accommodated in the existing driveway so that the third vehicle can egress the property without moving another car; or apply for and obtain approval of a zoning permit to pave an additional width of the driveway (to a maximum of 18 feet) in order to accommodate vehicles parking side by side and allow for a third vehicle to egress the property without moving another car. This widening shall be installed **prior to issuance of a certificate of occupancy** for the Bed and Breakfast. The driveway shall meet all required setback (not less than 5' from any property boundary), lot coverage and any other applicable dimensional requirements

2. This approval is for a ONE bedroom Bed and Breakfast use. 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.
3. The subject property must be, and remain owner occupied as long as the Bed & Breakfast remains in operation.
4. It is recommended that guests' arrival and departures be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
5. All guest parking shall be on-site and off-street.
6. No sign of the Bed and Breakfast use, other than a (separately permitted) sign, shall be visible on the exterior of the residence. Any sign will require a separate sign permit.
7. The applicant shall return to the DRB in one year after issuance of a certificate of occupancy for the Bed and Breakfast to report on any neighborhood concerns or complaints relative to the Bed and Breakfast use.
8. Regarding Standard Permit Condition #1 below the applicant will have to insure compliance with state regulations regarding short-term B&B type rentals, including but not limited to payment of required rooms and meals taxes.
9. Standard Permit Conditions 1-15:
  1. **Other City, State or Federal Permits.** The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions.  
**Note: All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from Department of Public Works-Inspection Services Division (DPW-ISD).** All construction permits must be closed out by way of approved inspections by DPW-ISD before issuance of a Unified Certificate of Occupancy (UCO) by the Code Enforcement Office as per Condition 3, below.
  2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced within one year of approval. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) within two years of approval, or be subject to enforcement actions.  
  
 These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).
  3. **Unified Certificate of Occupancy (UCO):** It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a UCO.

**If the project is partially completed**, meets “prior to issuance of a UCO” conditions of approval, meets all health and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. **Upon completion of the project**, applicant shall request and obtain a Final UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. **Failure to obtain a certificate of occupancy** places the property in violation of the CDO and is subject to enforcement.

In addition, **Failure to obtain a UCO within the time limits above is subject to** “after the fact” fees ranging from \$75 - \$1500 (in addition to the UCO fee).

4. **Project Modifications.** The project shall be completed as shown on the plans, which have been stamped “approved” and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.
5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final UCO.
6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.
7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.
8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.
9. **Transfer of Ownership. All zoning permits run with the land.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.
10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to one hundred dollars (\$100) per day, municipal tickets, and/or additional permitting fees.
11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the

jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.

If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.

13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.
14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

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