

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

*William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator*



TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: March 16, 2021
RE: 21-0589CA/CU; 19-21 Monroe 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: RH Ward: 3C

Owner/Applicant: Henry Stark

Request: After-the-fact conversion of a three-unit apartment building to a four-unit apartment building, establish a bed and breakfast (short-term rental) in one apartment, and request a two-space parking waiver.

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Background Information:

The applicant is requesting approval for an after-the-fact conversion of a three-unit apartment building to a four-unit apartment building, and to rent out his one-bedroom apartment as a bed and breakfast use (short-term rental) while he is away. Building permit records indicate that the property was permitted for three units in 1982. No subsequent permits, building or zoning, have been issued since 1982 to bring the unit count up to four. Rental billing records indicate that in 2007-2008, a fourth unit was added without zoning approval. The applicant now requests approval for the fourth unit. A two-space parking waiver is also requested, however a four-space waiver will be required.

Previous zoning actions for this property:

- **Zoning Permit 97-331;** installation of vinyl siding. Denied March 13, 1997.
- **Zoning Permit 03-306;** replace siding. Approved February 3, 2003.
- **Zoning Permit 03-525;** rebuild porch and construct dormer. Approved May 28, 2003.
- **Non-Applicability of Zoning Permit 07-095NA;** roof replacement. Approved August 3, 2006.
- **Zoning Permit 15-0025CA;** replacement windows. Approved July 14, 2014.
- **Non-Applicability of Zoning Permit 19-0434NA;** in-kind window replacements. Approved November 10, 2018.
- **Zoning Permit 20-0744CA;** replacement windows. Approved March 6, 2020.

Recommendation: Per an approved parking waiver, **Certificate of Appropriateness and Conditional Use approval** as per, and subject to, the following findings and conditions.

I. Findings

Article 3: Applications, Permits, and Project Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (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;

The conversion of one, 1-bedroom unit within the existing ‘four’ unit building (applicant/owner’s unit) to a short term rental use (bed and breakfast) while the owner/applicant is away has no appreciable impacts on existing or planned public utilities, services, or facilities. The applicant is advised to check with VT DEC as to whether a state wastewater permit is needed. **(Affirmative finding as conditioned)**

2. The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal development plan;

The property is located within the residential – high density zone. The neighborhood consists of a mixture of residential properties of varying unit counts. The subject rental will continue to serve as a place for people to stay, except that it will serve occupants on a short term basis rather than long term when the owner/applicant is traveling for work. City records indicate that this is the owner/applicant’s primary residence. **(Affirmative finding)**

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;

As noted above, the short term rental will continue to serve as a place for people to stay within the neighborhood, albeit on a short term basis. The short term rental is not expected to generate nuisance impacts from noise, odor, dust, and the like. **(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;

Little change in traffic is expected. The unit configuration remains unchanged. Rather than residents arriving and departing, short term guests will arrive and depart within established timeframes. Additionally, the property is well within walking distance to transit stops and the downtown core. **(Affirmative finding as conditioned)**

5. The utilization of renewable energy resources;

No part of this application would prevent the use of wind, water, solar, or other renewable energy resources. **(Affirmative finding)**

6. Any standards set forth in existing City bylaws and city and state ordinances;

The short term rental must adhere to the life safety standards and provide payment of applicable rooms and meals taxes as per the State of Vermont. **(Affirmative finding as conditioned)**

(b) Major Impact Review Standards

Not applicable.

(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.

The short term rental is not expected to produce adverse effects in need of mitigation.

(Affirmative finding)

2. Time limits for construction.

No construction timeline or phasing is included in this proposal. **(Affirmative finding)**

3. Hours of operation and/or construction to reduce the impacts on surrounding properties.

The unit is the owner's full time residence and the short term rental is offered only when the owner is away on business. It will not be allowed to operate when the owner is present in his unit. It is recommended that guest check-ins be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisances. **(Affirmative finding as conditioned)**

4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time. **(Affirmative finding as conditioned)**

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.

Not applicable.

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(5) Residential High Density (RH)

The Residential High Density (RH) district is intended primarily for high density attached multi-family residential development. Large buildings containing multiple dwelling units with high lot coverage are anticipated. The existing triplex (or fourplex if permitted) is consistent with this intent. Permitting the fourth unit and converting one of the units (studio apartment) to a short term rental use while the owner/applicant is away on business remains consistent with the intent of the zone. **(Affirmative finding)**

(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 4.4.5-2: Base Residential Density

District	Maximum dwelling units per acre ¹
High Density: RH	40 units/acre
Inclusive of new streets but exclusive of existing streets, and without bonuses or any Inclusionary Zoning allowances.	

The RH zone limits density to 40 units per acre, or 1,089 sf of lot area per unit. For four units, a total lot area of 4,356 sf is required. The property is 4,368 sf in size.

$4,368 / 43,560 \text{ (acre)} = 0.1 \text{ acres}$

$4 \text{ units} / 0.1 = 40 \text{ units}$; equal with the 40 unit/acre limitation

(Affirmative finding)

(c) Permitted and Conditional Uses

The “bed and breakfast” (short term rental) use is conditional in the RH zone. Owner occupancy is required, and up to 5 rooms may be let. In this case, the applicant is the owner and lives onsite. The applicant proposes to rent out his one-bedroom unit while he is away on business.

(Affirmative finding)

(d) District Specific Regulations

1. Setbacks

Not applicable.

2. Lot Coverage

Not applicable.

3. Accessory Residential Structures, Buildings, and Uses

Not applicable.

4. Residential Density

(c) Residential Occupancy Limits

In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.

Each unit within the structure will be limited to occupancy by a family, including no more than 4 unrelated adults and their minor children. **(Affirmative finding as conditioned)**

5. Uses

Not applicable.

6. Residential Development Bonuses

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.7 Density Calculations

(a) Dwelling Units per Acre

See Table 4.4.5-2 above.

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

Multi-unit attached dwelling uses in the Neighborhood Parking District require 2 parking spaces per unit. “Bed & Breakfast” uses require 1 parking space per rental room. The fourplex will require 8 parking spaces, and the property currently has 6 permitted onsite parking spaces – per the 1982 building permit. However, the submitted site plan shows two single-width driveways with four stacked parking spaces each. At this point, only 6 spaces have been permitted, and the additional 2 spaces on the plans (the fourth space in each driveway) cannot be acknowledged as existing – thus the request for the parking waiver. To complicate matters further, 2 of the 6 permitted parking spaces are not compliant with today’s parking standards. Only two-tandem parking spaces in both driveways are compliant, meaning that the end result is that the property would be 4 spaces short for compliant parking, not just 2 spaces short. By permitting the fourth dwelling unit, an increase to the nonconforming parking situation will occur. So technically, the parking waiver request should be for 4 spaces, not just 2 as originally requested. For residential uses, a parking waiver of no more than 50% of the required parking count can be granted. See below.

In consideration for the 1-room bed and breakfast use in the applicant’s single bedroom apartment, the net parking requirement will drop from 8 spaces to 7 spaces at times when the applicant is away on business and the bed and breakfast use operates. **(Affirmative finding if the parking waiver is approved)**

Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans

Any waiver granted for a residential use shall not exceed fifty percent (50%) of the required number of parking spaces.

The applicant submitted a parking management plan in support of a 2-space parking waiver request, but it could also be used to support a 4-space waiver. The applicant states that the property’s existing parking spaces are under-utilized since only 2 of the 4 tenants have vehicles. Two of the units are generally rented to low-income, elderly or disabled individuals who typically do not drive or have their own vehicles.

The applicant states that there will be no change in parking demand since the property has operated as a fourplex for many years now. The lack of abundant parking has encouraged the units to be made available to people who do not have access to automobiles and enjoy living close to downtown and public transportation. And due to the proximity to downtown and public transit, the location relieves the need for an automobile. The property is within a block from transit stops on Park Street (Battery Street) and Pearl Street, as well as downtown businesses. Additionally, the Cherry Street Bus Depot is four blocks away.

The applicant has listed 5 different strategies that will be used to reduce or manage the demand for parking in the future. These include: ensuring that tenant demand remains below the property’s permitted number of parking spaces; maintaining current tenants in order to keep vehicle count low; discouraging single passenger automobile ownership when advertising for new tenants;

continuing to offer off-street bike parking as an alternative mode of transportation; and limiting short term renters to one vehicle at maximum.

Should the DRB find the parking waiver request appropriate, then the applicant should be prepared to report back to the Department of Permitting and Inspections each year for 3 years as to the actual onsite parking demand. **(Affirmative finding if the parking waiver is approved)**

II. Conditions of Approval

1. **Prior to the release of the zoning permit**, the applicant shall obtain a letter from the Dept. of Public Works confirming adequate water and sewer capacity.
2. The occupancy of each unit on the property shall be limited to members of a family, as defined in Article 13. No more than 4 unrelated adults and their minor children may reside in any unit.
3. A 4-space parking waiver is included in this approval. The applicant shall report back to the Department of Permitting and Inspections each year for three years to define the efficacy of the parking waiver.
4. The subject property must be, and remain, owner occupied as long as the bed and breakfast short term rental remains in operation.
5. The short term rental shall not be operated at any time when the owner is occupying the apartment unit.
6. The short term rental must adhere to the life safety standards and provide payment of applicable rooms and meals taxes as per the State of Vermont.
7. It is recommended that guest check-ins be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisance.
8. All guest parking shall be on-site and off-street.
9. A state wastewater permit may be required. It is the applicant's responsibility to inquire with VT DEC as to whether such permit is necessary.
10. Any additional B&B room, or physical alteration, will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.
11. 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 and compliance with Division of Fire Safety standards and Health Department standards.
12. 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.
13. Standard permit conditions 1-15.