

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: Scott Gustin
DATE: May 18, 2021
RE: 21-0361CU; 41 Pine Pl

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: RM Ward: 5S

Owner/Applicant: Sam Catalano

Request: Establish a 3-bedroom short term rental (bed and breakfast) and 2-bedroom boarding house within duplex. No construction proposed.

Applicable Regulations:

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

Background Information:

The applicant lives within a duplex and occupies one side. The applicant is requesting approval of a 3-bedroom short term rental (bed and breakfast) within one of the two duplex units. The applicant is also seeking approval of a 2-bedroom boarding house as part of his residence in the other duplex unit. Both the short term rental and boarding house uses are in place. This approval is sought after-the-fact following a warning from code enforcement in October 2020. Much of the time since has been spent trying to address parking for the application.

Within the RM zone, wherein the property is located, both bed and breakfasts and boarding houses are predicated on owner-occupancy. The applicant is the property owner and lives onsite. No site or exterior building changes are proposed. The bed and breakfast is a conditional use, whereas the boarding house is a permitted use.

Previous zoning actions for this property are noted below.

- 4/6/21; Affirmative 15-year statute of limitations determination as to front yard parking
- 11/90; Approval to construct duplex

Recommendation: Conditional use and certificate of appropriateness denial as per, and subject to, the following findings.

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;

Use of one of the duplex units as a short term rental (bed and breakfast) has no appreciable impacts on existing or planned public utilities, services, or facilities. The applicant is advised to check with VT DEC to inquire as to whether additional permitting, including wastewater, is needed.

(Affirmative finding if 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 – medium density zone. The neighborhood consists of single- and multi-family homes within buildings of similar scale. No construction is included in this proposal, and residential density will remain unaffected. The property remains in character with the zoning district. **(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;

The subject dwelling will remain physically unchanged. It will provide living space for guests 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, if any, change in traffic is expected. Rather than residents arriving and departing, short term guests will arrive and depart within established timeframes. Guests will be within easy bike or walking distance to area attractions. **(Affirmative finding)**

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 applicable life safety standards and provide payment of rooms and meals taxes as per the State of Vermont. **(Affirmative finding if 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.

Guest check-ins should be limited to 7:00 am – 10:00 pm to minimize noise, traffic, and neighborhood nuisances. **(Affirmative finding if 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 if 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

(3) Residential Medium Density (RM)

The Residential 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. The residential duplex is consistent with this intent. The residence will serve as a short term rental as well as the owner's primary residence with boarders. The uses will not adversely impact the property's consistency with the character of this district. **(Affirmative finding)**

(b) Dimensional Standards and Density

Not applicable.

(c) Permitted and Conditional Uses

The "bed and breakfast" (short term rental) use is conditional in the RM 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 short term rental will contain 3 bedrooms. **(Affirmative finding)**

(d) District Specific Regulations

Not applicable.

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The property is located within the Neighborhood Parking District. Single family dwellings require 2 parking spaces. “Bed & Breakfast” uses require 1 parking space per bedroom, and boarding houses require 1 space per two beds.

The property contains room for 2 parking spaces – one in each garage. Approved as a duplex with 2 off-street parking spaces, the existing condition is a pre-existing nonconformity. The applicant recently received recognition of an area of unpermitted front yard parking per the 15-year statute of limitations. However, this area is too small at ~ 12’ X 10’ to accommodate an entire parking space (9’ X 18’). The applicant has sought approval to use the gravel area within the Pine Place street right-of-way for parking. Such parking is not actually off-street and cannot be counted towards the minimum off-street parking requirement.

The use approvals sought in this application require a total of 6 onsite parking spaces. Accounting for the 2-space nonconformity, at least 4 spaces would be needed for this application. Only 2 can be provided onsite. (**Adverse finding**)

II. Reasons for Denial

1. The application lacks compliant minimum onsite parking per the standards of Sec. 8.1.8, *Minimum Off-Street Parking Requirements*.