

## Department of Permitting & Inspections

Zoning Division  
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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** July 6, 2021  
**RE:** 21-0361CU; 41 Pine Pl

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**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.

This application has been pending for nine months, including one 3-month extension. If need be, one additional 3-month extension could be granted; however, DRB action is recommended at this time. The DRB reviewed this application May 18, 2021 and decided to continue the public hearing to obtain additional information as to the location of the front property line so as to better understand onsite parking availability. The front property line on the current tax map differs substantially from that on the original site plan. The site plan shows enough room for parking spaces within the two driveways, whereas the tax map does not. The applicant has provided additional information as to the front property line and parking availability. Changes to these findings are **noted in red** and are otherwise unchanged.

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. **As a result, the applicant’s residence requires 2 parking spaces. The 3-room Bed & Breakfast requires 3 spaces and the 2-bedroom boarding house requires 1 space. A total of 6 off-street parking spaces are required.**

**The applicant asserts that only 5 off-street parking spaces are needed, seemingly by combining the parking requirement for his dwelling unit with the boarding house (i.e. just 2 spaces); however this assertion is incorrect. The parking requirement for the dwelling unit is counted separately from that of the boarding house. The intent is to more accurately reflect the anticipated separate parking demand associated with the boarders. This practice has been consistently applied with other boarding houses at 62 East Avenue, 85 Crescent Road, and 60 Adams Street.**

**The applicant has found a property pin and has based onsite measurements on that which are consistent with the property dimensions depicted in the original site plan. As a result, the front property line is ~ 24’ from the front of each attached garage. Onsite parking totals 4 spaces (2 garage spaces and 2 driveway spaces). This is consistent with the originally approved site plan.**

**With the ~24’ distance to the front property line in front of the building, the applicant points out that there is room for a 5<sup>th</sup> parking space in the unpermitted gravel area to the northeast of the building. The portion of this unpermitted gravel within the property (not within the Pine Place right-of-way) was recently recognized as an unenforceable violation but was too small for another parking space based on the tax map boundaries. Based on the original site plan boundaries, it appears to be large enough for a 5<sup>th</sup> parking space within the property.**

**As an unenforceable violation, the 5<sup>th</sup> parking space noted above is not granted the same status as a legitimate pre-existing nonconformity per Sec. 5.3.2, “*Bianchi*” controlled uses, structures, and lots. As a zoning violation, albeit unenforceable, it cannot be used to meet a minimum parking requirement. (See also In re: Keenan conditional use approval, 266-12-07Vtec.)**

**The four legitimate onsite parking spaces are two spaces shy of the total off-street parking requirement. Note also that the spaces are arranged in tandem. As such, they may be used in support of each dwelling unit – the primary residence and potentially the boarding house. Tandem arrangement may be used for the short term rental only if the applicant is onsite and available to**

move vehicles during operation of the short term rental and provides a written guarantee of such availability.

Conceivably, the onsite parking arrangement could work to support the requested uses with a parking management plan per Sec. 8.1.15, *Waivers from Parking Requirements/Parking Management Plans* and by addressing the tandem arrangement per Sec. 8.1.14, *Stacked and Tandem Parking Restrictions*. The applicant has declined to address these two sections in favor of asserting that only 5 parking spaces are required and that 5 spaces are available onsite. As noted above, this assertion is incorrect. Legitimate off-street parking remains insufficient for the application as proposed. **(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*.