

## 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:** March 3, 2021  
**RE:** 21-0638CU; 251-253 South Union Street

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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: RL Ward: 6S

Owner/Applicant: Two Fifty Three South Union Street Realty, LLC / Rebecca Weisman and Christopher Wright Cronin

**Request:** Change of general office use to neighborhood commercial use (health studio and medical office). No site or exterior building changes.

### **Applicable Regulations:**

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

### **Background Information:**

The applicants are seeking approval to convert a preexisting nonconforming general office use into neighborhood commercial use (medical office and health studio).

Neighborhood commercial use is permissible in this location; however, it is predicated on an existing neighborhood commercial use (i.e. one neighborhood commercial may change to another). Alternatively, neighborhood commercial uses may be allowed in buildings originally constructed for commercial use. Neither is the case here.

The applicants wish to convert the entire building (~ 6,223 sf) to neighborhood commercial use. The upper size limit for neighborhood commercial uses is 4,000 sf. With that in mind, the applicants propose alternatively occupying ~ 4,000 sf neighborhood commercial space with the remainder used for a reestablished apartment and general office use. The building is currently permitted as general office space with a single upstairs apartment. The apartment has been removed and converted to general office use without zoning approval. The applicant's proposed alternative would reestablish that apartment with ~ 1,252 sf, but some office space would remain. In effect, ~ 4,000 of the building would be converted to neighborhood commercial use, ~ 1,252 sf would be converted back to an apartment, and the remaining ~ 971 sf would stay as general office space.

Previous zoning actions for this property:

- 7/12/89, Approval to install a compressor and new window
- 8/28/86, Approval to construct exterior egress stairs behind the building

- 3/10/82, Approval to install a replacement parallel sign
- 8/1/77, Approval to convert an apartment into expanded office space
- 7/11/67, Approval to convert the first floor residential space into office space

**Recommendation:** Conditional use 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;*

The proposed conversion of general office space to medical office and health studio 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 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 building is located within the residential – low density zone. The existing office use is a preexisting nonconformity and is inconsistent with the intent of the zone. The proposed conversion to a neighborhood commercial use would better align the use of the property with the intent of this residential 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 proposed neighborhood commercial uses include medical office and health studio. Neither is 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;*

The conversion of general office space to medical office and health studio can be expected to generate an increase in traffic. General office tends to attract employees and limited clientele, whereas both medical office and health studio routinely attract clientele. While significant traffic impacts are not anticipated, a basic traffic estimate of daily and peak hour trip generation should be provided in comparison to the existing use. **(No finding possible)**

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 proposed medical office and health studio would be affected by other city and state laws as applicable. **(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 proposed neighborhood commercial use 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. No site or exterior building alterations are proposed. **(Affirmative finding)**

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

As a neighborhood commercial use, hours of operation are limited to 6:00 AM – 11:00 PM, seven days per week. **(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**

##### **(1) Residential Low Density (RL)**

The Residential Low Density (RL) district is intended primarily for low density residential development in the form of detached single family dwellings and duplexes. As noted above, the office use is a preexisting nonconformity. While neighborhood commercial use is not residential, it is allowed under certain circumstances. Conversion to neighborhood commercial use would align the use of the property more closely with the intent of the district. **(Affirmative finding)**

***(b) Dimensional Standards and Density***

Not applicable.

***(c) Permitted and Conditional Uses***

Neighborhood commercial use is allowed as a conditional use up to 4,000 sf. The applicant's preferred option to use all 6,223 sf as neighborhood commercial cannot be approved. The alternative of up to 4,000 sf neighborhood commercial space could be approved, but there are limitations based on the requirement of street level space as noted below. **(Affirmative finding if conditioned)**

***(d) District Specific Regulations***

***5. Uses***

***Exception for Neighborhood Commercial Uses***

*Neighborhood commercial uses as defined in Article 13 and intended to primarily serve the nearby residential area shall be considered permitted uses in all residential districts subject to the following:*

(i) *This exemption shall only apply to:*

- 1) *Historic neighborhood commercial buildings that are listed or eligible for listing on the state or national register and originally designed and constructed for such purpose(s); or,*
- 2) *A street level neighborhood commercial use as defined in Article 13 in lawful existence as of January 1, 2007.*

The building is used entirely as general office. General office is not a neighborhood commercial use per the Article 13 definition of "neighborhood commercial use." According to the Vermont historic register, the building was originally constructed as a residence. As a result, the property does not qualify for consideration of neighborhood commercial use. **(Adverse finding)**

(ii) *Neighborhood commercial uses shall be limited to a single story on the street level of any structure.*

The applicants propose use of the entire building as neighborhood commercial use. That not being possible due to the 4,000 sf limitation, they propose to use the bottom two floors for neighborhood commercial use. One is at street level (2,030 sf) and the other is below street level (1,970 sf) but accessible from the exterior due to the slope of the lot. This criterion enables neighborhood commercial use only of the street level of the structure. **(Adverse finding)**

(iii) *Neighborhood commercial uses less than 2,000 sqft shall be treated as a permitted use. Neighborhood commercial uses greater than or equal to 2,000 sqft but less than 4,000 sqft shall be treated as a conditional use. Neighborhood commercial uses occupying 4,000 sqft or more shall not be permitted.*

The requested 6,223 sf of neighborhood commercial space cannot be permitted. Up to 4,000 sf could be; however, the building layout as noted above would limit neighborhood commercial use to the 2,030 sf of street level space. Such is not the proposal. **(Adverse finding)**

- (iv) *The neighborhood commercial use shall not be counted against the property's allowable residential density.*  
With the proposed conversion of one commercial use to two others, there is no impact on allowable residential density. **(Affirmative finding)**
- (v) *The sale of fuel for motor vehicles, or new or expanded gas station canopies, shall be prohibited.*  
Not applicable.
- (vi) *Hours of operation shall be limited to 6:00am to 11:00pm seven days per week. Any expansion in the hours of operation of an existing neighborhood commercial use shall require conditional use review by the DRB.*  
As conditioned.
- (vii) *All building height and setback requirements for the underlying residential district shall apply, and the lot coverage shall not exceed 60%.*  
No site or exterior building changes are included in this proposal. **(Affirmative finding)**
- (viii) *Any exterior changes to the building(s) or changes to the site plan shall be subject to the design review requirements of Article 6.*  
Not applicable.
- (ix) *To the extent that additional parking is necessary, the parking standards for Shared-Use Districts shall apply pursuant to Article 8.*  
The application does not specify how much of the neighborhood commercial use will be medical office versus health studio. Medical office requires 2 spaces per 1,000 sf, and health studio requires just 1 space per 1,000 sf. The application indicates 17 parking spaces onsite. That would be sufficient in any scenario for the two uses and a reestablished apartment; however, detail is needed as to the proposed area for the proposed uses. **(Affirmative finding if conditioned)**
- (x) *The conversion of a residential use to a neighborhood commercial use within a historic neighborhood commercial building more than 50 years old and originally designed and constructed for such purpose shall be exempt from the housing replacement requirements of Article 9, Part 2.*  
Not applicable.
- (xi) *Home occupations as defined and regulated under this article are not restricted by the provisions of this section.*  
Not applicable.
- (xii) *Any aspect of a neighborhood commercial use in lawful existence as of January 1, 2007 not in strict conformance with any of the above standards shall be considered non-conforming and be subject to the provisions of Article 5, Part 3.*  
Not applicable.

**Article 5: Citywide General Regulations:  
Sec. 5.3.4, Nonconforming Uses**

***(a) Changes and modifications***

The existing general office space is a preexisting nonconforming use. With the proposed conversion of ~ 4,000 general office use to neighborhood commercial use and 1,252 sf to a residential dwelling unit, 971 sf of general office space would remain. This section prohibits any change of a nonconforming use to anything other than a fully conforming use with exceptions only as noted in subsections 1 A and B below. Unlike nonconforming signs or structures, there is no provision to allow change to a nonconforming use that reduces, but does not eliminate, the nonconformity. There is no apparent provision to keep this reduced office space. It would need to be converted to residential space or another allowable use. **(Adverse finding)**

***I. Nonconforming Non-Residential Use***

***A. Exception for residential conversion.***

Not applicable.

***B. Existing Neighborhood Commercial Use.***

The general office use is not an existing neighborhood commercial use. It is a preexisting nonconforming use. **(Adverse finding)**

**Article 8: Parking**

***Sec. 8.1.8, Minimum Off-Street Parking Requirements***

See Sec. 4.4.5 (d) 5 (ix).

**II. Conditions of Approval**

In the event that the Development Review Board finds this application approvable, the following conditions are recommended.

1. Prior to release of the zoning permit, additional information shall be submitted subject to staff review and approval. The additional information shall include:
  - a. Traffic generation estimate of daily and peak hour trip ends; and,
  - b. Specification of building floor area dedicated to medical office, health studio, and one residential dwelling unit.
2. Neighborhood commercial use (medical office and health studio) is limited to 4,000 sf or less and may only be on the street level of the building (in this case, 2,030 sf). This approval includes reestablishment of a previously permitted single dwelling unit. No other uses are included in this permit. Any remaining building space shall be used for permissible uses approved under separate zoning permit.
3. No remaining general office use is included in this permit.
4. 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.
5. Hours of operation are limited to 6:00 AM – 11:00 PM, seven days per week.
6. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Permitting & Inspections as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
7. Standard permit conditions 1-15.