

## Department of Permitting & Inspections

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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** June 2, 2020  
**RE:** 20-0658CU; 36-38 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: RH Ward: 8E

Owner/Applicant: The Paul Gregory Mayer Rev. Trust & The Karen Louise Mayer Rev. Trust / Burlington Community House, LLC d/b/a My Cousin's Place c/o Jennifer Fabiano

**Request:** Change use from duplex to hostel.

### **Applicable Regulations:**

Article 3 (Applications, Permits, & Project Reviews), Article 8 (Parking), Article 9 (Inclusionary and Replacement Housing)

### **Background Information:**

The applicant is seeking approval to convert a duplex into a hostel. No site or exterior building changes are proposed. The property is currently being used as a short term rental, and the applicants are seeking to legitimize this use with approval as a hostel. A hostel is a conditional use in the high density residential zone, wherein the subject property is located.

This project was to be heard by the Development Review Board on March 4, 2020; however, the applicants requested deferral to address outstanding concerns related to parking and the duplex use of the property. The applicant has since worked to address questions as to parking, the duplex use, and housing replacement.

Previous zoning actions for this property are noted below:

- 4/21/20, Approval recognizing prior conversion to a duplex
- 9/21/78, Approval to add a 2<sup>nd</sup> bathroom to one apartment (noted 3-apartment complex as existing use)

**Recommendation:** Denial as per the following findings.

## **I. Findings**

### **Article 3: Applications and 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 property is served by municipal utilities. Sufficient water and sewer service are available. A State of Vermont wastewater permit may be required for the “new” use. A capacity letter issued by the Dept. of Public Works will be required prior to issuance if applicable.

Impact fees are not calculated for this application, as the change in use results in a net increase in fees that would be due. **(Affirmative finding if conditioned)**

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;*

The property is located within an established residential neighborhood in the high density residential zoning (RH) district. The RH zoning district is intended primarily for high density attached dwellings and attached multi-family apartments. Such is the case as a duplex. Several non-residential uses are allowed conditionally within the RH zone. Hostel is one of those uses. The proposed hostel is not a typical hostel – guests are let individual rooms rather than group accommodations. The venue is not advertised as a “hostel,” and no staff appear to be onsite (the application makes reference to a single employee who lives in Burlington). It may be viewed as a hostel only as a result of an outdated “hostel” definition in Article 13. That reads: “A place where travelers may stay for a limited duration, as recognized by the International Hostel Association.” Such association no longer exists. The property does serve as a place for visitors to stay for short periods of time. Insofar as no exterior building or site alterations are proposed, and given that the property will continue to serve as a place for individuals to stay, it may be viewed as consistent with the character of this high density residential neighborhood. **(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 hostel is not expected to generate nuisance impacts from noise, odor, dust, and the like that may be more typically associated with industrial uses. Overnight quiet hours are articulated in the application (10:00 PM – 7:00 AM) and would be included in this permit, if approved. **(Affirmative finding if conditioned)**

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;*

No traffic analysis has been provided or is required for this application. The proposed hostel is expected to generate modest additional traffic, primarily associated with guest turn-over. **(Affirmative finding)**

*and,*

5. *The utilization of renewable energy resources;*

No renewable energy utilization is included in this proposal. Future incorporation is not precluded by the use. **(Affirmative finding)**

*and,*

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

With the change in use to a hostel, rooms and meals tax will likely be required. **(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 hostel is not expected to produce offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

2. *Time limits for construction.*

No construction timeline or phasing are included in this proposal. The standard 3-year timeframe for zoning permits will apply. **(Affirmative finding)**

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

As a hostel, guests will stay overnight. Check in time is noted as 4:00 PM, and check out time is noted as 10:00 AM.

No construction is associated with this proposal. **(Affirmative finding)**

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.

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.*

See the recommended conditions.

**Article 8: Parking**

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

The onsite parking requirement for a hostel in the neighborhood parking district is 0.5 space per 2 beds. In this case, the total onsite requirement would be 4 spaces (0.5 X 7). The onsite driveway is wide enough for two vehicles side-by-side and deep enough for tandem parking (4 spaces); however, tandem parking spaces cannot be counted towards the minimum onsite parking requirement. As a result, only two parking spaces can be counted.

There are additional parking spaces behind the building and at least partially within the subject property, but they are used by neighboring properties on Buell Street and are not for the subject property and will likely be removed. Instead, the applicant is proposing to use 2 offsite parking spaces at 307 Pearl Street and 17 South Willard Street to satisfy this requirement. The applicant owns these properties as well. See Sec. 8.1.12 (a), *Off-Site parking facilities*, for additional information. **(Affirmative finding)**

### ***Sec. 8.1.12, Limitations, Location, Use of Facilities***

#### ***(a) Off-Site parking facilities***

The property is within the neighborhood parking district. As such off-site parking may be used, but no more than 50% of the minimum requirement may be located at a distance greater than 600 ft. from the use it serves. In this case, the distance between 36-38 South Union Street and the shared parking at 307 Pearl Street and 17 South Willard Street is 1,060 ft. With 2 onsite parking spaces, the other two spaces could be located more than 600 ft. away.

This week, the applicant submitted separate zoning permit applications for the shared parking areas at 307 Pearl Street and 17 South Willard Street. Orthophotos from 1978 and 2019 show significant parking expansion over time with no zoning approval. Initial review of the applications shows that the shared parking area may be approvable; however, final administrative action is needed at the time of this writing.

The shared parking area contains 24 parking spaces. The 6-unit apartment building at 307 Pearl requires 12 parking spaces, and the 5-unit apartment building at 17 South Willard Street requires 10 parking spaces. The two additional spaces are sufficient for 36-38 South Union Street.

Offsite parking in any event must be guaranteed for the duration of the use as evidenced by deed or easement, subject to review and approval by the City Attorney. Such language has been provided and forwarded to the City Attorney's office for review. **(Affirmative finding if conditioned)**

### **Article 9: Inclusionary and Replacement Housing**

#### ***Sec. 9.2.2, Applicability***

The housing replacement requirements of this Article are triggered by the conversion of dwelling unit(s) to nonresidential use. Such is the case here. Housing replacement standards for this application are predicated on use as a duplex. **(Affirmative finding)**

#### ***Sec. 9.2.3, Approval***

The applicants have provided information as to the number of dwelling units to be converted and the number of bedrooms within each (2 dwelling units, 7 bedrooms within each unit). No information has been provided as to whether the tenant notice requirements prior to conversion ever took place. **(No finding possible)**

#### ***Sec. 9.2.4, Relocation Requirements; Notice and Relocation Costs***

As noted above, no information has been provided as to whether any of the required tenant notice and relocation provisions ever happened per the requirements of this section. **(No finding possible)**

***Sec. 9.2.5, Housing Replacement Requirement***

The applicant has elected to meet the housing replacement requirement by paying into the city’s Housing Trust Fund. Each 7-bedroom dwelling unit converted to hostel use requires a housing replacement fee of \$33,797.32 (total of \$67,594.64 for the two units). Relief from the full amount is requested. See Sec. 9.2.9 below.

***Sec. 9.2.9, Relief***

*(a) The literal interpretation and strict application of the housing replacement requirement would be impossible for the owner;*

Documentation submitted to articulate the requested relief asserts that the full payment would likely be financially impossible for the applicant. The applicant is seeking 50% relief – the maximum possible under this Section. This criterion expressly refers to the owner, but only the applicant is addressed in the request for relief. Arguably, who provides the housing replacement payment could be a decision between the owner and the applicant. In any event, the request for relief provides no quantifiable evidence of financial hardship. As requested relief hinges on financial hardship, that needs to be demonstrated. **(No finding possible)**

*(b) The requested relief would be consistent with the spirit and purpose of this Article; and,*

The request for relief asserts that the hostel provides affordable short term housing for traveling professionals. No quantifiable data as to “affordable” is provided, nor is there any apparent restriction in guests to traveling professionals. With the conversion to a hostel, the property ceases to provide housing.

The request for relief also notes that this change in use enables a low-income Vermont resident to achieve a sustainable living. The applicant does not live in Burlington. The proposed conversion will remove two dwelling units from Burlington’s housing stock. **(Adverse finding)**

*(c) The requested relief does not constitute a grant of special privilege inconsistent with the limitations upon similar properties.*

The requested relief in this case hinges on financial hardship. Lacking any quantifiable data to support this assertion, the request for relief falls short. The housing replacement fee is substantial and is tied to the loss of two large dwelling units from the city’s housing stock. Requests for relief are rare and should be granted only when the need is clearly demonstrated. **(Adverse finding)**

**II. Conditions of Approval**

Conditions of approval are recommended only in the event the applicant can demonstrate full compliance with the housing replacement requirements of Article 9. Otherwise, denial is warranted per the lack of compliance with the housing replacement requirements.

1. **Prior to release of the zoning permit**, parking requirements shall be fully satisfied.

Specifically:

- a. The shared parking areas at 307 Pearl Street and 17 South Willard Street shall receive zoning permits;

- b. The off-site parking easement with 307 Pearl Street and 17 South Willard Street shall be reviewed and approved by the City Attorney; and,
  - c. Failure to comply with a. and b. shall render this zoning permit null and void.
- 2. **Prior to issuance of a certificate of occupancy**, payment to the city's Housing Trust Fund per Article 9 shall be made in full.
- 3. It is the applicant's responsibility to obtain a Vermont wastewater permit. A capacity letter issued by the Dept. of Public Works will be required prior to issuance if applicable.
- 4. Overnight quiet hours are 10:00 PM to 7:00 AM every day.
- 5. Standard zoning permit conditions 1-15.