

**Department of Planning and Zoning**

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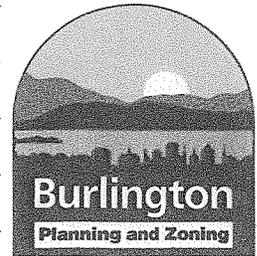
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Scott Gustin, AICP, Senior Planner

Mary O'Neil, AICP, Senior Planner

Nic Anderson, Zoning Clerk

Elsie Tillotson, Department Secretary



TO: Development Review Board

FROM: Ken Lerner

DATE: July 15, 2014

RE: 14-1172NA; 12 Weston 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: 1                      Parcel ID # 045-1-240-000

Owner: Charles and Cynthia Burns

Appellant: Michael Long et al

*Request:* Appeal of administrative determination, #14-1172NA, regarding zoning permit non-applicability of internal reconfiguration of existing units. No change to unit count, number of rooms or habitable space.

**Recommendation:** Uphold the issuance of Determination of Non-Applicability 14-1172NA based on the following findings:

Findings

A. Background and Appeal

- April 8, 2014 - Zoning Complaint #269421 filed with Code Enforcement Office alleging "reconfiguration interior of home to expand living space to create 2 apartments without Zoning Approval".
  1. May 15, 2014 - Determination of the Code Enforcement Office was issued that this is not a zoning violation. This determination was not appealed and was based on the following:
    - Sworn affidavit from the owner indicates this property has been used as a duplex from 1969 forward. Based on this statement and supported by other evidence submitted by the owner, from city records, and lack of evidence to the contrary, the use of the property is a duplex since at least 1969.

- 1969 pre-dates the adoption of the Zoning Code of April 26, 1973. As all zoning permits issued prior to that date, (except for permits associated with Zoning Board of Adjustment actions), appear to have been removed from the zoning records of the Planning & Zoning Department and to the Department's knowledge are no longer available, any uses that may have been subject to obtaining permits prior to April 26, 1973 which can be documented to have existed prior to that date, may continue to remain as a pre-existing non-conforming use so long as there is no City record to the contrary.
  - Property owner additionally refuted complaint and submitted supporting documentation that occupancy of two units at 12 Weston Street has existed continuously since 1969. Supporting documentation included, but not limited to, the following:
    - Report of Burlington Public Works regarding permits issued on the property.
    - Affidavit of Monika Busse, tenant at the third floor apartment.
    - Affidavit of Elizabeth L. Gadue, property owner.
- June 3, 2014 Non-applicability determination 14-1172NA issued for: *Internal reconfiguration of existing units. No change to unit count, number of rooms or habitable space.* This determination was based on the work being internal with no increase in living space, rooms or additional units.
  - June 16, 2014 Appeal filed; see attached appeal letter dated June 14, 2014. Appellants contend that the reconfiguration disregards parking and density (minimum lot size for a duplex). Their position also is that the premises have been an owner occupied single family house with an accessory apartment. Their view is that this occupancy distinctly is different than duplex use. Thus, in their view, the proposed interior reconfiguration changes the use from an owner-occupied residence with an accessory apartment into duplex. The duplex would now contain two large residential units that no longer constitute an accessory apartment under current codes.

#### B. Response

- The documented use of the premises since at least 1969 has been for two residential units.
- Under the zoning regulations in affect at that time this property was zoned "Residential – Zone 1" (see attached *Title 27, Zoning and Planning, Chapter 1 Municipal Zoning, Section 6509*)
- The allowed uses in this district include "*single family dwellings*", "*two family dwellings*", "*apartment houses of three or more family units, hotels, tourist cabins and motels*", "*rooming and tourist homes*" as well as some non-residential uses.
- Accessory apartments are not listed as a use, nor are they defined in the zoning code. Thus, based on the provisions of the effective ordinance, a residence with an accessory apartment would not have existed at that time. Therefore, with sworn statements of the owner and renter the only conceivable use that existed in 1969 at this property is a "two family dwelling".
- Under current CDO regulations regarding zoning permit requirements, specific interior work that requires permits are listed as follows:

Sec. 3.1.2      *Zoning Permit Required, (b) Interior work:*

1. *Increase in habitable living space (including, but not limited to, attic, bedroom, basement, garage, and winterizing or otherwise enclosing a porch).*
2. *Installation of additional kitchen.*
3. *Change in use.*
4. *Home occupations.*
5. *Increase or decrease in the number of units.*

In the requested interior work under the subject determination there is no increase in habitable living space, no additional kitchen, no change in use, no associated home occupation, and the number of units does not increase or decrease. Thus, under current zoning regulations such internal reconfiguration can occur without requiring a zoning permit.



Department of Planning and Zoning

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www.burlingtonvt.gov/pz

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DEPARTMENT OF  
PLANNING & ZONING

Non-Applicability of Zoning Permit Requirements

This form is a written verification from the Department of Planning and Zoning that based upon the description and statements given by the owner/applicant, a zoning permit is not applicable or required for the proposed project.

NOTE: THIS IS NOT AN APPROVAL TO START WORK.

CONSTRUCTION PERMITS WILL ALSO BE REQUIRED FROM THE DEPARTMENT OF PUBLIC WORKS AT 645 PINE STREET. VISIT THE OFFICE OR CALL 802-863-9094

PROJECT LOCATION ADDRESS: 12 Western St Burlington

PROPERTY OWNER: Elizabeth Gagne

APPLICANT: Charles Burns

\*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS:

POSTAL ADDRESS: 44 Shelburne St

CITY, ST, ZIP:

CITY, ST, ZIP: Burlington, VT, 05401

DAY PHONE:

DAY PHONE: 802-343-0462

EMAIL:

EMAIL: ccburns@c21jacks.com

SIGNATURE: Elizabeth Gagne

SIGNATURE: Charles Burns

I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this application.

Description of Proposed Project: Reconfiguring the interior of unit on the 2nd + 3rd floor and 1 unit on the 1st floor. No change to number of rooms

Existing Use of Property:  Single Family  Multi Family Units  Other or finished space

Proposed Use of Property:  Single Family  Multi Family Units  Other

OFFICE USE ONLY Zone: Eligible for Design Review? Year Constructed? Property Class:

Based upon the above description, the proposed work does not require a zoning permit for the following reason(s):

- Project constitutes repair/maintenance or replacement in-kind
- Project is exempt from zoning permit requirements per Section 3.1.2(c)(1) of the Zoning Ordinance
- Other: interior work only - no doors or changes

Reviewed and approved by: Date: 30 June 2014

Additional Notes: 2 units only are recognized

No additional living space or increase in the number of rooms

Non-Applicability Reference #: 16-072-VT

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JUN 16 2014

DEPARTMENT OF  
PLANNING & ZONING

June 14, 2014

Austin Hart, Chair  
Burlington Development Review Board  
City Hall  
149 Church Street  
Burlington, VT 05401

Re: 12 Weston Street

Dear Mr. Hart and Participating Members of the Development Review Board:

The residents below object to the administrative determination that 12 Weston Street in the RL Zone can be "reconfigured" without a permit. Such reconfiguration would result in the creation of a duplex without the required parking or the minimum lot size. These requirements are intended to prevent the detrimental effects on the neighborhood that will result if this "reconfiguration" is allowed.

This property is and has been for many years (at least thirty) an owner occupied single family house with an accessory apartment on the top floor or dormer story. As such, it has been a permitted use under the CDO which requires owner occupancy when an accessory apartment is part of a single family house.

The view that it *is* a duplex or has been used as a duplex for an extended period disregards the clear and compelling distinction in the CDO between a duplex and a single family house with an accessory apartment. (See Article 13: Definitions: Duplex)

Reconfiguration would be not an incidental, but a major change -- morphing an accessory apartment into a larger duplex unit, changing a single family house to a duplex, eliminating the owner occupancy requirement, and increasing the intensity of use and parking demand many times over.

Changing this single family house into a duplex necessitates enlarging the dormer level accessory apartment by extending it downstairs to the second floor. The "reconfiguration" request itself refutes the view that the house is already a duplex. Both by CDO definition and by function and use the dormer level apartment has *always* been accessory to the single family house.

The Zoning Administrator has argued that because the accessory apartment pre-dates the CDO, it can be reconfigured into a duplex unit without permit or review and regardless of parking and minimal lot size requirements. However, simply because such a change *could* have been made in the 1960s, does not mean it can be permitted now. The fact is the change *was not made* under a previous ordinance and the current ordinance, wisely, does not allow such a change.

Only one legal off-street parking space in the garage is provided, while four are required, and the lot is just 3000 square feet while the minimum lot size for a duplex is 10,000 square feet.

At the very least, if the applicant or a subsequent owner desires to reconfigure and use this property as a duplex, there should be an application and full review for this requested change of use. Anything less would be a subversion and violation of the intent and letter of the CDO.

The definition of "Duplex" in the CDO is unambiguous in specifying that **"for purposes of this ordinance a single-family detached structure with an accessory apartment shall not be considered a duplex."**

As such, it is clear that "reconfiguration" without a permit would change this single family house to a duplex in violation of the CDO. We ask that the DRB uphold the CDO and rule accordingly in granting our appeal.

Thank you for your consideration.

Sincerely,

Michael Long, 55 Henry Street  
Caryn Long, 55 Henry Street  
Alex Friend, 53 Henry Street  
Mary Moynihan, 53 Henry Street  
Greg Hancock, 69 Henry Street  
Kari Hancock, 69 Henry Street  
Hamilton Davis, 26 Henry Street  
Candace Page, 26 Henry Street  
Matt Moore, 82 Henry Street  
Susan Moakley, 82 Henry Street  
Scott Richards, 96 Henry Street  
Kathleen Donohue, 96 Henry Street  
Norman Williams, 381 South Union Street  
Peg Boyle Single, 58 Case Parkway  
Richard Single, 58 Case Parkway  
Paul Bierman, 86 Brookes Avenue  
Judy Rosenstreich, 30 Henry Street  
Sandra Wynne, 137 Mansfield Avenue  
Bret Findley, 148-150 Loomis Street  
Alexander Johnston, 148-150 Loomis Street  
Jesse Robbins, 23 Weston Street

Copy sent  
to Judy  
Rosenstreich  
6/4/14 WR

TITLE 27

*Zoning and Planning*

Chapter

1. Municipal Zoning
3. Subdivisions

CHAPTER 1

*Municipal Zoning*

SECTION

6501. Definitions.
6502. Administration and enforcement.
6503. Board of adjustment.
6504. Procedures.
6505. Certification of occupancy.
6506. Districts.
6507. Boundaries.
6508. Lots in two districts.
6509. Residential district — Zone 1.
6510. Park district — Zone 2.
6511. Outdoor advertising.
6512. Commercial district — Zone 3.
6513. Modified commercial district — Zone 3A.
6514. Gasoline filling stations.
6515. Industrial district — Zone 4.
6516. Unit development.
6517. Nonconforming uses.
6518. Changes or extension of nonconforming uses.
6519. Temporary uses.
6520. Residential trailer parking.
6521. Restoration after fire.
6522. Height and area regulations.
6523. Penalty.
6524. Construction of chapter, other laws.

Collateral references. For similar provisions, see Nimlo Model Ordinance Service section 11-201 et seq.

**§ 6501. Definitions**

For the purpose of this chapter:

(1) Singular words shall include the plural, and plural the singular, words in the present tense shall include the future, "used" shall include "designed or intended to be used," and the word "shall" is mandatory and not merely directory.

(2) Apartment house. A building or portion thereof used or designed to be used as a residence for three or more families living as units independently of one another.

(3) Building. Anything constructed or erected, the use of which requires more or less permanent location on the soil, or attached to something having a permanent location on the soil.

(4) Height of building. The vertical distance from the street curb level to the mean level of the slope of the main roof, provided, however, that the average elevation of the finished grade in front of the building may be substituted for the street curb level where the building in question is set back from the street a distance at least equal to the difference in elevation between the curb level and the grade level.

(5) Hotel. A building occupied as the temporary or permanent abiding place of individuals lodged therein with or without meals, in which there are more than fifteen sleeping rooms above the first story for separate occupancy and no provision made for cooking in individual rooms.

(6) Nonconforming use. The use of a building or premises which does not conform with the use regulations of the district where located.

(7) Public garage. A garage other than private, used or designed to be used for the housing or care of more than three self-propelled vehicles, where any such vehicles are for hire, stored, repaired, serviced, or kept for lease or sale.

**§ 6502. Administration and enforcement**

The building inspector of the city, or in case of his absence from the city, inability to serve, resignation, death or removal, the deputy building inspector, shall be the zoning administrative officer. No building or structure, or part thereof, shall be erected, altered or moved without a permit from the zoning administrative officer, issued upon application, stating that the plans and intended use indicate that the building is to conform in all respects with the provisions of this chapter. He shall have general charge of the administration of this chapter.

center line of Home Avenue, on the north by the center line of Flynn Avenue, on the east by the westerly line of Shelburne Street, and on the west by a line parallel to the westerly line of Shelburne Street and 325 feet westerly therefrom.

(2) That portion of the city bounded on the south by the south line of the driveway leading westerly from North Avenue to property of Consolidated Rendering Company, easterly by the westerly line of North Avenue, northerly by the south line of the S. W. Thayer School property, and westerly by a line parallel to the westerly line of North Avenue and 600 feet westerly therefrom.

Cross references. Dividing municipality into districts, see 24 V.S.A. § 3005. Uniform regulations, see 24 V.S.A. § 3006.

#### § 6508. Lots in two districts

Where a district boundary line divides a lot held as an entity by any owner or owners of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion, provided the lot has street frontage in the less restricted district.

#### § 6509. Residential district — Zone 1

Subject to the provisions of sections 6517–6520 hereinafter contained, no building shall be erected, altered or used, and no premises shall be used, in Zone 1, for any purpose except:

- (1) Single family dwellings.
- (2) Two family dwellings.
- (3) Farm or garden, provided such use shall not be injurious, noxious, detrimental or offensive to the neighborhood.
- (4) Church use, educational use, municipal recreational use.
- (5) Any of the following uses, when authorized as a special exception by the zoning board of adjustment:

(A) Apartment houses of three or more family units, hotels, tourist cabins, and motels.

(B) Rooming houses and tourist homes.

(C) Customary home occupations, such as millinery, hair-dressing, manicuring, laundering, preserving, home cooking, or the office of a doctor, dentist, musician, teacher, architect, artist, attorney, or member of some other recognized profession, provided such occupation be carried on by a person only within the dwelling or apartment used by him as his private residence, that no more than one other person be employed therein, and that such occupation occupy not more than one-third of the floor area of such dwelling

or apartment. No such occupation shall be carried on in an accessory building, and there shall be no display or advertising visible from the street except a professional or announcement sign not exceeding 1½ square feet in area.

(D) Offices of one or more doctors, dentists, musicians, teachers, architects, artists or attorneys, located other than within dwellings or apartments used by him or them as a private residence.

(E) Greenhouses or nurseries.

(F) Hospitals, sanitariums, or buildings used for charitable purposes.

(G) Governmental use.

(H) Golf courses.

(I) Club uses.

(J) Any use of the same general character as (A)-(I), supra.

Cross references. Restrictions in erection, construction, reconstruction, alteration, repair or use, see 24 V.S.A. § 3005.

— Exceptions to existing structures and uses, see 24 V.S.A. § 3010.

#### § 6510. Park district — Zone 2

Subject to the provisions of sections 6517-6520 hereinafter contained, no building shall be erected, altered or used, and no premises shall be used, in Zone 2, for any purpose except those permitted in Zone 1, or for park or recreational purposes. This section shall, however, be subject to the provisions of any existing law with respect to the use of parks.

Cross references. Parks, see section 3801 et seq.

#### § 6511. Outdoor advertising

Subject to the provisions of sections 6517-6520 hereinafter contained, and except as otherwise herein provided, no person shall erect or maintain, or cause to be erected or maintained, in Zones 1 and 2 any outdoor advertising structure, device, or display, and for the purpose of this section, the word "display" shall mean erecting, maintaining, pasting, painting, and posting an advertisement or sign out of doors or erecting or maintaining a billboard or other structure designed and intended for display of advertising matter where the same may be seen by the public.

Cross references. Illuminated signs, see section 4501 et seq.

Limiting advertising structures, see 24 V.S.A. § 3008.

Signs over street, see section 4207.

Statutory provisions, see 9 V.S.A. § 3621 et seq.