

## Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

<http://www.burlingtonvt.gov/PZ/>

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

*David E. White, AICP, Director  
Meagan Tuttle, AICP, Comprehensive Planner  
Jay Appleton, Senior GIS/IT Programmer/Analyst  
Scott Gustin, AICP, CFM, Principal Planner  
Mary O'Neil, AICP, Principal Planner  
Ryan Morrison, Associate Planner  
Layne Darfler, Planning Technician  
Anita Wade, Zoning Clerk*



### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: February 20, 2018  
RE: ZP18-0641CU, 206 East Avenue

---

**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.**

**Project:** ZP18-0641CU

**Location:** 206 East Avenue

**Zone:** RL **Ward:** IE

**Parking District:** Neighborhood

**Date application accepted:** January 23, 2018

**Applicant/ Owner:** Liam Murphy, Murphy Sullivan Kronk / 206 East Avenue LLC (Joel Rippa)

**Request:** Conditional use approval for the addition of a third residential unit to a two-unit structure.



#### Background:

- **Zoning Permit 11-0560CA;** New three car garage, remodel existing garage into two bedroom and bath, third floor deck, new exterior stairs. (Application defined use as three units.) **Denied** February, 2011. Applicant failure to submit documentation confirming

prior approval for a triplex, incomplete application. Decision appealed; appeal withdrawn April 2011.

- **Zoning Permit 97-019**; construction of a third story deck on top of the existing second floor flat roof. Proposal includes connecting the deck with a stair to meet the existing stair system on the side of the **duplex**. No increase in coverage **or change in use**. **Approved July 1996**.
- **Zoning Permit 83-191**; construct a 28' x 28' addition to the existing **duplex** to be used for a garage and additional living space. No decision recorded, no administrator's signature. May 1983.
- **Zoning Permit 81-358**; add dormer on north and south sides of the roof; outside stairway for safety. No change in building size. (identified as 2 family home on application.) Approved March 1981.
- Request to convert 2 family house to 1st floor realtor office, 2<sup>nd</sup> floor to 2 apartments, 3<sup>rd</sup> floor to one apartment (total 1 commercial and 3 apartments). Include sign for realtor's office. **Denied**, June 1971.



Further reference is made to the attached table and timeline of Assessor's, Code, DPW, Land Records, and Zoning records.

**Overview:** The owners of 206 East Avenue, through their attorney Liam Murphy, request the addition of a third residential unit per the Standards of Section 4.4.5 (d) 5. A.

The benchmark here is threefold:

1. The applicant must demonstrate that that property legally contained two or more units as of January 1, 2007;
2. The DRB has approved the request in advance as a conditional use, and,
3. The new unit count meets the density limitation for the zoning district.

The application fails on all three counts. See findings for further discussion.

There is a decision precedent for denial of a request to maintain an unpermitted residential unit at 79 Spruce Street, ZP 08-265CU, November 6, 2007. Upon appeal, the Vermont Environmental Court denied the application June 4, 2009. See *Environmental Court Summary Judgment 266-12-7 Vtec* dated Jun 4, 2009 denying approval to maintain four residential dwelling units at 79 Spruce Street.

**Recommendation:** Conditional use **Denial**, per the following findings:

## **I. Findings**

### **Article 2: Administrative Mechanisms**

#### **Section 2.7.8 Withhold Permit**

**Per this standard**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations. **Affirmative finding if conditioned.**

## **Article 3: Applications, Permits and Project Reviews**

### ***Section 3.1.2 Zoning Permit Required***

*(a) Exterior work*

#### *3. Change of use or expansion of use.*

There are no zoning permits on file for any change of use or expansion of use. Land records refer to the property as “a dwelling house” up to 1978. (1911 Chauncy Brownell to Lucy Rowe, 62:185; 1963 Fellow to Maynard, 164:472; 1978 1971 Maynard to Chausse 205:293; 1978 Chausse to Rippa, Burlington Land Records, 254: 255-256). The 1962 Burlington Zoning Ordinance made a distinction between single family and duplex; therefore, a permit would have been required for any change of use made after that ordinance was adopted. The owners represented the project as a duplex in 1971, and a triplex in 2011. (Both permit applications denied.)

Unless supporting documentation can confirm duplex use prior to 1962 or zoning approval after 1962, the assertion that the property legally contained two or more units as of January 1, 2007 is flawed. **Adverse finding.**

### **Section 3.5.2 (a) Conditional Use Review**

Consideration of an extra dwelling unit per Section 4.4.5 (d) 5. Requires Conditional Use review.

### **Section 3.5.6 Review Criteria**

- 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;*

A letter of water and sewer capacity will be required from Burlington’s Water Division for an additional unit. Additionally, a state wastewater permit will be required.

Other public utilities and services are likely able to support the intensity of one more dwelling unit with the existing residential zoning district. **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 historic development pattern of East Avenue is single family and duplex residences, with a more recent co-housing development and a medical residential care facility.

Within a residential zoning district; expansion of housing may be considered within the following direction of the Municipal Development Plan:

- Support the development of additional housing opportunities within the city... [MDP, Housing Plan, Page IX-1.]*

However,

- Support the creation of new rental and owner-occupied housing on every parcel of land in Burlington that is zoned for residential development at the number of units allowed by zoning. [MDP, Housing Plan, Page IX-12.]*

The 1971 request to increase the number of units and add a commercial office space was denied based on the likelihood of changing the character of the residential zoning district. In this

application, the proposed third unit will push the intensity of development beyond the allowable density of the zoning district per Table 4.4.5-1 and Section 5.2.7 (a). **Adverse 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;*

No nuisance impacts from noise, odor, dust, heat or vibrations are identified. There may be identifiable but marginal impacts from increased traffic to the third unit. **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;*

East Avenue is a major connector road with bike lanes and signalized intersections at both ends. The structure has been functioning as a three-unit residential structure, based on minimum housing rental registration and assessor's observations and notes. Minimum housing records show the property used as a triplex since at least 2003. In that regard, little change would be anticipated from present conditions.

The roadway, pedestrian paths and bike lane are capable of supporting the proposed use. **Affirmative finding if conditioned.**

*and,*

5. *The utilization of renewable energy resources;*

There is nothing within the application that would prohibit the use of renewable energy resources. **Affirmative finding.**

*and,*

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

Any change of use after 1962 would require zoning approval. There is no evidence that a zoning permit was issued for duplex use. Similarly, state wastewater permits should reflect changes of use. No state permits have been issued for this address or to this owner.

The applicant will be required to provide evidence of zoning approval of duplex use, and a sewer and water capacity letter from Burlington's Water Division for the new residential unit proposed.

The site plan provided by the applicant illustrates encroachment into the city Right-of-way along the sidewalk. Encroachments require review and approval by DPW and City Council. If considered for approval, a revised site plan must be provided that demonstrates compliance with setbacks and lot coverage; any encroachments in the ROW must be removed.

**Affirmative finding if conditioned.**

**(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 property has a large expanse of paving in the front yard which reflects a site plan submitted in 1983. There is no approval on that plan. Some parking may be logically identified in the garage requested in that application, but there is no administrative signature on the application confirming its acceptability, and no approval stamp or date of decision.

Review of required on-site parking, space configuration, site coverage calculation, conformity with setbacks and appropriate screening will be required with a revised site plan, if considered for approval.

**Affirmative finding if conditioned.**

- 2. Time limits for construction.*

If site alterations are included with this decision, they shall be completed within the two-year zoning permit window. **Affirmative finding if conditioned.**

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

Residential uses have no limitations on hours of operation. Not applicable.

- 4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions;*

Any enlargement or alteration of the use will be subject to review under the regulations in effect at the time of application. **Affirmative finding if conditioned.**

*and,*

- 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.*

The applicant shall submit a site plan with parking arrangement to affirm required parking and to establish conformity with parking circulation/layout guidance of Articles 6, Sections 6.2.2 (i) and (l) and Article 8.

See recommended conditions relative to confirmation of adequate sewer and water capacity.

**Affirmative finding if conditioned.**

**Article 4: Zoning Maps and Districts**

**Section 4.4.5 Residential Districts**

*(a) Purpose*

1. The **Residential Low Density (RL)** district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history.

The application is a request to add an additional residential unit to an existing duplex, per Section 4.4.5 (d) 5., below. That section also articulates the parameters to structures that “legally contained two or more units as of January 1, 2007.” The applicant has not demonstrated the duplex ever received zoning approval.

Triplex / 3 units is not identified as a typical or intended use in the Low Density Residential zoning district. East Avenue is a developed linear neighborhood reflecting a development history primarily of single family and duplex residential dwellings. (Buildings numbered between 150 and 260 East Avenue include 19 single family homes, 4 duplexes, and a more recently developed planned unit co-housing project.) A three-unit building is generally inconsistent with the intended principal use of the RL zoning district, and this street. **Adverse finding.**

**Section 4.4.5 (b) Dimensional Standards and Density**

**Table 4.4.5-2 Base Residential Density**

District	Maximum Dwelling Units Per Acre
Low Density: RL, RL-W	7 units/acre
206 East Avenue	8 units per acre.

The proposed third unit exceeds the density limitation for the RL zoning district. See *Density and Intensity of Development Calculations, (a) Dwelling Units per Acre* under Section 5.2.7, below. **Adverse finding.**

**Section 4.4.5 (c) Permitted and Conditional Uses**

*Attached dwelling, 3 or more* is **not a permitted use** in the RL zoning district per Appendix A. The only method of adding an additional unit is under Section 4.4.5 (d) 5, below.

**Adverse finding** relative to Appendix A, Use Table.

**Table 4.4.5-3: Residential District Dimensional Standards**

The submission materials offer some site changes to decrease existing coverage and meet setbacks. There are **no existing approved site plans on file**, and **no approvals** for the expanded parking areas. The site currently exceeds allowable coverage for the RL zoning district. Total coverage is identified as 46.29% (35% limitation in RL, with 10% bonus for open amenities.) NONE of the parking expansion that has occurred since 1978 has been done with the benefit of zoning approval.



Detail, 1978 ortho photograph, 206 East Avenue  
Note isolated parking area south of dwelling.



Detail, 1988 orthophotograph, 206 East Avenue.  
Parking has expanded to a central, and rear lot.

Until such time the applicant can provide evidence of duplex approval (and parking requirement verified) and documentation that the site expansion has been done with zoning approval, **No finding possible.**

#### **Section 4.4.5 (d) 5. Residential Density**

##### *A. Additional Unit to Multi-Family*

*One additional unit may be added to structures located in the RL district which legally contained two or more units as of January 1, 2007, if approved in advance as a conditional use by the DRB.*

The structure is within the RL zoning district, but has not demonstrated it was legally a duplex prior to January 1, 2007. Burlington City Directories inform that two units were not identified by occupancy until 1977.

Additionally, the applicant is not requesting an additional unit prior to its establishment (“if approved **in advance** as a conditional use by the DRB.”) Rental registration dating back to 2003, and Assessor’s notation in June 1987 reflect three units. This zoning permit application identifies the existing use as 3 units. The request for a third unit is therefore not being made in advance of its establishment. **Adverse finding.**

##### *B. Additions to Existing Residential Structures*

*No request for an addition to an existing structure shall be considered or imply approval of an additional unit, unless requested specifically on the zoning permit application form.*

Three applications for structural additions have been submitted since March 1981. All applications identify the use as a duplex. No requests were made to increase the number of residential units. On the 2011 zoning permit application, the use was identified as a triplex. The permit was denied for failure to demonstrate approval of the change of use.

No changes of use have been included in prior requests for additions, which is required by this standard if the number of dwelling units is proposed to be increased. **Adverse finding.**

##### *C. Residential Occupancy Limits*

*In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.*

All provisions of the Functional Family ordinance shall remain applicable to all dwelling units. Each unit must be occupied by a family as defined by the CDO. **Affirmative finding if conditioned.**

### **Article 5: Citywide General Regulations**

#### **Section 5.2.7 Density and Intensity of Development Calculations**

**(a) Dwelling Units per Acre:** *In accordance with the district-specific provisions of Article 4, the calculation of development intensity shall be measured as follows in such cases where the intensity of development is measured on a dwelling unit per acre basis:*

*1. Density Calculation: The total number of dwelling units provided on a development site, or portion of the site where split by a zoning district boundary, shall be divided by the gross site area expressed in acres.*

*In calculating the number of residential units permitted, fractional units of less than five-tenths (0.5) shall be rounded down to the nearest whole number and fractional units of five-tenths (0.5) or greater shall be rounded up to the nearest whole number. Any rounding of fractional units shall be limited to a single final calculation for any development.*

206 East Avenue is 17,424 sf in area. Using the above formula:

3 units (requested) / (17,424/43560; lot area divided by acre) or .4 = 7.5.

7.5 is greater than the 7 units per acre allowable by Table 4.4.5-2.

Using the rounding provision, 7.5 rounds up to 8; also greater than the 7 units per acre limitation of Table 4.4.5-2.

The applicant has increased the lot area in his calculation (narrative, p. 1) assumedly to reflect “gross site area”, which is a footnote intended for use when guiding subdivision development potential. This is inappropriate when addressing a developed lot with established public rights-of-way and defined parcel area.

The proposal for three units exceeds the density limitation of the zoning district. **Adverse finding.**

### **Article 8: Parking**

Each residential unit in the Neighborhood Parking District requires 2 parking spaces. For three units, 6 on-site parking spaces are required. There are no approved site plans on file, and no approvals for the expanded parking reflected on the submitted site plans. Orthophotographs demonstrate a pull-off parking area in existence as of 1978, but it has not had the benefit of permit approval. Even if the applicant obtained recognition that certain spaces were beyond the Statute of Limitations (15-year provision), those spaces would not be legal and would not be able to be used toward the calculation for required parking. The applicant has not received any such determination to date.

If a change of use is considered, any parking in setbacks or right-of-way must be removed. The applicant would be required to provide a site plan with legal parking spaces annotated for the approved use. **Affirmative finding if conditioned.**

### **Section 8.1.9 Maximum Parking Spaces**

*The total number of parking spaces provided in all parking districts shall not be more than 125% of the minimum number of spaces required for the Neighborhood Parking District for any given use as required in Table 8.1.8-1.*

For the proposed three units, 6 parking spaces are required in the Neighborhood Parking District. Per the standard, the maximum parking number is  $6 \times 1.25$ , or 7.5 (8) spaces. The extensive parking area illustrated on the proposed site plan would provide an excess of the maximum 8 spaces, and therefore exceeds the Maximum Parking allowance.

#### *6 Waiver of Maximum Parking Limitations*

*Parking in excess of the maximum parking limitation of this section may be waived by the DRB pursuant to the provisions of Section 8.1.15 with the following additional requirements:*

- A. *The Applicant requesting the waiver shall also provide a peak demand parking study for two similar uses in the area, and*
- B. *The following additional review criteria shall be addressed regarding how:*
  - i. *The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses;*
  - ii. *The proposed development demonstrates that its design and intended uses will continue to support high levels of existing or planned transit and pedestrian activity; and*
  - iii. *The site plan indicates where additional parking can be redeveloped to a more intensive transit supportive use in the future.*

The applicant has not requested a waiver of maximum parking provisions; has not submitted a peak demand parking study for two similar uses in the area, and has not demonstrated what spurs the need for two large (unpermitted) parking lots on the site. There is street parking along the east side of East Avenue, and GMT transit routes along East Avenue and Main Street to the south. Additionally, the UVM Campus shuttle crosses East Avenue near this location, and a bike lane runs the full length of East Avenue.<sup>1</sup> Simply put, the existing use does not require the expanse of pavement and lot coverage dedicated to parking, and the proposed use will not require such extensive paving. **Adverse finding.**

**Appendix A:** *Attached dwelling, multi-family (3 or more)* is not a permitted use in the RL zoning district. Section 4.4.5 (d) 5.A. is the sole method to add an additional unit.

**NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.**

---

<sup>1</sup> See *UVM MOVES, University of Vermont Campus Transportation Plan*, [https://www.uvm.edu/tps/commuting/UVMoves\\_Active%20Transportation%20Plan\\_FINAL\\_SM.pdf](https://www.uvm.edu/tps/commuting/UVMoves_Active%20Transportation%20Plan_FINAL_SM.pdf)