

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax (802) 863-0466

AJ LaRosa
Caitlin Halpert
Geoff Hand
Brooks McArthur
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 4, 2022, 5:00 PM

PUBLIC HEARING NOTICE

Remote Meeting

Zoom: <https://us02web.zoom.us/j/83225696227?pwd=SGQ0bTdnS000Wkc3c2J4WWw1dzMxUT09>

Webinar ID: 832 2569 6227

Passcode: 969186

Telephone: US +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799

- 1. ZP-22-512; 55-57 Howard Street (RL, Ward 5S) Patrick McHenry / Montana Burns**
Relocate medical office/acupuncture home occupation from downstairs unit (55 Howard St.) to upstairs unit (57 Howard St.).

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/dr/ agendas or the office notice board, one week before the hearing for the order in which items will be heard.

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

Department of Permitting and Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
<http://www.burlingtonvt.gov/PZ/>
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Theodore Miles, Code Compliance Officer
Charlene Orton, Permitting and Inspections Administrator
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Joseph Cava, Planning Technician
Celeste Crowley, Permit Administrator



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: October 4, 2022
RE: ZP-22-509; 98-100 North Willard Street

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.

File Number: ZP-22-509

Zone: RL **Ward:** 1E

Applicant/ Owner: Wen Dong

Request: Add one residential unit to a recently converted duplex (previous use was one commercial office unit and one residential unit; allowed conversion per Section 5.2.7 (a) 2., *Density Equivalent, Nonresidential Uses.*)



Background:

- **Zoning Permit 22-472;** convert office to one residential unit to create a second unit in the building. August, 2022.
- **Zoning Permit 10-1002CA;** install new railing around landing and down stairs, replace shingles on three porch roofs and install two egress windows. June 2010.
- **Non-Applicability of Zoning Permit Requirements 04-219;** remove existing first floor porch decking and replace with same. October 2003.
- **Zoning Permit 84-139;** erect a 4' green vinyl chain link fence 145' along south property line. April 1984.
- **Zoning Permit 78-563;** erect a 21' x 21' addition to the rear of the existing house for offices. March 1978.

Overview: 98-100 North Willard Street, which is listed on the Vermont State Register of Historic Resources, has been a non-conforming use with offices upstairs and a single residential unit downstairs until August of this year, when the offices were converted to one new residential unit. The units are large (4 bedrooms proposed), so the applicant has requested the addition of

one new residential unit as part of rehabilitation efforts. A recently adopted bonus (ZP-22-01, adopted February 2022) provides an allowance for development in excess of the limits established for residential density and residential dimensional standards if the building is listed on the state or National Register of Historic Resources upon review by the DRB.

Recommended motion: Consent approval, per the following findings and conditions:

I. Findings

Article 3: Applications, Permits and Project Reviews

Part 3: Impact Fees

Section 3.3.3 Exemptions and Waivers

(a) Exemptions

The following types of development are exempt from this Part:

2. *Alterations to existing use provided that such alteration occurs entirely within an existing building and within the same square footage.*

The applicant proposes no change to the building footprint or envelope; all alterations will be internal to the structure. No Impact Fees are required for this request. **Affirmative finding.**

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

(a) Purpose:

The Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment. They are also intended to create an inviting streetscape for residents and visitors. Development that places emphasis on architectural details and form is encouraged, where primary buildings and entrances are oriented to the sidewalk, and historic development patterns are reinforced. Parking shall be placed either behind, within, or to the side of structures, as is consistent with the district and/or the neighborhood. Building facades designed for parking shall be secondary to the residential aspect of a structure.

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 applicant proposes no exterior changes with the addition of one new residential unit. Although Appendix A does not define three units or more as permitted in the RL zoning district, the Historic Building Rehabilitation Bonus provides an allowance to add new residential units to buildings that enjoy historic register listing. See Section 5.4.8 (e), below. **Affirmative finding.**

(b) Dimensional Standards and Density

Table 4.4.5-1: Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W²

	Lot Frontage¹		Lot Size	
Use	<i>(linear feet)</i>		<i>(square feet)</i>	
	RL,WRL	RM,WRM	RL, WRL³	RM, WRM
Single detached dwelling	Min: 60'	Min: 30'	Min: 6,000	NA
Duplex and above			Min: 10,000	

98-100 North Willard Street is an existing, developed lot with a street frontage of 45.26' and a lot size of 6,743 sq. The Historic Buildings Rehabilitation Bonus, however, allows increased development in excess of limits set forth in this section. See Section 5.4.8 (e), below.

Affirmative finding.

Table 4.4.5-2: Base Residential Density

District	Maximum dwelling units per acre¹
Low Density: RL, RL-W	7 units/acre
Medium Density: RM, RM-W	20 units/acre
High Density: RH	40 units/acre
Inclusive of new streets but exclusive of existing streets, and without bonuses or any Inclusionary Zoning allowances.	

The maximum dwelling units per acre calculation has an annotation that the allowance is *without bonuses*. The Historic Buildings Rehabilitation Bonus allows increased development in excess of limits set forth in this section. See Section 5.4.8 (e), below. **Affirmative finding.**

Table 4.4.5-3: Residential District Dimensional Standards

No changes are proposed to the exterior of the building or the site.

The Historic Buildings Rehabilitation Bonus allows increased development in excess of limits set forth in this section. See Section 5.4.8 (e), below. **Affirmative finding.**

(c) Permitted and Conditional Uses:

The principal land uses that may be permitted, or conditionally permitted pursuant to the requirements of Article 3, within the Residential districts shall be as defined in Appendix A – Use Table.

Although Appendix A does not define three units or more as permitted in the RL zoning district, the Historic Building Rehabilitation Bonus provides an allowance to add new residential units to buildings that enjoy historic register listing in excess of the limits set forth in 4.4.5-2 and 4.4.5-3. See Section 5.4.8 (e), below. **Affirmative finding.**

(d) District Specific Regulations:

The following regulations are district-specific exceptions, bonuses, and standards unique to the residential districts. They are in addition to, or may modify, city-wide standards as provided in Article 5 of this ordinance and district standards as provided above.

1. Setbacks

A. Encroachment for Residential Driveways

Not applicable.

B. Encroachment into the Waterfront Setback.

Not applicable.

2. Lot Coverage

No changes to the parcel are proposed. Not applicable.

A. Exceptions for Accessory Residential Features.

The application proposes no changes or additions to the site. Not applicable.

3. Accessory Residential Structures, Buildings, and Uses

Not applicable.

4. 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.

This standard is not applicable, as the lot did not contain 2 or more units as of the date specified. The Historic Buildings Rehabilitation Bonus, however, allows increased

development in excess of limits set forth in this section. See Section 5.4.8 (e), below.

Affirmative finding.

B. Additions to Existing Residential Structures.

Not applicable.

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.

Occupancy of any unit within the building is subject to the Functional Family provisions of the ordinance. Not more than four unrelated adults may occupy any of the three units. **Affirmative finding as conditioned.**

5. Uses

This application proposes to introduce one new unit for a total of 3 units on-site. Although not identified as permitted in Appendix A (three or more units, not permitted), the Historic Preservation Rehabilitation Bonus allows for density in excess of limits imposed by Section 4.4.5-2. **Affirmative finding.**

A. Exception for Neighborhood Commercial Uses.

Not applicable.

6. Residential Development Bonuses.

A. Senior Housing Bonus.

Not applicable.

B. Residential Conversion Bonus.

The commercial office space has already been converted to a (conforming) residential use. The owner seeks to utilize the Historic Building Rehabilitation Bonus to add one more new residential unit. See Section 5.4.8 (e), below.

C. Limitations on Residential Development Bonuses:

For projects where the conditions of more than one applicable bonus listed above and under Sec.5.4.8 (e) are met, the applicant may use the most permissive exemption to the underlying lot coverage or residential densities applicable.

In no case shall any development bonuses and allowances granted, either individually or in combination, enable a building to exceed the maximum density, lot coverage and building height permitted in any district as defined below:

Table 4.4.5-8: Maximum Density, Lot Coverage and Building Heights with Bonuses

District	Maximum Density*	Maximum Height	Maximum Lot Coverage*
RH	80 du/ac	45-feet <i>(68-ft in RH Overlay)</i>	92%
RM-W	40 du/ac	60-feet	72%
RM	40 du/ac	35-feet	72%
RL, RL-W	20 du/ac	35-feet	62%

*- or 125% of the pre-application gross floor area or coverage of the qualifying principal building as may be applicable per Table 5.4.8-1 Historic Building Rehabilitation Bonus

The applicant is only seeking one bonus. No changes are proposed to the building exterior or to the site. **Affirmative finding.**

Article 5: Citywide General Regulations

Section 5.2.1 Existing Small Lots.

Not applicable.

Section 5.2.2 Required Frontage or Access

Not applicable.

Section 5.2.3 Lot Coverage Requirements

No changes are proposed to the existing parcel; but the Historic Building Rehabilitation Bonus offers additional allowance for principal building coverage. None is sought. **Affirmative finding.**

Section 5.2.4 Buildable Area Calculation

The site is not more than 2 acres. Not applicable.

Section 5.2.5 Setbacks

No changes proposed. Not applicable.

Section 5.2.6 Building Height Limits

No changes proposed. Not applicable.

Section 5.2.7 Density and Intensity of Development Calculations

See Table 4.4.5-2, above and Section 5.4.8 (e), below.

Part 3: Non Conformities

Prior to August 2022, the use was non-conforming as it included a pre-existing commercial office on the 2nd floor. Utilizing the Density Conversion from non-residential option, that office

space was eliminated in favor of a new residential unit. The Historic Preservation Rehabilitation Bonus allows for the addition of another residential unit in excess of the density and dimensional standards of Sections 4.4.5-2 and 4.4.5-3. **Affirmative finding.**

Sec. 5.4.8 Historic Buildings and Sites

The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:

To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;

To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;

To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,

To promote the adaptive re-use of historic buildings and sites.

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

98-100 North Willard Street is listed on the State of Vermont list of Historic Resources.

(b) Standards and Guidelines:

The following development standards, following the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used in the review of all applications involving historic buildings and sites subject to the provisions of this section and the requirements for Design Review in Art 3, Part 4. The Secretary of the Interior's Standards are basic principles created to help preserve the distinctive character of a historic building and its site. They are a series of concepts about maintaining, repairing and replacing historic features, as well as designing new additions or making alterations. These Standards are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility.

1. *A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.*

98-100 North Willard Street was constructed in 1895 by Louis Burbo as his own residence. Residential use will remain.

2. *The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.*

The State Register listing states: *The house has the same proportions and scale as the rest of the street and contributes to the general harmonious character of the street. The majority of the enlargement and alteration has been to the rear of the building and is not readily visible to the street; the façade is relatively unchanged.*

No exterior changes are proposed.

3. *Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.*

No exterior changes are proposed.

4. *Changes to a property that have acquired historic significance in their own right will be retained and preserved.*

None identified.

5. *Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.*

No exterior changes are proposed.

6. *Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.*

No exterior changes are proposed.

7. *Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*

Not applicable.

8. *Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.*

No archaeological resources have been identified at this location. Not applicable.

9. *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.*

No exterior changes are proposed.

10. *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

No exterior changes are proposed.

Affirmative finding.

Section 5.4.8 (e) Historic Building Rehabilitation Bonus:

In order to facilitate the rehabilitation and reuse of historic buildings in Residential and Institutional districts, development in excess of the limits set forth in Tables 4.4.4-1, 4.4.5-2 and 4.4.5-3 may be permitted by the DRB subject to all of the following conditions:

- i. *The principal building shall be listed or eligible for listing in the United States Department of the Interior's National Register of Historic Places or the Vermont State Register of Historic Places;*
98-100 North Willard Street is listed on the Vermont State Register of Historic Places.
- ii. *The density limits of the underlying zoning district in Sec. 4.4.4(b) shall not apply. The extent of development shall instead be limited to an expansion up to a total of 125% of pre-application gross floor area of the qualifying principal building in (i) above;*
The development will not occur outside the existing parameters of the structure.
- iii. *The rehabilitation conforms to the requirements of Sec.5.4.8 (b) above;*
See Section 5.4.8, above.
- iv. *Neighborhood commercial uses may be permitted by the DRB subject to the applicable requirements of Sec. 4.4.5(d)(5)(A);*
Not applicable.
and,
- v. *Lot coverage shall not exceed:*

Table 5.4.8-1 Historic Building Rehabilitation Bonus

District	Maximum Coverage
RL, RL-W, I	Expansion up to a total of 125% of pre-application principal building coverage.
RM, RM-W	Expansion up to a total of 125% of pre-application principal building coverage.
RH	Expansion up to a total of 125% of pre-application principal building coverage.

No changes are proposed to the existing lot coverage. **Affirmative finding.**

Article 8: Parking

Zoning Amendment 22-07 eliminated minimum parking requirements (Table 8.1.8) but has established Maximum Off-street Parking Requirements (Table 8.1.9-1.) Under that new provision, each unit has a limit of 3 off-street parking spaces.

98-100 North Willard Street has an existing a three car garage with room for parking and turnaround in front of the garage. This is an existing condition, and does not threaten the Maximum Parking standard.

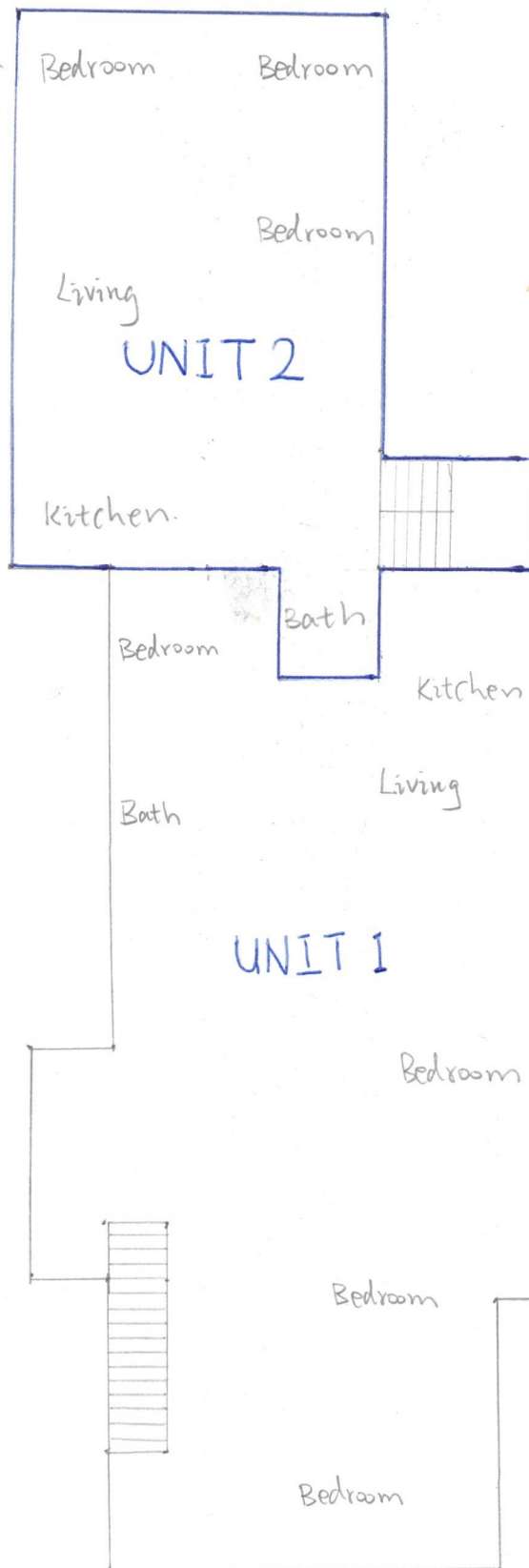
Affirmative finding.



II. Conditions of Approval

1. A State of Vermont Wastewater Permit may be required. It is the applicant's obligation to secure any such permit.
2. Prior to release of the zoning permit, the applicant shall receive written approval from Burlington's Department of Water Resources confirming adequate water and sewer capacity for the new unit.
3. Not more than four unrelated adults may occupy any of the residential units.
4. Standard Permit Conditions 1-15.

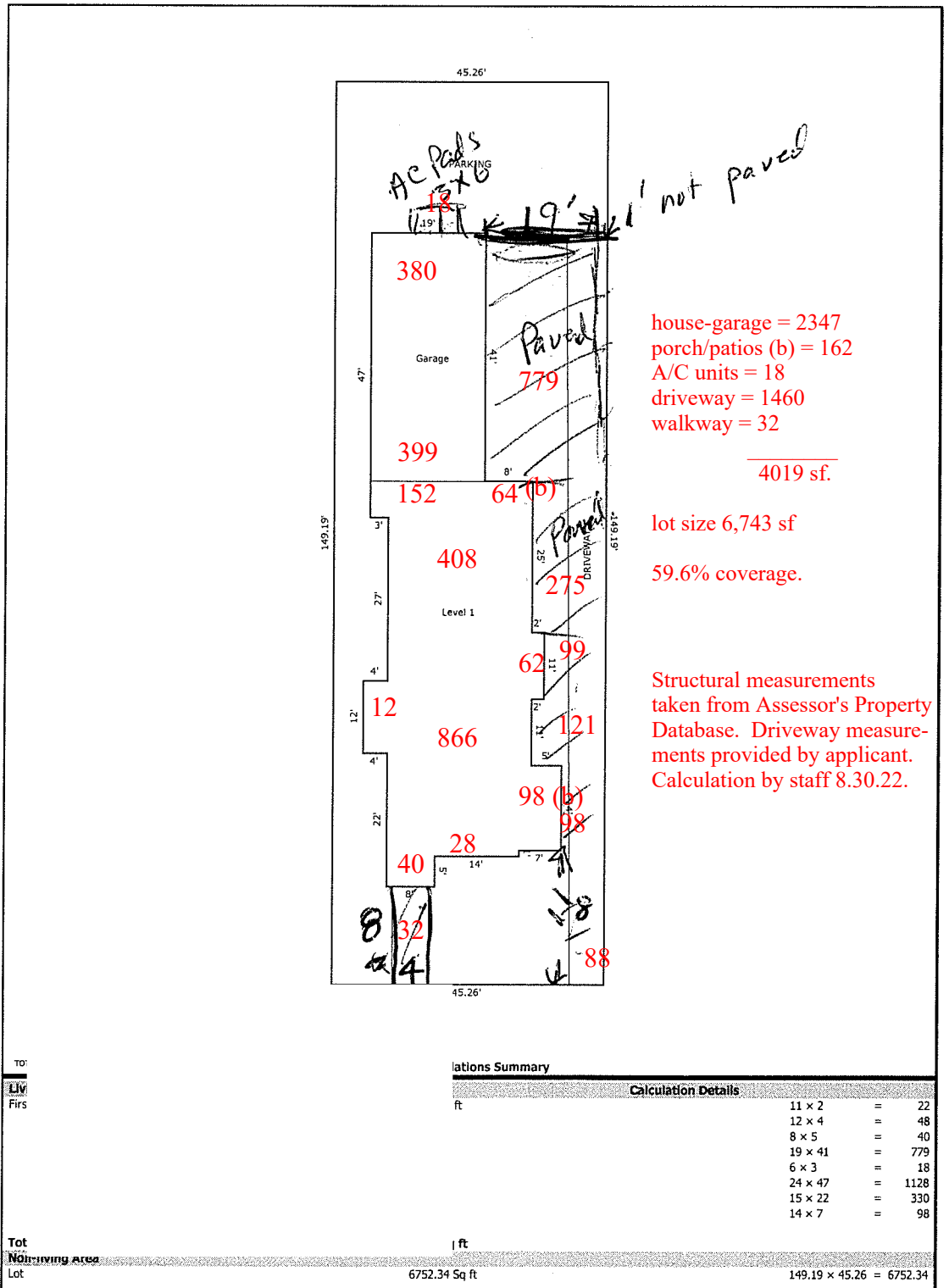
NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.



* Both units on 2nd Floor.
Front and Back.

Building Sketch (Page - 1)

Borrower			
Property Address			
City	County	State	Zip Code
Lender/Client			





Department of Permitting and Inspections

645 Pine Street
Burlington, VT 05401-8415
Phone: (802) 865-7188
www.burlingtonvt.gov/dpi

Home Occupation Application Questionnaire

Use this checklist for all applications for a home occupation - See Sec. 5.4.6 of the Zoning Ordinance. This questionnaire is provided to summarize details and is required to accompany a zoning permit application form and required fee (for either administrative approval or conditional use review).

Please note:

1. The specific requirements for home occupations can be found in Section 5.4.6 of the Comprehensive Development Ordinance which is available in its entirety on our website at www.burlingtonvt.gov/PZ
2. A 'Business Personal Property Registration Form' may be required to be submitted to the Assessors Office. This form is available at www.burlingtonvt.gov/assessor/businesses

Name of Business Proposed: Atlas Acupuncture

Type of Business Proposed: Acupuncture Clinic

Provide a detailed description of the proposed Home Occupation such as: activities involved; materials and equipment used; quantities of materials and equipment stored on-site; methods of operation; hours of operation. This may be done on a separate piece of paper and attached.

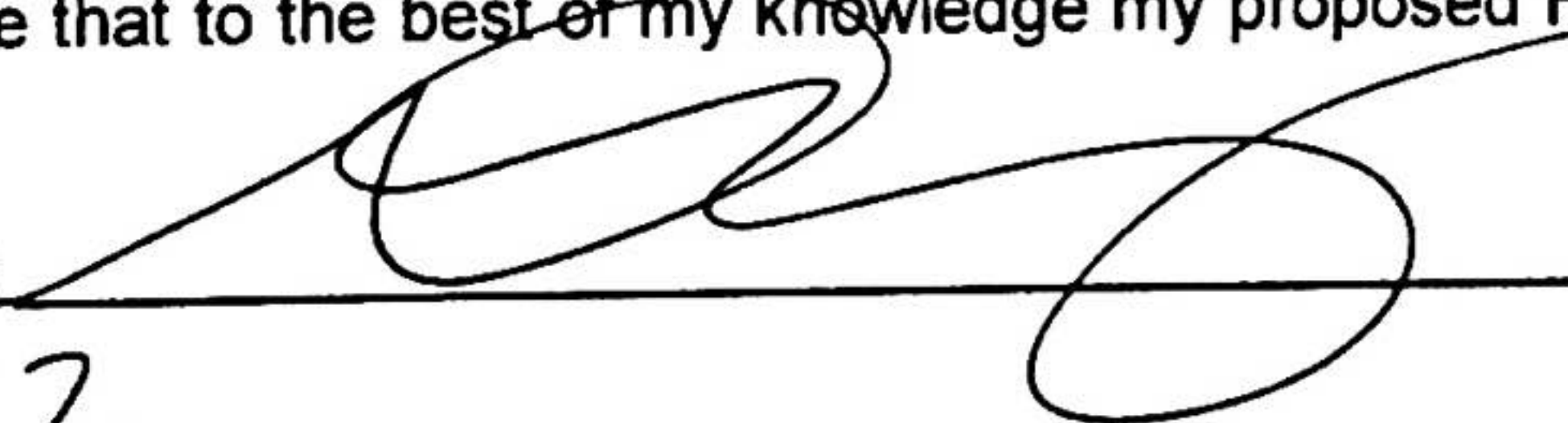
Please respond to the following:

1. How many persons will be involved or employed in the conduct of the proposed Home Occupation:
Residents of premises: 1 Others 0 Total Number 1
2. What type of product will be produced, serviced, or repaired in the conduct of your Home Occupation? (For example: repair of clocks or watches, making jewelry, etc.). Explain:
Acupuncture services / appointments only
3. Describe any alterations to the home or premises that might be required to facilitate your Home Occupation:
None
4. Describe what rooms will be used in the conduct of the Home Occupation and how these rooms will be used. (For example: garage will be used to store supplies; or den will contain desk and file cabinets, etc.). Indicate the gross floor area(s) that will be used in the conduct of the Home Occupation. Indicate the total gross floor areas of your house and include any accessory structure(s) to be used for the Home Occupation, (Ex. Garage).
One treatment room will be used for acupuncture appointments. One couch will be available for a patient to wait. Please see attached floor plan (version 2). The dimensions are 8.5' x 12.5' = 106 sqft.
5. Describe the mechanical and/or electrical equipment that will be necessary to conduct your business activity:
Heating pads or heat lamps are occasionally used based on patient preference
6. Describe how, where and in what amounts the material, supplies and/or equipment related to your Home Occupation will be displayed or stored:
All furniture + supplies related to the business will remain in the treatment room + not visible otherwise

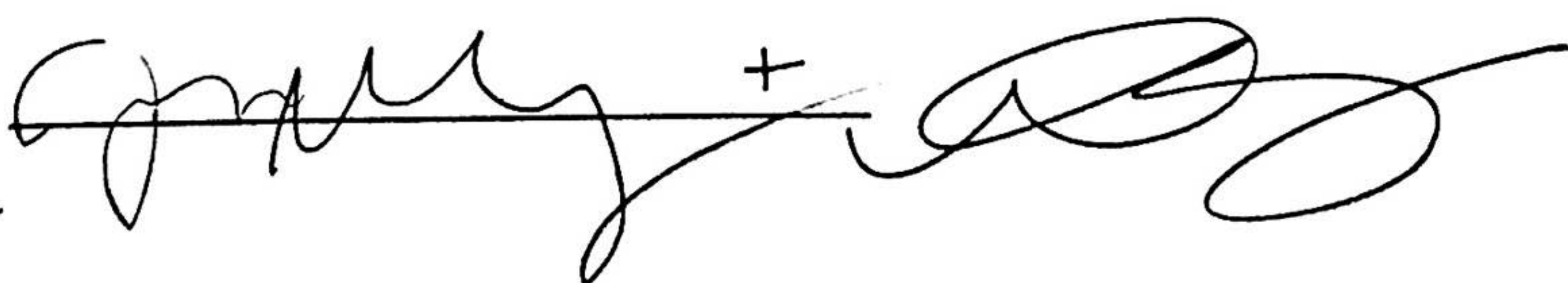
PLEASE TURN OVER

7. Will people come to your home to obtain any product or utilize any service connected with the proposed Home Occupation activity? Yes ☒ No ☐
If yes, please explain in detail:
Yes, a patient with an appointment will come for acupuncture services. Please see existing conditions to the 55 Harvard St home office. It will be the same.
8. Are any signs necessary or proposed relative to the Home Occupation? Yes ☐ No ☒
If yes, you are required to file for a Sign Permit. An application form can be obtained at the Planning and Zoning Department or on our website.
9. If trucks or other equipment will be used in your Home Occupation, where will they be parked or stored?
N/A
10. Will the Home Occupation involve the use of commercial vehicles for delivery of materials to or from the premises? Yes ☐ No ☒
If yes, please explain:
N/A
11. How many parking spaces will be provided for the home occupation? One (at the rear of the stacked driveway)
Where will they be located? Indicate parking spaces on a site plan of this property as part of your application submission. This will be unchanged from the current parking site plan
12. Is your proposed Home Occupation in conformance with the conditions, covenants and restrictions pertaining to your property? Yes ☒ No ☐
We suggest checking your deed for conditions, covenants and restrictions.
The owner/applicant will be the parking attendant.

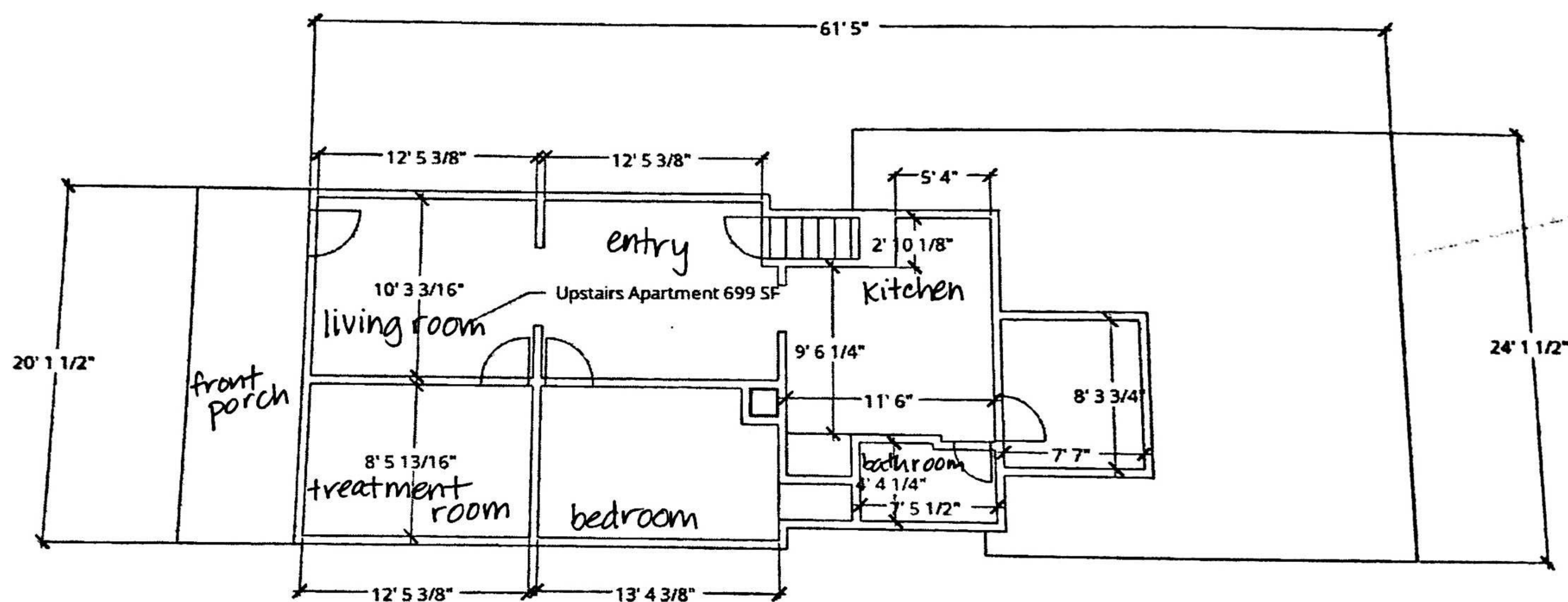
I have read and understand 'Sec 5.4.6 Home Occupations' under the City of Burlington Comprehensive Development Ordinance and believe that to the best of my knowledge my proposed Home Occupation would not violate any portion of said Ordinance:

Applicant's Signature: 

Date: 9/16/2022

Property Owner's Signature: 

Date: 9/16/2022



57 Howard St Floor Plan

Burlington Development Review Board

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Telephone: (802) 865-7188
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AJ LaRosa
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Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 4, 2022, 5:00 PM

AGENDA

Remote Meeting

Zoom: <https://us02web.zoom.us/j/83225696227?pwd=SGQ0bTdnS000Wkc3c2J4WWw1dzMxUT09>

Webinar ID: 832 2569 6227

Passcode: 969186

Telephone: US +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or
+1 253 215 8782 or +1 346 248 7799

- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Consent**

- 1. **ZP-22-509; 98-100 North Willard Street (RL, Ward 1E) 98-100 North Willard, LLC / Wen Dong**
Add additional residential unit to newly converted duplex utilizing Historic Building Rehabilitation Bonus. (Project Manager, Mary O'Neil)
- 2. **ZP-22-512; 55-57 Howard Street (RL, Ward 5S) Patrick McHenry / Montana Burns**
Relocate medical office/acupuncture home occupation from downstairs unit (55 Howard St.) to upstairs unit (57 Howard St.). (Project Manager, Ryan Morrison)

V. **Other Business**

- 1. **Historic Preservation Training**
Professor Thomas Visser

VI. **Adjournment**

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The programs and services of the City of Burlington are accessible to people with disabilities. Individuals who require special arrangements to participate are encouraged to contact the Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).

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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
Joseph Cava, Permit Technician
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: October 4, 2022
RE: ZP-22-512; 55-57 Howard Street

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.

File: ZP-22-512

Location: 55-57 Howard Street

Zone: RL **Ward:** 5S

Applicant/ Owner: Montana Burns / Montana Burns & PJ McHenry

Request: Relocate previously approved home occupation (acupuncture office) from the 1st floor unit to the 2nd floor unit in the existing duplex.

Background:

- **Zoning Permit 17-1191HO;** establish a medical office (acupuncture) as a home occupation, interior remodeling. Approved June 29, 2017.
- **Zoning Permit 17-1280CA;** front porch replacement. Approved June 27, 2017.
- **Non-Applicability of Zoning Permit 12-0299NA;** Repair slate roof. Approved September 7, 2011.

Applicable Regulations:

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

Overview: The applicant seeks approval to relocate the previously approved home occupation (acupuncture office) from the 1st floor unit to the 2nd floor unit in the existing duplex. The owners of the property, one of which being the applicant, reside on the property and currently occupy both units. No changes to the business operation, nor the structure itself, are proposed.

Recommendation: **Consent approval**, as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications, Permits, and Project Reviews

Section 3.5.6 Review Criteria

(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 utilization of an existing room within a dwelling unit for the purpose of an acupuncture practice will have no impact on existing or planned public utilities, facilities or services in the city. **Affirmative finding.**
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 proposed home occupation is accessory to a residential use within a residential zoning district. The home occupation is not anticipated to have any impacts on the character of the area. From the Comprehensive Plan:
 - *Explore and expand approaches to promote and support locally-owned and controlled small businesses, including home occupations and social entrepreneurs, that serve both city-wide needs and surrounding neighborhoods.* [planBTV: Comprehensive Plan, P. 48, 5.8] **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;*
There will be no perceptible noise, odor, dust, heat or vibrations associated with the proposed home occupation. **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 location is within a residential zoning district, connected within an established network of streets, sidewalks and bicycle paths of the city, and near public transit along Pine Street, a block away. No adverse impacts, unreasonable demand of services or dearth of transportation modes are identified. **Affirmative finding.**
5. *The utilization of renewable energy resources;*
The proposal will not prohibit the use of alternative or renewable energy resources. **Affirmative finding.**

and
6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.*
None identified. It is the applicant's obligation to secure any additional permits (from state or federal offices) as required. **Affirmative finding as 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;*
No requirements for screening are identified. **Affirmative finding.**
 2. *Time limits for construction.*
No construction is proposed. **Not applicable.**
 3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*
The applicant states that the home occupation will maintain hours of 9:00 AM to 5:00 PM. The business will be closed on Saturdays and Sundays. The business operates strictly by appointments only. There are no open hours to the general public. For a small residential home occupation, the hours do not suggest unreasonable traffic, parking congestion, or neighborhood nuisance. **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,*
Any request for enlargement or alteration of the Home Occupation will be reviewed under the standards in effect at the time of application. **Affirmative finding.**
- 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.*
None are identified; however, the DRB may add conditions at their discretion.

Article 5: Citywide General Regulations

Section 5.4.6 Home Occupations

Pursuant to the requirements of 24 VSA 4412(4), it is the intent of these regulations to provide for the use of a minor portion of a dwelling unit for a home occupation and to ensure compatibility with other permitted uses and with the residential character of the neighborhood. Such a home occupation must clearly be secondary or incidental to the principal residential use, and so located and conducted that the average neighbor, under normal circumstances, would not otherwise be aware of its existence.

(b) Conditional Use Review:

All home occupations not otherwise eligible for administrative approval above shall require review and approval by the DRB pursuant to the requirements of Art. 3, Part 5. In addition to the conditional use criteria, the following criteria must be met for any home occupation:

1. *A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL districts, and no more than two (2) full-time equivalent employees in other districts. The home occupation shall be conducted entirely within an existing dwelling unit and/or one enclosed accessory structure;*

The applicant is a resident of the property and will be the sole employee of the business.
Affirmative finding as conditioned.

2. *No more than thirty-five per cent (35%) of the floor area of said residence, including accessory structures, up to a maximum of seven hundred fifty (750) square feet, whichever is less, shall be used for such purpose;*

The 2nd floor unit is 699 sf. 35% of the 2nd floor totals 244.65 sf. The applicant proposes one treatment room totaling 106 sf, or 15%. **Affirmative finding.**

3. *No home occupation shall require alterations, construction or equipment that would change the fire rating of the structure or the fire district in which the structure is located;*

No alterations, construction, or equipment is proposed that would change the structure's fire rating. **Not applicable.**

4. *There shall be no outside storage of any kind related to the home occupation;*

None proposed. **Affirmative finding.**

5. *There shall be no exterior evidence of the conduct of a home occupation except for:*

- A. *Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each);*

Not proposed. **Affirmative finding.**

and

- B. *One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.*

No exterior signage is proposed. **Affirmative finding.**

6. *No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries. All parking shall be located off-street and shall maintain the required front yard setback;*

Scheduling is on an appointment basis. The applicant notes that there may, at times, be up to 2 clients in the business at one time when the schedule is fully booked. This subsection prohibits more than 1 customer vehicle at a time at a home occupation, and as such, the business will be limited to this restriction. The property has utilized a driveway long enough to park four vehicles, albeit in one stacked row. The city is currently amending Article 8 *Parking*, part of which eliminates minimum parking requirements. While the amendment has not yet been finalized by the City Council, it has been publicly noticed and is in effect – meaning there are no minimum parking requirements for the existing duplex. This section requires that home occupation parking be limited to one additional vehicle at a time for customers or deliveries, and that parking for the home occupation be off-street. The existing driveway will satisfy the requirement for one off-street parking space for clients, as well as one additional space for the applicant/home occupation proprietor. **Affirmative finding as conditioned.**

7. *No home occupation shall create sounds, noise, dust, vibration, smell, smoke, heat, humidity, glare, radiation, electrical interference, fire hazard or any other hazard, nuisance or unsightliness which is discernible from any adjacent dwelling unit;*

No defined nuisances are anticipated from the proposed home occupation. **Affirmative finding.**

8. *The home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes and shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part.*

The home occupation should present no exterior evidence of its presence, and it is not anticipated to change the character of the dwelling unit or the residential district within which it is located. **Affirmative finding.**

9. *Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day;*

No deliveries are proposed. **Affirmative finding.**

10. *With the exception of one delivery per day, as specified in subparagraph (9), no more than one (1) commercial vehicle shall be allowed on the premises at any one time;*

No commercial vehicles are associated with the proposed home occupation. **Affirmative finding.**

and

11. *There shall be no sale of goods except for goods fabricated on the premises as part of an approved home occupation.*

There is no sale of goods proposed with the home occupation. **Affirmative finding.**

(c) Exclusions:

Home occupations shall not include commercial stables or kennels, veterinary clinics, or similar establishments.

The home occupation does not involve commercial stables, kennels, veterinary clinics or similar. **Affirmative finding.**

(d) Revocation:

Approval of a home occupation may be revoked by the DRB in accordance with the following provisions:

1. *Noncompliance.* *Upon receipt of notification or evidence of noncompliance with conditions of approval or evidence of error or misrepresentation, the DRB may schedule a public hearing to consider the revocation or modification of approval for a home occupation;*
2. *Notice.* *The administrative officer shall duly warn such public hearing and give notice to the applicant, abutters, and other interested parties;*
3. *Public Hearing.* *The DRB shall hold a public hearing to hear cause as to why the approval of the home occupation should not be revoked. The DRB shall render its decision in accordance with the conditional use time limitations set forth in Article 3, Part 5; and*
4. *Errors.* *The burden of providing complete and accurate information shall be the sole responsibility of the applicant. Any error or misrepresentation may result in voiding or modification of the approval for a home occupation.*

The standards of revocation of a home occupation are provided to the applicant for informational purposes. Noncompliance with the conditions of the approval or errors in

information may result in revocation of the home occupation approval. **Affirmative finding as conditioned.**

Article 8: Parking

Table 8.1.8-1 Minimum Off Street Parking Requirements

The shift in location from one unit to the other within the duplex has no impact on the previously approved parking situation. ZP-17-1191HO approved the following parking situation:

The property currently has an 11' x 84' 4 ½" driveway. Parking spaces require a minimum depth of 18 ft. While 4 parking spaces may physically fit, limitations on stacked parking per Sec. 8.1.14, Stacked and Tandem Parking Restrictions, preclude recognition of more than 2 stacked spaces in this case (only valet parking arrangements may exceed the 2 stacked spaces). As a result, the City only recognizes the property as having 2 conforming parking spaces.

*With regard to the home occupation, there needs to be a 3rd parking space for customers during business hours. A precedent was set previously allowing stacked parking of up to 3 vehicles for a home occupation use based on the fact that the extra parking space was only needed during business hours, and the proprietor could act as a parking attendant. The same situation applies here, as the applicant has stated that she will act as a parking attendant for the property when the business is in operation. And naturally, the need for the extra space, as well as the need for a parking attendant, goes away after business hours. **Affirmative finding.***

II. Conditions of Approval:

1. Any expansion of the home occupation or alteration or construction to conduct the home occupation shall require the applicant to return to the DRB for review under the standards in effect at that time.
2. The home occupation shall be conducted solely by resident occupants. The proposal does not include additional, non-resident employees.
3. There shall be no outside storage of any kind related to the home occupation.
4. No exterior signage is included with this approval.
5. One off-street parking space shall be provided for clients. There shall be no overlap in patient scheduling so as to require more than one parking space at a time.
6. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day.
7. Hours of the home occupation operation are as follows:
 - Monday thru Friday – 9:00 am to 5:00 pm
8. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes as required.
9. Any noncompliance with the conditions of this approval or errors in information shall be the burden of the applicant and may be subject to revocation per Section 5.4.6 (d), above.
10. Standard Permit Conditions 1-15.

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax: (802) 863-0466

AJ LaRosa
Caitlin Halpert
Geoff Hand
Brooks McArthur
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 4, 2022, 5:00 PM

AGENDA

Remote Meeting

Zoom: <https://us02web.zoom.us/j/83225696227?pwd=SGQ0bTdnS000Wkc3c2J4WWw1dzMxUT09>

Webinar ID: 832 2569 6227

Passcode: 969186

Telephone: US +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or
+1 253 215 8782 or +1 346 248 7799

- I. Agenda
- II. Communications
- III. Minutes
- IV. Consent

1. **ZP-22-509; 98-100 North Willard Street (RL, Ward 1E) 98-100 North Willard, LLC / Wen Dong**
Add additional residential unit to newly converted duplex utilizing Historic Building Rehabilitation Bonus. (Project Manager, Mary O'Neil)

Approve

2. **ZP-22-512; 55-57 Howard Street (RL, Ward 5S) Patrick McHenry / Montana Burns**
Relocate medical office/acupuncture home occupation from downstairs unit (55 Howard St.) to upstairs unit (57 Howard St.). (Project Manager, Ryan Morrison)

Approve

V. Other Business

1. **Historic Preservation Training**
Professor Thomas Visser

VI. Adjournment

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 4, 2022, 5:00 PM

MINUTES

Remote Meeting

Board Members Present: All members were remote. AJ LaRosa, Caitlin Halpert, Brooks McArthur, Sean McKenzie, Brad Rabinowitz, Leo Sprinzen, and Chase Taylor

Board Members Absent: Geoff Hand

Staff Members Present: All members were remote. Mary O'Neil, Ryan Morrison, and Joseph Cava

- I. Agenda
- II. Communications
- III. Minutes
- IV. Consent

1. **ZP-22-509; 98-100 North Willard Street (RL, Ward 1E) 98-100 North Willard, LLC / Wen Dong**
Add additional residential unit to newly converted duplex utilizing Historic Building Rehabilitation Bonus. (Project Manager, Mary O'Neil)
Wen Dong: Sworn in.

AJ LaRosa: This project is recommended for consent approval. Mr. Dong, do you have any comments or questions?

Wen Dong: No, I'm good.

AJ LaRosa: Any questions or comments from the Board? Hearing none, would someone like to make a motion?

Brooks McArthur: Motioned to approve and adopt staff recommendations, Chase Taylor 2nd. Vote 6-0. Motion carries.

2. **ZP-22-512; 55-57 Howard Street (RL, Ward 5S) Patrick McHenry / Montana Burns**
Relocate medical office/acupuncture home occupation from downstairs unit (55 Howard St.) to upstairs unit (57 Howard St.). (Project Manager, Ryan Morrison)
Patrick McHenry, Montana Burns: Sworn in.

AJ LaRosa: This project is recommended for consent approval. Have you folks seen the staff report, or have any questions?

Patrick McHenry: Yes, I've viewed the staff report and have no issues with it.

AJ LaRosa: Are there any questions or comments from the Board? Hearing none, would someone like to make a motion?

Brad Rabinowitz: Motioned to approve and adopt staff recommendations, Brooks McArthur 2nd.
Vote 7-0. Motion carries.

V. Other Business

1. Historic Preservation Training

Professor Thomas Visser

Mary O'Neil: I am pleased to introduce Professor Thomas Visser, who has served on a variety of regulatory boards and conducted a wide array of research.

Thomas Visser: It's a pleasure to talk about old and fresh approaches to historic preservation in the City of Burlington. There's a lot of terminology and I look forward to breaking down the nuances of the regulations that have preserved the City. These regulations seek to preserve, maintain, and enhance Burlington's historic character scale, architectural integrity, and cultural resources. Does this topic of integrity make sense?

Mary O'Neil: Yes, this is a regular part of our work.

Thomas Visser: This topic of integrity stems beyond the beautiful mansions on the hill, but the fabric and texture of the community and sense of place including markets and tenement housing. Other driving factor for preservation include the urban renewal of the 60's-70's that decimated the downtown core. The City of Burlington takes a local approach to preservation being written in its zoning ordinance to protect and adaptively reuse historic buildings. An understanding of the recent past is very much alive in the present internationally following current events like the fate of the Cathedral of the Immaculate Conception. There is an obvious tension between preservation and new development.

Brad Rabinowitz: How do we define integrity when a building has been heavily modified, with a loss of character defining features?

Thomas Visser: It's subjective, open to interpretation. It's common to see earlier 19th century Greek Revival dwellings with late 19th century Queen Anne style modifications. One such example is Grasse Mount. It's all about the congruity and the relationship of varying styles to tell a full story rather than separate stories. This is the heritage that stems beyond written history to tell a broader context. Other buildings are noted for significant events that occurred towards broader events in history. Events could include social and political associations with the lives of significant people in history.

AJ LaRosa: I think we've dealt with a variety of these issues, and the challenge is drawing our own conclusions in the wake of landowner priorities. One such big issue before the Board has been demolition by neglect.

Thomas Visser: This raises some interesting points. Who has the authority to determine the burden of proof? Has the applicant provided us, the review committee, with answers to make the decision clearer? These are questions we need answer to fill in the gaps and determine whose responsibility it is. In regard to a demolition by neglect, if the quality and character defining features of these buildings are at risk for loss of integrity. The crunch doesn't become resources to preserve, but time as the period of abandonment is prolonged.

AJ LaRosa: It is a tough decision to weigh in on the balancing act.

Thomas Visser: We are here to make these calls.

Caitlin Halpert: The most common candidates for demolition by neglect include historic carriage barns and outbuildings that have outlived their useful lives.

Thomas Visser: It's all about the missing middle. If a historic outbuilding no longer fulfills its intended purpose, then what about adaptive reuse to fulfill other needs like housing density.

Caitlin Halpert: What can we do to encourage property owners to incentivize these buildings before it becomes too late?

Thomas Visser: As long as the adaptive reuse follows the Secretary of the Interior's Standards, then incremental steps can be taken to preserve character and give a historic building new use.

Mary O'Neil: I am glad you raised the issue of Missing Middle Housing. Sometimes zoning doesn't move as fast as we would like. The first project reviewed tonight was the inaugural exercise of a recently adopted bonus provision called the Historic Building Rehabilitation Bonus. This will allow greater density and more housing.

Thomas Visser: How much time do we have and how would the Board like to move forward?

AJ LaRosa: I'd like to encourage the Board to ask their own questions to broaden our own understanding. How do we incentivize preservation from a zoning standpoint?

Thomas Visser: Advocacy groups like Preservation Burlington are key to raising awareness and educating the masses about the potential for historic properties. Burlington has many examples of success stories to promote communication between adaptive reuse and new development. We also ask, what could have been done to improve the flow process for prospective applicants.

Brad Rabinowitz: Part of the issue is addressing economic viability of a prospective project of rehabilitating a historic building gracefully.

Thomas Visser: There are times when we have to admit that it's too late, but it's opening the line of communication before that happens. Are there other thoughts?

AJ LaRosa: People often tout just because its old, doesn't means its historic and in need of preservation.

Thomas Visser: This all comes back to significance of building(s) or neighborhoods and how they relate to the broader patterns of history. The New North End of Burlington for example is not highly surveyed which puts the integrity of whole neighborhoods at risk, and not just individual buildings. This is part of the discussion that needs to happen locally before parroting state and federal jargon to prove a point for preservation.

Brad Rabinowitz: Part of the issues that also arise is the buildings materials that were readily available in the distant past, but not so available now.

Thomas Visser: One of these materials are slate roofs which are now a specialty compared to the commonality and functionality of standing seam metal roofs.

Caitlin Halpert: I've thought about chimneys as a historic function of the structure. Some things I think about are the historic incorporation of PVC piping which has replaced the function of historic chimneys.

Thomas Visser: This is part of the mitigation between various agencies to retain historic character defining features like chimneys that tell the story of a building like Old Mill which was once three separate buildings.

AJ LaRosa: Being conscious of time, are there any additional questions from the Board?

Leo Sprinzen: Thank you for your time, this workshop has been extremely helpful.

Thomas Visser: Consistency is important, but its more than an aesthetic judgement call, and being familiar with the zoning ordinance to help assist with these conversations.

Mary O'Neil: Thank you for your contribution, Tom.

AJ LaRosa: Seeing as this was our last agenda item, I move we adjourn.

VI. Adjournment

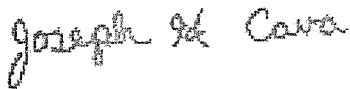
Hearing closed at 6:20 PM.



Alexander J. LaRosa, Chair of Development Review Board

10/25

Date



Joseph H. Cava, Permitting & Inspections Permit Technician

10-6-22

Date

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