



CODE ENFORCEMENT REPORT

ZP #: 18-0072AP

Tax ID: 038-4-113-000

City of
Burlington, Vermont
149 Church Street

Application Date: July 21, 2017

Property Address: 204 North Ave

Note: These are staff comments only; decisions on appeals are made by the Development Review Board, which may uphold or overturn Administrator's decision. **THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Appeal of NOV #335900-- **Notice of Violation issued for** Change of use from a duplex (2 units) to a triplex (3 units) without zoning approval.

Sec. 12.2.2 Appeals of Administrative Officer Decisions

Appeal of ZV #334211; **information and argument received from Appellant:**

Name and address of appellant:

Pierre Gingue
PO Box 105
Hinesburg, VT 05461

Represented by: Cynthia Broadfoot, Esq.

Brief description of the property with respect to which the appeal is taken

204 North Avenue is permitted as a 2-unit residential structure in the RM Zone.

Reference to the regulatory provisions applicable to that appeal

(a) Burlington Comprehensive Development Ordinance Articles 2, 3, 5, and 12.

Relief requested by the appellant

Applicant is requesting the City of Burlington Code Enforcement Office withdraw its Notice of Violation against Mr. Gingue and the property at 204 North Road [Avenue] as it relates to its usage as a three dwelling unit structure.

Appellant also asks that the City of Burlington should issue an after-the-fact permit for conversion from a two-unit structure to a three-unit structure.

Alleged grounds why such requested relief is believed proper under the circumstances

Applicant acquired the subject property on or about December 19, 2002. It is undisputed that the structure had three (3) dwelling units at that time.

When the previous owner bought the property in 1979, it was a duplex.

According to the Appellant's testimony in appeal, in 1992, the prior owner moved out of the property, retaining it as an investment. He states that at that time, he converted the property from 2 units to 3 units. Accordingly, the property has been a 3-unit residence since 1992.

The prior owner obtained building permits for the work but appears not to have obtained a zoning permit.

The subject property is located in Zone RM. Multi-family dwellings (3 or more) are a permitted use in Zone RM. We maintain that the usage as such began in 1992 and has continued to the present.

Pursuant to the City's Assessor's records, this property has been recognized as a 3-unit structure since at least the 1994 re-evaluation. Additionally, the Code Enforcement Office has been aware that the subject property is a three unit dwelling since at least December 17, 2002, when it issued a routine inspection letter to the prior owner, Samuel Conant.

As set forth in the City's letter dated July 7, 2017, the City previously initiated an enforcement against Mr. Gingue in January 2010.

To the extent that the property is in violation of City of Burlington regulations, the City has failed to timely enforce its owner regulations and enforcement should be barred.

Appellant's Submittals

No submittals attached to the appeal from Appellant

City's Rebuttal:

As illustrated in the Appeal, Appellant does not deny that the property has changed its use from a duplex to a triplex. However, the change required zoning approval and Appellant (or previous owner) failed to request zoning approval for the additional use (triplex) change. Appellant does not refute this fact, instead, Appellant states that the City failed to timely enforce the violation. Pursuant to caselaw, enforcement of a use violation--the type of violation at issue here--is not barred from enforcement by the statute of limitations on zoning violations as use violations are considered to be "continuing" violations, that is, to recur with each day of violation, therefore the statute of limitations wouldn't apply.

City's Submittals

- Notice of Violation Dated July 6, 2017
- Notice of Violation Dated January 20, 2010
- DRB March 3, 2010 Appeal minutes
- Copy of 24 V.S.A. § 4454(a) and
- Copy of 24 V.S.A. §4470 (b)

INVESTIGATION:

Planning/Zoning Records:

- Property is zoned as RM
- March 20, 2009: ZP 09-626CA approved to convert three season porch to finished living area; certificate of occupancy approved July 26, 2017.
- January 20, 2010: Notice of violation for the change of a single family dwelling unit to a triplex without zoning permit; NOV withdrawn June 5, 2017 due to lack of action in a timely manner.
- January 29, 2010: ZP 10-0602CA approved to install sixteen replacement windows; certificate of occupancy approved July 26, 2017.
- July 7, 2017 Notice of Violation for "Change of use from duplex (2 units) to triplex (3 units) without zoning approval.

Department Public Works Records:

- 1983 General Repairs with plumbing
- 1983 Building Permit – general repairs on exterior.
- 1992 Building Permit – Repair/remodel single family house
- 2002 Building Permit – siding repair, porch column repair and rebuild rear egress to comply with building code requirements.
- 2002 Building Permit – 16 vinyl replacement windows
- 2003 Mechanical Permit – install (2) new Rinnai space heaters in existing living units.
- 2003 Mechanical Permit – replace old hot air furnace with new gas fired hot air furnace and 3 hot water heaters.
- 2005 – Electrical permit – install new wiring for newly installed ac/dc interconnected smoke detectors per city ordinance in 3 units.
- 2008 – Building permit – repair damaged Gyp board walls and ceilings in three apartments.
- 2009 – Electrical permit – install new 100 am panel to Apt. 2, split the existing circuits which currently are both feeding from Apt. 1.
- 2010 – Building Permit – convert porch into a den.

Code Enforcement Minimum Housing Records:

- 1990 Property listed as a 2-unit rental.

- 2000 at the Property but does not identify number of units.
- 2002 note in the file that Property is not listed as a rental.
- December 17, 2012 property registered as a 3 unit rental.

Assessor Records:

- 1985 Assessor's Card identifies Property as a 2-unit structure with 10 rooms (4 of which are bedrooms).
- Notation on 1994 Assessor's Card indicates the use changed from 2 units to 3 units October 21, 1993, verified by inspection.
- Lot size: 3,244 sf

FINDINGS

- Structure was originally built as a duplex circa 1899 and taxed as such until 1994.
- In 1930 204 ½ North Avenue was built as a single family home and is separately owned.
- On January 20, 2010, a notice of violation (ZV 191179) was issued to Owner for a *change of use from single family home to a triplex without zoning approval*; Appeal included a statement from Appellant that "*prior owner purchased the property as a duplex. In 1992 he [previous owner] converted the property from 2 units to 3 units, moved out of the property and retained it as an investment property. Accordingly, the property has been a 3-unit residence since 1992*". Owner's attorney, Cynthia Broadfoot, argued ZV #191179 was not enforceable. At that January 20, 2010 public hearing there was confusion in City records between 204 North Avenue and 204 ½ North Avenue; City asked the Board for a continuance and later withdrew ZV 191179 (over the years City records showed 204 ½ North Avenue as one unit [single family home] and 204 North Avenue as one unit, two units, and three units and now believe the confusion has been remedied – 204 North Avenue is a recognized duplex).
- Found no municipal permit on record to change the use from duplex to triplex.

ARGUMENT

It appears undisputed by Appellant and the evidence that a zoning violation exists. The property was converted from a duplex to a triplex without zoning approval, a use of the property that does not meet the standards of the current zoning regulations. The only question raised is whether the City may enforce against this violation. As use violations are exempt from the zoning statute of limitations, the violation is enforceable.

Conclusion:

The property is located in the RM zone on a 3,244 sf lot; the CDO would not permit a triplex on such a small lot. At an allowable density of 20 units per acre, the 0.07 acre property could support 1 unit under today's zoning standards. Therefore, the Zoning Administrative Officer asks the Board to uphold ZV #334211, and, as allowed for in Section 2.7.10 of the CDO, include the following requirements to remedy the violation:

1. The 3rd unit shall be removed and the use converted to that of a duplex by October 10, 2017, Appellant shall request an Agreement from the City with a plan in which to remove the illegal unit and how the (third unit) space will be integrated into the existing duplex; Agreement will require a fee and will need to be executed by November 10, 2017.