



**CODE ENFORCEMENT OFFICE**

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**TO:** Development Review Board

**FR:** Jeanne Francis, Assistant Zoning Administrative Officer,  
Code Compliance and Enforcement

**DT:** May 15, 2018

**RE:** Report on **Appeal #18-0840AP**; Appeal of an Administrative Officer's Zoning Notice of Violation (ZV # 346538) issued on March 16, 2018, for "change of use from Single Family Home to Duplex without zoning approval" for Premises Located at 62 Venus Avenue, Burlington, Vermont

**Note:** This is the Administrative Officer's report; decisions are made by the Development Review Board, which may overturn or uphold the Zoning Administrator's Decision. **THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

**Location:** 62 Venus Avenue, Burlington, Vermont

**Tax Lot #** 024-1-087-000

**Appellant:** Lorraine Latorre, Trustee

**Representatives:** Jeffrey J. Wick Esq., and Joe Obuchowski Esq.

**Applicable Regulations:** CDO Articles 2, 3, 5, 8, 12 and VSA §4451

**Appeal # 18-0840AP**

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**Appeal: Sec. 12.2.2 Appeals of Administrative Officer Decisions**

- Appeal filed at the Planning/Zoning office on February 15, 2017:

Name and address of appellant:

Lorraine Latorre Trustee  
23 Blondin Circle  
Burlington, VT 05408

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

The subject property address is 62 Venus Avenue, Burlington, VT 05408, Tax Parcel ID # 024-1-07. The deed to this property is recorded at Volume 416, Page 355 and the deed-into-trust at Volume 1317 Page 245.

**Administrative Officer's Response to Appellant's Appeal:**

Reference to the regulatory provisions applicable to that appeal

**Appellant:** The City issued the NOV pursuant to 24 VSA 4451. This notice of appeal is being filed pursuant to CDO Sections 2.7.12 and 12.2.2. Among other grounds for appeal, we are asserting the enforcement is barred under 24 VSA 4454 (enforcement; limitations).

**Administrative Officer's Response:** 24 VSA 4454 is not included with the NOV. If Appellant wishes to assert 24 VSA 4454, they should request a "Determination" from the Zoning Administrator.

Structure received a building permit April 21, 1965 for a single family home. Assessor's Office first noted a change in use at an inspection in October 1991.

**Relief requested by the appellant:**

Appellant requests the following relief, and pleads for such relief in the alternative:

1. The enforcement is barred by 24 VSA 4454.

**Administrative Officer's Response:** 24 VSA §4454 does not apply to use violations. "A use violation that has never been legally established (and therefore cannot establish itself as a lawful nonconforming use) can be subject to an enforcement action at any time, particularly when the alleged use violation is ongoing." *In re Budget Inn NOV (Appeal of DAAT, Inc., David Singh from City of Barre DRB)*, 2013 WL 657039 (Vt. Super. Env'tl. Div. Nov. 19, 2013). Also see *City of Burlington v. Richardson*, 2006 WL 4088224 at 5 (Vt. Env'tl. Ct. June 27, 2006) (use violations are an exemption from 24 V.S.A. §4454 as use violations are analyzed as continuing or recurring violations).

2. That the property be treated as a legally pre-existing non-conforming use.

**Administrative Officer's Response:** Appellant would require a legal pre-existing use determination. One has not been sought.

3. Zoning approval for the duplex was granted and such approval needs to be located in the municipal records for other private records in the case the municipal records are incomplete or missing documents from era 1965-1984, which is the time period during which the alleged violation may have been created.

**Administrative Officer's Response:** There are no known permits in Municipal Records for a change in use. Covenant on Property prohibits a duplex use. Appellant would require a legal pre-existing use determination, which has not been sought or obtained.

4. A mutually agreeable remediation plan/settlement agreement between the owner and the City can be obtained, and we seek a reasonable opportunity to negotiate such remediation plan/settlement agreement with the City.

**Administrative Officer's Response:** Discussions regarding an agreement are occurring, but to date, there is not one in place.

5. Alleged use change is a change in density, not a use change, which use remains residential.

**Administrative Officer's Response:** Appendix A – Use Table – All Zoning Districts of the Comprehensive Development Ordinance lists detached single family dwellings and attached dwellings – duplex as separate uses. A change from detached single family dwelling to a duplex is a change in use and requires a zoning permit.

6. Appellant reserves the right to request additional relief prior to or at the hearing.

**Administrative Officer's Response:** Such a request would be supported with an enacted agreement between parties.

**Appellant also requests a Stay of Enforcement.**

In addition to the above relief sought, Appellant seeks a stay of enforcement (CDO 12.2.2(f), because irremediable damage will directly result to the owner and the tenants, if such is not granted.

**Administrative Officer's Response:** Such a request would be supported with an enacted agreement between parties.

City's Submittals

- Assessor's Records
- Code Enforcement: Minimum Housing Records
- Covenant in Land Records restricting development to single family homes
- Building permit #65-656 dated April 21, 1965 for the construction of a 50'x24' single family raised ranch home with 5 rooms and 1 car garage; (signed off by Raymond Wheel, Building Inspector)

**Background Information:**

- Property listed in City's Grand List as a 2 Family structure, 10 rooms, on an 8,673 sf lot.
- RL Zone
- Neighborhood Parking District
- Built 1965
- Ward 7N
- Appellants obtained control of the property in 2016

**CDO Article 2. Enforcement**

**Sec. 2.7.5 Observation or Complaints of Violations**

*... that have been taken.*

*The observation of a violation on the part of the administrative officer shall be considered an Investigation, and the alleged violator may be issued a notice of zoning violation or a municipal civil complaint ticket.*

**CDO Article 3. Applications, Permits, and Project Review**

**Sec. 3.1.2 Zoning Permit Required**

*Except for that development which is exempt from a permit requirement under Sec. 3.1.2(c) below, no development may be commenced within the city without a zoning permit issued by the administrative officer including but not limited to the following types of exterior and interior work:*

**(a) Exterior Work:**

...

- 3. Change of use or expansion of use.
- 16. Site improvements...

**(b) Interior Work:**

- 1. Increase in habitable living space (including, but not limited to, attic, bedroom, basement, garage, ...)
- 2. Installation of additional kitchen.
- 3. Change in use.
- 4. Increase or decrease in number of units

**CDO Article 5 Citywide General Standards**

Appellant stated he will argue the 15-year statute of limitations. However, that argument is misplaced. As indicated above, use violations are exempt from the zoning statute of limitations. “A use violation that has never been legally established (and therefore cannot establish itself as a lawful nonconforming use) can be subject to an enforcement action at any time, particularly when the alleged use violation is ongoing.” *In re Budget Inn NOV (Appeal of DAAT, Inc., David Singh from City of Barre DRB)*, 2013 WL 657039 (Vt. Super. Envtl. Div. Nov. 19, 2013). Also see *City of Burlington v. Richardson*, 2006 WL 4088224 at 5 (Vt. Envtl. Ct. June 27, 2006) (use violations are an exemption from 24 V.S.A. §4454 as use violations are analyzed as continuing or recurring violations).

It is also worth noting that Appellant did not seek a determination as a pre-existing legal nonconformity—“grandfathering”. To be determined to be a pre-existing legal nonconformity, one must demonstrate legal compliance with the zoning regulations prior to the change in the regulations that made, in this instance, the use, nonconforming.

**CDO Article 12. Appeals, Conditional Uses, Variances**

- Appellant filed a complete appeal as directed under CDO Article 12 Sec. 12.2.2

**24 V.S.A. §4451. Enforcement, penalties**

- (a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than \$200.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months.

## Summary

Appellants obtained control of this 1965 home in 2016. The house was permitted for construction of a 50'x24' raised ranch single family home with a one car garage (Building Permit # 65-656). According to Assessor's records, in October of 1991, via an inspection by their staff, it was discovered the single family house at 62 Venus Avenue had changed use to a duplex and had increased the number of rooms from 5 to 8; the one car garage approved in BP 65-656 had been removed. The Assessor's information reveals that building, electrical or plumbing permits had not been issued for changes; Code Enforcement Office confirmed their findings. No zoning permits for these changes are evident in Planning/Zoning records.

In addition, there is a covenant recorded in the City's land records prohibiting uses other than a residential, single-family home with a garage that accommodates up to 2 cars.

In 2006 the Code Enforcement Office received a complaint that the single family home had been converted into a duplex use; complaint verified at that time, however, the enforcement process was not enacted. In February of 2018 the mistake was discovered and the enforcement process was enacted. A notification notice was mailed to the Owner on February 1, 2018 without response. On March 16, 2018 the violation was followed-up with a formal Notice of Violation which was appealed on March 29, 2018.

No determination for a legally pre-existing nonconforming use (grandfathering) has been requested or obtained. Further, application of 24 V.S.A. §4454 is inappropriate as this is a use violation which is exempt from that statutory provision.

## CONCLUSION:

The City has provided sufficient evidence that violations noted in the March 16, 2018 NOV #346538 for a *change in use from a single family home to a duplex* are founded and enforceable.

The Code Enforcement Office, under the auspices of the Zoning Administrator, hereby requests the Development Review Board to uphold their decision that violations cited under NOV #346538 are viable and continue at said Property. Further, we request the Board condition the following:

1. Within 30 days from date of DRB decision, Owner shall enact a Stipulation Agreement with the City with a reasonable timeline in which to remove the violation and convert the use back to that of a detached single family dwelling; an administrative fee would be required.